



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

September 29, 2017

Ms. Shirley Brazel, Superintendent
Alpine Elementary School District
#101 County Road 2311
P.O. Box 170
Alpine Arizona 85920-0170

**Re: Alpine Elementary School District
OCR complaint number 08-17-1050**

Dear Ms. Brazel:

On October 19, 2016, we opened for investigation the Complainant's allegations that the Alpine Elementary School District discriminated against her and one of her children, both persons with disabilities, on the basis of disability. Specifically, the Complainant alleged that the District does not provide designated parking for persons with disabilities that is accessible to or useable by persons with disabilities. The Complainant alleged that the newly renovated disabled parking spaces do not provide a stable, level and slip-resistant surface useable by persons with disabilities (i.e., the left hand or drivers side of the parking space nearest to an accessible route is dirt rather than concrete); that these parking spaces were blocked during morning drop off and afternoon pick up by traffic in the loading zone; and that maintenance staff dumped snow in and around these parking spaces, making them useable.

During our evaluation of the complaint, the Complainant raised an additional allegation which we opened for investigation, namely that the Superintendent did not take action regarding her concerns that the disabled parking spaces were not accessible to or useable by persons with disabilities. The Complainant further alleged that Superintendent prohibited her from using the designated accessible parking spaces and restricted her to using only the loading zone.

We are responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulation 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. As a recipient of Federal financial assistance from the Department, the District is subject to these laws and regulations.

Legal Standards

OCR conducted this investigation pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504) and its regulation at C.F.R. §§ 104.4, 104.21, and 104.23, which state that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance; no person with a disability “shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies” and “each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.” In addition, individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e).

Additionally, this investigation was conducted pursuant to Title II of the Americans with Disabilities Act and its regulation at C.F.R. §§ 35.130, 35.133, 35.149, and 35.151(b), which state “no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity;” “a public entity shall 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 by the Act or this part,” “no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity,” and “each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.” Moreover, individuals filing a complaint, participating in an investigation, or asserting a right under Title II are protected from intimidation or retaliation by 28 C.F.R. § 35.134.

Altered Elements and Physical Accessibility of District Facilities

Both the Complainant and the District provided photographs of the parking spaces, access aisles, accessible route to the nearest accessible entrance and the loading zone. The District further provided blue prints and drawings for these elements. The District explained that it decided to improve safety for the children by resurfacing and restriping the entire parking lot in front of the school to include a loading zone directly in front of the main school entrance and relocating the two parking spaces designated for persons with disabilities in 2016.

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.

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. 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.

Both the photographic and documentary evidence clearly demonstrate that the parking spaces and access aisles are the proper dimensions and the parking spaces have signage. However, the 2010 Standards require one of these parking spaces to be designated with “van accessible” signage. No such signage is present in the photographs submitted. This same evidence also clearly demonstrates that the District has not provided an accessible route to the nearest accessible entrance. The applicable accessibility standards require the accessible route to include curb ramps where there is a change in level greater than ½” from the access aisles to an accessible route, which must be at least 36 inches wide. The evidence clearly shows no curb ramps are present and a route which is only 24 inches wide.

Maintenance of Elements and Accessible To and Useable By Persons With Disabilities

Both the Complainant and the District provided photographs of the parking spaces, access aisles, accessible route to the nearest accessible entrance and the loading zone. The District further provided blue prints and drawings for these elements. The drawing along with photographs also shows that the loading zone path of vehicular travel takes it in front of the two parking spaces

and access aisles for persons with disabilities resulting in traffic blocking these parking spaces. The District contends that staff will assist persons with disabilities to exit these parking spaces during drop-off and pick-up times. The Complainant contends that this never occurred and provided the names of other parents who use the disabled parking spaces who have complained to her that they also have trouble exiting these parking spaces.

The Complainant's photographs also suggested that the parking spaces and access aisles could be inaccessible to or useable by persons with disabilities due to debris and snow obstructing these elements. Again, the Complainant provided the names of witnesses who could corroborate that these elements are obstructed during inclement weather.

Retaliation

During our investigation, the Complainant asserted that her access to and use of the disabled parking spaces was curtailed by the Superintendent in a letter delivered to the Complainant March 8, 2017. In this letter, the Superintendent states that on at least three occasions during September and October that the Complainant in the parking lot acted in a loud, hostile and disruptive manner included raising her voice, arguing with an employee, and making derogatory, sarcastic remarks about the employee and the school toward District staff members. The letter included examples of the Complainant's alleged unruly behavior. The District said that District employees were unable to perform their job duties because of the Complainant's behavior. The District explained that even after the Complainant left the property, employees were so stressed from being treated in such a hostile manner, that it took some time before they could regain their composure and were able to perform their duties in a completely focused manner.

In the letter, the Superintendent informed the Complainant that "harassment of my staff, harassment of parents on school grounds, Board members and the repeated refusal to follow this District's policies and procedures cannot and will not be tolerated." As a result, the District excluded the Complainant from the Alpine Elementary School District campus. The Complainant was permitted to attend events such as Parent/Teacher conferences, graduation, and emergencies for her children with prior approval from the Superintendent. She was also allowed to bring her children to school and pick them up. However, the Superintendent stated that the Complainant "must use the drop-off and pick-up lane to do so." Additionally, the Complainant's communications were to be with the Superintendent only who would respond to questions and comments on a weekly basis. Finally, the Complainant could not interact or engage with any Board member, administrator, staff member or teacher without prior approval from the Superintendent.

In rebuttal to the District's claim that her access to school property was restricted due to abusive behavior toward staff and other parents, the Complainant contends that she was never abusive and provided audio recordings of her interactions with staff. OCR reviewed these recordings and confirmed that the Complainant's interaction with staff were not abusive. However, only one of the recordings dates coincided with any of the dates cited in the letter restricting her access to school property.

Conclusions

We concluded that the designated accessible parking spaces and the route leading from them to the building entrance do not comply with the applicable accessibility standard. Therefore, OCR finds that the District is in violation of Section 504 and Title II in this respect. During our investigation and prior to making a determination regarding the remaining allegations, the District requested to enter into the attached Agreement to resolve all the allegations raised in complaint 08-17-1050.

On September 28, 2017, we received the District's signed Resolution Agreement (copy enclosed). 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 08-17-1050 and will send a letter to the District, copied to the complainant, stating that this case is closed.

OCR routinely advises recipients of Federal funds and public educational entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR. The complainant may also have a right to file a private suit in Federal court whether or not OCR finds a violation.

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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we protect personal information to the extent provided by law.

If you have any questions, please contact me at XX or David Sumners, Equal Opportunity Specialist at XX.

Sincerely,

/s/

Tom Rock
Supervisory Attorney

Enclosure – Resolution Agreement

cc: Ms. Diane Douglas, Superintendent, Arizona Department of Education