



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
KANSAS
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May 10, 2018

Sent via email only to marni.parrack@centennialbroncos.org

Marni Parrack, Principal
Centennial Public Schools
1301 Centennial Avenue
P.O. Box 187
Utica, Nebraska 68456

Re: Centennial Public Schools
OCR Case Number: 07-18-1020

Dear Principal Parrack:

On October 30, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against Centennial Public Schools (District), Utica, Nebraska alleging discrimination on the basis of disability. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve the complaint.

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.
- 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.

Additional information about the civil rights statutes OCR enforces is available at <http://www.ed.gov/ocr>. The District is a recipient of Federal financial assistance from the Department and a public entity. Consequently, OCR has jurisdiction and investigated this complaint pursuant to Article III of OCR's *Case Processing Manual (CPM)*.¹

OCR investigated whether individuals with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by the District because the designated

¹ The *Case Processing Manual* is available on OCR's website at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

accessible spaces in front of one entrance to the school are inaccessible to, or unusable by, individuals with disabilities in violation of the regulations implementing Section 504 at 34 C.F.R. §§ 104.4, 104.21, 104.22, and 104.23; and, Title II at 28 C.F.R. §§ 35.130, 35.149, 35.150, and 35.151.

Legal Standards

The accessibility requirements of the Section 504 implementing regulations are located at 34 C.F.R. §§ 104.21-104.23. Comparable sections of the Title II implementing regulations are located at 28 C.F.R. §§ 35.149-35.151. Both 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149 provide that no qualified individual with a disability be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity because a District's facilities are inaccessible to, or unusable by, individuals with disabilities.

The regulations implementing Section 504 and Title II 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; the other covers new construction and alterations. The applicable standard depends upon the date of construction or alteration of the facility.

For existing facilities, 34 C.F.R. § 104.22 and 28 C.F.R. § 35.150 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. Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977; the applicable date under the Title II regulation is January 26, 1992.

Facilities constructed or altered after these dates are considered newly constructed or altered facilities 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 that the facility be designed and constructed in such a manner that it is readily accessible to, and usable by, individuals with disabilities. In addition, for alterations that affect or could affect facility usability, 34 C.F.R. § 104.23(b) and 28 C.F.R. § 35.151(b) require that, to the maximum extent feasible, the facility be altered in such a manner that the altered portion is readily accessible to, and usable by, individuals with disabilities.

The new construction provisions of the Section 504 and Title II regulations also set forth specific architectural accessibility standards for facilities constructed or altered after the above dates. With respect to Section 504 requirements for facilities constructed or altered on or after June 3, 1977, but prior to January 18, 1991, OCR looks to the American National Standards Institute (ANSI) Standards A117.1-1961 (re-issued 1971) for guidance in determining compliance with Section 504. Design, construction or alteration of a facility after January 18, 1991, which complies with the requirements of the Uniform Federal Accessibility Standards (UFAS) is deemed to comply with the requirements of Section 504.

Under the Title II regulation, compliance with either UFAS or the 1991 Americans with Disabilities Act Standards for Accessible Design (1991 Standards) for facilities constructed or altered after January 26, 1992, but prior to September 15, 2010, is deemed to comply with the requirements of Title II. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that public entities had a choice of complying with one of the following: UFAS, the 1991 Standards, or the 2010 ADA Standards for Accessible Design (2010 Standards). Construction or alteration of a facility on or after March 15, 2012, must comply with the 2010 Standards to be deemed to comply with the requirements of Title II. Both sets of regulations provide that districts may depart from the particular requirements of these architectural standards if substantially equivalent or greater access to and usability of the facility is provided.

Background Information

The Complainant alleged that vehicle access to the designated accessible parking spaces located near the west entrance of the District building (1301 Centennial Avenue; Utica, Nebraska 68456) is obstructed by vehicular traffic during before and after school student drop-off and pick-up. On April 16, 2018, OCR conducted a site visit to the District during afternoon student dismissal to inspect whether the designated spaces were obstructed or otherwise inaccessible as alleged by the Complainant. OCR observed the afterschool parent/guardian pick-up process at the west entrance of the District complex, which operates independently from the bus pick-up process at the east entrance of the complex. OCR also discussed with the Elementary School Principal how the drop-off and pick-up processes work.

Resolution

On April 30, 2018, the District expressed to OCR an interest in engaging in resolution negotiations pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*.

On May 10, 2018, the District submitted a signed Agreement (copy enclosed) that, when fully implemented, will address the complaint allegation. Pursuant to the Agreement, the District will ensure that, to the maximum extent feasible, the designated accessible parking spaces near the west entrance of the District building are accessible to persons with disabilities. Specifically, the District will develop a plan to ensure that public access to the designated accessible parking spaces is not obstructed by vehicular traffic during before and after school student pick-up and drop-off or by parked vehicles at any other time. Additionally, in order to ensure access to the designated accessible parking spaces, the District will notify students, parents, and District staff and employees of the authorized route and other relevant procedures for before and after school student pick-up and drop-off. The procedures will, at a minimum, specify that the designated accessible parking spaces must not be obstructed by parked or idling cars during before and after school student pick-up and drop-off. Please consult the Agreement for further details.

OCR considers the complaint allegation resolved effective the date of this letter and will monitor the District's implementation of the Agreement. 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 its investigation.

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, please be advised that 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.

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.

If you have any questions, please contact XXXXX X. XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/

Kelli Douglas
Supervisory Attorney

Enclosure