



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 15, 2022

Dr. Mary Kamerzell, Superintendent
Catalina Foothills Unified School District
2101 E. River Road
Tucson, Arizona 85718

Via Email Only to: mkamerzell@cfsd16.org

Re: Catalina Foothills Unified School District
OCR Case Number: 08-22-1043

Dear Superintendent Kamerzell:

This letter advises you of the resolution of the above referenced complaint filed with our office alleging that the Catalina Foothills Unified School District (District) discriminates on the basis of disability. Specifically, the complaint alleges the District discriminates against persons with mobility impairments at Ventana Vista Elementary School (School) because certain exterior doors¹ in the School are too heavy to open; the District has failed to properly maintain an accessible feature at the School (elevator); and there is no accessible route connecting the School building to the lower field area of the School, where children gather for activities during recess.

We conducted our investigation under the authority of 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. The District, a public entity, is a recipient of Federal financial assistance from the Department of Education and is, therefore, subject to the requirements of these laws. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

¹ Originally, OCR accepted the allegation that certain doors were too heavy to open but did not distinguish whether the door issue applied to exterior or interior door force. However, based on OCR's review of the District's submissions and clarification regarding the design of the School, OCR determined the issue raised in the complaint actually relates to the amount of force required to open exterior doors across the campus, including at restrooms, the main office, and at classrooms.

OCR's investigation included a review of information submitted by the District in response to OCR's initial request for data and subsequent requests seeking clarifying information, and interviews with the Complainant.

Legal Standard

The regulations implementing Section 504 and Title II provide that no qualified person with a disability shall, because a recipient/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/public entity's programs, activities, and services are accessible to individuals with disabilities. One standard applies to "new construction" and "alterations" while the other applies to "existing facilities." The applicable standard of compliance depends upon the date of construction and/or the date of any alterations to the facility.

New construction and alterations

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 the 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.

The Section 504 regulations, at 34 C.F.R. § 104.23(c), specify the *American National Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped* (ANSI 117.1 – 1961 (1971)) as the minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991. 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).

With respect to Title II, public facilities constructed or altered on or after January 26, 1992, through September 14, 2010, are required to choose application of UFAS or the 1991 *ADA Standards for Accessible Design* (1991 Standards) (28 C.F.R. Part 36, App. A). Public facilities constructed or altered on after September 15, 2010, through March 14, 2012, are able to comply through the application of UFAS, the 1991 Standards, or the 2010 Standards. Effective March 15, 2012, new construction and alterations pursuant to Title II are required to comply with the 2010 Standards. New construction and alterations completed before March 15, 2012, that did not comply with the 1991 Standards or UFAS (i.e., noncompliant new construction and alterations) were also subject to the 2010 Standards. 28 C.F.R. § 35.151(c)(5).

Existing facilities

The Section 504 regulations, at 34 C.F.R. § 104.22, and the Title II regulations, at 28 C.F.R. § 35.150, also apply to “existing facilities.” Section 504 defines existing facilities as any facility or part of a facility where construction was commenced prior to June 3, 1977. Existing facilities for the purposes of Title II are any facility or part of a facility where construction was commenced prior to January 26, 1992. The regulations provide that, with respect to existing facilities, the recipient shall operate its programs, services, and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities (hereinafter “the program accessibility standard”).

Accessibility of existing facilities is determined not by compliance with a particular architectural accessibility standard, but by considering whether a recipient program, service, or activity offered within an existing facility, when viewed in its entirety, is accessible to and usable by individuals with disabilities. The recipient may comply with the existing facility standard through the reassignment of programs, services, and activities to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, services, and activities, when viewed in their entirety, accessible to individuals with disabilities. In choosing among available methods for redressing program inaccessibility, the recipient must give priority to those methods that offer programs, services, and activities to individuals with disabilities in the most integrated setting appropriate as well as methods that entail achieving access independently and safely.

The concepts of program access and facilities access are related, because it may be necessary to remove an architectural barrier in order to create program access. For example, a program offered exclusively in a particular building on a campus may not be accessible and usable to individuals with disabilities absent the provision of physically accessible features. Under such circumstances, facility accessibility standards may be used to guide or inform an understanding of whether persons with disabilities face barriers to participating in the program, service, or activity provided in a particular facility. In reviewing program accessibility for an existing facility subject to Section 504, UFAS or the 2010 Standards may be used as a guide to understanding

whether individuals with disabilities can participate in or benefit from the program, activity, or service. The 2010 Standards may be used as a guide to understanding whether individuals with disabilities can participate in or benefit from the program, activity, or service of a public entity subject to Title II. Specific details of the architectural standards are described below as needed.

Background

The District reported that the School was constructed in 1993. The School is comprised of five buildings (hereafter “Building A,” “Building B”, and so forth), several of which have an upper level. Similar in design to a college campus, the buildings are set apart such that they are connected through a series of exterior routes that lead to the exterior doors of various rooms contained at each building (e.g., bathrooms that open to the exterior, classrooms that open to the exterior, etc.), or to an exterior door that continues along an interior accessible route within the respective building.

To access the upper levels of the buildings where an upper level exists, the School provides routes that they have designated as accessible and that either include a ramp or an elevator along the route. For example, to access the two first-grade classrooms located on the upper level of Building F, there is a ramp along the exterior accessible route. To access the three 5th-grade classrooms on the upper level of Building E, a student can either take an exterior set of stairs or take the elevator (Elevator #2) along the one accessible route to the upper level for wheelchair users. To access the upper level of the remaining buildings, there are exterior stairs or a functioning elevator that provides access (Elevator #1).

Door Opening Force

The Complainant alleged that the District discriminates against students with mobility impairments because certain exterior doors at the School are too heavy to open.

The District explained that in general, nearly all classrooms, office, bathrooms, and other rooms of the School have doors that open to the outside and are equipped with door closers. For most exterior doors, except for restroom doors, there are also vision panels that allow a student to be seen outside the door. In some instances, depending on the room, there are also windows next to the door that also allow for students who need assistance in opening the door to be seen. If unseen, the student can also knock for access. The District further explained that in those instances when an individual encounters a door that is difficult to open, even with a door closer, a work order can be submitted, and repairs are made promptly.

Regarding the main entrance door to the School, the District clarified that access to the School during student arrival and departure times in the morning and afternoon is not via the entrance at the main office but rather, is actually a gate that remains open during those times only. During the rest of the day the gate is closed and locked, and any student or visitor who wishes

to access the School must do so by entering through an exterior door located in the administration offices portion of the School. The District provided OCR video evidence showing that the exterior entry door, which is equipped with four vision panels, has an opening force of 5 lbf and a closing speed of 5.5 seconds.

Regarding restrooms with doors that open to the exterior, there are numerous student restrooms that are generally co-located near the various classroom clusters. For the exterior doors that lead to the boy's and girl's restrooms near the 2nd/3rd-grade and 4th/5th-grade classroom clusters, the District explained that the exterior entry doors are propped open during the school day and thus, are fully accessible. For the restrooms that are not propped open and are required to be accessed via a closed exterior door, including one staff restroom made available to students with mobility impairments, the District provided OCR with videos demonstrating that the doors required no greater than 5 lbf to open and, except for one door which closed at a rate of 3.6 seconds, the doors took no less than 5.3 seconds to close.

Analysis

The District could not identify with certainty the specific standard used during construction of the School in 1993 but indicated that it was most likely constructed using the 1991 Americans with Disabilities Act Standards for Accessible Design (1991 Standards) for new facilities. We therefore used the 1991 Standards as a guide in determining compliance.

The 1991 Standards provide the following with respect to door closers and door opening force:

4.13.10 Door Closers

If a door has a closer, then the sweep period of the closer shall be adjusted so that from an open position of 70 degrees, the door will take at least 3 seconds to move to a point 3 in (75mm) from the latch, measured to the leading edge of the door.

4.13.11 Door Opening Force

The maximum opening force allowable by the appropriate administrative authority.

- (1) Fire doors shall the minimum opening force allowable by the appropriate administrative authority.
- (2) Other doors.
 - (a.) **Exterior hinged doors. (*Reserved*)** [emphasis added]
 - (b.) Interior hinged doors: 5 lbf (22.2N)

(c.) Sliding or folding doors: 5 lbf (22.2N)

The United Access Board (the Access Board)², which provides guidance on the interpretation and implementation of ADA accessibility standards, explains the basis for the lack of a particular standard for exterior hinged doors, stating that³:

A maximum opening force is not specified for exterior swing doors because the closing force required by building codes usually exceeds an “accessible” resistance. Factors that affect closing force are the weight of the door, wind and other exterior conditions, gasketing, air pressure, HVAC systems energy conservation, etc.

Although there is no standard for maximum opening force, if the opening force is significant and the door is very heavy, an accessibility issue can arise if a person in a wheelchair or with mobility impairments is unable to open the door because it is too heavy. In those instances, OCR bases its determination on the general nondiscrimination prohibitions of 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149. OCR notes that these general nondiscrimination prohibitions incorporate, at a minimum, the regulations covering “existing facilities” found at 34 C.F.R. § 104.22 and 28 C.F.R. § 35.150. These provisions require that a school district operate each service, program, or activity, so that, when viewed in its entirety, it is readily accessible to and usable by disabled individuals.

Based on our analysis of the evidence obtained, OCR cannot find that the District did not comply with Section 504 or Title II with respect to the force required to open the exterior doors. The exterior doors inspected by the District and reported to OCR require no greater than 5 lbf to open and the closers meet the requirements of the 1991 Standards. Moreover, OCR learned during our investigation that the design of the doors allows School personnel to readily assist any individual with a disability who is having difficulties in accessing an exterior door. Therefore, OCR has determined that the evidence is not sufficient to support the complainant’s allegation that the exterior doors of School are not accessible to persons with mobility impairments because the exterior doors are too heavy.

Maintenance of Accessible Feature (Elevator #2)

The complaint alleged that the District discriminates against individuals with mobility impairments because it has failed to properly maintain an accessible feature at the School (Elevator #2).

² the United States Access Board (the Access Board) provides guidance on the interpretation and implementation of ADA accessibility standards.

³ see p. 58, <https://files.eric.ed.gov/fulltext/ED434504.pdf> or <https://www.access-board.gov/ada/guides/chapter-4-entrances-doors-and-gates/>

As noted in this letter, Elevator #2 provides the only means for individuals who use wheelchairs, etc. to access the upper level of Building E, which comprises three 5th-grade classrooms. The District confirmed that the elevator has been out of service since May 2021, but asserts it is not due to a lack of maintenance. The District explained that since May 2021 it has made efforts to contact vendors to repair the elevator however, the only alternative was a costly, temporary fix that was not warrantied and there was no guarantee it would last for any particular period of time. In lieu of making a costly and temporary, unreliable repair, the District determined that it would overhaul the elevator by replacing the controls, contacts, machine room pump, and the shaft. According to the District, it has so far solicited proposals and selected a vendor to complete the overhaul. The next step is to issue a purchase order and contract, and to pay the deposit. Once the contract is signed, the vendor will order the parts and will complete the repairs, which the vendor anticipates will take 20 weeks⁴ to complete from the ordering of parts to the completion of the overhaul. The District anticipates that the work will be done by the beginning of the 2022-23 school year.

Regarding how the District intends to make its programs and activities offered on the upper level of Building E accessible to individuals with mobility impairments; the School informed OCR that it is prepared to move entire classrooms to the first floor and to address any additional access issues on a case-by-case basis. Regarding access for the public, the School explained that no public activities will be held on the second floor for the remainder of this school year, including parent-teacher conferences, which are already being held virtually.

Analysis

The Title II regulation requires that public entities maintain inoperable working condition those features of facilities and equipment that are required by Title II to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 35.133(a). Title II does not prohibit temporary obstructions or isolated instances of mechanical failure. Isolated or temporary interruptions in service or access due to maintenance or repairs are also permissible. 28 C.F.R. § 35.133(b). However, allowing obstructions or “out of service” equipment to persist beyond a reasonable period of time would violate the requirement to maintain accessible features, as would repeated mechanical failures due to improper or inadequate maintenance.

During our investigation of this allegation, the District expressed an interest in voluntarily entering into an agreement (“Agreement”) to resolve the allegations and ensure compliance with Section 504 and Title II.

⁴ The vendor reported to the District that the lead time to get the parts is approximately 16 weeks and the actual repair will take four weeks.

Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint, OCR believes that doing so is appropriate, and the remedies align with the allegations.

Based on the information obtained thus far from the District, including information about recent actions taken by the District (i.e., selecting a vendor), OCR has concerns with the amount of time it is taking the District to complete the overhaul and with the plan the District indicates it will implement to ensure access to programs and activities provided on the upper level of Building E.

Regarding the elevator, the elevator has been out-of-service for nine months. Although the District has described steps that suggest progress has been made, the anticipated date for completion of the elevator overhaul has already shifted on the calendar since initiating an investigation of this allegation. Specifically, the District first reported to OCR that the overhaul was anticipated to be completed by "the end of the school year," but in recent correspondence to OCR, the District has shifted the anticipated completion date to "the beginning of the 2022-23 school year." Even then, the date is still based on signing a contract and ordering parts, which have not been completed.

Based on our analysis of the available information, OCR determined that resolving the allegations with an agreement without concluding the investigation, was appropriate pursuant to Section 302 of OCR's CPM.

Accessible Route to the Lower Field Area

The complaint alleged that the District discriminates against individuals with mobility impairments because there is no accessible route connecting the School building to the lower field area.

The District stated that there is an accessible route that connects the School building to a gate that leads to the field area, which the District described as being "dirt and grass." The District indicated that the path that leads from the gate to the actual field has a "gentle incline." According to the District, the lower field is sometimes used for Physical Education classes and for an optional recess activity called the Milers Club, where students run or walk around the field to accumulate miles.

The District provided OCR with a map showing the route designated as being accessible. The District also provided OCR with photographs showing the gate and the dirt path leading to the field.

Analysis

OCR first reviewed the map provided by the District and Google imagery of the representative area. OCR confirmed that the route from the main entrance area does continue through a gate in a partial boundary fence, then connects down a dirt path that generally leads to the ramada, the grassy lower field area⁵, and to basketball courts that are directly adjacent to the lower field area.



Based on our review of the map and Google imagery; the District’s statement that the path from the gate is a “gentle incline;” and restrictions on conducting onsite visits; OCR began the process of requesting additional information in the form of photographs and representative measurements. OCR first requested for photograph(s) of the gate area to better conceptualize how the designated route intersects the gate and connects to the lower field area (see below).

⁵ The complaint identifies the area as the lower field area but handwritten notes on the District map refer to it as the “Lower Playground.”



Upon providing the photographs of the gate area and dirt path, and before OCR had completed its investigation, the District similarly expressed an interest in resolving this allegation through a voluntary resolution agreement. OCR considered the District's request and, based upon OCR's current concern that the dirt path likely does not meet the 1991 Standards requiring accessible routes to have a ground surface that is stable, firm, slip-resistant (4.5.1); OCR determined a 302 resolution was appropriate in this instance.

Conclusion

In summary, OCR determined that the District does not discriminate against persons with mobility impairments with respect to the opening force of exterior doors. As it relates to the allegations that the District discriminates based on disability at the School because it fails to properly maintain an accessible feature of the School (Elevator #2) and fails to provide an accessible route to the lower field area, the District expressed a willingness to resolve these allegations through a voluntary agreement pursuant to Section 302 of OCR's CPM.

On March 14, 2022, we received the District's signed Resolution Agreement (enclosed). 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 and that the District's policies and practices are administered in a non-discriminatory manner. When the Agreement is fully implemented, this allegation will have been resolved consistent with the requirements of Title II, and its 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.

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 investigation. 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. The complainant also has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the District. The District has the option to submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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.

If you have any questions, please contact XXXX, Equal Opportunity Specialist, at 303-844-XXXX, or by email at XXXX@ed.gov.

Sincerely,

Thomas M. Rock
Supervisory General Attorney

Cc (By Email Only): XXXX