UNITED STATES DEPARMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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REGION XV
MICHIGAN
OHIO

September 22, 2017

Ms. Melissa Kircher
Superintendent
Bethel–Tate Local School District
675 W. Plane Street
Bethel, Ohio 45106

Re: OCR Docket No. 15-16-7320

Dear Ms. Kircher:

This letter is to notify you of the disposition of the above-referenced complaint filed on September 6, 2016, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Bethel–Tate Local School District (the District) alleging that discrimination on the basis of disability. Specifically, the complaint alleged that the District's William Bick Primary School (the School) does not have enough designated accessible parking spaces and that the School's existing designated accessible spaces are not properly marked with signs.

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, which prohibit 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 *et seq*., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity the District is subject to these laws, and OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated the following issue: whether qualified persons with disabilities are being denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the District's programs and activities because the District's facilities are inaccessible to and unusable by persons with disabilities in violation of 34 C.F.R. § 104.21, and the Title II implementing regulation at 28 C.F.R. § 35.149.

To conduct its investigation, OCR reviewed documents provided by the District. After a careful review and analysis of the information obtained during this investigation, OCR has determined that the evidence is sufficient to support a finding that the District discriminated on the basis of disability as alleged in violation of the regulations implementing Section 504 and Title II. The bases for OCR's determination are explained below.

Summary of OCR's Investigation

The School has two parking lots: the East Lot and the North Lot.

	East Lot	**North Lot**
Purpose	For visitors, staff and student drop-off and pick-up	For student buses drop-offs and pick-ups as well as some staff parking
Date of construction	2000-01	2000-01
Total number of parking spaces	59	23
Number of designated accessible spaces	2	0
Number of designated van-accessible spaces	0	0

The District reported that there have been no subsequent alterations to the parking lots since their construction.

Photographs of the designated accessible spaces indicated that they lack mounted signage.

Applicable Regulatory Standards

The Title II implementing regulation provides that no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. 28 C.F.R. § 35.149. The regulations reference standards for determining whether an entity's programs, activities, and services are accessible to individuals with disabilities, depending upon whether the facilities are determined to be existing construction, new construction, or alterations. 28 C.F.R. § 35.151. The applicable standard depends upon the date of construction or alteration of the facility. The Section 504 implementing regulation has comparable provisions. 34 C.F.R. §§ 104.21, 104.23.

For facilities for which construction commenced after January 26, 1992, each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.151(a). For a public entity covered by Title II, to meet this requirement, new construction commencing prior to September 15, 2010 must conform to the Uniform Federal Accessibility Standards (UFAS) or the 1991 ADA Standards for Accessible Design (the 1991 ADA Standards). 28 C.F.R. § 35.151(c)(1).

Section 4.1.2(5)(a) of the 1991 Standards and Section 4.1.1(5)(a) of the UFAS state that if parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces complying with Section 4.6 shall be provided in each such parking area in conformance with the table below, excerpted in relevant part:

Total Parking in Lot	**Required Minimum Number of Accessible Spaces**
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4

Section 4.6.4 of the 1991 Standards and of the UFAS provides that accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. Such signs shall be located so they cannot be obscured by a vehicle parked in the space.

Section 4.1.2.(5)(b) of the 1991 Standards requires that one in every eight accessible spaces, but not less than one, shall be served by an access aisle and shall be designated "van accessible" as required by Section 4.6.4.

Analysis and Conclusion

The East Lot has 59 spaces and therefore requires 3 accessible spaces. However, the East Lot has only 2 designated accessible spaces, in violation of Title II and Section 504.

Correspondingly, the North Lot has 23 spaces and therefore requires 1 accessible space. But the North Lot does not have any designated accessible spaces, in violation of Title II and Section 504.

The two currently existing designated spaces in the East Lot do not have a mounted sign, in violation of Title II and Section 504. Accordingly, because neither of the spaces had a sign, neither were designated as van accessible, in violation of Title II, which required at least one parking space to be designated as van accessible.

For these reasons, OCR finds that the School did not have enough designated accessible parking spaces and that the School' s existing designated accessible spaces are not properly marked with signs, in violation of Title II and Section 504. Although not specifically alleged in the complaint, OCR also notes that both lots lacked the necessary designated van accessible spaces as required by the 1991 Standards.

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.

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, OCR 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 appreciates the District's cooperation during the investigation of this complaint. If you have questions or concerns about this letter, please contact me by telephone at (216) 522-7640, or by e-mail at Sacara.Martin@ed.gov.

Sincerely,

/s/

Sacara M. Martin
Supervisory Attorney/Team Leader

Enclosure