



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
ONE PETTICOAT LANE
1010 WALNUT STREET, SUITE 320
KANSAS CITY, MO 64106

REGION VII
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

September 6, 2016

XXXXX XXXXX, Superintendent
XXXXX XXXXX Public Schools
XXXX XXXX XXXXX
XXXXX, XXXXX XXXXX

Re: Docket # 07151213

Dear Superintendent XXXXX:

On July 9, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the basis of disability by the XXXXX XXXXX XXXXXXXX District (District), XXXXXXX, XXXXX. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

Specifically, the complaint alleged the XXXXX XXXXX XXXXX School has an inaccessible playground, entry doors, water fountains and restrooms.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA).
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

As a recipient of FFA from the Department and a public entity, the District is subject to Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

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

OCR inspected the XXXXX XXXXX School building identified in your complaint to determine compliance with the accessibility requirements of Section 504, found at 34 C.F.R. §§ 104.21-104.23, and Title II, 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 a school district's facilities are inaccessible to or unusable by persons with disabilities, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination by that school district.

The Section 504 and Title II regulations contain two standards for determining whether a District's programs, activities and services are accessible to individuals with disabilities. One standard applies to existing facilities and the other covers new construction and alterations. The applicable standard depends upon the date of construction and/or alteration of the facility. Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977; the applicable date under the Title II regulations is before January 26, 1992.

For existing facilities, 34 C.F.R. § 104.22(a) and 28 C.F.R. § 35.150(a) require a District to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. This standard does not necessarily require that a District make each existing facility or every part of an existing facility accessible if alternative methods are effective in providing overall access to the service, program, or activity.

Facilities constructed or altered on or after the above dates are considered new construction or alterations under Section 504 and Title II standards. With respect to newly constructed facilities, 34 C.F.R. § 104.23(a) and 28 C.F.R. § 35.151(a) require each facility be readily accessible to and usable by individuals with disabilities. With respect to alterations, 34 C.F.R. § 104.23(b) and 28 C.F.R. § 35.151(b) require alterations that affect usability be readily accessible to and usable by disabled persons to the maximum extent feasible.

Facilities constructed or altered on or after June 3, 1977 but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards A117.1-1961. On or after January 18, 1991, but prior to January 26, 1992, new construction or alterations must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). After January 26, 1992, but prior to September 15, 2010, new construction or alterations must comply with either the UFAS or the Americans with Disabilities Act Accessibility Guidelines 1991 Standards (1991 Standards). On or after September 15, 2010, and before March 15, 2012, the new construction and alterations may comply with one of the following: the Americans with Disabilities Act Accessibility Guidelines 2010 Standards (2010 Standards), UFAS, or the ADAAG Standards.

The Department of Justice (DOJ) in September 2010 adopted the 2010 ADA Standards for Accessible Design (2010 Standards). The 2010 Standards took effect on March 15, 2012 and

replace DOJ's original ADA standards. DOJ's standards apply to facilities covered by the ADA, including places of public accommodation, commercial facilities, and state and local government facilities. OCR applies the 2010 Standards to buildings or features constructed or altered after March 15, 2012. The 2010 Standards may be accessed at http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards_prt.pdf.

The District informed OCR that the existing gym and locker room area was built in the early 1950s. The floor plan was all newly constructed in 1999: Classrooms, Offices, Restrooms, Media Center, Kitchen, Cafeteria and Corridors.

OCR inspected the XXXXX XXXXX XXXXX school on November 4, 2015. OCR used the 1991 ADA standards to determine compliance and the 2010 standards to determine remedial actions, if necessary. Prior to OCR's site visit; the District also indicated that it had commenced alterations to several building features and areas in order to provide greater access to students and other persons with mobility impairments.

Prior to the completion of OCR's investigation, the District submitted a signed agreement (copy enclosed) on September 6, 2016, that when fully implemented, will address the issues assessed in this compliance review. The Agreement requires the District to complete the remedial measures identified in the Compliance Charts, which are incorporated by reference into the Agreement. The District will provide OCR with periodic status updates on progress implementing the agreement. Each status update will identify the action steps which were completed and include a description of the alteration.

The Agreement also requires the District to designate an individual to coordinate the District's efforts to comply with Section 504, provide the Section 504 coordinator training on the legal requirements of Section 504 and identify the 504 coordinator in its policies and procedures regarding disability discrimination, specifically, its notice of nondiscrimination, grievance procedures, Section 504 policies and procedures, and website if applicable.

OCR will monitor the implementation of the Agreement and the District's actions to ensure the District's compliance with Section 504 and Title II. The District has agreed to provide data and other information in a timely manner in accordance with the reporting requirements of the Agreement. OCR will conduct additional visits and 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 issues in the review. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume the investigation.

This resolution letter and Agreement are intended to address only those issues that are included in the Agreement or discussed in the resolution letter. They are not formal statements 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 Agreement and this letter are not intended and should not be construed to address the District's compliance with the regulations implementing Section 504, Title II, or any other statutes enforced by OCR that are not specifically addressed herein. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) XXX-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

Maria North
Supervisory Attorney

Enclosures

cc: XXXXX XXXXX
Commissioner of Educatio