



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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August 30, 2022

Ruby James, Superintendent
Eloy Elementary District
1011 N. Sunshine Blvd.
Eloy, AZ 85131

Sent via email only to ruby.james@eloyesd.net

Re: Eloy Elementary School District
OCR Case Number: 08-22-1352

Dear Superintendent James:

This letter advises you of the resolution of the above referenced complaint alleging that the Eloy Elementary School District (District) discriminates on the basis of disability. Specifically, the Complainant alleged that the District denies students with disabilities access to programs and activities at Curiel Primary School and Eloy Intermediate School by failing to provide accessible restrooms at each school and by failing to provide an accessible area for student drop-off/pick-up at Eloy Intermediate School.

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.

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

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

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.

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.

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 (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).

Factual Background

- The Complainant is a parent of a student with a mobility disability. The student previously attended Curiel Primary School for the 2020-2021 school year and currently attends Eloy Intermediate School.
- Curiel Primary School was constructed in 1950, and Eloy Intermediate School was built in 1977.
- As it relates to restrooms at each of the schools, there are three sets of gender specific toilet rooms with stalls for student use within each school. The District reported generally

that the restrooms of each of the schools were renovated in May 2011. The District told OCR that the renovations consisted of “paint, flooring, doors, door latches, new toilets and urinals, and signage.” The District initially identified that it referred to the “ADA Standards” in making the alterations; however, the District later explained that due to a flood that impacted its archives, the District’s efforts to determine the scope of work completed to the elements within the restrooms and whether the 1991 Standards or the 2010 Standards were applied in the renovations have thus far been unsuccessful.¹

- As it relates to student drop-off/pick-up at Eloy Intermediate School, the Complainant asserted that city street-side drop-off/pick-up of students along the boundary of the School is not accessible and that the parking lot in front of the School, which has accessible parking spaces, is blocked with cones during student drop-off/pick-up times. The District explained that while it does require parents to conduct drop-off/pick-up of students along the city street, the cones are no longer in use. The District also told OCR that the two designated accessible parking spaces in front of the School are made available for individuals with disabilities or who have students with disabilities to conduct student drop-off/pick-up, including the Complainant.
- As it relates to the two designated accessible parking spaces at Eloy Intermediate School, the District reported that it restriped the spaces and installed new signage in June 2022.

Summary of Investigation and Conclusion

OCR’s investigation of the allegations included an interview with the Complainant, a review of documents and photographs of the representative areas provided by the District, and an onsite inspection conducted by OCR at Curiel Primary School and Eloy Intermediate School on August 11, 2022.

During the onsite inspection, the District expressed its desire to resolve the allegations through a voluntary resolution agreement (the Agreement). OCR procedures, at Section 302 of our Case Processing Manual (CPM), provide that an allegation(s) under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegation(s) *and* OCR determines that it is appropriate to resolve them because OCR’s investigation has identified concerns that can be addressed through a resolution agreement. The provisions of the resolution agreement must be aligned with the complaint allegations and be consistent with applicable regulations. OCR considered the District’s request and determined, based on an analysis of the data gathered through our onsite inspection, that the case was appropriate for resolution through OCR’s voluntary resolution process.

The attached Agreement addresses concerns OCR noted in its review of the data gathered to this point and ensures that any required alterations comply with the 2010 Standards. When fully

¹ If the start of new construction or alterations commenced on or after September 15, 2010, but before the effective date of the 2010 Standards (March 15, 2012), the District could choose between using the 1991 Standards (without the elevator exemption), UFAS, or the 2010 Standards.

implemented, the Agreement will address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the Agreement until the recipient is in compliance with the terms of the Agreement and the statute(s) and regulation(s) at issue in the case.

Specifically, the Agreement addresses the following concerns, along with the accessibility standards OCR notes would apply based on the District's belief as to when the Schools were constructed and/or altered:

1. The doorways of several restrooms at each school have an unbeveled vertical change in level that exceeds ½". *See* 1991 Standards §§ 4.1.3(11), 4.5.2, 4.7.
2. The signage at three restrooms at Curiel Primary School are located on the hinge side of the doorway rather than on the latch side, despite adequate wall space. *See* 1991 Standards § 4.30.6.
3. In the standard accessible stall of three restrooms at Curiel Primary School, the toilet paper dispenser is located on the side wall opposite the water closet and therefore, is not within reach. *See* 1991 Standards §§ 4.16.6, Fig. 30(d).
4. At one lavatory in seven of the twelve restrooms at the Schools, the pipes are not insulated or otherwise configured to protect against contact. (1991 Standards § 4.19.4)
5. The surface along the accessible route to the doorway of the boys' Corridor 2 toilet room (as designated by the District) at Curiel Primary School is broken and pitted and therefore, does not provide for a stable surface. *See* 1991 Standards §§ 4.1.3(11), 4.3.1, 4.3.6, 4.3.8.
6. A privacy partition in the Corridor 2 boys' restroom at Curiel Primary School is positioned perpendicular approximately 40" behind the two urinals of the restroom and thus, does not allow for a forward approach to the clear floor space provided at the lower, otherwise accessible urinal. *See* 1991 Standards §§ 4.18.3, 4.22.5, 4.18.13.
7. The signs at the designated accessible parking spaces at Eloy Intermediate School are not mounted so that the bottom of the sign is 60" above the finished ground surface; and the one space that meets the size and slope requirements to be a van accessible space does not have a sign designating it as such. *See* 2010 Standards §§ 208.2.4, 502.6.
8. At the access aisle for each designated accessible parking space, where it adjoins the access aisle to the adjacent accessible route to the main entrance to Eloy Intermediate School, the surface is broken and pitted and therefore, is not a stable surface. *See* 2010 Standards §§ 502.4, 302.
9. The door of the standard accessible stall in the outside girls' restroom at Eloy Intermediate School requires an excessive amount of force to pull to a closed position (20 lbs) and thus, requires an individual to use two hands in order to hold the door closed while simultaneously operating the door latch *See* 1991 Standards §§ 4.1.3(11), 4.22.2, 4.13.9.

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.

The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

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,

Thomas M. Rock
Supervisory General Attorney