



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

September 23, 2019

Sent via email only to XXXXXXX@XXXXXX

XXXXX XXXXXXXX, XXXX
XXXXX XXXXX XXXXX
XXXXX XXXXXXX XXXX
XXXXXX, XXXXXXX XXXX

Re: Francis Howell R-III School District
OCR Case Number: 07-19-1141

Dear XXXXXXXX:

On March 28, 2019, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint regarding your client, the Francis Howell R-III School District (District), St. Charles, Missouri, alleging discrimination on the basis of disability. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

In a May 17, 2019 letter, OCR informed the District it would investigate whether:

1. the District discriminated against the Student on the basis of disability when it denied the Student an equal opportunity to participate in the District’s athletic program, specifically as a member of the track and field team, in violation of 34 C.F.R. §§ 104.4 and 104.37(c) and 28 C.F.R. § 35.130; and
2. the District’s High School provides an accessible entrance to the high school, and the door and route for students to access the track/shot put practice area is accessible to students with mobility impairments consistent with the requirements of 34 C.F.R. §§ 104.21 and 104.22 and 28 C.F.R. § 35.130.

OCR is responsible for enforcing:

- 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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA).

- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

As a recipient of FFA from the Department and a public entity, the District is subject to Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

To protect individuals' privacy, the names of employees and other parties were not used in the letter.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of or otherwise be subjected to discrimination under any program or activity that benefits from or receives FFA. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a). Prohibited discrimination by a recipient or public entity includes: denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits or services offered by that recipient or public entity; affording a qualified person with a disability an opportunity to participate in or benefit from aids, benefits or services that is not equal to that afforded others; and providing a qualified person with a disability with aids, benefits or services that are not as effective as those provided to others.¹

The Section 504 and Title II regulations also state that no qualified person with a disability shall, because a covered entity'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 of the entity's programs or activities.² The regulations reference standards for determining whether an entity's programs, activities, and services are accessible to individuals with disabilities depending upon whether the facilities are determined to be existing construction, new construction, or alterations. The applicable standard depends upon the date of construction or alteration of the facility. For purposes of determining accessibility, a "facility" is defined at 34 C.F.R. § 104.3(i) to include "all or any portion of buildings, structures, equipment, roads, walks, parking lots or other real or personal property or interest in such property." Under 28 C.F.R. § 35.104, a "facility" means "all or any portion of buildings, structures, sites, complexes, equipment, ... walks, ...or other real or personal property, including the site where the building, property, structure or equipment is located."

For existing facilities, the regulations require an educational institution 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 compliance standard is referred to as "program access." This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access

¹ 34 C.F.R. § 104.4(b)(1)(i)-(iv); 28 C.F.R. § 35.130(b)(1)(i)-(iv).

² 34 C.F.R. § 104.21; 28 C.F.R. § 35.149.

to the service, program or activity.³ Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. Under Title II, existing facilities are those for which construction began on or before January 26, 1992.

To provide program access in existing facilities, an institution may use such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternative accessible sites, alteration of existing facilities, construction of new facilities, or any other methods that result in making its program or activity accessible to persons with disabilities. A recipient is not required to make structural changes in existing facilities where other methods are effective in providing program access. However, in choosing among available methods for providing program access, the institution is required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.⁴ Where programs or activities cannot or will not be made accessible using alternative methods, structural changes may be required in order for recipients to comply.

For new construction, the facility or newly constructed part of the facility must itself be readily accessible to and usable by persons with disabilities.⁵ With regard to alterations, each facility or part of a facility that is altered by, on behalf of or for the use of an institution after the effective dates of the Section 504 and/or Title II regulation in a manner that affects or could affect the usability of the facility or part of the facility must, 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.⁶ Under Section 504, for construction or alterations commencing on or after March 15, 2012, recipients of Federal financial assistance may choose to comply with the Uniform Federal Accessibility Standards (UFAS) or the 2010 ADA Standards for Accessible Design (2010 Standards). The Title II regulation provides that public entities are required to comply with the 2010 ADA Standards for Accessible Design (2010 Standards) for construction or alterations commencing on or after March 15, 2012.

Preliminary Investigative Findings

During the 2018-19 School year, the Student was in the XX^h grade and a member of the high school's track and field team. The Student uses XXXXXXXX. The Complainants alleged the District failed to ensure appropriate modifications were in place in a timely manner, which would allow the Student access to the shot put practice area. The Complainants stated last year, the District XXXXX to transport XXXXXXX from the building to the outdoor shot put practice area but that the cart had not been made available to the Student at the start of the 2018-19 track season. The Complainants further alleged there was not an accessible route from the High School's Activities Office/weight room area to the High School stadium complex where the track is located or the shot put practice area. The Complainants also stated there are inaccessible entrances/exits located in areas of the High School building.

³ 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a).

⁴ 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b).

⁵ 34 C.F.R. § 104.23(a); 28 C.F.R. § 35.151(a).

⁶ 34 C.F.R. § 104.23(b); 28 C.F.R. § 35.151(b).

The District's High School is not registered as a historical site nor has application been made to register it as a historical site. According to the District's response (information provided in a letter dated May 31, 2019 from the most recent architectural firm (the Firm) to work with District on the last two phases of construction), the current high school building was constructed in three phases:

- Phase 1 (completed in 1992) includes the practice gym, the Band and Choir rooms, and the Auditorium. (This phase was not completed by the current "project team.")
- Phase 2: (completed in 2012)⁷ includes the Academic Building, Main Entrances, Commons, classrooms.
- Phase 3: (completed in 2013) includes the Field House (gymnasium), Locker rooms, weight room, and Activities Office.

In 2013, the District completed the section of the High School where the Activities Office is located, making this area and any related routes subject to the accessibility standards for new construction and alterations, including the requirement that at least one accessible route be provided within the site from site arrival points to an accessible building entrance and that at least one accessible route connect accessible facilities on the same site.

OCR conducted a site visit on July 24, 2019, during which OCR inspected the routes from the Activities Office to the track and shot put practice area, the entrances/exits along the route, and the High School's main entrance.

Resolution

On August 29, 2019, the District expressed interest in voluntarily resolving this complaint pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*.⁸ Prior to the completion of OCR's investigation into this complaint, the District submitted a signed Agreement (copy enclosed) on September 20, 2019, that, when fully implemented, will address the allegations of this complaint. The Resolution Agreement requires the District to develop and implement a plan for ensuring an accessible route to the track and shot put practice areas, for ensuring noted doors and doorways comply with relevant accessibility standards, and for ensuring the provision of designated points of contact and procedures regarding the necessary modification in order to afford the Student an equal opportunity to participate on the track and field team. Please consult the Agreement for further details.

OCR considers the allegation of this complaint resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails

⁷ The District did not provide an exact date when Phase 2 was completed but groundbreaking occurred prior to March 15, 2012.

⁸ The *Case Processing Manual* is available on OCR's website at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

to carry out the Agreement, OCR may resume investigating the complaint.

The District 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, please be advised 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.

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. Complainants may have the right to file a private suit in Federal court whether or not OCR finds a violation.

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX, Attorney, at (XXX) XXX-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXXXX@ed.gov. Thank you for your cooperation.

Sincerely,

Kelli Douglas
Supervisory Attorney

Enclosure