



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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July 30, 2019

Dr. Janice Jackson  
Chief Executive Officer  
Chicago Public Schools District #299  
42 West Madison Street  
Chicago, Illinois 60602

*Sent via electronic mail only to: [CEDO-Jackson@cps.edu](mailto:CEDO-Jackson@cps.edu)*

Re: OCR Case #05-19-1228

Dear Dr. Jackson:

This is to advise you of the resolution of the above-referenced complaint filed against the Chicago Public Schools District #299 (District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). Specifically, the complaint alleged that the Langford Community Academy (Academy) discriminates on the basis of disability against persons with mobility impairments due to the lack of 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. The District acknowledged the Academy lacks an accessible entrance for persons with mobility impairments. Based on that 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.

## **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 (Program Access)**

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

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. Another way to refer to this standard is as providing program access. 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, in effect and applicable for facilities constructed or altered on or after January 18, 1991, at 34 C.F.R. 104.23(c), delineated the Uniform Federal Accessibility Standards (UFAS) as a minimum standard for determining accessibility. 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.

OCR utilizes the UFAS or ADDAG standards as a guideline to assess if an element of an existing facility is accessible.

#### Background Information

The Academy enrolls students from pre-kindergarten through eighth grade. The Academy was constructed in 1963. Based on the construction date, the Academy is an existing facility and the program access standards apply.

The District has acknowledged that the Academy lacks an accessible entrance. The District asserted the Academy's student population did not include any students with a mobility impairment during the 2018-2019 school year. The District explained that when a visitor with a mobility impairment arrives at the Academy "teachers and staff meet with the parents and/or guardians and community members in the foyer area." The District informed OCR that the foyer is several steps above street level.

#### District and Academy Policies and Procedures

According to the District, a notice is posted at the main entrance and appears in the Parent and Student Handbook (Handbook) that informs visitors to the Academy how to request access to programs and activities. The District provided OCR a copy of the Handbook (which is not available on the Academy's website).

The Handbook includes a "Combined Americans with Disabilities Act and 504 Policy" (Policy A). Policy A states that it:

[A]ppplies to accommodation requests, complaints and appeals under 504 and the ADA made by employees, employment applicants, parents/guardians, students, community members, Local School Council members, volunteers, and other persons with disabilities. The request, complaint and appeal procedures set forth in this policy apply to requests for disability-based accommodations and allegations of disability discrimination as described and prohibited in the Board's Comprehensive Non-Discrimination, Title IX and Sexual Harassment Policy (Policy B).

Also, Policy A explains:

District services, programs and activities, when viewed as a whole, are required to be accessible to qualified persons with disabilities. The District will accomplish this by, among other things, reassignment of programs and events to accessible locations or renovation of existing facilities. However, a public entity is not required to make structural changes in existing facilities where other methods are effective.

In addition, Policy A states that individuals may request relocation of an activity to an accessible location by utilizing the procedures contained in Policy B, which is available on-line at: <https://policy.cps.edu/> Policy B, then instructs individuals to utilize Policy A to request a disability-related modification.

#### Facts

The Academy designated a single door as the entrance for adults who are picking up or dropping off students. No elevator or ramp exist at this entrance. A set of stairs lead to the designated entrance from the sidewalk. A second set of stairs lead to the building inside the external entrance. In order to pick up a student from school, an adult must walk up both sets of stairs (15-20 in total) and sign out the student. The Academy has not developed a procedure to provide program access to a person with a mobility impairment who wishes to visit the Academy (to pick up a student or for any other reason).

The Complainant is an adult who wears leg braces. She provides transportation to a student (Student) who attends the Academy. In January 2019, the Complainant parked her car near the designated entrance. She told OCR that when she visited the Academy that day, she had difficulty climbing the stairs to enter the building. She subsequently asked an employee whose name and title she did not know to release the Student in the future to meet her on the sidewalk so she would not be required to climb any stairs. According to the Complainant, her request was denied. The District informed OCR that it is not aware of any staff member who would have denied the Complainant's request.

### **Analysis and Conclusion**

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

The sole entrance designated for adults to pick up a student from the School is not accessible to individuals with a mobility impairment because it can only be accessed by steps. The School also lacks an accessible entrance for individuals visiting the School for any other reason. Therefore, OCR has determined that the District has failed to provide an entrance that is accessible to individuals with mobility impairments, 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 compliance issue raised by the complaint. The provisions of the Agreement are aligned with the compliance issue and the information obtained during OCR's investigation and are consistent with the applicable regulations. Pursuant to the Agreement, the District will develop and submit to OCR for approval a statement on how members of the public can request programs or activities at the Academy be provided in or relocated to an accessible location. Upon approval of the statement by OCR, the Academy will post the statement on its website and include it in the 2019-20 back to school information. An alternate location will meet the standards contained in the 2010 ADA Standards for Accessible Design (ADA Standards). Within 7 calendar days of approval by OCR, the District will provide written instructions to the Complainant that explain how the Academy will ensure that she has program access with respect to the allegation that gave rise to this complaint.

OCR will monitor the implementation of the Agreement and looks forward to receiving the District's first monitoring submission by August 16, 2019.

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 thanks you and your staff, especially Ms. Dalila Bentley, for the cooperation extended to OCR. If you 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](mailto:mark.erickson@ed.gov).

Sincerely,

Aleeza Strubel  
Supervisory Attorney

Enclosure

cc: Mr. Joe Moriarty  
Ms. Ruchi Verma  
Ms. Susan Best  
Ms. Kathleen Gibbons  
Ms. Dalila Bentley