



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

June 29, 2023

Sent via email only

Ms. Christie Willis, Superintendent
Wood County Schools

Re: Docket No. 03231195

Dear Ms. Willis:

This letter is to advise you of the resolution of the complaint that was filed with the U.S. Department of Education's Office for Civil Rights (OCR) against Wood County Schools (the District) in West Virginia. The complaint alleges that the District discriminates against individuals with disabilities by:

1. Maintaining District school buildings without adequate accessible parking;
2. Maintaining District school buildings without accessible routes from site arrival points to accessible entrances for buildings;
3. Maintaining inaccessible playgrounds at District school buildings; and
4. Maintaining an inaccessible sink in the nurse's office at Williamstown Elementary School.

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. 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.

Pursuant to Section 203 of the *Case Processing Manual*, OCR utilized our Rapid Resolution Process as an expedited process to resolve the allegations in this investigation. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint 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 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

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

in, denied the benefits of, or otherwise subjected to discrimination in a district's programs or activities because the district'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, districts 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 districts 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 districts 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 Complainant reported to OCR concerns about the accessibility of the District's school facilities. She submitted evidence to OCR of her own assessment, including photographs and written summaries to support her concerns. The Complainant's first documented concern was inadequate accessible parking at Blennerhassett Elementary School, Blennerhassett Middle School, Criss Elementary School, Edison Middle School, Emerson Elementary School, Fairplains Elementary School, Franklin Elementary School, Gihon Elementary School, Greenmont Elementary School, Hamilton Middle School, Jackson Middle School, Jefferson Elementary School, Kanawha Elementary School, Lubeck Elementary School, Madison Elementary School, Martin Elementary School, Mineral Wells Elementary School, Neal Elementary School, Parkersburg High School, Parkersburg South High School, Van Devender Middle School, Vienna Elementary School, Williamstown Elementary, and Williamstown Middle/High School. The Complainant's second documented concern was a lack of, or inadequate, accessible routes from site arrival points to accessible entrances at Blennerhassett Middle School, Criss Elementary School, Emerson Elementary School, Fairplains Elementary School, Franklin Elementary School, Gihon Elementary School, Greenmont Elementary School, Hamilton Middle School, Jackson Middle School, Jefferson Elementary School, Madison Elementary School, Neal Elementary School, Parkersburg High School, Van Devender Middle School, and Vienna Elementary School. The Complainant reported and documented concerns about signage applicable to accessible parking and accessible routes at many of these schools.

The Complainant also submitted documentation of accessibility concerns related to the doors or entrances of Blennerhassett Elementary School, Blennerhassett Middle School, Criss Elementary School, Emerson Elementary School, Greenmont Elementary School, Hamilton Middle School, Jackson Middle School, Kanawha Elementary School, Lubeck Elementary School, Mineral Wells Elementary School, Neal Elementary School, Parkersburg High School, Parkersburg South High School, and Williamstown Elementary.

The Complainant submitted reported concerns about the accessibility of the sink in the nurse's office at Williamstown Elementary School. She also provided concerns about the District schools that have playground facilities with regard to the accessibility of routes to the playgrounds, as well as the ground surface inside the play areas.

The District's counsel reported to OCR that when the District received notice of this complaint, it was already in the process of seeking architectural/engineering services to assess the District's needs for compliance with the Americans with Disabilities Act (ADA). The District submitted documentation of its current advertisement and request for architectural/engineering design services, seeking bids for its paving projects, including ADA assessments and compliance. On

May 15, 2023, the District requested to resolve this complaint through a voluntary resolution agreement.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on June 28, 2023 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and 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 until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

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 Andrea DelMonte, the OCR attorney assigned to this complaint, at 215-656-8554 or andrea.delmonte@ed.gov.

Sincerely,

/s/
Melissa M. Corbin
Program Manager

Enclosure

cc: Richard S. Boothby, Esquire (via email only)