



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION V
ILLINOIS
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NORTH DAKOTA
WISCONSIN

April 30, 2019

Superintendent XXXXXXXXX
Bellwood School District #88
640 Eastern Avenue
Bellwood, Illinois 60104

Sent via electronic mail only: XXXXXXXXXXXXXXXX

Re: OCR Docket #05-19-1082

Dear Superintendent XXXXX:

This is to advise you of the resolution of the above-referenced complaint filed against Bellwood School District #88 (District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), under 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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35 prohibit discrimination on the basis of disability by public entities. As a public entity, the District is subject to Title II.

Specifically, the complaint alleges that the Thurgood Marshall Elementary School (School) lacks an accessible entrance.

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

During the investigation, OCR reviewed information provided by the complainant and the District and conducted an on-site visit to Thurgood Marshall Elementary School (School) to review the entrances available for individuals with mobility impairments as well as the parking lots and paths to the School's entrances. Based on the information, OCR determined that the District did not comply with Section 504 and Title II. The District has signed the enclosed Resolution Agreement (Agreement) to address the identified violation.

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

Accessibility – General

The implementing regulations of Section 504 at 34 C.F.R. § 104.21 and of Title II at 28 C.F.R. § 35.149, provide that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, 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 was commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The Section 504 regulation, at 34 C.F.R. 104.22(a) and the Title II regulation, at 28 C.F.R. 35.150(a), provide that with such facilities, termed "Existing Facilities," the recipient will operate the programs and activities so that, when viewed in its entirety, each such program or activity is readily accessible to and usable by persons with disabilities. The District may comply with this requirement through the reassignment of classes and activities to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs and activities accessible to persons with disabilities. The District is not required to make structural changes in existing facilities where other methods are effective in achieving compliance.

Accessibility – New Construction

The implementing regulation of Section 504, at 34 C.F.R. §104.23, and Title II, at 28 C.F.R. 35.151, are applicable to any facility or part of a facility where construction commenced after June 3, 1977 (Section 504), or January 26, 1992 (Title II), respectively. Such facilities or the newly-constructed portions thereof are termed "new construction." The regulations provide that each 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 a disability. 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 Act Accessibility Guidelines for Building and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed, or altered on or after January 26, 1992. Under the regulations, departures are allowed from particular requirements of the standards when it is clearly evident that equivalent access is provided. Under Title II, a recipient may select UFAS or ADAAG as a compliance standard. Under Section 504, ADAAG may be utilized as a standard that provides equivalent access.

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 (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.

Accessibility – Entrances, Path of Travel, and Parking Lots

Entrances

ADAAG, at 4.14.1, requires that an entrance required to be accessible shall be part of an accessible route complying with 4.3.

Path of Travel

ADAAG, at 4.3.2(1), provides that at least one accessible route within the boundary of the site shall be provided from public transportation stops, accessible parking, accessible passenger loading zones, and public streets or sidewalks, to the accessible building entrance they serve. ADAAG, at 4.7.2, which governs slopes of curb ramps, provides that maximum slopes of adjoining gutters, road surface immediately adjacent to the curb ramp, or accessible route shall not exceed 1:20. ADAAG, at 4.3.8, also requires the path of travel to be free of abrupt changes in level of greater than ½ inch.

Parking Lots

ADAAG, at 4.1.2(5)(a) and (b), specifies the ratio and dimensions of designated accessible parking spaces. 4.1.2(5)(a), provides that a parking lot that has a total of 51 to 75 spaces, must have a minimum of 3 accessible spaces. These spaces do not have to be provided in a particular lot, but rather may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience is ensured.

ADAAG, at 4.6.3, also specifies parking dimensions, requiring that an accessible parking space be at least 96 inches wide, that parking access aisles be part of an accessible route to the building or facility entrance, and that parking spaces and access aisles be level with surface slopes not exceeding 1:50 (2%) in all directions. Lastly, ADAAG, at 4.6.4, requires appropriate signage at designated accessible parking spaces, and ADAAG, at 4.1.2 (5) (b), requires one in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 in (2440 mm) wide minimum and shall be designated "van accessible" as required by 4.6.4.

Background

The School enrolls students in grades kindergarten through fifth and is one of seven schools operated by the District. The School's original building was constructed before 1941 and an addition was built in 1950. Based on construction dates, the School is an existing facility.

The District was unaware of the date of construction for a route that visitors to the School must travel between one of the District's two parking lots and the main entrance to the School. Based on OCR's visual inspection, the routes are new construction.

The District owns two parking lots for visitors to the School, Parking Lot A and Parking Lot B. While the District did not know when the last time either Parking Lot A or B had been repaved and/or restriped, OCR's visual inspection determined improvements to both lots had been made in the last 20 years. Thus, both parking lots are considered new construction.

OCR utilizes the UFAS or ADDAG standards as a guideline to judge if an element of an existing facility is accessible. The routes and the parking lots were probably constructed in between 1991 and 2012 and, as such, OCR utilized ADAAG to determine the accessibility of the routes and parking lots. The District did not inform OCR whether it has elected UFAS or ADDAG for new construction.

Door 1 serves as the main entrance to the School. The School's office is located next to Door 1, which, according to the Superintendent and the School's Principal, is the only designated entrance to be used by parents and visitors. For safety purposes, this allows School employees to monitor the parents and visitors who "sign in" upon arrival. Door 1 is located on the southeast side of the School.

Facts

Entrances to the School

The School is an existing facility under Section 504 and Title II and is subject to the UFAS or ADAAG standards when renovations occur. There are five steps a visitor or parent must use to gain access to Door 1, which is located on the southeast side of the School and is designated as the entrance to the School. No ramp exists and no sign exists that designates the main entrance as the accessible entrance.

Another entrance to the School, Door 7, is located on the northwest side of the School. The Complainant had an informal arrangement to enter the School through Door 7 by ringing a buzzer, which would prompt a School employee to contact the custodian to open the door for her. Door 7 has a ramp but does not have a sign designating it as an accessible entrance.

Path of Travel

Parking Lot A, which is located across a busy street and is the closest to Door 1, is used primarily by employees and occasionally by visitors. Parking Lot B is located adjacent to Door 7 and has been used by the Complainant. Parking Lots A and B and the path of travel from the lots to Door

1 are new construction under Section 504 and Title II and are subject to the UFAS or ADAAG standards.

Parking Lot A and the public sidewalk are crumbling and have abrupt changes in level. Regarding path of travel, the Village of Bellwood owns and maintains the sidewalks and street. Detectable warnings (4.7.7) are present at both entrances to the street. However, the crumbling sidewalk has an abrupt change in level in excess of ½ inch. The sidewalk, at its narrowest width of 37”, exceeds the minimum of 36” required by ADAAG at 4.3.3. Parking Lot B connects to the School via a sidewalk, which exceeds 5’ in width and is a non-slick surface. The sidewalk has a detectable warning where it meets the driveway.

Parking Lots

Parking Lot A has approximately 55 spaces of which two are designated by paint on the pavement instead of upright signage (4.6.4) as being for persons with mobility impairments. Given the size of Parking Lot A, ADAAG, at 4.1.2 (5)(a), requires a minimum of three designated parking spaces for persons with mobility impairments, and ADAAG, at 4.1.2 (5) (b) requires van accessible parking. The two spaces are 12’ and 16’ wide. While the width of the parking spaces are sufficiently wide (4.6.3), they are not located at the nearest point to the School’s main entrance per ADAAG at 4.6.2. Instead of being located at the southwest corner, the spaces are located at the northwest corner.

Parking Lot B has approximately 25 spaces with two reserved by signage for persons with mobility impairments. One designated space is located nearest to the adjacent sidewalk. Given the size of Parking Lot B, ADAAG, at 4.1.2 (5)(a), requires a minimum of one designated parking space for persons with mobility impairments, and ADAAG, at 4.12(5)(b), requires van accessible parking. Like all other spaces, the two spaces were only 6’ wide and lacked an “access aisle.”

Analysis and Conclusion

Entrance

The main entrance, the designated entrance to the School, and is not accessible to individuals with a mobility impairment because it is accessed by steps. It does not currently have a ramp and does not have a sign that designates it as the accessible entrance. There is no unlocked alternative accessible entrance for the school.

Path of Travel

The path of travel from Parking Lot A to the main entrance is not accessible because there are abrupt changes in level in the lot itself and the public sidewalk and the current accessible parking spaces are not located nearest to the main entrance.

The path of travel from Parking Lot B to the main entrance, however, is accessible.

Parking Lots

The School lacks a sufficient number of accessible parking spaces. While Parking Lot A has two parking spaces designated for persons with mobility impairments, the spaces lack appropriate signage, are not located at the nearest point to the School's main entrance, and the sidewalk lacks a means of egress. Similarly, while Parking Lot B also has two designated parking spaces for individuals with disabilities, both spaces are not accessible because they are only 6' wide and lack an "access aisle." Neither Parking Lot A nor Parking Lot B has van accessible parking.

Based on the above, OCR has determined that the District has failed to provide an entrance, a path of travel to the main entrance, and parking spaces that are accessible to individuals with disabilities, in violation of the implementing regulation of Section 504, at 34 C.F.R. 104.22, and at 34 C.F.R. §104.23, and Title II, at 28 C.F.R. 35.150 and 28 C.F.R. 35.151.

The District signed the enclosed Agreement, which, when fully implemented, will fully resolve the issues covered in the complaint. The provisions of the Agreement are aligned with those issues and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the 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 individual 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 wishes to thank the District and particularly you, Ms. XXXXXX XXXXXX, and Mr. XXXXX XXXXX for the cooperation extended to OCR during the course of this investigation. If you or any of your staff members have any questions regarding this matter, please do not hesitate to contact Mark Erickson of my staff at 312-730-1574 or by email at mark.erickson@ed.gov.

Sincerely,

Aleeza Strubel
Supervisory Attorney