



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

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October 31, 2018

Dr. Shannon Dubek
Superintendent
Morris Elementary School District 54
2001 Dupont Ave.
Morris, Illinois 60450

Re: OCR #05-18-1325

Dear Dr. Dubek:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its case processing activities in the above-referenced complaint filed with OCR against the Morris Elementary School District #54 alleging discrimination on the basis of disability.

Specifically, the complaint alleges that District is failing to provide an accessible route leading to and through the playground and an accessible surface under the play components in the playground at Morris Elementary School for students with mobility impairments.

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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance, 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, which prohibit discrimination on the basis of disability by public entities. These laws also prohibit retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws. Additional information about the laws OCR enforces can be found at www.ed.gov/ocr.

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 complaint. Discussions between OCR and the District resulted in the District's signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the issues raised in the complaint.

Legal Standard

Accessibility, general: The implementing regulation of Section 504, at 34 C.F.R. § 104.21-23, provides 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

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from participation in, or otherwise be subjected to discrimination under any program or activity. Comparable sections of the Title II regulation are found at 28 C.F.R § 35.149-35.151.

Accessibility, existing facilities: The implementing regulation of Section 504, at 34 C.F.R. § 104.22, is applicable to any facility or part of a facility where construction commenced prior to June 3, 1977 and January 26, 1992 for Title II and must comply with 34 C.F.R. §104.22 and 28 C.F.R. §35.150. The regulation provides that with regard to such facilities, termed “existing facilities,” the District will operate the programs and activities so that, when viewed in their entirety, the programs and activities 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 and activities 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 statute, the District must give priority to methods that offer the programs and activities to disabled persons in the most integrated setting appropriate.

Accessibility, new construction: The implementing regulation of Section 504, at 34 C.F.R. § 104.23(b), is applicable to any facility or part of a facility where construction was commenced after June 3, 1977. These facilities are termed “new construction or alterations.” The regulation provides 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 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.

Or, in the alternative, recipient institutions also have the option of implementing new construction in accordance with another set of accessibility standards, the Americans with Disabilities Act Accessibility Standards for Accessible Design (revised September 15, 2010), and available at, <http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm>, (hereafter referred to 2010 ADA Standards for Accessible Design), but must consistently utilize one standard per facility. If the start date for construction is on or after March 15, 2012, all newly constructed or altered state and local government facilities must comply with the 2010 Standards. Before that date, the 1991 Standards (without the elevator exemption), the UFAS, or the 2010 Standards may be used for such projects when the start of construction commences on or after September 15, 2010.

A recipient institution may deviate from technical and scoping requirements of either standard if, by doing so, it achieves substantially equivalent or greater accessibility and usability of the facility 34 C.F.R. § 104.23(c).

A playground “meets the definition of “facility” under the Section 504 and Title II regulations, 34 C.F.R. §104.3(i) and 28 C.F.R. §35.104. A playground facility is comprised of both the structure or equipment installed to provide play activities and the surface surrounding such structure or equipment.

Facts

Student A was a XXXXX grade student at XXXX during the 2017-2018 school year when the immediate complaint was filed. Student A will remain at this location through his XX grade year, when he will matriculate at a separate high school district. Student A has XXX, and, has an Individual Education Program (IEP) that identifies XXXX as his primary disability among other XXX related to XXXX, as secondary disability. In addition to Student A, there are two other students with XXXX enrolled at the School.

The Complainant alleges that the District has failed to provide an accessible route leading to and through the playground and an accessible surface under the play equipment in the playground at XXX School for students with mobility impairments. The Complainant advised that Student A spends a majority of his day XXXX and is not able to access the playground because the surface is made of woodchips.

Resolution

The District contends it is committed to serving individuals with disabilities, including Student A. During the course of OCR’s investigation, the District advised OCR that it wished to resolve the complaint pursuant to Section 302 of OCR’s CPM. OCR has determined that it is appropriate to resolve this complaint. The terms of the resolution agreement (Agreement) are aligned with the complaint allegation. The Agreement requires the District to provide an accessible playground including routes to and from the playground.

Conclusion

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 District’s implementation of the Agreement.

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 filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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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 suite in Federal court, whether or not OCR finds a violation.

We appreciate the cooperation you and your staff extended to OCR during the course of the processing of this complaint. We particularly appreciate the cooperation of Darcy Kriha, counsel for the District.

If you have any questions, please contact at 312-730-1580 or Sandra.L.Garcia@ed.gov.

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

Enclosure
cc: Darcy Kriha