



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
KANSAS
MISSOURI
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SOUTH DAKOTA

September 3, 2019

Sent via email only to XXXXX@gorepublicschools.org

XXXXX XXXXX, Superintendent
Gore Public Schools
1200 N W Hwy 10
Gore, Oklahoma 74435

Re: Gore Public Schools
OCR Case Number: 07-19-1129

Dear Mr. XXXXX:

On March 7, 2019, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against Gore Public Schools (District), Gore Oklahoma. The Complainant alleged that the District discriminates against persons with disabilities. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve Allegation 3. For the reasons set out below, OCR determined there is insufficient evidence to conclude the District discriminated as alleged in Allegations 1 and 2.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of FFA. The Section 504 regulation at 34 C.F.R. § 104.61 incorporates by reference the Title VI regulation prohibiting retaliation.
- 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. The Title II regulation at 28 C.F.R. § 35.134 prohibits retaliation by public entities.

The District is a recipient of FFA from the Department and a public entity. Consequently, it is subject to Section 504 and Title II. Additional information about the civil rights statutes OCR enforces is available at <http://www.ed.gov/ocr>.

OCR investigated whether the District discriminates against persons with disabilities in violation of Section 504 and its implementing regulation at 34 C.F.R. §§ 104.21, and the Title II implementing regulation at 28 C.F.R. § 35.130, by:

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

1. failing to ensure availability of the accessible parking spaces for the Lower Elementary School (School) by allowing the school buses to block the spaces during student drop off and pick up;
2. failing to provide an accessible route from the parking lot to the School; and
3. failing to ensure the accessibility of the playground at the School by:
 - a. failing to create an accessible route to the playground,
 - b. maintaining an inadequate number of accessible components, and
 - c. maintaining an inaccessible playground surface.

To protect individuals' privacy, the names of employees, witnesses, and other parties were not used in this letter.

OCR applies a preponderance-of-the-evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In reaching a determination in this complaint, OCR considered documentation submitted by the Complainant and the District. OCR interviewed the Complainant and conducted an on-site inspection of the Elementary School on August 27, 2019. OCR met with the Superintendent and the Elementary School Principal during the on-site. The legal and factual bases for OCR's determination are set forth below.

Legal Standards for Accessibility

The accessibility requirements of the Section 504 regulation are found at 34 C.F.R. §§ 104.21 through 104.23. Comparable sections of the Title II regulation are found at 28 C.F.R. §§ 35.149 through 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'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.

The Section 504 and Title II regulations contain two standards for determining whether a school'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 school 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 school 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 Standards A117.1-1961. Facilities constructed or altered on or after January 18, 1991, but prior to January 26, 1992, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). If physical construction or alteration commenced after January 26, 1992, but prior to September 15, 2010, then new construction and alterations must comply with either the UFAS or the Americans with Disabilities Act Accessibility Guidelines 1991 Standards (1991 Standards), except that the elevator exemption the 1991 Standards shall not apply. If physical construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, then 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 1991 Standards except that the elevator exemption of the 1991 Standards shall not apply. If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations shall comply with the 2010 Standards.

The Title II regulation, as amended, states that elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 ADA Standards or UFAS are not required to be modified in order to comply with the requirements set forth in the 2010 ADA Standards.

Allegation 1

Findings of Fact

The Complainant alleged the District discriminates against persons with disabilities by failing to ensure availability of the accessible parking spaces for the Elementary School (School) by allowing the school buses to block the spaces during student drop off and pick up.

The Complainant told OCR that originally the disabled parking spaces were along 4th street by the back entrance of the Elementary School. Later, the Elementary School started parking buses on 4th Street during school hours, which blocked access to the disabled parking spaces. The Superintendent told the Complainant that he could not go along 4th Street anymore. After the Complainant complained to the Superintendent the School moved the signs but did not move the spaces. The Complainant stated that when the buses are unloading or loading students, the route to the disabled parking spaces is blocked and he cannot access the spaces. He said that he must go through the parking lot to get to the spaces, but he cannot get to the spaces when students are

exiting or entering the buses.

OCR observed the buses unloading students in the morning of August 27. The School is located between 3rd and 5th Streets. 4th Street is a dead-end street between 3rd and 5th Streets and runs along the parking lot in front of the School but ends at the School building. The buses enter the school grounds from 3rd Street and travel along the driveway directly in front of the School. The buses stop at an entrance to the school which is used for loading and unloading students. It is not the main entrance to the School. The buses then park on 4th Street during the school day. The buses return in the afternoon when the routes taking the students home are completed. The buses then park at the bus barn on school grounds, and do not block 4th Street while parked.

The two accessible parking spaces along 4th Street, therefore, are blocked during the school day. There is a parking lot in front of the School. This lot has both striped parking spaces and unmarked parking spaces. The total number of spaces in the lot are about fifty. There are four accessible parking spaces in the lot in addition to the spaces along 4th Street. There are two accessible parking spaces directly in front of the gate that leads to the main entrance of the School. There are two additional accessible parking spaces in front of the stand-alone gym building. The gym building shares the same parking lot as the School.

All of the accessible parking spaces in the parking lot are accessible from the street in front of the school. The accessible parking spaces are not blocked by the buses unloading or loading students on the driveway in front of the School. The access to the accessible parking spaces in the parking lot is not blocked by the buses parked on 4th Street because a vehicle does not have to drive on 4th Street to enter the parking lot.

Analysis and Conclusion

The 2010 ADA Standards provide that where parking spaces are provided, accessible parking spaces for persons with disabilities shall be provided in accordance with ADAAG § 208. The Complainant alleged that although there are accessible parking spaces in the Elementary School parking lot, those spaces are not accessible when the buses are unloading and loading students.

During OCR's site visit on August 27, OCR observed that the cars entering the parking lot could park in the accessible parking spaces while the buses were unloading or loading. The buses block 4th Street during the school day, but vehicles can enter the parking lot and park in the accessible spaces in the parking lot without needing to use 4th Street.

The accessible parking spaces in the Elementary School parking lot are available by entering the parking lot and are not blocked by buses loading or unloading students. Therefore, based on this evidence, OCR has determined that there is insufficient evidence to substantiate Allegation 1. Consequently, OCR is closing this allegation as of the date of this letter.

Allegation 2

Findings of Fact

The Complainant alleged the District discriminates against persons with disabilities by failing to provide an accessible route from the parking lot to the main door of the Elementary School. The Complainant told OCR that the path from the accessible parking spaces to the door was obstructed making it difficult for access by a person with mobility impairments, especially the with the use of a wheelchair.

OCR inspected the path of travel from the accessible parking spaces to the main door of the Elementary School. To get to the main door of the School from the accessible parking spaces near the driveway, a person will cross the driveway to the gate of a fence that enclosed the front of the School. The gate is not locked during the school day. Then the person will walk down a sidewalk to the front entrance. The route from the accessible parking spaces to the entrance of the School is 202 feet. The route is a level concrete sidewalk. OCR did not observe any obstructions between the accessible parking spaces and the front entrance. OCR also observed that when the buses stop to unload or load students, the buses do not block the path from the accessible parking spaces to the front entrance.

Analysis and Conclusion

The 2010 ADA Standards at §206.2.1 provide that at least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones.

During the inspection of the path of travel, OCR observed that the route from the accessible parking spaces to the main door was accessible. The path of travel was along a level sidewalk with an unlocked gate along the path. There were no obstructions, including no obstruction from the buses stopped while unloading and loading students.

There is an accessible route from the accessible parking spaces in the Elementary School parking lot to the main door. Therefore, based on this evidence, OCR has determined that there is insufficient evidence to substantiate Allegation 2. Consequently, OCR is closing this allegation as of the date of this letter.

The Complainant has a right to appeal OCR's determination, with regard to Allegations 1 & 2, within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Allegation 3

Legal Standards for Play Areas

The Section 504 regulation at 34 C.F.R. § 104.4(b) states:

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

The 2010 ADA Standards at Part 240 provides for standards for new construction of play areas and existing play areas where alterations occur.

OCR applied Section 504 to determine whether the play areas are compliant with the applicable law, which requires an examination of the play components, the routes to and from the play area, and the routes within a play area to determine whether it is accessible.

Resolution

For existing facilities, 34 C.F.R. § 104.22(a) requires a school 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. OCR inspected the play areas to determine if they were accessible by students with mobility impairments.

There are two large play areas and two smaller play areas at the Elementary School, within a large playground area bound by a fence. The Complainant told OCR that the play areas were not accessible because there was a pipe along the edges of each play area that enclosed the play areas, and all play areas used a pea gravel surface. OCR inspected the play areas at the Elementary School.

The play areas were built in 1986. All four play areas consist of mostly ground level play components. There are some elevated play components in one of the large play areas. There is a white plastic pipe around the edges of all play areas to keep the play area surface within the play area. The diameter of the pipe is 4 ½ inches. The surface of all play areas is pea gravel. The sidewalks from the classrooms do not extend to the edge of the play area, which means that part of the path of travel to the play areas is over grass.

The pea gravel surface and path of travel raise compliance concerns because of the difficulty to maneuver on that surface. This renders the play areas inaccessible to students with mobility impairments and prevents those students from engaging in activities on the play areas.

On September 3, 2019, the District returned the attached, signed Agreement. The Agreement requires the District develop a plan to ensure compliance with the 2010 ADA Standards for Play Areas. Please consult the Agreement for further details.

OCR considers the complaint 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 the Complainant 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 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,

XXXXX XXXXX
Supervisory Attorney