UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

April 12, 2018

Re: 06141514

Dr. Amy Jacobs, Superintendent
Coahoma Independent School District
600 North Main Street
Coahoma, Texas 79511

Dear Dr. Jacobs:

This letter is to inform you of the determinations of the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office based on its investigation of the above-referenced complaint against the Coahoma Independent School District (CISD), Coahoma, Texas, in which the complainant alleged that the CISD discriminates on the basis of disability by failing to make some of its exterior doors, as well as the elementary school playground and high school stadium press box, accessible to persons with disabilities.

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, which prohibit discrimination on the basis of disability in any program or activity receiving Federal financial assistance, and 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 on the basis of disability by public entities. CISD is a recipient of Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdictional authority to investigate this complaint.

Based on the complainant's allegations, OCR investigated the following legal issues:

1. Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by CISD because the facilities and programs (exterior doors, elementary school playground, high school stadium press box) at CISD are inaccessible to persons with mobility impairments, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.21-104.23 and 28 C.F.R. § 35.149-35.151, respectively; and

2. Whether CISD discriminates on the basis of disability by failing to ensure that the portable buildings for students with disabilities and the services and activities provided therein are comparable to the other facilities, services and activities at the Coahoma High

School (CHS) campus, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.34(c) and 28 C.F.R. § 35.130, respectively.[1]

A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (*i.e.*, sufficient evidence to prove that something is more likely to have occurred than not). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

The determination set forth below is based upon our review of information provided by the complainant and CISD, interviews with CISD staff members/officials, and an onsite inspection of CISD facilities conducted on December 3, 2017. As a result of OCR's investigation and analysis, OCR has determined that there is sufficient evidence to establish some, but not all, of the complainant's allegations. Provided below is an explanation of how this determination was reached.

ALLEGATION #1

The complainant informed OCR that the entrances at Robert Ethridge Junior High School (REJHS), CHS, and the CISD administration building are inaccessible to persons with mobility impairments. She noted that the doors require too much force to open and that the door handles are difficult to manipulate.

Further, the complainant complained that the two press boxes at the CHS football stadium are inaccessible because the only way they can be accessed is by talking flights of stairs up to the press boxes.

The complainant also told OCR that the playground at Coahoma Elementary School (CES) is surrounded by pipe that is 8"-10" high. As a result, she had seen a student get out of his wheelchair to scurry to the playground play components because of the height of the pipe. She added that the elderly cannot crossover the pipe to join their grandchildren in the playground.

<u>Exterior Doors and Press Boxes</u>

Legal Standard

The 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 generally that no qualified individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by disabled individuals, be excluded from participation in, or denied the benefits of services, programs or activities; or otherwise be subject to discrimination by the recipient. The regulations implementing Section 504 and Title II each contain two standards for

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[1] The issue statement has been revised from the notification letter issued September 22, 2014.

determining whether a recipient's/public entity's facilities are accessible to or usable by persons 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 regulation implementing each statute requires entities subject to the statute to provide "program accessibility" in programs and activities offered in existing facilities. In addition, each regulation establishes design and construction standards for new and altered facilities. The applicable standard depends on the date of construction and/or alteration of the facility.

Existing Facilities

An existing facility under Section 504 is any facility that was constructed, or for which construction was commenced, prior to June 3, 1977, the effective date of the Section 504 regulation. Under Title II, an existing facility includes facilities that were constructed, or for which construction was commenced prior to January 26, 1992, the effective date of the Title II regulation.

For existing facilities, both Section 504 and Title II require public entities and recipients to operate programs or activities so that the programs and activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities. (The specific language of Title II also refers to services.) Neither regulation requires public entities or recipients to make all existing facilities or every part of the existing facility accessible to and usable by individuals with disabilities, if the [service], activity, or program as a whole is accessible.

Under both regulations, program accessibility for existing facilities can be achieved by making nonstructural changes such as the redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, or delivery of services at alternate accessible sites. Priority consideration, however, must be given to offering the programs or activities in the most integrated setting appropriate. It should be noted that if no effective alternatives can be provided to achieve program accessibility, a recipient or public entity is required to make necessary structural changes. These changes are to be made consistent with the requirements for new construction.

Depending on the date of construction, some facilities may be existing facilities for purposes of Title II but may also constitute new construction under Section 504 (e.g., buildings constructed on or after June 3, 1977, but before January 26, 1992.) In these cases, public entities/recipients that are covered under both Title II and Section 504 must meet the standards for existing construction under Title II and also the applicable accessibility standards for new construction and alterations under Section 504.

In evaluating existing facilities under both Section 504 and Title II, OCR may use technical accessibility standards such as UFAS, ANSI, 1991 ADAAG, and the 2010 ADA Standards as a guide to assess whether persons with disabilities can participate in the program or activity operated by a recipient. During the discussion below, OCR will refer to all of these standards collectively as the "generally accepted new construction standards."

New Construction and Alterations

Both Section 504 and Title II require that a new or altered facility (or the part that is new or altered) be accessible to and usable by individuals with disabilities. However, there are differences in the applicable accessibility standards for new construction and alterations. Alterations standards recognize that structural impracticability or technical infeasibility may be encountered; however, new construction standards must be used in alterations whenever possible.

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). Under the Title II regulation, public entities had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (1991 Standards) 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 public entities had a choice of complying with one of the following: UFAS, 1991 Standards, or the 2010 ADA Standards for Accessible Design (2010 Standards). The Title II regulation provides that public entities 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, the 2010 Standards may be used 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.

Findings of Fact and Analysis

Exterior Doors

CISD Administration Building

The CISD administration building is a small, one-story building that has one public entrance. According to the information obtained from CISD, the administration building was built in 1972 and there are no known alterations that have been made to the building except for possible key lock changes. Because the administration building was constructed prior to June 3, 1977, the applicable accessibility standard is the existing facility standard.

The public entrance is a two-doors-in-a-series type of entrance. Both doors swing inwards in the same direction. The measurement between the exterior and interior doors when hinged is 22 ¾” which is less than the 48” minimum allowed by the generally accepted new construction standards. Therefore, the maneuvering clearance between the two doors is significantly less than allowed by the generally accepted new construction standards. The standard wheelchair has the dimension of 42”x 25”. (ANSI 3.10) A person in a wheelchair cannot clear the exterior door before attempting to open the interior door. Therefore, the space between the doors is insufficient for a person in a wheelchair trying to enter the administration building. The maneuvering clearances before entering the exterior door and after clearing the interior door meet the generally accepted new construction. There was no symbol of access was found at the entrance.

Both exterior and interior entrance doors have 33''width of clear opening which meets the generally accepted new construction standards. The doorway thresholds for the doors also met the generally accepted new construction standards. The door opening forces for the interior door and exterior doors are 5 lbf and 9 lbf, respectively. The opening force of the interior door meets the generally accepted new construction standards. The generally accepted new construction standards do not specify a maximum allowable opening force for exterior doors. Regardless, the opening forces of the doors do not raise an accessibility concern. The door handles are no higher than 48" (measurements range from 37" to 46.5") and are operable with one hand and without tight grasping, pinching or twisting of the wrists. This is consistent with the generally accepted new construction standards.

Using the generally accepted new construction standards as a guide, the lack of sufficient clear floor space between the exterior and interior doors of the entrance renders the administration building not readily accessible to and unusable by individuals with disabilities who wish to conduct business at the administration level. This poses a compliance concern that can be rectified by providing the programs, services, and activities at the CISD administration building to persons with disabilities at an accessible facility or in an otherwise accessible manner.

Robert Etheridge Junior High School

According to the information obtained from CISD, REJHS was built in 1972 and no known alterations/modifications have been made except for possible key lock changes. Because the EJHS was constructed prior to June 3, 1977, the applicable accessibility standard is the existing facility standard. REJHS has three public entrances: the main front entrance, an entrance of on the east side of building and a rear entrance. All of the entrances are exterior double doors.

All entrance doors have 32''width of clear opening which meets the generally accepted new construction standards. Maneuvering clearances provided at the doors also meet the generally accepted new construction standards. The doorway thresholds for the doors meet the generally accepted new construction standards. A sign near the parking lot indicates that the front entrance is accessible, but there is no signage at the entrance.

As stated above, the generally accepted new construction standards do not specify a maximum allowable standard for exterior doors. Nevertheless, three of the six doors have opening forces below 5 lbf, so these exterior doors meet the generally accepted new construction standards for interior doors. The remaining three exterior doors have opening forces of 8 lbf which meet ANSI standards for interior doors. Therefore, the opening force of later three exterior doors does not raise an accessibility concern. The door handles are no higher than 48" (measurements range from 38" to 39") and are operable with one hand and without tight grasping, pinching or twisting of the wrists.

Based on the information above, EJHS entrances are readily accessible to and usable by individuals with disabilities who wish to access programs, services and activities available in the building. However, OCR recommends accessibility signage be placed at the entrance.

Coahoma High School

According to the information obtained from CISD, the CHS building was built in 1961 and a new addition was constructed to the northeast of the CHS building in 2010. CHS noted that door locks were replaced in summer 2014. There is a main entrance and another public entrance on the west side of the building (“Side Entrance”). The entrances were not affected by the 2010 construction. Because the usability of the parts of the CHS building in which the entrances are found were not affected by the 2010 construction and are part of the original structure built prior to June 3, 1977, the applicable accessibility standard is the existing facility standard.

The Side Entrance is composed of four exterior double doors. All entrance doors have 33’’width of clear opening which meets the generally accepted new construction standards. The doorway thresholds for the doors meet the generally accepted new construction standards. The entrance is not identified by accessibility signage. Appropriate maneuvering clearances are provided at the doors.

As reiterated above, the accessibility standards do not specify a maximum allowable standard for exterior hinged doors. The opening pressure for each exterior door is 2.5 lbf which meets the generally accepted new construction standards. Therefore, the opening force of the doors does not raise an accessibility concern. The door handles are no higher than 48” (measurements at 35” each) and are operable with one hand and without tight grasping, pinching or twisting of the wrists.

The main entrance has two sets of double doors. Each set has a two-doors-in-a series type of entry. Both doors swing inwards in the same direction. The maneuvering clearances before entering the exterior doors and after clearing the interior doors meet the generally accepted new construction standards, as the measurement between the exterior and interior doors when hinged is 47 3/4”, which is close to the 48” minimum under allowed by the generally accepted new construction standards. Therefore, it makes no significant impact to the maneuverability of the rest of the space between the interior and exterior doors which pose no accessibility concerns.

Again, the accessibility standards do not specify a maximum allowable standard for exterior doors. The opening pressure for each door ranged from 1.5 lbf to 3.0 lbf, which meets the generally accepted new construction standards for interior doors. Therefore, the opening force of the doors does not raise an accessibility concern. The door handles are no higher than 48” (measurements range from 33” to 46”) and are operable with one hand and without tight grasping, pinching or twisting of the wrists.

Based on the information above, CHS entrances are readily accessible to and usable by individuals with disabilities usable by individuals with disabilities who wish to access programs, services and activities available in the building. However, OCR recommends that accessibility signage be placed at the entrance.

Press Boxes

According to the information obtained from CISD, the CHS football stadium was built in 1964. In 1981, the wood bleachers and press boxes were replaced with metal bleachers and press boxes. No other changes have been made to the stadium since 1981. Therefore, the ANSI standard was applicable at the time when the bleachers and press boxes were replaced.

There are two press boxes, one for the home side and another for the visitor side. The home press box has a total area 381 square feet. It has one entrance. To access the home press box, a person must go up flights of stairs from the entrance of the bleachers to the platform outside the entrance door of the press box. The visitor press box has a total area of 218 square feet and also has one entrance. Similarly, to access the visitor press box, a person must go up flights of stairs from the entrance of the bleachers to the platform outside the entrance door of the press box. The entrance doors to the home and visitors press boxes have clear openings of 28" and 29", respectively. These measurements are not in compliance with ANSI which requires a minimum clear opening of 32".

The home press box has four small rooms (6'x6', 6'x6', 6'x8', and 6'x8') and a large room (12'x12'). Each room meets the minimum turning space requirement of 60"x 60" under ANSI. Leading from the entrance door to the large room is hallway which 42" wide. Although ANSI is silent about wheelchair passage width, the generally accepted new construction standards require 36". Therefore, the hallway raises no accessibility concerns. However, the clear opening for each door is 28" which does not comport with ANSI's requirement of 32".

The visitor press box has two small rooms (6'x6', 7'x6') and a large room (12'x 9'). Each room meets the minimum turning space requirement of 60"x 60" under ANSI. Leading from the entrance door to the large room is hallway which 42" wide. Although ANSI is silent about wheelchair passage width, the generally accepted new construction standards require 36". Therefore, the hallway raises no accessibility concerns. However, again, the clear opening for each door is 28" which does not comport with ANSI's requirement of 32".

Based on the information above, there is no accessible route leading from the entrance of the bleachers of the stadium to the press boxes. Also, the clear opening of the entrance and interior doors of the press boxes do not meet ANSI standards. Therefore, the press boxes are not in compliance with Section 504/Title II.

<u>Playground</u>

Legal Standard

For purposes of determining accessibility, a "facility" is defined at 34 C.F.R. § 104.3(i) to include "all or any portion of buildings, structures, equipment, roads, walks, parking lots or other real or personal property or interest in such property." Under 28 C.F.R. § 35.104, a "facility" means "all or any portion of buildings, structures, sites, complexes, equipment, ... walks, ...or other real or personal property, including the site where the building, property, structure or equipment is located." Interpretive guidance to the Title II regulation issued by the U.S. Department of Justice states that the term "facility" includes both indoor and outdoor areas where human-constructed improvements, structures, equipment or property have been added to the natural environment.

A playground meets the definition of a "facility" under the Section 504 and Title II regulations. A playground facility is comprised of the structure or equipment installed to provide play activities, the route into and around the playground area, as well as the surface surrounding the structure or equipment. Until recently, there were no Federally-adopted accessibility design standards that carried the authority of a regulation and specified their application to the unique features of play areas. The 2010 Standards include (at sections 240 and 1008) scoping and technical requirements for play areas.

According to the Title II regulations (28 C.F.R. § 35.150(b)(2)(i)), elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the ADAAG or UFAS, are not required to be modified in order to comply with the requirements set forth in the 2010 Standards; this is called a "safe harbor." However, 28 C.F.R. §35.150(b)(2)(ii) provides the safe harbor provision does not apply to those elements in existing facilities that were not subject to supplemental requirements, which includes play areas or play grounds. Thus, play areas built before March 15, 2012, must comply with the 2010 Standards. However, although preferable for an entity to meet the 2010 Standards, if it is not possible to achieve compliance with the 2010 Standards in an existing setting, the requirements for program accessibility provide enough flexibility to permit the covered entity to pursue alternative approaches to provide accessibility.

Findings of Fact and Analysis

The playground is located on the elementary school campus and composed of two play areas. One play area is designated for pre-kindergarten (Pre-K Play Area). The other play area is for rest of the students (K-5 play area) and it is divided into 5 play stations (Play Stations #1-#5). 2010 ADA Standard 240.1 requires that, when separate play areas are provided within a site for children in specific age groups, each area must comply with its requirement. Therefore, both the Pre-K and K-5 play areas must each comply with 2010 ADA Standards.

Although there is a cement path that bisects the playground and connects the parking lots to the rear entrance of the school, there are no accessible routes leading to the play areas, benches or tables in the playground.

The exact date of construction of the Pre-K Play Area is unknown. However, CISD informed OCR that it has been there more than 10 years. Before the 2010 ADA Standards, there were no enforceable Federal design standards specifically for play areas or play components. Nevertheless, the generally accepted new construction standards governing surface and access routes still applied. Also, the existing facility standard has generally obligated a school district to provide an accessible route to a play area and an accessible surface beneath the play components to allow student access to the program.

There is no accessible route leading to the play area or to any of the equipment in the Pre-K Play Area. Additionally, the play area has a grass surface which is not stable, firm and slip-resistant. Therefore, OCR has concluded that the Pre-K Play Area does not comply with Section 504/Title II.

The K-5 Play Area was constructed in August 2014, so 2010 ADA Standards are the applicable construction standard. Each play station of the play area has a surface made up of engineered wood fiber and is surrounded and contained by a one-foot tall hedge. The wood fiber is soft and gets significantly compressed when a person walks on it.[2] Therefore, the use zone surfaces are not firm, stable and slip-resistant as required by 2010 ADA Standards. There are no ramps, paths, berms, or other mechanisms in place to assist persons in a wheelchair travel over the hedge and onto the use zone of each play station. A person in a wheelchair cannot traverse over the hedges. There are no accessible routes to any of the equipment located in Play Stations #1-#5.

For purpose of analysis, each play component identified below is categorized as either a ground-level play component or an elevated play component.[3] According to 2010 ADA Standards, a ground-level play component "is a play component that is approached and exited at the ground level." An elevated play component is one that "is approached above or below grade and that is part of a composite play structure consisting of two or more play components attached or functionally linked to create an integrated unit providing more than one play activity."

Also, for purposes of analysis, each play component is also identified by the different types of play experiences ("play types") that each provides. Different types of play experiences include, but are not limited, to climbing, swing, rocking and sliding.

Play Station #1 is composed of 12 swings. All swings provide a swinging play experience and are deemed to be ground level play components. Play Station #2 is a single structure composed of several panels to simulate rock climbing. This structure is composed of ground level play components. The play experience provided by this structure is climbing.

Play Station #3 is a composite play structure made up of the following elevated play components: 3 adjacent slides (sliding), 1 rock climbing panel (climbing), 1 spiral/corkscrew climber (climbing), 1 adjacent slide (sliding), 1 spiral slide (sliding), 1 tic-tac-toe panel (manual play), 1 gear panel (manual play), and 1 single slide (sliding). The structure also contains 1 steering wheel (manual play) which a ground level play component.

This composite play structure system has a transfer platform which measures 14"x 28" and is in compliance with 2010 ADA Standards. The top of the of the transfer platform is 7" inches from the ground which is not in compliance with 2010 ADA Standards which require a height between 11" to 18". However, it is noted that the thickness of the current engineered wood fiber surface may be affecting the compliance with this height requirement. The transfer steps are in compliance with 2010 ADA Standards which requires transfer steps to be at least 14" X 24" and no higher than 8".

Play Station #4 is a composite play structure made up of the following elevated play components: 1 single slide (sliding), 1 set monkey bars (swinging), and sky wheel (swinging). The structure also contains 3 chin-up bars which are ground level play components (swinging/climbing).

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[2] Engineered Wood Fiber (EWF) surfaces on use zones, if properly installed and maintained correctly in accordance with American Society for Testing and Materials (ASTM) F 1292 (1999 or 2004 edition), can meet the requirements of the 2010 ADA Standards § 1008.2.6.2 .

[3] Because the Pre-K Play Area predates 2010 ADA Standards, no ground level versus elevated play component analysis is required.

This composite play structure system has a transfer platform which measures 25”x 24” and is in compliance with 2010 ADA Standards. The top of the of the transfer platform is 8” inches from the ground which is not in compliance with 2010 ADA Standards which require a height between 11” to 18”. However, it is noted that the thickness of the current engineered wood fiber surface may be affecting the compliance with this height requirement. The transfer steps are in compliance with 2010 ADA Standards which, as stated above, require transfer steps to be at least 14” X 24” wide and no higher than “8.

Play Station #5 is composed of 3 separate structures. There are two stand-alone climbers, one shaped as a dinosaur (climbing) and another shaped as a dome (climber). Both climbers are ground level play components. The third structure is composed of the following components: 1 set standard monkey bars (swinging), 1 set swinging monkey bars (swinging),1 barrel spinner (spinning), 1 chain net(climbing), 1 set standing/feet swings (swinging), and 1 sky wheel (swinging). All of these components are ground level components.

The 2010 ADA Standards have two requirements which dictate the number of ground-level play components that must be on an accessible route. However, as indicated above, none of the aforementioned play components are on an accessible route.

One requirement is pursuant to 2010 ADA Standard 240.2.1.1 which requires that at least one of each play type must be located on an accessible route. According to the aforementioned information, four different play types of the ground-level play components are found in the K-5 Play Area: swinging, manual play, climbing and spinning. Therefore, 2010 ADA Standards require that an accessible route connect one of each play type in the K-5 Play Area for a total of 4 play components.

Another requirement is pursuant to 2010 ADA Standards 240.2.1.2 which applies in situations where elevated play components are provided. This 2010 ADA Standard sets forth a table that indicates the minimum number and play types of ground-level play component that must be on an accessible route based on the number of elevated play components found in a play area. According the play component information stated above, there are 12 total elevated play components in the K-5 Play Area. Because the K-5 Play Area has 12 elevated play components, a minimum of 4 ground-level play components must be located in an accessible route and the same must provide a minimum of 3 different play types.

Comparing the ground-level play components required under 2010 ADA Standard 240.2.1.1 versus the table under 2010 ADA Standard 240.2.1.2, both result in a requirement that 4 ground-level play components be provided. However, 2010 ADA Standard 240.2.1.1 requires more play types be provided than 2010 ADA Standard 240.2.1.2. Therefore, the former controls and 4 ground-level play components, providing 4 different play types, must be on an accessible route. At the time of the onsite inspection, no play component on the K-5 Play Area was on an accessible route.

In addition to requiring a certain number and different types of ground-level play components be provided, 2010 ADA Standards, at 240.2.2, also require that, when elevated play components are provided, that at least 50% of them be on an accessible route. However, 2010 ADA Standards provide for an exception in which play areas such as the K-5 Play Area that contains less than 20 elevated play components may use a transfer system instead of ramps to connect to at least 50 percent of the elevated components. Play Stations #3 and #4 are the only play stations that contain elevated play components, and both of these composite play structure systems have a transfer system that connects a person with disabilities to all elevated play components, allowing access to all elevated play components in the K-5 Play Area.

In summary, there is no accessible route from the CES building to the play areas. Also, neither the Pre-K nor K-5 play area has an accessible route to its play components. The hedges around Play Stations #1-#5 are difficult for persons in wheelchairs to negotiate. To be in compliance with 2010 ADA Standards, the K-5 Play Area would need 4 ground-level play components, proving 4 different play types on an accessible route. Also, at least 50% of the elevated play components must be on an accessible route. Therefore, the play areas are in violation of Section 504/Title II.

ALLEGATION #2

The complainant alleged that special education students with the most severe disabilities are placed in portable classrooms outside the CHS main building. The complainant noted that nondisabled students are not placed in portable classrooms.

In its initial response, CISD informed OCR that there are no portable classrooms in their campuses and that the complainant was referring to a classroom that is integrated into CHS campus building. CHS noted that the classroom in question ("Classroom") has amenities that traditional classrooms do not have such as a kitchen, a washer, a dryer and a restroom. CHS stated that the reason that these amenities are present in the Classroom is because of the curriculum of the special education classes taught in the Classroom.

During the onsite inspection, OCR found no portable buildings on any CISD campus. From the outside, the Classroom is a metal panel structure attached to the CHS building. The Classroom in entered through a CHS hallway. The entrance to the Classroom has the same appearance like any other classroom in the building. The inside of the Classroom (wall, lighting, floor, etc.) appears the same as other classrooms in the building. The Classroom is subdivided into two rooms. One room has a kitchen with appliances and washer and dryer and the other room is a regular classroom with a "time out" corner. The Classroom is owned by a cooperative of six school districts, including CISD.

OCR interviewed one of the special education teachers who teach in the Classroom. She informed OCR that two classes are taught in the classroom. One class is called Life Skills and is taught in the room that has the kitchen with washer and dryer. The other room is for the Behavior Adjustment Class (BAC) and is taught in the room with a "time out" corner. Only students that have been referred to the BAC and/or Life Skills as part of their individual education plan (IEP) or Section 504 plan are placed in said classes. These classes are designed to address the specific needs of the students placed in the same.

As the name suggests, the Life Skills class teaches students home skills such as shopping, personal banking, cooking, cleaning, etc. That is why the room has a kitchen and appliances. Life Skills students also receive regular class instruction in the class. Currently, there are 8 students placed in the Life Skills class. They come from CISD and the Forsan Independent School District.

BAC is a class designed for students who are too disruptive for the regular classroom environment but whose placement in a punitive setting would be inappropriate. Having a "time out" area in the Classroom is part of BAC. Students are transitioned to mainstream classes as they progressed from Level 1 (most time in BAC) to Level 5 (less time in BAC). Currently, there are no students in BAC.

Based on the above, the Classroom is of the same quality and has more amenities than traditional classrooms. Therefore, the students with disabilities are taught in a classroom with services and activities that are comparable to the other facilities, services and activities at CHS. Therefore, a violation of 34 C.F.R. § 104.34(c) and 28 C.F.R. § 35.130 cannot be maintained.

Conclusion

In sum, OCR has determined by a preponderance of the evidence that 1) the press boxes at the CHS stadium and 2) the play areas at the CES are inaccessible to persons with mobility impairments. OCR also identified a compliance concern with regard to the amount of clear floor space between the exterior and interior doors of the CISD administration building entrance. CISD committed to a written resolution agreement (Agreement) (copy enclosed) on April 11, 2018 which addresses the areas of noncompliance with Section 504 and Title II, as well as the compliance concern, identified by OCR. OCR has determined that this Agreement, upon full implementation, will satisfactorily resolve the noncompliance and compliance concern. OCR will monitor CISD's progress in the implementation of the Agreement. Failure to implement the Agreement, as scheduled, may result in administrative enforcement or judicial proceedings.

This concludes OCR's investigation of the complaint and should not be interpreted to address the CISD'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. You may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the CISD 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, that individual may file another 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. In the event that 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.

If you have any questions you may contact the assigned investigating Civil Rights Attorney, Jose Ortiz, at 214-661-9643 or jose.ortiz@ed.gov, or Supervisory Attorney/Team Leader Terri Gonzales at 214-661-9687 or terri.gonzales@ed.gov.

Sincerely,

/s/

Taylor D. August
Director
Office for Civil Rights
Dallas Office