



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 26, 2017

Mr. Andrew Kim, Superintendent
Comal Independent School District
1404 IH 35 North
New Braunfels, TX 78130

RE: 06151354
Comal Independent School District

Dear Mr. Kim:

This letter is to notify you of the determination made by the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, regarding the above-referenced complaint received on March 31, 2015, against the Comal Independent School District (CISD), New Braunfels, Texas. The complainant alleged that the CISD discriminates against individuals with mobility impairments based on their disability. Specifically, the complainant alleged that playgrounds at each of the CISD's elementary special education magnet schools are inaccessible to individuals with mobility impairments.

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 the 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 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. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. The CISD is a recipient of federal financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to process allegations of discrimination against the CISD under Section 504 and Title II.

On June 16, 2015, OCR notified the CISD that it would investigate the legal issue of whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by the CISD because the playgrounds at each of its elementary special

education magnet schools are inaccessible to or unusable by individuals with mobility impairments, in violation of Section 504 and Title II at 34 C.F.R. §§ 104.21-104.23, and 28 C.F.R. §§ 35.149-35.151, respectively.

During the course of the investigation, OCR interviewed the complainant and received information from the CISD. OCR's review of the information obtained revealed that the CISD has eight elementary special education magnet campuses as follows: a) Freiheit Elementary School; b) Garden Ridge Elementary School; c) Oak Creek Elementary School; d) Johnson Ranch Elementary School; e) Mountain Valley Elementary School; f) Rahe Bulverde Elementary School; g) Specht Elementary School; and h) Timberwood Park Elementary School. Only two of the campuses – Mountain Valley and Johnson Ranch – were constructed after March 15, 2012, thus requiring full compliance with the 2010 Standards. The remaining playgrounds were constructed prior to March 15, 2012.

The complainant alleged that playgrounds at the elementary special education magnet schools are inaccessible to students with mobility impairments because the playground surfaces consisting of wood fibers are not routinely maintained, only replenished annually, and not properly compacted. As a result, the playgrounds are not accessible to individuals who use wheelchairs or walkers.

Information provided by the CISD outlines a plan (ADA Ramp Installation Project) to alter all eight elementary special education magnet campus playgrounds to provide accessible ramps and ground surfaces. The CISD reported the following alterations:

Freiheit Elementary School – Installed two ADA compliant ramps in playground areas in June 2015;

Garden Ridge Elementary School – Installed two ADA compliant ramps in playground areas in June 2015;

Oak Creek Elementary School – Installed two ADA compliant ramps in playground areas in June 2015;

Johnson Ranch Elementary School – Cost estimates bid to install two ADA accessible ramps;

Mountain Valley Elementary School - Cost estimates bid to install two ADA accessible ramps;

Rahe Bulverde Elementary School - Cost estimates bid to install two ADA accessible ramps;

Specht Elementary School - Cost estimates bid to install two ADA accessible ramps; and

Timberwood Park Elementary School - Cost estimates bid to install two ADA accessible ramps.

The CISD provided OCR with a copy of a contract with Park Place Recreations Designs, Inc. for construction of accessible ramps at the above listed schools. In addition, the contract specifies adding wood fibers for the playground surface.

Prior to the completion of OCR's investigation, and before OCR obtained sufficient evidence to make a determination of compliance or noncompliance, the CISD informed OCR that it was interested in resolving the complaint. Section 302 of OCR's Case Processing Manual provides that a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint and OCR determines that such a resolution is appropriate. The provisions of the resolution agreement will be aligned with the complaint allegations and issues investigated and will be consistent with applicable law and regulations.

The CISD voluntarily submitted to OCR a Resolution Agreement, which was signed by the Superintendent, on January 13, 2017. A copy of the Resolution Agreement is enclosed. OCR has determined that the provisions of the Resolution Agreement are aligned with the issue investigated and appropriately resolve it. Specifically, the Resolution Agreement requires the CISD to provide an accessible ground surface and properly maintain the ground surface at the special education magnet school campuses. Additionally, it requires that the CISD's new alterations to ramps and ground surfaces at the playgrounds to be compliant with the 2010 Standards, and it requires the CISD to ensure that the playgrounds at Mountain Valley and Johnson Ranch (constructed after March 15, 2012) to be fully compliant with the 2010 Standards. Finally, it requires the CISD to make at least one playground at each of the special education magnet schools compliant with the 2010 Standards to ensure program accessibility.

OCR accepts the Resolution Agreement as an assurance that the CISD will fulfill its obligations under Section 504 and Title II with respect to the issue. The dates for implementation of specific actions are detailed in the Resolution Agreement. OCR will monitor the implementation of the Resolution Agreement. Please be advised that if the CISD fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

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.

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, the complainant may file another complaint alleging such treatment.

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. 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.

Thank you for the cooperation you and your staff extended to OCR in our efforts to resolve this complaint. If you have any questions regarding this letter, please contact Marvin Macicek, Investigator, at XXXXXXXXXXXX or by email at XXXXXXXXXXXXXXXXXXXX or you may contact Timothy D. Caum, Supervisory Attorney/Team Leader, at XXXXXXXXXXXX or by email at XXXXXXXXXXXXXXXXXXXX

Sincerely,

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

Enclosure