



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 24, 2022

Sent, via email only, to capittman@olatheschools.org

Christopher Pittman, Staff Counsel
Olathe Public Schools
14160 S. Black Bob Rd., P.O. Box 2000
Olathe, Kansas 66063

Re: Olathe U.S.D. #233
OCR Case Number: 07221269

Mr. Pittman:

On April 28, 2022, the U.S. Department of Education, Office for Civil Rights (OCR), received the above-referenced complaint against Olathe U.S.D. #233 (District), located in Olathe, Kansas, alleging the play area at Walnut Grove Elementary (School) is not accessible to students with disabilities. This letter is to confirm that the District has voluntarily entered into an agreement to resolve this complaint.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination based on disability in programs and activities that receive federal financial assistance. OCR also enforces 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 against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance.

Because the District receives federal financial assistance from the U.S. Department of Education and is a public entity, the District is subject to Section 504 and Title II, and OCR's jurisdiction. Additional information about the laws OCR enforces is available on its website at <http://www.ed.gov/ocr>.

Legal Standard

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

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.

Preliminary Background Information

On September 7, 2022, the District provided OCR with a timeline of the construction and alteration of the School's play area. First constructed in 1985, the play area has been upgraded several times in the intervening years, including renovations in 1998, 2006, 2015, 2017, and 2018. The most recent addition to the playground was a sidewalk in August 2022. The District also provided general information regarding planned updates to the play area, indicating that the District has not adopted a specific plan to implement the updates yet. Based on the information provided to date, OCR has concerns regarding compliance with the applicable accessibility standards under Section 504 and Title II for the School's play area.

Resolution

Prior to the completion of OCR's investigation, the District agreed to resolve this complaint pursuant to a resolution agreement in accordance with Section 302 of OCR's *Case Processing Manual*.¹ OCR determined it would be appropriate to resolve this complaint in accordance with OCR's rapid resolution process. On October 18, 2022, the District submitted a signed resolution agreement (Agreement) (copy attached) that, when fully implemented, will address the complaint. The Agreement requires the District to prepare and implement a remedial plan to address noncompliance with elements, areas, and spaces pertaining to the play area at the School.

OCR considers this complaint resolved and will monitor the District's implementation of the Agreement. When OCR determines the District has fully implemented the terms of the Agreement, OCR will close this complaint. If the District fails to carry out the Agreement, OCR may resume investigating the complaint. OCR will not close the monitoring of the Agreement until OCR determines that the District has demonstrated compliance with all the terms of the Agreement and is in compliance with Section 504 and Title II and their implementing regulations, which were at issue in this complaint.

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. A 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 District may not harass, coerce, intimidate, or discriminate against any individual because that individual filed a complaint or participated in the complaint resolution process. If this happens, that individual may file a complaint with OCR 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, it will seek to protect, to the extent provided by law, personally identifiable information which, if

¹ OCR's *Case Processing Manual* is available at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.pdf>.

Page 4 – Christopher Pittman – 07221269

released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Geoff Townsend, Attorney, at (816) 268-0424 (voice), or (877) 521-2172 (telecommunications device for the deaf), or by email at geoffrey.townsend@ed.gov.

Sincerely,

Jennifer Brooks
Supervisory Attorney

Attachment