



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
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July 25, 2023

Dr. Shelia Boozer
Superintendent
Champaign Community Unit School District 4

Sent by email only to: boozersh@u4sd.org

Re: OCR Docket #05-23-1197

Dear Dr. Boozer:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution activities for the above-referenced complaint against Champaign Community Unit School District 4 (District) alleging discrimination on the basis of disability. Specifically, the complaint alleges the District discriminates against persons with mobility impairments by failing to provide an accessible playground at Stratton Elementary School (School).

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 a recipient 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 at 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 the investigation, OCR reviewed information provided by the District. Prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint in accordance with Section 302 of OCR's *Case Processing Manual* (CPM). OCR determined that it is appropriate to resolve the complaint through the enclosed Resolution Agreement (Agreement). The applicable legal standards, the information gathered during the investigation, and the basis for OCR's determination is explained below.

Legal Standards

Accessibility, generally: 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 individuals with disabilities, be

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

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, 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.

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 shall, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities.

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 Standards), available at <https://www.ada.gov/law-and-regs/design-standards/2010-stds/>. 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 Standards.” The 2010 Standards include provisions specific to playground accessibility.

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 routes into and around the playground area, and the surface surrounding such structure or equipment. The 2010 ADA Standards, at § 240 and § 1008, include scoping and technical requirements for play areas. Playgrounds must include accessible routes to access the use zone as well as accessible routes to the ground-level and elevated play components.

The 2010 Standards, Chapters 2 and 10, at §240 and §1008, require that playgrounds include play components at ground and elevated levels for persons with disabilities. Additionally, at least one of each type of play component should be provided at ground level in a play area and must be on an accessible route. 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 Standards provide requirements for how many ground-level and elevated play components must be on accessible routes with a firm, stable, and slip-resistant surface that is able to be independently navigated by a person who uses a mobility device.

Facts

The School is a magnet school that teaches through an art lens using visual art, music, drama, and dance to engage students. The School enrolls approximately 450 elementary school students in grades kindergarten through eighth grade. The complaint alleges the District discriminates against students based on disability because the playgrounds at Stratton Elementary School are not accessible to persons with mobility impairments.

The District provided OCR with documentation regarding the playgrounds at the School, including photographs of the playgrounds as they appeared during the 2022-2023 school year. The School has two playgrounds – the East playground and the West playground.¹ The East playground is primarily used by students in kindergarten and first grade and the West playground is used by students in grades kindergarten through eighth grade. The East playground was originally constructed in 1998 and the West playground was constructed in 1999.

The District informed OCR in its data response that it planned to renovate both playgrounds to improve accessibility during the summer of 2023, and had already purchased equipment prior to having received notice of this OCR complaint.² Due to the planned renovations, OCR did not visit the School to ascertain whether the playgrounds meet applicable accessibility standards. However, from the data and photographs provided, OCR has concerns that the playgrounds have areas that are not accessible to persons with mobility impairments. In particular, the information provided by the District suggests that routes to portions of the playgrounds are not accessible;

¹ The School shares the building with the Champaign Early Elementary Childhood Center which has its own playground. Students from the School occasionally use this playground; however, OCR’s investigation is limited to the allegations regarding the East and West playgrounds at the School.

² The 2010 Standards at §240.1.1, which specifically addresses play area additions, provides that when play areas are designed and constructed in phases, the requirements of § 240 shall apply to each successive addition so that when the addition is completed, the entire play area complies with all the applicable requirements of § 240.

photographs from the 2022-2023 school year indicate that both playgrounds have wood chip surfacing throughout the use zone which does not provide a firm, stable, and slip-resistant accessible route to any of the play components as required by § 302.1 of the 2010 Standards. Further, from the photographs provided, it is not clear if each playground has accessible ground-level and elevated play components for persons with disabilities in the ratio required in by the 2010 Standards.

OCR was unable to review design plans as installation of the equipment and improvements to the playground surface are underway.³ However, the District informed OCR that its planned renovation of the East playground includes expansion of the play area by approximately 1800 square feet, and removal an overhead track ride and installation of an entirely new, large, play structure. The District will therefore need to ensure that play components are provided for students with mobility impairments at ground level and elevated points of entry. The District will also need to provide accessible routes to the play components for the items installed after the March 15, 2012, implementation date of the 2010 Standards. Where ground level play components are provided by the District, the District will need to ensure that one of each type shall be on an accessible route and comply with the provisions at §1008.4 of the 2010 Standards. Where two or more ground level play components are provided, the play components will need to be dispersed throughout the play area to ensure integration with other play components in order to comply with § 240.1 of the 2010 Standards. For the West playground, the District informed OCR that its planned renovation includes installation of four new play components and resurfacing the area of the playground. The District will therefore need to provide a firm, stable, and slip resistant accessible route to the newly installed accessible play components as required by §302.1 and 1008.2.6 of the 2010 Standards.

The District has informed OCR that the renovations are scheduled to be completed in approximately August 2023 before the 2023-2024 school year begins. Since the the renovations will be completed during the summer of 2023, the District will need to ensure the improvements to the playgrounds comply with the 2010 Standards related to Chapter 10, Play Areas. Upon completion of the work, OCR will conduct a site inspection.

Resolution

Based on the information provided to date, OCR identified compliance concerns regarding the accessibility of the two playgrounds at the School. However, because the District already planned renovations to improve the accessibility of both playgrounds, the District advised OCR that it wished to resolve the complaint pursuant to Section 302 of OCR's CPM.

The District executed the enclosed Agreement that, when fully implemented, will address the evidence obtained and the allegation investigated. OCR plans to conduct inspection of the two playgrounds once construction is completed. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statute(s) and regulation(s) at issue in his case.

³ To the extent the District plans to use rubberized mulch for the playground surface, it would not be compliant with the 2010 Standards, which requires accessible routes to be firm, stable, and slip resistant.

Conclusion

This concludes OCR's complaint resolution activities 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. OCR will monitor the District's implementation until the District is in compliance with the terms of the Agreement and the statute(s) and regulation(s) at issue. Upon determining the District's compliance, OCR will close the case.

The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate or discriminate against any individual because he or she filed a complaint or participated in the complaint resolution process. If this happens, the Complainant 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.

OCR would like to thank the District for the cooperation extended to OCR during the investigation. We particularly appreciate the cooperation of Ms. Kristen Kinast and Ms. Jennifer Smith, counsel for the District. If you have any questions regarding this matter, please contact Laura Paul, OCR Attorney, at 312-730-1546 or by email at laura.paul@ed.gov.

Sincerely,

Melissa Howard
Supervisory Attorney

Enclosure

cc: Jennifer A. Smith, Franczek P.C. (sent via email only to jas@franczek.com)
Kristen R. Kinast, Franczek P.C. (sent via email only to krk@franczek.com)