



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

500 WEST MADISON ST., SUITE 1475  
CHICAGO, IL 60661-4544

**REGION V**  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

October 4, 2017

Mr. Joe Novsek  
Superintendent  
Carlyle Community School District 1  
1400 13<sup>th</sup> Street  
Carlyle, IL 62231

Re: OCR Docket # 05-17-1278

Dear Mr. Novsek:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint filed against the Carlyle Community School District (District), alleging discrimination on the basis of disability.

Specifically, the complaint alleged that the District discriminates against individuals with disabilities (mobility impairments) by failing to provide an accessible route to the baseball and softball fields at Carlyle High School (high school).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

During its investigation, OCR reviewed information provided by the Complainant and the District. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the matter. Discussions between OCR and the District resulted in the District signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the issues raised in the complaint.

## **Legal Standards**

Accessibility, general: The implementing regulations of Section 504, at 34 C.F.R. § 104.21, and Title II, at 28 C.F.R. § 35.149, provide that no qualified person with a disability will, 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 or activity.

Accessibility, existing facilities: The implementing regulations of Section 504, at 34 C.F.R. § 104.22, and Title II, at 28 C.F.R. § 35.150, are applicable to any facility or part of a facility where construction commenced prior to June 3, 1977 (Section 504), or January 26, 1992 (Title II), respectively. The regulations provide that with regard to such facilities, termed "existing facilities," the District will operate the programs, activities and (as to Title II) services so that, when viewed in their entirety, the programs, activities, and services are readily accessible to and usable by persons with disabilities. The District may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alterations of existing facilities or any other methods that result in making each of its programs, activities, and services accessible to disabled persons. The District is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of the statutes, the District must give priority to methods that offer the programs, activities, and services to disabled persons in the most integrated setting appropriate.

The implementing regulation of Section 504, at 34 C.F.R. § 104.22(f), requires a recipient to adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and useable by individuals with disabilities.

Accessibility, new construction: The implementing regulations of Section 504, at 34 C.F.R. § 104.23(b), and Title II, at 28 C.F.R. § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504), or January 26, 1992 (Title II), respectively. These facilities are termed "new construction or alterations." The regulations provide that each facility or part of a facility which is altered by or for the use of a recipient or public entity in a manner that affects or could affect the usability of the facility must, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities. The regulations specify the accessibility standard to be used in determining the accessibility of the alterations based on the date of construction or renovation.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineated 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), delineated UFAS or The Americans with Disabilities 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 regulation implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (2010 ADA Standards). The Title II regulation, at 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 must comply with the 2010 [ADA] Standards.”

### **Facts**

The complaint indicated that the District provides no accessible route to the baseball and softball fields at the high school such that people with mobility impairments are unable to access the ball fields to view games.

The District informed OCR it could not locate blue prints for the construction of either the softball or baseball fields but indicate that their research estimates the fields were constructed on or about 1972 and since then “not a whole lot has changed.” The District informed OCR that it shares the ball field(s) with the City of Carlyle (City), but that the District has no control over activities the City holds in the ball fields. Photographs provided by the District of one of the ball fields demonstrate the existence of bleachers where spectators can watch the game and a gravel road leading to the middle of both fields from accessible parking spaces in a parking lot. The District advised OCR the road is used by spectators attending games at both fields and “many people watch from their cars or bring their own chairs and sit in the outfield.” The photographs show, and the District agrees, that there is no accessible route from the accessible parking spaces to the designated seating area in either ball field.

OCR advised the District it would have to obtain additional information to determine the extent of any modifications/alterations made to the ball fields since their construction on or about 1972 to determine whether the District was required to provide program access under the existing facilities standards or whether any modifications and/or alterations made to the ball fields require the District to provide accessible routes under the new constructions standards of Section 504 and Title II. In lieu of providing this information, the District advised OCR that it wished to resolve this allegation pursuant to Section 302 of OCR’s *CPM*. OCR has determined that it is appropriate to resolve this allegation at this juncture because OCR’s investigation has not proceeded to a point where a finding is clear. .

### **Conclusion**

The District requested to resolve the complaint pursuant to Section 302 of the *CPM* prior to the conclusion of OCR’s investigation. The enclosed Agreement is fully aligned with the complaint allegation, and requires the District to install an accessible route to the District’s baseball and softball fields.

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. OCR will monitor the Agreement to ensure compliance.

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 individual may file a 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.

We wish to thank you for your cooperation and courtesy during our investigation. If you have any questions, please contact Leticia Magdaleno, OCR attorney, at (312) 730-1590 or by e-mail at [Leticia.Magdaleno@ed.gov](mailto:Leticia.Magdaleno@ed.gov).

Sincerely,

Marcela Sanchez-Aguilar  
Supervising Attorney

XXXXXXX  
Enclosure