



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION VI  
ARKANSAS  
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TEXAS

May 11, 2017

Dr. Michael Hinojosa  
Superintendent, Dallas ISD  
3700 Ross Avenue  
Dallas, TX 75204

CC: Leticia McGowan  
Dallas ISD Office of Legal Services  
lmcgowan@dallasisd.org

OCR Complaint #06171033  
Dallas Independent School District

Dear Dr. Hinojosa:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint filed against the Dallas Independent School District (DISD or District). The Complainant alleged that the DISD, through its officials at Seagoville High School (SHS or the School) discriminated against students with mobility impairments by failing to provide ramps to certain portable classroom units and failing to provide a functioning elevator to the second floor of the School.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination based on disability by recipients of Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) 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. Because the DISD is a recipient of Federal financial assistance from the Department and a public entity, OCR has jurisdiction to resolve this complaint under Section 504 and Title II.

OCR opened the following issue for investigation:

Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by the DISD because certain portable classroom units and an elevator to the second floor at the School are inaccessible to or unusable by persons with disabilities, 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.

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

### *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 an entity'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 entity. The regulations implementing Section 504 and Title II each contain two standards for determining whether an 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 applicable standard depends on the date of construction and/or alteration of the facility.

Both the Section 504 and Title II prohibit discrimination on the basis of disability in the programs and activities of covered entities. 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.

### 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.

### 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, districts had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) 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 districts had a choice of complying with one of the following: UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards). The Title II regulation provides that districts are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012. For the purposes of Title II compliance, a public entity must comply with the 2010 Standards as of March 15, 2012, even if the Uniform Federal Accessibility Standards (UFAS) remains an option under the Section 504 regulations after that date.

### *Investigative Summary*

The Complainant alleged that multiple portable classroom units at the School did not have ramps and therefore were inaccessible to students with impaired mobility. The Complainant also reported that the School's elevator was not functioning. In response to OCR's data request, the District submitted documentation indicating that there are currently 27 portable units in use at the School, 21 of which are designated for classroom use. A chart provided by the District indicates that nine of the 27 portables do not have ramps. The District also submitted work orders for the School's elevator which indicated that it was out of service for a significant portion of the beginning of the fall 2016 semester.

Prior to conducting interviews of District employees or conducting an onsite visit, OCR was notified by the District of its interest in voluntarily resolving the complaint. OCR's Case Processing Manual (CPM) Section 302 provides that issues under investigation may be resolved at any time when, prior to the conclusion of OCR's investigation, the recipient expresses an interest in resolving the issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation. On April 11, 2017, OCR approved the District's request to resolve the complaint prior to the conclusion of OCR's investigation. The District submitted the attached Resolution Agreement (Agreement) on May 11, 2017, which OCR has determined addresses the allegations in this complaint and which, when fully implemented, will resolve the complaint. The Agreement requires the District to provide ramps for all the School's portable units and ensure proper functioning of the School's elevator, in accordance with the 2010 Standards.

As of the date of this letter, OCR is closing the investigative stage of this complaint; however, OCR will actively monitor the implementation of the Agreement by the District. If the District fails to implement the Agreement, OCR will resume its investigation of the above issue. This letter is not intended nor should it be construed to cover any matters not specifically addressed herein.

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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against anyone because they have filed a complaint or participated in the complaint resolution process. If this happens, the person 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. 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 regarding this letter, please contact Tyler Clemons, the attorney assigned to this matter, at (214)661-9690 or [Tyler.Clemons@ed.gov](mailto:Tyler.Clemons@ed.gov), or Timothy D. Caum, Supervisory Attorney, at (214)661-9648 or [Timothy.Caum@ed.gov](mailto:Timothy.Caum@ed.gov).

Sincerely,

/s/

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