



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

XXXXXXXXXXXXXXXXXXXX

Scott Scriven LLP
250 East Broad Street, Suite 900
Columbus, Ohio 43215

Re: OCR Docket #15-16-1494

Dear XXXXXXXXXXXXXXXXXXXX:

This letter is to inform you of the disposition of the above-referenced complaint originally filed with the U.S. Department of Justice (DOJ) on June 21, 2016, against Olentangy Local Schools (the District). The complaint was referred to the U.S. Department of Education, Office for Civil Rights (OCR), on July 5, 2016. The complaint alleged that the District has discriminated against individuals on the basis of disability. Specifically, the complaint alleged that the District has discriminated against individuals with mobility impairments by failing to provide accessible pathways to the District's baseball diamonds at Berkshire Middle School, Hyatts Middle School, and Shanahan Middle School.

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 is also 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 Section 504 and Title II. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR initiated an investigation of the following issue: whether qualified persons with disabilities, because the District's facilities are inaccessible to or unusable by persons with disabilities, are being denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any program or activity, 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.

The Complainant asserted that there are no accessible pathways to the baseball diamonds at the District's three above-referenced schools for persons who use wheelchairs.

Documents OCR obtained from the District's website indicate that Hyatts Middle School is new construction and opened for the 2007-2008 school year; Berkshire Middle School is new construction, was under construction through 2010, and opened for the 2011-2012 school year; and Shanahan Middle School is existing construction which has undergone renovations, including since 2010. OCR viewed online images of the baseball fields at issue at each school, which showed the following:

- Berkshire Middle School appears to have two baseball diamonds, each of which appear to be surrounded almost entirely by grass.
- Hyatts Middle School appears to have one baseball diamond, which appears to be surrounded almost entirely by grass.
- Shanahan Middle School appears to have six baseball diamonds, two of which have paths leading to them from the parking areas nearest to those diamonds, and four of which appear to require traversing over grass to reach the diamonds.

Prior to the completion of OCR's investigation, the District asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). The resolution is explained below.

Applicable Regulatory Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.21 and the 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 that 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.

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. 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b). 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 support facilities for a program in an existing facility being viewed in its entirety, such as restrooms, telephones, water fountains, and parking spaces, it should be determined whether sufficient numbers exist that are reasonably convenient, usable in inclement weather, and appropriate to the use of the facility, with the focus being on whether access to the program is unreasonably limited by the lack of accessible support facilities.

The Section 504 regulation also requires a recipient to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities in existing construction that are accessible to and usable by persons with disabilities. 34 C.F.R. § 104.22(f). In reviewing program access for an existing facility, the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards) may be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service.

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. § 104.22(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.

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 regulation 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 a 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) (1997) 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.

The U.S. Department of Justice published revised regulations for Titles II and III of the ADA on September 15, 2010. These regulations adopted the 2010 ADA Standards, which 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 constructions and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards.

Resolution and Conclusion

As noted above, prior to the completion of OCR's investigation, the District expressed interest in resolving the allegations in the complaint pursuant to Section 302 of OCR's CPM, which provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient expresses interest in resolving the complaint and signs a resolution agreement that addresses the complaint allegations. Such a resolution does not constitute an admission of liability on the part of the District, nor does it constitute a determination by OCR that the District has violated any of the laws that OCR enforces. On December 20, 2016, the District submitted the enclosed signed resolution agreement (the Agreement) to OCR. The provisions of the Agreement are aligned with the complaint allegation and the information obtained to date during the investigation and consistent with applicable regulations. When fully implemented, the Agreement will resolve the allegation in the complaint.

In light of the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the District's implementation of the Agreement. Should the District fail to fully implement the Agreement, OCR will take appropriate action to ensure the District's compliance with the Section 504 and Title II regulations.

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 a complaint alleging such treatment.

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 monitoring report by May 15, 2017. For questions about implementation of the Agreement, please contact xxxxxxxxxxxxxxxxx, who will be monitoring the District's implementation, by e-mail at xxxxxxxxxxxxxxxxx@ed.gov or by telephone at (216) xxx-xxxx.

For questions about this letter, please contact xxxxxxxxxxxxxxxxx Supervisory Attorney/Team Leader, at (216) xxx-xxxx.

Sincerely,

/s/

Meena Morey Chandra
Director

Enclosure