

September 16, 2016

Valerie Henning-Piedmonte, Ed.D.  
Superintendent of Schools  
Brewster Central School District  
30 Farm to Market Road  
Brewster, New York 10509

Re: Case No. 02-16-1236  
Brewster Central School District

Dear Superintendent Henning-Piedmonte:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Brewster Central School District (the District). The complainant alleged that the District's C.V. Starr Intermediate School (School 1) lacks any designated accessible parking spaces in School 1's rear parking lot.

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 U.S. Department of Education (the Department). OCR also 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 both Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that “[n]o 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.

In its investigation, OCR reviewed documentation that the complainant and the District provided. OCR also interviewed the complainant and District staff. Additionally, OCR conducted an on-

site inspection of School 1's rear parking lot, front parking lot, and designated accessible entrance. OCR made the following determinations.

The complainant alleged that School 1 lacks any designated accessible parking spaces in School 1's rear parking lot. The complainant informed OCR that School 1's Student/Parent Handbook requires parents/guardians to park in the rear parking lot, and walk their children to and from the cafeteria, to drop off and pick up students.

OCR determined that School 1 was constructed in 1997, and the rear parking lot was constructed, paved, and striped in 2013. 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."<sup>1</sup> Accordingly, OCR determined that School 1 and the rear parking lot are new construction under the regulations implementing Section 504 and the ADA.

The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities.<sup>2</sup> The regulation implementing Section 504, at 34 C.F.R. § 104.23, requires that all facilities constructed or alterations to existing facilities made after January 18, 1991, 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). 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 (2010 Standards). Since the rear lot was originally constructed in 2013, it must comply with the 2010 Standards.

School 1 is housed in a building comprising two schools, School 1 and the Wells Middle School (School 2). School 1's rear lot is used by staff and visitors to School 1; and, the three large athletic fields shared and used by School 1, School 2, and the District's other school buildings, are adjacent to School 1's rear lot. One of these athletic fields is in closer proximity to School 1's rear lot than to any other parking facilities.<sup>3</sup>

The 2010 Standards, at Section 208.1, provide that if parking spaces are provided, parking spaces must comply with Section 208. With 49 parking spaces, School 1's rear lot is required to have two accessible spaces, one of which must be van accessible (2010 Standards, at Sections 208.2).

The District acknowledged that it does not have accessible parking in the rear lot, but asserted that it does not provide accessible parking spaces in the rear parking lot because the five accessible parking spaces in School 1's front lot are located on the shortest accessible route to

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<sup>1</sup> Under the regulation implementing the ADA, at 34 C.F.R. § 35.151, construction or alterations commenced after January 26, 1992, is considered "new construction."

<sup>2</sup> The regulation implementing the ADA contains a similar requirement at 34 C.F.R. § 35.151.

<sup>3</sup> Five parking lots serve the building that houses School 1 and School 2. OCR determined that the other two athletic fields are equally close to, or closer to the high school's parking lot, which is in close proximity to Schools 1 and 2.

the designated accessible entrance at the front of School 1. In accordance with the 2010 Standards, at Section 208.3.1, Exception 2, spaces may be provided in a different location if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance; however, since one of the athletic fields is located closest to School 1's rear lot, then this exception does not apply. Accordingly, OCR determined that School 1's rear lot is not in compliance with the regulations implementing Section 504 and the ADA.

OCR also examined the accessible parking spaces offered in School 1's front lot, which was constructed in 1997. School 1's front lot is used by staff and visitors to School 1 and has a total of 66 parking spaces, five of which are designated accessible, with four access aisles interspersed among them. All five designated accessible parking spaces have markings depicting the symbol of accessibility painted on the pavement of the relevant space; however, OCR determined that four of the five spaces lack signage mounted on a pole that is located so that they cannot be obscured by a vehicle parked in the space. ADAAG 4.6.4 and UFAS 4.6.4 provide that accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. Such signs shall be located so that the sign cannot be obscured by a vehicle parked in the space. Accordingly, OCR determined that School 1's front lot is not in compliance with the regulations implementing Section 504 and the ADA.

Since the District identified School 1's front entrance as the accessible entrance for School 1, OCR examined this entrance for accessibility. School 1 was constructed in 1997. OCR determined that School 1's front entrance lacks any signage depicting the international symbol of accessibility. ADAAG 4.30.7(1) and UFAS 4.30.7(1) provide that elements and spaces of accessible facilities that are required to be identified by the international symbol of accessibility include accessible entrances when not all entrances are accessible; and, that inaccessible entrances shall have directional signage to indicate the route to the nearest accessible entrance. In addition, there are two sets of doors at the front entrance, and the innermost doors required 7.5 pounds of force to open. The maximum force for pushing or pulling open an interior door is 5 pounds of force (See ADAAG 4.13.11(2)(b) and UFAS 4.13.11(2)(b)). Accordingly, OCR determined that School 1's designated accessible front entrance is not in compliance with the regulations implementing Section 504 and the ADA.

OCR determined that School 1's drop-off procedures formerly required parents to park in School 1's rear lot and walk their children to the cafeteria to drop off their children; however, on or about April 4, 2016, School 1 amended its Student/Parent Handbook to specifically state that individuals with "handicapped parking permits" should use the designated accessible parking spaces located in School 1's front lot.

On September 14, 2016, the District agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified in this letter. OCR will monitor the implementation of the resolution agreement.

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 Aditi K. Shah, Compliance Team Attorney, at (646) 428-3897 or [aditi.shah@ed.gov](mailto:aditi.shah@ed.gov); or James Moser, Compliance Team Attorney, at (646) 428-3792 or [james.moser@ed.gov](mailto:james.moser@ed.gov).

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

Cc: XXXXXX XXXXXXXXX, Esq.  
XXXXX XXXXXXX, Esq.