



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 4, 2020

Dr. Robert Haworth
Superintendent
Vigo County School Corporation
Sent by email only to robert.haworth@vigoschools.org

Re: OCR Docket # 05-20-1024

Dear Dr. Haworth:

This is to advise you of the completion of the investigation of the above-referenced complaint filed against the Vigo County School Corporation (Corporation) with the U.S. Department of Education (Department), Office for Civil Rights (OCR).

The complaint alleged that the Corporation discriminates against individuals with disabilities by failing to provide appropriately-located accessible parking spaces at Terre Haute North Vigo High School (School).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 - 12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the Corporation is subject to these laws.

During the investigation, OCR reviewed information provided by the Complainant and the Corporation and conducted an on-site visit to review the School's parking lots. Based on the investigation, OCR determined that the parking lot that was the subject of the complaint did not comply with Section 504 and Title II. The Corporation executed the enclosed Resolution Agreement (Agreement) on May 19, 2020, that, when fully implemented, will address the compliance issues. The basis for OCR's determination is explained below.

Legal Standards

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.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The implementing regulations of Section 504, at 34 C.F.R. § 104.23(b), and Title II, at 28 C.F.R. § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. These facilities are termed “new construction or alterations.” The regulations provide that each facility or part of a facility which is altered by or for the use of a recipient in a manner that affects or could affect the usability of the facility shall, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities. The regulations specify the accessibility standard to be used in determining the accessibility of the alterations based on the date of construction or renovation.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineated 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) as a minimum standard for determining accessibility for facilities constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. § 35.151(c), delineated UFAS or The Americans with Disabilities Accessibility Guidelines for Buildings and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992.

The regulation implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (2010 ADA Standards). The regulation, at 28 C.F.R. § 35.151(c)(3), now provides, “If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 [ADA] Standards.”

Chapter 5 of the 2010 ADA Standards states that the resurfacing of a parking lot constitutes an alteration. Chapters 2 and 5 of the 2010 ADA Standards set forth the requirements for parking spaces. In a lot with 151 to 200 parking spaces, a minimum of six must be accessible. One in every six accessible parking spaces, with a minimum of one, must be van accessible. The 2010 ADA Standards also state requirements for width of accessible spaces and access aisles and for signage for designated spaces.

Under the 2010 ADA Standards, accessible parking spaces must be located on the shortest accessible route of travel to an accessible facility entrance. 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. Chapter 4 of the 2010 ADA Standards sets forth the requirements for an accessible route, including width, surface, and slope requirements.

Facts

The Complainant advised OCR that the parking lot about which the complaint was filed is in front of the main entrance of the School. The main entrance is on the south side of the School.

According to the Corporation, the parking lot serving this entrance was resurfaced in approximately 2019.

There are 156 parking spaces that serve the main entrance. Nineteen spaces are in a single line southwest of the main entrance and 113 spaces are in a larger lot separated from the single line strip of parking by a grass median, with a walkway connecting the larger lot to the single strip. There are also 24 spaces in a single line strip southeast of the main entrance; these spaces are further from the entrance than those on the other strip.

None of the spaces in either strip are designated for use by individuals with disabilities. Four of the spaces in the larger lot are designated for use by individuals with disabilities, with two located on the northeast end of the lot, close to the main entrance, and two located on the northwest end of the lot, in front of an entrance marked E-14.¹ Each of the four designated spaces met the requirements of the 2010 ADA standards related to width, access aisles, and sign height. None of the signs marking the four spaces designated the spaces as van accessible.

The route from the northeast spaces to the main entrance to the School meets the requirements of the 2010 ADA Standards regarding accessible routes.

Analysis and Conclusion

OCR determined that the 2010 ADA standards apply to the parking lot as it was resurfaced in approximately 2019. The parking lot has an insufficient number of spaces designated for individuals with disabilities as required by the 2010 ADA Standards. In addition, the location of the spaces does not conform to the 2010 ADA Standards, as they are not located on the shortest accessible route of travel to the accessible facility entrance.

Based on the above, OCR determined that the Corporation is not in compliance with the Section 504 regulations, at 34 C.F.R. § 104.23(b), and the Title II regulations, at 28 C.F.R. § 35.151, with regard to the parking lot.

The Corporation signed the enclosed Agreement, which, when fully implemented, will fully resolve the issues covered in the complaint. The provisions of the Agreement are aligned with those issues and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address Corporation's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

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.

¹ Entrance E-14 was locked and had a sign reading "not an entrance." Further, the part of the ramp leading to Entrance E-14 had a slope that exceeded the allowance of the 2010 ADA standards.

Please be advised that the Corporation 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.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR wishes to thank you and the Corporation personnel and especially Mr. Jonathan L. Mayes, Corporation counsel, for the cooperation and courtesy extended to OCR during its investigation. If you have any questions, please contact Charles Bryans, OCR attorney, at (312) 730-1623 or by email at Charles.Bryans@ed.gov

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. Jonathan L. Mayes