



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 17, 2016

IN RESPONSE, PLEASE REFER TO: 03161086

Mr. Stephen Guthrie
Superintendent
Carroll County Public Schools
125 North Court Street
Westminster, MD 21157

Dear Superintendent Guthrie:

This is to notify you of the resolution of the complaint you filed with the U. S. Department of Education, Office for Civil Rights (OCR), against the Carroll County Public Schools (the District). Specifically, you allege that the District's East Middle School is not accessible to students with mobility impairments. We also considered whether the District discriminates against students with disabilities because they are unable to attend their neighborhood school, due to the inaccessibility of East Middle School.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities, such as public elementary and secondary school systems.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504, Title II and their implementing regulations.

Based on the allegations raised in this complaint, OCR investigated the following issue: Whether the District discriminates against students with mobility impairments whose home school is the East Middle School, by providing their educational program at an

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

accessible middle school, in violation of the Section 504 regulation at 34 C.F.R. Section 104.21 and the Title II regulation, at 28 C.F.R. § 35.149.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In reaching its determination, OCR analyzed information and documentation that the Complainant and the District provided, and interviewed District staff. Based on the information obtained by OCR during its investigation, OCR has determined that there is insufficient evidence to support the allegations.

Legal Standards

Accessibility

Discrimination Prohibited – 34 C.F.R. § 104.21: No qualified person with a disability shall, because a recipient'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 program or activity operated by the District. Title II of the ADA contains similar language at 28 C.F.R. §§ 35.149.

Existing facilities: 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 District 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 District 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 District 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 District 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.

Different Treatment

An individual with a disability under Section 504 is any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. 34 C.F.R. Section 104.3(j)(1) and (2).

The regulation implementing Section 504 at 34 C.F.R. §§104.4(a), (b)(1)(i), (ii) and (vii), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance. A recipient, in providing any aid, benefit, or service, may not, on the basis of disability, deny a qualified person with a disability the opportunity to participate in or benefit from an aid, benefit, or service; afford a qualified person with a disability the opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others; or otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

In order to establish a violation of Section 504, we would have to find that the Complainant was treated differently than similarly-situated nondisabled students in a way that limited the Complainant's opportunity to participate in or benefit from a school program or activity, and that either the District cannot articulate a legitimate nondiscriminatory reason for the different treatment or that the District has articulated a legitimate nondiscriminatory reason for the different treatment, but the reason is pretext for discrimination. Additionally, OCR examines whether the recipient treated the Complainant in a manner that was consistent with established policies and practices and whether there is any other evidence of discrimination based on disability.

Section 504 and Title II of the ADA have equivalent standards. *See* 28 C.F.R. §§ 35.130(a),(b). Title II is interpreted as adopting the standards of Section 504 in areas where Title II has not adopted a different standard. Therefore, OCR will apply Section 504.

Findings of Fact

- The District reported that East Middle School was constructed in 1936; renovations at the East Middle School occurred from 1950 to 1964 and further renovations took place in 1975. A ramp was added at the entrance to the gymnasium around 1979. Based on the dates of construction and renovation, the East Middle School, with the exception of the ramp to the gymnasium entrance,

is considered existing construction and falls under the program accessibility standard.

- The District stated that all of its middle schools are accessible, with the exception of East Middle School. The District acknowledges that the East Middle School is not accessible, although there is limited access to facilities located on the first level of the building.
- The District stated that it uses a “cluster concept” to provide program accessibility at its inaccessible schools; specifically, schools at each organization level and within a reasonable geographic distance of each other have been grouped and one or more schools have been identified as accessible facilities. Under this plan, students with disabilities having mobility impairments whose neighborhood/home school is East Middle School would attend the nearby neighboring West Middle School with transportation.
- The District reported that West Middle School is the closest accessible school to East Middle School. The District stated that West Middle School is located approximately 1.2 miles from East Middle School. The two schools are in the same town and community. OCR confirmed the proximity between the schools.
- The District stated that East Middle School and West Middle School offer the same educational curriculum and extracurricular activities, as do all of its middle schools. OCR reviewed the District’s website and confirmed that the academic and non-academic programs at the two schools were equivalent.
- The District stated that for students with mobility impairments whose home school is the East Middle School, the decision regarding placement is made through the IEP or Section 504 process, as applicable. In most instances, this assignment would be to West Middle School. However, if a parent preferred another middle school, the District would attempt to satisfy that request. All District students with mobility impairments are provided transportation.
- The District stated that during the 2015-2016 school year, there were two students who use wheelchairs and whose neighborhood/home school was East Middle School. One of these students attended West Middle School and the other attended Shiloh Middle School. The student who attended Shiloh Middle School was placed there at the parent’s request. The District stated that both students receive the same educational services and programming at their assigned schools that they would have received at their home/neighborhood school.
- Nondisabled students are also placed outside of their neighborhood/home school for a variety of reasons, including parental request/preference.

- The District reported that a ramp located at the Gymnasium entrance to East Middle School provides access to facilities on the first level of this School, including the gymnasium, media room, office and conference rooms.
- During the 2015-2016 school year, there were two students with disabilities affecting their mobility who remained in East Middle School, their neighborhood/home school. For both students, it was determined through the IEP process that East Middle School was an appropriate placement with the provision of physical/environmental support to accommodate their needs. One of these students is visually impaired and her IEP requires the development of her navigational skills (use of steps, etc.); she is provided with high-contrast markings on drop offs such as stairs and curbs and extra time for movement in between classes. The other student has multiple disabilities, including a genetic disorder causing speech, motor and cognitive delays; he receives adaptive equipment which includes a harness for safety with balance issues, when walking on all terrains. The District stated that it tries to accommodate students in their neighborhood/home schools whenever possible.
- Students with temporary disabilities which impact their mobility (e.g. students using crutches due to an injury) have also continued to attend East Middle School; as such situations arise, they are provided with assistance, as determined to be appropriate to meet their needs. For example, they may receive assistance in navigating the stairwells and extra time for movement between classes. Alternatively, they may receive their instruction from a certified teacher in the District's Connections Room located on the first floor of the school building, which provides academic support to students.

Analysis and Conclusion

Based on the dates of construction and renovation, East Middle School is considered existing construction and falls under the program accessibility standard. As is expressly stated under the accessibility regulations for existing construction at 34 C.F.R. Section 104.22 and 28 C.F.R. Section 35.130, the District may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings.

Accordingly, under the applicable existing construction/program access standard, the District is not required to make East Middle School accessible. The District's plan for providing program access to students with mobility impairments whose neighborhood/home school is the East Middle School satisfies the applicable standard of program accessibility at this existing construction facility. Specifically, pursuant to this plan, students with mobility impairments who cannot be accommodated at East Middle School are reassigned to the closest neighboring accessible school, West Middle School, which is located in the same community and town as East Middle School, and is

just over a mile away. These students are also provided with transportation. This is consistent with 34 C.F.R. Section 104.22 and 28 C.F.R. Section 35.130, which expressly state that the District may comply with the program access standard by reassigning programs, activities and services to accessible buildings.

Both of these schools provide equivalent academic curriculums and extracurricular offerings; therefore, students with mobility impairments who are reassigned to West Middle School have access to the same range of academic programs and extracurricular activities as they would have in East Middle School, their neighborhood/home school. Moreover, the transportation times from students' residences to both schools are equivalent, given the close distance between the two schools.

Different Treatment – Allegation 2

OCR also considered whether the reassignment of students with mobility impairments from East Middle School to West Middle School constituted different treatment in violation of Section 504 and Title II of the ADA. OCR's investigation revealed that students without disabilities are also assigned to schools outside of their residence areas for various reasons, including due to parental preferences. However, even if OCR assumes that the District's actions in reassigning students with mobility impairments constituted different treatment on the basis of disability, the District presented a legitimate, nondiscriminatory reason for its actions. Specifically, it is making such assignments in order to comply with the applicable program accessibility standard for existing construction and, as discussed above, this is a permissible means of meeting that standard as East Middle School is an existing construction facility. As noted previously, the District is not required to make East Middle School accessible in order to satisfy the applicable program access standard, and can make reassignments in order to do so.

Moreover, OCR's investigation established that students with mobility impairments who are impacted by having to change schools do not experience any denial or loss in educational benefits, services or opportunities and they have access to the same range of educational and extracurricular programs in both schools. OCR's investigation did not discern any burdens or disadvantages to this group of students as a result of school reassignment, as the travel time to both schools is equivalent and these students are able to attend an accessible school within the same town and community in which they reside. Accordingly, OCR determined that students with mobility impairments were not harmed as a result of being reassigned from East Middle School to West Middle School.

Based on a preponderance of the evidence, OCR finds that the evidence does not support the Complainant's allegations that the District discriminated on the basis of disability. We conclude that there is insufficient evidence to support a finding of a violation of Section 504 with regard to the allegations in this complaint.

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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

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 personal privacy.

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.

We would like to thank the District, and especially its counsel, for their cooperation in this matter. If you have any questions, please contact me at 215-656-8522 or by email at vicki.piel@ed.gov.

Sincerely,



Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

cc: Rochelle Eisenberg, Esq.