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November 5, 2019

Dr. Jason Glass, Superintendent
Jefferson County Public Schools
1829 Denver West Drive #27
Golden, Colorado 80401

By email only to: Jason.Glass@jeffco.k12.co.us

Re: Jefferson County Public Schools
Case Number: 08-19-1371

Dear Superintendent Glass:

We are notifying you of our decision in this case. We received a complaint alleging that Jefferson County Public Schools (District) discriminates on the basis of disability. Specifically, the complainant alleges that the District denies students with mobility disabilities access to programs and activities at Lasley Elementary School (School) by failing to provide an accessible route connecting the entrance with all accessible spaces and elements within the school building as well as to the playgrounds and the field area.

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, at the School, 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 District reported that the School was originally constructed in 1961. Based on the site elevation at the time, the School was constructed such that there was a west wing containing six classrooms which connected to the main portion of the building via a set of stairs going down, since the main portion was constructed at a lower level.

In 1963, the District added more classrooms to the original construction via an exterior addition. The 1963 addition was constructed just to the southwest of the 1961 building, at the same

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elevation as the main portion of the 1961 building. In order to join the two buildings, the District constructed an interior hallway extending northward and joining the far west end of the western wing. Along the hallway route, there is a set of stairs that accounts for the elevation change from the 1963 building to the west wing of the 1961 building which, as stated, is at a higher elevation. In addition to the interior hallway with the stairs, the District constructed an exterior sidewalk as a means of joining an exterior door on the east side of the 1963 addition to an exterior door of the main portion of the building (1961). Unlike the hallway connection, the sidewalk does not contain stairs since the 1963 building and the main portion of the 1961 building are at the same elevation.

In 1996, the District constructed several more classrooms as an addition to the exterior of the west wing. As a means of tying the addition into the existing construction (1961 & 1963), the District constructed an interior hallway. In addition, the 1996 section of the building includes an exterior route that connects an exterior door of the 1996 section to an exterior door of the main building, which bypasses stairs in hallway of the original 1961 building. This route then connects to an interior route (hallway) running to such areas as the gymnasium, lunchroom, art room, administration offices, and the School's main entrance. In addition to the 1996 addition on the west wing, the District also added more classrooms to the west side of the main building which, like the west wing, connects to the other elements/primary function areas via an interior route (hallway).

Regarding the playgrounds and the field area, there are three elevation levels to the south of the School's main buildings. There is an upper level closest to the School buildings which contains two playgrounds; one that was built in 2016 (UPA1) and is designated as the accessible play area, and another that the District recalls was built "in the mid-90s" (UPA2). On the next level, the middle level (lower), there are two more playgrounds which are accessed via a set of steps from the upper level, and which bisects the two playgrounds. According to the District, the one playground to the east of the bisecting sidewalk (MPA1) was built in the "mid-90s," and the one to the west of the sidewalk (MPA2) was likely "original construction (1961)." The third level, the lowest level, is a field area that, according to the District, is original construction (1961) and is used primarily for field days and occasionally for PE classes. In order to access the field area, students use a set of stairs that lead from the middle level to the field area. For instances when a student with a mobility disability needs to access the area, the student will have an aide who will assist the Student in getting to the field area via a route (a sidewalk) extending from the School's main entrance, along the west side of the campus, and down to the field area.

During OCR site visits conducted on July 31 and August 21, 2019, OCR assessed the routes joining the front entrance to all accessible features/elements of the facility, as well as to the playgrounds and field areas.

Analysis and Conclusion

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 1) excluded from participation in, or denied the benefits of services, programs or activities, or 2) otherwise be subjected to discrimination by the District. The program accessibility and architectural 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.

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. Which standard applies depends upon the date of construction or alteration of the facility.

The Section 504 regulations, at 34 C.F.R. §104.22, and the Title II regulations, at 28 CFR §35.150, apply to “existing facilities”, defined generally as any facility or part of a facility where construction was commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that, with respect to existing facilities, the school district shall operate its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. OCR also interprets the existing facility standard to apply to buildings that are leased by the school district, regardless of date of construction, unless construction or alteration work on such buildings was done by or for the school district on or after the applicable dates.

Accessibility of existing facilities (including leased facilities) is determined not by compliance with a particular architectural accessibility standard, but by considering whether the program or activity, when viewed in its entirety, is accessible to and usable by individuals with disabilities.

The school district may comply with the existing facility standard through the reassignment of programs and activities to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs and activities accessible to disabled persons. The school district is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. In choosing among available methods, the school district must give priority to those methods that offer programs and activities to disabled persons in the most integrated setting appropriate.

For those District facilities constructed or altered after the effective date of Section 504 and Title II, the District will ensure that its facilities are readily accessible to and usable by persons with disabilities. C.F.R. § 104.23; 28 C.F.R. § 35.151. Based on the dates of the UPA2 and MPA1 playgrounds (“mid-90s”), the additions to the west wing and south main (1996), and the UPA2 playground (2016); we evaluated whether the routes connecting the front entrance to the School to these elements complied with the applicable accessibility standard in effect at the time (i.e., 1991 and 2010 ADA Standards for Accessible Design (the “Standards”)).

The complaint raised the concern that students with mobility disabilities are required to use exterior accessible routes in order to access all elements of the facility (e.g. specials classrooms

in the main building), regardless of weather conditions. The complaint raised further concerns that the field area, which is considered existing construction (1961), was also inaccessible because no accessible routes exist.

OCR first notes that the District, in attempting to resolve these concerns before this complaint was filed with OCR, conducted an accessibility survey in order to assess the feasibility of renovations that would provide for a continuous accessible interior route through the entirety of the facility, despite the existence of accessible exterior routes that joined all elements of the facility. Although not required to do so by the regulations, the District considered replacing stairs in the existing construction portions of the School with ramps or, as an alternative to ramps, adding vertical lifts or stair lifts. In each instance, the District determined these options were infeasible for a myriad of reasons, including for instance that there was not enough vertical clearance, that lifts protruded too far, or that vertical lift widths created a safety hazard due to reduction in passing space in the narrow hallways. During our onsite visits, OCR confirmed the District's observations.

We next note that the District provided OCR an example of when a student with a mobility disability attended the School and the School ensured the Student was provided with program access. In the example, the School, through an IEP that was designed to meet the Student's individual disability-related needs, provided the Student a paraeducator whose responsibility was to assist the Student in navigating the facility, including between the Student's classroom in the 1963 addition to the specials classes in the 1961 main building, and to the field area when necessary.

We determined, based on the information summarized above, that the District provides program access to students with mobility disabilities in those areas of the School building considered to be existing construction under Section 504 and Title II.

Our review of the routes in the new construction additions to the school building found that those routes comply with the Standards¹ with one exception: a ramp on the route that is intended to provide access to the performance area in the gymnasium, has just one handrail when the Standards require two handrails. (1991 Standards § 4.8.5)

Regarding the routes to the playgrounds that are considered new construction, OCR found that the route to the 2016 play area (UPA1) meets accessibility requirements based on the Standards. OCR also found that the District does not provide an accessible route(s) to those playgrounds that the District described as being built in the "mid-90s" (UPA2 and MPA1) and thus, the playgrounds are not accessible to or usable by persons with disabilities, under Section 504 and Title II. (1991 Standards § 4.1.2(2))

¹ OCR noted that the 1991 Standards, which were in effect at the time the District constructed the 1996 additions to the School, require an accessible route be provided to those additions. The Standards do not, however, require that the route provided be exclusively on the interior through the existing construction portions of the building.

In summary, we find that the District did not comply with Section 504, Title II, and their implementing regulations with respect to the ramp leading to the performance area and as it relates to routes which are necessary for accessing the UPA2 and MPA1 playgrounds.

We thank the District for voluntarily entering into an Agreement to resolve these compliance concerns. 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 08-19-1371 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 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.

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 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

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Enclosure – Resolution Agreement

cc: XXXX, via email only
XXXX

cc (w/o enclosures): Ms. Katy Anthes, State Commissioner of Education, via email only