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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

Mr. Chuck North
Superintendent
Reading Community Schools
301 Chestnut Street
Reading, Michigan 49274

Re: OCR Docket #15-15-1263

Dear Mr. North:

This letter is to notify you of the disposition of the complaint filed on April 28, 2015, with the U.S. Department of Education's Office for Civil Rights (OCR), against the Reading Community Schools (District), alleging discrimination on the basis of disability. Specifically, the complaint alleged that visitors with mobility impairments are denied access to programs at Owens High School (the School) in the District because of a lack of accessible parking.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq*., and its implementing regulation, 28 C.F.R. Part 35. 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. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated the legal issue of 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.

I. Background

The Complainants made their complaint via e-mail to the U.S. Department of Justice (DOJ) on January 7, 2015. The DOJ forwarded the complaint to OCR on April 24, 2015, and OCR received it on April 28, 2015. The complaint did not provide a telephone number for the Complainants. OCR attempted to contact the Complainants for additional information via e-mail; however, they did not respond.

According to the written complaint, the Complainants asserted that the School used to have two accessible parallel parking spots near the gym entrance; however, they disappeared when the District remodeled the sidewalk. After one of the Complainants complained to an unidentified school board member, the District installed a small sign near the spots, but failed to correct or restore the pavement markings.

Following OCR's issuance of letters of notification in this matter, the District's superintendent requested to resolve the compliance concerns pursuant to Section 302 of OCR's Case Processing Manual.

II. 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 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 are 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 provide 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 started on March 15, 2012 and beyond, 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 1993 *Title II Technical Assistance Manual* provides further guidance on the self-evaluation and transition plan requirements. The manual states that the 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 instructed 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.[1]

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, as captured below. 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.

TOTAL PARKING SPACES PROVIDED	REQUIRED MINIMUM NUMBER OF ACCESSIBLE SPACES
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of total
More than 1,000	20 plus one for each 100 over 1,000

In addition, the 2010 ADA Standards at Section 208.2.4 requires that for every six or fraction of six accessible parking spaces required by 208.2, at least one shall be a van accessible parking space.

[1] http://www.ada.gov/restripe.htm

The 2010 ADA Standard at 502.2 requires accessible car parking spaces be at least 96" wide and van parking spaces be at least 132'' wide (except that they may be at least 96" wide where the access aisle is 96'' minimum). The 2010 ADA Standard at 502.3 requires accessible parking spaces to include a 60"-wide access aisle, and that parking spaces be along accessible routes. The 2010 ADA Standard Advisory to Standard 502.3 requires accessible routes to connect parking spaces to accessible entrances. The 2010 ADA Standard at 502.4 allows for a maximum slope in any direction of 1:48 for parking spaces.

The 2010 ADA Standard 502.6 requires parking space identification signs to include the International Symbol of Accessibility, and signs identifying van parking spaces to contain the designation "van accessible." Signs must be at least 60" above the finish floor or ground surface measured to the bottom of the sign.

III. Voluntary Resolution

As noted above, before OCR completed its investigation, the District expressed an interest in resolving all allegations under Section 302 of the Manual. The Manual provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation.

On July 8, 2015, the District has signed the enclosed resolution agreement (Agreement), which, once implemented, will fully address the complaint allegations in accordance with Section 504 and Title II. Under the terms of the Agreement, the District will ensure that accessible parking spaces at the School comply with the 2010 ADA Standards at 208.2 (minimum number); 208.2.4 (sufficient van accessible spaces); 208.3.1 (located on shortest accessible route to accessible entrance); 502.2 (vehicle spaces); 502.3, 3.1, 3.2, 3.3 (access aisle); and 502.6 (signage).

IV. Conclusion

Based on the information above, OCR is closing this complaint effective the date of this letter. 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, coerced, 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 a 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 personal privacy.

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

OCR appreciates the District's cooperation during the investigation of this complaint. If you have any questions, please contact me at (xxx) xxx-xxxx. For questions about implementation of the Agreement, please contact xx xxxxx xxxxxxx at (xxx) xxx-xxxx, or by e-mail at xxxxx.xxxxxxx@ed.gov, who will be monitoring the District's implementation of the Agreement. We look forward to receiving the District's first monitoring report by September 1, 2015.

Sincerely,

/s/

Lisa M. Lane
Supervisory Attorney/Team Leader

Enclosure