



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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July 12, 2023

Mr. Daniel Besson
President
Village of Hales Corners
5635 S. New Berlin Road
Hales Corners, WI 53130

Sent via email only to dbesson@halescorners.org

Re: OCR 05-23-4008

Dear Mr. Besson:

This letter is to notify you of the determination made by the U.S. Department of Education (Department), Office for Civil Rights (OCR) regarding the complaint filed with the U.S. Department of Justice (DOJ) against the Milwaukee County Federated Library System about the Village of Hales Corners Public Library alleging discrimination on the basis of disability. DOJ referred the complaint to OCR on December 13, 2022.

Specifically, the complaint alleges that the Village of Hales Corners Public Library (Library) discriminates on the basis of disability against mobility impaired patrons of the Library because:

- 1) the restrooms, water fountains and computer rooms are inaccessible; and
- 2) the Library fails to provide program access to programs it offers.

OCR enforces 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. Title II prohibits discrimination on the basis of disability by public entities. As a public entity, the Library is subject to Title II.

During its investigation, OCR reviewed documents provided by the Complainant and the Village of Hales Corners, and interviewed the Library Director, the Village President and the Village Treasurer. OCR also conducted a physical review of the Library.

Prior to OCR completing its investigation, the Library expressed an interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. OCR determined that a resolution agreement is appropriate for addressing a portion of this case because OCR's investigation identified concerns that can be addressed through a resolution agreement. A summary of OCR's investigation to date, determinations and the resolution agreement follows.

Legal Standards

The regulation implementing Title II, at 28 C.F.R. § 35.149, states that no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

Existing Facilities

Under Title II, an "existing facility" is a building, or part thereof, where construction was commenced on or before January 25, 1992. The Title II regulation, at 28 C.F.R. § 35.150, requires public entities to operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities (the "program accessibility standard").

Accessibility of existing facilities is determined not by compliance with a particular architectural accessibility standard, but by considering whether a public entity's program, service, or activity offered within an existing facility, when viewed in its entirety, is accessible to and usable by individuals with disabilities. The public entity may comply with the existing facility standard through the reassignment of programs, services, and activities to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, services, and activities, when viewed in their entirety, accessible to individuals with disabilities. In choosing among available methods for redressing program inaccessibility, the public entity must give priority to those methods that offer programs, services, and activities to individuals with disabilities in the most integrated setting appropriate as well as methods that entail achieving access independently and safely.

The concepts of program access and facilities access are related, because it may be necessary to remove an architectural barrier in order to create program access. For example, a program offered exclusively in a particular building may not be accessible and usable to individuals with disabilities absent the provision of physically accessible features. Under such circumstances, facility accessibility standards may be used to guide or inform an understanding of whether persons with disabilities face barriers to participating in the program, service, or activity provided in a particular facility. The 2010 Standards may be used as a guide to understanding whether individuals with disabilities can participate in or benefit from the program, activity, or service of a public entity subject to Title II.

New construction and alterations

For the purposes of Title II, "new construction or alterations" is defined as any construction of or alterations to a facility or a part of a facility on or after January 26, 1992. The regulations provide that each facility or part of a facility constructed by, on behalf of, or for the use of the public entity 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 disabilities. The regulations further provide that

each facility or part of a facility altered by, on behalf of, or for the use of the public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

In general, an “existing facility” may comply with the “program access” requirement through the redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other method that results in making each of its programs, services, or activities accessible to persons with disabilities. The institution is not required to make structural changes to existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for providing program access, the institution or public entity shall give priority to those methods that offer programs, services and activities to disabled persons in the most integrated setting appropriate.

When a public entity makes alterations to a primary function area, meaning an area where major activities take place, additional accessibility is required. Restrooms are not primary function areas unless the provision of restrooms is a primary purpose of the area, for example, in highway rest stops. Alterations to primary function areas trigger an accessible "path of travel" requirement, that is, a requirement to make the path of travel from the entrance to the altered primary function area -- and telephones, restrooms, and drinking fountains that serve the altered area -- accessible.

A public entity is not required to spend more than 20% of the cost of the original alteration on making the path of travel accessible, even if this cost limitation results in less than full accessibility. When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

Background

The Library was constructed in 1984 and opened in 1985. The Library building is comprised of two levels. Each level has a separate accessible entrance with accessible parking, an accessible path of travel and accessible doors. There are stairs connecting the two levels but not an elevator.

The upper level of the Library contains the collections, circulation and information desks, two restrooms, computers with desks, a boardroom, staff areas, equipment and other items integral to its operation. The lower level contains a multi-purpose room for meetings and events, a storage room, a local health department office, a historical society office, a cable broadcasting room, and a small kitchen area. Most of the Library's functions occur on the upper floor.

No alterations or modifications have been made to the Library except that in 2010 or 2011¹ the sunken floor area of the Library reserved for children's programming was leveled.

The water fountain on the upper level has not been altered since 1984. There is a stool placed underneath the fountain to assist shorter patrons and children to access the fountain. This stool can be moved to allow for wheelchair access. There is no water fountain on the lower level.

There are multiple desks throughout the upper level with computers for public use. Each desk also has a chair which may be moved to allow for wheelchair access, although one desk may not allow for use of a wheelchair due to the height of the desk. There are also two small rooms designated for computer use on the upper level. These rooms are marked "computer room 1" and "computer room 2". Each room also has a chair which can be moved to allow for wheelchair access. There are no public computers on the lower level.

As for access to Library programs, the Library Director told OCR that it is the Library's policy to offer to assist patrons, whether or not they are disabled, with locating and securing books or any other library materials. The Director explained that this is done to be helpful as well as to assist those patrons who do not have easy access to another level of the Library. While the majority of Library programs are held on the upper level, there are times when the Library hosts programs and other events on the lower level. However, both entrances are accessible.

Analysis

The complaint alleges that the Library's restrooms, water fountains and computer rooms are inaccessible, and the Library fails to provide program access to programs it offers.

OCR analyzed whether the Library ensured equal access to its programs and activities to people with disabilities. Federal regulations require that state and local governments ensure that, when viewed in their entirety, their programs and activities are accessible to people with disabilities. 28 C.F.R. Part 35.150

The Library's alteration of the children's area in 2010 or 2011 is considered an alteration to a primary function area of the Library. Such alterations trigger an accessible "path of travel" requirement, that is, a requirement to make the path of travel from the entrance to the altered primary function area -- and restrooms and drinking fountains that serve the altered area -- accessible. This "path of travel" requirement does not include the computer desks or the computer room. Therefore, OCR finds that the Library is not required to make any changes to those spaces. The path of travel does include the water fountain and OCR found the water fountain to be accessible. Therefore, the water fountain was not made part of the enclosed agreement.

As for the Library's general program access, OCR found that the Library complies with the "program access" requirement through the use of staff to assist patrons with retrieving books or

¹ The Library did not maintain any documentation related to this modification and was unable to produce documentation of the modification to OCR.

other Library materials from an inaccessible location. The Library Director explained to OCR that when programs or activities are held in the lower level additional staff is assigned to assist patrons with disabilities (as well as patrons without disabilities).

OCR identified concerns that the restrooms on the upper level of the Library were not fully accessible. The attached Agreement addresses this issue.

Conclusion

The Library executed a resolution agreement that, when fully implemented, will address the compliance concerns discussed above. The agreement requires the Library to ensure that it provides on the upper level of the Library at least one restroom available to staff and patrons that is in compliance with the 2010 ADA Standards.

OCR will monitor the implementation of the agreement until the Library is in compliance with its terms and the statutes and regulations at issue in the case. A copy of the agreement is enclosed with this letter.

This concludes OCR's investigation of the complaint and should not be interpreted to address the Library'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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), 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 that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

OCR would like to thank Remzy D. Bitar, attorney for the Library. If you have any questions about this letter, you may contact Susan Johlie, Attorney, at Susan.Johlie@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure