



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

September 30, 2022

Via e-mail only to: XXXXX

William M. Deters II, Esq.
Ennis Britton
1714 West Galbraith Road
Cincinnati, OH 45239

Re: OCR Docket No. 15-20-1020

Dear Mr. Deters:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXX XXXXX, XXXXX, with the U.S. Department of Education, Office for Civil Rights (OCR), against Reading Community School District (the District) alleging that the District is discriminating against persons with disabilities. Specifically, the Complainant alleged that the following features of the District's PK-12 facility are inaccessible:

1. The routes from the parking lots to the K-1, elementary, middle, and high school entrances are not accessible as the routes are not stable, firm and slip resistant and/or do not have curb ramps that meet the accessibility requirements;
2. The route from the high school's passenger loading zone to the entrance is not accessible as there is no curb cut;
3. There is not an accessible route into the outdoor classroom as entry requires the use of stairs;
4. There is not an accessible pedestrian route onto the campus from Bolser Drive as the sidewalk exceeds the maximum allowable slope; and
5. The parking lots at the elementary, middle, and high school entrances do not have a sufficient number of accessible parking spaces.

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 Section 504 and Title II. Therefore, OCR had jurisdiction to investigate this complaint.

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

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Based on the complaint allegations, OCR opened an investigation of the following legal issue: whether qualified individuals with a disability are excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the District's programs and activities because the above-listed features are inaccessible to or unusable by individuals with disabilities in violation of 34 C.F.R. §§ 104.21-23, and 28 C.F.R. §§ 35.149-151.

To conduct its investigation, OCR reviewed information provided by the Complainant and the District, interviewed the Complainant, and conducted an onsite visit to the District on XXXXX XXXXX XXXXX XXXXX. After a careful review and analysis of the information obtained during its investigation, OCR has determined that, with regard to allegations ##1-3, while these areas may have been inaccessible at the time the complaint was filed, the District has since brought these areas into compliance. For allegation #4, OCR determined that the evidence was insufficient to show a violation, as the 2010 ADA Standards do not require the pedestrian route onto the campus from Bolser Drive to be accessible, as the District asserted that the pedestrian route from Columbia was its one required accessible pedestrian route.¹ Finally, with regard to allegation #5, OCR found sufficient evidence of a violation, as not all of the parking lots had the required number of accessible spaces, and none of the lots had the required number of accessible spaces designated as van accessible. In addition, OCR noted that the spaces in the middle school parking lot did not have appropriate signage. Therefore, the evidence was sufficient to support a finding that the District violated the regulations implementing Section 504 and Title II as alleged with respect to allegation #5. The bases for OCR's determination are explained below.

Applicable Regulatory Standards

The Section 504 regulation states that no qualified individual 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 of the recipient's programs or activities. 34 C.F.R. § 104.21. Similarly, the regulation implementing Title II states 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.

A threshold question in any accessibility analysis is whether the facility or an element of a facility at issue is an existing facility, an alteration, or new construction. Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. Under Title II, existing facilities are those for which construction began on or before January 26, 1992. 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 will be considered new construction if construction began (ground was broken) on or after June 3, 1977. The U.S. Department of Justice published revised Title II regulations on September 15, 2010, called the 2010 ADA

¹ As it was not an allegation made by the Complainant, OCR did not assess whether the pedestrian route from Columbia complied with the relevant 2010 ADA Standards.

Standards for Accessible Design (the 2010 ADA Standards). The 2010 ADA Standards went into effect on March 15, 2012. For new construction and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards.

The 2010 ADA Standards address accessible routes at § 206. Section 206.2.1 states that “[a]t least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.” Section 206.2.2 states that “[a]t least one accessible route shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site.” Section 206.3 states that “[a]ccessible routes shall coincide with or be located in the same area as general circulation paths.” The advisory note to this section further states that the “accessible route must be in the same area as the general circulation path. This means that circulation paths, such as vehicular ways designed for pedestrian traffic, walks, and unpaved paths that are designed to be routinely used by pedestrians must be accessible or have an accessible route nearby.”

Ground surfaces along the accessible route must be stable, firm, and slip resistant. 2010 ADA Standards 302.1. In general, an accessible route must be at least 3 feet wide. 2010 ADA Standard 403.5.1. The standards also prescribe limitations on slope and changes in levels along the accessible route. The slope along an accessible route must be less than 1:20 or comply with the standards for ramps. 2010 ADA Standard 402.2.

The running slope on a ramp may not exceed 1:12. 2010 ADA Standard 405.2. A change in level along an accessible route greater than ½ inch requires a ramp; changes between ¼ inch and ½ inch must be beveled; and changes up to ¼ inch may be vertical without edge treatment. 2010 ADA Standard 403.4 and 303. Ramps must be at least 3 feet wide. 2010 ADA Standard 405.5. Doors along an accessible route must be accessible. 2010 ADA Standard 404.1. Double-leaf doorways must have a least one active leaf that meets the specifications in 2010 ADA Standard 404, including clear width, maneuvering clearance, thresholds, hardware, closers, and closing and opening force.

OCR notes that the 2010 ADA Standards require at least 60 percent of public entrances to be accessible. 2010 ADA Standards 206.4.1. The 2010 ADA Standards address accessible entrances at § 404. Entrance doors and doorways shall comply with ADA Standard 404 and shall be on an accessible route complying with 402. Where not all entrances are accessible, those that are shall be identified by the International Symbol of Accessibility complying with 2010 ADA Standard 703.7.2.1. 2010 ADA Standards 216.6. Directional signs complying with 2010 ADA Standard 703.5 that indicate the location of the nearest entrance complying with § 404 shall be provided at entrances that do not comply with § 404. The Advisory to 2010 ADA Standard 216.6 regarding entrances states that where a directional sign is required, it should be located to minimize backtracking. In some cases, this could mean locating a sign at the beginning of a route, not just at the inaccessible entrances to a building.

Summary of OCR’s Investigation

The complaint, received by DOJ on September 8, 2019, and transferred to OCR on October 10, 2019, stated that the District was, on September 9, 2019, going to open its new K-12 school (the

School), and that the School was being opened while still an active construction site. The Complainant provided OCR with photographs of the exterior of the School and its parking lots.

Information available on the District's website showed that the facility is new, and that Ohio Facilities Construction Commission (OFCC) was involved in its construction.

In response to OCR's data request, the District sent 2 pages from its architect, VSWC Architects, consisting of a one-page letter and a site plan. The letter states:

Several of these items have been brought up before by a number of the residents of Bolser Drive. As we have tried to relay to them, the project is still under construction and some of these items have not yet been completed. A tough construction schedule mixed with several delays related to weather have caused the schedule to be pushed back. It is my understanding that the school's schedule and the schedule of the asphalt plants have caused the installation of the topcoat of asphalt to be pushed back to next summer as that will be the first feasible opportunity to lay it efficiently.

Our responses to the alleged complaints are as follows:

1. The routes from the parking lots to the K-1, elementary, middle, and high schools entrances are not stable, firm and slip resistant and/or do not have curb ramps that meet the accessibility requirements; - As it was stated above the parking lot/drive areas do not have the top coat of asphalt causing the entirety to be approximately 1.5" too low. This layer of asphalt will be laid during the summer of 2020, a temporary asphalt patch has been added at each ADA curb cut until the final layer can be added. At the completion of the project all three entrances shall have an accessible ADA compliant curb ramp.
2. The route from the high school passenger loading zone to the entrance is not accessible as there is no curb cut; - There is a curb cut shown on the drawings, I have attached a drawing with the curb cut shown circled.
3. There is not an accessible route into the outdoor classroom as entry requires the use of stairs; - This sidewalk access was inadvertently missed during the construction document phase and we are currently working on a design to add an accessible sidewalk to this space.
4. There is not an accessible pedestrian route onto the campus from Bolser Drive as the sidewalk exceeds the maximum allowable slope; and - The Bolser Drive entrance is not designed as an accessible route as it is not required. The Bolser Drive entrance is a convince entrance. The accessible route entrance is located on Columbia Avenue at the main entrance. Per 2010 ADA Standards for Accessible Design, Section 206.2.1 Site Arrival Points, at least one accessible route shall be provided, one is provided.

5. The parking lots at the elementary, middle, and high school entrances do not have a sufficient number of accessible parking spaces. - It is my understanding that all accessible spaces have been clearly marked, however as stated above the project is not complete and an additional layer of asphalt is required; due to that a minimal amount of striping was done until the asphalt can be completed. The final design shows 390 parking spaces. According to table 208.2 8 accessible spaces are required. We have provided 10 accessible spaces. I have highlighted them on the attached site plan as evidence. I have included a site plan showing the parking spaces with red dots. I believe I have provided enough evidence to show that we are not in violation apart from item 3, which as I mentioned in the response, is currently in the works to provide an accessible route. If you have any additional questions, please let me know.

OCR visited the District on August 4-5, 2022, and during its onsite took measurements regarding the accessibility of the areas specified in the complaint. The following are a summary of OCR's onsite findings.

Allegation #1: The routes from the parking lots to the K-1, elementary, middle, and high school entrances are not accessible as the routes are not stable, firm and slip resistant and/or do not have curb ramps that meet the accessibility requirements.

While onsite, OCR found that the routes are stable, firm, and slip resistant, as they are made of asphalt and concrete and are in good repair. They either have a curb ramp that meets the requirements, or do not have a curb ramp, as it is not required because the route does not cross over a curb (e.g., the high school parking lot).

Allegation #2: The route from the high school's passenger loading zone to the entrance is not accessible as there is no curb cut.

While onsite, OCR found that, although there is no designated passenger loading zone at the high school, there is a curb cut in the driveway directly in front of the entrance, and OCR witnessed parents dropping off their students here during its August 2022 onsite.

Allegation #3: There is not an accessible route into the outdoor classroom as entry requires the use of stairs.

OCR found during the onsite that, since the complaint was filed, the District has built an accessible route into its outdoor classroom space, and the route is accessible from the sidewalk alongside the southeast corner of the building to the outdoor classroom. There is a route from the middle school to the outdoor classroom that requires the use of stairs; the stairs are adjacent to the middle school doorway. For anyone with a mobility impairment exiting from the middle school, one would have to traverse the sidewalk to a second section of sidewalk that leads to the outdoor classroom. OCR did not measure the sidewalk that connects the middle school entrance to the outdoor classroom's accessible entrance, and thus is not commenting on whether that route meets the requirements for an accessible route. OCR notes that, if the route from the middle school doorway to the outdoor classroom is not accessible, the District must ensure that, if and when middle school students use the outdoor classroom, it takes steps necessary to provide an

equal opportunity for all middle school students to participate. For example, any middle school students using the outdoor classroom could be required to access it from the elementary school doorway so that all students are using the same route.

Allegation #4: There is not an accessible pedestrian route onto the campus from Bolser Drive as the sidewalk exceeds the maximum allowable slope.

The 2010 ADA Standards only require one route to be accessible. The District explained to OCR that its other pedestrian route, from Columbia Avenue, is its accessible pedestrian route. The Complainants did not allege that the route from Columbia Avenue was inaccessible, and thus OCR did not measure the route. The District should ensure that it is accessible.

Allegation #5: The parking lots at the elementary, middle, and high school entrances do not have a sufficient number of accessible parking spaces.

During the course of its investigation, including the August 2022 onsite visit, OCR assessed the parking lots associated with each building, as described below.

High School

There are two parking lots at the front of the school, near the high school entrance. The lot closest to Columbia Avenue has 80 spaces, with 0 accessible. The second lot, directly adjacent to the accessible route to the high school entrance, has 70 spaces, with 5 designated accessible. The 2010 ADA Standards at 208.3.1 allow accessible spaces 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. Here, as the lot with the accessible spaces is closer to the accessible route, grouping the spaces in one lot is acceptable, and for a lot of 150 spaces, 5 is sufficient, although at least one needs to be designated as van accessible. These spaces have compliant signs, except that any van accessible space requires a sign designating it as van accessible (and the space must comply with the minimum width requirements for a van accessible space and its access aisle, which are not at issue in this complaint).

Elementary School

The elementary school parking lot does not have a sufficient number of accessible parking spaces based on the size of the lot, as there are 88 spaces and only 2 are accessible. As applied to this parking lot, the applicable standards require 4 accessible spaces, and one needs to be van accessible. Each space needs to have a compliant sign, and the sign for the van accessible space needs to state that it is van accessible.

Middle School

The middle school lot has 164 spaces, with 6 designated accessible, but none are marked as van accessible. While the number of parking spaces is sufficient, at least one space needs to be designated as van accessible. In addition, none of the designated accessible spaces had a sign complying with the 2010 ADA Standards; each designated accessible space must have

appropriate signage. While many of the spaces had an accessibility symbol on the ground, this is insufficient to comply with the Standards.

Analysis and Conclusion

The complaint was filed when the District's new facility was undergoing construction. Since the complaint was filed, the District has taken steps to complete construction. As the building is new construction, it must comply with the 2010 ADA Standards. While onsite, OCR only reviewed the areas specified in the allegations; OCR did not analyze whether the District complied with other requirements.

With regard to allegations ##1-3, for the reasons described in the summary above, OCR found that, while these areas may have been inaccessible at the time the complaint was filed, the evidence from the parties and OCR's onsite visit demonstrated that the District has since remedied any deficiencies.

For allegation #4, OCR determined that the 2010 ADA Standards do not require the pedestrian route onto the campus from Bolser Drive to be accessible, as the District asserted that the pedestrian route from Columbia was its one required accessible pedestrian route. Therefore, OCR found insufficient evidence of a violation with regard to allegation #4.

With regard to allegation #5, OCR found sufficient evidence of a violation. For the reasons discussed in greater detail above, the elementary lot did not have the required number of accessible spaces, and none of the lots had the required number of accessible spaces designated as van accessible. In addition, OCR noted that the spaces in the middle school parking lot did not have appropriate signage.

As described above, in order to comply with the 2010 ADA Standards, the District must:

1. Designate at least one of the accessible parking spaces serving the high school as a van accessible space with appropriate signage. The space and its access aisle must meet the requirements of the Standards set forth in Section 502.
2. Designate an appropriate number of parking spaces at the elementary school parking lot as accessible, as required by Table 208.2, with at least 1 of every 6 spaces designated as van accessible, to comply with 502.6. The spaces must have appropriate signage and otherwise comply with Section 502.
3. Designate at least one of the accessible parking spaces serving the middle school as a van accessible space with appropriate signage. The space and its access aisle must meet the requirements of the Standards set forth in Section 502. In addition, each of the other 5 accessible spaces must have appropriate signage.

XXXXXX XXXXX XXXXX, XXXXX, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address the violations in accordance with Section 504 and Title II. OCR will monitor the implementation of the Resolution 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. 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.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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, it will seek to protect, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant has a right to appeal OCR's determination regarding allegation #4 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.

OCR looks forward to receiving the District's first monitoring report by **November 4, 2022**. For questions about implementation of the Agreement, please contact Ms. Kimberly Kilby. Ms. Kilby will be overseeing the monitoring and can be reached by e-mail at XXXXX. If you have questions about this letter, please contact me by telephone at XXXXX or by e-mail at XXXXX.

Sincerely,

Nathaniel J. McDonald
Supervisory Attorney/Team Leader

Enclosure