



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

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

**REGION V**  
ILLINOIS  
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MINNESOTA  
NORTH DAKOTA  
WISCONSIN

August 30, 2022

Mr. Pedro Martinez  
Chief Executive Officer  
Chicago Public Schools, District #299  
Sent via electronic mail only to [ceo-martinez@cps.edu](mailto:ceo-martinez@cps.edu)

Re: OCR Docket #05-22-1264

Dear Mr. Martinez:

This letter 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 Chicago Public Schools District 299 (District).

Specifically, the complaint alleged that:

- (1) from [REDACTED] to the present, the District discriminated against the Complainant on the basis of disability [REDACTED] by failing to provide her with accessible parking spaces at Murray Language Academy (School); and
- (2) the District retaliated against the Complainant for filing complaints of disability discrimination relating to her attempts to secure bus service for her son (Student A) when, in [REDACTED], it denied the Complainant use of a parking lot with access to an accessible entrance.

OCR is responsible for enforcing 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, and 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. These laws also prohibit retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

During its investigation, OCR reviewed documents the District provided and interviewed the Complainant and School personnel. Prior to the completion of the investigation, the District 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 District retaliated against the Complainant as alleged. The bases for OCR's determinations are explained below.

## **Legal Standards**

### *Accessibility*

The implementing regulations of Section 504, at 34 C.F.R. § 104.21, and of 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 individuals with disabilities, 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, and Title II, at 28 C.F.R. 35.151, are applicable to any facility or part of a facility where construction commenced after June 3, 1977 (Section 504), or January 26, 1992 (Title II), respectively. Such facilities, or the newly constructed portions thereof, are termed "new construction." The regulations provide that each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with a disability. The Section 504 regulation, in effect and applicable for facilities constructed or altered on or after January 18, 1991, at 34 C.F.R. 104.23(c), delineated the Uniform Federal Accessibility Standards (UFAS) as a minimum standard for determining accessibility. The Title II regulation, at 28 C.F.R. 35.151(c), delineated UFAS or the Americans with Disabilities Act Accessibility Guidelines for Building 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 2010 ADA Standards, at 28 C.F.R. §35.151(c)(3), provide, "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 Standards." OCR Notice of Interpretation, Federal Register, Vol. 77, No. 50, pages 14972-14976 (March 14, 2012), allows use of the 2010 ADA Standards under Section 504.

The 2010 ADA Standards identify the number of accessible parking spaces that must be provided, based on the number of available spaces in each lot or facility. The 2010 ADA Standards also set forth requirements parking spaces must meet in order to be considered accessible, including size and signage requirements and that the spaces must be located on the shortest accessible route to an accessible entrance.

### *Retaliation*

The Section 504 implementing regulation, at 34 C.F.R. § 104.61, incorporates by reference the regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e), which prohibits a recipient or other person from intimidating, threatening, coercing, or discriminating against any individual because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the regulation. The Title II regulation, at 28 C.F.R. § 35.134, also prohibits retaliation.

In order to establish a *prima facie* case of retaliation, the following elements must be established: (1) An individual engaged in a protected activity (opposed a discriminatory policy, asserted protected rights, or participated in an OCR complaint or proceeding); (2) the recipient took an adverse action directed at the individual contemporaneously with or subsequent to the protected activity; and (3) there is an inferable causal connection between the protected activity and the adverse action. If a *prima facie* case is established, OCR then considers whether the recipient has a legitimate non-retaliatory justification for its action and whether the justification is a pretext for retaliation.

### **Facts**

The District built the School in 1954 and states that it most recently restriped the parking lot in 2019. According to the District, there are two parking spots designated as accessible at the School, located in the School's parking lot, which has a total of 36 spaces.

The Complainant told OCR that she had complained to the District on several occasions beginning in [REDACTED] about Student A not receiving transportation.

The Complainant, who said she has a parking placard allowing her to park in accessible spaces, told OCR that she visited the School on [REDACTED], to discuss Student A not receiving transportation services. The Complainant said she parked in the School's parking lot and attempted to enter the School through the entrance closest to the parking lot ("lot entrance") rather than through the main entrance on the other side of the School. The Complainant said a District security guard told her that she could not enter through the lot entrance because it was reserved for staff and for students arriving by bus and also told her she could not park her car in the parking lot, since the parking lot was for staff use only.

The Principal said he encountered the Complainant that day outside the lot entrance. He said the Complainant complained about Student A not receiving certain transportation-related services, he discussed this complaint outside the School, and the Complainant left without requesting to enter the School through the lot entrance. The Principal and Assistant Principal also denied to OCR that anyone from the District told the Complainant that she could not park in the parking lot.

The Complainant told OCR that the only reason she spoke with the Principal outside on a cold winter morning, rather than inside, was because District personnel did not allow her to enter through the lot entrance.

Both the Principal and Assistant Principal told OCR that parents are permitted to park in the designated accessible spots, but they would need to enter the school through the main entrance, which is on the other side of the building complex and is not the entrance closest to the two accessible parking spots. The Complainant said there are no signs informing parents that they are permitted to park in the School's lot.

## **Analysis and Conclusion**

### **Allegation #1**

According to the District, it provides two accessible spaces out of 36 total spaces in the School's lot, which is the number the District must provide pursuant to applicable accessibility standards. OCR has concerns, however, that the District does not permit parents to use the entrance on the shortest accessible route from the parking lot—the lot entrance. Instead, parents must enter through the main entrance, on the other side of the building. In addition, OCR has concerns about the absence of signs informing parents with disabilities that they may park in the lot.

Prior to OCR conducting an on-site visit to the School and making a determination regarding the District's compliance with Section 504 and Title II, the District expressed a willingness to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. OCR has determined that it is appropriate to resolve this complaint with a Voluntary Resolution Agreement at this juncture.

The District subsequently signed the enclosed Agreement to resolve Allegation #1. When fully implemented, the Agreement will address the evidence obtained and the allegation investigated. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the terms of the agreement and the statutes and regulations at issue in the case.

### **Allegation #2**

Testimony conflicted as to whether the Complainant was denied the opportunity to park in the School's lot, but the evidence established that the Complainant was not permitted to use the lot entrance on [REDACTED]. OCR did not find evidence sufficient to show that the District denied the Complainant use of the parking lot with access to an accessible entrance because of her complaints about the lack of transportation provided to Student A. The District stated that the School does not permit parents (or other visitors) to enter the School through the lot entrance, and OCR found no evidence to the contrary. Accordingly, OCR concludes that the evidence is insufficient to establish that the District retaliated against the Complainant.

### **Overall Conclusion**

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 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. The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

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 recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 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. 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 for the courtesy and cooperation extended to OCR during the investigation. If you have any questions about this letter, please contact Aaron Chait, OCR Attorney, by phone at (312) 730-1725 or by email at [aaron.chait@ed.gov](mailto:aaron.chait@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Joseph Moriarty, Esq. (sent via email only to [jtmoriarty@cps.edu](mailto:jtmoriarty@cps.edu))  
Ruchi Verma, Esq. (sent via email only to [rverma@cps.edu](mailto:rverma@cps.edu))  
Laura Battistoni, Esq. (sent via email only to [llsmith19@cps.edu](mailto:llsmith19@cps.edu))  
Alexa Bulau, Esq. (sent via email only to [albulau@cps.edu](mailto:albulau@cps.edu))