



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

January 11, 2016

Bill Lindsay
City Manager
City of Richmond
450 Civic Center Plaza, Suite 300
Richmond, CA 94804

(In reply, please refer to case no. 09-15-4028.)

Dear City Manager Lindsay:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Main Branch of the Richmond City Library (Library), operated by the City of Richmond (City). OCR investigated whether the Library failed to provide for the prompt and equitable resolution of a complaint of discrimination made by the Complainant in regard to the below listed issues. OCR also investigated whether the Library discriminated against the complainant, who is a person with a mobility impairment, on the basis of disability because of physically inaccessible restrooms, inadequate signage indicating a path of travel via the elevator to all other Library floors, and inadequate accessible parking spaces and signage for such spaces.

OCR opened the investigation under the authority of Title II of the Americans with Disabilities Act of 1990, and its implementing regulations. Title II prohibits discrimination on the basis of disability by certain public entities. The Library is a public entity subject to the requirements of Title II and the regulations.

To investigate this complaint, OCR reviewed documents and information provided by the Complainant and the Library. The following is a summary of the applicable legal standards, areas of noncompliance identified through the investigation, areas resolved prior to the completion of our investigation and the reasons for the resolution of this complaint.

Legal Standards

The Title II regulations, at 28 C.F.R. §35.107(b), require a public entity employing 50 or more persons to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints.

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

The program accessibility requirements of the Title II implementing regulations are found at 28 C.F.R. §§35.149-35.151. The regulation, at 28 C.F.R. §35.149, provides that no qualified person with a disability shall, because a public entity's facilities are inaccessible to or unusable by disabled persons, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program of activity of the public entity.

The Title II regulation, at 28 CFR §35.150, provides that as to “existing facilities” the public entity shall operate its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. These sections are applicable to any facility or part of a facility where construction was commenced prior to January 26, 1992. Accessibility of existing facilities is determined not by compliance with a particular architectural accessibility standard, but by considering whether the program or activity, when viewed in its entirety, is accessible to and usable by individuals with disabilities. Program access may require consideration of potential barriers to access that were not recognized at the time of construction or alteration.¹

The Title II regulations, at 28 C.F.R. § 35.105, require public entities to evaluate their current services, policies, and practices, and the effects thereof, that do not or may not meet the nondiscrimination requirements under the regulations; and make necessary modifications to correct these barriers to access. To the extent that structural changes are necessary to achieve program access in an “existing facility,” the public entity must develop a transition plan describing the steps required to complete the changes. Under 28 C.F.R. § 35.150(d), the plan will describe the physical obstacles that limit accessibility to programs and activities for individuals with disabilities, the methods used to make the facilities accessible, the schedule for taking steps to increase accessibility, and the responsible official for implementing the plan.

The Title II regulations, at 28 C.F.R. §35.151, are applicable to “new construction or alterations,” defined as any facility or part of a facility where construction was commenced after January 26, 1992. The regulations provide that each newly constructed facility or part of a facility shall be designed and constructed in such manner that it is readily accessible to and usable by persons with disabilities using the 2010 Standards for Accessible design when construction commences on or after March 15, 2012. The regulations further provide that each newly altered facility or part of a facility affecting accessibility shall, to the maximum extent feasible, be altered in such manner that the altered portion is readily accessible to and usable by persons with disabilities.

Relevant Facts and Analysis

On March XX, 2015, the Complainant tried to attend a public meeting at the Library. Upon arriving at the Library, she was unable to use an accessible parking space with her van as the spaces were not appropriately sized and lacked access aisles and

¹ Title II Regulations, Appendix A to Part 35 – Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services.

signage. Once she entered the Library, she attempted to find and use an accessible restroom. Due to the lack of an accessible restroom, the Complainant was not able to stay for the meeting. During the time the Complainant was in the Library, she noticed the Library located part of its book collection on the second floor but she did not see an elevator or signage to the same that would allow for access to that level.

Prompt and Equitable Resolution of Complaints

On the same day as her visit to the library, the Complainant filed a complaint with the City's ADA Coordinator, regarding the inaccessibility of the Library's restrooms and parking and the lack of signage indicating the location of an elevator to access the second floor of the Library. On April 1, 2015, the ADA Coordinator provided the Complainant with a partial written response and indicated that the Library would be resolving the issues she raised. However, his response did not provide timeframes or specific information regarding the resolution of each area of concern raised by Complainant. On two subsequent dates, the Complainant contacted the ADA Coordinator requesting specific information to resolve each of the issues she raised. In response, the ADA Coordinator told the Complainant that the matter would be looked into, but he did not provide any further information as he was unexpectedly out of the office for an extended period of time and there was no other individual designated to respond to the complaint in his absence. As such, the Complainant did not receive a complete response to her complaint prior to filing the present complaint with OCR, on June 15, 2015, 80 days after she filed her complaint with the Library. Therefore, OCR finds that the Library is not in compliance with the Title II regulations, at 28 C.F.R. §35.107(b), because it did not promptly and equitably resolve the complaint.

The City has, on behalf of the Library, agreed to resolve this area of noncompliance identified during the investigation by developing and distributing a memorandum to appropriate personnel setting forth a plan to respond to complaints of discrimination when the primary designee is unable to do so.

Accessibility of Restrooms, Parking and Signage for Path of Travel

The Library was built in or about 1950. In 1976, the garage area attached to the Library was converted to work space. In 2005, one of the parking lots serving the Library and other nearby City buildings was re-stripped. In 2011, the City drafted an ADA transition plan which included a self-evaluation of the accessibility of its existing facilities, including the Library. In accordance with the ADA, the City solicited public comment on its draft transition plan.

During the course of the investigation, and prior to a determination by OCR regarding the scope and appropriate design standards applicable to the barriers raised in this complaint, the Library provided OCR with information that the City had begun a renovation project at the Library under its transition plan to address the inaccessibility of the Library restrooms (both male and female), parking spaces, and directional signage identifying the accessible path of travel to and throughout the Library.

The Library provided documentation to OCR showing that it applied for permits to do the work in January, 2015 and that the City approved the construction in April, 2015. The Library informed OCR that it located the budget to break ground on the aforementioned accessible features and began construction on August 14, 2015, with a projected completion date in January, 2016. OCR was informed that the design and construction of the ADA features, including the signage and parking space changes, would meet the 2010 Standards as required by the Title II regulations.

In order to fully resolve the barriers to access raised in this complaint, the City entered into a Resolution Agreement with OCR to ensure that the Library restrooms, parking spaces, and directional signage to and through the accessible path of travel in the Library are permanent features of the Library and built according to the applicable 2010 Standards and to provide for temporary interim measures to provide for program access while the construction and alterations are underway.

Conclusion

When fully implemented, the executed Resolution Agreement, which is enclosed, is intended to address all of OCR's compliance concerns in this investigation. Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. This concludes OCR's investigative process 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.

OCR will monitor the implementation of the agreement until the Library is in compliance with Title II and its implementing regulations, which were at issue in this case. OCR is informing the Complainant of the complaint resolution by concurrent letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 Library 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 Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. If 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 would like to thank Library's representatives, particularly Bruce Souble, Esq., for their courtesy and cooperation in resolving this case. If you have any questions about this letter please contact Christina Medina, at (415) 486-5548.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Enclosure

Cc: Bruce Souble, Assistant City Attorney (via email only)