



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CHICAGO, IL 60604

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July 11, 2023

Arthur R. Culver
Superintendent
East St. Louis School District # 189
Sent via electronic mail only to arthur.culver@estl189.com

Re: OCR Docket #05-23-1147

Dear Mr. Culver:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution activities in connection with the above-referenced complaint against East St. Louis School District #189 (District) alleging discrimination on the basis of disability. Specifically, the complaint alleges that during the 2022-2023 school year, the District failed to ensure that accessible parking spaces and an accessible route to East St. Louis Senior High School (School) were available for individuals with disabilities.

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, 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. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance from the Department, 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 District is subject to these laws.

During the investigation, OCR reviewed information provided by the complainant and the District, including photos of the parking lots at the School, and interviewed District personnel. Prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint in accordance with Section 302 of OCR's *Case Processing Manual* (CPM) and signed the enclosed Resolution Agreement (Agreement) to resolve compliance concerns identified by OCR. This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the complaint was resolved.

Legal Standards

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 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, 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, 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 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 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 Standards.”

The 2010 Standards specify the required number of accessible spaces in each lot, based on the total number of parking spaces offered in the lot. The 2010 Standards also provide technical requirements for accessible parking spaces, including the size and marking of spaces and access aisles, surfaces, signage, and connection to accessible routes.

Facts

The School serves approximately 1400 students in 9th through 12th grades. In response to OCR’s data request, the District reported that all parking lots at the School were sealed and striped during the summer of 2020.

The District reported that the School provides almost 300 parking spaces, 21 of which are designated as accessible, spread among five parking lots. Lot A (North lot) is primarily used by students and has 85 parking spaces, 4 of which are designated as accessible. Lot B (East lot) is used by faculty and has 57 parking spaces, 3 of which are designated as accessible. Lot C (Southeast lot) is used by faculty and visitors and has 132 parking spaces, 10 of which are designated as accessible. Lot D (South Central circle drive) is used by front office personal and visitors and has 11 parking spaces, 3 of which are designated as accessible. Lot E (West lot) is primarily used by faculty and has 9 parking spaces, 1 of which is designated as accessible. The District reported that none of the accessible parking spaces are assigned but they are filled on a first come, first served basis.

Photographs provided by the District indicate that parking spaces in Lots A and C lack signage. Additionally, the District personnel reported that there are not any van specific accessible spaces in any of the lots.

Analysis and Conclusion

Based on the evidence collected to date, OCR has identified compliance concerns with the parking lots at the School. While each of the lots has a sufficient number of spaces designated as accessible, the information provided by the District suggests that some designated parking spaces lack required signage and there is not information to indicate that any of the spaces are van accessible, as required by the 2010 Standards. In accordance with Section 302 of the CPM, a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the complaint and signed the enclosed Agreement to resolve the allegation raised in this complaint. OCR will monitor the District's implementation of the Agreement.

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.

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

OCR wishes to thank the District and particularly counsel Mr. Garrett Hoerner for the cooperation extended to OCR during the course of this investigation. If you have any questions

regarding this matter, please do not hesitate to contact Laura Paul, OCR Attorney, at 312-730-1546 or via email at Laura.Paul@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Garrett P. Hoerner (sent via email only to gph@bhylaw.com)