



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

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CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

Mr. Shawn Lewis-Lakin  
Superintendent  
Royal Oak Schools  
800 DeVillen Avenue  
Royal Oak, Michigan 48073

Re: OCR Docket #15-15-1016

Dear Mr. Lewis-Lakin:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education's Office for Civil Rights (OCR) against Royal Oak Schools (the District) on October 15, 2014, alleging discrimination on the basis of disability. Specifically, the complaint alleged that the District's Jane Addams Elementary School (the School) is not accessible to individuals with mobility impairments because the accessible parking spaces for the School are not on an accessible route to an accessible public entrance.

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). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (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). 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 entity, the District is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated whether qualified persons with disabilities are being denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any District program or activity because the District's facilities are inaccessible to or unusable by persons with disabilities, in violation of the regulations implementing Section 504 at 34 C.F.R. §§ 104.21-23 and Title II at 28 C.F.R. §§ 35.149-151.

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## **Background**

The Complainant told OCR that the only parking area for the School is behind the School building. In this parking area, there are several designated accessible parking spaces, but the walkway from these parking spaces to the adjacent entrance has two steps leading to a landing at the School entrance, and then another step at the entrance. The Complainant said that, during school hours, all of the School's doors are locked and there is no buzzer or call button at this entrance adjacent to the parking, as there is at the School's front entrance that would allow School staff to unlock the door for someone trying to use this entrance during school hours.

OCR's investigation of the complaint included interviews with the Complainant, a review of data provided by the District, and an onsite visit to the District. After a careful review of the information obtained during the investigation, OCR has determined that the School is not accessible to persons with mobility impairments because the accessible parking spaces for the School are not on an accessible route to an accessible public entrance. However, the District signed the enclosed resolution agreement that, once implemented, will fully address OCR's finding in accordance with Section 504 and Title II. A summary of the applicable legal standards, OCR's investigation, the bases for OCR's determinations, and the terms of the agreement are presented below.

## **Applicable Regulatory Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that benefits from or receives Federal financial assistance. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a). Prohibited discrimination by a recipient or public entity includes denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits, or services offered by that recipient or public entity; affording a qualified person with a disability an opportunity to participate in or benefit from aids, benefits, or services that is not equal to that afforded others; and providing a qualified person with a disability aids, benefits, or services that are not as effective as those provided to others. 34 C.F.R. § 104.4(b)(1)(i)-(iv); 28 C.F.R. § 35.130(b)(1)(i)-(iv). Pursuant to Section 504, recipient school districts must also provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities. 34 C.F.R. § 104.4(b)(2).

The Section 504 and Title II regulations also 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. 34 C.F.R. § 104.21; 28 C.F.R. § 35.149. The regulations reference standards for

determining whether an entity's programs, activities, and services are accessible to individuals with disabilities, depending upon whether the facilities are determined to be existing construction, new construction, or alterations. The applicable standard depends upon the date of construction or alteration of the facility.

For existing facilities, the regulations require an educational institution to 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. 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a). 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.

To provide program access in existing facilities, an institution may use such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternative accessible sites, alteration of existing facilities, construction of new facilities, or any other methods that result in making its program or activity accessible to persons with disabilities. A recipient is not required to make structural changes in existing facilities where other methods are effective in providing program access. However, in choosing among available methods for providing program access, 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. 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b). 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 Section 504 regulation also requires a recipient to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities in existing construction that are accessible to and usable by persons with disabilities. 34 C.F.R. § 104.22(f).

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. Under the Title II regulation, the applicable date for new construction is January 26, 1992.

With regard to alterations, each facility or part of a facility that is altered by, on behalf of, or for the use of an institution after the effective dates of the Section 504 and/or Title II regulation in a manner that affects or could affect the usability of the facility or part of

the facility must, 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. 34 C.F.R. § 104.23(b); 28 C.F.R. §35.151(b).

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) (1977) 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 enforceable 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.

In reviewing program access for an existing facility, the ADA Standards or UFAS may also be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service.

The Title II regulation states that, where structural changes in facilities were to be undertaken to comply with the program accessibility obligations under 28 C.F.R. § 35.150, the changes were to be made within three years of January 26, 1992, but as expeditiously as possible. 28 C.F.R. § 35.150(c). Public entities employing 50 or more persons were required to develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. Public entities were required to provide an opportunity to interested persons, including individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan was required to be made available for public inspection. Transition plans are required to, at a minimum:

- (i) identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

- (ii) describe in detail the methods that will be used to make the facilities accessible;
- (iii) specify the schedule for taking the steps necessary to achieve compliance with 28 C.F.R. § 35.150 and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (iv) indicate the official responsible for implementation of the plan.

DOJ's "Title II Technical Assistance Manual" provides further guidance on the self-evaluation and transition plan requirements. The manual states that DOJ expected that many public entities would reexamine all their policies and practices even if they had already completed a self-evaluation under Section 504, as programs and functions may have changed significantly since the Section 504 self-evaluation was completed; actions that were taken to comply with Section 504 may not have been implemented fully or may no longer be effective; and Section 504's coverage has been changed by statutory amendment.

DOJ's manual further instructs that a public entity's self-evaluation identify and correct those policies and practices that are inconsistent with Title II's requirements, and that, as part of the self-evaluation, a public entity should:

- 1) identify all of the public entity's programs, activities, and services; and
- 2) review all the policies and practices that govern the administration of the public entity's programs, activities, and services.

This includes, among other things, examining each program to determine whether any physical barriers to access exist and identifying steps that need to be taken to enable these programs to be made accessible when viewed in their entirety.

With regard to parking, DOJ has stated that, when an ADA-covered entity restripes a parking lot, it must provide accessible parking spaces as required by the 2010 ADA Standards, and that failure to do so would violate the ADA.

The 2010 ADA Standard at 208 requires that, where parking spaces are provided, parking spaces shall be provided in each parking area in conformity with the 2010 ADA Standard Table 208.2. Spaces required by the table need not be provided in the particular lot; rather they may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost, and convenience is ensured.

## **Summary of OCR’s Investigation and Analysis**

The School is located at 2222 West Webster Road in Royal Oak, Michigan. The District reported to OCR that the School was constructed in 1953. Because the School was constructed prior to June 3, 1977 (and January 26, 1992), and the District did not report any renovations to the entrances that would fall under the new construction or alteration requirements, OCR determined that the School is an existing facility under Section 504 and Title II.

The District also reported to OCR that in August 2013 the District resurfaced the School parking area with new asphalt and installed new concrete sidewalks. Because alterations were completed on the parking area and its adjacent sidewalks in August 2013, OCR determined that the 2010 ADA Standards would apply to the parking area and route leading to the School entrance.

OCR conducted an onsite visit to the District in March 2015 to assess the accessibility of the route from the accessible parking spaces to the designated accessible entrance.<sup>1</sup> As summarized below, OCR’s site visit confirmed that the designated accessible entrance to the School is inaccessible to individuals with mobility impairments. OCR also found that the signage for one of the accessible parking spaces and one of the accessible routes from the accessible parking space to the entrance does not fully comply with the 2010 ADA Standards.

- **Front School Entrance and Drop-off Area**

At the front (south side) of the School, there is a paved drop off area that is a right of way for the public roadway, and is not a parking area. There are two front entrances to the School on the south side of the building, a main entrance and a visitor’s entrance. Neither of these entrances had any signage providing direction to the designated accessible entrance that is adjacent to the parking area for the School. The 2010 ADA Standards require that where not all entrances are accessible, directional signs complying with Standard 703.5 that indicate the location of the nearest accessible entrance, shall be provided at the entrances that are not accessible. The District stated that before and after school each day, all School doors are unlocked for student entry and exit. However, during the school day, for safety reasons, all doors are kept locked and there is a buzzer for visitors at the School’s front entrance to ring the office and allow entrance to the School.

- **Accessible Parking and Routes to Designated Accessible Entrance**

There are 60 parking spaces in the parking area on the north side of the building that is designated for staff and those needing accessible parking. Five of the spaces are designated as accessible, with two of the five spaces designated as van accessible spaces. The 2010 ADA Standards, at 208.2, require a minimum of three accessible parking

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<sup>1</sup> OCR used the 2010 ADA Standards as a guide with respect to the necessary measurements of the entrance doors, as any renovations would need to comply with the 2010 ADA Standards.

spaces for a parking area with 51 to 75 total spaces. In addition, the 2010 ADA Standards, at 208.2.4, require that for every six or fraction of six accessible parking spaces required by 208.2, at least one shall be a van parking space. OCR's investigation found that the District complies with the number of accessible parking spaces, and van parking spaces, with respect to the parking lot at issue.

OCR also found that each of the accessible parking spaces is at least eight feet wide and adjacent to an access aisle that is greater than eight feet wide. The access aisles are marked to discourage parking in them. The slope in the accessible parking spaces and aisles is no greater than 1:48 (1.19°) in any direction. The four designated accessible parking spaces north of the designated accessible entrance are identified with appropriate signage that is 60 inches minimum above the ground surface. Two of the four spaces include the designation "van accessible" parking on the signage. The signage for the fifth designated accessible parking space, located east of the designated accessible entrance, is not 60 inches minimum above the ground surface, and thus is not in compliance with Standard 502.6 of the 2010 ADA Standards.

The 2010 ADA Standards, at 208.3, state that accessible parking spaces that serve a particular building shall be located on the shortest accessible route from the parking to an accessible entrance. OCR observed that the five designated accessible parking spaces are closest to the designated accessible entrance. Four of the designated parking spaces are directly north of the designated accessible entrance, and the fifth designated accessible parking space is east of the designated accessible entrance. The route from all five spaces is firm, stable, slip resistant, and greater than 36 inches wide, as required by 2010 ADA Standard 206.2.1. The slope from the five spaces to the designated accessible entrance never exceeds 1:20 (2.86°) except at the curb ramps. The cross slopes are no greater than 1:48 (1.19°).

Both the accessible routes from the four north spaces and the one east space utilize curb ramps. Both curb ramps are greater than 36 inches wide. At the top of the curb ramps there is a level landing greater than 36 inches long and as wide as the curb ramps. The slope of the curb ramps never exceeds 1:12 (4.76°). The cross slope on the curb ramp from the four spaces is not greater than 1:48 (1.19°), however, the cross slope on the curb ramp from the fifth space is 1:38 (1.5°), and does not comply with the 2010 ADA Standards at 405.3.

OCR observed that the route from the designated accessible spaces to the designated accessible entrance does not require the use of stairs, as alleged by the Complainant. The District clarified that there is another School entrance adjacent to the parking area that does require the use of stairs, but that is not the School's designated accessible entrance.

- **Designated Accessible Entrance**

The designated accessible entrance adjacent to the parking is marked accessible with the International Symbol of Accessibility. The entrance consists of two double swing doors in a series. The thresholds of the doors are under ¼ inch, as set forth in Standard 404.2.5.

The clear width opening is too narrow, however, as it measures only 30 inches, less than the required 32 inches set forth in Standard 404.2.3. The doors provide the required 18 inches of maneuvering clearance on the pull side of the door next to the handle, as set forth in Standard 404.2.4.1. The door hardware is operable with one hand and does not require tight grasping, pinching, or twisting of the wrist, as set forth in Standard 309.4. The operable part of the door hardware is 34 inches from the ground, and the door will remain open from 90° to 12° for greater than five seconds, as set forth in Standards 404.2.7 and 404.2.8.

Once a person enters the building through the exterior door, there is a vestibule and then another set of doors (the interior doors) before accessing the hallway. The 2010 ADA Standards, at 404.2.6, require that the distance between two hinged or pivoted doors in a series be at least 48 inches plus the width of the doors swinging into the space. OCR found that there is less than the required 48 inches of space in the vestibule between the exterior door and the interior door when it is open. The carpets are less than ½ inch thick, and securely attached to the ground, as set forth in Standard 302.2. The interior doors leading from the vestibule into the School building required fewer than five pounds of pressure to operate, as set forth in Standard 404.2.9.

As stated above, before and after school all School doors are unlocked for student entry and exit. However, during the school day all doors are kept locked. There is a sign on the designated accessible entrance directing a person, who is seeking entrance while the door is locked, to call the telephone number listed, which is the School's office number, for assistance in gaining entrance to the School at this entrance.

OCR notes that in an effort to address the Complainant's specific circumstances in which there are arrivals after the School doors are locked, the District offered to provide the Complainant with xxx xxxx xxxxx xxxxxxxxxxx xxx xxxx xxxxxxxx to unlock the designated accessible entrance from 8:35 a.m. to 9:15 a.m., so that she would not have to call the office number. The Complainant declined the xxx xxxx. The District also informed OCR that the designated accessible entrance will be replaced after the 2014-2015 school year, and that the District plans to install a buzzer at this entrance, similar to the one provided at the School's front entrance door.

Based on all of the above information, OCR finds that because portions of the accessible route and the designated accessible entrance do not fully comply with the 2010 ADA Standards for routes and entrances, the District has failed to provide program access to individuals with mobility impairments with respect to the School's programs and activities, in violation of Section 504 and Title II.

### **Resolution and Conclusion**

On May 6, 2015, the District provided OCR with the enclosed signed resolution agreement, which, once implemented, will fully address OCR's findings in accordance with Section 504 and Title II. In summary, the resolution agreement requires the District



to modify the School's designated accessible entrance, ensure the route to the entrance is accessible, and install appropriate signage to ensure compliance with the 2010 ADA Standards.

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, the harmed individual may file another complaint alleging such treatment.

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

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 personal privacy.

If you have questions regarding this letter, please contact me at (xxx) xxx-xxxx.

The OCR contact person for the monitoring of the agreement is xx xxxxxx xxxxxx, who may be reached at (xxx) xxx-xxxx or by e-mail at [xxxxxx.xxxxxx@ed.gov](mailto:xxxxxx.xxxxxx@ed.gov). We look forward to receiving the District's first monitoring report, which should be directed to xx xxxxxx. Should you wish to submit the report electronically, you may do so at [OCRCleMonitoringReports@ed.gov](mailto:OCRCleMonitoringReports@ed.gov).

Sincerely,

/s/

Lisa M. Lane  
Supervisory Attorney/Team Leader

Enclosure