



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

February 21, 2023

Via e-mail only to: XXXXX

Scott C. Peters, Esq.
Peters Kalail & Markakis Co, L.P.A.
Corporate Plaza II
6480 Rockside Woods Blvd. South, Suite 300
Cleveland, Ohio 44131

Re: OCR Docket No. 15-20-1174

Dear Mr. Peters:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXX XXXXX, XXXXX, with the U.S. Department of Education, Office for Civil Rights (OCR), against Triway Local School District (the District) alleging discrimination on the basis of disability. Specifically, the complaint alleges that:

1. Shreve Elementary (Shreve) is inaccessible to individuals with mobility impairments because its entrance cannot be accessed without the use of stairs, and because the designated accessible parking spaces have a gravel surface and are not located on the shortest accessible route from the parking lot to the school's entrance.
2. Wooster Township Elementary (Wooster) is inaccessible to individuals with mobility impairments because its entrance cannot be accessed without the use of stairs, and because the designated accessible parking spaces are blocked by cars during student pick-up and drop-off times.
3. The basketball court at Triway High School (the High School) is inaccessible to individuals with mobility impairments because it cannot be accessed without the use of stairs.
4. The High School football stadium is inaccessible to individuals with mobility impairments because it lacks accessible seating, and because the walkway to the stadium requires the use of stairs for access.

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

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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 issue: whether any qualified individual with a disability is 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.

During its investigation to date, OCR reviewed information provided by the Complainant and the District, including but not limited to an interview of the Complainant and a review of documentation, photographs and videos from the District. The allegations in the complaint concern four different District buildings/facilities: Shreve, Wooster, the High School gymnasium, and the High School stadium.

The District constructed the main building of Shreve in 1922. In 1952, the District added an annex to the north of the main building. The annex includes an enclosed walkway that connects to the Main Building. Wooster was constructed in 1938.

The District constructed the High School in 1961—including “the current gymnasium that is used as the basketball and volleyball courts.” The gymnasium is on the main level of the building; however, it was constructed so that spectator areas are at grade—i.e., on the same level as the main level—and the surface of the court is several feet below the floor of the spectator area. The stadium was constructed in 1964. According to the District, “[i]n 1998 new aluminum seat rows and backs were added to the [. . .] steel structural components” of the original bleachers.” There are three sets of bleachers for spectators: home side of field; visitor side of field; and the northwest endzone.

OCR learned during its investigation that the District is constructing a new complex that will replace all of the school buildings at issue in this complaint. The project is expected to be completed (i.e., the new facilities will open) by the start of the 2024-2025 school year. It is OCR’s understanding as of the date of this letter that the High School stadium will not be replaced as part of the current building project.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that benefits from or receives federal financial assistance. Title II’s implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a).

Prohibited discrimination by a recipient or public entity includes denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits, or services offered by that recipient or public entity; affording a qualified person with a disability an opportunity to

participate in or benefit from aids, benefits, or services that is not equal to that afforded others; and providing a qualified person with a disability with aids, benefits, or services that are not as effective as those provided to others. 34 C.F.R. § 104.4(b)(1)(i)-(iv); 28 C.F.R. § 35.130(b)(1)(i)-(iv).

The Section 504 and Title II regulations also 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. 34 C.F.R. § 104.21; 28 C.F.R. § 35.149.

Standards for Existing Facilities

The regulations reference 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.

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 Title II, 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.

In reviewing program access for an existing facility, the ADA Standards or UFAS may be used as a guide to understand whether individuals with disabilities can participate in the program, activity, or service.

The Title II regulation, at 28 C.F.R. § 35.150(a)(2) and (3), provides that, with respect to existing facilities, a public entity is not required to take any action that would threaten or destroy the historic significance of a historic property. Nor is it required to take action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or would result in undue financial and administration burdens. In such cases, however, alternative measures to achieve program accessibility must be undertaken. *See* Title II Technical Assistance Manual (DOJ); 2010 ADA Standards at Section 106 (definitions).

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).

Standards for New Construction and Alterations

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 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).

New construction and alterations after January 26, 1992, but prior to March 15, 2012, must conform to UFAS or 1991 Americans with Disabilities Act Standards for Accessible Design (the 1991 ADA Standards) or equivalent standards. However, the 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 (DOJ) 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). 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.

Shreve Elementary

The Complainant alleged that, on June 9, 2019, XXXXX went to Shreve XXXXX XXXXX XXXXX XXXXX XXXXX. XXXXX said the accessible parking has a gravel surface and is very far from the “front door.” XXXXX said one must walk up steps to ring a buzzer to get into the building.

According to the District, the “enclosed walkway” or “Exit 6” to the Annex on the floor plan provided by the District is the closest entrance to the designated accessible parking and is accessed by using a concrete ramp. “Exit 6” is not the entrance that is used by the general public to access Shreve—the District identified “Exit 3” on the floor plan of the main building as the main entrance. The photographs provided did not include any signs to identify the location of an accessible entrance.

Regarding parking, the District said Shreve is served by three parking lots and the first parking lot is a gravel lot that has been “in use since at least 1952” and has not been altered since construction. The District said the gravel lot contains the only designated accessible parking space for the building, “which is [identified] by a sign on the pole.” The District provided OCR with a photograph of the parking space. The parking surface was covered by gravel and appeared uneven—it included what appeared to be sections of old asphalt or other, similar hard surface that had broken up over time. Weeds were growing in the lot.

Based on the information obtained to date, OCR has determined that “program access” is the standard that applies to the allegation regarding the entrance and parking at Shreve. OCR notes a cause for concern, without more information, that the entrance and parking at Shreve might not be accessible to individuals with disabilities. There appears to be a lack of appropriate signage associated with the main entrance and the enclosed walkway and, using the 2010 Standards as a guide, the photographs of the parking surface suggest it is not stable, firm, and slip resistant.

Wooster Elementary

The Complainant alleged that a visitor must climb stairs to ring a buzzer for entry to Wooster, and that the designated accessible parking spaces are blocked by cars during student pick-up and drop-off times.

Regarding the entrance, the District said Wooster has two public entrances on the side of the building facing Dover Road. The first entrance (“Exit 1” on the building’s floor plan), which is near the gymnasium and principal’s office, “is above grade and served by stairs only” and is the entrance closest to the designated accessible parking. Photographs of “Exit 1” did not include any directional signs that indicate the location of the nearest accessible entrance. The second entrance (“Exit 9” on the building’s floor plan), which is on the west side of the building near the library is “above grade and served by a ramp.”

OCR informed the Complainant that the District asserted there are two public entrances to Wooster facing Dover Road, one with stairs and one with a ramp, and asked XXXXX XXXXX XXXXX was aware of a second entrance with a ramp. In response, the Complainant said the second entrance is not for parents/visitors. XXXXX said, for safety, all visitors must walk up to the entrance with steps to get buzzed in and then go through additional doors to the front office to sign in and get a visitor sticker badge.

Regarding parking, the District said there are ten designated accessible parking spaces for Wooster that are located “along the sidewalk on the asphalt drive directly in front of the [Wooster] building.” Pictures of the asphalt drive and one of the signs designating accessible

parking was provided to OCR. This is the driveway that “[p]arents dropping off and picking up children use” that creates a situation in which the District acknowledges “it is possible that parents’ vehicles, as they wait in line to exit the property, block vehicles parked in these designated spaces.” According to the Complainant, this situation leaves individuals who need access to the designated parking spaces with three choices: arrive much earlier than the drop-off/pick-up times, arrive after all cars have left, or “park very far away in the parking lot and walk.” The District states that “a driver who wishes to leave one of the designated spaces during” the time when parents are dropping off or picking up children “can turn on the vehicle’s left turn signal to be let into the line, signal with his or her hand to be let into the line, or, in absence of a courteous driver, ask one of the school employees who are always present at drop off and pick up to hold a car in line so that the driver can enter his or her vehicle into the line.”

Based on the information obtained to date, OCR has determined that “program access” is the standard that applies to the allegation regarding the entrance to Wooster. OCR notes a cause for concern, without more information, that the visitor entrance to Wooster is not readily accessible to and useable by individuals with disabilities because photographs did not include any directional signs that indicated the location of the nearest accessible entrance and the Complainant maintains that parents/visitors do not enter Wooster using the entrance with a ramp, for security reasons. OCR also notes concern about the effective accessibility of the designated accessible parking at Wooster considering pick-up and drop-off of students takes place along the driveway where the parking is located.

High School Gymnasium

The Complainant alleged that, on XXXXX XXXXX, XXXXX, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, XXXXX, XXXXX XXXXX XXXXX at the High School gymnasium. XXXXX said there were multiple ways to get to the court/floor, but every way required the use of stairs.

The District stated that a person with a mobility impairment can reach the gymnasium floor by entering the main level of the High School at the west entrance, taking the elevator, and then walking through a central corridor to a door on the north end of the gymnasium that provides access to a hallway. The individual would then reach a set of stairs that can be climbed using a portable “stair climber” to the gymnasium floor. Videos provided by the District support that the gymnasium floor cannot be accessed without the use of stairs.

Regarding the stair climber, the District said District personnel must be “notified that a person needs assistance to access the gymnasium floor” and then “obtain necessary information” to “arrange for the use of [the] stair climber.” The District explained that an additional person is needed to operate the stair climber. It stated further that the High School principal, assistant principal, building custodians, and athletic directors are all trained on using/operating the portable stair climber, and one or more of them would be available to assist an individual to access and use/operate the portable stair climber in order to access the gym floor, if needed.

The District asserted that the “following statement is posted on the District’s athletic department’s website (triwayathletics.com): If you need assistance accessing the high school gymnasium floor for an event, please contact the Athletic Department at 330-804-4550.” OCR

The information obtained to date indicates a cause for concern under Section 504 and Title II, including that the District did not provide any information stating the applicable accessibility standards that it utilized in renovating the stadium bleachers, that the District reported that individuals with mobility impairments can only view competitions from the track or on an

asphalt pathway which is not integrated, and none of the videos that the District provided indicate the presence of directional signs with respect to the location of these seating areas.

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 allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On XXXXX XXXXX, XXXXX, 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 **March 31, 2023**. For questions about implementation of the Agreement, please contact Ms. Erin Barker-Brown, who will oversee the monitoring and can be reached by telephone at XXXXX or by e-mail at XXXXX. If you have questions about this letter, please contact me by telephone at XXXXX.

Sincerely,

Sacara Miller
Supervisory Attorney/Team Leader

Enclosure