



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

March 2, 2023

XXXXXXX, Superintendent
111 Education Lane
Mendenhall, MS 39114
Sent via email only to: XXXXXXXX

OCR Complaint No. 06-22-1974

Dear Superintendent XXXXXXXX:

This is to notify you the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint, filed against the Simpson County School District (District), in Mendenhall, Mississippi. The Complainant alleged the District discriminates against people with disabilities because the playgrounds located at Mendenhall Elementary School and Magee Elementary School are inaccessible to persons with disabilities as follows: (1) there is no accessible path to the play areas; (2) there are no accessible paths of travel between the individual play components in the play areas; (3) the ground surface of the play areas are not accessible; and (4) none of the individual play components is accessible.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive 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, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public education system, OCR has jurisdiction over it pursuant to 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 District because the playgrounds located at Mendenhall Elementary School and Magee Elementary 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.

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 it is more likely than not that unlawful discrimination occurred). 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.

During the course of the investigation, OCR reviewed documentation from the District and the Complainant regarding the allegations at issue in this complaint. In particular, OCR reviewed photographs of the playgrounds identified in the complaint. OCR also discussed the complaint with the District, in which the District acknowledged concerns regarding the physical accessibility of the identified playgrounds.

Prior to the conclusion of OCR's investigation, the District expressed an interest in resolving this issue pursuant to OCR's *Case Processing Manual* (CPM) Section 302 and OCR approved the District's request to resolve the issue prior to the conclusion of the investigation. The basis for OCR's resolution is discussed below in more detail.

Resolution

The Complainant alleged the Mendenhall Elementary School and Magee Elementary school playgrounds are physically inaccessible to persons with disabilities. The District acknowledged concerns regarding the accessibility of these playgrounds as well, and photographs of the playgrounds illustrated the concern. For example, neither playground includes an accessible path leading to the area. Additionally, there is no accessible route to accessible play structures within either playground. Based on the investigation to date, OCR is concerned the Mendenhall and Magee Elementary School playgrounds are physically inaccessible to people with disabilities.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntary resolution of this issue pursuant to OCR's CPM Section 302. On March 1, 2023, the District entered into the attached Agreement, which adequately addresses these concerns. OCR has determined the provisions of the Agreement are aligned with this complaint allegation and appropriately resolves it. Further, OCR accepts the Agreement as an assurance that the District will fulfill its obligations under the laws and regulations enforced by OCR with respect to the issue. The dates for implementation and specific actions are detailed in the enclosed Agreement. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this issue. However, OCR will actively monitor the District's implementation of 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.

In light of the commitments the District has made in the Agreement, OCR finds that the complaint allegations are resolved, and OCR is closing its investigation of the allegations as of the date of this letter. OCR will monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issue raised.

If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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.

Please be advised 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. The individual may have a 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.

If you have any questions regarding this letter, please contact Jeff Coleman, the attorney assigned to this complaint, at (202) 987-1605, or jeffrey.a.coleman@ed.gov. You may also contact me at (214) 661-9600.

Sincerely,

A handwritten signature in blue ink that reads "Melissa Malonson". The signature is fluid and cursive, with the first name "Melissa" being more prominent than the last name "Malonson".

Melissa Malonson
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

Enclosure