



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

February 24, 2017

XXXXXXXXXXXX XXXXXXXXXXXXXXXX
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215

Re: OCR Docket #15-16-1470

Dear xx xxxxxxxxxxxxxxxx:

This letter is to inform you of the disposition of the above-referenced complaint against Jonathan Alder Local Schools (the District) that was referred to the U.S. Department of Education (the Department), Office for Civil Rights (OCR), on July 5, 2016, by the U.S. Department of Justice (DOJ), Civil Rights Division. The complaint alleged that the District failed to maintain an accessible baseball field at the District's junior high school (the School) with respect to the pathway to the baseball diamond as well as the entrance gate to the baseball diamond because it was too narrow.

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 Department. OCR also is 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. Therefore, OCR has jurisdiction over this complaint.

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

During the course of the investigation, OCR reviewed documentation provided by the District and conducted an onsite visit to the School. After carefully reviewing the information provided, OCR has determined that the evidence is sufficient to support a finding that the District failed to provide program accessibility to the School's baseball diamond. The basis for OCR's determination is discussed below.

Applicable Regulatory Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.21 and Title II implementing regulation at 28 C.F.R. § 35.149 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. The regulations reference standards for determining whether an entity's programs, activities, and services are accessible to individuals with disabilities depend 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 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 the Title II regulation, 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.

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).

In reviewing program access for an existing facility, the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards) may be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service.

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 is considered new construction if construction began (ground was broken) on or after June 3, 1977. Under the Title II regulation, a facility is considered new construction if the construction was commenced after 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 regulation 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 a 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) (1997) 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.

The U.S. Department of Justice published revised regulations for Titles II and III of the ADA on September 15, 2010. These regulations adopted 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 constructions and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards.

The Section 504 regulation, at 34 C.F.R. § 104.22(e), also required that, in the event that structural changes to existing facilities were necessary to meet the program accessibility requirement of 34 C.F.R. § 104.22(a), recipients develop, within six months of the effective date of this part of the regulation (June 3, 1977), a transition plan setting forth the steps necessary to complete such changes. Similarly, 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:

- 1) identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
- 2) describe in detail the methods that will be used to make the facilities accessible;
- 3) 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
- 4) indicate the official responsible for implementation of the plan.

A public entity's self-evaluation identifies and corrects those policies and practices that are inconsistent with Title II's requirements, and, as part of the self-evaluation, a public entity should: identify all of the public entity's programs, activities, and services; and 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.

Summary of OCR's Investigation and Analysis

The Complainant asserted that there was no accessible pathway to the baseball diamond at the School for persons who use wheelchairs, and that the entrance gate to the baseball diamond was not accessible because it was too narrow.

The District reported to OCR that the School's baseball diamond was constructed sometime between approximately 1955 and 1965. The District also reported to OCR that it had not found any evidence indicating that there had been renovations to the baseball diamond since the original construction. Because the baseball diamond was constructed prior to June 3, 1977, and the District did not report any renovations to the baseball diamond that would fall under the new construction or alteration requirements, OCR determined that the path to the baseball diamond and the baseball diamond constitute existing facilities under Section 504 and Title II. As explained above, for existing facilities, the regulations require a district 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 (program access). OCR used the 2010 ADA Standards as a guide to evaluate program accessibility.

With respect to the entrance gate, pursuant to Section 404.2.3 of the 2010 ADA Standards, door openings or gates shall provide a clear width of 32 inches minimum. Clear openings of doorways with swinging doors shall be measured between the face of the door and the stop, with the door open 90 degrees. During the onsite visit, the only gate wide enough for a wheelchair to pass through was locked; however, the superintendent assured OCR that this gate could be

unlocked and propped open during baseball games. Although OCR was unable to measure the opening of the gate with it open to 90 degrees, OCR was able to get an accurate measurement of the width of the gate – 55 inches. Therefore, the width of the gate does not present a compliance problem with respect to the accessibility of the program at the baseball diamond.

With respect to the pathway, Section 302.1 of the 2010 ADA Standards requires that an exterior accessible route be stable, firm, and slip-resistant. According to the Section 302.1 advisory note, “[a] stable surface is one that remains unchanged by contaminants or applied force, so that when the contaminant or force is removed, the surface returns to its original condition. A firm surface resists deformation by either indentations or particles moving on its surface. A slip-resistant surface provides sufficient frictional counterforce to the forces exerted in walking to permit safe ambulation. OCR observed during its site visit to the School’s baseball diamond that the entire pathway, from the parking lot to the bleacher seating area, was not stable, firm or slip-resistant; rather, it was made up of loose gravel and the area near the baseball diamond’s bleacher seating was made up of gravel and spotted with grassy patches. Based on OCR’s observation of the inaccessibility of the pathway from the parking lot to the baseball diamond bleacher area, OCR has concluded that the District has failed to provide program access to individuals with mobility impairments to the District’s programs and activities at the School’s baseball diamond area, in violation of Section 504 and Title II.

Resolution and Conclusion

On February 21, 2017, the District provided OCR with the enclosed resolution agreement, signed February 13, 2017, which, once implemented, will fully address OCR’s finding in accordance with Section 504 and Title II. The resolution agreement requires the District to:

- Complete a self-evaluation to determine program accessibility at the School’s baseball diamond.
- Use the results of the self-evaluation to develop and submit to OCR for review and approval a transition plan setting forth the steps necessary to complete the changes identified and the dates the District plans to make the modifications.
- Develop an interim plan for how the District will make its programs and activities at the baseball diamond accessible to and usable by persons with disabilities while the District is developing and implementing the transition plan.
- Adopt and implement procedures to ensure that interested persons 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 junior high school baseball diamond and how to request relocation of programs, services, and activities that are not accessible, including an appropriate District contact person.

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 xxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxx, who may be reached at (216) xxx-xxxx or by e-mail at xxxxxxxxxxx.xxxxxxxxxx@ed.gov. We look forward to receiving the District's first monitoring report by **February 28, 2017**, and the report should be directed to xxxxxxxxxxxx. If you have questions regarding this letter, please contact xxxxxxxxxxxx xxxxxxxxxxxx, Supervisory Attorney/Team Leader, at (216) xxx-xxxx or by e-mail at xxxxxxxxxxxxxxxxx@ed.gov.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure