



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VII  
ARKANSAS  
KANSAS  
MISSOURI  
NEBRASKA  
OKLAHOMA  
SOUTH DAKOTA

June 29, 2023

*Sent via email only, to: XXXXXX.XXXXXXX*

XXXXXX XXXXXX, Director  
Pine Bluff Main Library  
600 S. Main Street  
Pine Bluff, Arkansas 71601

Re: Pine Bluff Main Library  
OCR Complaint No. 07234007

Dear XX. XXXXXX:

On January 6, 2023, the U.S. Department of Education, Office for Civil Rights received a complaint against the Pine Bluff Main Library (Library), located in Pine Bluff, Arkansas, alleging the Library discriminates against individuals with disabilities. Specifically, the complainant alleged she wanted to access information on the second floor of the Library, but the elevator is not working. This letter is to confirm that the Library has voluntarily entered into an agreement to resolve this complaint.

Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, prohibit discrimination against qualified individuals with disabilities by public entities. OCR has delegated enforcement authority over public libraries under Title II. Because the Library is a public library, it is subject to Title II and to OCR's jurisdiction. Additional information about the laws that OCR enforces is available on our website at <http://www.ed.gov/ocr>.

### **Legal Standard**

The accessibility requirements of the Title II implementing regulations are located at 28 C.F.R. §§ 35.149-35.151. These regulations, at 28 C.F.R. § 35.149, provide that no qualified individual with a disability be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity because a public entity's facilities are inaccessible to, or unusable by, individuals with disabilities. The regulation implementing Title II contains 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; the other covers new construction and alterations. The applicable standard depends upon the date of construction or alteration of the facility.

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

[www.ed.gov](http://www.ed.gov)

For existing facilities, 28 C.F.R. § 35.150 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. Under the Title II regulation, existing facilities are those for which construction began before January 27, 1992.

Facilities constructed or altered after this date are considered newly constructed or altered facilities under Title II standards. With respect to newly constructed facilities, 28 C.F.R. § 35.151(a) requires that the facility be designed and constructed in such a manner that it is readily accessible to, and usable by, individuals with disabilities. In addition, for alterations that affect or could affect facility usability, 28 C.F.R. § 35.151(b) requires that, to the maximum extent feasible, the facility be altered in such a manner that the altered portion is readily accessible to, and usable by, individuals with disabilities.

The new construction provisions of the Title II regulation also set forth specific architectural accessibility standards for facilities constructed or altered after the above date. Construction or alteration of a facility on or after March 15, 2012, must comply with the 2010 ADA Standards for Accessible Design (2010 Standards) to be deemed to comply with the requirements of Title II. The 2010 Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, appendices B and D.

### **Preliminary Background Information**

The Complainant informed OCR that she sought access to information located on the second floor of the Library, but she could not reach the second floor due to her disability. She advised OCR that the only sign she saw at the Library notified the public that the elevator was not working, but the sign provided no information about how to access materials on the second floor. She further stated that she spoke with a Library employee who offered to retrieve any information she wanted from the second floor.

You informed OCR that the building opened to the public on November 30, 2022. You explained that mechanical issues with the elevator began on December 23, 2021. The Library had the elevator repaired several times in 2022 before it completely stopped working on June 16, 2022. The Library has selected a contractor to install a new elevator and anticipates the installation to be completed in November 2023.

You advised OCR that since the elevator stopped working, the Library is offering public computer access, genealogy, microfilm readers, children's programs, and a record studio on the first floor.

### **Analysis and Resolution**

The evidence obtained during OCR's investigation to date raised concerns regarding the public's knowledge of how to access materials that are housed on the second and third floors of the Library.

During OCR’s investigation, the Library indicated that it had begun the process of replacing the existing elevator, and in furtherance of that objective, expressed interest in resolving this complaint in accordance with Section 302 of OCR’s *Case Processing Manual*.<sup>1</sup> On June 28, 2023, the Library submitted a signed Resolution Agreement (Agreement) (copy attached) that, when fully implemented, will address the complaint allegation. Specifically, the Agreement requires the Library to repair or replace the existing elevator, and in the meantime, to develop and implement a process for providing access to all materials housed on the second and third floors of the Library.

OCR considers this complaint resolved and will monitor the Library’s implementation of the Agreement. When OCR determines the Library has fully implemented the terms of the Agreement, OCR will close this complaint. If the Library fails to carry out the Agreement, OCR may resume investigating the complaint. OCR will not close the monitoring of the Agreement until OCR determines that the Library has implemented all the terms of the Agreement and is in compliance with Title II and its implementing regulations at issue in this complaint.

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

Please be advised that the Library may 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. Complaints alleging such retaliation may be filed with OCR.

Under the Freedom of Information Act, 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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, please contact XXXXXX XXXXXX, at (XXX) XXX-XXXX (voice) or (XXX) XXX-XXXX (telecommunications device for the deaf), or by email at XXXXXX.XXXXXX@XX.XXX

Sincerely,

Megan Levetzow  
Supervisory Attorney

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<sup>1</sup> OCR’s *Case Processing Manual* is available at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.