



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

ONE PETTICOAT LANE
1010 WALNUT STREET, SUITE 320
KANSAS CITY, MO 64106

REGION VII
ARKANSAS
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

XXXXXX, 2023

Sent via email only, to: XXXXXX XXXXXX

XXXXXX XXXXXX, XXXXXX

Tuttle Public Schools
515 E. Main St.
Tuttle, Oklahoma 73089

Re: Tuttle Public Schools
OCR Case Number 07231149

Dear XXXXXX XXXXXX:

On XXXXX XXXXX, 2023, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the Tuttle Public School District (District), located in Tuttle, Oklahoma, alleging discrimination based on disability. Specifically, the Complainant alleges the District fails to meet accessibility standards with respect to its softball facilities. This letter is to confirm that the District has voluntarily entered into an agreement to resolve this complaint.

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, prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance. OCR has Section 504 enforcement jurisdiction over recipients of federal financial assistance from the U.S. Department of Education. 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, prohibit discrimination against qualified individuals with disabilities by public entities. OCR has Title II enforcement jurisdiction over public education systems and institutions.

As a recipient of federal financial assistance from the Department of Education and a public entity, the District is subject to Section 504, 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 found at 34 C.F.R. §§104.21-104.23. Comparable sections of the Title II implementing regulations are 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 an entity's facilities are inaccessible to or unusable by disabled individuals, be excluded from participation in, or denied the benefits of services, programs or activities; or otherwise be subject to discrimination by the entity.

The regulations implementing Section 504 and Title II each contain two standards for determining whether an entity's facilities are accessible to or usable by persons with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility.

Both the Section 504 and Title II prohibit discrimination on the basis of disability in the programs and activities of covered entities. The regulation implementing each statute requires entities subject to the statute to provide "program accessibility" in programs and activities offered in existing facilities. In addition, each regulation establishes design and construction standards for new and altered facilities.

Existing Facilities

An existing facility under Section 504 is any facility that was constructed, or for which construction was commenced, prior to June 3, 1977, the effective date of the Section 504 regulation. Under Title II, an existing facility includes facilities that were constructed, or for which construction was commenced prior to January 26, 1992, the effective date of the Title II regulation.

For existing facilities, both Section 504 and Title II require public entities and recipients to operate programs or activities so that the programs and activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities. (The specific language of Title II also refers to services.) Neither regulation requires public entities or recipients to make all existing facilities or every part of the existing facility accessible to and usable by individuals with disabilities, if the [service], activity, or program as a whole is accessible.

Under both regulations, program accessibility for existing facilities can be achieved by making nonstructural changes such as the redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, or delivery of services at alternate accessible sites. Priority consideration, however, must be given to offering the programs or activities in the most integrated setting appropriate. It should be noted that if no effective alternatives can be provided to achieve program accessibility, a recipient or public entity is required to make necessary structural changes. These changes are to be made consistent with the requirements for new construction.

Depending on the date of construction, some facilities may be existing facilities for purposes of Title II but may also constitute new construction under Section 504 (e.g., buildings constructed on or after June 3, 1977, but before January 26, 1992.) In these cases, public entities/recipients that are covered under both Title II and Section 504 must meet the standards for existing construction under Title II and also the applicable accessibility standards for new construction and alterations under Section 504.

New Construction and Alterations

Both Section 504 and Title II require that a new or altered facility (or the part that is new or altered) be accessible to and usable by individuals with disabilities. However, there are differences in the applicable accessibility standards for new construction and alterations. Alterations standards recognize that structural impracticability or technical infeasibility may be encountered; however, new construction standards must be used in alterations whenever possible.

With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulation, districts had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or altered after January 26, 1992, and prior to September 15, 2010.

For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that districts had a choice of complying with one of the following: UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards).¹ The Title II regulation provides that districts are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012.² For the purposes of Title II compliance, a public entity must comply with the 2010 Standards as of March 15, 2012, even if the Uniform Federal Accessibility Standards (UFAS) remains an option under the Section 504 regulations after that date.

Preliminary Background Information

The Complainant informed OCR that the District built a new softball facility in 2021, but that the new facility, as constructed, is not handicapped accessible due to the parking spaces and public restrooms. The Complainant informed OCR that, at the present time, the District is allowing individuals to use a handicap accessible bathroom available in the girls' locker room.

OCR reviewed photographs of the softball facility provided by the District. The photographs showed that the parking lot is gravel and/or dirt, there are no handicapped spaces or aisles marked on the ground, and there are no handicap parking signs mounted 60 inches or more above the ground. The photographs also showed a mobile bathroom facility located outside the main gate entrance in the parking lot. The mobile bathroom provides two men's and two women's bathrooms. The mobile bathroom is elevated and must be accessed by a short flight of stairs.

The District advised OCR that plans are already in place to improve its softball facilities. The District's plans for construction include building a concrete pad in the parking lot for handicap

¹ The 2010 ADA Standards for Accessible Design consist of 28 C.F.R. § 35.151 and the 2004 ADAAG at 36 C.F.R. Part 1191, appendices B and D.

² The U.S. Department of Education revised its Section 504 regulations to formally adopt the 2010 Standards in lieu of UFAS. The Section 504 regulations now require the use of the 2010 Standards in new construction and renovations.

parking and the addition of a new building at the softball facility that will provide handicapped accessible restrooms.

Based on the information provided to date, OCR has concerns regarding whether the District's softball facilities, in their present, form are inaccessible to individuals with disabilities and compliant with the accessibility standards of Section 504 and Title II. Specifically, OCR is concerned with the accessibility of the parking spaces and bathrooms.

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*.³ OCR determined it would be appropriate to resolve this complaint in accordance with OCR's rapid resolution process. On XXXXX XXXXX, 2023, the District submitted a signed Resolution Agreement (Agreement) that, when fully implemented, will address the complaint. Specifically, the Agreement requires the District to finalize plans to comply with the accessibility requirements of Section 504 and Title II, to construct a concrete parking pad for handicap parking with the necessary sidewalks for access to the softball facilities, to develop and implement a plan to ensure that handicapped individuals know about and have access to the current handicapped bathroom stall at the softball facilities until a new building is constructed, and to construct a new building at the softball facilities that includes public restroom facilities that comply with the accessibility requirements of Section 504 and Title II.

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 implemented 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.

The District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. Complaints alleging such retaliation may be filed with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an

³ OCR's *Case Processing Manual* is available at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, please contact XXXXXX XXXXXX, at (XXX) XXX-XXXX (voice) or (XXX) XXX-XXXX (telecommunications device for the deaf), or by email at XXXXXX.XXXXXX@XX.XXX

Sincerely,

XXXXXX XXXXX
XXXXXX XXXXX