



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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September 16, 2022

Jeff Olson
Superintendent
Fort Totten School District 30
Sent via email only to jeff.olson@k12.nd.us

RE: OCR Docket #05-22-1221

Dear Superintendent Olson:

This letter is to advise you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Fort Totten School District 30 (District) alleging discrimination based on disability.

Specifically, the complaint alleged the District discriminates against individuals with mobility impairments on the basis of disability by failing to provide accessible restroom stalls in Four Winds High School (School).

OCR is responsible for enforcing 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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35, which respectively prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department and public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

During its investigation, OCR learned that the District is part of a cooperative, the Four Winds Community School group, which includes the School and the Tate Topa Tribal School, a tribally controlled kindergarten through eighth grade school affiliated with the Bureau of Indian Education (BIE).¹ OCR reviewed documents the District and the BIE provided. Prior to the completion of the investigation, the District executed the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the complaint. The bases for OCR's determination are explained below.

Legal Standards

The implementing regulations of Section 504, at 34 C.F.R. § 104.21, and Title II, at 28 C.F.R. § 35.149, provide that no qualified person with a disability shall, because a recipient's facilities are

¹ The District notified the BIE of OCR's investigation in this matter, and the BIE provided OCR information relevant to the investigation of the allegation.

inaccessible to or unusable by persons with a disability, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity.

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). 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 implementing regulations of Section 504, at 34 C.F.R. § 104.23(b), and Title II, at 28 C.F.R. § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II). These facilities are termed “new construction or alterations.” The regulations provide that each facility or part of a facility that is altered by or for the use of a recipient or public entity in a manner that affects or could affect the usability of the facility must, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities. The regulations specify the accessibility standard to be used in determining the accessibility of the alterations based on the date of construction or renovation.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineated the American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped [ANSI 117.1-1961 (1971)] (ANSI 1971) as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the Uniform Federal Accessibility Standards (UFAS) for facilities constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. § 35.151(c), delineated UFAS or The Americans with Disabilities Accessibility Guidelines for Buildings and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992.

The regulation implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (2010 ADA Standards). The regulation, at 28 C.F.R. § 35.151(c)(3), now provides, “If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 ADA Standards.” The 2010 ADA Standards state, “Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.”

Facts

The School is located on the main floor of a building owned by the BIE. The District's Superintendent told OCR that the building was constructed in the late 1970's or early 1980's and has not had any significant alterations or improvements to its restrooms since at least 1991; the BIE indicated that the building was constructed in 1983 and confirmed there had been no renovations since then.

The complaint specifically alleged that some of the School's restroom stall doors open in the wrong direction, and that some of the stalls fail to meet applicable accessibility requirements.

The District informed OCR that there are six restrooms in the School, four of which have one stall designated as accessible, and provided OCR with information regarding the specific location of the restrooms; two additional restrooms, located as part of the Weight Room and the teachers' lounge, are separate rooms without stalls.

The doors to the stalls designated as accessible in Restroom L2W (C108) and Restroom L2M (C107) swing in; ANSI 1971 Section 5.6.2(3) requires each accessible stall to have a door that is 32 inches wide and swings out. In addition, the handrails in the stall designated as accessible in all four restrooms with stalls are not fastened to the wall at the center; ANSI 1971 Section 5.6.2(4) requires at least one toilet stall in each restroom to have "handrails on each side, 33 inches high and parallel to the floor, 1 ½ inches in outside diameter, with 1 ½ inches clearance between rail and wall, and fastened securely at ends and center." OCR's investigation did not reveal any other aspects of the stalls that do not meet ANSI 1971 or the 2010 ADA Standards.² OCR has not conducted an on-site to determine whether the restrooms are located on an accessible route from an accessible entrance to the School.

Analysis and Conclusion

OCR has compliance concerns regarding the School's restroom stalls designated as accessible. All the restrooms in the School were built in 1983 and therefore are considered new construction under Section 504 and existing facilities under Title II; based on the date of construction, they must comply with the minimum requirements of ANSI 1971. Based on the evidence obtained to date, OCR has concerns that some toilet stalls may not meet the ANSI 1971 standards, as they lack doors that swing out and grab bars fastened at the middle.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. The District expressed interest in resolving the complaint and executed the enclosed Agreement that, when fully implemented, will address OCR's compliance concerns. The provisions of the Agreement are aligned with this complaint and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

² While some of the toilet seats were not at the exact height of 20 inches required by ANSI 1971, they were within the range of 17-19 inches allowed by the 2010 ADA Standards.

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. This letter sets forth OCR's determination in one OCR case. This letter is not a formal statement of OCR policy and should not be relied on, 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. It is also important for you to understand that the laws OCR enforces prohibit the District from harassing, coercing, intimidating, or discriminating against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, that individual may file a 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. If 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.

OCR would like to thank the District for the courtesy and cooperation extended to OCR during the investigation. If you have any questions regarding this letter, please contact Aaron Chait, Attorney, at (312) 730-1725 or aaron.chait@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure