



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

April 3, 2023

Via e-mail only to: XXXXX

XXXXX XXXXX
XXXXX

Avon Lake Library
32649 Electric Blvd.
Avon Lake, Ohio 44012

Re: OCR Docket No. 15-23-4023

Dear XXXXX XXXXX:

This letter is to notify you of the disposition of the above-referenced complaint filed on January 27, 2023, with the U.S. Department of Education, Office for Civil Rights (OCR), against Avon Lake Public Library (the Library) alleging that the Library discriminated against individuals with disabilities by not providing a functioning elevator.

OCR 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 public entity, the Library is subject to this law.

Based on the complaint allegation, OCR opened an investigation of the following legal issue: whether the Library's programs and facilities are readily accessible to and usable by persons with disabilities as required by 28 C.F.R. § 35.149-151.

During its investigation to date, OCR reviewed information provided by the Complainant and the Library.

Based on the complaint allegations, OCR investigated the legal issue of whether qualified individuals with disabilities, because the Library's facilities are inaccessible to or unusable by individuals with disabilities, are being excluded from participation in, denied the benefits of the services, programs, or activities of the Library, or subjected to discrimination, in violation of the Title II implementing regulation at 28 C.F.R. §§ 35.149-151.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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Legal Standard

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.

Analysis

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 Library expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation.

The Library informed OCR that the building opened in the summer of 1958 as a newly constructed facility. OCR located media and news articles which reported that the Library underwent major renovations between August 2021 and February 2023, expanding the Library from 10,000 to 26,867 square feet. The renovations included the creation of a reading garden, drive-up window, expanded meeting rooms, technology upgrades, and a dedicated space for children and youth programming.

The Library provided OCR with several invoices from an Elevator Company (the Company) the Library hired that showed that between September 2022 and December 2022, the Library's elevator was not functioning and the Company made several attempts to repair it. An invoice dated December 5, 2022, indicated that the Company added more hydraulic fluid and suspected that the elevator unit was also leaking oil.

The Library informed OCR that on December 5, 2022, it learned that the damage sustained from the hydraulic fluid leakage rendered the elevator inoperable, and it had to replace the elevator. The Library expedited the process for replacing the elevator and on February 9, 2023, the Library's Board of Trustees approved a resolution waiving the competitive bidding process for the removal and installation of an elevator. The Library estimated that the elevator will be replaced by the fall of 2023, contingent upon materials being available.

The Library indicated that it has limited its programming to the main (first) floor since December 2022. The Library advised OCR that the first floor houses its public collection, service desks, public restrooms, and meeting rooms. The lower level has additional meeting rooms and storage. The Library told OCR that it advises individuals requesting a lower-level meeting room about the lack of an elevator and gives them the opportunity to schedule a meeting room on the first floor.

OCR confirmed that the Library's website includes a notification that the elevator is inoperable. In addition, the website indicates which meeting rooms require traversing stairs because of the inoperable elevator.

Based on the above, OCR determined that resolution pursuant to Section 302 was appropriate.

On March 23, 2023, the Library 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 Library 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 Library's first monitoring report by December 15, 2023. For questions about implementation of the Agreement, please contact Tanya Williams Sample, who will oversee the monitoring and can be reached by telephone at XXXXX or by e-mail XXXXX. If you have questions about this letter, please contact me by telephone at XXXXX or by e-mail at XXXXX.

Sincerely,

Denise C. Vaughn
Supervisory Attorney/Team Leader

Enclosure