



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
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August 16, 2018

IN RESPONSE, PLEASE REFER TO DOCKET #03171356

Richard L. Gregg
Superintendent
Christina School District
Drew Educational Support Services Center
600 N. Lombard Street
Wilmington, DE 19801

Dear Mr. Gregg:

This is to notify you of the resolution of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Christina School District (the District). The complaint alleged that the District discriminated on the basis of disability. Specifically, the complaint alleges that the District's Glasgow High School (the School) is not accessible to persons with disabilities in the following areas:

- 1) The door to the designated accessible entrance of the School is kept locked; and
- 2) The designated accessible route to the School is blocked by school buses.

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 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 (Title II) 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities, such as public institutions of higher education. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504, Title II, and their implementing regulations.

As part of OCR's investigation, we interviewed the Complainant and District personnel and reviewed information submitted by both parties. Additionally, OCR conducted an onsite inspection of these facilities on June 28, 2018. Prior to the conclusion of OCR's investigation, the District agreed to resolve Allegation 1 and based on the information obtained in OCR's investigation, OCR determined that Allegation 2 has been resolved.

Allegation 1 – Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4(a), states that no qualified individual 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 which receives Federal financial assistance. The Section 504 regulation at 34 C.F.R. Section 104.4(b)(1) provides that a recipient, in providing any aid, benefit, or service, may not, on the basis of disability, deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service. The Section 504 regulation at 34 C.F.R. § 104.4(b)(1)(ii) further provides that a recipient, in providing any aid, benefit or service, may not, directly or through contractual, licensing or other arrangements, on the basis of disability, afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others.

In determining whether an individual with a disability was treated differently than a nondisabled person, OCR first determines whether there were any differences in the treatment of an individual and similarly situated individuals who do not have disabilities. Additionally, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and practices and whether there is any other evidence of disability discrimination. If different treatment is present, OCR then assesses the recipient’s explanation for any difference in treatment to determine if the reasons offered are legitimate or merely a pretext for discrimination. Title II of the ADA prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standard when analyzing the same claims under Title II of the ADA.

With regard to the accessibility of a recipient’s facilities, an existing facility under Section 504 is any facility that was constructed, or for which construction was commenced, prior to June 3, 1977, the effective date of the Section 504 regulation. Under Title II, an existing facility includes facilities that were constructed, or for which construction was commenced prior to January 26, 1992, the effective date of the Title II regulation.

The Section 504 regulation, at 34 C.F.R. § 104.22(a), requires a recipient to operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to persons with disabilities. The regulation implementing Title II, at 28 C.F.R. § 35.133, includes a similar requirement.

Allegation 1 – Factual Summary

The Complainant alleged that the door to the designated accessible entrance of the School is kept locked.

There are two accessible entrances at the Glasgow High School, one in the front of the building and one in the rear of the building. There is also a main entrance to the High School located at the front of the building, which is accessed by stairs, and is not accessible.

There is a camera and a buzzer/bell at the main entrance. Neither of the two accessible entrances have a camera or a buzzer/bell.

The District advised OCR that all doors to the Glasgow High School are kept secured for safety purposes after school begins each day, from 7:30 a.m. on, and remain locked throughout the school day. During the morning hours when students are arriving at school, all doors including those at the designated accessible entrances are unlocked. District personnel are present to welcome staff, parents and students and to monitor student arrival and dismissal. The District stated that it takes the precaution of locking all doors after school begins in order to ensure the safety and security of the students and staff at the School; specifically, to prevent intruders from entering the building and inflicting harm. The District stated that if the doors to the High School were left unlocked, it would be relatively easy for a visitor or intruder to bypass the main office without being noticed.

The District explained the procedure for visitors to gain access to the School during the school day while the doors are locked as follows:

All visitors enter the building through either one of the two sets of front doors to the school building – the main entrance with steps located at the front of the building or the designated accessible entrance, which is also located at the front of the building. The designated accessible entrance at the front of the building is located off to the side from the main entrance with the steps; therefore, the two entrances are physically separated from each other.

At the main entrance (again, which is not accessible due to steps), there is a buzzer and a camera. A person seeking to access the building at this location has to ring the buzzer, which is connected to the office and alerts the main office staff that someone is at the door. Office staff can see who is outside through the camera and then unlock the door for the visitor to gain entry. Visitors are directed towards the main office in order to sign in and sent to the requested designation.

As there is no buzzer and camera at the designated accessible entrance at the front of the building, persons with disabilities can call ahead prior to their arrival and be met by School staff directly upon their arrival. Alternatively, if a person with a disability comes to the building without prior notice, persons in their party alert the main office staff and they are admitted to the building once staff becomes aware of their presence.

On May 30, 2018, the District requested to resolve Allegation 1 prior to the conclusion of OCR’s investigation.

Request to Resolve Complaint through a Voluntary Resolution Agreement

Under OCR procedures, a complaint allegation may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint allegation by signing a Resolution Agreement and OCR determines that such a resolution is appropriate. The provisions of the Resolution Agreement must be aligned with the complaint allegation, the information obtained in the investigation to date, 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 May 30, 2018, the District requested to resolve this allegation through a Resolution Agreement. On August 14, 2018, the District signed this Agreement. As is our standard practice, OCR will monitor the District’s implementation of the Agreement, a copy of which is enclosed. Accordingly, OCR is concluding its investigation of Allegation 1 as of the date of this letter.

Allegation 2

Factual Summary

The Complainant alleged that the designated accessible route to the School is blocked by school buses. The building, including the parking areas, was constructed in 1974.

The District stated that the buses for the general education students pull into assigned slots in front of the High School and that there was never an issue with these buses blocking accessible routes. However, the District advised OCR that previously, school buses picked up and dropped off students with disabilities at the rear entrance of the High School. The District acknowledged to OCR that during these times, school buses blocked the designated accessible route to the School and the crosswalks which lead to the rear accessible entrance. The District reported to OCR that after receiving this OCR complaint, the District revisited the procedure for buses picking up and dropping off students with disabilities from school each day, and as of September 18, 2017, it moved the site for arrivals and departures to the side of the High School, which is located closer to the students’ classroom. The buses which use this location are all equipped with lifts, and they pull over the curb and onto the portion of the route which is accessible; additionally, all of these students receive assistance from School staff in accessing the building at this location. As result, there are no longer any buses that utilize the area at the rear of the building where the accessible route is located.

Additionally, the District reported the following procedures it has implemented to ensure that accessible routes and crosswalks at the rear of the School remain unobstructed:

- Transportation staff has provided continuous training regarding school bus operations procedures to School personnel and they have also been provided with copies of crosswalk regulations.
- Transportation staff painted yellow bar lines as ground indicators for all traffic to observe for the appropriate distance from the crosswalk.
- A teacher is assigned to the area during the morning, whose responsibility is to make sure that the crosswalk is not impeded for visitors.
- The District’s Transportation Supervisor and Transportation Specialists also regularly monitor these areas and check to make sure that they are in compliance. If a violation (blocked route or crosswalk) is detected, the staff member on duty addresses this by requiring the vehicle to move in order to rectify the blockage.

The Complainant was unable to identify any instances when buses or other vehicles have blocked the accessible route since the District changed its policy in the Fall of 2017 and moved the location for pick up and drop off of students with disabilities from the rear of the building to the side of the building. The District reported to OCR that it has not received any complaints about blocked routes (other than this complaint) and was not aware of any instances where the new procedure had been breached or accessible routes were blocked by school buses or other vehicles.

Analysis and Conclusion

OCR will dismiss an allegation when it obtains credible information indicating that the allegation raised by the complaint has been resolved, there are no current issues appropriate for further resolution, and there are no systemic concerns which have been identified. The information provided by the District established that since the complaint was opened by OCR, the District relocated the area used by buses to pick up and drop off of students with disabilities. As a result, there are no longer any school buses which drop off or pick up students in the back of the building where the accessible route is located and all such drop offs and pickups now occur at the side of the building where they do not interfere with or block any accessible routes to the School. The District has also implemented procedures to ensure that accessible routes and crosswalks are not blocked by other vehicles, which includes regular inspections and ongoing monitoring to ensure that they remain unobstructed. Additionally, the Complainant was unable to identify any instances when buses or other vehicles have blocked the accessible routes since the Fall of 2017 when the new procedure went into effect. As a result of the

District's actions, the accessible routes to the building are no longer being blocked by school buses or any other vehicles and individuals with disabilities who are using these routes have unrestricted access to the School along these paths. Accordingly, OCR determined that the concern identified in Allegation 2 has been resolved and OCR is dismissing this allegation.

This letter is not intended nor should it be construed to cover any other issues regarding the District's compliance with Section 504 or Title II of the ADA, which 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.

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.

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.

OCR would like to thank the District, and Mr. Edward Mayfield, for the cooperation extended to us throughout this matter. If you have any questions or concerns, please contact me at 215-656-8522 or by email at vicki.piel@ed.gov.

Sincerely,

/s/

Vicki Piel
Team Leader

cc: Edward Mayfield
Enclosure