



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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CHICAGO, IL 60604

REGION V

ILLINOIS  
INDIANA  
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MINNESOTA  
NORTH DAKOTA  
WISCONSIN

November 12, 2021

Wayne Kazmierczak  
Superintendent  
White Bear Lake Area Schools  
4855 Bloom Avenue  
White Bear Lake, Minnesota 55110

*Sent via email only to: [wayne.kazmierczak@isd624.org](mailto:wayne.kazmierczak@isd624.org)*

Re: OCR Complaint # 05-21-1265  
Complainant: XXXX XXXXXXXXX

Dear Mr. Kazmierczak:

This letter is to advise you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against White Bear Lake Area Schools (District).

Specifically, the Complainant alleges that the District's Otter Lake Elementary School (School) is inaccessible to persons with physical and mobility impairments in that the School:

1. does not have an accessible route from its center parking lot to its main office,
2. does not have an accessible restroom, and
3. does not provide an accessible surface in the playground area.

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, 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, 28 C.F.R. Part 35, which prohibit 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 documents the Complainant and the District provided. Prior to the completion of the investigation, the District executed the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve Allegation #1 and #2. Regarding Allegation #3, OCR has determined that the evidence is insufficient to establish that the District discriminates against individuals with disabilities, as alleged. The bases for OCR's determinations are explained below.

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*

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 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 or activity.

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). 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 statute, 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 CFR § 104.22(f), provides that the recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and locations of services, activities, and facilities that are accessible to and usable by persons with disabilities. The implementing regulation of Title II, at 28 C.F.R. § 35.163(a), provides that public entities must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of accessible services, activities and facilities.

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). These facilities are termed "new construction or alterations." The regulations provide that each facility or part of a facility that 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. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or

vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

The phrase “to the maximum extent feasible,” as used in this section, applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).

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 1971) 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 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 shall comply with the 2010 ADA Standards.”

## **Background**

The District comprises nine elementary schools, two middle schools, and two high schools. The School was built in 1987 and opened for students in the fall of 1988.<sup>1</sup> Since 1988, the School has

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<sup>1</sup> Northeast Metro 916 Intermediate School District (District 916) paid for a small portion of the construction costs and, as a result, owns 10,120 square feet of the School building. The District 916 space includes several special education classrooms. District 916 no longer occupies the space and now leases it to the District.

made four significant alterations or improvements: installing a playground in 1995, resurfacing the playground in 2014, replacing a curb ramp in 2018, and renovating one restroom in 2020.<sup>2</sup>

In September 2019, a building bond referendum package was passed to address facility needs throughout the District.<sup>3</sup> As part of these updates, the District hired Julee Quarvee-Peterson Inc. (JQP) Accessibility Consultants to assess the accessibility of District buildings. JQP drafted an Accessibility Review and Action Plan report (Report) for the District. The District is currently working with architects and engineers to update eight restrooms, curb ramps, parking lots, and sidewalks at the School to voluntarily bring them into compliance with the 2010 ADA standards. The projected start date for this project is June 2022 and the projected completion date is December 31, 2022.

## **Facts**

### **Allegation #1**

The complaint alleges that there is no accessible route from the center parking lot to the main office. The Complainant specifically noted that the curb ramps are crumbling and the door to the main office does not have a push button opener. According to the Complainant, a person using a wheelchair would not be able to independently open the door and enter the main office without assistance from another person.

OCR reviewed the Report, which notes that the exterior route to the main entry of the building has a curb ramp with a slope of 9.5% and flared sides of 12.5% and 13.8%, which do not comply with the minimum accessibility requirements of the 2010 ADA Standards. However, as the School is an existing facility with only one alteration to a single curb ramp since it was originally constructed in 1987, this route must comply with ANSI 1971. Accordingly, it must blend to a common level and must not be interrupted by abrupt changes in level. The District advised OCR that this curb ramp would voluntarily be brought into compliance with the 2010 ADA Standards as part of the June 2022 construction project.

Information provided by the District indicates that the force required to push open the door to the main office is 3.94 pounds and the force required to pull open the door is 4.56 pounds; both measurements meet the minimum accessibility requirements of the 2010 ADA Standards. Additionally, the clear opening width of the main office door meets the minimum requirements of the 2010 ADA Standards. District documentation also indicates that the main office door does not have a push button opener.

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<sup>2</sup> In 2020, the District hired Kraft Contracting & Mechanical L.L.C. to increase the accessibility of the restroom in the District 916-owned wing of the building. This included, but was not limited to, installing a new ADA compliant toilet, relocating the sink for ADA compliance, and installing new grab bars. However, the District does not hold this out to be the School's designated accessible restroom.

<sup>3</sup> <https://www.isd624.org/about/facilities-planning/building-our-future> (last accessed: October 14, 2021)

Neither ANSI 1971 nor the 2010 ADA Standards require an automatic door opener as long as the door itself meets the minimum accessibility requirements for clear width and opening force. Furthermore, the District indicates that the plan or practice of providing access to individuals with mobility impairments who need to access the main office includes a glass window on the door whereby an administrative assistant working in the office can see who is at the door and render assistance if needed.

## **Allegation #2**

The Complainant alleges that the School does not have an accessible restroom. The Complainant explained that she toured the School in May of 2021, during which time School staff showed her two accessible restrooms. The Complainant described several elements to OCR that she believed were either unsafe or were inaccessible in the restrooms.

OCR reviewed the Report with respect to the restrooms in the School. The Report concludes that eight restrooms, including those viewed by the Complainant, need alterations in order to comply with the 2010 ADA standards. However, as an existing facility with only one alteration to one restroom since the School was originally constructed in 1987, ANSI 1971 are the standards applicable to the unaltered restrooms. Nevertheless, the District advised OCR that it would voluntarily bring the School's restrooms into compliance with the 2010 ADA Standards as part of the June 2022 construction project. In order to do so, the District would have to make the following changes. Of the two restrooms located near the third-grade classrooms, both restrooms require compliant grab bars, a relocation of the toilet paper dispenser, the addition of a low coat hook, and the insulation of pipes under the lavatory. The Report further indicates that the restrooms near room 301 do not contain an accessible 5' wide stall and notes a need for signage indicating the nearest accessible restroom. Regarding the restroom adjacent to the Special Education classroom, the Report indicates that there is an accessible stall separated by a curtain for privacy and the bathroom is intended for use exclusively by students with special needs with assistance from the Special Education Department staff. It is not intended for independent use.

The District also provided information showing that the restroom near the cafeteria and the restroom near room 412 lack insulated pipes and the space between the side grab bars and the wall exceeds the minimum standards set forth by ANSI 1971. The side grab bar in the bathroom near room 412 is also mounted lower than the ANSI 1971 standard.

## **Allegation #3**

The Complainant alleges that the playground area is inaccessible due to the wood chips on the ground which prevent a child from accessing the play structure and elements.

The District advised OCR that in 2011 the District hired an independent lab to test a proposed new surface for the playground. OCR reviewed documents showing that this ground covering was installed in the playground in 2014. The 2010 ADA Standards require playground surface requirements to meet the standards set forth in the American Society for Testing and Materials (ASTM) guidelines. ASTM F 1951-09 requires that a playground surface shall have average work per foot values for straight propulsion and for turning less than the average work per foot values for straight propulsion and turning on a hard smooth surface with a grade of 1:14. OCR reviewed the lab results from 2011, which confirm that the average work per foot values of the playground surface covering installed by the District were less than the baseline values dictated by the ASTM. The tests confirmed that this new surface, comprised of wood fiber, meets or exceeds accessibility requirements.

### **Analysis and Conclusion**

#### **Allegation #3**

The District provided documentation showing that the ground covering installed by the District in 2014 is accessible, as it meets the specifications of ASTM F 1951-09. OCR also reviewed invoices demonstrating that the District has hired a company specializing in playground maintenance to inspect and maintain the playground on a yearly basis. Accordingly, the ground covering installed by the District in the School's playground is compliant with the 2010 ADA standards. Based on all the information obtained during the investigation, OCR determined that the evidence is insufficient to establish that the District does not have an accessible playground, as alleged in Allegation #3.

#### **Allegation #1 and #2**

OCR has compliance concerns regarding the route from the School's center parking lot to the main office and regarding the restrooms near the cafeteria and room 412.

The accessible route between the center parking lot and the main office was originally constructed in 1987. Therefore, the route must comply with minimum requirements of ANSI 1971. ANSI 1971 § 4.2.2 requires walks to consist of a continuing common surface, not interrupted by steps or abrupt changes in level. ANSI 1971 § 4.2.3 requires walks to blend to a common level whenever they cross other walks, driveways or parking lots.

All the restrooms in the School were built in 1987 and therefore must comply with the minimum requirements of ANSI 1971 § 5.6.2(4). This section requires that at least one toilet stall in each restroom to have "handrails on each side, 33 inches high and parallel to the floor, 1 ½ inches in outside diameter, with 1 ½ inches clearance between rail and wall, and fastened securely at ends and center." ANSI 1971 also requires the pipes to be insulated. The District has made plans to upgrade the restrooms so they comply with the 2010 ADA Standards.

In accordance with Section 302 of OCR's CPM, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. While the District maintains that the School is in compliance with all applicable regulations, it nevertheless expressed interest in resolving these allegations, and OCR determined that it is appropriate to resolve them pursuant to Section 302 of the CPM. On November 11, 2021, the District executed the enclosed Agreement, which when fully implemented, will address the concerns regarding this allegation. The provisions of the Agreement are aligned with this allegation and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

### **Overall 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. This letter sets forth OCR's determination in one OCR case. This letter is not a formal statement of OCR policy and should not be relied on, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The Complainant has a right to appeal OCR's determination with regard to Allegation # 3 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation. It is also important for you to understand that the laws OCR enforces prohibit the District from harassing, coercing, intimidating, or discriminating against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, that 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. If 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.

OCR would like to thank the District and Ryan Supple, Esq., Rupp, Anderson, Squires & Waldspurger, P.A., for the courtesy and cooperation extended to OCR during the investigation.

Supt. Kazmierczak  
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OCR looks forward to working with the District during the monitoring of the Resolution Agreement. If you have any questions regarding this letter, please contact Stephanie Bogdan, Attorney, at 312-730-1719, or by email at [stephanie.bogdan@ed.gov](mailto:stephanie.bogdan@ed.gov).

Sincerely,

Ann Cook-Graver  
Supervisory Attorney

Enclosure

cc: Ryan Supple  
Attorney  
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