



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XV
MICHIGAN
OHIO

September 29, 2023

Via e-mail only to: [redacted contact]

Karly B. Johnson, Esq.
Manchester Newman & Bennett, L.P.A.
201 E. Commerce Street, Level 2
Youngstown, Ohio 44503

Re: OCR Docket No. 15-18-1380

Dear Ms. Johnson:

This letter is to notify you of the disposition of the above-referenced complaint filed on [redacted content], with the U.S. Department of Education, Office for Civil Rights (OCR), against Southington Local School District (the District) alleging discrimination on the basis of disability. Specifically, the complaint alleged that the District holds events at its Chalker Building when the building is not physically accessible to individuals with mobility impairments because stairs are required to enter the building and to use the restroom.

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. As a recipient of federal financial assistance from the Department of Education and as a public entity, the District is subject to these laws.

Based on the complaint allegations, OCR opened an investigation of the following legal issues:

1. Whether qualified individuals with disabilities are being denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any District program or activity because District 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.
2. Whether the District, on the basis of disability, excluded qualified persons with a disability from participation in, denied him and/or her the benefits of, or otherwise subjected him and/or her to discrimination under any of its programs or activities in

violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130.

During its investigation to date, OCR reviewed documents provided by the District and conducted an on-site visit to the District. OCR also interviewed members of District staff including [redacted content] and [redacted content]. OCR's review of the information obtained during the investigation to date raises a compliance concern. Prior to the conclusion of the OCR's investigation, the District expressed its interest in resolving this complaint under the Rapid Resolution Process (RRP) and Section 302 of OCR's *Case Processing Manual*.

Summary of Investigation to Date

The Complainant alleged that the Building is inaccessible to individuals with mobility impairments. The Complainant reported that the District and a local historical society hold events in the Building that cannot be attended by individuals with disabilities because to access the Building an individual has to use stairs and the only restroom is located in the basement level. The Building is located at 4432 State Route 305 in Southington, Ohio. It was constructed in 1906 and opened for use in 1907 when a benefactor conveyed it to the District to use as a school. While the District owns the Building, the benefactor's legal will provided that the Building and land would revert to his living heirs if: it is not used for two consecutive years; insurance is not kept on the building; or regular maintenance is not practiced.

The District reported that the Building was used as a school through the conclusion of the 2010-2011 school year when the District constructed and opened a new K-12 school building. The Building was nominated in 2010 and ultimately placed on the National Register of Historic Places on February 4, 2011. The District provided records including documents related to the Building's nomination as a Historical Place and an architectural facilities assessment, that showed that no physical changes had been made to the structure of the Building and that it is not accessible.

On October 16, 2018, OCR conducted an on-site visit to the Building and interviewed the District's [redacted content]. OCR observed that the Building is fairly small, with a footprint of approximately 48 feet by 75 feet and is two stories high along with a basement level. The exterior is constructed of brick and stone. The first floor is above grade level and steps are required to gain access into the Building. There are three entrances, with one at the front on the north side, one at the east side, and one at the rear on the south side. The only restrooms in the Building are on the basement level. The only way to access any level within the Building is to use stairs. The Building's interior remains in the same configuration as originally constructed in 1906, including original flooring, and there has been no reconfiguration of walls or spaces. The District reported that the only additions over the decades has been the installation of drop ceilings in some spaces and removable room partitions, but no wall or structural changes have been made. The Building's windows were replaced at some point with more energy efficient windows and its heating and electrical systems were also replaced.

In 2018, the District utilized four rooms in the Building to store old records, in part to avoid the restriction/reversion provision of benefactor's will. The [redacted content] told OCR that the only academic activity that takes place at the Building is an annual third grade trip for students to observe a historical place listed on the National Historic Register of Historic Places and to an adjoining Civil War memorial on the property. The [redacted content] stated that in 2017, there was also a community art show held in the Building where the high school art teacher invited students to participate.

The Building is mostly used by the local historical society - Southington Community Trust (Community Trust), a non-profit organization that seeks to preserve the history and historical artifacts of the community. Typically, the Community Trust held two or three events annually in the Building with the District's consent/approval. The [redacted content] said that the Community Trust conducts its own activities at the Building. A member of the trust submits an application to use the Building for an event and he reviews it. [redacted content] said that a private citizen could apply to use the Building, but he could not recall that this had ever happened. The [redacted content] also told OCR that [redacted content] was not aware of any other person or group that used or asked to use the Building. The [redacted content] said that there is a District policy for use of District buildings. The [redacted content] told OCR that they have never received a request to use the Building from a student or community member who is mobility impaired, but if they did, that they would try to make an accommodation. [redacted content] said [redacted content] did not believe the District has a policy to address this type of situation. [redacted content] said that the new K-12 school building is fully accessible, which is where they hold functions and events. Both [redacted content] and [redacted content] did not know if the Community Trust had ever received a request to use the Building from an individual with a mobility impairment.

The [redacted content] and [redacted content] described to OCR of several annual events and functions the Community Trust had held at the Building. The [redacted content] told OCR that these events are planned and organized by the Community Trust; [redacted content] said the District's only involvement is approving the application for the event. The [redacted content] also stated that the Community Trust typically held their monthly meetings in the Building. [redacted content] also explained that [redacted content]. In December 2022, OCR obtained an update on the District's use of the Building as well as any changes that may have occurred since OCR's 2018 onsite visit. OCR learned that no physical changes had been made to the Building other than some necessary roof repairs and heating and ventilation work. The District reported that the that third-grade students had resumed the annual field trip to the Building and the District continues to store some documents at the building which are only accessed by a District employee. Also, the Community Trust has not held some of its annual events in recent years but has held some of its meetings in the Building since they ceased in March 2020.¹ However, the District did not assert that the Community Trust was foreclosed from submitting applications to use the Building for events in the future.

Legal Standards and Analysis

The Section 504 implementing regulation at 34 C.F.R. § 104.21 and Title II implementing

¹ Many of the Community Trust and District events last occurred in 2019. OCR notes that the reference to March 2020 related to the Global Pandemic at which point most activities ceased until varying dates in 2022.

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.

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. § 104.23(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.

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. 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 constructions and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards.

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.

The Section 504 regulation, at 34 C.F.R. § 104.22(e), also required that, in the event that structural changes to existing facilities were necessary to meet the program accessibility requirement of 34 C.F.R. § 104.22(a), recipients develop, within six months of the effective date of this part of the regulation (June 3, 1977), a transition plan setting forth the steps necessary to complete such changes. Similarly, 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:

- 1) identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
- 2) describe in detail the methods that will be used to make the facilities accessible;
- 3) 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
- 4) indicate the official responsible for implementation of the plan.

A public entity's self-evaluation identifies and corrects those policies and practices that are inconsistent with Title II's requirements, and, 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.

Historic Properties

The accessibility of historic properties is addressed in Title II's implementing regulations. The regulations define historic properties as "those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law."² 28 C.F.R. § 35.104.

Title II modifies the general prohibition against discrimination with respect to historic properties. Specifically, while public entities are, as explained above, generally prohibited from discriminating against a "qualified individual with a disability" because its facilities "are inaccessible to or unusable by individuals with disabilities" a "public entity does not have to take any action that would threaten or destroy the historic significance of an historic property." 28 C.F.R. § 35.104(a)(2).

² The National Park Service's website has information about historical properties. Per this page, for a property to be eligible for listing on the national register of historic places, it must meet two criteria: 1) "*Age and Integrity*: Is the property old enough to be considered historic (generally at least 50 years old) and does it still look much the way it did in the past?" and 2) "*Significance*: Is the property associated with events, activities, or developments that were important in the past? With the lives of people who were important in the past? With significant architectural history, landscape history, or engineering achievements? Does it have the potential to yield information through archeological investigation about our past?"

Chapter Six of “Program Accessibility” from “Compliance with the Americans with Disabilities Act: A Self-Evaluation Guide for Public Elementary and Secondary Schools” (OCR 9/1/95), states that the regulation’s statement that a public entity is not required to take any action that would threaten or destroy the historic significance of a historic property was included “in order to avoid possible conflicts between the Congressional mandate to preserve historic properties and the mandate to make all programs and activities located in existing facilities accessible to individuals with disabilities.”³ Therefore, if any action would threaten or destroy the historic significance of a historic property, the recipient need not take it, although program access must otherwise be provided. 28 C.F.R. § 35.151(b)(3)(ii).

The 1991 ADA Standards provide the following with respect to historic property:

Where alterations are undertaken to a qualified historic building or facility [. . .] if the entity undertaking the alterations believes that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility and that the alternative requirements in 4.1.7(3) should be used for the feature, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer⁴ agrees that compliance with the accessibility requirements for accessible routes (exterior and interior), ramps, entrances or toilets would threaten or destroy the historical significance of the building or facility, the alternative requirements in 4.1.7(3) may be used.

Consultation With Interested Persons. Interested persons should be invited to participate in the consultation process, including State or local accessibility officials, individuals with disabilities, and organizations representing individuals with disabilities.

4.1.7(2)(b)-(c).

The Title II Technical Assistance Manual at II-6.5000 provides the following examples of alternative requirements for historic buildings or facilities that provide a minimal level of access:⁵

- a. An accessible route is only required from one site access point (such as the parking lot).
- b. A ramp may be steeper than is ordinarily permitted.
- c. The accessible entrance does not need to be the one used by the general public.
- d. Only one accessible toilet is required and it may be unisex.
- e. Accessible routes are only required on the level of the accessible entrance.

³ Chapter Six – “Program Accessibility” from “Compliance with the Americans with Disabilities Act: A Self-Evaluation Guide for Public Elementary and Secondary Schools” (OCR 9/1/95) (citing the preamble of 28 C.F.R. § 35.150(b)(2)).

⁴ The State Historic Preservation Officer can delegate “the consultation responsibility for purposes of this section to a local government historic preservation program.” 1991 ADA Standards 4.1.7(d).

⁵ II-6.5000 Alterations to historic properties, available at <https://www.ada.gov/taman2.html#II-6.5000>.

The Technical Assistance Manual also provides the following illustration regarding minimal alternative requirements that would threaten or destroy the historic significance of a building or facility:

ILLUSTRATION: A town owns a one-story historic house and decides to make certain alterations in it so that the house can be used as a museum. The town architect concludes that most of the normal standards for alterations can be applied during the renovation process without threatening or destroying historic features. There appears, however, to be a problem if one of the interior doors is widened, because historic decorative features on the door might be destroyed. The town architect consults the standards and determines that the appropriate historic body with jurisdiction over the particular historic home is the State Historic Preservation Officer. The architect then sets up a meeting with that officer, to which the local disability group and the designated title II coordinator are invited. At the meeting the participants agree with the town architect's conclusion that the normal alterations standards cannot be applied to the interior door. They then review the special alternative requirements, which require an accessible route throughout the level of the accessible entrance. The meeting participants determine that application of the alternative minimal requirements is likewise not possible. In this situation, the town is not required to widen the interior door. Instead, the town provides access to the program offered in that room by making available a video presentation of the items within the inaccessible room. The video can be viewed in a nearby accessible room in the museum.

Voluntary Resolution and Conclusion

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, 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 concerns that can be addressed through a resolution agreement. In this case, the District expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On September 29, 2023, 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 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. Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR looks forward to receiving the District's first monitoring report by December 1, 2023. For questions about implementation of the Agreement, please contact Mr. Stephen Buynack, who will oversee the monitoring and can be reached by telephone at (202) 987-1839 or by e-mail at Stephen.Buynack@ed.gov. If you have questions about this letter, please contact me by telephone at (202) 987-1838 .

Sincerely,

Denise C. Vaughn
Team Leader

Enclosure