



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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July 18, 2016

Mr. Matt Klosterman
Superintendent
Belleville School District #118
105 West A Street
Belleville, IL 62220

OCR Case No. 05-16-1160

Dear Mr. Klosterman:

On February 17, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint filed against the Belleville School District #118 (District). The complaint alleges that the District discriminated against XXX based on his disability (XXX).

Specifically, the complaint alleges the following:

1. The District failed to provide accessible seating XXX in the West Haven Elementary School and Roosevelt Elementary School gymnasiums in XXX.
2. The District failed to reasonably accommodate XXX in the West Haven Elementary School and Roosevelt Elementary School gymnasiums in XXX.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 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 a public entity, the District is subject to the requirements of Section 504 and Title II. Additional information about the laws OCR enforces can be found at www.ed.gov/ocr.

During the investigation, OCR reviewed the complaint submitted by the Complainant and interviewed the Complainant, reviewed documents submitted by the District, and spoke with the District Assistant Superintendent. Prior to OCR's conclusion of OCR's investigation, the District expressed interest in resolving the complaint in accordance with Section 302 of OCR's *Case Processing Manual* (CPM). The District signed the enclosed Resolution Agreement on June 22, 2016 and submitted the Resolution Agreement to OCR on July 7, 2016, which, when fully

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implemented, will resolve the issues raised in the complaint. The reasons for this determination are set forth below.

Applicable Legal Standards

Accessibility, general:

The regulation implementing Section 504, at 34 C.F.R. § 104.21, states that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with a disability, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which the regulation applies. The regulation implementing Title II, at 28 C.F.R. § 35.149, states that no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

Accessibility, existing facilities:

Under Section 504, an "existing facility" is a building, or part thereof, where construction was commenced on or before June 2, 1977. The Section 504 regulation, at 34 C.F.R. § 104.22(b), requires institutions to operate programs and activities offered in "existing facilities" so that, when viewed in their entirety, are readily accessible to persons with disabilities.

Under Title II, an "existing facility" is a building, or part thereof, where construction was commenced on or before January 25, 1992. The Title II regulation, at 28 C.F.R. § 35.120, requires public entities to operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

In general, an "existing facility" may comply with the "program access" requirement through the redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other method that results in making each of its programs, services, or activities accessible to persons with disabilities. The institution is not required to make structural changes to existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for providing program access, the institution or public entity shall give priority to those methods that offer programs, services and activities to disabled persons in the most integrated setting appropriate.

Accessibility, new construction:

Under Section 504, any facility or part of a facility for which construction commenced on or after June 3, 1977 is considered "new construction." The Section 504 regulation, at 34 C.F.R. § 104.23, requires each such facility or part of a facility constructed by, on behalf of, or for the use of an institution to be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. Any portion of an existing facility that was altered on or after June 3, 1977 is an "alteration." Under Section 504, each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient, in a

manner that affects or could affect the usability of the facility or part of the facility shall, 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.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), designates the American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped [ANSI 117.1-1961 (1971)] (ANSI) as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the Uniform Federal Accessibility Standards (UFAS) for facilities constructed or altered on or after January 18, 1991.

Under Title II, any facility or part of a facility for which construction commenced on or after January 26, 1992 is considered “new construction.” The Title II regulation, at 28 C.F.R. § 35.151, requires each facility or part of a facility constructed by, on behalf of, or for the use of a public entity to be designed and constructed in such a manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Any portion of an existing facility that was altered on or after January 26, 1992 is an “alteration.” Under Title II, each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient, in a manner that affects or could affect the usability of the facility or part of the facility shall, 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.

The Title II regulation, at 28 C.F.R. § 35.151(c) and the corresponding Appendix, state that new construction and alterations that commenced on or after July 26, 1992 and prior to September 15, 2010 must comply with either the Uniform Federal Accessibility Standards (UFAS) or the 1991 ADA Standards for Accessible Design (1991 Standards). In September 2010, the regulations implementing Title II were amended and new accessibility guidelines were adopted. The 2010 ADA Standards for Accessible Design (2010 Standards) apply to physical construction or alterations that commence on or after March 15, 2012. Facilities constructed or altered on or after September 15, 2010 and before March 15, 2012 are in compliance with Title II if they meet the 1991 Standards, UFAS, or the 2010 Standards. OCR Notice of Interpretation, Federal Register, Vol. 77, No. 50, pages 14972-76 (March 14, 2012) allows use of the ADA Standards to meet the compliance requirements under Section 504.

Notice, existing facilities:

For “existing facilities,” the implementing regulation of Section 504, at 34 C.F.R. § 104.22(f), provides that “the recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities.” If a recipient utilizes the relocation option of program accessibility, it must provide reasonable notice to students, parents and others who may have a disability and require relocation of programs, activities or services.

Maintenance of Accessible Facilities:

A public entity must maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. This requirement does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. This standard is codified in the regulation implementing Title II, at 28 C.F.R. § 35.133, and is also generally applicable to recipients of Federal financial assistance.

1991 Standards

Section 4.1.3(19) of the 1991 Standards states that in assembly areas with fixed seating accessible wheelchair locations shall comply with 4.33.2, 4.33.3 and 4.33.4. This Section provides the minimal number of required wheelchair locations in the assembly area based on the assembly area's seating capacity. The 1991 Standards require a gymnasium with a seating capacity of over 500 to have six wheelchair locations, plus 1 additional space for each total seating capacity increase of 100. Section 4.33.2 provides for the minimum clear ground or floor space of each wheelchair location in an assembly area. Section 4.33.3 requires that wheelchair areas be integrated throughout the seating plan and provide lines of sight comparable to those for members of the general public. This section further requires accessible seat locations to be on an accessible route and to have at least one companion fixed seat next to each wheelchair seating area. For assembly areas with seating capacities over 300, wheelchair spaces must be provided in more than one area. This section allows for readily movable seats to be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users.

Policies and Procedures

The District's policies and procedures governing nondiscrimination and accommodating individuals with disabilities can be found in the District Policy Manual, which is available upon request at the District 118 Central Office for review or copy. District Policy 8:70 states that the District will provide an opportunity to participate in all school-sponsored services, programs, or activities without discrimination. District Policy 8:70 guarantees that each service program or activity operated in an existing facility will be readily accessible to, and usable by, individuals with disabilities, and new construction and alterations to existing facilities will be accessible when viewed in their entirety. Under this policy, an individual requiring an accommodation should notify the Superintendent or Principal as far as possible prior to a school-sponsored function, program, or meeting if the individual requires special assistance or services, and provide information on which services the individual requires.

Factual Background

The Complainant alleges that XXX was discriminated against based on his disability (XXX) when the District did not accommodate his disabilities XXX at two District elementary schools.

XXX

The District informed OCR that the Complainant expressed concerns about the accessibility of the Roosevelt gymnasium XXX. XXX. The District further informed OCR that they planned to install reverse truncation seating to both gymnasiums as soon as practicable.

The District informed OCR that the Westhaven gymnasium was built in 1997, with a seating capacity of 1,284 persons. The gymnasium does not provide wheelchair accessible seating; however, the gymnasium bleachers have the option of being pushed back to allow for wheelchair seating in the front row. Construction on the Roosevelt Elementary School gymnasium began prior to January 18, 1991. The gymnasium's seating capacity is 974 persons. The gymnasium does not provide wheelchair accessible seating. No portion of either gymnasium has been altered or renovated since the date of construction.

Conclusion

The Westhaven gymnasium was constructed in 1997 and is considered “new construction” under both Section 504 and Title II. Therefore, OCR applies the applicable provisions of the UFAS and the 1991 Standards in determining compliance with Section 504 and Title II.

Construction on the Roosevelt gymnasium began prior to January 18, 1991, and the gymnasium is considered “new construction” under Section 504 and an “existing facility” under Title II. Therefore, the ANSI standards apply in determining whether the seating in the gymnasium complies with Section 504. These standards do not have a specific requirement for wheelchair accessible seating in assembly areas. Under Title II, 34 C.F.R. § 104.22, a recipient shall operate programs or activities so that the program or activity, when viewed in its entirety, is readily accessible to individuals with disabilities. The provision does not require a recipient to make each of the existing facilities or every part of a facility accessible to and usable by a person with a disability.

The District expressed an interest in resolving the allegations in this complaint and stated it is committed to complying with Section 504 and Title II. The District plans to alter both gymnasiums to add reverse truncation seating and to otherwise ensure the gymnasiums provide access for limited mobility individuals.

The enclosed Resolution Agreement, when fully implemented, will address OCR's compliance concerns. The provisions of the Resolution Agreement are aligned with the allegations in the complaint and the information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the implementation of the Resolution Agreement until the District is in compliance with Section 504 and Title II regulations at issue in this case.

The 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 Complainant 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, we 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 privacy.

The Complainant may file a private suit in Federal court, whether or not OCR finds a violation.

OCR would like to thank the District for the cooperation and courtesy extended to OCR during our investigation. We look forward to working with you during the monitoring of the Resolution Agreement. If you have any questions, please contact Ms. Janet Bonem, Equal Opportunity Specialist, at 312-730-1567, or Janet.Bonem@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure