



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

April 25, 2022

Superintendent James Hodgkin
By email: jhodgkin@winthropschools.org

Re: Complaint No. 01-22-1029
Winthrop Public Schools

Dear Superintendent Hodgkin:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received on October 26, 2021 against Winthrop Public Schools, which OCR will refer to as the District. The Complainant alleged that the District is discriminating on the basis of disability by staging the XXXXXXXX XXXXX XXXXXX's dismissal process in a parking lot that he alleges is in an unsafe condition, has no parking spaces designated for persons with disabilities, and is not on an accessible route from where students are being dismissed (Allegation 1). The Complainant also alleged that when he raised these concerns to the District, School staff retaliated against him by delaying his daughter's dismissal from the School, which he alleges exacerbated symptoms of his disabilities (Allegation 2).

OCR enforces 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, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the U.S. Department of Education. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the U.S. Department of Education. The laws enforced by OCR also prohibit retaliation against any individual who asserts rights or privileges under these laws or their implementing regulations, or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the District receives federal financial assistance from the U.S. Department of Education and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

As explained further below, before OCR completed its investigation of Allegation 1, the District expressed a willingness to resolve that allegation by taking the steps set out in the enclosed Resolution Agreement. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegation 2. In reaching a determination regarding Allegation 2, OCR reviewed documents provided by the District and interviewed District staff. OCR's findings and conclusions are discussed below.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.21, provides that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a recipient's programs or activities because the recipient's facilities are inaccessible to or unusable by individuals with disabilities. The Title II regulation, at 28 C.F.R. § 35.149, contains a similar prohibition for public entities.

The regulations implementing Section 504 and Title II each contain two standards for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility. Under the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977; under the Title II regulation, existing facilities are those for which construction began prior to January 27, 1992. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under Section 504 and Title II standards.

For existing facilities, the Section 504 regulation, at 34 C.F.R. § 104.22, and the Title II regulation, at 28 C.F.R. § 35.150, require a recipient to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. The recipient may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities and services accessible to persons with disabilities. In choosing among available methods of meeting the requirements, a recipient must give priority to methods that offer programs, activities and services to persons with disabilities in the most integrated setting appropriate.

With respect to newly constructed facilities, the Section 504 regulation, at 34 C.F.R. § 104.23(a), and the Title II regulation, at 28 C.F.R. § 35.151(a), require that the recipient design and construct the facility, or part of the facility, in such a manner that it is readily accessible to and usable by individuals with disabilities. In addition, for new alterations that affect or could affect facility usability, the Section 504 regulation, at 34 C.F.R. § 104.23(b), and the Title II regulation, at 28 C.F.R. § 35.151(b), require that, to the maximum extent feasible, the recipient alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

The new construction provisions of the Section 504 and Title II regulations set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS) although deviations from UFAS are permitted if such deviations provide substantially equivalent or greater access to and usability of the facility. Under the Title II regulation, recipients had a

choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or altered after January 26, 1992 and prior to September 15, 2010. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that recipients had a choice of complying with either UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards). The Title II regulation provides that recipients are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012. While the Section 504 regulations have not been amended to formally adopt the 2010 Standards, a recipient may use the 2010 Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, appendices B and D.¹

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

In analyzing an individual's claim of retaliation against a recipient, OCR analyzes whether: (1) the individual engaged in a protected activity;² (2) the individual experienced an adverse action caused by the recipient;³ and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If all these elements are present, this establishes an initial, or *prima facie*, case of retaliation. OCR then determines whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action. OCR next examines this reason to determine whether it is a pretext for retaliation. If OCR finds that the reason was pretextual, then OCR will make a finding of retaliation; conversely, if OCR finds that the recipient proffered a legitimate, non-retaliatory reason for the action at issue and that the reason was not pretextual, then OCR will find insufficient evidence of a violation.

Findings of Fact

According to the District, the School follows a dismissal procedure that requires all parents and guardians to remain outside the building as the students exited. During dismissal, parents and guardians park in the School's rear parking lot between 2:50 p.m. and 3:10 p.m. and walk up to the dismissal door, where District staff assist parents or guardians in the dismissal process. Staff outside the building notify staff inside the building which parents or guardians are present for dismissal. Staff inside the building use a "Pick Up Patrol" application to request those parents' or guardians' students from their classrooms. Requested students then leave their classrooms and exit the rear of the building to their waiting parents or guardians. According to the District, during the dismissal process, an assistant principal remains outside the building organizing and moving parents and guardians through the process and as they wait for their students.

¹ See <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm>.

² A "protected activity" is the exercise of a right that is protected under OCR's non-discrimination laws.

³ An "adverse action" is something that could deter a reasonable person from engaging in further protected activity.

The Complainant alleged that the area where the dismissal process is staged is not safe for individuals with disabilities. Specifically, the Complainant alleged that the rear parking lot lacks appropriate signage for accessible parking spaces, the pavement in the parking lot is uneven, and the walking paths have loose dirt and asphalt that create a slipping or tripping hazard. Photos of the parking lot provided by the District appear to corroborate some of the Complainant's concerns.

The Complainant also alleged that he attempted to speak with District administrators about these accessibility concerns, the dismissal process, and the problems they could create for individuals with disabilities. According to the Complainant, his concerns were not addressed and remediation of the hazards identified has not occurred. The Complainant asserted that his concerns were met with dismissiveness by School staff. He alleged that in the days after raising his concerns with the District, he attempted to pick up his daughter from the School but was forced to wait fifty minutes, exacerbating the condition of his disability. The Complainant could not identify a reason for this delay and believed it was a direct response to his raising the aforementioned concerns.

The School's Principal informed OCR that at no point has the dismissal of the Complainant's daughter been delayed in response to the Complainant raising concerns about the dismissal process. The Principal corroborated that the dismissal process is conducted as described above and has never lasted as long as the Complainant alleged. The Complainant did not respond to OCR's invitation to rebut the Principal's assertions.

The District informed OCR that it responded to the Complainant's concerns within a week by developing an alternative process for the Complainant and his family. The Complainant is able to pick up his children at the front of the building where he is able to park closer to the School's entrance. The front entrance of the School is also closer to the students' classrooms, reducing the waiting time for the Complainant and his family.

Analysis

Allegation 1

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving Allegation 1 and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address Allegation 1. OCR will monitor the District's implementation of the Agreement.

Allegation 2

While the Complainant alleges that he was forced to wait approximately fifty minutes for the dismissal of his daughter, OCR did not find sufficient evidence to support this allegation. OCR found the Principal to be credible when she informed OCR that the Complainant's daughter was never delayed in her dismissal and that the dismissal process lasts approximately fifteen minutes.

Furthermore, the Complainant did not provide any information or evidence to rebut the evidence presented by the District. Accordingly, OCR found insufficient evidence that the District retaliated against the Complainant

Conclusion

This concludes OCR's investigation of the complaint. This letter 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. OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

The complainant has a right to appeal OCR's determination regarding Allegation 2 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the District may not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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.

Sincerely,

Paul Easton
Compliance Team Leader

Enclosure