



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XV
MICHIGAN
OHIO

March 17, 2022

Via E-mail Only to: wlillis@columbus.k12.oh.us

Wanda T. Lillis, Esq.
Associate Legal Counsel
Columbus City Schools
3700 South High Street
Columbus, Ohio 43207

Re: OCR Docket No. 15-22-1005

Dear Ms. Lillis:

This letter is to notify you of the disposition of the above-referenced complaint filed on October 5, 2021, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Columbus City Schools (the District) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the auditorium at Columbus International High School is inaccessible to individuals with mobility impairments because it lacks accessible seating and requires the use of stairs to access to the floor and stage.

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 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.

The Complainant alleged that the auditorium of Columbus International High School does not include seating for an individual with a wheelchair; the area where such an individual would probably have to sit provides only three to three and a half feet of space. The Complainant also

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alleged that there is no way to access the floor or stage of the auditorium without using stairs; there are no ramps available.

The Section 504 and Title II regulations 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.

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 Americans with Disabilities Act Standards for Accessible Design (ADA Standards) or Uniform Federal Accessibility Standards (UFAS) may be used as a guide to understand whether individuals with disabilities can participate in the program, activity, or service.

The District provided OCR with information and supporting documentation regarding the District building located at 4077 Karl Road in Columbus, Ohio (the Building), which houses Columbus International High School and the District's Columbus Global Academy program. The District said the Building was constructed in 1961, with additions in 1965 (classrooms) and

1975 (library). The District also provided OCR with the dates of certain improvements made to the Building.

The District provided OCR with drawings of each of the three levels of the building. The first floor was illustrated to show what the District represented as the accessible route from the primary building entry to the auditorium. The District noted that the stage floor, built as part of the 1961 original building, is not on an accessible route. The District said there are no other doors at grade and accessible, and there is no elevator.

Photographs provided by the District support that there is no access to the auditorium floor or the stage without the use of stairs. The photographs show the floor space at the top of the auditorium, behind the seats and just inside double entry doors. Although the images do not show that the area is specifically designated for wheelchair seating, based upon OCR's review of all auditorium images provided, that floor space appears to be the only area that could be used for such seating. OCR estimates the space could provide two to four wheelchair spaces, and at least one of those spaces would possibly be obstructing access to fire equipment. Although the images provided to date do not include measurements of the floor space, and OCR has not conducted an onsite visit, the floor space appears to be relatively small when considering wheelchair access.

The District said Columbus Global Academy and Columbus International High School hold various activities in the auditorium during and after the school day (e.g., band and orchestra concerts, academic award assemblies, honor roll recognition, student picture day). The District said the auditorium is also used as a "swing space" during lunch periods for students to sit and relax, and it has been used for staff meetings to accommodate social distancing during the pandemic.

The District said it was not aware of any written or verbal complaints regarding the accessibility of the auditorium during the 2021-2022 school year, although it said there were two individuals who informally communicated concerns about their ability to fully access the space during the relevant time period.

OCR has determined that the Building is an existing facility for which 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. As noted above, the District described numerous programs and activities that are held in the auditorium for both schools, during and after school hours.

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 concerns that can be addressed through a resolution agreement. In this case, without completing its investigation, OCR's causes for concern include photographic evidence and the District's admission that there is no access to the auditorium floor or the stage without the use of stairs. Photographs of the auditorium also show a relatively small floor space at the top/back of the auditorium behind the seats, and just inside the entry doors. OCR estimates that, from the evidence obtained to date,

the floor space could provide, at most, two to four wheelchair spaces, and at least one of those could be obstructing access to fire equipment. OCR, therefore, notes concern regarding the number, width, depth, approach/egress, and companion seats associated with wheelchair seating in the auditorium. The District expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On March 13, 2022, 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 1, 2022. For questions about implementation of the Agreement, please contact Ms. Erin Barker-Brown. She will be overseeing the monitoring and can be reached by telephone at (216) 522-4978 or by e-mail at Erin.Barker-Brown@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-7640.

Sincerely,

/s/

Sacara Miller
Supervisory Attorney/Team Leader

Enclosure