



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

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CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

January 22, 2020

Mr. James Soyars  
Director of Business Services  
Kent City School District  
321 N. Depeyster Street  
Kent, Ohio 44240

Re: OCR Docket #15-19-1443

Dear Mr. Soyars:

This is to notify you of the disposition of the above-referenced complaint that was filed on July 26, 2019, with the U.S. Department of Education, Office for Civil Rights (OCR), against Kent City School District (the District). The complaint was originally filed with the U.S. Department of Justice and was forwarded to OCR for investigation. The complaint alleged discrimination based on disability. Specifically, the complaint alleged that the parking lots at Roosevelt High School do not have a enough accessible spaces and that those spaces that are designated as accessible do not meet the standards of the Americans with Disabilities Act of 1990.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public school district, the District is subject to these laws; thus, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation into the legal issue of whether qualified individuals with a disability were excluded from participation in, were denied the benefits of, or were otherwise subjected to discrimination in the District's programs and activities because the District's high school parking lots are inaccessible to or unusable by individuals with disabilities in violation of 34 C.F.R. §§ 104.21-104.23, and 28 C.F.R. §§ 35.149-35.151.

## **Background**

To date, OCR has investigated this complaint by reviewing information provided by the District and the Complainant, and through an on-site visit on January 8, 2020.

Complainant alleged that she has occasion to visit the High School for various District and community events held there. On those visits, Complainant alleged that the parking lots have an insufficient number of accessible spaces and those spaces it does have do not comply with the ADA requirements.

## **Applicable Legal Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.21 and Title II implementing regulation at 28 C.F.R. § 35.149 state that no qualified person with a disability shall, because a covered entity's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any of the entity's programs or activities. The Section 504 and Title II regulations contain different standards, based on when a facility was constructed and/or renovated, for determining whether a school's programs, activities, and services are accessible to individuals with disabilities.

The standard of program access applies to any existing facility. 35 C.F.R. § 104.22; 28 C.F.R. § 35.150. Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977; under the Title II regulation, existing facilities are those for which construction began before January 26, 1992. *See* 28 C.F.R. § 35.151(a)-(b). Pursuant to the program access standard, educational institutions must operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program, or activity. *See* 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a). In choosing among available methods for meeting the program access requirement for existing facilities, the institution is required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. *See* 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b).

However, when all or part of an existing facility is altered in a manner that affects or could affect the usability of the facility or part of the facility, it must, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities. 34 C.F.R. § 104.23(b); 28 C.F.R. § 35.151(b).

For new construction, the facility or newly constructed part of the facility must itself be readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(a); 28 C.F.R. § 35.151(a). Under the Section 504 regulation, a facility is considered new construction if construction began (ground was broken) on or after June 3, 1977. Under

the Title II regulation, a facility is considered new construction if the construction was commenced after January 26, 1992.

For an entity covered by Section 504, new construction and alterations after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI). New construction and alterations between January 18, 1991, and January 26, 1992, must conform to the Uniform Federal Accessibility Standards (UFAS). *Compare* 45 C.F.R. § 84.23(c) (1997) and 34 C.F.R. § 104.23(c) (1981) with 34 C.F.R. § 104.23(c) (2012). New construction and alterations after January 26, 1992, but prior to March 15, 2012, must conform to UFAS or the 1991 Americans with Disabilities Act Standards for Accessible Design (the 1991 ADA Standards) or equivalent standards. However, the Section 504 regulation provides, at 34 C.F.R. § 104.23(c), that departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

The U.S. Department of Justice (DOJ) published revised regulations for Titles II and III of the ADA on September 15, 2010. These regulations adopted revised accessibility standards called the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards). The 2010 ADA Standards went into effect on March 15, 2012, although entities had the option of using them for construction or alterations commencing September 15, 2010, until their effective date. For new construction and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards.<sup>1</sup>

The numerical requirements for the number of required accessible spaces and van accessible spaces for parking lots of varying sizes are found at Sections 208.2 and 208.2.4 of the 2010 ADA Standards. General Exception 2 to Section 208.3.1 of the 2010 ADA Standards states that “parking spaces shall be permitted to be located in different parking facilities if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance or entrances, parking fee, and user convenience. The Advisory comment provides that, “Factors that could affect ‘user convenience’ include, but are not limited to, protection from the weather, security, lighting, and comparative maintenance of the alternative parking site.”

### **Summary of OCR’s Investigation to Date**

Prior to the completion of OCR’s investigation, the District asked to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM) on January 8, 2020.

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<sup>1</sup> Regarding parking, when an ADA-covered entity restripes a parking lot, it must provide accessible parking spaces as required by the ADA Standards. See <http://www.ada.gov/restripe.htm>

The District responded to OCR's data request on October 21, 2019. The District informed OCR that the parking lots were constructed between 1958 and 1975. There are six lots around the High School. The District designates them as Lot A through Lot F. Each has been restriped since 2010; accordingly, OCR determined that the parking facilities are subject to the 2010 ADA Standards.

Lot A is the Staff/Visitor Lot and has 94 spaces. Under the 2010 ADA Accessibility Standards, it is required to have four accessible space (one being a van accessible space). OCR found that the lot had five accessible spaces (two being van accessible spaces). Lot B is the Student/Visitor Lot and has 240 spaces. Under the 2010 ADA Accessibility Standards, it is required to have seven accessible spaces (two being van accessible spaces). OCR found that the lot had three accessible spaces (one being a van accessible space). Lots A and B have an accessible route which lead to the Main Entrance.

Lot C is a Staff Lot and has 24 spaces; Lot D is a Staff Lot and has 22 spaces and Lot E is a Staff Lot and has 22 spaces. None of the spaces in Lots C, D or E are accessible. Under the 2010 ADA Accessibility Standards, Lots C, D, and E are required to have one accessible space each (each van accessible). Lot C is located near an entrance which is not generally open to the public which is not accessible. Lots D and E are located near entrances which are not generally open to the public and which may not be accessible. Further investigation would be required to determine the accessibility of the entrances to Lots D and E.

Lot F is located near the building's Natatorium and has 51 spaces. Under the 2010 ADA Accessibility Standards, it is required to have three spaces (one being van accessible). OCR found that the lot had three accessible spaces (one being van accessible). The doors to the Natatorium are generally open to the public only for swim meets.

Based on above, the District is deficient accessible parking spaces in Lot B (four spaces, one being a van space), Lot C (one van accessible space), Lot D (one van accessible space), and Lot E (one van accessible space). The evidence gathered to date appears to support the Complainant's allegation that the District's high school parking lots lack enough accessible spaces for individuals with a disability that impairs mobility. Further, OCR's onsite investigation found that the existing van accessible spaces require signage that designates them as "van accessible."

To complete its investigation, OCR would need to conduct a more thorough site visit to the High School to examine the accessibility of the parking Lots C, D, and E for accessibility, and conduct interviews with relevant staff (superintendent, school principal, maintenance director), as well as possibly request further documentation to determine the dates of construction and any alteration to the lots.

### **Voluntary Resolution Prior to Conclusion of Investigation**

Before OCR completed its investigation, the District expressed interest in resolving the complaint pursuant to Section 302 of the *Manual*. The *Manual* provides that a complaint

may be resolved before the conclusion of an OCR investigation if a recipient expresses an interest in resolving the complaint. This does not constitute an admission of liability on the part of a recipient such as the District, nor does it constitute a determination by OCR that the District has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegations or the information obtained during the investigation and consistent with applicable regulations.

The District has signed the enclosed resolution agreement, which, once implemented, will fully address the information obtained during the investigation in accordance with Section 504 and Title II. The agreement requires the District to make the following modifications to the parking lots at Roosevelt High School no later than July 1, 2020: a) the addition of two standard accessible parking spaces to the staff lot (Lot A) on the shortest accessible route; b) the addition of three van accessible and one standard accessible parking spots to the student lot (Lot B), c) the addition of appropriate signage to all existing van accessible parking spaces designating those spaces as “van accessible” and d) the addition of signage to Lots C, D, and E directing patrons to accessible parking in the staff and/or student lots (Lots A and B). The District will make the modifications required by this Agreement in accordance with the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design. In addition, the District will inform High School students who need to use accessible parking that they are permitted to use the accessible parking spaces in the staff lot, providing they display the proper accessible parking placard or license plate, in the following manner: a) by adding such language to the District website; b) by sending an email to all High School parents with such language; and c) by adding such language to the Student Handbook, beginning with the 2020-2021 edition, and all editions thereafter.

In light of this agreement, OCR considers the allegations in the complaint to be resolved, and we are closing our investigation as of the date of this letter. OCR will, however, monitor the District’s implementation of the agreement. Should the District fail to fully implement the agreement, OCR will reopen the case and take appropriate action to ensure the District’s full compliance with Section 504 and Title II.

### **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.

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, a complainant 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.

We appreciate the cooperation of District staff during the resolution of this complaint. We look forward to receiving the District's first monitoring report, which is due by March 31, 2020. Please send the first monitoring report to Vincent Cheverine, who will be monitoring the District's implementation of this agreement. Mr. Cheverine may be reached by telephone at (216) 522-2676 and by email at [Vincent.Cheverine@ed.gov](mailto:Vincent.Cheverine@ed.gov). If you have any questions about this letter, you may contact me at (216) 522-7634.

Sincerely,

Donald S. Yarab  
Supervisory Attorney/Team Leader

Enclosure