



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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August 29, 2017

Kriss Hagerl, Superintendent
Sierra Vista Unified School District #68
3555 East Fry Boulevard
Sierra Vista, AZ 85635

Re: Sierra Vista Unified School District #68
Case Number: 08-16-1438

Dear Superintendent Hagerl:

We are notifying you of our decision in this case. The Complainant alleged that Sierra Vista Unified School District #68 (District) discriminates on the basis of disability. Specifically, the complainant alleged that the District denies students with disabilities access to programs and activities at Buena High School by failing to provide:

- 1) Accessible parking located near the accessible entrance;
- 2) an accessible route from the designated accessible parking to the accessible entrance due to excessive vertical changes and because school buses routinely block the curb cut leading to the accessible entrance;
- 3) an accessible entrance and entry hallway near the school office;
- 4) signage designating means of egress and areas of refuge in the school building;
- 5) in the theater and gymnasium:
 - a. accessible entrances;
 - b. accessible seating locations that are dispersed around the facility;
 - c. assistive listening devices; and
- 6) an accessible route to the baseball stadium.

We conducted our investigation under the authority of Section 504 and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the Department, and Title II and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs or activities of a public entity. As a public entity that receives Federal financial assistance, the District is subject to these legal requirements.

We investigated whether the District discriminates against individuals with disabilities by not providing program access to existing elements and not ensuring a barrier-free environment in newly constructed or altered elements in violation of Section 504 and Title II.

Facts

The high school was built in 1991. Located on the site are four parking areas that access the high school. There is one parking area on the north side of the campus, one parking area directly to the east, and two on the south side (nearest to the main office). At the high school there is a Performing Arts Center (PAC) which is available for public use for plays, presentations, concerts, and so forth. In addition, there

is one baseball field and one softball field, both of which are located just to the north of the east parking lot.

On June 21, 2017, OCR conducted an on-site inspection of the areas identified by the complainant. OCR assessed the accessibility of each of the parking areas, the gymnasium, the playing fields, the PAC, and entrances and routes near the main office. With respect to allegations 1, 2, 3, and 6; OCR found no compliance concerns.¹

Concerning allegation #5, OCR found that while the PAC does have an audio amplification system, the PAC does not have a listening system to assist individuals with severe hearing loss [See Sections 4.1.2 and 4.33 of Uniform Federal Accessibility Standards (UFAS)]. In addition, the District reported, and we confirmed, that for the 1100 seat PAC, the District only designates 11 positions as wheelchair accessible.² The number of wheelchair positions does not comply with Section 4.1.2 of the UFAS, which requires that for assembly areas with a seating capacity of 1,100, there shall be 21 wheelchair seating locations.

Analysis and Conclusion

The accessibility requirements of the Section 504 implementing regulation are found at 34 C.F.R. §§ 104.21-104.23. Comparable sections of the Title II implementing regulation 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 a District's facilities are inaccessible to or unusable by disabled individuals, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity.

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 4, 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.

¹ Regarding allegation #4, OCR did not assess whether the signage indicating egress and areas of refuge were present during this site visit. OCR learned during the investigation of this complaint that this issue was previously addressed in an earlier OCR complaint, case number 08-12-1004, filed by the Complainant.

² As there are no accessible routes to the upper level of seating in the PAC, all wheelchair accessible seating is dispersed horizontally among sections of varying admission prices on the concourse level only.

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 4, 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.³ 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.

The District was unable to provide documentation establishing the specific date in 1991 on which construction began on the high school complex. The District also did not provide information regarding the accessibility standard used in the design or construction of the high school. Consequently, we could not definitively identify the accessibility standard which should have been used by the District in constructing the high school – ANSI or UFAS. Given that ANSI was applicable for the only the first two-and-one-half weeks of 1991, we determined that it was much more likely the District should have used UFAS during the high school's construction. Therefore, we evaluated the high school facilities using UFAS.

We found the PAC does not have assistive listening system and that the wheelchair accessible seating in the PAC does not meet the applicable accessibility standard relating to total required, and thus, are not accessible to or usable by persons with disabilities, under Section 504 and Title II.

In summary, we find that the District did not comply with Section 504, Title II, and their implementing regulations because there are not a sufficient number of wheelchair spaces and there is not an assistive listening system in place.

We thank the District for voluntarily entering into an Agreement to resolve the accessibility issues. OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase of this case is complete, OCR will close Case Number 08-16-1438 and will send a letter to the District, copied to the Complainant, stating that this case is closed.

This letter sets forth OCR's determination in an individual OCR 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.

OCR routinely advises recipients of Federal funds that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint

³ After the U.S. Department of Education revises its Section 504 regulation to formally adopt the 2010 Standards in lieu of UFAS, use of the 2010 Standards will be required to comply with Section 504.

investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Please also note the Complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

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.

Thank you for the courtesy and cooperation you and your staff extended to us during the investigation of this case. If you have any questions or concerns, please feel free to contact XXXX, Equal Opportunity Specialist and primary contact for this case, at XXXX or by email at XXXX, or me at XXXX.

Sincerely,

/S/

Thomas M. Rock
Supervising General Attorney

Enclosure – Resolution Agreement

cc w/ enclosure: XXXX

cc w/out enclosure: Honorable Diane Douglas
Superintendent of Public Instruction