



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

June 29, 2015

Christopher Steinhauser
Superintendent
Long Beach Unified School District
1515 Hughes Way
Long Beach, California 90810

(In reply, please refer to case no. 09-12-1452.)

Dear Superintendent Steinhauser:

The U.S. Department of Education, Office for Civil Rights, has completed its resolution process for the above-referenced complaint filed against the Long Beach Unified School District alleging discrimination on the basis of disability due to physically inaccessible elements and facilities at Polytechnic High School (School). The allegations covered specific portions of the following campus elements and facilities: campus entrances; Natatorium; Auditorium; parking; Building 100; Building 200; Building 400; Building 500; Building 800; Building 850; South Gymnasium; and outdoor seating areas.

OCR opened the investigation under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and their implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by certain public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

OCR gathered evidence through reviewing documents provided by the Complainant and the District, interviewing the Complainant, and conducting an on-site visit to the School. The following is a summary of the applicable legal standards, areas of noncompliance identified through the investigation, and resolution of this complaint.

The program accessibility requirements of the Section 504 implementing regulations are found at 34 C.F.R. §§104.21-104.23; comparable sections of the Title II implementing regulations are found at 28 C.F.R. §§35.149-35.151. Both 34 C.F.R. §104.21 and 28 C.F.R. §35.149 provide that no qualified person with a disability shall, because a school district's facilities are inaccessible to or unusable by disabled persons, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program of activity of the school district.

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

The Section 504 regulations, at 34 C.F.R. §104.22, and the Title II regulations, at 28 CFR §35.150, apply to “existing facilities”, defined as any facility or part of a facility where construction was commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that, with respect to existing facilities, a school district shall operate its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. Accessibility of existing facilities is determined not by compliance with a particular architectural accessibility standard, but by considering whether the program or activity, when viewed in its entirety, is accessible to and usable by individuals with disabilities.

The Section 504 regulations, at 34 C.F.R. §104.23, and the Title II regulations, at 34 C.F.R. §35.151, are applicable to “new construction or alterations”, defined as any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that each newly constructed facility or part of a facility shall be designed and constructed in such manner that it is readily accessible to and usable by persons with disabilities. The regulations further provide that each newly altered facility or part of a facility affecting accessibility shall, to the maximum extent feasible, be altered in such manner that the altered portion is readily accessible to and usable by persons with disabilities.

The regulations specify the Federal standard to be used in determining the accessibility of new construction and alterations. The Section 504 regulations, at 34 C.F.R. §104.23(c), delineate the American National Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physical Handicapped [ANSI 117.1 – 1961(1971)] as the minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991. The Uniform Federal Accessibility Standards (UFAS) set forth the designated standard for facilities constructed or altered on or after January 18, 1991.

The Title II regulations, at 28 C.F.R. §35.151(c), delineate UFAS or the ADA Standards for Accessible Design, 1991 (1991 Standards) as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992, but prior to September 15, 2010. The ADA Standards for Accessible Design were amended in 2010 (2010 standards). If construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, then a school district may comply with UFAS, the 1991 Standards, or the 2010 Standards. New construction and alterations that commence on or after March 15, 2012 must comply with the 2010 Standards.

Through its investigation, OCR identified the following areas of non-compliance on campus:

- lack of sufficient accessible parking in some parking lots¹ and the garage;
- lack of signage for: various campus entrances/exits, Natatorium exterior entrances, parking garage entrances, one Building 100 building entrance/exit, Building 100 restrooms, Building 100 vertical access, Building 200

¹ During the course of the investigation the District began implementing a renovation project with respect to parking lots on campus, including accessibility improvements.

entrances/exits, Building 200 vertical access, Building 300 entrances/exits, Building 400 vertical access to Building 500, Building 800 entrances/exits, and Building 850 entrances/exits;

- inaccessible door hardware, width, and/or opening force on some doors in the following buildings: Natatorium, Auditorium, Building 100 restrooms, and Building 200 exterior entrances/exits;
- inaccessible path of travel to the girls Natatorium locker room restroom;
- inaccessible restrooms or restroom features in the following buildings or facilities: Natatorium locker rooms, Auditorium, and Building 100;
- other inaccessible features in the Auditorium, including: entrances/exits, seating, internal vertical access, and the box office;²
- lack of visual designation of the accessible seating in the swimming pool viewing area;
- an inoperable swimming pool lift;
- inaccessible cafeteria seating; and
- inaccessible outdoor seating areas.

OCR also noted that there was a lack of notice of accessible features to the campus community, and there was no published classroom relocation procedure. These elements are important because some of the School's existing facilities may house classes or other activities on the second floor which can only be reached by stairs. For example, there are classrooms on the second floor of Building 800 and the South Gymnasium which have no elevator access. The School has a practice of relocating classes and other activities to accessible locations, but this procedure is not written and is not published.

OCR did not identify compliance concerns regarding other areas on campus referenced in the Complainant's allegations. Specifically, OCR did not find that the path of travel to the men's Natatorium locker room restroom was inaccessible, or that the swimming pool viewing area was inaccessible. OCR also did not observe that the entrances to the parking garage were inaccessible. The parking garage has one accessible entrance and one inaccessible entrance---this configuration will be acceptable once appropriate signage is posted.

OCR also did not conclude that the second floor of Building 100 is inaccessible, as alleged, in that there are two exterior elevators which allow for access to this level. In addition, OCR did not confirm that the interior path of travel through Building 100 was inaccessible because of its width. OCR likewise did not find that the designated emergency exit route from the second floor of Building 400 is inaccessible, or that the second floor of Building 500 is inaccessible.

With respect to Building 800, OCR did not find that first floor room doorways were too narrow. Programs and activities located on the second floor are relocated, as

² At the beginning the OCR investigation the District informed OCR that it was in the process of modernizing and upgrading the School Auditorium, including accessibility enhancements.

necessary, when an accessible space is required. The complaint alleged that there are no accessible restrooms for students or visitors on the first floor of Building 800. OCR found that there are no restrooms for student or visitor use in Building 800 at all, whether on the first or second floor. The only restrooms located in that building are for staff use, and are located on the first floor.

On March 20, 2015, OCR informed the District's representative of its findings, as outlined above. On June 19, 2015, the District submitted a Resolution Agreement, a copy of which is enclosed, to address each area of noncompliance identified during the investigation.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor the District's implementation of the Resolution Agreement through completion. OCR is informing the Complainant of the complaint resolution by concurrent letter. Note that the Complainant may file a private suit in federal court whether or not OCR finds a violation.

This concludes OCR's investigative process 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. 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.

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 individual may file a complaint with OCR alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records on request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR would like to thank District representatives, particularly Nancy Mahan Lamb, Esq., for their courtesy and cooperation in resolving this case. If you have any questions about this letter please contact Julie Baenziger, at (415) 486-5502, or me, at (415) 486-5555.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Enclosure

Cc: Nancy Mahan Lamb, Esq.