

June 10, 2015

Mr. Todd Carlson
District Administrator
Gillett School District
208 West Main Street
Gillett, Wisconsin 54124

Re: OCR #05-15-1082

Dear Mr. Carlson:

The U.S. Department of Education's Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against the Gillett School District (District). The Complainant alleges discrimination on the basis of disability XXXXX. Specifically, the complaint alleges that the District discriminates against mobility impaired students by failing to provide accessible parking spaces on an accessible route to the entrance to the junior/senior high school. The complaint also alleges that the District fails to provide appropriate signage for accessible parking spaces in the same parking lot.

OCR is responsible for enforcing 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 is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §12132, 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 a public entity, the District is subject to the provisions of Section 504 and Title II with respect to this complaint.

OCR investigated this complaint by interviewing the Complainant and conducting an onsite visit to the District. OCR also reviewed documents submitted by both parties. OCR's determinations are set forth below.

Policies and Procedures

The District prohibits discrimination on the basis of disability.¹ The District's website also provides contact information for the District's Special Education Director and another staff member; these are the designated staff members for complaints alleging discrimination on the basis of disability. The District publishes, "Special Education Procedural Safeguards Rights for Parents and Children School District of Gillett," which also provides contact information for the District's Special Education Director.

¹ http://www.gillett.k12.wi.us/district/ds_public_notices.cfm .

Applicable Legal Standards

Accessibility, general: The implementing regulation of Section 504, at 34 C.F.R. § 104.21, states that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with a disability, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which the regulation applies.

Accessibility, existing facilities: The Section 504 regulation, at 34 C.F.R. § 104.22(b), requires institutions to operate programs and activities offered in "existing facilities" so that, when viewed in their entirety, they are readily accessible to persons with disabilities. Under Section 504, an "existing facility" is a building, or part thereof, where construction was commenced on or before June 2, 1977. In general, an institution may comply with this requirement, called "program access," through the redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, alteration of existing facilities and construction of new facilities, or any other method that results in making each of its programs and activities accessible to persons with disabilities. The institution is not required to make structural changes to existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for providing program access, the institution shall give priority to those methods that offer programs and activities to disabled persons in the most integrated setting appropriate.

Notice: The implementing regulation of Section 504, at 34 C.F.R. § 104.22(f) (under "existing facilities") also provides that "the recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities."

If a recipient utilizes the relocation option of program accessibility, it must provide reasonable notice to students, parents and others who may have a disability and require relocation of programs, activities or services.

Maintenance of Accessible Facilities: A public entity must maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. This requirement does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. This standard is codified in the regulation implementing Title II, at 28 C.F.R. § 35.133, and is also generally applicable to recipients of Federal financial assistance under Section 504.²

Accessibility, new construction: The Section 504 regulation, at 34 C.F.R. § 104.23, applies to any facility or part of a facility where construction was commenced on or after June 3, 1977. These facilities are termed "new construction" and the altered portion of existing facilities are termed "alterations." The regulations require that each such facility or part of a facility

² The regulation implementing Title II, at 28 C.F.R. §§ 35.149–52, requires public entities to offer accessible facilities. The regulation implementing Section 504, at 34 C.F.R. §§ 104.21–23, requires recipients of Federal financial assistance to offer accessible facilities.

constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. In addition, under Section 504, each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after June 3, 1977, in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

The Section 504 regulation, at 34 C.F.R. § 104.23(b), provides that when an existing facility or part thereof is altered in a manner that affects or could affect the usability of the facility or part of the facility, it shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities. The Section 504 regulation, at 34 C.F.R. § 104.23(c), designates the *American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped* [ANSI 117.1-1961 (1971)(ANSI)] as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the *Uniform Federal Accessibility Standards* (UFAS) for facilities constructed or altered on or after January 18, 1991.

The regulations implementing Title II and the *ADA Accessibility Guidelines* (ADAAG) were amended in September 2010. Title II adopted new accessibility guidelines, *2010 ADA Standards for Accessible Design* (ADA Standards), which became effective March 15, 2011. 28 C.F.R. § 35.151(c)(3) now provides, “If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards.” OCR Notice of Interpretation, Federal Register, Vol. 77, No. 50, pages 14972-14976 (March 14, 2012) allows use of the ADA Standards under Section 504.

Factual Summary

The Complainant alleged that the route between the accessible parking spaces serving the School and the School’s accessible entrance were consistently obstructed by buses, rendering the route inaccessible. Due to the obstructed accessible route, the Complainant regularly parked in an area near the sidewalk at the School to drop-off and pick-up Student A, causing others to complain that he was blocking the fire lane and creating a hazard for parking lot traffic. In addition, in September 2014, the Complainant notified the District that the accessible parking spaces lacked signage, causing non-disabled individuals to park in the accessible parking spaces. The District immediately placed signs at the accessible parking spaces designating them for disabled individuals. However, according to the Complainant, the signs were weighted rather than fixed, and students consistently moved them from the accessible spaces or turned them away from the designated spaces, allowing nondisabled individuals to continue to park in the designated spaces. The Complainant informed OCR that he complained two times to School office staff about the signs and that nothing was done to correct the situation.

Parking Spaces

The District's junior/senior high school (School) was built in 1924 with additions in 1961 and an auditorium and accessible entrance built in 1995. The School is connected to the District's administrative building, which was built in 1961. The School, the Administrative building and the District's outdoor sports facility (football field and track), which is across the parking lot from the School and the Administrative Building, share a 140-space parking lot, which was constructed in 1993 with no renovations since that time. UFAS standards apply to the parking lot. Five of the 140 parking spaces are designated for the disabled.

Sports Complex

Two of the spaces lead to the sports field. The access aisle between the two spaces is adjacent to the sidewalk leading to the field.

Administrative Building

There are two accessible spaces near the administrative building. Although buses do not block access to the administrative building, the route to the building from the accessible spaces requires individuals to walk in the path of cars entering and exiting the parking lot.

Measurements taken onsite show that the parking spaces and aisles are long and wide enough as well as level with slope and cross slope meet the UFAS requirements.

School

OCR observed that the two accessible spaces near the designated accessible entrance to the School are blocked at the beginning and end of the school day by school buses dropping off and picking up students.

Under UFAS (4.6.1), the parking lot has a sufficient number of accessible spaces (5) for the number of spaces (140) in the parking lot. The spaces are distributed in the parking lot to be the closest spaces to each of entrances to the three locations. All of the designated parking spaces are sufficiently wide at 96 inches and wider (UFAS 4.6.3); the demarcated access aisles adjacent to the designated spaces are sufficiently wide at more than 60 inches wide (UFAS 4.6.3). The slope of the parking spaces, access aisles and route to the entrances meet standards (UFAS 4.6.3).

Although the signs are not permanently mounted in the pavement of the parking lot, they are weighted at the bottom of each sign to render moving the signs difficult. The District does not recall specific times when the signs were moved away from the designated spaces but asserts that staff would immediately return the signs to the proper location if staff notice they are out of place or are notified that they had been moved. Each accessible parking space has a sign which meets the required standards set forth in UFAS (4.1.1).

Regarding the parking spaces and the accessible route to the School's accessible entrance, the evidence shows that school buses park between the accessible parking spaces nearest the accessible entrance at the School and the School's accessible entrance. The District confirmed

that the school buses park at that location in the morning and afternoons when dropping off and picking up students. OCR finds that this renders inaccessible the route between the accessible spaces near the School and the School's accessible entrance.

Conclusion

Based on the above, OCR finds that the parking lot is not readily accessible to and usable by persons with disabilities.

The District has provided the enclosed Agreement to OCR. In developing the proposed agreement, OCR has ensured that it is aligned with the complaint allegation, and is consistent with the applicable regulations and legal standards. OCR will monitor the District's implementation of the Agreement.

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. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

The 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 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, we 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 privacy.

We wish to thank you and your staff for the cooperation and courtesy extended to OCR during our investigation. If you have any questions regarding this letter, please contact me at (312) 730-1610 or by email at amy.truelove@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure