



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

Renaissance Tower
1201 Elm Street, Suite 1000
Dallas, TX 75270

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

[redacted content]

Mr. Stephen Harrell, Superintendent
Deer Park Independent School District
sharrell@dpisd.org

(Sent via email only)

Re: OCR Complaint Ref. No. 06-20-1151

Dear Superintendent Harrell:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint filed against the Deer Park Independent School District (DPISD or District) in Deer Park, Texas, which OCR received on [redacted content]. The complainant alleged that the District discriminated against persons with mobility-related disabilities during the fall semester of the [redacted content] academic year by not maintaining a football field and corresponding sidewalks (collectively, “the Facility”) at the DPISD Deepwater Junior High School that were physically accessible for devices such as wheelchairs and scooters (i.e., no curb ramps or curb cuts for sidewalks; sidewalks are too narrow for wheelchairs and contain uneven surfaces; and inadequate seating exists for wheelchair and scooter users in the Facility’s bleacher section).

OCR 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), as amended, 29 U.S.C. § 794, 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 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 certain public entities, including elementary and secondary educational institutions. The DPISD is a recipient of Federal financial assistance from the Department and is a public elementary and secondary educational institution. Therefore, OCR has jurisdiction over this complaint under Section 504 and Title II.

OCR opened this complaint for investigation to determine whether the District violated Section 504 and Title II based on the allegations. During its investigation, OCR reviewed information provided by the complainant and the District.

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Before OCR made a compliance determination, the DPIISD expressed interest in voluntarily resolving the allegations in this complaint. Section 302 of OCR's *Case Processing Manual* (CPM) provides that allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, 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 concerns that can be addressed through a resolution agreement. OCR determined that voluntary resolution prior to the conclusion of the investigation is appropriate in this case. A summary of the information OCR obtained during its investigation is included below.

I. 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.

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.

II. Summary of the Evidence Obtained and Proposed Resolution

On [redacted content], OCR issued a notification letter and data request notifying the parties that our agency had opened the allegations in this case for investigation. Our agency received the District's data response on [redacted content]. The District's information indicated that it had already contracted with an architectural engineering firm to "address the concern in question." In particular, the District's documentation reflected that the firm would survey the area and address wheelchair access to the Facility and that [redacted content] had approved in [redacted content] related plans submitted by DPISD. According to these plans, the District has retained the firm to complete construction, drainage improvements, and paving improvements at the Facility, "shortly after [OCR determines] the disposition of the complaint." OCR understands this information relayed by the District to serve as an admission that the areas at issue in this investigation – namely, the route leading up to, and the stadium seating available at, the Facility – are presently inaccessible to or unusable by persons with disabilities.

Prior to OCR investigating further and reaching a compliance determination regarding the issue investigated, the District expressed interest in voluntarily resolving this complaint. Because OCR's preliminary investigation has revealed potential concerns that can be addressed in a resolution agreement, OCR has determined that voluntary resolution prior to the conclusion of the investigation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) is appropriate in this case.

III. Conclusion

The DPISD signed and voluntarily submitted the enclosed Resolution Agreement (Agreement) on [redacted content]. The provisions of the Agreement are supported by the evidence obtained during the investigation and are consistent with the applicable statutes and regulations. When fully implemented, the Agreement will address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the Agreement until the recipient is in compliance with the terms of the Agreement and the statute and regulations at issue in the case. Upon determining the recipient's compliance, OCR will close the case.

This concludes OCR's investigation of the complaint and should not be interpreted to address the DPISD'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. 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 DPISD may not harass, coerce, intimidate, or discriminate against any individual because the individual 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. If 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.

OCR would like to thank the District for its cooperation throughout OCR's investigation and resolution of this complaint. If you have any questions regarding this letter or the Agreement, please contact Marvin Macicek, the investigator assigned to the complaint, at (214) 661-9636, or at Marvin.Macicek@ed.gov. You may also contact me, at (214) 661-9647, or at Cristin.Hedman@ed.gov.

Sincerely,

Cristin Hedman Sparks
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

Enclosure: Voluntary Resolution Agreement