



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

ONE PETTICOAT LANE
1010 WALNUT STREET, SUITE 320
KANSAS CITY, MO 64106

REGION VII
ARKANSAS
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

August 25, 2020

SENT VIA EMAIL

XXXX XXXXX XXXX XXXXXXXXXXXXXXXX
XXXX XX XXXX
XXX XXXX XXXX XXXXX
XXXX XXXXX XXXXXX XXXXX

Re: Phoebe Apperson Hearst Library
OCR Case Number: 07-17-4015

Dear XX. XXXXX:

The United States Department of Education (Department), Office for Civil Rights (OCR), received a complaint referral from the United States Department of Justice alleging discrimination on the basis of disability by the Phoebe Apperson Hearst Library (Library), in Lead, South Dakota. This letter is to confirm the City of Lead (City) has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.¹

The complaint alleged that there is no accessible entrance to the Library facility, the main floor of the library is narrow and difficult to access for individuals in a wheelchair and the children’s section of the Library is located in the Library’s basement and is inaccessible to individuals with mobility impairments. The XXXXXXXXXXX XXXXXXXXX walks with the assistance of forearm crutches and is unable to navigate the stairs to the children’s section.

OCR enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public libraries. Under Title II, OCR has enforcement jurisdiction over public libraries.²

OCR investigated whether individuals with mobility disabilities are excluded from participation in, or are denied the benefits of, services, programs, or activities of the Library, in violation of Title II. OCR interviewed the complainant, communicated with the Library and conducted a site visit.

The Title II regulations contain two standards for determining whether a public entity’s programs, activities and services are accessible to individuals with disabilities. One standard applies to existing facilities, and the other covers new construction and alterations. The

¹ The Phoebe Apperson Hearst Library is operated as a department of the City of Lead, South Dakota.

² 28 C.F.R. 35.190(b)(2)

applicable standard depends upon the date of construction and/or alteration of the facility. Under the Title II regulations, existing facilities are those for which construction began the before January 26, 1992.

For existing facilities, 28 C.F.R. § 35.150(a) requires a public entity to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. This standard does not necessarily require that a public entity make each existing facility or every part of an existing facility accessible if alternative methods are effective in providing overall access to the service, program, or activity.

The City informed OCR that when the original site of the Library was destroyed by fire in 1984, the Library moved to a temporary location for more than a year before moving to its current location in 1986. The building where the Library is currently housed was constructed in the 1940s. The City asserted that the Library has not been renovated or altered since 1991. The Library has moveable shelves, bookcases, and other furniture that can be rearranged. Because OCR did not readily identify any post-1991 renovations or alterations during its onsite visit on August 15, 2017, OCR concluded that the Library is an existing facility governed by the regulation at 28 CFR § 35.149. Under the existing facilities standard, the Library is required to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities.

During OCR's site visit, the City provided OCR with an approved Library Board of Trustees policy. The policy states that the Library "is committed to providing equitable access to information to all members of the community." The City, through its City Administrator, also expressed its interest in resolving the complaint allegation. OCR did observe that the library entrance does not have an accessible door for individuals with mobility impairments and access to the children's section requires the use of a stairway.

In accordance with Section 302 of OCR's *Case Processing Manual*,³ a complaint may be resolved at any time when, before OCR issues its final determination, the recipient expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve the issues under investigation with an agreement. In light of the City's willingness to address the concerns identified by OCR without further investigation, OCR determined that entering into a voluntary resolution agreement is appropriate. The Agreement requires the City to evaluate its current services, policies, and practices, and the effects thereof, and determine which services, policies, and practices do not or may not meet the requirements of Title II; to develop a plan to bring the Library into compliance with Title II; to provide OCR a copy of the evaluation, plan and timeline of alterations and modifications; and to provide individual assistance to individuals who need assistance. Subsequent discussions with the Library resulted in the Library signing the attached Agreement on August 19, 2020, which when fully implemented will address the concerns in the complaint.

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.

³ OCR's Case Processing Manual may be accessed at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

This concludes OCR's investigation of this complaint. A complainant may have the right to file a private suit in Federal court regardless of OCR's determination.

Please be advised that the City and Library may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, that individual may file a complaint with OCR.

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, it 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 will monitor the implementation of the Agreement and will close the complaint when OCR determines that the terms of the Agreement have been satisfied. The first report under the Agreement is due by August 28, 2020.

If you have any questions, please contact XXXXXX XXXXXXXXXXXX, Attorney, at (XXX) XXX-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXXX.XXXXXXXXXXX@ed.gov.

Sincerely,

J. Earlene Gordon
Supervisory Attorney

Attachment