



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS**

230 SOUTH DEARBORN ST., 37<sup>TH</sup> FLOOR  
CHICAGO, IL 60604

**REGION V**  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

August 26, 2021

Mr. Keith Thackery  
Superintendent  
Carroll Consolidated School Corporation  
Sent via email only to [kthackery@carroll.k12.in.us](mailto:kthackery@carroll.k12.in.us)

Re: OCR Docket # 05-21-1145

Dear Mr. Thackery:

This is to advise you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Carroll Consolidated School Corporation (Corporation), alleging discrimination on the basis of disability and also alleging retaliation.

Specifically, the complaint alleges the following:

1. the Corporation discriminates on the basis of disability against individuals with disabilities by failing to provide accessible parking spaces at Carroll Junior/Senior High School (School); and
2. the Corporation retaliated against an employee (Employee A) XXXXXX after he complained publicly of disability discrimination, by terminating him from his position as XXXXXX.

OCR enforces 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. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. 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 at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. These laws also prohibit retaliation. 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 interviewed Employee A and Corporation personnel and reviewed information provided by Employee A and the Corporation. Prior to the completion of the investigation, the Corporation executed the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve Allegation #1. Regarding Allegation #2, OCR has determined that the evidence is insufficient to establish that the Corporation retaliated against Employee A as alleged. The bases for OCR's determinations are explained below.

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

## **Allegation #1**

### **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 will, 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 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). 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 or public entity in a manner that affects or could affect the usability of the facility must, 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) 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.

### **Facts**

There is one contiguous parking lot ("Main Lot") located on the east, north, and south sides of the School building. All these spaces are used for the School building. The Corporation indicated that a section of the Main Lot was re-paved and re-sealed in June 2020 and the rest of the Main Lot will be re-paved and re-sealed in August 2021. The Superintendent also said that the spaces designated as accessible will be re-striped in August 2021.

There are 397 parking spaces in the Main Lot. Ten spaces are designated as accessible. Photographs provided by the Corporation do not show upright signs identifying any of these spaces as accessible. The Corporation provided a map that showed six spaces designated as accessible (Spaces 1–6) on the north side of the School and four spaces designated as accessible (Spaces 7–10) on the east side of the School.

Spaces 1–6 range from 104 to 119 inches wide, and all have access aisles, with the access aisle 122 inches wide for Space 1, 77 inches wide for Spaces 2, 5, and 6, and 119 inches wide for Spaces 3 and 4. Spaces 3 and 4 share a common access aisle. Spaces 5 and 6 also share a common access aisle. Spaces 7–10 are each 107 inches wide, and do not have designated access aisles.<sup>1</sup>

To reach the School from Space 1 requires using a curb ramp that leads to the nearest entrance to Space 1 (Entrance 1). To reach the School from Spaces 2–4 requires crossing the parking lot to the nearest entrance to Spaces 2–4 (Entrance 2). To reach the School from Spaces 5 and 6 requires crossing the parking lot to the nearest entrance to Spaces 5 and 6 (Entrance 3). To reach the School from Spaces 7–10 requires crossing the parking lot to a curb ramp to the nearest entrance to Spaces 7–10 (Entrance 4). The map and photographs provided by the Corporation showed that the designated accessible spaces are the closest spaces to their respective entrances, with the exception of Spaces 2–4, which do not appear to be the closest spaces to Entrance 2. The slope of the curb ramps to Entrances 1 and 4 were not reflected in the photographs the Corporation provided to OCR.

The routes from each of the ten designated spaces to the School are paved asphalt and concrete. The photographs provided by the Corporation do not reveal the conditions of the routes.

### Analysis

OCR has compliance concerns about the Main Lot. In particular, three spaces (Space 2–4) do not appear to be located closest to the accessible route leading to the closest accessible entrance. In addition, four spaces (Spaces 7–10) do not have designated access aisles. OCR also has concerns with the apparent lack of signage for each of the designated spaces and has not yet assessed whether the routes from the parking spaces to the entrances are accessible.

The Corporation signed the enclosed Agreement, which, when fully implemented, will fully resolve the issues covered in Allegation #1 of 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.

---

<sup>1</sup> The Corporation asserted that 6 spaces are van accessible, but only Spaces 1, 3 and 4 meet the 2010 ADA Standards for van accessible spaces.

## **Allegation #2**

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.61, incorporates the procedural provisions applicable to Title VI of the Civil Rights Act of 1964 and prohibits a recipient from intimidating, threatening, coercing, or discriminating against an individual for the purpose of interfering with any right or privilege secured by Section 504 or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulation.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to or for the purpose of interfering with the exercise of a protected activity. To find a prima facie case of retaliation, each of the following three elements must be established: (1) an individual engaged in a protected activity; (2) the individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If a prima facie case of retaliation is established, then OCR considers whether there is a facially legitimate, non-retaliatory reason for the adverse action, and whether the facially legitimate, non-retaliatory reason for the adverse action is a pretext for retaliation.

### **Facts**

Employee A initially asserted to OCR that the Corporation terminated him from his position as XXXXXX after he complained XXXXXX about the Corporation removing accessible spaces from the School's parking lot. However, Employee A later said that he did not know whether the School's principal (the Principal) XXXXXX about the parking lot, that he had XXXXXX criticizing the actions of the Corporation, on issues such as XXXXXX, and that his termination could have stemmed from another one of XXXXXX. Employee A provided XXXXXX in which he criticized the Corporation XXXXXX.

Information provided by the Corporation indicated that the Principal placed Employee A on administrative leave XXXXXX and that the Board of Trustees voted XXXXXX to terminate Employee A's employment. The Corporation provided information that, based on a recommendation from the Principal to the Superintendent, it terminated Employee A because his conduct violated a provision XXXXXX.

The Principal stated that he was not aware of XXXXXX made by Employee A concerning accessible parking spaces when he placed Employee A on leave and recommended termination of Employee A's employment. The Principal stated that XXXXXX he was aware of concerning the parking lot were made XXXXXX after Employee A had already been terminated.

The Principal and the Superintendent stated that the Corporation's decision to terminate Employee A XXXXXX was not in retaliation for prior protected activity, but because his prior comments XXXXXX reflected poorly on the Corporation and the School community and because of Employee A's XXXXXX.

### Analysis

The information received by OCR indicated that Employee A engaged in a protected activity by complaining about the removal of accessible spaces in the parking lot on XXXXXX, and that the Corporation subjected him to adverse actions by placing him on administrative leave on XXXXXX and terminating his employment on XXXXXX. However, the evidence was insufficient to establish a causal connection between these adverse actions and the protected activity because the adverse actions occurred prior to the protected activity. Therefore, based on the above, OCR has determined that the evidence is insufficient to establish that the Corporation subjected Employee A to retaliation as alleged.

### Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the 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 one OCR case. This letter is not a formal statement of OCR policy and should not be relied on, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The complainant has a right to appeal OCR's determination regarding Allegation #2 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the Corporation. The Corporation has the option to submit to OCR a response to the appeal. The Corporation must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

It is also important for you to understand that the laws OCR enforces also prohibit the Corporation from harassing, coercing, intimidating, or discriminating against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, that individual may file a 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. If 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.

We wish to thank you and Corporation personnel, and particularly Corporation counsel XXXXXX, for the cooperation extended to OCR during the investigation. If you have any

questions, please contact James Barton, OCR Attorney, by phone at 312-730-1720 or by email at [James.Barton@ed.gov](mailto:James.Barton@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Miriam Robeson (sent via email only to [miriam@harmonrobesonlaw.com](mailto:miriam@harmonrobesonlaw.com))