



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Mr. Blake Cooper, Superintendent
Commerce Independent School District
3315 Washington St.
Commerce, TX 75428

RE: OCR Case No. 06141522
Commerce Independent School District (CISD)

Dear Mr. Cooper:

This letter is to notify you of the determination made by the U. S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, regarding the above-referenced complaint. In this complaint, which was received in this office on July 10, 2014, the complainant alleged that the Commerce Independent School District (CISD or District), Commerce, Texas, discriminates against individuals with disabilities (mobility impairment). By letter dated August 26, 2014, OCR informed you that we would investigate whether the CISD discriminated against individuals with disabilities (mobility impairment) by failing to provide facilities that are readily accessible to and usable by individuals with disabilities as follows:

- 1. A.C. Williams Elementary School**
 - a. Playground has barriers around it
 - b. Accessible entrance not identified by signage
- 2. Commerce Elementary School**
 - a. Playground has barriers around it
 - b. Accessible entrance not identified by signage
- 3. Commerce Middle School**
 - a. Accessible entrance not identified by signage
 - b. Gymnasium does not have accessible seating or pathways
 - c. Inadequate number of accessible parking spaces
 - d. Accessible parking not identified by signage
 - e. Accessible parking spaces are not on an accessible route to front entrance
- 4. Commerce High School**
 - a. Accessible entrance not identified by signage

OCR is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to this Department, are in compliance with Section 504 of the Rehabilitation Act of 1973

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

(Section 504), 29 U.S.C. §794, (amended 1992), and its implementing regulation, at 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability, as well as Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §12132, and its implementing regulation, at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. The CISD, being a recipient of Federal financial assistance, and a public education entity, is subject to our jurisdiction under Section 504 and Title II.

Legal Standards

The Section 504 and Title II regulations provide two standards for determining accessibility, dependent upon when the facility was constructed or altered. Under Section 504, buildings constructed prior to June 3, 1977, the effective date of the regulation, are regarded as "existing facilities" and must comply with 34 C.F.R. §104.22. This section requires that a recipient's programs or activities, when viewed in their entirety, be accessible to persons with disabilities.

Facilities constructed after June 3, 1977, and parts of existing facilities altered after that date, are deemed "new construction" under Section 504 and must comply with 34 C.F.R. §104.23. Under this section of the regulation, buildings constructed or altered in a manner affecting accessibility during the period of June 3, 1977 through January 17, 1991, are deemed to be in compliance if they met the American National Standards Institute's accessibility standards (ANSI) at A117.1-1961 [R 1980]) or substantially equivalent standards. All new construction, or alterations of existing facilities made on January 18, 1991 and thereafter, but prior to January 26, 1992, the effective date of the regulation implementing Title II, must be in compliance with the Uniform Federal Accessibility Standards (UFAS) or substantially equivalent standards.

The Title II implementing regulation also has two standards, one for existing facilities and one for new construction or alterations. With respect to existing facilities, the regulation implementing Title II at 28 C.F.R. §35.150 requires that public entities 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. An existing facility is defined as any facility for which construction or alteration was commenced before the effective date of the regulation implementing Title II. For existing facilities, each facility need not be readily accessible. Instead, each program or activity is to be operated so that the program or activity, when viewed in its entirety, is readily accessible and usable.

Under the regulation implementing Title II at 28 C.F.R. § 35.151, as of January 26, 1992, new construction or alteration of existing facilities must be in conformance with the UFAS or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG), or equivalent standards. Public entities have a choice of which standards to follow. While both Section 504 and Title II provide that recipients may depart from the particular requirements of these architectural standards if equivalent or greater access and usability is provided, the SAISD informed OCR during its investigation that it chose to use the accessibility requirements as specified in the ADAAG for all modifications and/or new construction in the

referenced facilities that occurred after 1991. In keeping with this prior choice of preference, OCR will reference ADAAG as the standard for use by the SAISD in this matter.

Depending upon the date of construction, some facilities may be considered existing facilities for purposes of Title II, but may also constitute new construction under Section 504, e.g., buildings constructed after June 3, 1977, but before January 26, 1992. In these cases, public entities/recipients must meet the standards for existing construction under Title II and also standards for new construction under Section 504.

To reach a determination in this case, OCR reviewed information provided by the complainant and the recipient, to include pertinent policies and procedures and information gathered during interviews with the complainant and SAISD staff and administrators. OCR also conducted a visual inspection of the facilities on December 4-5, 2014.

As a result of our investigation, OCR determined that there is sufficient evidence to support a conclusion of noncompliance with Section 504 and Title II, as related to the facilities identified in 1 (b), 2 (b), 3 (a-e), and 4 (a). OCR also determined there is insufficient evidence to support a conclusion of noncompliance with regard to the facilities identified in 1(a), and 2 (a). Provided below is an explanation of the bases for these determinations.

- 1. Whether students with disabilities are excluded from participation in, or denied the benefits of, the CISD's educational programs and activities because certain aspects of the A.C. Williams Elementary School campus are not accessible to students with mobility impairments (e.g., playground has barriers around it; the accessible entrance is not identified by signage), in violation of Section 504 (34 C.F.R. §§104.21 - 104.23), and Title II (28 C.F.R. §§35.149 – 35.151).**

In the District's data response, it indicated that the playground for this school was constructed during the 1991-1992 school year, so it would qualify as new construction under Section 504 and Title II. OCR's inspection of the playground determined that the playground is located in close proximity to the main building and is on an accessible route. The accessibility route to the playground was stable, firm and slip-resistance and was wide enough to maneuver a wheel chair.

The ground surface consists of wood chips that conform to the ASTM F1951-99 standards. Although this playground consists of a soccer field, basketball court, volleyball court, and tether ball court, it also consists of 2 sets of swing equipment with 8 swings in each set. There was also 1 handicap swing set that was located closest to the entrance of the playground. The District indicated that the District's maintenance department is responsible for maintaining the ground surface (wood chips) for all play areas at issue. The District's maintenance system consists of inspecting the play areas a minimum of once per month to ensure that the playground surface inspected and verification as to the depth of the wood chips around and under the play equipment. Based upon the information above, OCR determined that the ground surface and accessible routes meets the applicable accessibility requirements.

During OCR's inspection, OCR determined that there were no "barriers" around the playground. However, the playground is enclosed by a chain link fence. According to the District, the

playground is available for students' use only, and not the public. The playground is accessed only from the inside of the school's main building and according to the District, the fence is a security measure for safety measures of the students. Hence OCR determined that the fence is not a "barrier" but a safety measure to keep the students safe in its environment.

OCR determined through a visual inspection that there were no signs indicating the location of the nearest accessible entrances nor directing individuals from inaccessible entrances to the accessible entrances identified by the international symbol of accessibility, as required by ADAAG 4.1.3 and 4.30.

Based on this information, OCR concluded that programs and activities located at the A.C. Williams Elementary school, when viewed in its entirety, are not accessible for the reason set out above, and thus, there was sufficient evidence to support a conclusion of noncompliance with Section 504 and Title II.

- 2. Whether students with disabilities are excluded from participation in, or denied the benefits of, the CISD's educational programs and activities because certain aspects of the Commerce Elementary School campus are not accessible to students with mobility impairments (e.g., playground has barriers around it; the accessible entrance is not identified by signage), in violation of Section 504 (34 C.F.R. §§104.21 - 104.23), and Title II (28 C.F.R. §§35.149 – 35.151).**

In the District's data response, it indicated that the playground for this school was constructed during the 2009 school year, so it would qualify as new construction under Section 504 and Title II. OCR's inspection of the playgrounds determined that the playgrounds are located in close proximity to the main building and is on an accessible route. However, the playground on the northeast side of the building is not in use and during OCR's inspection OCR confirmed that the other playground was an active playground for only students. There were 2 entrances from the school to the playground. One entrance had a ramp for students with mobility impairments that were close proximity to the playground. The accessibility route to the playground was stable, firm and slip-resistance and was wide enough to maneuver a wheel chair

OCR's inspection of the active playground determined that the ground surface consists of wood chips that conform to the ASTM F1951-99 standards. There were play units for both students with disabilities and non-disable students. The District indicated that the District's maintenance department is responsible for maintaining the ground surface (wood chips) for all play areas at issue. The District's maintenance system consists of inspecting the play areas a minimum of once per month to ensure that the playground surface inspected and verification as to the depth of the wood chips around and under the play equipment. Based upon the information above, OCR determined that the ground surface and accessible routes meets the applicable accessibility requirements.

During OCR's inspection, OCR determined that there were no "barriers" around the playground. However, the playground is enclosed by a chain link fence. According to the District, the playground is available for students' use only, and not the public. The playground is accessed

only from the inside of the school’s main building and according to the District; the fence is a security measure for safety of the students. Hence OCR determined that the fence is not a “barrier” but a safety measure to keep the students safe in its environment.

OCR determined through a visual inspection that there were no signs indicating the location of the nearest accessible entrances nor directing individuals from inaccessible entrances to the accessible entrances identified by the international symbol of accessibility, as required by ADAAG 4.1.3 and 4.30.

Based on this information, OCR concluded that programs and activities located at the Commerce Elementary school, when viewed in its entirety, are not accessible for the reason set out above, and thus, there was sufficient evidence to support a conclusion of noncompliance with Section 504 and Title II.

- 3. Whether students with disabilities are excluded from participation in, or denied the benefits of, the CISD’s educational programs and activities because certain aspects of the Commerce Middle School campus are not accessible to students with mobility impairments (e.g., accessible entrance is not identified by signage; the gymnasium does not have accessible seating or pathways; there are an inadequate number of accessible parking spaces; the accessible parking is not identified by signage; and accessible parking spaces are not on an accessible route to an accessible entrance), in violation of Section 504 (34 C.F.R. §§104.21 - 104.23), and Title II (28 C.F.R. §§35.149 – 35.151).**

In the District’s data response, it indicated that the Middle School was originally constructed in 1967, and there were renovations/modifications to all areas of the school. In 2001, there were renovations done at the main office entrance, auditorium entrance, library entrance and entrance of the gymnasium. In 2005, there were modifications done to portable classrooms, and in 2009, a ramp was constructed at the entrance of the gymnasium. Therefore, the Middle school would qualify as new construction under Section 504 and Title II.

a. Accessible entrance not identified by signage:

OCR determined through a visual inspection that there were no signs (signage) indicating the location of the nearest accessible entrances nor directing individuals from inaccessible entrances to the accessible entrances identified by the international symbol of accessibility, as required by ADAAG 4.1.3 and 4.30.

Based on this information, OCR concluded that programs and activities located at the Middle school, when viewed in its entirety, are not accessible for the reason set out above, and thus, there was sufficient evidence to support a conclusion of noncompliance with Section 504 and Title II.

b. Accessible seating at the gymnasium:

In the District's data response, it indicated that the total capacity of seating at the gymnasium is 374 spaces, which means that the number of required wheelchair locations is 6. OCR's visual inspection indicated that there were over 11 wheelchair accessible spaces with at least one companion seating next to each wheelchair seating area in compliance with ADAAG 4.33.3. The locations of the wheelchair spaces are provided and available throughout the gymnasium located on the front rows of the stands for lines of sight comparable to those for members of the general public. The accessible route also connects wheelchair seating locations with performing areas, to include the gymnasium floors. Each of the wheelchair spaces were at least 48 inches deep for approach from the front door, and 60 inches deep for approach from the side required by ADAAG 4.33.2. Therefore, the seating at the Middle school gymnasium was in compliance with Section 504 and Title II, as required by ADAAG 4.33.3. Based upon the information above, OCR determined that there is accessible seating at the gymnasium which meets the applicable accessibility requirements.

c. Pathways, Parking spaces and signage:

According to the District, there are 120 parking spaces with 2 accessible parking spaces located at the West side of the school, closest to the gymnasium. However, the date of the parking lot was built was not provided so the appropriate legal standard cannot be determined at this time. However, the District stated that there were modifications done (seal coated and re-striped) to the parking lot, but was unable to provide the specific dates (on or after 2000). Thus the ADAAG standard was applied to determine eligibility. However, a parking lot of this size requires 5 accessible parking spaces (at least one of which is van accessible) to meet the requirements under ADAAG 4.1.2(5)(a).

During OCR's onsite of the parking lot, OCR observed that the parking lot was not on an accessible shortest route and/or pathway to the gymnasium. The parking lot also is used as a thorough-way (one-way street) for parents to drop/pick up students at the end of the school day. The designated 2 accessible parking spaces did not have a curb ramp leading to an accessible walkway and/or route. Rather, persons must transverse across the vehicle traffic area of the parking lot without the benefit of any demarcated pedestrian access route leading from these parking spaces to the gymnasium.

The route/pathways from the parking lot to the gymnasium is also on an unstable surface (holes and uneven grade levels), and is not located on the shortest accessible route of travel from adjacent parking to an accessible entrance. However, the District may consider, in accordance with ADAAG 4.1.2(5)(a), providing the requisite accessible parking spaces that would be needed in this parking lot, in another location, as long as equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience is ensured. Therefore, the District may consider adding these accessible parking spaces, with accompanying access aisle and curb ramp if needed to another location.

In addition, there was no signage on the designated 2 accessible parking spaces on this lot, but only having the international symbol of accessibility painted on the lot. Therefore, the parking

spaces, pathways and signage at the Middle school gymnasium were not in compliance with Section 504 and Title II, as required by ADAAG 4.33.3.

d. Accessible parking spaces on an accessible route to the front entrance:

There were 2 (main and auxiliary) entrances (doors) to the entrance of the Middle school. At the main entrance there were a total of eight (8) parking spaces, with one (1) accessible parking space with no access aisle. The accessible parking spaces were at least 8 feet wide in compliance with ADAAG 4.6.3. The parking lot is on a one-way thorough street, and also has to transverse across the street with a crosswalk to the sidewalk. The walk walkway/route to the ramp of the main entrance was stable, firm and slip-resistant. However, the accessible parking spaces located at the front entrance of the Middle school was not in compliance with Section 504 and Title II, as required by ADAAG 4.33.3.

- 4. Whether students with disabilities are excluded from participation in, or denied the benefits of, the CISD's educational programs and activities because certain aspects of the Commerce High School campus are not accessible to students with mobility impairments (e.g., the accessible entrance is not identified by signage), in violation of Section 504 (34 C.F.R. §§104.21 - 104.23), and Title II (28 C.F.R. §§35.149 – 35.151).**

OCR determined through a visual inspection that there were no signs (signage) indicating the location of the nearest accessible entrances nor directing individuals from inaccessible entrances to the accessible entrances identified by the international symbol of accessibility, as required by ADAAG 4.1.3 and 4.30.

Based on this information, OCR concluded that programs and activities located at the High school, when viewed in its entirety, are not accessible for the reason set out above, and thus, there was sufficient evidence to support a conclusion of noncompliance with Section 504 and Title II.

In summary, OCR determined that there is sufficient evidence to support a conclusion of noncompliance with Section 504 and Title II, as related to the facilities identified in 1 (b), 2 (b), 3 (a-e), and 4 (a). OCR also determined there is insufficient evidence to support a conclusion of noncompliance with regard to the facilities identified in 1(a), and 2 (a). However, on August 13, 2015, the CISD signed and submitted the enclosed Resolution Agreement (Agreement) to address these compliance issues. Therefore, OCR is closing the investigative portion of this complaint, effective the date of this letter. OCR will consider this complaint fully resolved when the CISD has fully implemented the provisions of this Agreement. The dates for implementation and specific actions required are detailed in the Agreement and OCR will monitor the implementation of the Agreement. Therefore, progress reports with supporting documentation, should be submitted as indicated in the Agreement. Please be advised that if CISD fails to adhere to the actions outlined in this Agreement, OCR will immediately resume its investigative efforts.

This concludes OCR's investigation of the complaint and should not be interpreted to address the CISD'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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the CISD 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, it 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.

Thank you for your cooperation and that of your staff throughout the course of this investigation. If you have any questions or concerns regarding this matter, you may contact the assigned investigator, Patricia Sinanan, at 214-661-9649. Ms. Sinanan may also be reached at Patricia.Sinanan@ed.gov. You may also contact the Supervisory Attorney, Adriane Martin, at (214) 661-9678. Ms. Martin may also be reached at Adriane.Martin@ed.gov.

Sincerely,

Taylor D. August
Director, Dallas Office
Office for Civil Rights