



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

December 11, 2018

Dr. Monica Goldson
Interim Chief Executive Officer
Prince George's County Public Schools
Sasscer Administration Building
14201 School Lane
Upper Marlboro, MD 20772

Sent via email only: ceo@pgcps.org

RE: OCR Complaint No. 03-17-1391

Dear Dr. Goldson:

This is to inform you of the outcome of the above referenced complaint that was filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) against Prince George's County Public Schools (the District) alleging discrimination on the basis of disability. Specifically, the Complainant alleges that:

1. The District is discriminating against individuals with disabilities by failing to ensure access to the programs, activities and services at XXXXXX (the School) because:
 - a. the entrance to the School is not accessible;
 - b. the emergency alarm system does not have visual signals;
 - c. the playground is not accessible; and
 - d. the stage is not accessible.
2. The District is discriminating against XXXXXX (the Student), who attends the School, on the basis of disability because:
 - a. XXXXXX;
 - b. XXXXXX;
 - c. XXXXXX; and
 - d. XXXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. As the District receives

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Federal financial assistance from the Department and is a public entity, OCR has jurisdiction pursuant to Section 504 and Title II.

xx – paragraph redacted – xx

Before OCR completed its investigation of Allegations 1(a) through 1(d), the District expressed a willingness to resolve them by taking the steps set out in the enclosed Voluntary Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Voluntary Resolution Agreement.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.21, and the Title II regulation, at 28 C.F.R. § 35.149, provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a recipient's programs or activities because the recipient's facilities are inaccessible to or unusable by individuals with disabilities.

The regulations implementing Section 504 and Title II each contain two standards for determining whether a District's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility. Under the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977; under the Title II regulation, existing facilities are those for which construction began prior to January 27, 1992. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under Section 504 and Title II standards.

For existing facilities, the Section 504 regulation, at 34 C.F.R. § 104.22, and the Title II regulation, at 28 C.F.R. § 35.150, 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. The District may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities and services accessible to persons with disabilities. In choosing among available methods of meeting the requirements, a District must give priority to methods that offer programs, activities and services to persons with disabilities in the most integrated setting appropriate.

With respect to newly constructed facilities, the Section 504 regulation, at 34 C.F.R. § 104.23(a), and the Title II regulation, at 28 C.F.R. § 35.151(a), require that the District design and construct the facility, or part of the facility, in such a manner that it is readily accessible to and usable by individuals with disabilities. In addition, for new alterations that affect or could affect the usability of the facility, the Section 504 regulation, at 34 C.F.R. § 104.23(b), and the Title II regulation, at 28 C.F.R. § 35.151(b), require that, to the maximum extent feasible, the District

alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

The new construction provisions of the Section 504 and Title II regulations also set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulation, District had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or altered after January 26, 1992 and prior to September 15, 2010. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that District had a choice of complying with either UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards). The Title II regulation provides that recipients are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012. While the Section 504 regulations have not been amended to formally adopt the 2010 Standards, a District may use the 2010 Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, appendices B and D.

Factual Background

The District reported that the School was built in 1971 and has not been altered since that date. The District completed an internal analysis of the accessibility issues related to the School building and found that it could not be made accessible without “significant alterations.” OCR notes that the analysis did not specifically address the accessibility issues identified by the Complainant (entrance, emergency alarm system, playground, stage). The District indicated that the fire alarm system was upgraded in 2013.

Conclusion

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the District signed the enclosed Voluntary Resolution Agreement on November 6, 2018, which, when fully implemented, will resolve Allegations 1(a) through 1(d). The provisions of the Agreement are aligned with these allegations and the information discussed above that was obtained during OCR’s investigation, and are consistent with applicable law and regulation. OCR will monitor the District’s implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case.

This concludes OCR’s 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, please contact Michael Wesley, the investigator assigned to this complaint at 215-656-6908 or michael.wesley@ed.gov, or Andrea DelMonte, the attorney assigned to this complaint, at 215-656-8554, or andrea.delmonte@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader
Philadelphia Office
Office for Civil Rights

Enclosure