



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

May 1, 2018

VIA U.S. MAIL

Marlin Berry, Superintendent
Rogers Public Schools
500 W. Walnut St.
Rogers, AR 72756

Re: OCR Complaint No. 06151367

Dear Superintendent Berry:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Rogers Public Schools (RPS, District, or Recipient) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), alleging discrimination on the basis of disability. Specifically, the Complaint alleged that specific areas of some of the buildings in the District were inaccessible to people with disabilities.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by certain public entities. As a recipient of Federal financial assistance from the Department and a covered public entity, the Recipient is subject to Section 504, Title II and their implementing regulations. Therefore, OCR has jurisdictional authority to process this complaint.

Accordingly, OCR opened the following issue for investigation:

- Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by RPS because the allegedly inaccessible components listed at the allegedly inaccessible locations below, are inaccessible to or unusable by persons with disabilities, in violation of Section 504 and Title II, at 34 C.F.R. §§ 104.21-104.23, and 28 C.F.R. §§ 35.149-35.151, respectively.

Legal Authority:

Section 504 and Title II prohibit people, on the basis of disability, from being excluded from participation in, being denied the benefits of, or otherwise being subjected to discrimination by recipients of federal financial assistance or by public entities. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130. People with disabilities must have equal access to recipients' programs, services, or activities unless doing so would fundamentally alter the nature of the programs, services, or

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

activities, or would impose an undue burden. 28 C.F.R. § 35.164. Both Section 504 and Title II prohibit affording individuals with disabilities an opportunity to participate in or benefit from aids, benefits, and services that is unequal to the opportunity afforded others. 34 C.F.R. § 104.4(b)(1)(ii); 28 C.F.R. § 35.130(b)(1)(ii). Similarly, individuals with disabilities must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or the same level of achievement as others. 34 C.F.R. § 104.4(b)(2); 28 C.F.R. § 35.130(b)(1)(iii). An individual with a disability, or a class of individuals with disabilities, may be provided with a different or separate aid, benefit, or service only if doing so is necessary to ensure that the aid, benefit, or service is as effective as that provided to others. 34 C.F.R. § 104.4(b)(1)(iv); 28 C.F.R. § 35.130(b)(1)(iv). In sum, programs, services, and activities must be operated in ways that comply with Section 504 and Title II.

Investigation To Date:

To date, OCR has investigated this complaint by reviewing information provided by the Complainant and the Recipient. OCR has conducted a preliminary assessment of several of the accessibility issues raised in this complaint. The Complainant alleged the following accessibility issues:

Elementary Schools:

1. Grace Hill Elementary (GHE): Teachers' lounge has an inaccessible restroom (stall doors too narrow, no stall turn radius, and no knee space); 100 hall girls' restroom has no accessible stall; 100 hall boys' restroom lavatory is the inappropriate height; 100 hall classrooms have no turn radius at water closets,¹ and classroom sinks and drinking fountains have no knee space; there is a trip hazard on the accessible ramp outside of the 200 hall building's double doors; nurse's office restroom has no turn radius at the toilet; office area restrooms have insufficient turn radius; kitchen restroom has no clear floor space; classroom restroom doorways are too narrow, have no grab bar, and no turn radius at the water closet;
2. Frank Tillery Elementary (FTE): 100 hall classrooms lack clear knee space at the sinks and drinking fountains; the office restrooms lack proper turn radius at the water closets; the gymnasium floor threshold is too high; gymnasium restrooms have no accessible stalls; drinking fountains near the main office lack proper knee space; braille restroom signs are too high;
3. Garfield Elementary (GE): The drinking fountain near the office restroom has inaccessible handles and no knee space; the Ross building's boys' and girls' restrooms have no accessible stalls; the upstairs teachers' restroom is inaccessible (i.e., no turn space at toilet, handle located on the wrong side of water closet, inaccessible lavatory handles due to incorrect placement, and no grab bars); no accessible entrance to the main building; kitchen has no clear knee space and the counter is too high; boys' restroom has an object obstructing its entrance; boys' restroom has several steps in its only entry and has no accessible stall; kitchen restroom has steps as only entry and no turn radius at water closet; GE is a two-story

¹ Water closet and toilet are used interchangeably for purposes of this notification letter.

building with classrooms upstairs and there is no ramp or elevator for mobility impaired students and/or staff;

4. Bonnie Grimes Elementary (BGE): All 100 hall classroom restrooms are not accessible; nurse's station restroom lacks proper turn radius in front of toilet; 100 hall teacher restrooms lack turn radius in front of toilet;
5. Russell Jones Elementary (RJE): 100 hall accessible restroom does not have sufficient turn space at toilets;
6. Westside Elementary (WE): Restroom in kitchen has no turn radius at the toilet; 100 hall classroom restrooms have no turn radius at the toilet; 200 hall classroom sinks and drinking fountains lack knee space; 300 hall restrooms lack sufficient turn space; 300 hall classroom sinks have no knee space; all classroom doors have round knobs and not levers (i.e., inaccessible handles); sink and drinking fountain in music room lack sufficient knee space; counselors office restroom lacks turn radius at toilet; classroom doors to the outside of the building have steps and are inaccessible to mobility impaired individuals;
7. Eastside Elementary (EE): Restrooms in the 100, 200, and 300 hallways have no accessible stalls; 100 hall classroom restrooms have no wheelchair access; 100 hall classroom sinks and drinking fountains lack knee space; classroom doorknobs are round (i.e., inaccessible); office restroom lacks turn radius at toilets; nurses station restroom lacks turn radius at toilets; kitchen restroom lacks turn radius at toilet; kitchen restroom entry doorway is too narrow; drinking fountain in the hallway restroom too high and blocking egress;
8. Reagan Elementary (RE): Restrooms in 100 hall classrooms have no turn radius at toilet; office restrooms have no turn radius at toilet; kitchen restroom has no turn radius at toilet;
9. Bellview Elementary (BE): Nurses' station bathroom has a step to enter the shower and soap dispenser is leaking onto grab bar, causing a slip hazard; kitchen sink lacks proper knee space; kitchen toilet lacks grab bars, towel dispenser is too high, kitchen cabinet blocks turn radius at toilet, and egress from kitchen to its restroom is insufficient; 300 wing restroom has inappropriate height for children and adults for the water closet and lavatory, and restroom sinks lack sufficient knee space; room 201's restroom lacks turn space at toilet and sink lacks knee space; room 211's restroom soap leaks onto grab bar causing a hazard; 200 wing classroom sinks lack knee space; library sink lacks knee space; room 140's toilet has insufficient turn space and the dispenser is too high; room 301's kitchen sink lacks sufficient knee space; room 321's tampon and towel dispenser is too high; 400 Kindergarten wing has inappropriate lavatory and water closet heights for children and adults; 400 wing drinking fountains and sinks all lack sufficient knee space;
10. Old Wire Elementary (OWE): Office restroom lacks sufficient turn radius at toilet; nurses' station sink lacks proper knee space; commons area accessible stall has insufficient turn space; room 116's braille sign is an inappropriate height and there are no grab bars in restroom; gymnasium has child height water closet and lavatory, with adult height drinking fountain;

11. Mathias Elementary (ME): Adult restroom near the janitor's office lacks proper turn radius at the toilet; kitchen's rear entrance (from the accessible parking lot) has a ramp with an incline that is too steep; kitchen restroom has no turn radius at toilet; room 201 has its handle on wrong side of water closet;

12. Lowell Elementary (LE): 200 hall restroom has an accessible stall; gym drinking fountain incorrect height; gym toilet has insufficient turn space; 400 hall accessible stall has insufficient turn and knee space; 100 hall lacks an accessible stall; all adult restrooms lack turn radius at toilets, including the nurses' station restroom; office restroom lacks turn radius at toilet; kitchen restroom lacks turn radius at toilet; LE annex building lacks turn radius toilet in two restrooms and no knee space at kitchen sink; classroom doors to outside of the building have a step; kitchen counter has no knee space and the counter is too high; there is no clear knee space under classroom sinks and their accompanying drinking fountains;

13. Tucker Elementary (TE): N.W. hall restroom's accessible toilet stalls have insufficient turn space; kitchen restroom has insufficient turn space, grab bar is too small, and towel dispenser too high;

14. Northside Elementary (NE): Kitchen restroom lacks proper turn radius at toilet, and round knob (i.e., inaccessible) on kitchen restroom door; step at outside entry classroom door, therefore making classroom outside exits inaccessible; boys' restroom entrance by the janitor's office obstructed, accessible stall has handle on wrong side of water closet, and no grab bar; girls' restroom stall missing grab bar; all classroom restrooms lack sufficient turn radius at water closets; office restroom lacks an accessible stall; classroom sinks and drinking fountains lack knee space; library sink lacks knee space; adult restrooms lack turn radius at toilets and lack knee space;

Middle/Junior High Schools:

15. Oakdale Middle (OM): Faculty bathrooms in the teachers' lounge have doors that are too narrow; kitchen restroom is inaccessible (i.e., no turn radius/turning space, doorway too narrow, and no grab bars); kitchen restroom has no turn radius at water closet and entry doorway too small; coaches' restroom has no turn radius at water closet or shower; teachers' lounge has no accessible stall; boys' and girls' restroom near science wing have no accessible stall; nurses' station has no turn radius at toilet; fieldhouse has a step to enter shower; boys' locker room shower handle at 56" (i.e., inappropriate height), and drinking fountain lacks proper knee space;

16. Greer Lingle Junior High (GLJH): Main office area restroom has no fire strobe and bathroom stall door is an inappropriate height; restroom near principal's office has a handle on wrong side of toilet; hallway drinking fountains have no knee space; gymnasium dressing room's accessible restroom stall has its handle on wrong side; sixth grade boys' restroom accessible stall has its handle on wrong side; eighth grade girls' accessible stall has handle on wrong side, and towel dispenser is more than 48" from floor; kitchen restroom has no fire strobe, no grab bars, and no knee space; and, coaches' offices have no turn radius at toilets, no grab bar, no fire strobe, no knee space, and a step to enter the showers;

17. Elmwood Junior High (EJH): Restrooms have no accessible stalls; commons' drinking fountains at incorrect height; coaches' offices lack turn radius at toilet; kitchen restroom has no turn radius at toilet; locker room's accessible shower stall has an inaccessible handle;

High Schools:

18. Rogers High School (RH): Room 1152's kitchen has no knee space at sink; commons girls' restroom towel dispenser is too high; nurses' station sink lacks knee space;

19. Heritage High School (HH): E hall's girls' restroom counter is the inappropriate height; wheelchair and ambulatory stall grab bars obstructed with dispenser; E hall's boys' restroom side grab bar obstructed; accessible stall lacks sufficient turn space at toilet; D hall's girls' restroom's accessible stall lacks sufficient turn space and grab bar obstructed; boys' and girls' restroom in the auto shop lack accessible stalls; athletic center's restrooms lack an accessible stall and proper knee space at lavatory, showers have step to enter, and the shower handle is inappropriate height;

Other:

20. Administration Building (Admin): Men's restroom is inaccessible; reception area accessible stall has insufficient turn space; upstairs men's restroom has insufficient turn space; basement restrooms (at the lounge area) lack proper turn radius at toilet and no grab bars; doorways not wide enough to accommodate a wheelchair; lounge and kitchen restroom are accessible only by stairs;

21. School Services (David Caldwell Complex---where all of the buses and spaces are maintained, according to the complainant): Restrooms by kitchen lack proper turn radius at water closet and no fire strobe; kitchen counter is more than 34 inches high; no knee space at kitchen sink; restrooms in bus lounge lack turn radius at toilets and doorways too small; maintenance restroom has insufficient turn radius at water closet; no knee space at the drinking fountain in the bus bay; both upstairs and downstairs hall restroom have no turn radius at the toilets;

22. Pre-Kindergarten Building (Pre-K): Men's restroom's accessible stall lacks sufficient turn radius, and lavatory lacks proper knee space, handle on wrong side of water closet, towel dispenser and hand dryer too high, lavatory blocks egress; classroom sink and drinking fountain lack knee space; nurses' station sink lacks knee space;

23. ESOL Building (ESOL): Kitchen has no knee space at sink and counter too high; both restrooms in building have no turn radius at the toilets; and,

24. Annex Building (Annex): Room 414 towel dispenser out of reach for mobility impaired individuals; New Tech area girls' accessible stall has insufficient turn space and handle on wrong side; 400 hall drinking fountain has no knee space; gym drinking fountain missing handle; boys' locker room accessible stall's handle on wrong side; kitchen restroom lavatory lacks knee space and handle on wrong side of the water closet, no fire strobe, and towel and

soap dispenser too high; office area accessible stall handle on the wrong side and no fire strobe; coach's restroom lack turn radius at the toilet, and no grab bar.

OCR conducted a preliminary examination of the information provided by the Complainant, the data responses from the Recipient, and data collected by OCR during an on-site visit to RPS in February of 2017, and found possible compliance concerns as to whether the items identified by the Complainant are accessible to individuals with disabilities. For example, OCR had concerns about the height of some paper towel dispensers and the possible obstruction of some grab bars in certain student restrooms.

Prior to the completion of OCR's investigation, the Recipient asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On May 1, 2018, the Recipient submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the commitments the Recipient has made in the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the Recipient's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the Recipient has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

If the Recipient fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the Recipient written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint and should not be interpreted to address the Recipient'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 Recipient may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file a complaint alleging such treatment.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it 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 looks forward to receiving the Recipient's first monitoring report by August 31, 2018. For questions about implementation of the Agreement, please contact Craig Nydick, who will be monitoring the Recipient's implementation, by e-mail at craig.nydick@ed.gov or by telephone at (214)-661-9622. For questions about this letter, please contact me at (214)-661-9600.

Sincerely,

Melissa Huling Malonson
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

cc: X---Name Redacted---X (X---Email Redacted---X), Outside Counsel