



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN STREET, SUITE 1620
DALLAS, TEXAS 75201-6831

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

January 17, 2014

Mr. Ronnie Kincaid, Executive Director
Education Service Center Region 14
1850 Highway 351
Abilene, TX 79601

RE: OCR Case No. 06134056
Education Service Center Region 14

Dear Mr. Kincaid:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced July 8, 2013, complaint against the Education Service Center Region 14 (ESC), Abilene, Texas. The complainant alleged that the ESC discriminated against him and other persons with disabilities (mobility impairment) as a result of its use of an inaccessible site wherein the ESC conducted staff development training on xxxxxx xx, xxxx. More specifically, the complainant alleged the ESC utilized inaccessible facilities at Sweetwater High School (SHS), in the Sweetwater Independent School District, in Sweetwater, Texas, as follows:

1. There are no accessible restrooms in the auditorium;
2. There is no access to the auditorium's accessible lift (e.g., no one had key to turn on the lift);
3. There is no accessible route from the auditorium to the accessible restrooms in the football stadium; and
4. There is no accessible parking.

Additionally, the complainant alleges that the ESC discriminated against him and other persons with disabilities (mobility impairments) by failing to provide programs and activities that are accessible to and useable by persons with mobility impairments at the ESC's main facility because:

5. The main entry door (designated accessible entrance) is too heavy to open, and
6. Its restrooms are not accessible.

This agency is responsible for determining whether entities 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 (Section 504), 29 U.S.C. §794 (amended 1992), and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. OCR is also responsible for enforcing

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

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 ESC is a recipient of Federal financial assistance from the Department, and is a public entity. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Section 504 and Title II.

On September 5, 2013, OCR notified the ESC and the complainant that OCR was opening the complaint and would investigate to determine:

1. Whether qualified persons with disabilities are being denied the benefits of, excluded from participation in, or are otherwise subjected to discrimination in the ESC's programs and activities because portions of the Sweetwater High School, leased or otherwise utilized by the ESC on August 14, 2013, are inaccessible to or unusable by persons with disabilities, in violation of Section 504, at 34 C.F.R. §§ 104.21 -104.23, and Title II, at 28 C.F.R. §§ 35.149 – 35.151.
2. Whether qualified persons with disabilities are being denied the benefits of, excluded from participation in, or are otherwise subjected to discrimination because the ESC's main facility's restrooms and main entrance are inaccessible to or usable by persons with disabilities, in violation of Section 504, at 34 C.F.R. §§ 104.21 - 104.23, and Title II, at 28 C.F.R. §§ 35.149 – 35.151.

On January 14, 2014, the ESC's designated representative requested on its behalf to voluntarily resolve Issue 1 prior to OCR's completion of its investigation. OCR's *Case Processing Manual (CPM)* § 302 provides that a complaint may be resolved when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Resolution of complaints in this manner must be approved by the Office Director. CPM § 302 also states that the provisions of the resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation, and will be consistent with applicable regulations. On January 15, 2014, OCR Dallas' Regional Director approved voluntary resolution of Issue 1.

The ESC submitted the enclosed Resolution Agreement (Agreement) dated January 16, 2014, to memorialize steps that it would take to resolve issue one. OCR has determined that the Agreement, when fully implemented, will satisfactorily resolve the compliance concern raised in Issue one.

Issue two: Whether qualified persons with disabilities are being denied the benefits of, excluded from participation in, or are otherwise subjected to discrimination because the ESC's main facility's restrooms and main entrance are inaccessible to or usable by persons with disabilities, in violation of Section 504, at 34 C.F.R. §§ 104.21 - 104.23, and Title II, at 28 C.F.R. §§ 35.149 – 35.151.

Legal Standard

Section 504 and Title II prohibit recipients and public school systems from denying people with disabilities equal opportunity to participate in programs, services, and activities because their facilities are inaccessible to or unusable by them at 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149. Both Section 504 and Title II also contain two standards to be used in determining whether a covered entity's programs, activities, and services are accessible to individuals with disabilities depending on when the facility was constructed or altered. Under Section 504, at 34 C.F.R. § 104.22, buildings constructed prior to the effective date of the regulation, June 3, 1977, are regarded as existing facilities and must comply with 34 C.F.R. § 104.22. Facilities constructed after June 3, 1977, and parts of existing facilities altered after that date, are deemed new construction and must comply with 34 C.F.R. § 104.23. 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 meet the American National Standards Institute's accessibility standards (ANSI) 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.

Under Title II at 28 C.F.R. § 35.150, an existing facility includes facilities that were already constructed, or for which groundbreaking had begun, prior to the effective date of the Title II regulation, January 26, 1992. New construction, at 28 C.F.R. § 35.151, includes facilities for which construction or alterations began on or after January 26, 1992, and must be in conformance with UFAS, the Americans with Disabilities Act Accessibility Guidelines (ADAAG) (amended September 2010, effective March 15, 2012, at <http://www.ada.gov/regs2010/2010ADAStandards/2010ADASTandards.htm>), or equivalent standards.

Based on information provided by the ESC, OCR determined that the restrooms and the main door located at the ESC's main facility are all considered new facilities under the Title II regulation because the facility was constructed in January 1990 with substantive changes made in 2003. Thus, all facilities under review must be assessed using UFAS, the Americans with Disabilities Act Accessibility Guidelines (ADAAG), or equivalent standards.

Restroom Facilities at the ESC's Main Facility

Based on the site inspection conducted on September 26, 2013, OCR determined that there are two restrooms each (men's and women's) in the ESC's main facility. Activities conducted at the facility are primarily meetings and conferences. OCR's on-site found restrooms in the main facility in compliance with all relevant 2010 Standards requirements, including the requirements found in Sections 213, 216, and 603 with the exceptions of signage (i.e., accessible restroom did not have signage indicating such) as required in Section 703 of the 2010 Standards. However, prior to OCR's departure the afternoon of September 26th, the ESC posted the required accessible signage thus correcting this issue. Therefore, OCR determined that restrooms located in the ESC's main facility were accessible.

ESC's Main Facility Entrance Door

OCR also inspected the exterior doors for the above main facility. While the UFAS and ADAAG standards provide for specific door opening force for interior doors, the standards do not address the maximum force for pushing or pulling an exterior hinged door. In accordance with the Americans with Disabilities Act Self Evaluation Guide, when neither UFAS nor ADAAG contain specific standards for a particular type of facility, the technical requirements of the chosen standard should be applied to the extent possible. OCR's inspection determined that the force pull of the main facility's entrance door was 8.5 lbf., and was operable by a single effort. Absent a specific standard in UFAS or ADAAG, OCR cannot find that the ESC did not comply with Section 504 or Title II with respect to the force required to open an exterior door. Moreover, OCR's own inspection of the door found the 8.5 lbf. to be reasonable, and not be so heavy so as to prevent or prohibit persons with disabilities access to the programs and activities contained therein. Therefore, OCR determined that there is insufficient evidence to support a finding of a violation as related to issue two.

Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding the issues in this complaint. However, OCR will actively monitor the ESC's implementation of the Agreement to determine whether the commitments made therein have been implemented consistently with the terms of the Agreement. Please be advised that if the ESC fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts. If the ESC determines a need to modify any portion of the Agreement, it may submit, for consideration, proposed revisions to OCR.

Effective the date of this letter, OCR is closing the investigative portion of this case. 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 also note that you may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under OCR procedures, we are obligated to advise you and the institution against whom the complaint is filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceedings or hearing held in connection with a complaint.

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.

If you have any questions or concerns, please contact Mrs. Sharon A. Gilmore, Equal Opportunity Specialist, at (214) 661-9616, or Adriane Martin, Team Leader, at (214) 661-9600.

Sincerely,

/s/

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

Enc: as stated