



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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December 29, 2021

Ms. Tracy Dorland, Superintendent
Jefferson County School District R-1
1829 Denver West Drive #27
Golden, Colorado 80401

Via email only to Tracy.Dorland@jeffco.k12.co.us

Re: **Jefferson County School District R-1**
OCR Case 08-21-1406

Dear Superintendent Dorland:

On August 17, 2021, the Office for Civil Rights (OCR) of the U.S. Department of Education (Department) received a complaint alleging discrimination against individuals with disabilities. The complaint alleged that Jefferson County School District (District) denies students with mobility disabilities access to programs and activities at Great Work Montessori School (School) by failing to provide an accessible route connecting the School's main entrance to designated accessible parking spaces, to a temporary building used for classrooms, and to a field area used for recess and physical education. The temporary building and field area are across a public street from the School.

Because we have the authority and the complaint was filed timely, we initiated an investigation of this complaint under Section 504, and its implementing regulation, at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination based on disability in programs and 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 based on disability by public entities. The District is a recipient of funding from the Department and a public entity and, therefore, required to comply with Section 504 and Title II, respectively.

Legal Standards

The regulations implementing Section 504 and Title II provide that no qualified person with a disability shall, because a recipient's/public entity's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program, service, or activity of the recipient. 34 C.F.R. § 104.21; 28 C.F.R. § 35.149. The regulations contain two standards for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities. One standard applies to "existing facilities" while the other covers "new construction" and "alterations." The applicable standard of compliance depends on the date of construction and/or the date of any alterations to the facility.

New Construction/Alterations

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The Section 504 regulations, at 34 C.F.R. § 104.23, apply to “new construction or alterations,” defined as any facility or part of a facility where construction was commenced after June 3, 1977. For purposes of Title II, “new construction or alterations” is defined as any construction of or alterations to a facility or a part of a facility on or after January 26, 1992. The regulations for each law provide that each facility or part of a facility constructed by, on behalf of, or for the use of the recipient/public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. The regulations further provide that each facility or part of a facility altered by, on behalf of, or for the use of the recipient/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 persons with disabilities.

Facilities constructed or altered on or after January 18, 1991 are required to comply with the *Uniform Federal Accessibility Guidelines* (UFAS) (Appendix A to 41 C.F.R. subpart 101-19.6). Recipients may choose between applying the *2010 Standards for Accessible Design* (2010 Standards) (28 C.F.R. § 35.151 and 28 C.F.R. part 36, subpart D) or UFAS for any new construction or alteration commenced on or after March 15, 2012. 77 F.R. 14972, 14975 (Mar. 14, 2012).

Effective March 15, 2012, new construction and alterations pursuant to Title II are required to comply with the 2010 Standards.

Facts

In response to our request for data regarding this allegation, the District reported that the School was constructed in 2018. Therefore, OCR used the 2010 ADA Standards to evaluate the accessibility of the School’s routes that connect its entrance with designated accessible parking spaces, the temporary building, and the field area.

While conducting an on-site inspection at the School on October 15, 2021, we found a temporary, newly constructed route from the entrance to the designated accessible parking spaces; and altered, temporary routes from the entrance to the temporary building and field area. However, the temporary routes did not comply with Section 504 and Title II because the running slope of the temporary sidewalk to the building and field area exceeded five percent along the route; and the cross-slope at the temporary parking spaces exceeded eleven percent along the route.

The District asserted to OCR that it plans to initiate second phase of construction in summer 2022, which will address the concerns that OCR identified. The District explained that the construction plan includes a redesign of the entrance area, parking spaces, and routes, which will provide Section 504- and Title II-compliant accessibility by summer 2024. The District also explained that the building and field area located across the street from the School’s main entrance will no longer be used after the redesign is completed.

In the meantime, the District is developing an interim plan that will address the concerns that OCR identified. According to the District, the plan will ensure that the temporary routes connecting the entrance to designated accessible parking spaces, the temporary building, and the field area are accessible to and usable by persons with disabilities.

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District requested to resolve the concerns OCR identified during its investigation. Section 302 provides that an allegation under investigation may be resolved at any time when, prior to OCR issuing a draft letter of findings, a recipient of federal financial assistance or public entity expresses an interest in resolving the allegation and OCR determines that it would be appropriate to resolve the allegation. Because OCR's investigation identified concerns that can be addressed through a Resolution Agreement (Agreement) and because the District is in the process of comprehensively addressing the concerns identified by OCR, OCR determined that entering into an Agreement is appropriate. The terms in the attached Agreement align with the evidence obtained during the investigation and the allegations.

On **December 16, 2021**, we received a signed Resolution Agreement from the District. Therefore, 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 closely monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. When the Agreement is fully implemented, this allegation will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions, as described in the Agreement.

Conclusion

This concludes OCR's investigation and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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.

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 resolution process. If this happens, the individual may file a complaint alleging such treatment.

The complainant may have a 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 District's cooperation in this case. If you have any questions, please contact XXX at XXX, or by email, at XXX.

Sincerely,

/s/

Designated Team Leader

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cc: Amy Malik, Head of School, Great Work Montessori School
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Ms. Alyssa C. Burghardt, District Counsel
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Katy Anthes, Colorado Commissioner of Education
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