



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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September 21, 2016

V. Sue Cleveland, Ed.D., Superintendent
Rio Rancho Public School District
500 Laser Road NE
Rio Rancho, New Mexico 87124

Re: Rio Rancho Public School District
OCR Case Number: 08-15-1310

Dear Dr. Cleveland:

We have completed our investigation of the above-referenced complaint filed on August 18, 2015, against Rio Rancho Public School District (the District), alleging discrimination on the basis of disability. Specifically, the complaint received by the Office for Civil Rights (OCR) alleged that: (1) the District fails to ensure that members of the public with mobility impairments attending sporting events at the gymnasiums at Rio Rancho High School (RRHS) and V. Sue Cleveland High School (CHS) have ready access to those events because the elevators are unavailable for use; and (2) clear lines of sight are not available at accessible seating locations for spectators with mobility impairments attending sporting events at the gymnasiums.

We conducted an investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U. S. Department of Education; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District is subject to these laws and regulations because it is a recipient of Federal financial assistance from the Department and a public entity.

During the investigation, we reviewed documentation provided by the District and the complainant. We also interviewed the complainant and District staff and observed on site the elevators and lines of sight available in the gymnasiums at seating locations and areas designated for spectators with mobility impairments. With respect to the first allegation, we determined that during the course of our investigation, the District took sufficient steps to ensure that the elevators at the gymnasiums are readily useable by spectators with mobility impairments. With respect to the second allegation, we found by a preponderance of evidence, lines of sight at accessible seating locations or in accessible seating areas are unnecessarily impeded at some events. On September 3, 2016, the District entered into a Resolution Agreement, which when fully executed, will resolve our compliance concern stemming from the second allegation. A copy of the Resolution Agreement is enclosed. This letter explains our determination and our finding.

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

Elevators

The complaint alleged that the District fails to ensure that usable elevators are available to members of the public with mobility impairments attending sporting events at the gymnasiums. The regulation implementing Title II at 28 C.F.R. § 35.133, requires public entities to maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. Section 504 is interpreted to permit recipients no lesser standard.

In response to OCR's written request for data, the District acknowledged that the elevator at RRHS, until December 9, 2015, was restricted to use only by persons in possession of a special fob or key code, neither of which was generally available to the public. Following the installation of new elevator control equipment, the District reported, the elevator became fully operational and permits all individuals at after-school events to gain elevator access by simply pushing the elevator call button. While on site on May 11, 2016, OCR confirmed the presence of the new control equipment.

In response to OCR's written request for data, the District asserted that the usability of the elevator at CHS has never been restricted. To the contrary, OCR learned while on site that the elevator once had restrictions to access similar to those at RRHS. We confirmed while on site, however, that the elevator now automatically unlocks after school hours and remains unrestricted automatically all weekend long. The complainant confirmed to us that the elevator is now available for use by spectators without restriction.

Because OCR obtained credible information indicating that the allegation with respect to the elevators was resolved following our opening the allegation for investigation, we are closing this allegation from further investigation.

Lines of Sight

The complaint alleged that clear lines of sight are not available at accessible seating locations for spectators with mobility impairments attending sporting events at the gymnasiums. The regulation implementing Section 504 at 34 C.F.R. part 104, subpart C, and the regulation implementing Title II at 28 C.F.R. part 35, subpart D, generally require covered entities to ensure that no person with a disability is denied the benefits of its services, programs, or activities because facilities are inaccessible to or unusable by persons with disabilities. In addition, the Uniform Federal Accessibility Standards at § 4.33.3, and the 1991 ADA Standards for Accessible Design at § 4.33.3, incorporated into the regulations, require covered entities to provide people with physical disabilities lines of sight in assembly areas that are comparable to those for members of the general public.¹

¹ Construction of RRHS was initiated in January 1996. Construction of CHS was initiated in June 2007. Based on these dates of construction, the regulations generally require each of these facilities to conform with either the Uniform Federal Accessibility Standards or the 1991 ADA Standards for Accessible Design.

By direct observation on site, OCR confirmed the lines of sight are blocked in designated seating areas and in niches available to persons with mobility impairments and their companions at the upper levels in both gymnasiums by permanent signage, temporary banners mounted on rails, and spectators seated or standing in the back rows of the lower-level bleachers. Accordingly, OCR found it more likely than not that at some events, lines of sight at accessible seating locations or in accessible seating areas are unnecessarily impeded.

Conclusion

The enclosed Resolution Agreement, when fully implemented, will ensure that unobstructed lines of sight are established and maintained for persons with mobility impairments requiring the use of accessible seating or seating areas at spectator events held in the gymnasiums. This concludes our investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. We are closing the investigation of this complaint effective the date of this letter.

Please note that the complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. Additionally, 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, the individual may file another complaint alleging such treatment.

This letter sets forth OCR's determination in an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. 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.

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

I thank you for the cooperation and assistance of your staff, especially XXXX who assisted us while on site at the gymnasiums. If you have any questions, please contact XXXX, who will be your point of contact during the monitoring of the Resolution Agreement, at (303) 844-XXXX, or by email at XXXX@ed.gov.

Sincerely,

/s/

Thomas E. Ciapusci
Supervisory Team Leader

Enclosure: Resolution Agreement

cc: Honorable Hanna Skandera (without enclosure)
Secretary of Education, New Mexico Public Education Department

XXXX
Director of Secondary Special Education