



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
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November 25, 2014

Dr. David Leach
Superintendent of Schools
Warwick Valley Central School District
P.O. Box 595
Warwick, New York 10990-0595

Re: Case No. 02-14-1155
Warwick Valley Central School District

Dear Dr. Leach:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the Warwick Valley Central School District. The complainant alleged that the District failed to publish contact information for its Section 504/ADA Coordinator (Allegation 1). In addition, the complainant alleged that the District's website is inaccessible for individuals with disabilities (Allegation 2). The complainant further alleged that the following District facilities are inaccessible to individuals with disabilities (Allegation 3):

Park Avenue Elementary School

(a) Route to the playground areas.

Sandfordville Elementary School

(b) Route to the playground areas; and
(c) Route to athletic fields.

Warwick Valley High School

(d) Tennis courts;
(e) Accessible parking spaces in the front of the high school (spaces are sloped);
(f) Route to the athletic stadium;
(g) Seating at the athletic stadium;
(h) The ticket booth at the athletic stadium (too high);
(i) Signage is not provided from the accessible parking spaces to the athletic stadium;
(j) Route to the accessible seating for basketball games in the gymnasium;
(k) Signage is not provided identifying the accessible exit from the gymnasium;

- (l) Route to the baseball field; and
- (m) Seating in the baseball field area.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the Department. In addition, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

With respect to Allegation 1, the complainant alleged that the District failed to publish contact information for its Section 504/ADA Coordinator. The regulation implementing Section 504, at 34 C.F.R. § 104.8(a), requires recipients of financial assistance from the Department to issue a notification identifying the identity of the individual designated to coordinate the recipient's compliance with Section 504 pursuant to 34 C.F.R. § 104.7(a). In addition, the regulation implementing the ADA, at 28 C.F.R. § 35.107(a), requires public entities that employ 50 or more persons to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the ADA and make available to all interested individuals the name, office address, and telephone number of this employee.

The District informed OCR that the Assistant Superintendent of Curriculum and Instructional Services is designated as its Section 504 and ADA Coordinator; however, there are no publications that notify beneficiaries that the Assistant Superintendent has been so designated. Accordingly, OCR has determined that there was sufficient evidence to substantiate the complainant's allegation that the District failed to publish contact information for its Section 504/ADA Coordinator, in accordance with the requirements of 34 C.F.R. § 104.8(a) and 28 C.F.R. § 35.107(a).

On November 13, 2014, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in Allegation 1. OCR will monitor implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

With respect to Allegation 2, the complainant alleged that the District's website is inaccessible for individuals with disabilities.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(ii), prohibits a recipient from affording a qualified individual with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others. The regulation, at 34 C.F.R. § 104.4(b)(1)(iii), further requires a recipient to provide students with disabilities with aids, benefits and services that are as effective as those provided to students without disabilities. The regulation, at 34 C.F.R. § 104.4(b)(1)(iv), also provides that recipients may not on the basis of disability provide different aids, benefits or services to students with disabilities except when

necessary to provide such students with aids, benefits or services that are as effective as those provided to others. The regulation implementing Title II of the ADA contains similar requirements at 28 C.F.R. § 35.130(b)(1)(ii-iv). In addition, the regulation implementing Title II of the ADA, at 28 C.F.R. § 35.160(a)(1), provides that: a public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

The District has a “Website Accessibility Statement” that states that it is the goal of the District to ensure that information on its website is accessible to individuals with visual, hearing, or cognitive disabilities. It also provides the contact information of the District’s Webmaster, and directs visitors to the website to contact the Webmaster if they are unable to access information on the website.

OCR requested that the Department’s Assistive Technology Team review the District’s website to determine the accessibility of the site for assistive technology users. The Assistive Technology Team analyzed the District’s website to determine whether it is accessible, using as guidance the 16 Web Standards and 12 Software Standards of Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998.¹ The Assistive Technology Team’s analysis of the website revealed the following concerns:

- Images are missing alternative text. Some of the images that do have alternative text have alternative text that is not complete or informative.
- While sampled multimedia files have captions, the captions are automatically generated and inaccurate.
- There are a number of data tables on the websites that are not correctly coded to allow use by assistive technology users.
- Frames (found on each website page) lack proper names and titles.
- Main and side drop down menus are inaccessible since unable to view lists of links from those menu options, and lists of links are not available to keyboard users.
- Form fields lack proper structure (including the “Profile” and “Family Connection” webpages, as well as the webpage used to add money to student meal accounts).
- Documents are not properly structured for use by assistive technology (e.g., the “Registration Form”, “Bus Stop Request Form”, and the Student Handbook).
- There are areas where color contrast is low and does not meet contrast ratio tests.

On November 13, 2014, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in Allegation 2. OCR will monitor implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

¹ <http://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-section-508-standards>

With respect to Allegation 3, the complainant alleged that the following District facilities are inaccessible to individuals with disabilities:

Park Avenue Elementary School

(a) Route to the playground areas.

Sandfordville Elementary School

(b) Route to the playground areas; and

(c) Route to athletic fields.

Warwick Valley High School

(d) Tennis courts;

(e) Accessible parking spaces in the front of the high school (spaces are sloped);

(f) Route to the athletic stadium;

(g) Seating at the athletic stadium;

(h) The ticket booth at the athletic stadium (too high);

(i) Signage is not provided from the accessible parking spaces to the athletic stadium;

(j) Route to the accessible seating for basketball games in the gymnasium;

(k) Signage is not provided identifying the accessible exit from the gymnasium;

(l) Route to the baseball field; and

(m) Seating in the baseball field area.

The regulation implementing Section 504, at 34 C.F.R. § 104.21, provides 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 to which this part applies.” The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149.

The regulation implementing Section 504, at 34 C.F.R. § 104.22, categorizes facilities constructed on or before June 3, 1977, as “existing facilities”.² The regulation implementing Section 504 requires a recipient to operate each program or activity conducted in existing facilities so that the program or activity, when viewed in its entirety, is readily accessible to individuals with disabilities.³ The regulation implementing Section 504 does not require a recipient to make structural changes to existing facilities. A recipient may comply through means such as redesign of equipment, or reassignment of classes or other services to accessible buildings or locations. Where programs or activities cannot or will not be made accessible using alternative methods, structural changes may be required in order for recipients to comply.

The regulation implementing Section 504, at 34 C.F.R. § 104.23, categorizes facilities constructed or altered by, on behalf of, or for the use of a recipient after June 3, 1977 as “new construction.”⁴ The regulation implementing Section 504 requires that new construction be readily accessible to

² Under the ADA, an existing facility includes facilities that were constructed, or for which construction was commenced, prior to January 26, 1992, the effective date of the regulation implementing the ADA.

³ The ADA includes a similar requirement for public entities at 28 C.F.R. §§ 35.149-35.150.

⁴ These facilities are also new construction as defined by the regulation implementing the ADA, at 34 C.F.R. § 35.151.

and usable by individuals with disabilities.⁵ The regulation implementing Section 504, at 34 C.F.R. § 104.23, also requires that all buildings constructed or alterations to existing facilities made after January 18, 1991, must be in compliance with the Uniform Federal Accessibility Standards (UFAS), or it must be clearly evident that equivalent access is provided to meet the requirements of Section 504, such as through compliance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG).⁶

Park Avenue Elementary School

The District informed OCR that the building was built in approximately 1928, and that the playgrounds were built in approximately 1990. Therefore, OCR determined that the school building should be considered an “existing facility” under Section 504 and the ADA, and the playgrounds should be considered “new construction” under Section 504 and the ADA.

The complainant alleged that the route to the playground areas is made up of grass and gravel; and there is no paved path to generally access the playground areas. OCR determined that there are two playgrounds: one next to the parking lot (Playground 1) and one on the side of the school (Playground 2). As for the specific route to Playground 1, OCR determined that there is a parking lot that leads to the playground, and the portion of the pavement between the crosswalk and the path to the parking lot is cracked and bumpy. Therefore, it would be difficult for a wheelchair to navigate that route. Also, there is a grassy area of approximately 70 feet leading from the paved area to the playground equipment. Therefore, OCR determined that the route to Playground 1 is inaccessible. As for the specific route to Playground 2, OCR determined that Playground 2 is located at the top of a hill, and the route thereto has a slope ranging from 10.6% to 16.6%. Therefore, OCR determined that the route to Playground 2 is also inaccessible.

Sandfordville Elementary School

The District informed OCR that the building was built in approximately 2000. Therefore, OCR determined that the building should be considered “new construction” under Section 504 and the ADA. The complainant alleged that the route to the playground area is made up of grass and gravel; and there is no paved path. OCR determined that, contrary to the complainant’s allegation, the pathway to the playground is paved and level and therefore accessible.

The complainant also alleged that the route to the athletic fields is made up of grass and gravel; and there is no paved path. OCR determined that there is only one athletic field; it is used for soccer in the fall and for lacrosse in the spring. The route to the athletic field consists of a sidewalk; however, from the sidewalk, there are steps leading to the field. Therefore, OCR determined that the route to the athletic field is inaccessible.

⁵ The regulation implementing the ADA contains a similar requirement at 34 C.F.R. § 35.151.

⁶ Pursuant to the regulation implementing the ADA, at 28 C.F.R. § 35.151, new construction or alteration of existing facilities commenced after January 26, 1992, must be in conformance with UFAS, ADAAG, or equivalent standards. Beginning March 15, 2012, all new construction or alterations of existing facilities must conform to the 2010 ADA Standards for Accessible Design.

Warwick Valley High School

The District informed OCR that the building was built in 1958, and an addition to the building was built in 2000. The District also informed OCR that the tennis courts were built in 1974; the stadium was built in 1958; the stadium bleachers were built in the 1970s; and the baseball fields were built in 1974. Therefore, OCR determined that the portion of the building constructed in 1958, and the tennis courts, stadium, stadium bleachers, and the baseball fields should be considered “existing facilities” under Section 504 and the ADA. The portion of the high school building constructed in 2000 is considered “new construction” under Section 504 and the ADA.

The complainant alleged that the tennis courts are not accessible. However, OCR determined that the tennis courts are accessible and that there is an accessible route to the tennis courts.

The complainant also alleged that the accessible parking spaces in the front of the high school are too steep. OCR determined that there are eight parking spaces in front of the high school, two of which are designated as parking spaces for individuals with disabilities. One of the designated spaces has a slope of 9.3% and the other has a slope of 9.0%. The access aisle in between the two accessible spaces has a slope of 8.6%. Therefore, OCR determined that as a result of the steep slopes, these two parking spaces and their adjoining access aisle are inaccessible. Further, the two parking spaces do not have any signs designating them as accessible parking spaces, although they both have ground markings indicating that they are the accessible parking spaces.

In addition, the complainant alleged that the route to the athletic stadium is inaccessible. OCR determined that there is no designated accessible route from the school to the athletic stadium. The existing route is over 800 feet long, and sloped. Some portions of the route include an accessible slope, but other areas included slopes that vary from 9.7% to 10.9%. Therefore, OCR determined that the route from the school to the athletic stadium is inaccessible. However, the District informed OCR that no one would use the route to travel from the school to the athletic stadium since it is only used for weekend games; there are no activities held at the stadium during the school week. The District informed OCR that during the weekends, any player would travel directly to the stadium via car, and could park in one of accessible parking spaces in front of the stadium. Therefore, OCR determined that it was not necessary for the route between the school and the athletic stadium to be accessible. The District informed OCR that it is the practice of visitors to park in the open area in front of the stadium; however, OCR determined that there are no actual parking spaces (designated accessible or otherwise) delineated in front of the stadium.

Further, the complainant alleged that the seating at the athletic stadium is not accessible and not present at all levels. OCR determined that the athletic stadium has a capacity of approximately 2000 seats. There are 40 seats for individuals with disabilities, which is a sufficient amount. OCR determined that all of the seats designated as accessible seating are located in the front row and are in fact accessible.

The complainant also alleged that the ticket booth at the athletic stadium is too high. OCR determined that there is no ticket booth at the athletic stadium, and the District does not sell or

otherwise issue tickets for any events held at the stadium. OCR determined that the structure that the complainant referred to is a concession stand. The District stated that concessions are not sold out of the window of the structure, but instead they are sold from folding tables outside of the stand. The height of these tables is 27 inches. Therefore, OCR did not find any compliance concerns with respect to the concession stand.

In addition, the complainant alleged that signage is not provided from the accessible parking spaces to the athletic stadium. As discussed above, OCR determined that there are no designated accessible parking spaces for the athletic stadium. The bleachers are accessed via two ramps, located on opposite ends of the bleachers. One of the two ramps is a switch-back ramp, consisting of three ramps. The highest portion of the switch-back ramp, which leads from the bleachers, has a slope ranging from 8.6% to 8.1%. The second highest portion has a slope ranging from 7.7% to 9.6%. The third portion, which leads to the ground level, has a slope of 7.7%. Accordingly, OCR determined that the switch-back ramp was inaccessible since there are portions of the ramp with a slope steeper than 8.3%. The remaining ramp is accessible, and available for use by individuals with disabilities; however, the accessible ramp lacks appropriate signage.

Further, the complainant alleged that there is an inaccessible route to the accessible seating for basketball games in the gymnasium. OCR determined that the width of the doors leading into the gymnasium measured 32 inches, and therefore the door width is accessible. OCR determined that the rest of the route to the accessible seating is also accessible.

The complainant also alleged that there is no signage provided identifying the accessible exit from the gymnasium. OCR determined that there is no signage identifying the accessible exit from the gymnasium.

In addition, the complainant alleged that the route to the baseball field and seating at the baseball field are inaccessible. OCR determined that there are two baseball fields located at the high school: one for the varsity baseball team and another shared by the junior varsity and freshman baseball teams. OCR determined that there is an accessible sidewalk, which is approximately 8 feet wide, from the school to the varsity baseball field, but it leads only to the area behind home plate. The route from the sidewalk to the bleachers (located behind third base) is inaccessible, as it is a grass route approximately 100 feet long. OCR determined that there are no designated seating areas for individuals with disabilities in the bleacher area of the varsity field. The available space on the ground and the route to the bleachers are covered in grass and are therefore inaccessible.

Since the varsity baseball field is an existing facility, the District must develop an alternate plan for achieving accessibility. The District informed OCR that few spectators sit in the bleachers located near the varsity field (behind third base); instead, most spectators, including individuals in wheelchairs, congregate on the accessible sidewalk behind home plate because the vantage point is more desirable. Therefore, OCR has determined that the District has developed an alternate plan for achieving accessibility.

OCR determined that the route to the junior varsity and freshman baseball field is also inaccessible because it is a grass route that is approximately 300 feet long. In addition, the ground of the seating area to the junior varsity and freshman baseball field is covered in grass. The District has no alternate plan for achieving accessibility to this field. Therefore, OCR has determined that the District must create an accessible route to this field and accessible seating, or develop an alternate plan for achieving accessibility.

OCR noted the above-referenced compliance concerns in Appendix A.

On November 13, 2014, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in Allegation 3. OCR will monitor implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This letter 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 the right to file a private suit in federal court whether or not OCR finds a violation.

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 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, it 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.

If you have any questions about OCR's determination, please contact Richard L. Anderson, Compliance Team Investigator, at (646) 428-3781 or richard.anderson@ed.gov, or Coleen Chin, Senior Attorney, at (646) 428-3809 or coleen.chin@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Enc.

Appendix A⁷

Park Avenue Elementary School

Building Component	Exterior route to Playground Next to Parking Lot
Accessibility Issues	<ul style="list-style-type: none">• The portion of the pavement between the cross walk and the path to the parking lot (which led to the playground) is cracked and bumpy. Also, there is approximately 70' of grass from the paved area to the playground equipment. [Floor and ground surfaces shall be stable, firm, and slip resistant. ADA 2010 Standards 302.1]

Building Component	Exterior Route to Playground Next to School
Accessibility Issues	<ul style="list-style-type: none">• Playground located at the top of a hill, with a route slope ranging from 10.6% to 16.6%. [Slope of walking surfaces shall not be steeper than 1:20 (8.3%). ADA 2010 Standards 403.3]

Sandfordville Elementary School

Building Component	Exterior Route to Athletic Field
Accessibility Issues	<ul style="list-style-type: none">• Route to athletic field includes stairs. [At least one accessible route shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site. 2010 ADA Standards 206.2.2]

⁷ Because any alterations would need to be made consistent with current accessibility standards, all citations refer to the 2010 ADA Standards for Accessible Design (2010 ADA Standards).

Warwick High School

Building Component	Accessible Parking Spaces in Front of the Building
Accessibility Issues	<ul style="list-style-type: none"> • There are two parking spaces for individuals with disabilities. The first parking space has a slope of 9.3%, and the second parking space has a slope of 9.0%. [Slope of parking spaces and access aisles shall not be steeper than 1:48 (2.0%). ADA 2010 Standards 502.4] • The access aisle in between the two parking spaces has a slope of 8.6%. [Slope of parking spaces and access aisles shall not be steeper than 1:48 (2.0%). ADA 2010 Standards 502.4] • Neither of the two parking spaces has a sign designating them as accessible parking spaces, although they both have ground markings indicating that they are the accessible parking spaces. [Parking space identification signs shall include the International Symbol of Accessibility complying with ADA 2010 Standards 703.7.2.1. Signs shall be 60” minimum above the ground measured from the bottom of the sign. ADA 2010 Standards 502.6]

Building Component	Exterior Route to Stadium
Accessibility Issues	<ul style="list-style-type: none"> • No designated accessible parking spaces in front of stadium.⁸ [Accessible parking spaces shall comply with 2010 ADA Standards 502.]

Building Component	Ramp to Stadium Bleachers
Accessibility Issues	<ul style="list-style-type: none"> • Accessible ramp to stadium bleachers lacks appropriate signage. [Exterior signs identifying permanent rooms and spaces, such as restrooms, room numbers, and room names, shall be provided. Tactile text descriptors are required for pictograms that are provided to label or identify a permanent room or space. Where both visual and tactile characters are required, either one sign with both visual and tactile characters, or two separate signs, one with visual, and one with tactile characters, shall be provided. Raised characters shall also be duplicated in braille. Tactile characters on signs shall be located 48” minimum above ground, measured from the baseline of the lowest tactile character and 60” maximum above the ground, measured from the baseline of the highest tactile character. ADA 2010 Standards 216.2; 703.1; 703.2; 703.3; 703.4, and 703.5]

⁸ OCR determined that there were no designated parking spaces of any kind in front of the stadium.

Building Component	Signage Identifying Accessible Exit from Basketball Gym
Accessibility Issues	<ul style="list-style-type: none"> • Accessible exit from basketball gym lacks appropriate signage. [Interior signs identifying permanent rooms and spaces, such as restrooms, room numbers, and room names, shall be provided. Tactile text descriptors are required for pictograms that are provided to label or identify a permanent room or space. Where both visual and tactile characters are required, either one sign with both visual and tactile characters, or two separate signs, one with visual, and one with tactile characters, shall be provided. Raised characters shall also be duplicated in braille. Tactile characters on signs shall be located 48” minimum above ground, measured from the baseline of the lowest tactile character and 60” maximum above the ground, measured from the baseline of the highest tactile character. ADA 2010 Standards 216.2; 703.1; 703.2; 703.3; 703.4, and 703.5]

Building Component	Route to Junior Varsity/Freshmen Baseball Field
Accessibility Issues	<ul style="list-style-type: none"> • The route to the junior varsity and freshman baseball field is a grass route that is approximately 300’ long. [Floor and ground surfaces shall be stable, firm, and slip resistant. ADA 2010 Standards 302.1]

Building Component	Seating at Junior Varsity/Freshman Baseball Field
Accessibility Issues	<ul style="list-style-type: none"> • The ground under the seating area is covered in grass. [Floor and ground surfaces shall be stable, firm, and slip resistant. ADA 2010 Standards 302.1]