



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

April 25, 2018

By Email Only to: cooper@cmsd12.org

Dr. Walter Cooper, Superintendent
1775 LaClede Street
Colorado Springs, CO 80905

Re: Cheyenne Mountain School District
Case Number: 08-18-1061

Dear Superintendent Cooper:

We write to advise you of the resolution of a complaint that was filed with our office against Cheyenne Mountain School District ("District"). The Complainant alleged that the District failed to comply with the alterations provisions of Federal law when, in 2013, it enclosed the pathway between two buildings at Skyway Elementary School.

We investigated the complaint pursuant to Section 504 of the Rehabilitation Act of 1973, and its implementing regulation at 34 Code of Federal Regulations ("C.F.R.") Part 104, which prohibit discrimination on the basis of disability in education programs and activities that receive Federal financial assistance from the U.S. Department of Education, and pursuant to Title II of the Americans with Disabilities Act of 1990 ("ADA"), as amended, 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 and a public entity, the District is subject to these laws and regulations.

We found sufficient evidence to conclude that the District failed to comply with the alterations standards regarding the construction at Skyway Elementary School. The District voluntarily agreed to enter into a resolution agreement to resolve this matter.

I. Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.23(b) states:

Alteration. 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.

The Title II regulation at 28 C.F.R. § 35.151(b) states:

Alterations.

(1) 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.

Under Title II, alterations done in 2013 must comply with the 2010 ADA Standards.

A. OCR's Evidentiary Standard

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion as alleged.

II. OCR's Investigation

Our investigation focused on obtaining the evidence necessary to determine whether the District complied with the legal standards articulated in Section I above. Specifically, as part of our investigation, we requested and reviewed documents, including architectural drawings from the 2013 construction, and conducted an onsite investigation to measure and photograph the relevant architectural features.

III. Factual Findings

OCR's investigation established the following facts by a preponderance of the evidence. In 2013, in response to the Sandy Hook school shooting incident, Cheyenne Mountain School District decided to make Skyway Elementary School more secure by providing a single point of entry into school grounds. Part of this endeavor included enclosing the breezeway between the "upper" and "lower" buildings, so no one could enter the upper building except through the main entrance at the lower building.

When the breezeway was enclosed, not only did it enhance security, it also provided an interior route for students and staff to pass between both buildings, out of the weather.

At all times before and after the breezeway enclosure was installed, the route between the upper and lower buildings contained a short flight of four (4) steps that makes it inaccessible to people who use wheelchairs. The finished floor surface of the upper building is 24" above the finished floor surface of the lower building.

Outside the breezeway, there is an exterior, uncovered ramp that provides wheelchair access from the playground area to the upper building. Currently, the only route to the upper building is via the exterior ramp.

IV. Analysis

When an existing facility is modified in a way that “affects or could affect the usability of the facility or part of the facility,” the alterations provisions of Title II and Section 504 are triggered. Here, the design and construction of the breezeway enclosure affects the usability of the facility in two significant ways: it means that people who do not use wheelchairs are able to move between the buildings inside an enclosure that both protects them from potential security threats and from inclement weather, which can be common and severe, given the location of the school. Because the breezeway is not accessible, anyone who uses a wheelchair would have to leave the safety and weather protection of the enclosed breezeway, go outside, use the uncovered ramp, and go up or down as needed to move between the buildings.

As the modification affects or could affect usability of the facility, the “alterations” provisions of Title II and Section 504 are triggered. As such, the District should have done the alteration in a way that made the breezeway accessible to people with disabilities. Currently, the route includes a short flight stairs to accommodate a 24” rise, but no route that is accessible to people with disabilities. Either a platform lift or a properly configured ramp will need to be provided to bring the alteration into compliance with the Section 504 and Title II regulations.

Late in the investigation, the District raised a concern that installation of a certain style of wheelchair platform lift, enclosed by a pony wall, would impinge by a few inches on the required width of the egress passageway, under life/safety codes enforced by the Fire Marshal. When the District constructed the enclosed breezeway, it had full flexibility in determining how wide the enclosure should be; there are no external factors that would have constrained its width. The length of the breezeway was set by the existing distance between the buildings. OCR notes that if the District had, as required by the ADA and Section 504, designed and constructed the breezeway enclosure to provide an accessible route, it might have added a few inches to its width to accommodate its desired wheelchair lift or taken out the steps altogether to accommodate a ramp (assuming there was sufficient length between the buildings to do so). Since it did not do so, the District will now have to find a lift that can accommodate the existing space constraints created by the breezeway enclosure, expand the width of the breezeway enclosure, receive a variance from the Fire Marshal, or take out the stairs entirely and install a ramp that complies with the 2010 ADA Standards, as it determines is most appropriate. The regulatory limitation that covered entities only have to make the altered area accessible “to the maximum extent feasible” does not provide a viable defense here, where it is the District’s configuration of the alteration itself that created the conditions that now make it more difficult to add a specific style of wheelchair lift.

V. Conclusion

In reviewing the documentation, information, and facts we established in our investigation, OCR determined that the weight of the evidence supports the conclusion that the District violated Title Section 504 and Title II by failing to comply with the alterations provisions when it undertook the construction of an enclosed breezeway linking the upper and lower buildings at Skyway Elementary School in 2013. The District will need to modify the route inside the breezeway so that it is accessible to people with disabilities, in a way that conforms to the 2010 ADA Standards for Accessible Design.

We thank the District for entering into the resolution agreement with OCR to resolve this issue. OCR is closing the investigative phase of this case effective the date of this letter.

The case is now in the monitoring phase. OCR will monitor implementation of this Agreement through periodic reports from the District demonstrating that the terms of the Agreement have been fulfilled. We will provide the District with written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. The monitoring phase will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the Agreement is fully implemented, the allegation will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District, copied to the Complainant, stating that this case is closed. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This letter addresses only the issues listed previously and should not be interpreted as a determination of the District's compliance or noncompliance with Section 504, Title II, or any other federal law in any other respect.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

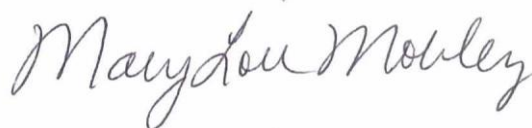
The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law. Please be advised that 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 investigation. If this happens, the individual may file another complaint 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, we will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of 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, please contact me at Mary.Lou.Mobley@ed.gov or 303-844-4480.

Sincerely,

A handwritten signature in cursive script that reads "Mary Lou Mobley".

Mary Lou Mobley