



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

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

September 29, 2020

Kevin Rogers, Superintendent
Lewisville Independent School District
XXX

Ref: #06-17-1205

Dear Mr. Rogers:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint filed against the Lewisville Independent School District (District), Lewisville, Texas, which was received on December 12, 2016. The Complainant alleged that the District discriminated against XXX XXX (Student) on the basis of disability and also subjected the Student to retaliation.

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance from the U.S. Department of Education 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, and its implementing regulation at 34 C.F.R. Part 104, which prohibits 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. § 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, including public preschools and elementary and secondary educational institutions. OCR also enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibits discrimination on the basis of race, color, or national origin and also states, at 34 C.F.R. § 100.7(e), the following:

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 section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation proceeding or hearing under this part.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference the prohibition against retaliation found in Title VI. The regulation implementing Title II, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

The LISD is a recipient of Federal financial assistance from the Department and is a public elementary and secondary educational institution. Therefore, OCR has jurisdiction to process complaints of discrimination and retaliation filed against the LISD under Section 504 and Title II.

Based on the complaint allegations, OCR opened the following legal issues for investigation:

1. Whether the LISD discriminated against the Student on the basis of disability by failing to evaluate the Student's need for related aids and services despite having notice that, because of the Student's alleged disability, the Student needed or was believed to need such aids and services to provide XXX with an equal opportunity to participate in the LISD's educational program, including XXX XXX, and thereby denied the Student a free appropriate public education during the spring XXX semester and XXX school year, in violation of Section 504, at 34 C.F.R. §§ 104.33, 104.35, and 104.37; and Title II, at 28 C.F.R. § 35.130.
2. Whether the LISD retaliated against the Student because the complainant requested that the LISD make necessary modifications to enable the Student's equal participation in the LISD's XXX XXX in violation of Section 504, at 34 C.F.R. § 104.61, and Title II, at 28 C.F.R. § 35.134, when, during the XXX school year:
 - a. LISD XXX XXX made rude remarks and gestures to the Student when the Student vocalized that XXX could not complete a XXX XXX activity; and
 - b. LISD XXX XXX gave the Student an excessive XXX XXX XXX as compared to other XXX for not being able to XXX XXX and for other XXX XXX (e.g., XXX XXX XXX).
3. Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by the LISD because the path between the ninth grade campus and the main campus at Hebron High School is 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.

During our complaint resolution proceedings, OCR collected and analyzed information provided by the Complainant and the District, including pertinent policies, procedures, and student records. OCR also conducted a virtual onsite inspection of the exterior route between the District's HHS main campus building and the ninth-grade center.

ISSUE #1 and #2:

Prior to the completion of the investigation, OCR received information from the District indicating that the Student has reached the age of majority, i.e., 18.

OCR processes complaints in accordance with its Case Processing Manual (CPM). Pursuant to CPM Section 108(e), a complainant filing on behalf of or pertaining to another person is responsible for securing any necessary written consent from that individual, including when a complainant files for a student over the age of 18 or one who becomes 18 while the complaint is under investigation. After learning that the Student had turned 18, OCR sent the Complainant an email on July 22, 2020 requesting a signed consent form from the Student and informing XXX that if OCR did not receive the signed consent form within 20 calendar days, the complaint would be closed. OCR also attempted to reach the Complainant via telephone and left a voice message on August 12, 2020 requesting that XXX provide a signed consent form from the Student. Additionally, on August 27, 2020, OCR mailed the Complainant

a letter and blank consent form requesting that XXX provide a signed consent form from the Student and informing XXX that if OCR did not receive the signed consent form by September 11, 2020, the complaint would be closed. OCR did not receive the signed consent form for the Student. Therefore, OCR is dismissing issues 1 and 2 in accordance with the provisions set forth in our CPM and will take no further action regarding Issues 1 and 2.

ISSUE #3:

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 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).¹ 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, 2012.² 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.

Construction/Alteration Dates and Applicable Accessibility Standard

The District informed OCR that the Ninth Grade Campus was constructed in 2008. Therefore, OCR conducted its review using the 1991 Americans with Disabilities ADAAG to determine whether the exterior route was readily accessible to and usable by individuals with disabilities.

Background

The complaint alleged that the exterior route between the District's HHS main campus building and the ninth-grade center is not accessible to students with disabilities. According to the information provided by the District, the HHS main campus began construction in 1997 and the ninth-grade center was constructed in 2008.

On September 24, 2020, OCR conducted a virtual on-site inspection of the exterior route between the main campus building and the ninth-grade center. During the inspection of the exterior route, OCR noted a portion of the route had sustained water damage which affected the route's accessibility.

¹ The 2010 ADA Standards for Accessible Design consist of 28 C.F.R. § 35.151 and the 2004 ADAAG at 36 C.F.R. Part 1191, appendices B and D.

² The U.S. Department of Education revised its Section 504 regulations to formally adopt the 2010 Standards in lieu of UFAS. The Section 504 regulations now require the use of the 2010 Standards in new construction and renovations.

Analysis

OCR's *Case Processing Manual*, Section 302, states that allegations under investigation may be resolved at any time when, prior to the point when the Regional Office issues a final determination, the recipient expresses an interest in resolving the allegations, and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. After the investigation of this complaint began, but before OCR reached an investigative compliance determination, the District expressed a desire to voluntarily resolve this allegation, and OCR determined that resolution of this issue was appropriate.

The District submitted the enclosed Resolution Agreement (Agreement), to memorialize the steps that it will take to resolve the compliance issues raised by the complaint allegations pertaining to issue 3. OCR has determined that the Agreement, when fully implemented, will satisfactorily resolve the compliance issues raised regarding issue 3. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding issue 3; however, OCR will actively monitor the District's efforts to implement the Agreement. Please be advised that if the District fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

As there are no other issues appropriate for investigation, 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. The Complainant has been notified of this action.

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 any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the 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 regarding this letter, please contact Tamara Williams, the OCR Investigator assigned to this complaint, at (214) 661-9607, or at tamara.williams@ed.gov. You may also contact me at (214) 661-9638, or at lori.bringas@ed.gov.

Sincerely,

Lori Howard Bringas
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

Enclosure (as stated)