



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CHICAGO, IL 60604

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November 6, 2019

Mr. Matt Donkin
Superintendent
Frankfort Community School District #168
601 E. Main Street
West Frankfort, Illinois 62896

Re: OCR Docket #05-19-1327

Dear Mr. Donkin:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint filed against the Frankfort Community School District #168 (District) alleging discrimination on the basis of disability.

Specifically, the complaint alleged that the District discriminates against individuals with disabilities by failing to provide, at Frankfort Community High School (School), an entrance that is accessible for individuals with disabilities, and parking for individuals with disabilities in an appropriate location and with an appropriate accessible route.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal Financial Assistance (FFA). OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of FFA from the Department and a public entity, the District is subject to Section 504 and Title II.

Prior to OCR concluding its investigation and making a final determination, the District expressed an interest in resolving the allegation under Section 302 of OCR's *Case Processing Manual* (CPM). OCR determined that it was appropriate to resolve the allegation with an agreement. On October 21, 2019, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address the allegations and issues raised in the processing of this complaint. OCR will monitor the implementation of the Resolution Agreement.

Legal Standards

Accessibility, general: The implementing regulations of Section 504, at 34 C.F.R. § 104.21, and Title II, at 28 C.F.R. § 35.149, provide that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with a disability, be denied the

benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity.

Accessibility, existing facilities: The implementing regulations of Section 504, at 34 C.F.R. § 104.22, and Title II, at 28 C.F.R. § 35.150, are applicable to any facility or part of a facility where construction commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that with regard to such facilities, termed “existing facilities,” the District will operate the programs, activities and (as to Title II) services so that, when viewed in their entirety, the programs, activities, and services are readily accessible to and usable by persons with disabilities. The District may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alterations of existing facilities or any other methods that result in making each of its programs, activities, and services accessible to disabled persons. The District is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of the statute, the District must give priority to methods that offer the programs, activities, and services to disabled persons in the most integrated setting appropriate. The implementing regulation of Section 504, at 34 CFR § 104.22(f), provides that the recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and locations of services, activities, and facilities that are accessible to and usable by persons with disabilities. The implementing regulation of Title II, at 28 C.F.R. § 35.163(a), provides that public entities must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of accessible services, activities and facilities.

Accessibility, new construction: Under Section 504, any facility or part of a facility for which construction commenced on or after June 3, 1977 is considered “new construction.” The Section 504 regulation, at 34 C.F.R. § 104.23, requires each such facility or part of a facility constructed by, on behalf of, or for the use of an institution to be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. Any portion of an existing facility that was altered on or after June 3, 1977 is an “alteration.” Under Section 504, each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient, in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), designates the *American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped* [ANSI 117.1-1961 (1971)] (ANSI) as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the *Uniform Federal Accessibility Standards* (UFAS) for facilities constructed or altered on or after January 18, 1991.

Under Title II, any facility or part of a facility for which construction commenced on or after January 26, 1992 is considered “new construction.” The Title II regulation, at 28 C.F.R. § 35.151, requires each facility or part of a facility constructed by, on behalf of, or for the use of a

public entity to be designed and constructed in such a manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Any portion of an existing facility that was altered on or after January 26, 1992 is an "alteration." Under Title II, each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient, in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

The Title regulation, at 28 C.F.R. § 35.151(c) and the corresponding Appendix, state that new construction and alterations that commenced on or after July 26, 1992 and prior to September 15, 2010 must comply with either the *Uniform Federal Accessibility Standards* (UFAS) or the *1991 ADA Standards for Accessible Design* (1991 Standards). In September 2010, the regulations implementing Title II were amended and new accessibility guidelines were adopted. The *2010 ADA Standards for Accessible Design* (2010 Standards) apply to physical construction or alterations that commence on or after March 15, 2012. Facilities constructed or altered on or after September 15, 2010 and before March 15, 2012 are in compliance with Title II if they meet the 1991 Standards, UFAS, or the 2010 Standards. OCR Notice of Interpretation, Federal Register, Vol. 77, No. 50, pages 14972-76 (March 14, 2012) allows use of the ADA Standards to meet the compliance requirements under Section 504.

Facts

The complainant asserted that at the School, the District has failed to provide an entrance that is accessible for individuals with disabilities, and parking space(s) in an appropriate location and with an appropriate accessible route.

In response to the complaint allegation, the District informed OCR that the School was constructed in 1921. A north addition to the School was completed in or around 1938. The School has two entrances designated as accessible: the main entrance (Door A) and the southeast entrance (Door B). The District told OCR that the School's entrances were renovated between 1998 and 2000.

Regarding parking facilities, the District reported to OCR that it has three parking lots for visitors to the School. Parking Lot A is located behind the School's gymnasium (Gymnasium) and contains 53 parking spaces. Parking Lot B surrounds the School and the District reported it contains 43 parking spaces; however, it included in this count 3 parking spaces on the street that are not on District property. The District reported that Parking Lot C, which is directly adjacent to and surrounds the Gymnasium, contains 30 parking spaces; however, the District included in this count 8 parking spaces designated as accessible in front of the Gymnasium that also are not entirely on District property. The District reported to OCR that these 8 parking spaces are grouped together in order to provide greater accessibility, in terms of travel distance, to the School's main (accessible) entrance, and the Gymnasium's accessible entrance. The District's total count of available parking spaces in Lots A through C (including street parking spaces) is 126 parking spaces, 8 of which the District reported are accessible, and 2 of these 8 spaces the District reported are van accessible. The District reported to OCR that it does not know the last time its parking lots have been altered (*i.e.*, repaved or restriped.)

On September 19, 2019, OCR conducted an onsite visit to the School to examine the School's entrances, parking facilities near the School and Gymnasium, including the 8 spaces the District reported it grouped together to provide greater accessibility, and accessible routes from the parking facilities to the School and Gymnasium.

Entrances to the School

As the District reported, OCR observed that the School has two entrances designated as accessible: the main entrance (Door A) and the southeast entrance (Door B). Based on OCR's visual inspection of these entrances, it determined that the 1998-2000 date range the District provided appears to be accurate. Accordingly, the 1991 ADA standards apply to these entrances.

Relevant 1991 ADA Accessibility Standards

4.1.2 Accessible Sites and Exterior Facilities: New Construction. An accessible site shall meet the following minimum requirements:

(c) Accessible entrances when not all are accessible (inaccessible entrances shall have directional signage to indicate the route to the nearest accessible entrance);

4.3 Accessible Route

4.3.2 Location. (1) "At least one accessible route within the boundary of the site shall be provided from . . . accessible parking . . . or sidewalks to the accessible building entrance they serve."

4.3.3 Width. The minimum clear width of an accessible route shall be 36 inches except at doors.

4.3.6 Surface Textures. The surface of an accessible route shall comply with 4.5, which generally requires surfaces to be stable, firm and slip resistant. [4.5.1]

4.3.7 Slope. An accessible route with a running slope greater than 1:20 is a ramp and shall comply with 4.8. Nowhere shall the cross slope of an accessible route exceed 1:50.

4.3.8 Changes in Levels. Changes in levels along an accessible route shall comply with 4.5.2. If an accessible route has changes in level greater than ½ inches, then a curb ramp, ramp, elevator, or platform lift shall be provided that complies with 4.7, 4.8, 4.10, or 4.11, respectively. Stairs shall not be part of an accessible route.

4.13. Doors

4.13.4 Double-Leaf Doorways. If doorways have two independently operated door leaves, then at least one leaf shall meet the specifications in 4.13.5 and 4.13.6. That leaf shall be an active leaf.

4.13.5 Clear Width. Doorways shall have a minimum clear opening of 32 inches with the door open 90 degrees, measured between the face of the door and the stop.

4.13.6 Maneuvering Clearances at Doors. Minimum maneuvering clearances at doors that are not automatic or power-assisted shall be compliant with minimum measurements depending on the directional approach. The floor or ground area within the required clearances shall be level and clear.

4.13.8. Thresholds at Doorways. Thresholds at doorways shall not exceed $\frac{3}{4}$ inches in height for exterior sliding doors or $\frac{1}{2}$ inches for other types of doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2.

4.13.9 Door Hardware. Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs.

4.13.10 Door Closers. If a door has a closer, then the sweep period of the closer shall be adjusted so that from an open position of 70 degrees, the door will take at least 3 seconds to move to a point 3 in (75 mm) from the latch, measured to the leading edge of the door.

4.14 Entrances

4.14.1 Minimum Number. Such entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available (see 4.3.2(1)). They shall also be connected by an accessible route to all accessible spaces or elements within the building or facility.

Door A, the School's main entrance, is located at the center of the south side of the School, and Door B is located at the southern end of the east side of the School. Both entrances are connected to routes that do not require the use of stairs.

Door A is a double-leaf door with an opening width of 72 inches between the face of the door and the stop, when the door was open 90 degrees. Door B is a double-leaf door with two openings measuring 34 inches each. Both Door A and Door B contained openings exceeding the 32 inches required by the 1991 ADA Standards. The entrances to Door A and Door B also had sufficient maneuvering clearance beyond the latch side and over 48 inches of clearing depth. OCR also inspected the doors and determined they both had handles that are operable with one hand and positioned at an appropriate height. Both Door A and Door B were equipped with a closer, which takes at least 3 seconds to close from a position of 70 degrees to a position of 3 inches from the latch. OCR also examined the thresholds at the doorways of Door A and Door B and determined that they did not exceed $\frac{1}{2}$ inch in height, as required by the 1991 ADA Standards.

OCR observed that no signs exist that designate either Door A or Door B as accessible entrances, and there is no directional signage on the non-accessible entrance to the school directing visitors to the nearest accessible entrance.

Parking Facilities

While the District reported to OCR that it does not know the date it last repaved or restriped its parking lots, based on OCR's visual inspection that the lines in each lot that are still faintly visible, OCR determined that each parking lot was likely restriped after March 15, 2012. Therefore, OCR used the 2010 ADA Standards in determining compliance.

Chapters 2 and 5 of the 2010 ADA Standards set forth the requirements for parking spaces as follows:

Total Number of Parking Spaces Provided (per facility)	(Column A) Minimum Number of Accessible Parking Spaces Required (car and van)	Minimum Number of Van-Accessible Parking Spaces (1 of six accessible spaces)
1 to 25	1	1
26 to 50	2	1
51 to 75	3	1
76 to 100	4	1
101 to 150	5	1
151 to 200	6	1
201 to 300	7	2
301 to 400	8	2
401 to 500	9	2
501 to 1000	2% of total parking provided in each facility.	1/6 of Column A*
*one out of every 6 accessible spaces		

2010 ADA Standards § 208.2.

Accessible parking spaces must be located on the shortest accessible route of travel to an accessible facility entrance. Where buildings have multiple accessible entrances with adjacent parking, the accessible parking spaces must be dispersed and located closest to the accessible entrances. Accessible parking spaces may be clustered in one or more lots if equivalent or greater accessibility is provided in terms of distance from the accessible entrance, parking fees, and convenience. 2010 ADA Standards § 208.3.

Accessible parking spaces for cars must be at least 96 inches wide with a 60-inch wide marked access aisle located adjacent to the designated parking space. An access aisle may be shared by two spaces. One in every six accessible parking spaces is required to be van accessible. Van-

accessible parking spaces must be at least 132 inches wide with a 60-inch marked access aisle or 96 inches wide with a 96-inch wide marked access aisle. 2010 ADA Standards §§ 502.2 & 502.3.

Accessible parking spaces must be identified with a sign that displays the International Symbol of Accessibility and the bottom of the sign must be at least 60 inches above the ground. Van-accessible parking spaces must have a sign that identifies the parking space as “van-accessible.” 2010 ADA Standards § 502.6.

Chapter 4 of the 2010 ADA Standards sets forth the requirements for an accessible route. An accessible route must be at least 36 inches wide and have a firm, stable, slip resistance surface. The running slope along the accessible route must not be steeper than 1:20 and the cross slope must not be steeper than 1:48. 2010 ADA Standards § 402.¹

If the accessible route crosses a curb, there must be a curb ramp. The curb ramp must be at least 36 inches wide with flared sides for all surfaces to meet without any vertical barriers. The running slope of the curb ramp must not be steeper than 1:12 and the cross slope must not be steeper than 1:48. The slopes of the adjoining surfaces immediately adjacent to the curb ramps must not be steeper than 1:20. 2010 ADA Standards § 406.

District Parking Lots

The District informed OCR that it clustered eight accessible parking spaces—which is more than it believes is required²—directly across from the Gymnasium’s south-facing main entrance to provide greater accessibility to the School and Gymnasium. These eight parking spaces, each designated with blue paint, begin on the sidewalk, blocking the public right of way, and extend onto or directly adjacent to the street.³ There are four signs affixed to posts with the International Symbol of Accessibility in front of every other parking space, but four of the six signs are not at least 60 inches above the ground as required by the 2010 ADA Standards.⁴ The District told OCR that two of these eight parking spaces are van-accessible; however none of these spaces is designated with a sign indicating that it is van-accessible, nor do any of the spaces have marked access aisles, as required by the 2010 ADA Standards.

In addition, OCR observed that these eight spaces are not located at the nearest point to the accessible entrances at the School or Gymnasium. OCR noted that there are parking spaces at the at the southwest corners of the Gymnasium and the School that would provide greater

¹ If any portion of the accessible route is steeper than 1:20, then it must be treated as a ramp. A ramp must be at least 36 inches wide with a stable, firm, and slip resistant surface. The running slope must not be greater than 1:12. The level landing must be at least 60 inches long and 60 inches wide. If the ramp has a rise higher than 6 inches, there must be handrails on both sides. The top of the handrail gripping surface must be no less than 34 inches and no greater than 38 inches above the ramp surface. If the handrail gripping surface is circular, it must be no less than 1 ¼ inches and no greater than 2 inches in diameter. The handrails must extend at least 12 inches horizontally beyond the top and bottom of the ramp. 2010 ADA Standards § 405.

² Given the sizes of Parking Lots A, B, and C, the 2010 ADA Standards require a minimum of seven designated accessible parking spaces, three of which must be van-accessible.

³ During OCR’s onsite visit, the District acknowledged that at least part of these eight parking spaces are not on District property.

⁴ Each of the four signs in front of the Gymnasium are 54 inches above the ground.

accessibility in terms of distance and, with respect to the School, would not require pedestrians to cross a curb ramp and street to gain access to the School's nearest accessible entrance. OCR also found that these eight parking spaces do not have access aisles and do not connect to an accessible route, as other parking spaces block the route that otherwise may be accessible. Lastly, OCR found that the spaces themselves are in a state of deterioration and are not firm and stable.

Path of Travel

The District was unaware of the date of construction for the routes that lead to the School's accessible entrances. Based on OCR's visual inspection, there are curb ramp alterations to the routes that were likely conducted in the last five years. Based on this information, OCR applied the 2010 ADA Standards in determining compliance.

Chapter 4 of the 2010 ADA Standards sets forth the requirements for an accessible route. An accessible route must be at least 36 inches wide and have a firm, stable, slip resistance surface. The running slope along the accessible route must not be steeper than 1:20 and the cross slope must not be steeper than 1:48. 2010 ADA Standards § 402.⁵

If the accessible route crosses a curb, there must be a curb ramp. The curb ramp must be at least 36 inches wide with flared sides for all surfaces to meet without any vertical barriers. The running slope of the curb ramp must not be steeper than 1:12 and the cross slope must not be steeper than 1:48. The slopes of the adjoining surfaces immediately adjacent to the curb ramps must not be steeper than 1:20. 2010 ADA Standards § 406.

OCR measured the routes surrounding Door A and Door B and found that they are located on stable, firm, slip-resistant surfaces, are wider than 36 inches all the way through, and have slopes within the standards. OCR determined that there are two curb ramps that lead from the accessible spaces directly in front of the Gymnasium to Door A, and one curb ramp that leads from the accessible street parking spaces (not on District property) to Door B. All of the curb ramps exceed the 36-inch width requirements of the 2010 ADA Standards. Regarding the path of travel from the spaces directly in front of the Gymnasium, OCR observed that not all eight of those spaces are connected to an accessible route, as the sidewalk and public right of way is blocked by the other parking spaces.

⁵ If any portion of the accessible route is steeper than 1:20, then it must be treated as a ramp. A ramp must be at least 36 inches wide with a stable, firm, and slip resistant surface. The running slope must not be greater than 1:12. The level landing must be at least 60 inches long and 60 inches wide. If the ramp has a rise higher than 6 inches, there must be handrails on both sides. The top of the handrail gripping surface must be no less than 34 inches and no greater than 38 inches above the ramp surface. If the handrail gripping surface is circular, it must be no less than 1 ¼ inches and no greater than 2 inches in diameter. The handrails must extend at least 12 inches horizontally beyond the top and bottom of the ramp. 2010 ADA Standards § 405.

Conclusion

Entrance

Both accessible entrances to the School have doors with openings, maneuvering clearances, door handles, positioning height of the door handles, door closers and thresholds meeting or exceeding the requirements of the 1991 ADA Standards. Both entrances are connected to an accessible route. The accessible entrances do not have signs that designate these entrances as accessible, and the inaccessible entrance does not have directional signage directing visitors to the nearest accessible entrance.

Parking Lots

Pursuant to the 2010 ADA Standards, and assuming the counts the District provided for each parking lot are accurate, the District is required to have a total of 7 accessible parking spaces as follows: 1) three accessible parking spaces in Parking Lot A, including one van-accessible space; 2) two accessible parking spaces in Parking Lot B, including one van-accessible space; and 3) two accessible parking spaces in Parking Lot C, including one van-accessible space. The District may cluster the accessible parking spaces in one or more lots if equivalent or greater accessibility is provided in terms of distance from the accessible entrance and convenience.

Path of Travel

There is not an accessible path of travel from each of the eight parking spaces directly in front of the Gymnasium to the Gymnasium's or School's accessible entrances because the parking spaces are located on the sidewalk space making up the public right of way necessary to travel across in order to reach an accessible route.

The District requested to resolve the allegation pursuant to Section 302 of the CPM prior to the conclusion of OCR's investigation. The terms of the enclosed Agreement are aligned with the allegation and issues investigated to date and are consistent with the applicable Section 504 and Title II regulations.

The Agreement requires the District to take the following actions:

- Equip all of the accessible entrances to the School with signs identifying those entrances as accessible using the International Symbol of Accessibility, and equip all non-accessible entrances with directional signs indicating the location of the nearest accessible entrance.
- Submit for OCR's approval a plan, consistent with the 2010 ADA Standards, and a proposed timeline for ensuring that the parking lot(s) for the School and the parking lot(s) for the Gymnasium have an adequate number of designated accessible parking spaces on accessible routes to the accessible entrances of the School and Gymnasium, respectively.

- Upon OCR's approval, implement the plan.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issue other than those addressed in this letter. The complainant may file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR wishes to thank the District and its legal counsel, specifically Ms. Christine Christensen, for the cooperation extended during OCR's processing of this complaint. If you have any questions, please contact Roberto Flores, Equal Opportunity Specialist, at 312-730-1688 or by email at Roberto.Flores@ed.gov.

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

cc: Christine Christensen