



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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November 16, 2015

Mr. Robert Lech, Superintendent
Jamestown Public School District #1
120 2nd Street, S.E.
P.O. Box 269
Jamestown, ND 58401

Re: OCR Docket #05-15-1272

Dear Mr. Lech:

This is to advise you of the disposition of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) on May 21, 2015, against the Jamestown Public School District #1 (District) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District is discriminating against persons with mobility impairments, including Student A, a student at xxxxxxxxxxxxxxxxxxxxxx xxxxxx, because it does not have accessible routes to each of its schools.

OCR established jurisdiction under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134 (Title II), and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities and in educational programs or activities that receive Federal financial assistance. As a recipient of Federal financial assistance and a public entity, the District is subject to Section 504 and Title II.

Applicable Standards

Accessibility, general

The Section 504 implementing regulation at 34 C.F.R. § 104.21, states that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with a disability, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which the regulation applies. The Title II implementing regulation at 28 C.F.R. § 35.149, states that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with a disability, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program, service or activity.

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

Accessibility, existing facilities

The Section 504 regulation at 34 C.F.R. § 104.22(b), and the Title II regulation at 28 C.F.R. § 35.150(b), require institutions to operate programs, services (for Title II) and activities offered in "existing facilities" so that, when viewed in their entirety, they are readily accessible to persons with disabilities. Under Section 504, an "existing facility" is a building, or part thereof, where construction was commenced on or before June 2, 1977. Under Title II, an "existing facility is a building, or part thereof, where construction was commenced on or before January 25, 1992." In general, an institution may comply with this requirement, called "program access," through the redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, alteration of existing facilities and construction of new facilities, or any other method that results in making each of its programs and activities accessible to persons with disabilities. The institution is not required to make structural changes to existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for providing program access, the institution shall give priority to those methods that offer programs and activities to disabled persons in the most integrated setting appropriate.

Accessibility, new construction

The Section 504 regulation at 34 C.F.R. § 104.23, applies to any facility or part of a facility where construction was commenced on or after June 3, 1977. The regulation implementing Title II at 28 C.F.R. § 35.151, applies to any facility or part of a facility where construction was commenced after January 26, 1992. These facilities are termed, "new construction" and the altered portion of existing facilities are termed, "alterations." The regulations require that each such facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities.

The Section 504 and Title II regulations, respectively at 34 C.F.R. § 104.23(b) and 28 C.F.R. §35.151(b), provide that when an existing facility or part thereof is altered in a manner that affects or could affect the usability of the facility or part of the facility, it shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities. The Section 504 regulation at 34 C.F.R. § 104.23(c), designates 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), designates the UFAS or the Americans with Disabilities Act 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 regulations implementing Title II and the ADA Accessibility Guidelines (ADAAG) were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (ADA Standards), which became effective March 15, 2011. 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 Notice of Interpretation, Federal Register, Vol. 77, No. 50, pages 14972-14976 (March 14, 2012) allows use of the ADA Standards under Section 504.

A facility, or portion thereof, constructed on or after June 3, 1977, but before January 26, 1992, is deemed an existing facility under Title II, but is deemed new construction under Section 504. If a facility meets the Section 504 new construction standards, it is accessible throughout the facility and meets the Title II program accessibility standards. If the facility does not meet the Section 504 new construction standards, the facility may or may not comply with the Title II program access standards

For the new construction facilities, OCR determined if the facility met the specific accessibility standard for the facility based on the date of construction of the facility.

Maintenance of Accessible Facilities

A public entity must maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. This requirement does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. This standard is codified in the regulation implementing Title II of the Americans with Disabilities Act (Title II), at 28 C.F.R. § 35.133, and is also generally applicable to recipients of Federal financial assistance under Section 504.

Parking

According to Section 208.1 of the 2010 ADA Standards for Accessible Design, where parking spaces are provided, parking spaces shall be provided in accordance with 208.

Background

The District has nine schools. xxxxxxxxxxxxxxxxxxxxxxxxxxxx (the School), which Student A attends, was built in xxxx, and which received an addition in xxxx, is an existing facility. In addition, xxxxxxxxxxxxxxxxxxxx, constructed in xxxx, xxxxxxxxxxxxxxxxxxxxxxxxxxxx, constructed in xxxx, xxxxxxxxxxxxxxxxxxxxxxxxxxxx, constructed in xxxx, and xxxxxxxxxxxx xxxxxxxxxxxx, constructed in xxxx, are existing facilities. OCR uses the accessibility standards, as a guide, in determining if the facility or portion of the facility, when viewed in their entirety, is readily accessible to persons with disabilities.

enough. However, the threshold at Roosevelt and Washington measure 1” in height, and at Gussner the threshold measures 2” in height; the thresholds at those schools were too high.

Finally, OCR observed that the operating devices on the designated accessible doors of each of the buildings have accessible handles, pulls, latches, locks and other operating devices. The hardware mounted on each of the doors is at an appropriate height.

New Construction

Career and Technology Center and Louis L’Amour Elementary are new construction facilities under Section 504 but existing facilities under Title II. These schools are subject to the ANSI standard under Section 504. Jamestown North and Jamestown High School are new construction facilities under Section 504 and Title II and are subject to the UFAS or ADDAG standards.

OCR noted that none of the routes to these District buildings is steeper than 1:20.

OCR noted that none of the designated accessible entrances at these schools is identified by the International Symbol of Accessibility.

OCR observed that a minimum clear opening of each designated accessible door at each school was more than 32 inches wide. With respect to the thresholds at each doorway, with the exception of Louis L’Amour, OCR observed that the thresholds do not exceed ½”. However, the threshold at Louis L’Amour Elementary School measures 1 ¼” in height, which is too high.

Finally, OCR observed that the operating devices on the designated accessible doors of each of the ten buildings have handles, pulls, latches, locks and other operating devices with a shape that is easy to grasp with one hand that do not require tight grasping, tight pinching, or twisting of the wrist to operate. The hardware mounted on each of the doors is no higher than 48 inches above the floor.

Analysis and Conclusion

Existing facilities

OCR determined that the District’s existing facilities are inaccessible to people with mobility impairments because signage is absent at the accessible entrances at all buildings and the thresholds at Roosevelt, Washington and Gussner Elementary Schools were too high. Thus, when viewed in their entirety, Gussner, Lincoln, Roosevelt and Washington Elementary Schools and Jamestown Middle School are not readily accessible to persons with disabilities. Therefore, OCR determined that the District was not in compliance with 34 C.F.R. § 104.22, and Title II, at 28 C.F.R. § 35.150.

New construction

OCR determined that the District's new construction facilities are inaccessible to people with mobility impairments because signage is absent at the accessible entrances at all buildings and the threshold at Louis L'Amour Elementary School measures 1 ¼" in height and exceeds the appropriate standard. Thus the District's new construction facilities, Career and Technology Center, Louis L'Amour Elementary School, Jamestown North, and Jamestown High School, are not readily accessible to and usable by persons with disabilities. Therefore, OCR determined that the District was not in compliance with Section 504 at 34 C.F.R. § 104.23. In addition, as existing facilities under Title II at 28 C.F.R. § 35.150, the absence of signage and the threshold at Louis L'Amour Elementary School, cause the Career and Technology Center and Louis L'Amour Elementary School, when viewed in their entirety, to be not readily accessible to persons with disabilities. In this case, addressing the new construction issues under Section 504 also addresses the existing facility issues under Title II.

On November 10, 2015, the District entered into an agreement which, when implemented, will resolve the compliance problems described above. The agreement contains the steps to be taken and the dates for implementation. OCR looks forward to receiving the District's report confirming implementation of the agreement.

This concludes OCR's investigation of the complaint and 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.

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. 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.

The complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR would like to thank you and your staff, especially Ms. Meredith Vukelic, counsel for the District, for the courtesy and cooperation extended to OCR. If you have any questions regarding this letter, please contact Lara Vaive at 312-730-1612, or at lara.vaive@ed.gov.

Sincerely,

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Aleeza Strubel
Supervisory Attorney

Enclosure

cc: Ms. Meredith Vukelic