



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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August 27, 2014

Mr. Robert Runcie
Superintendent
Broward County School District
600 SE Third Avenue
Ft. Lauderdale, Florida 33301

Re: Complaint #04-14-1442

Dear Mr. Runcie:

This letter is to notify you of the determination of the U.S. Department of Education (Department), Office for Civil Rights (OCR), regarding the resolution of the above-referenced complaint received on February 28, 2014, against Broward County School District (District). Specifically, the Complainant alleged that Stranahan High School (School) discriminated against a mobility impaired student in the following ways: (1) there is no accessible restroom near her classroom; (2) the route from her classroom to the cafeteria is inaccessible; and (3) the cafeteria serving line is inaccessible.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504) 29 U.S.C. Section § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. The District is subject to the provisions of Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Section 12121 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX and Section 504.

OCR investigated the following issues:

1. Whether the District failed to provide an accessible restroom in noncompliance with Section 504.
2. Whether the route to the cafeteria is inaccessible in noncompliance with Section 504.
3. Whether the District failed to provide an accessible serving line in the cafeteria in noncompliance with Section 504.

OCR's investigation included a review of documents pertinent to the complaint, and interviews with the Complainant and District staff.

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Legal Standards

The regulations implementing Section 504, at 34 C.F.R. § 104.21, and Title II, at 28 C.F.R. § 35.149, state that no 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 to which Section 504 and Title II apply.

The Section 504 and Title II regulations contain two standards for determining whether a school's programs, activities, and services are accessible to individuals with disabilities. One standard applies to existing facilities; the other covers new construction and alterations. The applicable standard depends upon the date of construction or alteration of the facility.

For existing facilities, the regulations require an educational institution 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. This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program, or activity. Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. The applicable date under the Title II regulation is January 26, 1992. In choosing among available methods for meeting the program access requirement for existing facilities, the institution is required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

For new construction, the facility (or newly constructed part of the facility) must itself be readily accessible to and usable by persons with disabilities. With regard to alterations, each facility or part of a facility that is altered by, on behalf of, or for the use of an institution after the effective dates of the Section 504 and/or Title II regulation in a manner that affects or could affect the usability of the facility or part of the facility must, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

For an entity covered by Section 504, new construction and alterations after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI). New construction and alterations between January 18, 1991, and January 26, 1992, must conform to Uniform Federal Accessibility Standards (UFAS). New construction and alterations after January 26, 1992, must conform to UFAS or the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or equivalent standards. Public entities have a choice of which standard to follow. However, once an entity selects a standard for a facility, the same standard must be used for the entire facility. New construction and alterations after March 15, 2012, must conform to the 2010 ADA Standards. The District applied ADAAG regulations as

the guide to ensure compliance in design and construction of the District's parking lots and buildings.

Issue 1: Whether the District failed to provide an accessible restroom

During the investigation, OCR found that the School was constructed in 1951 and has a total of 28 buildings. The School originally consisted of six buildings but 22 buildings were added to the School since its construction. The Student is in the Varying Exceptionalities Program which is located in Building #1. According to the District, Building #1 was remodeled in 1992 and retrofitted with an accessible restroom. The work completed consisted of removing the door of one of the stalls to make room for a changing table used to change the diapers of disabled students. The restroom was again renovated in 2013. The work involved removing a toilet stall to accommodate a Hoyer lift for one of the students. According to the District the 2010 ADA Standards were used when the alterations were made.

The accessible restroom is approximately 111 feet from the Student's classroom. The Student uses the restroom with the assistance of her aide. The restroom is equipped with a mobile chair used to assist the Student with getting to the toilet.

OCR found that the restroom was not accessible for the following reasons: 1) There is no grab bar next to the toilet; 2) the grab bar behind the toilet does not extend 36 inches; 3) The toilet paper dispenser is too far from the toilet and; 4). the faucet could not be operated without tight grasping.

To resolve these compliance issues, the District voluntarily entered into the enclosed Resolution Agreement (Agreement) to modify the restroom to ensure it is accessible to persons with disabilities. When implemented, the District will resolve the compliance issues. OCR will monitor the implementation of the Agreement to ensure that it is fully implemented.

Issue 2: Whether the walkway to the cafeteria is inaccessible to the mobility impaired.

During the investigation, OCR found that the Student travels from Building #1 to the cafeteria. The distance from Building #1 to the cafeteria is approximately 914 feet. OCR found that the route was accessible and usable by person with disabilities in accordance to the ADAAG standards.

Issue 3: Whether the cafeteria serving line is accessible to persons with disabilities

During the onsite inspection OCR found that there was an accessible route leading to the cafeteria that is usable for person with disabilities. According to the Student's classroom teacher, the aide assists the Student in the cafeteria because she is unable to maneuver the chair independently and cannot get her food tray without assistance. The teacher stated that the Student has a unique wheelchair which requires her to sit in a reclined position. OCR has determined that the serving line meets the ADAAG standards, and the aide assigned to the Student permits her to have access to the cafeteria services. OCR will explore with the District,

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through technical assistance, other steps it may take that will enable the Student to have more independent access, if possible, to the cafeteria without the use of an aide.

Conclusions

To resolve these compliance issues, the District voluntarily entered into the enclosed Resolution Agreement (Agreement), that when implemented, will resolve the compliance issues. OCR will monitor the implementation of the Agreement to ensure that it is fully implemented.

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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive 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.

The Complainant may file a private suit in federal court whether or not OCR finds a violation. Please be advised that the University 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.

If you have any questions, please contact Phyllis Kane, Investigator at (404) 974-9388.

Sincerely,

Cynthia G Pierre, Ph.D.
Regional Director

Enclosure