



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
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REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

August 17, 2021

IN RESPONSE, PLEASE REFER TO: 03-21-1179

Dr. Gary Peiffer
Superintendent
Chartiers-Houston School District
2020 West Pike Street
Houston, PA 15342
By Email Only: gary.peiffer@chartiers-houstonsd.com

Dear Dr. Peiffer:

This is to advise you of the outcome of the complaint that was filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) against Chartiers-Houston School District (the District) alleging discrimination on the basis of disability at Allison Park Elementary School (the School). The Complainant alleges that the School maintains areas that are inaccessible to individuals with mobility impairments, specifically:

- 1) The playground surface is inaccessible;
- 2) The playground does not have a sufficient range of play structure activities that are accessible to and usable by individuals with disabilities; and
- 3) The outside garden classroom surface is inaccessible.

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.
- 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.

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

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

Legal Standards

The accessibility requirements of the Section 504 regulation are found at 34 C.F.R. Section 104.21-104.23. Comparable provisions of the Title II regulation are found at 28 C.F.R. 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.

A playground meets the definition of a "facility" under the Section 504 and Title II regulations (see 34 C.F.R. 104.3(i) and 28 C.F.R. 35.104). A playground facility is comprised of the structure or equipment installed to provide play activities, the route into and around the playground area, as well as the surface surrounding the structure or equipment. The general nondiscrimination provisions of Section 504 and Title II apply to playgrounds (see 34 C.F.R. 104.4 and 28 C.F.R. 35.130). These provisions provide for equal opportunity and program accessibility.

Play areas must comply with the 2010 ADA Standards for Accessible Design ("2010 Standards"), specifically sections 240 and 1008 which detail the technical requirements for ensuring these areas are accessible.

In reaching its determination regarding the accessibility of playground facilities, OCR analyzes whether there is an accessible route leading to and through the playground which is firm, stable, and slip resistant; whether there is a sufficient range of play structure activities within the playground that is accessible to and usable by disabled individuals; and whether there is accessible surfacing beneath accessible play equipment that is firm, stable, slip resistant, and resilient.

Factual Summary

Information collected by OCR shows that the ground surface for the School's playground is composed entirely of grass and mulch, except for one paved pad that is entirely surrounded by grass. The playground is adjacent to a parking lot with an accessible ground surface, but a fence separates the parking lot from the playground. The playground is used during recess and physical education class.

Information collected by OCR also shows that the ground surface for the School's outdoor garden classroom is composed of grass. The classroom has various learning stations, such as the Science, Technology, Engineering, Art and Math (STEAM) Shed, garden planters, a sound/percussion station and a classroom/performance area. The outdoor garden classroom is used for science activities, classroom meetings using the classroom's performance area, student painting sessions, group or individual meetings with the guidance counselor or social worker in a more relaxing setting, book talks from the librarian and music class percussion lessons. The District reported that the space is used throughout the year, weather permitting.

Analysis and Conclusion

While OCR did not complete its investigation, the information collected indicated that the surfaces of the playground and the outdoor garden classroom are not accessible to individuals with mobility impairments. Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on August 17, 2021, which, when fully implemented, will resolve the concerns identified in this complaint. The provisions of the Agreement are aligned with the issues raised by the Complainant 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.

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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Michael Branigan, the OCR investigator assigned to this complaint, at 215-656-8516 or michael.branigan@ed.gov.

Sincerely,



Christina M. Haviland
Supervisory Attorney

Enclosure