



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

230 SOUTH DEARBORN ST., 37<sup>TH</sup> FLOOR  
CHICAGO, IL 60604

REGION V  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

March 24, 2023

XXXXXXXXXXXXXXXXXXXX

Superintendent

Northbrook/Glenview School District 30

*Sent via email only to: XXXXXXXXXXXXXXXXXXXX*

Re: OCR Docket #05-22-1629

Dear Superintendent XXXXXXXXXXXXXXXXXXXX

This letter is to inform you of the resolution of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), against the Northbrook Glenview School District 30 (District), alleging discrimination based on disability.

OCR investigated whether the District discriminates against persons with mobility impairments at the District's Wescott Elementary School (School) by failing to provide:

1. an accessible main entrance; and
2. an accessible playground.

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, 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 District, the Complainant, and a parent of a child with a mobility impairment (Parent) that is a student within the District. Additionally, OCR interviewed the Complainant, the Parent, and relevant District personnel. For the reasons set forth below, OCR is resolving this complaint pursuant to Section 303(c) of OCR's *Case Processing Manual* (CPM). Specifically, OCR determined that there is insufficient evidence to establish a violation of Section 504 or Title II with respect to Allegation 1 and a portion of Allegation 2. Prior to the completion of OCR's investigation of the remaining portion of Allegation 2, the District expressed interest in resolving it in accordance with Section 302 of the CPM and signed the enclosed Resolution Agreement (Agreement). This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the complaint was resolved.

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

## **Overarching Legal Standards**

Accessibility, general: The implementing regulations of Section 504, at 34 C.F.R. § 104.21-23, 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 persons 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 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 and 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 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, activities, and services to disabled persons in the most integrated setting appropriate.

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, available at <http://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm> (hereafter referred to as the 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.”

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, respectively. A playground facility is comprised of the structure or equipment installed to provide play activities, the route into and around the playground area, and the surface surrounding such structure or equipment. The 2010 ADA Standards include (at sections 240 and 1008) scoping and technical requirements for play areas.

### **Allegation 1 – Main Entrance**

#### **Facts**

The Complainant and Parent allege that the main entrance (Entrance) at the School is inaccessible to persons with mobility impairments. Specifically, they allege that the main entrance to the School lacks an automatic door opening mechanism.

#### **Entrance**

According to the data provided to OCR by the District, the Entrance to the School was constructed in 1999. Given its 1999 date of construction, the Entrance is considered “new construction” to which ADAAG applies.

*Accessible Route:* ADAAG Section 4.3 applies to the accessible route to the School’s entrance. Section 4.3 requires one accessible route from accessible parking and passenger loading zones, public transportation stops, and street and sidewalks to the accessible building entrance they serve. Additionally, it requires the width of an accessible route to be 36 inches except at doors (See 4.13.15 and 4.13.6). Ground and floor surfaces along accessible routes shall be stable, firm, and slip resistant. It also requires that doors along an accessible route comply with Section 4.13.

*Doors and Entrances:* ADAAG Section 4.13 applies to the Entrance doors. It requires double-leaf doorways to have one door that complies with Sections 4.13.5 and 6. Doorways shall have a clear opening of 32 inches with the door open at 90 degrees. There shall be 60 inches of front clearance and 18 inches of side clearance for front approached doors, and that the floor or ground area within the required clearances be level and clear. The minimum space between two hinged or pivoted doors in a series is 48 inches and must either swing in the same direction or away from the space between the doors. Door thresholds shall not exceed 1/2 inch in height for non-sliding doors. Doors handles must have a shape that is easy to grasp with one hand and does not

require tight grasping and must be no higher than 48 inches above finished floor. Section 4.13.12 requires that if an automatic door is used, then it shall comply with additional standards.

OCR conducted onsite visits in January and February of 2023 to inspect the Entrance and route to the Entrance. OCR observed that the width of the route to the entrance exceeds 36 inches, does not have a cross slope, and has a stable, firm, and slip resistant concrete surface. The Entrance has a series (i.e., two sets of a row of 3 doors); the first set of exterior doors leads to an enclosed foyer and the second set of doors lead to the interior of the School. Each doors exceeds 32 inches in width and the distance between the first set of doors and the second set of doors is 14 feet, which exceeds 48 inches. All doors swing in the same direction. All doors have thresholds that are no more than ¼ inch high, have door handles that are easy to grasp with one hand and do not require tight grasping and are positioned between 34 and 48 inches high. All doors to the Entrance are manual, without automatic or electronic touchpad openers. The Entrance doors are made mostly of glass and are located adjacent to the front office, which allows front office School employees to view visitors who approach the Entrance. The second set of doors is locked during the School's hours of operation for security reasons. Thus, any person, regardless of whether the person has a mobility impairment, who arrives after the School day has commenced, must rely on an office employee to facilitate entrance to the School.

### **Analysis and Conclusion**

The Complainant and Parent allege that the Entrance to the School discriminates against persons with mobility impairments because it lacks an automatic door-opening apparatus.

OCR analyzed the Entrance under ADAAG. Specifically, OCR analyzed ADAAG at Sections 4.3; 4.5; 4.13.; and 4.14. OCR's inspections showed that the route to the Entrance meets the applicable standards. Additionally, OCR's inspection showed that the measurements of Entrance doors, such as height of door handles and width of the door(s), all met the necessary standards. Although the Entrance lacks an automatic door-opener, ADAAG does not require one. Accordingly, OCR finds insufficient evidence to establish a violation of Section 504 or Title II, with respect to Allegation 1.

### **Allegation 2 - Playground**

#### **Facts**

The Complainant and Parent allege that the playground at the School (Playground) is inaccessible to persons with mobility impairments. Specifically, they allege that the Playground surface is inaccessible due to improper maintenance and the Playground's ratio of ground-level play components to elevated play components does not comply with the 2010 ADA Standards.

#### **Playground Surface**

With respect to the ground surface material of the Playground, the 2010 ADA Standards require that floor and ground surfaces be stable, firm and slip resistant (1008.2, 403.2, 302.1); and that

changes in levels greater than ¼ inch should be ramped. In addition, the 2010 ADA Standards (at 1008.2.6.1) state that ground surfaces shall comply with ASTM F-1951, which has been incorporated by reference into the 2010 ADA Standards. ASTM F-1951 states that sand, gravel and wood chips are examples of a “loose fill system,” which it defines as a “surface system consisting of small independent, movable components.” ASTM F-1951 states that playground surfaces represented as complying with ASTM F-1951 must meet all applicable requirements specified therein, and that essential records necessary to document any claim that the requirements within the specification have been met must be kept. The document sets forth additional requirements that must be met for the surface within the fall zone of the surrounded playground equipment. ASTM F-1951 states that when tested according to the test methods described therein, the surface in place must have average work per foot values for straight propulsion and for turning less than the average work per foot values for straight propulsion and for turning on a hard, smooth surface with a grade of 1:14. The 2010 ADA Standards also state that ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F-1951.

OCR also observed concave indentations in the engineered wood fiber material (Fill) throughout the play area, resulting in various changes of level on the Playground surface exceeding ¼ inch. During OCR’s February 2023 visit, OCR observed concaved indentations in the Fill below the exit of each slide, where the Fill meets the sidewalk at the entrance of the play area, and at other exit and entrance points to the Left and Center Play Areas. OCR observed concave indentations in the Fill beneath the swings. OCR observed that new Fill was recently added beneath each swing but was loose and may have not been adequately tamped down because it was not firm. OCR also observed other areas of loose Fill but was unable to differentiate if the cause of loose Fill was a lack of maintenance or by students during a recess.

The School’s Building and Grounds Supervisor (Supervisor) assumed his current role in September 2021, which occurred after the Playground’s construction. The Supervisor is responsible for the cleanliness, maintenance, and safety of the School grounds. Regarding maintenance of the Playground, the Supervisor told OCR that an intergovernmental agreement exists between the District and the local park district. The Supervisor told OCR that pursuant to the intergovernmental agreement, the park district performs duties, such as mowing grass, picking up litter, and maintaining and grooming the Fill. He told OCR that the park district may work on School property three times per week during the “busy season” and once a week in the winter. He explained the park district subcontractor does not provide advance notice when planning to work on School property and does not provide any written report regarding work accomplished at the Playground. The Supervisor told OCR that a School custodian regularly grooms the Fill with a rake to keep it level and can also use a blower to reposition errant Fill; the School does not own a tool that enables it to tamp/compress existing Fill.

### Playground Play Components

According to the 2010 ADA Standards, a “play component” is an element intended to generate specific opportunities for play, socialization, or learning. Play components are manufactured or

natural; and are stand-alone or part of a composite play structure. The 2010 ADA Standards describe two types of play components: ground-level and elevated.

A ground-level play component is approached and exited at the ground level. Examples of ground-level play components may include spring rockers, swings, diggers, and stand-alone slides. The 2010 ADA Standards require at least one of each type of ground-level play component to be on an accessible route, comply with 1008.4, and to be integrated into the play area (240.2.1.1; 240.2.1). Regarding integration, designers should consider the optimal layout of ground level play components accessed by children with disabilities to foster interaction and socialization among all children; grouping all ground level play components accessed by children with disabilities in one location is not considered integrated. Moreover, when a ground-level play component such as a sandbox is provided, an accessible route must connect to the border of the sand box. Accessibility to the sand box would be enhanced by providing a transfer system into the sand or by providing a raised sand table with knee clearance complying with 1008.4.3, but is not required. (Advisory 240.2.1)

An elevated play component is a play component that is approached above or below grade and that is part of a composite play structure consisting of two or more play components attached to create an integrated unit providing more than one play activity. Play components that are attached to a composite play structure and can be approached or exited at the ground level as well as above grade from a platform or deck, such as a climber, are considered elevated play components, not ground-level play components. (Advisory 240.2.2)

Where a play area contains elevated play components, the play area must provide a certain ratio of ground-level play components of differing types on an accessible route. Table 240.2.1.2 sets forth the requisite number of ground-level play components that must be on an accessible route. Furthermore, 50% of the elevated play components must also be on an accessible route. (1008.4, 240.2.2, Chapter 4). Two methods contemplated by the 2010 ADA Standards for the provision of an accessible route to elevated play components are ramps and transfer systems. (1008.2 and 1008.3)

According to the documents provided to OCR, the Playground was constructed in 2021. Thus, the 2010 ADA standards apply. The Playground covers over 7,500 square feet (160' x 48') and has four distinct play areas. As one faces north, from west to east, these play areas are present: the Gagaballpit<sup>1</sup> (the Gagaball Pit); the left play area (Left Play Area); the center play area (Center Play Area); and a swing set. All play areas can be accessed by moving across the 6' wide, flat, and concrete sidewalk, and traversing over Fill. The District provided OCR with the technical specifications of the Fill. These specifications reveal that the Fill manufacturer, undertook surface testing for accessibility compliance against the 2010 ADA Standards, specifically for ASTM F1951, regarding the Fill. The testing results concluded the Fill "met the requirements of ASTM F1951" and thus, the 2010 ADA Standards, at the time the Fill was originally installed (in 2021).

---

<sup>1</sup> <https://www.gagaballpits.com/product/gaga-ball-pit-ada-doorway/>

The Gagaball Pit, a ground-level play component, has eight fixed sides and the interior has a hard and flat rubber slip-resistant surface. Seven of the eight sides are 24 inches high. The eighth fixed side, or the entrance to the Gagaball Pit, is slightly lower at 19 inches, presumably to allow students to more easily enter the structure. The Gagaball Pit does not have a gate feature to allow persons with a mobility impairment the ability to enter the structure. In addition, there is not an accessible route to the Gagaball Pit. For an accessible route under the 2010 ADA Standards, ground surfaces must have no opening with a cross section more than half an inch, and the maximum change in level without a slope or ramp is one quarter inch (303.2). The Gagaball Pit is installed on slab of concrete and the border of the concrete that is directly adjacent to the Playground Fill creates a change in level that exceeds one quarter inch.

The Left Play Area consists of one ground-level play component and ten (10) elevated play components. The one ground-level play component is a pull-up bar. The pull-up bar provides one type of play experience of exercise. The elevated play components consist of the following: a zipline; monkey bars; a slide; a climbing wall; spiral bars; a three-student slide; a two-student slide; a spiral climbing element; a balance bar; and a steering wheel. The Left Play Area does not appear to include a transfer platform or ramp for persons with a mobility impairment to access those elevated play components.<sup>2</sup>

The Center Play Area consist of five (5) ground-level play components and eight (8) elevated play components. The five (5) ground-level play elements consist of the following: picnic table; pull-up bar; pole swing; balance beam; and toad stools. These ground-level play components provide four separate play types, such as exercise, rocking, balancing, and imaginative play. The eight (8) elevated play components consist of the following: a roller slide; two-person slide; spiral climber; bongo drums; monkey bars; two (2) maze panels; and a musical bell panel. The Center Play Area has an accessible ramp that overlaps the sidewalk yet does not create an abrupt change of level that exceeds 3/8 of an inch. This first ramp has a 34-inch-wide entry, is 11 feet long, and a slope of 4 degrees; it provides access to a maze panel and musical bell panel. At the end of the ramp is an enclosed, flat, hexagonal area with a 78 inch diameter. The second ramp, which has a 34-inch-wide entry, is 10 feet long, and has a 2.6 degree slope, begins at one side of the hexagon and links to another hexagonal area with the same dimensions. The second ramp provides access to the other maze panel and bongos.

The swing set has seven standard swings and one adapted swing. During OCR's January 2023 onsite, the height of the swings ranged between 25 and 28 inches above the Fill. During OCR's February 2023 onsite, OCR observed the concave indentations below the swings contained fresh Fill. With the additional Fill, the height of the swings ranged between 22 and 27 inches.

---

<sup>2</sup> OCR notes that Left Play Area has a flight of low-level and wide stairs/steps leading up to one side of the structure. It is unclear, however, whether the size and height of these steps meet the definition of "transfer steps" in the 2010 Standards (1008.3.2, 1008.3.2.1, 1008.3.2.2, and 1008.3.2.3).

**Table 240.2.1.2 Number and Types of Ground Level Play Components Required to be on Accessible Routes (Table 240)<sup>3</sup>**

<b>Number of Elevated Play Components Provided</b>	<b>Minimum Number of Ground Level Play Components Required to be on an Accessible Route</b>	<b>Minimum Number of Different Types of Ground Level Play Components Required to be on an Accessible Route</b>
1	Not Applicable	Not applicable
2 to 4	1	1
5 to 7	2	2
8 to 10	3	3
11 to 13	4	3
14 to 16	5	3
17 to 19	6	3
20 to 22	7	4

In sum, the Playground consist of eighteen (18) elevated play components, eight (8) ground-level play components, and four (4) different types of ground-level play components.

### **Analysis and Conclusion**

The Complainant and Parent allege that the Playground surface and ratio of ground-level to elevated play components do not meet the 2010 ADA Standards.

OCR’s investigation showed that the District kept essential records that indicate the Playground Fill complies with the 2010 ADA Standards with respect to the material of the ground surface, and that at installation in 2021, the ground surface complied with the 2010 ADA Standards. However, OCR’s investigation also showed that, although there is an intergovernmental agreement between the District and local park district to provide maintenance of the Playground, the District does not know the schedule of maintenance and does not keep records that establish the Playground surface is “inspected and maintained regularly and frequently to ensure continued compliance with ASTM F-1951.” Moreover, during both times it visited the Playground, OCR observed many areas near and around entrances/exits to the play components and composite structures in which the Fill was displaced (i.e., concaved indentations) resulting in changes in level that exceed ¼ inch, and areas in which Fill was added to remedy those areas of concaved indentations but the Fill was not tamped down and seemed loose.

In accordance with Section 302 of the CPM, a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR’s investigation of the portion of Allegation 2

<sup>3</sup> Table 240.2.1.2 available in full at [2010 ADA Standards for Accessible Design | ADA.gov](https://www.ada.gov/2010-ada-standards-for-accessible-design/)



involving the Playground surface, the District expressed interest in resolving the complaint and signed the enclosed Agreement to resolve the issues raised in Allegation 2. OCR will monitor the District's implementation of the Agreement.

Regarding the ratio of ground-level to elevated play components, OCR found that the Playground consist of eighteen (18) elevated play components and eight (8) ground play components, although the Gagaball Pit is not on an accessible route. Additionally, OCR found that the seven (7) ground play components consisted of four (4) different play types (swinging, rocking, balancing, imaginative play). According to the 2010 ADA Standards, a playground with eighteen (18) elevated play components is required to have six (6) ground level play components with three (3) different types of ground-level play components on an accessible route. Although, as described above, OCR observed that the ground surface material (Fill) is in a condition that makes it inaccessible for persons with mobility impairments to currently traverse, the Fill itself complies with the 2010 ADA Standards and the District has signed an agreement, pursuant to Section 302 of OCR's CPM, requiring the District to adequately inspect and maintain the Playground surface to ensure it remains accessible to persons with mobility impairment. Therefore, OCR concludes that the ration of ground-level to elevated play components at the Playground meets the requirements under the 2010 ADA Standards. Accordingly, OCR finds insufficient evidence to establish a violation of Section 504 or Title II, with respect to the portion of Allegation 2 regarding ratio of ground-level to elevated play components, as alleged.

This concludes OCR's complaint processing. 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.

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 filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint against the District with OCR 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.

OCR would like to thank the District for the cooperation and courtesy extended to OCR during our investigation. In particular, we wish to thank Mr. A. Lynn Himes, the District's counsel.

If you have any questions about this letter, please contact Mark Erickson, Senior Equal Opportunity Specialist, at 312-730-1574 or [Mark.Erickson@ed.gov](mailto:Mark.Erickson@ed.gov), or Christopher Farrelly, Attorney, at 312-730-1629 or [Christopher.Farrelly@ed.gov](mailto:Christopher.Farrelly@ed.gov).

Sincerely,

Marcela Sanchez-Aguilar  
Supervisory Attorney

Enclosure

cc: XXXXXXXXXXXXXXXXXXXXXXXX