



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

February 24, 2020

Mr. Thomas Yazvac
Superintendent
Springfield Local School District
11335 Youngstown-Pittsburgh Road
New Middletown, Ohio 44442

Re: OCR Docket No. 15-16-1319

Dear Superintendent Yazvac:

This letter is to notify you of the disposition of the above-referenced complaint, received by the U.S. Department of Education (Department), Office for Civil Rights (OCR) on April 8, 2016, against Springfield Local School District (the District) alleging that that the District discriminated against students on the basis of disability. Specifically, the complaint alleged that the swings, pathways to elevated equipment, and the rubber surface at the playground at the District's Springfield Elementary School (the School) are inaccessible to individuals with mobility impairments.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR also 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 on the basis of disability by public entities. Because the District receives Federal financial assistance from the Department and is a public entity, the District is subject to these laws.

Based on the complaint allegations, OCR opened an investigation of the following legal issue: whether qualified individuals with disabilities are being excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any District program or activity because Springfield Elementary School's playground is inaccessible to or unusable by persons with disabilities, in violation of the regulation implementing Section 504 at 34 C.F.R. §§ 104.21-23 and the regulation implementing Title II at 28 C.F.R. §§ 35.149-151.

During its investigation to date, OCR reviewed information provided by the Complainant and the District and conducted an onsite visit to the School.

Summary of OCR's Investigation

The School has two playgrounds, one for kindergarten through second grade (K-2 playground) and one for third and fourth grades (3-4 playground). The District told OCR that it began construction on the playgrounds in July 2015. The District stated that, in the summer of 2016, it

installed a wheelchair-accessible swing on the K-2 playground and a cement pathway covered by a rubber top connecting the asphalt portion of the playground to the accessible swing.

During its onsite visit, OCR observed that the K-2 playground contained 7 elevated play components, accessible by a transfer station, and 16 ground-level play components (including two swing sets of six swings each). The 3-4 playground contained 10 elevated play components, accessible by a transfer station, and 25 ground-level play components (including 20 swings).

OCR also reviewed relevant documentation related to the playground submitted by the District. For both of the playgrounds, the District submitted a document entitled “Compliance and Technical Data,” which states that the playgrounds were:

designed to meet the 2010 Standards... when installed over a properly maintained surfacing material that is in compliance with ASTM F1951 ‘Accessibility of Surface Systems Under and Around Playground Equipment’ as well as ASTM F1292, ‘Impact Attenuation of Surfacing Materials Within the Use Zone of Playground Equipment’, appropriate for the fall height of the structure.

The District submitted a brochure describing the surface material of the playgrounds, called “Playsafer™ Rubber Mulch.” The brochure states:

Playsafer™ Rubber Mulch, installed at a non-compacted depth of 6” / 13 pounds per sq. ft., is handicap accessible, according to ASTM F1951, Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playgrounds. Playsafer™ must be compacted at 3” and again at 6” using a pneumatic tamper, Bobcat, or similar.

Under the heading “Maintenance,” the brochure states:

Immediately following installation and inspection, the level of Playsafer™ Rubber Mulch should be marked off on the playground equipment, using a permanent marker or the like. Especially in high traffic areas, Playsafer™ requires periodic raking to restore the material to its safe and proper depth.

The District submitted a document titled, “IPEMA Impact Attenuation Report – ASTM F1292-13” (report), dated May 13, 2015. The report states that a sample of the material was tested on May 12 and 13, 2015, and certifies that the sample was “in compliance with ASTM F1292-13 at the temperature and rating specified.”

The District also submitted a November 28, 2001, “test report” showing that a company called Detroit Testing Laboratory, Inc., tested a sample of the PlaySafer Rubber Mulch material submitted by the material’s manufacturer. The test report states that the material met ASTM F1951099. However, the District did not submit any documentation demonstrating that the material was tested after installation on the District’s playgrounds.

The District told OCR that the playground surfaces were maintained periodically. However, during its onsite visit, OCR observed that the rubber mulch was unevenly distributed over the surface of both playgrounds. For example, on the K-2 playground, the mulch was not evenly distributed at the edge of the path to the swing set; at various points, it was as high as 1.5 inches higher than the path and as low as 2 inches below the path. Also, OCR observed rubber mulch scattered on the path. On the 3-4 playground, the rubber mulch sloped away from the transfer station platforms, and the rubber mulch partially covered the rubber mats under one of the ground level play components. Additionally, the rubber mulch on the 3-4 playground was very uneven at the concrete transition between materials (asphalt and rubber mulch); OCR measured as much as a 2.5-inch difference in height between the concrete and the rubber mulch.

Legal Standard

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, 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. The regulations' reference standards for determining whether an entity's programs, activities, and services are accessible to individuals with disabilities depend 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 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 to the service, program, or activity. 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a). Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. Under the Title II regulation, existing facilities are those for which construction began on or before January 26, 1992.

For new construction, the facility or newly constructed part of the facility must itself be readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(a); 28 C.F.R. § 35.151(a). Under the Section 504 regulation, a facility is considered new construction if construction began (ground was broken) on or after June 3, 1977. Under the Title II regulation, a facility is considered new construction if the construction was commenced after January 26, 1992.

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 called the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards). For new construction and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards.

A playground meets the definition of “facility” under the Section 504 and Title II regulations, 34 C.F.R. § 104.3(i) and 28 C.F.R. § 35.104. A playground facility is comprised of both the structure or equipment installed to provide play activities and the surface surrounding such structure or equipment.

Analysis and Resolution

The complaint specifically alleged that three aspects of the District’s playgrounds were inaccessible: surface material, pathways to elevated equipment, and swings.

- **Surface Material**

2010 ADA Standard 1008.2.6 requires that ground surfaces on accessible routes, clear floor or ground spaces, and turning spaces comply with the ASTM F1951 standard. Standard 1008.2.6 further requires that ground surfaces located within use zones shall comply with ASTM F1292. 2010 ADA Standard 302.1 requires that ground surfaces be stable, firm, and slip resistant. An advisory note for Standard 302.1 states that a stable surface is one that remains unchanged by contaminants or applied force, so that when the contaminant or force is removed, the surface returns to its original condition; a firm surface resists deformation by either indentations or particles moving on its surface; and a slip resistant surface provides sufficient frictional counterforce to the forces exerted in walking to permit safe ambulation.

The District submitted documentation certifying that the rubber mulch material as installed complies with ASTM F1292, as required by Standard 1008.2.6. The District also submitted documentation from the rubber mulch manufacturer which state that the rubber mulch surface complies with ASTM F1951 when installed properly. However, the District did not submit any documentation certifying that the rubber mulch surface as installed complies with ASTM F1951.

An advisory note for Standard 1008.2.6 states that ground surfaces must be inspected and maintained regularly to ensure continued compliance with the ASTM F1951 standard. During OCR’s onsite visit, the District’s superintendent stated that the material is maintained periodically. However, OCR observed that the rubber mulch was unevenly distributed over the playground surface. For example, on the 3-4 playground, at the concrete transition from the blacktop to the rubber mulch, the rubber mulch was as low as 2.5 inches lower than the concrete. Also, OCR measured the rubber mulch at the proper depth directly under the transfer station, but the rubber mulch sloped significantly downward from the platform so that, a few inches away from the platform, the difference in height was 20 inches (2 inches more than allowed under the 2010 ADA Standards).

Therefore, the evidence raises a concern that the rubber mulch surfaces do not comply with Standard 1008.2.6.

In addition, OCR determined that the material of the pathway to the wheelchair-accessible swing (cement covered by rubber mat) was stable, firm, and slip resistant. However, during OCR’s onsite visit, OCR observed rubber mulch scattered on the pathway. Therefore, the evidence

raises a concern that the pathway to the wheelchair-accessible swing does not comply with Standard 302.1.

- **Swings/Ground Level Play Components**

The 2010 ADA Standards do not specifically require districts to install wheelchair-accessible swings. Because they are accessed and exited from the ground, swings are ground level activities. However, 2010 ADA Standard 240.2.1 requires that a certain number of ground level play components be on an accessible route, depending on the number of elevated play components provided. Furthermore, 2010 ADA Standard 302.2 requires that ground surfaces along accessible routes be stable, firm, and slip resistant.

At the time the complaint was filed, the K-2 playground had 16 swings and the 3-4 playground had 20 swings, none of which was wheelchair-accessible. After the complaint was filed, the District installed a wheelchair-accessible swing and path on the K-2 playground. The path is cement covered by a rubber pad and leads from the blacktop surface to the swing. As noted above, the path appears firm, stable, and slip resistant, as required by Standard 302.2. As noted above, OCR observed some loose rubber mulch on the accessible path. The 3-4 playground has no accessible swing and no cement/rubber pathway to either swing set.

The K-2 playground provides seven elevated play components. Therefore, Standard 240.2.1 requires that at least two ground level play components be on an accessible route. One of the 16 swings on the K-2 playground (the wheelchair-accessible swing) is on an accessible route. All of the remaining swings and the remaining ground level play components are on the rubber mulch surface.

The 3-4 playground provides 10 elevated play components. Therefore, Standard 240.2.1 requires that at least three ground level play components be on an accessible route. The 3-4 playground contains 20 swings and 5 additional ground level play components, all of which are on the rubber mulch surface. As noted above, the District did not submit any documentation certifying that the rubber mulch surface as installed complies with ASTM F1951, as required by Standard 1008.2.6.

Therefore, the evidence raises a concern that the playgrounds do not provide accessible routes to ground level play components as required by Standard 240.2.1.

- **Pathways to Elevated Equipment**

On both playgrounds, the sections containing elevated and ground level play components are covered in rubber mulch (except for the path to the wheelchair-accessible swing on the K-2 playground, which is cement covered by a rubber mat). 2010 ADA Standard 240.2.2 requires that where elevated play components are provided, at least 50% shall be on an accessible route.

On the K-2 playground, a transfer station connects the path to the wheelchair-accessible swing and the elevated play components. The measurements of the transfer station meet the requirements of Standard 1008.3.

On the 3-4 playground, a transfer station is provided to the elevated play components, but the play structure containing the elevated play components is surrounded by rubber mulch. As noted above, the District did not submit any documentation certifying that the rubber mulch surface as installed complies with ASTM F1951, as required by Standard 1008.2.6.

Therefore, the evidence raises a concern that the playground does not provide accessible routes to elevated play components as required by Standard 240.2.1.

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. In this case, the District expressed an interest in resolving the allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On February 19, 2020, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

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 individual 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, OCR 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 Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR looks forward to receiving the District's first monitoring report by July 31, 2020. For questions about implementation of the Agreement, please contact Ms. Allison Beach. She will be overseeing the monitoring and can be reached by telephone at (216) 522-2666 or by e-mail at

Allison.Beach@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-7640, or by e-mail at Sacara.Miller@ed.gov.

Sincerely,

/s/

Sacara E. Miller
Supervisory Attorney/Team Leader

Enclosure