



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

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REGION XV
MICHIGAN
OHIO

May 12, 2017

Mr. Karl Colón
Director
Greene County Public Library
76 East Market Street
Xenia, Ohio 45385

Stephanie R. Hayden, Esq.
Greene County Prosecuting Attorney's Office
55 Greene Street
Xenia, Ohio 45385

Re: OCR Docket #15-16-4005

Dear Mr. Colón and Ms. Hayden:

This letter is to notify you of the disposition of the above-referenced complaint filed on July 29, 2013, with the U.S. Department of Justice (DOJ) against the Greene County Public Library – Fairborn Community Library Branch (the Library). DOJ referred the complaint to the U.S. Department of Education (the Department), Office for Civil Rights (OCR), on October 29, 2015, for processing. The complaint alleged that the Library's doors and restrooms are not wheelchair accessible or compliant with the Americans with Disabilities Act.

OCR 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 public entity, the Library is subject to Title II.

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 Library's services, programs or activities because the Library's facilities are inaccessible to or unusable by persons with disabilities, in violation of the regulation implementing Title II at 28 C.F.R. §§ 35.149-151.

OCR's investigation of the complaint included a review of documents obtained from the Library and an onsite visit to the Library on February 23, 2016. After a careful review of the information obtained during the investigation, OCR has concluded that the Library has failed to provide program access to individuals with mobility impairments with respect to its programs and activities, in violation of Title II.

The Library signed the enclosed resolution agreement, which, once implemented, will fully address OCR's findings in accordance with Title II. A summary of the applicable legal standards, OCR's investigation, and the bases for OCR's determinations are discussed below.

Applicable Legal Standards

The regulation implementing Title II at 28 C.F.R. § 35.149 requires that no person with a disability shall, because a local government 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 service, program, or activity to which Title II applies. The regulation references standards for determining whether an entity's programs, activities, and services are accessible to individuals with disabilities, depending upon whether the facilities are determined to be existing, new construction, or alterations. The applicable standard depends upon the date of construction or alteration of the facility. Under Title II, 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. 28 C.F.R. § 35.151(a). 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 date of the 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. 28 C.F.R. § 35.151(b).

New construction or alterations commenced after January 26, 1992, but prior to September 15, 2010, must comply with either the Uniform Federal Accessibility Standards (UFAS) or the 1991 Americans with Disabilities Act (ADA) Standards for Accessible Design (the 1991 ADA Standards) except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) of the 1991 ADA Standards would not apply. New construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, may comply with the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards), UFAS, or the 1991 ADA Standards except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) of the 1991 ADA Standards shall not apply. New construction or alterations commenced on or after March 15, 2012, must comply with the 2010 ADA Standards.

Existing buildings leased by a public entity after the effective date of the Title II regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in 28 C.F.R. § 35.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of 28 C.F.R. § 35.151. 28 C.F.R. Part 35, Appendix B.

For existing facilities, the regulations require an 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. 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 it 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. 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. In reviewing program access for an existing facility, the 2010 ADA Standards may be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service.

The Title II regulation states that, where structural changes in facilities were to be undertaken to comply with the program accessibility obligations under 28 C.F.R. § 35.150, the changes were to be made within three years of January 26, 1992, but as expeditiously as possible. 28 C.F.R. § 35.150(c). Public entities employing 50 or more persons were required to develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. Public entities were required to provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan was required to be made available for public inspection. Transition plans are required to, at a minimum:

- (i) identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

- (ii) describe in detail the methods that will be used to make the facilities accessible;
- (iii) specify the schedule for taking the steps necessary to achieve compliance with 28 C.F.R. § 35.150 and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (iv) indicate the official responsible for implementation of the plan.

As part of the self-evaluation, a public entity should: identify all of the public entity's programs, activities, and services; and review all the policies and practices that govern the administration of the public entity's programs, activities, and services. This includes, among other things, examining each program to determine whether any physical barriers to access exist and identifying steps that need to be taken to enable these programs to be made accessible when viewed in their entirety.

The Title II regulation requires accessible features and equipment be maintained in working condition. 28 C.F.R. § 35.133. Temporary obstructions or isolated instances of mechanical failure or isolated or temporary interruptions in service or access are not prohibited, but should not persist beyond a reasonable period of time.

The Title II regulation also requires, at 28 C.F.R. § 35.163, that a public entity ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. A public entity must also provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

Summary of OCR's Investigation

Library representatives told OCR that the Fairborn Community Library is a branch of the Greene County Public Library. The building that houses the Library is owned by the City of Fairborn. The Library leases the building from the City of Fairborn.

According to the information provided by the Library, the building that houses the Library was constructed in 1940 as a U.S. Post Office. The Library reported to OCR that it is believed that the building was conveyed to the City of Fairborn during the 1980s. The Library said that the City of Fairborn built an addition to the building in 1990, and the Library signed a lease to operate a public library in the building on January 23, 1992.

On March 7, 2017, OCR spoke with the Library's Director, who explained that the lease has been in operation since it was originally signed in 1992; it is self-perpetuating and it continues so long as the building is operated as a library.

The Library reported that since its occupancy there have not been any construction activities. The Library indicated that the Greene County Public Library and the City of Fairborn replaced carpeting, painted, and purchased new furniture for the building in 2009, and that no work of any kind was done with respect to the restrooms. The Library stated that the 1991 ADA Standards were applied to the 2009 updates.

Because the building the Library leases was constructed prior to January 26, 1992, and the Library did not report any renovations to the building that would fall under the new construction or alteration requirements for purposes of OCR's analysis in this case, OCR determined that the Library constitutes an existing facility under Title II. OCR used the 2010 ADA Standards as a guide to assess program accessibility. OCR staff conducted an onsite investigation to take measurements and photographs of the facilities on February 23, 2016. The onsite information is described below, and also provided in chart form in the enclosed Addendum.

In addition, in the Library's written response to OCR, it indicated that it has not completed a self-evaluation of the facility, does not have separate policies or procedures relating to building accessibility, and does not have published notices regarding access to the building.

Library's Entrances

The 2010 ADA Standards at 206.2.1 state that at least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks to the accessible building or facility entrance they serve. OCR found that the Library's main entrance is not accessible as there is not at least one route from site arrival to that entrance that does not require the use of stairs.

The 2010 ADA Standards at 216.6 provide that, at entrances that are not accessible in compliance with the standards, directional signs to the nearest accessible entrance shall be provided. OCR found that there are no signs at the Library's main entrance that direct individuals to the location of the nearest accessible entrance.

With respect to parking for the main entrance, 2010 ADA Standard 208.3.1 states that parking spaces that serve a particular building or facility shall be located on the shortest accessible route from parking to an entrance. With regard to parking for the main entrance, OCR found that there is only street parking available and the single parking space designated as the accessible space is adjacent to the Library's entrance. OCR found, however, that the designated space is not accessible as the curb ramp is too close to traffic.

The Library's back entrance is designated as the accessible entrance. However, OCR found that the Library lacked an accessible route from the parking area to the designated accessible entrance. Standard 208.2.4 states that for every six or fraction of six parking spaces, at least one shall be a van parking space; Standard 206.2.1 states that at least one accessible route shall be provided within the site from accessible parking spaces and

accessible passenger loading zones to the accessible building or facility entrance they serve; and Standards 502.2 and 502.3 state that parking spaces shall have an adjacent access aisle and that the access aisles shall adjoin an accessible route. Here, OCR observed that the parking lot does not include a van accessible space; the parking spaces' access aisles are not at least 60" wide; and the access aisles do not adjoin the accessible route, as an individual must go into the route of traffic to get to the accessible route.

In addition, OCR learned during its investigation that the Library's elevator that allows individuals to access the Library from the designated accessible entrance without the use of stairs had been inoperable from at least October 2015 until at least the time of OCR's onsite visit on February 23, 2016. OCR found that, at the time of the OCR's February 23, 2016, onsite, the inoperability of the elevator made the Library inaccessible without the use of stairs; therefore, OCR had concluded that the Library did not have an accessible entrance and, as a result, failed to provide access to its programs and activities in violation of Title II. The Library subsequently reported to OCR that the elevator has been repaired.

First Floor Restrooms

OCR found that the Library's first floor restrooms lacked an accessible route. 2010 ADA Standard 206.4.4 states that at least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements within a building or facility. Specifically, OCR observed that the route to the women's first floor restroom has a water fountain that abuts a clear path to the entrance.

Standard 703.3 states that braille shall be contracted; and Standard 404.2.9 states that the interior hinged doors and gates shall have a maximum force of five pounds to open. With regard to the restroom doors, the signage did not contain braille and it takes greater than five pounds of force to open.

With regard to the inside of the restroom, OCR observed the following:

- The sink, mirrors, coat hook, and hand dryers were too high above the floor (Standards 603.3, 603.4, 606.3, 308.2).
- The grab bars were not appropriately placed (Standards 604.5.1; 604.5.2)
- The sinks were not insulated and not otherwise configured to protect against contact (Standard 606.5).
- In the water closets, there is not enough clearance between the grab bar and protruding objects; specifically, the toilet paper dispenser is located behind the grab bar (Standard 604.7).

Basement Restrooms

OCR also identified accessibility concerns with respect to the Library's basement restrooms. Specifically, OCR observed the following:

- The restroom doors lacked signage with the International Symbol of Accessibility or braille (Standards 604.2; 216.8).
- The doors require more than five pounds of force to open (Standard 404.2.8.1).
- The sinks have no insulation and are not otherwise configured to protect against contact (Standard 606.5).
- Neither the girls' nor boys' restroom contains stalls that are wide enough for persons using wheelchairs to access the compartments (Standard 604.8.1.1); they lack rear grab bars in the "accessible stalls" (Standard 604.5); the flushers require greater than five pounds of force to operate (Standards 605.4; 309.4); and there is no hardware outside of the door and only a lock on the inside of the door, which is not operable with one hand without tight grasping, pinching or twisting of the wrist (Standards 309.4; 604.8.1.2)

Conclusion and Resolution

Accordingly, based on all of the above information, OCR finds that the Library does not provide accessible routes to the Library for individuals with mobility impairments and maintains inaccessible restrooms that include stalls that are too narrow for persons using wheelchairs to access. Therefore, OCR concludes that the Library has failed to provide program access to individuals with mobility impairments with respect to its programs and activities in violation of Title II.

On May 4, 2017, the Library provided OCR with the enclosed signed resolution agreement, which, once implemented, will fully address OCR's findings in accordance with Title II. In summary, the resolution agreement requires the Library to: provide documentation demonstrating that it has repaired the elevator and will maintain the elevator; complete a self-evaluation to determine program accessibility at the Library; use the results of the self-evaluation to develop and submit to OCR for review and approval a transition plan setting forth the steps necessary to complete the changes identified and the dates the Library plans to make the modifications; develop an interim plan for how the Library will make its programs and activities accessible to and usable by persons with disabilities while the Library is developing and implementing the transition plan; adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services and activities that are accessible to and usable by persons with disabilities at the Library and how to request relocation of programs, services, and activities that are not accessible, including an appropriate Library contact person.

In light of the signed agreement, OCR finds that this complaint is resolved and is closing this investigation as of the date of this letter. OCR will, however, monitor the Library's implementation of the Agreement. Should the Library fail to fully implement the Agreement, OCR will reopen the complaint and take further appropriate action to ensure compliance with Title II.

This concludes OCR's investigation of the complaint 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. 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.

The Complainant may 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, 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.

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.

We appreciate the assistance you provided to OCR during the course of this investigation. OCR is committed to a high-quality resolution of every case.

The OCR contact person for the monitoring of the agreement is xxxxxxxxxxxxxx, who may be reached (216) xxx-xxxx or by e-mail at xxxxxxxxxxxxxxxx@ed.gov. If you have questions regarding this letter please contact xxxxxxxxxxxxxxxx, Supervisory Attorney/Team Leader. Xx xxxxxxxxxxxxxx may be reached at (216) xxx-xxxx or by e-mail at xxxxxxxxxxxxxxxx@ed.gov.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosures