



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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May 16, 2022

Dr. Kodey Hughes, Superintendent
Superintendent of Schools
346 East 600 North
Nephi, UT 84648

Via Email Only to: kodey.hughes@juabsd.org

Re: Juab School District
OCR Case Number: 08-22-1147

Dear Superintendent Hughes:

This letter advises you of the resolution of the above referenced complaint filed with our office alleging that the Juab District (District) discriminates on the basis of disability. Specifically, the complaint¹ alleges the District at Red Cliffs Elementary School (School) discriminates against individuals with mobility disabilities by: (1) failing to maintain an accessible feature (automated door opener at the accessible entrance); (2) failing to provide an accessible ramp along the route connecting the student drop off area to a designated accessible entrance to the School; and (3) failing to ensure that designated accessible parking is available.

We initiated 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 OCR made numerous attempts to clarify certain aspects of the complaint, but OCR's efforts were unsuccessful.

Summary of Investigation

OCR notified the District of the complaint allegations and provided the District an opportunity to respond our request for data relating to the allegations. In response to our request, the District provided OCR with photographs and videos of the designated accessible parking areas on the School campus, of the student drop-off and pick-up zones, of the operation of the automatic door opener at main entrance, and of the ramp that connects the accessible parking areas to the main entrance. Moreover, when providing the supporting photographs and videos, the District also informed OCR that it had completed its own accessibility audit of the identified areas and had determined alterations were necessary. Correspondingly, the District expressed a desire to resolve the allegations in this Complaint through a voluntary resolution agreement.

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 and occupied in the fall of 2007. Although the District could not identify with certainty the accessibility standard used in constructing the School, the District believes the School was constructed using the 1991 Standards. In 2015, the School altered the parking lot and student drop-off area using the 2010 Standards.

Issue #1: Maintenance of Accessible Feature

The complaint alleged that the automatic door opener located at the one designated accessible entrance for the School (the main entrance), was not operating and thus, the District has failed to ensure that an accessible feature was available.

The Title II regulation requires that public entities maintain in operable 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).

Section 108(k) of our Case Processing Manual (CPM) provides that OCR will dismiss an allegation when OCR obtains credible information indicating that the allegations raised are currently resolved.

The District provided OCR with a video showing that the automatic door opener at the School's main entrance, once activated via the wall mounted push button, was fully functioning. OCR notes that other than stating that it was not operating, the complaint does not provide any additional information relating to any alleged outage(s) (i.e., frequency and duration).

Based on the available information, OCR has determined that even if true that the automatic door opener was not functioning at some point in time, the evidence supports that any concern

about the automatic door opener is currently resolved. Accordingly, OCR is closing this complaint allegation pursuant to Section 108(k) of our *Case Processing Manual*.

Issue #2: Accessible Parking

The complaint alleged that the District discriminates against persons with mobility impairments because it does not ensure that designated accessible parking is available. The complainant asserted that parents and other staff and their spouses park in accessible parking spaces during drop-off and pick-up and thus, accessible parking spaces are not available to those who need the spaces.

Analysis

The 2010 Standards require that where parking spaces are provided, they must meet certain requirements of the standards with respect to number, size and type, location, and signage.

As noted in this letter, the Title II regulation requires that public entities maintain in operable 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).

In its response to the complaint allegations, the District informed OCR that it had completed an inspection of the parking lots adjacent to the School and found that of the seven designated accessible parking spaces dispersed across the campus, two of the accessible parking spaces do not contain access aisles and some of the parking spaces do not have the proper signage. The District indicated that as soon as possible, they intend to add the access aisles and install signage.

Although the District identified accessibility issues relating to a lack of access aisles and signage, OCR has concerns that the report does not address, and which had not been clarified before the District's request to resolve the allegation. As examples, the District's report does not explain whether the number of designated accessible spaces meets the minimum number of standard and/or van accessible spaces required, and whether or how the District ensures that designated accessible parking spaces, which are accessible features, are available to those who need to utilize the spaces.

Issue #2: Accessible Route

The complaint alleged that the District fails to provide an accessible ramp along the route connecting the student drop-off area to a designated accessible entrance to the School.

Analysis

The District explained that although the ramp along the accessible route to the main entrance has not been altered since original construction in 2007, the student drop-off area was altered in 2015.

Regarding the ramp along the route, a preliminary review of the information provided by the District shows that the ramp is comprised of three ramp runs with each run being separated by a landing. The landing at the bottom of the first run, which begins the ascension of the ramp from the student drop-off area, includes what appears to be at least a 4-inch-high concrete curb that may have been intended to be edge protection, and is more than likely meant to be continuous footing for the vertical posts of the continuous handrails along the entirety of the ramp. More important, the curb and handrails encircle the bottom landing and thereby create a landing that is approximately 48 inches by 60 inches that, once entered, requires a ninety degree turn to continue up the ramp or, in essence, a change in direction that would require a level landing that is 60 inches by 60 inches and other considerations. (1991 Standards § 4.8)

In reviewing the photographs of the ramp and corresponding route, OCR also noted concerns that the student drop-off area, as altered in 2015, may not meet the standards for passenger loading zones. While there appears there is a vehicle pull-up space that may be 20' long and includes an adjacent flat area, the area does not appear to include a marked access aisle that is 60 inches wide minimum. (2010 Standards § 503)

Conclusion

In summary, OCR determined that the accessible feature (automatic door opener) the complaint alleged was not operating is currently functioning properly. As it relates to the remaining allegations, there continues to be concerns with the parking, the ramp, and the student drop-off area. OCR therefore determined that resolving the outstanding concerns with an agreement without concluding the investigation, pursuant to Section 302 of OCR's CPM, was appropriate in this instance.

On May 16, 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.

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 XXXX, or by email at XXXX.

Sincerely,

/S/

Thomas M. Rock
Supervisory General Attorney

Cc (By Email Only): XXXX