



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CHICAGO, IL 60604

REGION V
ILLINOIS
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IOWA
MINNESOTA
NORTH DAKOTA
WISCONSIN

May 5, 2020

Dr. Wendy Y. Robinson
Superintendent
Fort Wayne Community Schools
Sent via email only to wendy.robinson@fwcs.k12.in.us

Re: OCR Docket #05-20-1095

Dear Dr. Robinson:

The U.S. Department of Education (Department), Office of Civil Rights (OCR), has completed its complaint resolution activities in connection with the above-referenced complaint against Fort Wayne Community Schools (Corporation) alleging discrimination on the basis of disability.

Specifically, the complaint alleged that the District is discriminating against individuals with disabilities by failing to provide sufficient accessible seating for events at the gymnasium at Northrop High School (School).

OCR is responsible for enforcing 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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 - 12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the Corporation is subject to these laws.

During the investigation, OCR reviewed information provided by the Complainant and the Corporation and conducted an on-site visit to the School. Prior to the completion of OCR's investigation, the Corporation expressed interest in resolving the complaint in accordance with Section 302 of OCR's *Case Processing Manual* (CPM). The Corporation executed the enclosed Resolution Agreement (Agreement) on April 30, 2020.

This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the complaint was resolved.

Legal Standards

The implementing regulations of Section 504, at 34 C.F.R. § 104.21, and of Title II at 28 C.F.R. § 35.149, provide that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be

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excluded from participation in, or otherwise be subjected to discrimination under any program or activity.

The implementing regulations of Section 504, at 34 C.F.R. § 104.22, and Title II, at 28 C.F.R. § 35.150, are applicable to any facility or part of a facility where construction commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that with regard to such facilities, termed “existing facilities,” the Corporation will operate the programs, activities and (as to Title II) services so that, when viewed in their entirety, the programs, activities, and services are readily accessible to and usable by persons with disabilities. The Corporation may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alterations of existing facilities or any other methods that result in making each of its programs, activities, and services accessible to disabled persons. The Corporation is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of the statute, the Corporation must give priority to methods that offer the programs, activities, and services to disabled persons in the most integrated setting appropriate.

The implementing regulation of Section 504, at 34 CFR § 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 locations of services, activities, and facilities that are accessible to and usable by persons with disabilities. The implementing regulation of Title II, at 28 C.F.R. § 35.163(a), provides that public entities must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of accessible services, activities and facilities.

The implementing regulations of Section 504, at 34 C.F.R. § 104.23(b), and Title II, at 28 C.F.R. § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. These facilities are termed “new construction or alterations.” The regulations provide that each facility or part of a facility which is altered by or for the use of a recipient in a manner that affects or could affect the usability of the facility shall, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities. The regulations specify the accessibility standard to be used in determining the accessibility of the alterations based on the date of construction or renovation.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineated 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. The Title II regulation, at 28 C.F.R. § 35.151(c), delineated UFAS, or The Americans with Disabilities Accessibility Guidelines for Buildings and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992.

The regulation implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (2010 Standards). The regulation, at 28 C.F.R. § 35.151(c)(3), now provides, “If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards.”

Policies and Procedures

The Corporation’s policies and procedures governing nondiscrimination and accommodating individuals with disabilities can be found on the Corporation’s website.¹ The Corporation’s Nondiscrimination Policy (Policy) states, “No person is excluded from participating, denied the benefits of, or otherwise subject to unlawful discrimination [based on disability] under any educational program or student activity.” Under the Policy, an individual who may have experienced discrimination or may have been denied participation in any program or activity, may contact the building principal or the Corporation’s Section 504 Coordinator.

Facts

The Complainant alleged that the Corporation does not provide sufficient accessible seating for events held at the gymnasium at the School. She stated that when she was visiting the School in November 2019 to watch a game, she had difficulty going up and down the bleachers because the first step is over 10 inches high and without handrails and that she fell and bruised her thigh when she climbed down from the bleachers. The Complainant acknowledged that she did not ask anyone whether there was alternative seating for her or report to anyone that she had difficulty going up and down the bleachers. The Complainant explained that she did not know to whom she could request assistance, or report her difficulties accessing a bleacher seat.

The Corporation informed OCR that the School’s gymnasiums were designed and constructed between 1969 and 1971. The main gymnasium, which is the subject of this complaint, is used for athletic events, such as basketball, volleyball, wrestling and gymnastics, and other events such as band concerts. This gymnasium has two levels of retractable wooden bleacher-style seating on both sides of the court, on a lower and upper level; the upper level of bleachers is accessible only by staircases with handrails on each side of the court. The Corporation stated that the main gymnasium has not been renovated since its construction, but that it is in the process of renovating the gymnasium this year.

According to the Corporation, the main gymnasium has a seating capacity of approximately 2,400 people, with courtside seating along the entire first row of bleachers on each side of the gymnasium for individuals who cannot climb steps; the Corporation informed OCR that if the first row is full, folding chairs can be set up on the gym floor near the baskets on each side of the gym to accommodate individuals in wheelchairs and their companions. During OCR’s onsite visit to the School, Corporation personnel informed OCR that individuals in wheelchairs and their companions are placed on each side of the court, in front of the four staircases going to the upper level bleachers. OCR observed that those four areas have the capacity to accommodate three wheelchairs and companion seats each to avoid blocking access to the staircases.

¹ <https://www.fwcs.k12.in.us/discrimination.php>.

The School's Principal and Athletic Director acknowledged to OCR that there are no signs advising individuals how they may obtain assistance with any questions or concerns they may have regarding the accessibility of the gymnasium. However, they said that if individuals with mobility impairments need assistance, the Athletic Director and other School staff are always present and available to answer questions regarding accessibility during games or other events.

On February 12, 2020, the Corporation informed OCR that it had plans to update the bleachers in the School's main gymnasium and produced a copy of the approved construction plans for the renovation project. These plans show that once the renovation is completed, the main gymnasium will have a total seating capacity of 2,143, of which a total of 15 wheelchair spaces will be available along the first row of the bleachers located on the lower level on each side of the court (30 for the whole gymnasium). The plan shows that there will be a total of 26 companion seats when all 30 wheelchair places in the gym are used. The construction plans also show the renovated bleachers will have a total of 8 recommended designated aisle seats. During OCR's onsite visit, the Corporation personnel confirmed that the renovated bleachers will have the International Symbol of Accessibility along the first row of the lower level bleachers and will have handrails lining every staircase.

Analysis and Conclusions

In accordance with Section 302 of OCR's CPM, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. OCR has concerns that the existing arrangement of the gymnasium may not provide individuals with mobility impairments access to the programs offered in the gymnasium; in particular, notice is not provided to visitors of how to locate assistance. The Corporation informed OCR that it is in the process of renovating the gymnasium and expressed interest in resolving the complaint. OCR determined that it is appropriate to resolve this case via Section 302 of the CPM.

On April 30, 2020, the Corporation executed the enclosed Agreement, which when fully implemented, will address the compliance concerns. The provisions of the Agreement are aligned with the allegation 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 Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address Corporation's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

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 Corporation 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 Corporation for the cooperation and courtesy extended to OCR during our investigation. In particular, we wish to thank Mr. David Amen, the Corporation's General Counsel. If you or any of your staff members have any questions regarding this matter, please contact Sherry Rosenblum, Equal Opportunity Specialist, at (312) 730-1601 or by email at Sherry.Rosenblum@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. David Amen (sent via email to David.Amen@fwcs.k12.in.us)