



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

December 29, 2014

James A. Fredericka, Esq.
Ambrosy & Fredericka
144 North Park Avenue, Suite 200
Warren, Ohio 44481

Re: OCR Docket #15-14-1031

Dear Mr. Fredericka:

This letter is to notify you of the disposition of the above-referenced complaint that was filed on June 6, 2013, with the U.S. Department of Justice (DOJ) against the Champion Local Schools (the District), and that was received by the U.S. Department of Education's Office for Civil Rights (OCR) on October 31, 2013. The complaint alleged that the District discriminated against a student (the Student) based on his disability. Specifically, the complaint alleged that the District refused to place the Student at xxx xxxxx xxxxxxxxxxx xxxxxxx because the District's Central Elementary School (the School) was not accessible to xxx due to xxx xxxxxxxx xxxxxxxxxxxx

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 U.S. Department of Education and as a public entity, the District is subject to Section 504 and Title II. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated whether a qualified individual with a disability had been denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any District program or activity because the School is inaccessible to or unusable by persons with disabilities, in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.21 and the regulation implementing Title II at 28 C.F.R. § 35.149.

OCR's investigation of the complaint included interviews with the the Student's parent, an analysis of data provided by the Student's parent and the District, as well as an April 9, 2014, onsite visit to the School. After a careful review of the information obtained during the investigation, OCR has determined that the District's Central Elementary School does not meet the accessibility requirements of Section 504 and Title II. However, the District signed the enclosed resolution agreement that, once implemented, will fully address the complaint allegation 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 Legal 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 with 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, 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 compliance standard is referred to as "program access." 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 it 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.

For support facilities for a program in an existing facility being viewed in its entirety, such as restrooms, telephones, water fountains, and parking spaces, it should be determined whether sufficient numbers exist that are reasonably convenient, usable in inclement weather, and appropriate to the use of the facility, with the focus being on whether access to the program is unreasonably limited by the lack of accessible support facilities.

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.

A playground “meets the definition of “facility” under the Section 504 and Title II regulations, 34 C.F.R. §104.3(i) and 28 C.F.R. §35.104. A playground facility is comprised of both the structure or equipment installed to provide play activities and the surface surrounding such structure or equipment.

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 or organizations representing 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 instructed that a public entity's self-evaluation identifies and corrects 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.

The Title II regulation, as amended, states that elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 ADA Standards or UFAS are not required to be modified in order to comply with the requirements set forth in the 2010 ADA Standards. However, this safe harbor does not apply to those elements in existing facilities for which there were neither technical nor scoping specifications in the 1991 ADA Standards. These include, among other elements, play areas. 28 C.F.R. § 35.150(b)(2).

Background

At the time the complaint was filed in xxxx xxxxx the Student was xxxx xxxxx old and was identified by the District under the Individuals with Disabilities Education Improvement Act (IDEA) as a xxxxxxxxxxx xxxxxxxx xxxxxxxxxxxxxx xxx xxx xxxxxxxxxxx xxxxxxxxxxxxxxxxxxx xxx xxxx x xxxxxxxxxxx xxxxx xxx xxxxxxxxxxx currently, the Student can xxxxxxxxxxx xxx xxxxxxxx

X---paragraph redacted---X

Summary of OCR's Investigation and Analysis

The School is an elementary school serving preschool to fourth grade students; the building also houses the District's central offices. In addition, the following District programs are held at the School, including: PTO meetings; a parent volunteer Character Council; Santa Shop; parent and teacher "meet and greet" evenings; kindergarten orientation; a Senior Men's Care Crew; volunteer tutoring; kindergarten screening; a monthly Market Day; a Scholastic Book Fair; school assemblies held twice each year; and Family Fun Nights.

The District reported to OCR that the School was constructed in 1913 and the three-story sections of the School were added in 1915, 1925, and 1931. The School consists of three buildings: (1) the main building in the center; (2) the south wing, which consists of a two-story gymnasium and approximately 12 classrooms on the second and third stories, added in 1939; and (3) the north wing, which houses the District's administrative offices on the third floor, 12 classrooms, and the cafeteria, added in 1940. The District added an accessible ramp to the gymnasium was added in 1997.

The District reported that the classrooms in the School's south wing were closed in 1980 due to declining enrollment and that six of those classrooms were subsequently reopened in 1990, at which time "new carpets and other incidental repairs" were made. The District also reported that, throughout the years, it added handrails to the School, lowered some water fountains, and changed selected restroom facilities to accommodate individuals with disabilities. The District did not, however, provide any dates for these reported modifications to the School.

As the School and its additional wings were built prior to June 3, 1977 (and January 26, 1992), OCR determined that the School is an existing facility under Section 504 and Title II. While the District made alterations in 1990, when it installed new carpet and made other incidental repairs to six classrooms in the south wing OCR determined that the alterations were limited to one portion of the south wing and did not have any effect on the accessibility of the preschool program at issue in this complaint.

OCR conducted an onsite visit in April 2014 to assess the accessibility of the School and, in the event of significant barriers to accessibility, to evaluate the potential for program accessibility at the School. OCR's site visit confirmed that the School, including the preschool program, is inaccessible to individuals with mobility impairments.

The main entrance to the School is on the east side of the building through the north wing. The north wing connects to the main building through a ground-level hallway that is currently inaccessible from the outside due to a step between the sidewalk and the hallway entrance. The south wing is adjacent to the main building. Both wings are also connected to the main building through the basement levels.

There are unmarked street parking spaces on the east side of the building, but the School parking lot is located behind the building on the north side of the School. Additionally, there are parking spaces directly behind the building (on the west side of the building) where four designated-accessible parking spaces are marked; three of the designated-accessible parking spaces are across the parking lot from the gymnasium, and one designated-accessible parking space is adjacent to the north wing. The back of the School has several stairways leading from the School to the parking lot and playground. None of the stairways are accessible. Behind the south wing and directly across from the three accessible parking spaces is a designated-accessible ramp leading into the gymnasium. According to the District, this ramp, at the time of OCR's investigation, was the only existing ramp at the School.

The main entrance doors to the School sit on a platform half a step above the sidewalk level. The main entrance doors to the School, like all other doors in the School, are not equipped with

any powered opening devices nor do they otherwise appear to have been adapted for accessibility. Inside the School from the main entrance, visitors can either go up 11 steps of a divided set of stairs to reach the first and second grade classrooms on the first level, or go down a narrower set of eight steps to a set of fire doors leading to the cafeteria area and the pre-kindergarten (preschool) and kindergarten classrooms. OCR's visit confirmed that it was necessary to traverse additional sets of stairs to reach the School's kindergarten and preschool classrooms. OCR observed during its visit that the restrooms near the kindergarten classes are inaccessible as they are located three steps above the floor level. OCR also observed that there is no accessible route available between the library and the preschool and kindergarten classes as traveling between these areas also requires the use of stairs (eight steps). At the time of OCR's April 2014 onsite visit, the School did not have elevators, ramps, or chair lifts in the School.

The gymnasium is accessible from the outside of the School using the designated-accessible ramp. OCR found, however, that the gymnasium is not accessible from the inside of the School. There are no classrooms on the gym level, which is located on the ground level of the building between the preschool and kindergarten classrooms (in the basement level) and the first and second grade classrooms on the first floor. Eleven to twelve steep steps separate the first floor from the gymnasium.

The second and third floors of the north wing are almost identical to one another and neither floor is accessible, as they can only be reached using stairs. There are no steps to enter the restrooms, but the doorways to the restrooms are only 29 inches wide. The District's administrative offices are located on the third floor of the north wing.

OCR also observed the playground at the School to gauge its overall accessibility to students with disabilities using the 2010 ADA Standards as a guide, as the District did not provide any information indicating when the playground was constructed. With respect to the playground, OCR noted that the preschool and kindergarten students' route to the playground is inaccessible, as the students have to traverse up a set of seven to nine narrow stairs from their classroom to the parking level in the back of the School. Additionally, the District's playground is adjacent to the asphalt parking lot to the east and to a grassy area to the south and there are no accessible routes connecting either side to the playground.

The District's playground surface consists of a thick layer of gravel that does not comply with the requirements of the 2010 ADA Standards, which require that floor and ground surfaces for play areas be stable, firm and slip resistant (2010 ADA Standards at 1008.2, 403.2, and 302.1). OCR also did not observe any accessible routes within the play areas, as required by the 2010 ADA Standards (206.2.17.1 and 1008.2). OCR did not evaluate the accessibility of the play components, as OCR finds that the School's the playground, in its entirety, is inaccessible based on the lack of accessible routes to and within the playground, as well as the playground's surface.

During the course of OCR's investigation, the District submitted a proposed plan to OCR to address the accessibility issues specifically posed by the stairs in the School. For the 2014-2015 academic year, the District proposed the following: 1) building a wheelchair ramp to the School's main entrance from the School's driveway; 2) installing an automatic door access to the

main entrance; and 3) installing an inclined platform lift providing access up to the first grade classroom and main office and down to the cafeteria, preschool and kindergarten classrooms. The District notified OCR by letter dated July 21, 2014, that the lift purchase has already been approved by the District's Board of Education. Effective the 2015-2016 academic year, the District proposed the following: 1) installing a wheelchair lift from the gymnasium that would provide access to the School's guidance office, additional classrooms, and art and music classes; and 2) installing two wheelchair lifts: one from the third grade classrooms to the guidance office and one from the guidance office to principal office and first grade classrooms. In its July 21 letter, the District indicated that the four wheelchair lifts would permit persons who use wheelchairs to access all instructional classrooms, including art, music, gym, and the cafeteria.

During the course of the investigation, in approximately October 2014, the District also notified OCR that the District had already taken some steps to make the School accessible and reported that the Student did not need some of the accessibility equipment the parties originally anticipated xx would need to access the program.

Resolution

Based on the information above, OCR concluded that the District has failed to provide access to persons with mobility impairments to all programs being provided at the School, in violation of Section 504 and Title II. OCR also determined that the District failed to provide program access for its xxxxxxxxxx program to the Student at the School for the xxxxxxxxxx and xxxxxxxxxx school years.

However, the District has signed the enclosed resolution agreement, which, once implemented, will fully address OCR's findings in accordance with Section 504 and Title II. OCR incorporated portions of the District's proposed plan into the resolution agreement. In summary, the resolution agreement requires the District to: 1) construct a ramp, install an automatic door, and install a wheelchair lift at the main entrance of the School; 2) complete a self-evaluation of the program accessibility at the School to identify any physical barriers to access to School programs and the steps needed to render them accessible; 3) develop a transition plan setting forth the steps necessary to complete the changes identified in the self-evaluation; 4) develop an interim plan for how to make its programs and activities accessible to persons with disability within 30 calendar days of notice to the District of such a need; 5) adopt procedures to ensure that interested persons, including persons with mobility impairments, can obtain information as to the existence and location of services and activities that are accessible to and usable by persons with disabilities at the School; 6) provide the Student with a xxxxxxxxxx xxxx xx xxxxxx xxx xxx xxxxxxxxxxxx xxxxxx xxxxxxxxxxxx xxxxxxxxxxxx xxxxxx xxx xxxxxxxx xxxxxxxx and 7) meet with the Student's parent(s) to evaluate the effectiveness of the measures taken to render the xxxxxxxxxx program accessible to the Student.

Conclusion

In light of the signed Agreement, OCR finds that this complaint is resolved, and we are closing our investigation as of the date of this letter. OCR will, however, monitor the District's implementation of the Agreement. Should the District fail to fully implement the Agreement,

OCR will reopen the complaint and take further appropriate action to ensure compliance with Section 504 and Title II.

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.

The OCR contact person for the monitoring of the agreement is xxx xxxxxx xxxxxxxx who may be reached (216) 522-xxxx or by e-mail at xxxxxxxxxxxx@ed.gov. We look forward to receiving the District's first monitoring report by January 9, 2015, which should be directed to xxx xxxxxxxx. If you have questions regarding this letter, please contact xxx xxxx xxxx at (216) 522-xxxx or by e-mail at xxxxxxxxxxxx@ed.gov.

Sincerely,

/ s/

Meena Morey Chandra
Director

Enclosure