

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV



1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

May 12, 2017

Mr. Jeff Langdon
Superintendent
Deer Park Community City Schools
4131 Matson Avenue
Cincinnati, Ohio 45236

Re: OCR Docket #15-14-1350

Dear Mr. Langdon:

This letter is to inform you of the disposition of the above-referenced complaint against Deer Park Community City Schools (the District) that was filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), on September 30, 2014, alleging discrimination on the basis of disability. Specifically, the complaint alleged that the District's administrative building at 4131 Matson Avenue, Deer Park, Ohio 45236 (the Administrative Building), including the public meeting room (Meeting Room) where Board of Education meetings are held, is not accessible to persons with mobility impairments because the public entrance to the Meeting Room is on a walkway that is raised at least six inches above the parking lot with no curb cuts or ramps. In addition, the complaint alleged that the accessible parking spaces for the Meeting Room are not located on the shortest accessible route from parking to an accessible entrance.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35 (Title II). Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to these laws. Therefore, OCR has jurisdiction over this complaint.

Based on the complaint allegations, OCR investigated whether qualified individuals with disabilities are being excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any of the District's services, programs or activities because the District's facilities are inaccessible to or unusable by persons with disabilities, in violation of the Section 504 implementing regulation at 34 C.F.R. §§ 104.21-23 and the Title II implementing regulation at 28 C.F.R. §§ 35.149-151.

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During the course of the investigation, OCR reviewed documentation provided by the District, interviewed District employees, and conducted an onsite visit to the District. After carefully reviewing the information provided, OCR has determined that the evidence is sufficient to support a finding that the District's Administrative Building, where its board of education meetings are held, is not accessible as alleged. The basis for OCR's determination is discussed below.

Applicable Regulatory Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.21 and Title II implementing regulation at 28 C.F.R. § 35.149 state that no qualified person with a disability shall 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 because a covered entity's facilities are inaccessible to or unusable by persons with disabilities. The regulations reference standards for determining whether an entity's programs, activities, and services are accessible to individuals with disabilities. The applicable standard depends upon whether the facilities are determined to be existing construction, new construction, or alterations. Whether facilities are existing, new, or alterations depends upon the date of the construction or alteration of the facility.

- **Standards for Existing Facilities**

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.

For existing facilities, "program access" is required. An educational institution is 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 the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program, or activity. 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a).

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

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

In reviewing program access for an existing facility, the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards, discussed below) may be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service.

- **Standards for New Construction and Alterations**

Each facility or part of a facility constructed by, on behalf of, or for the use of an institution after the effective dates of the Section 504 and/or Title II regulation (“new construction”) must be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons, if the construction was commenced after the effective date of this part. 34 C.F.R. § 104.23(a); 28 C.F.R. § 35.151(a). 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. 34 C.F.R. § 104.23(b); 28 C.F.R. § 35.151(b).

For an entity covered by Section 504, new construction and alterations after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI). New construction and alterations between January 18, 1991, and January 26, 1992, must conform to the Uniform Federal Accessibility Standards (UFAS). Compare 45 C.F.R. § 84.23(c) (1977) and 34 C.F.R. § 104.23(c) (1981), with 34 C.F.R. § 104.23(c) (2012). New construction and alterations after January 26, 1992, but prior to March 15, 2012, must conform to UFAS or the 1991 Americans with Disabilities Act Standards for Accessible Design (the 1991 ADA Standards) or equivalent standards. However, the Section 504 regulation provides, at 34 C.F.R. § 104.23(c), that departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

The U.S. Department of Justice published revised regulations for Titles II and III of the ADA on September 15, 2010. These regulations adopted revised enforceable accessibility standards—the 2010 ADA Standards. The 2010 ADA Standards went into effect on March 15, 2012, although entities had the option of using them for construction or alterations commencing September 15, 2010, until their effective date. For new construction and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards.

In addition, the Title II regulation, at 28 C.F.R. § 35.151(b)(4), addresses alterations and provides that:

An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible

to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

According to this provision, a “primary function” is a major activity for which the facility is intended, and areas that contain a primary function include meeting rooms in a conference center. 28 C.F.R. § 35.151(b)(4)(i). “Path of travel” includes the route connecting the altered area with an exterior approach, including sidewalks and parking areas, and an entrance to the facility. 28 C.F.R. § 35.151(b)(4)(ii).

Summary of OCR’s Investigation and Analysis

The Complainant alleged that the public entrance to the Meeting Room in the Administrative Building is not accessible to persons with mobility impairments because it is on a walkway that is raised at least six inches above the parking lot with no curb cuts or ramps. In addition, the Complainant alleged that the accessible parking spaces for the Meeting Room were not located on the shortest accessible route from parking to an accessible entrance.

- **Construction Dates and Standards**

The District reported that the Administrative Building was built in 1958 and originally operated as Howard Elementary School. In 2009, the building was no longer used as a school and the District converted six classrooms into administrative offices. In 2013, the District renovated the school’s multi-purpose room into the Meeting Room, which is used as a professional development center and meeting room. This is where the District’s Board of Education meetings are held twice a month, and the District’s website lists this building as the District’s address and the superintendent’s office. OCR observed during its onsite visit that the Meeting Room is located toward the back of the Administrative Building, and that interior routes connect the Meeting Room to each of the entrances to the building

Because the Administration Building was constructed in 1958, OCR determined that it is an existing facility under Section 504 and Title II. However, the renovations to the interior of the Administrative Building took place in 2009 and renovations to the Meeting Room, which is open to the public and primarily at issue here, took place in 2013. These areas of the building are alterations. Furthermore, as set forth above, the Title II regulations require alterations that affect access to an area that contains a primary function to be made such that the route, including sidewalks, parking areas, and entrances, is readily accessible. Thus, the regulations require the route to the Meeting Room at issue in this complaint should have been made to comply with the 2010 ADA Standards to the maximum extent feasible as part of the alterations to the Meeting Room and Administrative Building in 2013.

- **Entrances**

OCR found that there are multiple entrances to the Administrative Building, including two in the front, two in the back, and one on the west side of the building. At the time of OCR’s investigation, the District was only using three entrances: the front entrance toward the west side

of the building, the back entrance near the center of the building, and the entrance on the west side of the building. The District acknowledged that the front and back entrances it was using were not accessible due to a raised concrete landing or platform just outside each door. The District reported, however, that it had designated the entrance of the west side of the building as the accessible entrance.

The District acknowledged, and OCR confirmed during the onsite visit, that the front and back entrances the District was using were inaccessible. Therefore, OCR analyzed the accessibility of the entrance on the west side of the Administrative Building, which the District was using and had identified as accessible. OCR found an accessibility issue with respect to the threshold of the doorway at this entrance. 2010 ADA Standard 404.2.5 requires that thresholds, if provided at doorways, must be a maximum of ½ inch in height, but the 2010 ADA Standards also provide an exception for existing or altered thresholds ¾ inch high that have a beveled edge on each side with a slope not steeper than 1:2. The threshold at the entrance on the west side of the building measured a total of ¾ inches high, but the edge was not beveled to meet the Standards. Thus, as the threshold does not meet the accessibility standard, the west entrance is not accessible to individuals with mobility impairments as required by 28 C.F.R. § 35.151(b)(4).

Furthermore, the 2010 ADA Standards at 206.4.1 require that at least sixty percent of all public entrances shall be accessible pursuant to Standard 404. Therefore, even if the threshold at the entrance on the west side of the Administrative Building was in compliance, at least one of the other two doors the District was using would have to be accessible. Since it is undisputed that the front and back entrances in use are not accessible, the District does not meet this sixty percent standard.

Although all three of the entrances to the Administrative Building that the District was using are inaccessible, OCR noted during the onsite visit that the back entrance toward the east side of the building, which the District had closed and was not using, does not have a raised platform in front of it and would be accessible if open. Similarly, the District provided information demonstrating that the front entrance on the east side of the building is closed, but would be accessible if the District chose to open it. Furthermore, under 2010 ADA Standard 206.2.1, there is an accessible route from a site arrival point for the Administrative Building—i.e., the public sidewalk—to the front entrances.

OCR also identified areas in which the Administrative Building did not have signage consistent with the accessibility standards at its entrances. OCR observed that there are signs using the International Symbol of Accessibility on the back of the Administrative Building, near the west side of the building and the entrance the District had designated as accessible. Nonetheless, OCR observed that there is also directional signage near the other entrance at the back of the building stating “Board Meeting Enter Here.” This alternative signage instructs the public that the inaccessible back entrance is the public entrance to the board Meeting Room. Similarly, OCR found that there is no signage at the inaccessible front entrance of the Administrative Building indicating the location of the entrance the District designated as accessible.

The 2010 ADA Standards require that all accessible entrances complying with Standard 404 be identified by the International Symbol of Accessibility. The Standards also require that, in instances in which not all entrances are accessible, directional signs complying with Standard 703.5 indicating the location of the nearest accessible entrance be provided at the entrances that are not accessible. An advisory note to Section 216.6 further states that, “[w]here a directional sign is required, it should be located to minimize backtracking. In some cases, this could mean locating a sign at the beginning of a route, not just at the inaccessible entrances to a building.” Accordingly, the signage at both the front entrance and the back entrance near the Meeting Room would not meet the applicable Standards even if one of the entrances to the building was accessible.

- **Parking**

OCR found that the District does not own a parking lot for its Administrative Building; the City of Deer Park owns the adjacent parking lot behind the Building. The parking lot was built around 1958-1960 and serves the District’s Administrative Building, a city park, and a community recreation center. The evidence shows that the city has allowed the District to use this parking lot as the parking area for its Administrative Building. OCR’s onsite inspection and the photographs provided by the District indicate that the lot has been restriped within the past few years, and that the lot has been repaved at some point more recently than 1960. The entire parking lot has 85 parking spaces total. Currently, four of these spaces are designated as accessible. Two of the spaces designated as accessible are far from the Administrative Building, on the south side of the lot, serving the city park. The other two designated accessible spaces are close to the District’s building and farthest from the city’s facilities, indicating that adding accessible parking on this side of the lot was completed for the use of the District, requiring that it comply with the accessibility standard for alterations under both Section 504 and Title II. Even if this section of parking was not altered for the use of the District, the District is still responsible for providing access to its facilities and programs, as explained above. Although the District does not own the parking lot, the evidence demonstrated that it has a longstanding practice of using the parking lot to provide access to its programs and activities in the Administrative Building, with the city’s permission. Therefore, viewed in their entirety, the District’s programs held in this facility include use of the parking lot and, thus, the District’s use of it must satisfy the program accessibility standard, at a minimum.

Each of the spaces near the Administrative Building measures 96” wide and there is a 96” aisle in between the two spaces. Both of these spaces are marked by signage and one of the spaces is designated on the sign as van accessible. These two spaces are not located on the shortest accessible route to the Meeting Room.

Although the designated accessible parking spaces serving the Administrative Building otherwise comply with the 2010 ADA Standards in terms of width, access aisles, and signage, OCR finds that the District is not providing access to its programs in the building with respect to parking because the spaces are not on the shortest accessible route to the Meeting Room, in violation of the Section 504 and Title II regulations.

- **New Facility Anticipated in 2018**

The District reported to OCR that it will only continue to use the Administrative Building until July 2018, when it anticipates completing construction of a new administration building. The new building will be nearby and all offices and activities presently housed and hosted in the Administrative Building will be moved there.

Resolution and Conclusion

On April 26, 2017, the District provided OCR with the enclosed resolution agreement, signed April 17, 2017, which, once implemented, will fully address OCR's findings in accordance with Section 504 and Title II. The resolution agreement requires the District to:

- Open, relocate, or otherwise modify one of the front (main) entrances so that it is accessible in compliance with the 2010 ADA Standards, including 206.4 (Entrances) and 206.2.1 (Accessible Routes –Site Arrival Points).
- Open, relocate, or otherwise modify one of the back entrances so that it is accessible in compliance with the 2010 ADA Standards, including 206.4 (Entrances) and 206.2.1 (Accessible Routes –Site Arrival Points).
- Provide signage identifying the location of the designated accessible entrances at the front and the back of the Administrative Building, consistent with the 2010 ADA Standards at 216.6.
- Add or relocate accessible parking spaces designated for the District's use for the Administrative Building so that, consistent with 208.3.1, two accessible parking spaces (one of which is van accessible) are located on the shortest accessible route from the parking lot parking to an accessible back entrance.
- Construct its new administrative facility, which will replace the Administrative Building in July 2018 as the District's administrative offices and board meeting space, in compliance with the 2010 ADA Standards for new construction and subject to OCR oversight and monitoring with respect to exterior entrances and parking.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District'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 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, the harmed individual may file another 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 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.

The OCR contact person for the monitoring of the agreement is xxxxxxxxxxxxxx, who may be reached at (216) xxx-xxxx or by e-mail at xxxxxxxxxxxxxxxx@ed.gov. We look forward to receiving the District's first monitoring report by **July 1, 2017**, and the report should be directed to xx xxxxxxxxxxxx. If you have questions regarding this letter, please contact xx xxxxxxxxxxxx Supervisory Attorney/Team Leader, at (216) xxx-xxxx or by e-mail at xxxxxxxxxxxxxxxx@ed.gov.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure