



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 21, 2018

Michael Penca, Superintendent
Flagstaff Unified School District
3285 East Sparrow Avenue
Flagstaff, AZ 86004

By email only to: mpenca@fuds1.org

Re: Flagstaff Unified School District
Case Number: 08-18-1132

Dear Superintendent Penca:

This letter advises you of the resolution of the complaint filed with our office alleging that the Flagstaff Unified School District #5 (District) discriminates on the basis of disability. Specifically, the complaint alleged that the District denies students with disabilities access to programs and activities at DeMiguel Elementary School and Sinagua Middle School by failing to provide:

1. accessible parking spaces at DeMiguel Elementary School that are available for use by individuals with disabilities because non-disabled individuals park in these spaces on a daily basis;
2. restroom doors at DeMiguel Elementary School that meet opening force requirements;
3. room signage at DeMiguel Elementary School that has Brailled characters; and
4. room signage at Sinagua Middle School that is mounted at the required height above the finished floor.

We began investigating the complaint pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. 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 and a public entity, the District is subject to these laws and regulations.

On February 28, 2018, prior to submitting a comprehensive data response and an OCR site visit, the District contacted OCR and indicated that it had already begun evaluating the accessibility of issues raised prior to the complaint being filed. The District indicated its desire to voluntarily enter into an agreement to resolve the allegations pursuant to Section 302 of the *Case Processing Manual*. We reviewed this request and determined that it justified entering into an agreement without completing a full investigation of the complaint.

On March 19, 2018, we received the signed Resolution Agreement, which is enclosed. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of the Agreement through periodic reports demonstrating the terms of the Agreement have been fulfilled. We will provide written notice of any deficiencies regarding the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

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 08-18-1132 and will send a letter to the District 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 investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Please also note that complainants 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: Denise Lowell-Britt, Udall Shumway, by email only

cc w/out enclosure: Honorable Diane Douglas
Arizona Superintendent of Public Instruction, by email only