



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

July 13, 2016

IN RESPONSE, PLEASE REFER TO: 03161110

Superintendent William A. Smith
Cabell County Schools
2850 5th Avenue
Huntington, WV 25702

Dear Superintendent Smith:

This is to notify you of the resolution of the complaint that you filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Cabell County Public Schools (the District), alleging discrimination on the basis of disability. The Complainant alleges that there is no accessible route to the playground at the District's XXXXXX (the School) for students with disabilities.

OCR enforces 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. OCR also enforces Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35 (Title II). Title II prohibits discrimination on the basis of disability by public entities. Because the District receives Federal financial assistance from the Department and is a public entity, the District is subject to these laws.

Legal Standards

The accessibility requirements of the Section 504 regulation are found at 34 C.F.R. Sections 104.21-104.23. Comparable provisions of the Title II regulation are found at 28 C.F.R. Sections 35.149-35.151. Both regulations provide that no qualified person with a disability shall, because a recipient'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 program or activity operated by the recipient.

Accessibility, new construction: The implementing regulations of Section 504, at 34 C.F.R. § 104.23(b), and Title II, at 28 C.F.R. § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. These facilities are termed “new construction or alterations.” The regulations provide that each facility or part of a facility which is altered by or for the use of a recipient in a manner that affects or could affect the usability of the facility shall, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities. The regulations specify the accessibility standard to be used in determining the accessibility of the alterations based on the date of construction or renovation.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineated the American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped [ANSI 117.1-1961 (1971)] (ANSI) as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the Uniform Federal Accessibility Standards (UFAS) for facilities constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. § 35.151(c), delineated UFAS, or The Americans with Disabilities Accessibility Guidelines for Buildings and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed, or altered on or after January 26, 1992.

The regulation implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (2010 ADA Standards). The regulation, at 28 C.F.R. § 35.151(c)(3), now provides, “If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards.” OCR uses the accessibility standards as a guideline for assessing the accessibility of existing facilities.

Factual Background and Analysis

The District does not have records of the date that the route to the playground was last renovated; however, it indicated that it would have been in the 1980’s to the 1990’s. Based on these dates, it is considered new construction under Section 504 and Title II. As to the ADA Accessibility Standard that would be applied based on this date of construction, it would have been one of the older standards (ANSI, UFAS or ADAAG); however, as the District warranted to OCR that this route is inaccessible and that it is under contract to make renovations to the route in order to make it accessible, these renovations must comply with the 2010 ADA Standards.

In its data response, the District provided photographs of the route to the playground. They showed that the route was in extremely poor condition with severely broken and cracked pavement which did not provide a flat, level surface for travel. At the transition

from the route to the playground, there is a curb which appears to be more than a few inches high and would be a barrier for a student in a wheelchair to access the playground. It also appeared that part of the existing route was too steep and may not comply with the appropriate slope under the accessibility standards of no steeper than 1:20. (2010 ADA Accessibility Standards, Section 403 Walking Surfaces)

The District stated that there were three students in wheelchairs who currently use the playground and District employees provide these students with assistance in accessing the playground. The District reported that it repaved the route after sending these photographs to OCR, though it is not clear if the route meets the applicable accessibility requirements. The District plans additional renovations to ensure access to the playground at the ground level and warranted that all such renovations will be made in compliance with Section 504 and Title II and the applicable accessibility standards.

OCR procedures provide that a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a resolution agreement. The provisions of the resolution agreement must be aligned with the complaint allegations, the issues investigated, and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the District, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, on March 28, 2016, the District requested to resolve this complaint through a Voluntary Resolution Agreement (the Agreement). On July 11, 2016, the District signed the Agreement with OCR to resolve the allegation in this complaint. Accordingly, OCR is concluding its investigation of this complaint. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the District's implementation of the Agreement.

This letter is not intended, nor should it be construed, to cover any other issues regarding the District's compliance with Section 504, Title II and their implementing regulations that may exist and are not discussed herein. The Complainant may have the right to 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.

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 Complainant may file another complaint alleging such treatment.

If you have any questions, please contact Mr. Dale Leska at 215-656-8562 or Dale.Leska@ed.gov me at 215-656-8522 or Vicki.Piel@ed.gov.

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure

CC: Todd A. Alexander Assistant Superintendent, Leadership/Administration