



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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September 8, 2023

Dr. Joe Gothard
Superintendent
St. Paul Public Schools

Sent via email only to: joe.gothard@spps.org

Re: OCR Complaint # 05-23-1138

Dear Dr. Gothard:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution activities for the above-referenced complaint against Saint Paul Public Schools (District). Specifically, the Complainant alleges that the District discriminates against persons with physical and mobility impairments at Groveland Park Elementary (School) in that:

1. The School does not have an accessible entrance,
2. The School does not have an accessible route, and
3. The School playgrounds are not accessible.

OCR enforces 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 in any program or activity operated by recipient a 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 Section 504 and Title II.

During its investigation, OCR interviewed the Complainant and District staff and reviewed documents provided by the Complainant and the District. OCR also conducted an onsite visit to the School in June 2023. Prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint and OCR determined that it is appropriate to do so pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On September 5, 2023, the District submitted to OCR the enclosed Resolution Agreement (Agreement), which, when fully implemented, will address the evidence obtained and the allegations investigated. A summary of OCR's investigation to date and OCR's compliance concerns are explained below.

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 (2010 ADA Standards).¹ The regulation, at 28 C.F.R. § 35.151(c)(3), now provides, "If physical

¹ Available at <http://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm>.

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.

Background

The School is an elementary school serving District students in pre-Kindergarten through fifth grades. The School was constructed in 1921.

Allegation #1 and #2 – Entrance and Route

The complaint alleges that the School does not have an accessible route to an accessible entrance. Specifically, the Complainant alleges that the north entrance deemed accessible by the District is routinely blocked by service vehicles during school hours and that the route from the public sidewalk at St. Clair Avenue is in disrepair and also routinely blocked by vehicular traffic.²

The main entrance to the School is located on the south side of the school building, facing St. Clair Avenue, and is not accessible. The District has a designated accessible entrance on the north side of the School. The route to this entrance from the public sidewalk includes a sidewalk along the west side of the School building from St. Clair Avenue (or climbing ten stairs and following a sidewalk along the west side of a parking lot from Sargent Avenue), a driveway around the northwest corner of the School, crossing a small parking lot, and an approximately 27.5 foot ramp down to the accessible entrance. The ramp to the accessible entrance was built in 1996. The parking lot was last altered in 2002.

The School and accessible entrance were constructed prior to June 3, 1977, and therefore are considered existing facilities. The route to the accessible entrance was altered in 1996 when a ramp was built and again in 2002 when the parking lot which is part of the route was altered. Therefore, the UFAS or ADAAG Standards apply to the route alterations. The ADAAG § 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, ADAAG requires the width of an accessible route to be 36 inches (except at doors). Ground and floor surfaces along accessible routes must be stable, firm, and slip resistant. ADAAG § 4.3.7 provides that a route that has a running slope greater than 1:20 shall comply with the ADAAG’s ramp requirements, and that the cross slope on a route shall not exceed 1:50.

While conducting an onsite visit during school hours, OCR observed a delivery truck restricting access to the School’s accessible parking spot and the ramp on the accessible route leading to the accessible entrance. The District’s Executive Director of Operations and Administration (Director) confirmed to OCR that delivery trucks do at times restrict access to the accessible route during the school day. The Director also stated that the District had taken steps in the fall

² The Complainant provided OCR with photographs taken on different days showing delivery trucks, a garbage truck, and a school bus restricting access to the accessible parking spot, ramp and driveway along the accessible route to the accessible entrance during school hours.

2022 to limit waste removal services restricting access to the accessible route and entrance by changing the location where dumpsters and waste were stored and changing the time in which waste removal occurs to outside of school hours.

OCR further observed the deteriorated condition of the accessible route, with many areas of the route in the driveway and in the parking lot that were substantially cracked and uneven. OCR also found areas on the sidewalk and parking lot where the cross slope of the ground surface exceeded the ADAAG standards. The Director presented OCR with an ADA Access Review conducted in May 2023 and informed OCR that the District plans to make substantial improvements to the accessible route in the summer of 2024. These improvements include repaving the parking lot and driveway and changing the route to the accessible entrance so that it no longer shares the driveway with vehicular traffic.

Allegation #3 – Playground

The Complainant alleges that the School does not have an accessible playground.

School students utilize two separate playgrounds for recreation throughout the school day. One playground is located on School property to the west of the School building (Playground A). The second playground is located on property owned by the city of St. Paul, Minnesota (City), to the east of the School building (Playground B). Playground B was built³ and is maintained by the City. OCR confirmed with the Principal at the School (Principal), that students at the School utilize both Playground A and Playground B during the school day, even though the latter is not on School property.

The 2010 ADA Standards, at § 240 and § 1008, include scoping and technical requirements for play areas. The ADA 2010 Standards require that playgrounds include play components at ground and elevated levels for persons with disabilities. Additionally, at least one of each type of play component⁴ should be provided at ground level in a play area and must be on an accessible route. The accessible route is required to have a firm, stable, and slip-resistant surface that is able to be independently navigated by a person who uses a mobility device. Ground surfaces also must be stable, firm and slip resistant; and that changes in levels greater than ¼ inch should be ramped.

Playground A was installed in 2007, prior to the scoping and technical requirements delineated for playgrounds in the 2010 ADA Standards. The District added two additional ground level play components in 2012 and 2013 to which the 2010 ADA Standards apply.

Playground A is accessed by a sidewalk leading to a paved walkway that runs along the side of the play area to the playground entrance. Playground A consists of a large play structure with elevated play components and ground level play components. Playground A does not have an accessible route from the playground entrance to the play structure's transfer platform⁵, nor is

³ The District was unable to provide OCR with the date Playground B was constructed.

⁴ Different "types" of play components are based on the general experience provided by the play component. Different types include, but are not limited to, experiences such as rocking, swinging, climbing, spinning, and sliding. The 2010 ADA Standards delineate the number and type of ground-level and the percentage of elevated play components required for a playground.

⁵ OCR also noted transfer platforms with excessive heights that would not be accessible to students with mobility limitations.

there an accessible route from the playground entrance to the two ground level play components that were added in 2012 and 2013.⁶ The ground surface of Playground A consists of engineered wood fiber (EWF) which is inspected by the District once or twice a year with EWF added during each inspection. The District maintains that the EWF complies with ASTM F-1951, which has been incorporated by reference into the 2010 ADA Standards.⁷ OCR observed the EWF surface of Playground A to be undulating with dips in high traffic areas such as the base of the slides and other ground level play components. OCR observed several locations where the levels of EWF were low enough that the black netting of the container was visible.

Playground B consists of one large play structure with ground level and elevated play components, two sets of swings (including an accessible swing), a climbing structure, and two ground level rocking play elements. The accessible swing was installed in the 2022. The surface of Playground B is primarily sand with a poured in place (PIP) rubber walkway leading to the different play elements. However, OCR observed sand covering the PIP rubber walkway in places, making the surface slippery. OCR also observed areas where the PIP rubber walkway was too narrow to be accessible to a person with mobility limitations. Playground B does not have ramps or transfer platforms that would allow persons with mobility limitations to access the elevated play components.

Analysis and Resolution

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. Prior to the conclusion of OCR's investigation the District expressed interest in resolving the complaint allegations, and OCR determined that it is appropriate to resolve the allegations in this case prior to making a finding to address OCR's compliance concerns.

OCR has compliance concerns regarding the accessible route to the School's accessible entrance. Specifically, OCR has concerns that both the condition of the accessible route and the cross slope do not conform with the standards identified in the ADAAG. Additionally, OCR has concerns that the vehicular traffic blocking both the accessible route and the entrance during school hours prevents persons with disabilities from being able to access the School building.

OCR also has compliance concerns regarding the playgrounds used by the School's students. Although the District asserted that Playground A's ground surface of EWF was specifically designed for playgrounds, OCR has concerns that the ground surface is uneven and would not be able to be independently navigated by a person who uses a mobility device. Furthermore, OCR is concerned that the District only inspects and fills the surface twice a year and does not have a maintenance schedule to ensure Playground A's surface remains stable, firm, and slip-resistant. Playground A also lacks an accessible route to the ground level play components installed in 2012 and 2013 and to the transfer platform for the play structure installed in 2007. While Playground B includes a PIP rubber walkway, OCR has concerns that the rest of Playground B's

⁶ The 2010 ADA Standards at § 240.2 and § 1008.2 require ground level play components to be on an accessible route.

⁷ 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." 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 2010 ADA Standards also state that ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F-1951

ground surface is sand and that sand covering the walkway makes the walkway slippery. OCR also observed areas where the walkway is too narrow to be accessible for individuals with mobility limitations. Further, OCR has concerns that individuals with limited mobility are unable to access Playground B's elevated play components. Accordingly, OCR has concerns that the District does not provide an accessible playground for persons with physical and mobility impairments at the School.

Prior to the conclusion of OCR's investigation, the District signed the enclosed Resolution Agreement, which is fully aligned with the complaint allegations, the evidence obtained to date, and OCR's compliance concerns. It requires the District to ensure that Student A has an accessible route and entrance to his classroom for the 2023-2024 school year that is readily available and to provide Student A with a playground that is accessible to and usable by him. The Resolution Agreement further requires the District to develop a plan to ensure that the School's accessible route and entrance are not blocked or otherwise obstructed during school hour and to make modifications, repairs and/or alterations as necessary to provide an accessible route from the site arrival points to an accessible entrance in conformance with the 2010 ADA Standards. The District further agrees to evaluate the playgrounds used by School students and to develop and implement a Playground Plan that ensures the School's playground facilities are accessible to and usable by persons with mobility impairments. When fully implemented, the Resolution Agreement will address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the agreement until the District is in compliance with the terms of the Resolution Agreement and the statutes and regulations at issue. Upon determining the District's compliance, OCR will close the case.

Conclusion

This concludes OCR's complaint resolution activities with regard to 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 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 and Charles Long, Counsel for Saint Paul Public Schools, for the courtesy and cooperation extended to OCR during the investigation. 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.

Sincerely,

Melissa Katt
Supervisory Attorney

Enclosure

cc: Charles Long (*sent by email only to:* charles.long@spps.org)