



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

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June 4, 2014

Hugh E. Beattie
Superintendent of Schools
Ringwood Public School District
121 Carletondale Road
Ringwood, New Jersey 07456-1611

Re: Case No. 02-14-1025
Ringwood Public School District

Dear Superintendent Beattie:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the Ringwood Public School District. The complainants alleged that the following facilities at the Robert Erskine Elementary School (the School) are inaccessible to individuals with mobility impairments, including her son (the Student): (a) the upper level of the School; and, (b) the School's play equipment and playground area.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that "No qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or

otherwise be subjected to discrimination under any program or activity to which this part applies.” The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149.

With respect to Allegation (a), the complainants alleged that the upper level of the School is inaccessible to individuals with mobility impairments. OCR determined that the School was constructed in 1960, and the building itself has not been altered since that date. The regulation implementing Section 504, at 34 C.F.R. §104.22, categorizes facilities constructed on or before June 3, 1977, as “existing facilities”. Accordingly, the School is an existing facility under the regulation implementing Section 504.¹ The regulation implementing Section 504 requires a recipient to operate each program or activity conducted in existing facilities so that the program or activity, when viewed in its entirety, is readily accessible to individuals with disabilities.² Accordingly, each program or activity operated in the School, when viewed in its entirety, must be readily accessible to individuals with disabilities. The regulation implementing Section 504 does not require a recipient to make structural changes to existing facilities. A recipient may comply through means such as redesign of equipment, or reassignment of classes or other services to accessible buildings or locations. 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.

OCR determined that the main entrance to the School is located on the lower level, where the offices for the administration, the nurse, and the multipurpose room (cafeteria and gymnasium) are located. The upper level contains all of the School’s classrooms, including the special education classroom in which the Student was placed during school year 2013-2014. OCR determined that the interior route between the upper and lower levels of the School includes a staircase. OCR determined that the first set of stairs consists of 15 steps leading to a landing, and then four additional steps to the second level.

In order to provide access from the lower to upper levels of the school for the mobility impaired, the School purchased a portable wheelchair lift, the Garaventa Stair Trac SA-2³, in August 2003, which is situated adjacent to the stairs between the upper and lower levels of the School. The School proposes to use this device for access to each level. The Superintendent informed OCR that no one, including the Student, has ever used the portable chair lift.⁴

During an onsite inspection, OCR determined that the portable chair lift is operational, although there are no written procedures in place for its use.⁵ Based on OCR’s observation of the operation of the portable wheelchair lift during an onsite inspection, and a review of the manufacturer’s website,⁶ OCR determined that the portable wheelchair lift does not comply with applicable accessibility guidelines as it does not facilitate unassisted entry, operation and exit from the lift; and, does not provide the minimum clear floor or ground space required to

¹ The facility is also an existing facility under the ADA. Under the ADA, an existing facility includes facilities that were constructed, or for which construction was commenced, prior to January 26, 1992, the effective date of the regulation implementing the ADA.

² The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149-35.150.

³ This is a battery operated portable stair climber that attaches to most manual wheelchairs.

⁴ X---paragraph redacted---X

⁵ A District maintenance person must operate the lift.

⁶ www.garaventa.ca/pwl/

accommodate a single, stationary wheelchair. In addition to the above, OCR's inspection found that the interior door pressure for the doors located at the upper and lower levels along the interior route ranged from 12 to 16 pounds, which exceeds the maximum allowed. Therefore, OCR determined the District has not ensured that each program or activity conducted on the upper level of the building, when viewed in its entirety, is readily accessible to individuals with disabilities as required by 34 C.F.R. §104.22.

With respect to Allegation (b), the complainants alleged that the School's play equipment and playground area are inaccessible to individuals with mobility impairments. OCR examined the exterior route between the School and the playground area; the playground play components; and the route within the playground connecting the play components.

OCR determined that the asphalt sidewalk along the exterior route from the School to the playground area is approximately 125 feet in length. The sidewalk surface is cracked and uneven in sections, and slopes upward too steeply (12.5%, 11.25% and 12.3%) before the route enters the playground area.

The District advised OCR that eight pieces of playground equipment were installed in 1960 (the original play equipment), at the time of the School's construction.⁷ In 2002 and 2003, the School's Parent Teacher Association altered the playground by purchasing and installing an integrated piece of playground equipment (the new play equipment).⁸ The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities.⁹ The regulation implementing Section 504, at 34 C.F.R. § 104.23, requires that all facilities constructed or alterations to existing facilities made after January 18, 1991, be in compliance with the Uniform Federal Accessibility Standards (UFAS), or it must be clearly evident that equivalent access is provided to meet the requirements of Section 504, such as through compliance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG).¹⁰

The applicable accessibility guidelines specify that where elevated play components are provided a certain number of accessible ground level play components shall also be provided.¹¹ OCR determined that the District's play equipment complies with the guidelines for the necessary types and number of components.

⁷ The original play equipment consisted of a total of seven components, including of one elevated component (triangle monkey swing) and six ground level components (tire swing, bridge jungle gym climb, pole climb, L shaped board-walk, ball toss and soccer net).

⁸ The new play equipment consists of thirteen play components, including one elevated modular component consisting of seven separate play elements: (1) a sky walk, (2) a double-glide slide, (3) a single glide slide, (4) a deep arch climber, (5) an horizontal loop ladder (6) an access ladder and (7) a sliding pole. The ground level play equipment consists of six play elements (1) a U bounce, (2) a challenge walk, (3) a chinning/turning bar, (4) lily pods bounce, and (5) two stationary buttons.

⁹ The regulation implementing the ADA contains a similar requirement at 34 C.F.R. § 35.151.

¹⁰ Pursuant to the regulation implementing the ADA, at 28 C.F.R. § 35.151, new construction or alteration of existing facilities commenced after January 26, 1992, must be in conformance with UFAS, ADAAG, or equivalent standards. Beginning March 15, 2012, all new construction or alterations of existing facilities must conform to the 2010 ADA Standards for Accessible Design (2010 Standards).

¹¹ Part 1191 Americans with Disabilities Accessibility Guidelines for Buildings and Facilities, 42 U.S.C. 12204, 15.6.2.2 - Additional Number and Type

OCR determined that the ground surface covering the designated accessible route within the playground area, as well as the playground area surrounding the play equipment, was covered with wood chips, grass and dirt.¹² The ground surface of the area along the route to the new play equipment and the area surrounding the new play equipment was extremely uneven, with significant changes in level throughout.

Based on the above, OCR determined that the exterior route between the School and the playground area, and the ground surface of the area on the route to and surrounding the new play equipment is not in compliance with applicable accessibility guidelines; i.e., this new construction is not readily accessible to and usable by individuals with disabilities as required by 34 C.F.R. § 104.23.¹³

On May 29, 2014, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in this letter. OCR will monitor the implementation of the resolution agreement. If the District fails to implement the terms of the resolution agreement, OCR will resume its investigation of the complaint.

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

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 complainants 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, it 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.

¹² The ground surface of the playground is wood fiber mulch, grass and dirt. According to 1008.2.6.1, ground surfaces shall comply with the American Society for Testing Materials (ASTM)-F 1951. According to 1008.2.6.1, ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F 1951; moreover, according to 302.1, floor and ground surfaces shall be stable, firm, and slip resistant.

¹³ For example, the "lip" of the transition from the paved surface to the dirt and grass area on the route to the new play equipment was more than 6 inches in height/change in level. An area at the base of the slide of the new play equipment had a depression of more than 12 inches deep and 24 inches in circumference, and other areas of the ground surface were extremely weathered and not maintained.

If you have any questions about OCR's determination, please contact Richard L. Anderson, Compliance Team Investigator, at (646) 428-3781 or richard.anderson@ed.gov, or James Moser, Compliance Team Attorney, at (646) 428-3792 or james.moser@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: Erin M. Callahan, Esq.