



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 26, 2022

Joanna Honea, Executive Director
Satori Charter School
3727 North 1st Avenue
Tucson, Arizona 85719

Via email only to jo@satorischool.org

Re: Satori Charter School
OCR Case 08-22-1464

Dear Director Honea:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Satori Charter School (School) alleging that the School discriminates against students with mobility impairments. Specifically, the complaint alleges that the playgrounds used by the School are inaccessible to students with mobility impairments because the playgrounds do not have a range of play activities that are accessible; do not have an accessible route leading to and through the playgrounds that is firm, stable, and slip-resistant; and do not have an accessible playground surface under and around the play equipment.

We conducted our investigation under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the Department. The School is subject to the requirements of Section 504 because it is a recipient of Federal financial assistance from the U.S. Department of Education, and it is also subject to the requirements of Title II because it is a public entity.

Summary of Investigation

During the investigation, OCR reviewed data provided by the School. On August 9, 2022, OCR also conducted an on-site visit, which included an examination of the playgrounds and an interview of the Executive Director (Director). As explained further below, before OCR completed its investigation, the School expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

Legal Standard

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that benefits from or receives Federal financial assistance. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a). Prohibited discrimination by a recipient or public entity includes denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits, or services offered by that recipient or public entity; affording a qualified person with a disability an opportunity to participate in or benefit from aids, benefits, or services that is not equal to that afforded others; and providing a qualified person with a disability with aids, benefits, or services that are not as effective as those provided to others. 34 C.F.R. § 104.4(b)(1)(i)-(iv); 28 C.F.R. § 35.130(b)(1)(i)-(iv). Pursuant to Section 504, recipient schools must also provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities. 34 C.F.R. § 104.37(a)(1).

The Section 504 implementing regulation at 34 C.F.R. § 104.21 states that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which Section 504 applies. The Title II regulation at 28 C.F.R. § 35.149, contains a similar provision for public entities.

The regulations contain standards for determining whether a recipient's programs, activities, and services are readily accessible to and usable by individuals with disabilities, depending on whether the facilities (including leased facilities) are determined to be existing facilities, new construction, or altered construction. The applicable standard depends on the date of construction or alteration of the facility and the nature of any alternation.

Existing Facilities

Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. Under Title II, existing facilities are those for which construction began on

or before January 26, 1992. While these dates remain the primary benchmarks for accessibility standards, Appendix A to the Title II regulations clarifies that the classification of a facility under the ADA is “neither static nor mutually exclusive.” 28 C.F.R. part 35, Appendix A. In general, a newly constructed facility is subject to the accessibility standards in effect at the time of construction, and as a facility undergoes subsequent alteration, those alterations will be subject to the accessibility standards in effect at that time. *Id.*

For existing facilities, the regulations require an educational institution to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. This compliance standard is referred to as “program access.” This standard does not require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program, or activity. 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a).

To provide program access in existing facilities, an institution may use such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternative accessible sites, alteration of existing facilities, construction of new facilities, or any other methods that result in making its program or activity accessible to persons with disabilities. A recipient may comply with this standard through physical alteration of existing facilities, but a recipient is not required to make structural changes to the facility itself when other methods are effective in achieving compliance. 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a). In choosing among available methods for meeting the program access requirement for existing facilities, an institution is required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b). Where programs or activities cannot or will not be made accessible using alternative methods, structural changes may be required in order for recipients to comply.

In reviewing program access for an existing facility, the accessible design standards referenced in the Section 504 and Title II regulations may also be used as a guide to understand whether individuals with disabilities can participate in the program, activity, or service. A covered public entity must make its programs and activities accessible unless it can demonstrate that required modifications would result in a fundamental alteration of the program or in undue financial and administrative burdens. 28 C.F.R. § 35.150(a)(3). The concept of program accessibility serves as a guideline in evaluating existing facilities and in formulating structural and nonstructural solutions to any physical access problems found in these facilities.

New Construction and Alterations

Under the Section 504 regulation, a facility will be considered new construction if construction began on or after June 3, 1977. Under the Title II regulation, the applicable date for new

construction is January 26, 1992. For new construction, the facility or newly constructed part of the facility must itself be readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(a); 28 C.F.R. § 35.151(a).

With regard to alterations, each facility or part of a facility that is altered by, on behalf of, or for the use of an institution after the effective dates of the Section 504 and/or Title II regulation in a manner that affects or could affect the usability of the facility or part of the facility must, 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. 34 C.F.R. § 104.23(b); 28 C.F.R. § 35.151(b).

Determining which standards apply to a given new construction or alteration depends upon the date the new construction or alterations took place. For an entity covered by Section 504 and Title II, new construction and alterations begun after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI). New construction and alterations begun between January 18, 1991, and January 26, 1992, must conform to the Uniform Federal Accessibility Standards (UFAS). Compare 45 C.F.R. § 84.23(c) (1977) and 34 C.F.R. § 104.23(c) (1981), with 34 C.F.R. § 104.23(c) (2010). New construction and alterations after January 26, 1992, but prior to March 15, 2012, must conform to either UFAS or the 1991 Americans with Disabilities Act Standards for Accessible Design (the 1991 ADA Standards).

The U.S. Department of Justice (DOJ) published revised regulations for Titles II and III of the ADA on September 15, 2010. These regulations adopted revised enforceable accessibility standards called the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards), which also included specific technical and scoping regulations for various recreational facilities, including play areas. The 2010 ADA Standards went into effect on March 15, 2012, although entities had the option of using them for construction or alterations commencing September 15, 2010, until their effective date.

According to the Title II regulations (28 C.F.R. § 35.150(b)(2)(i)), elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 Standards or UFAS, are not required to be modified in order to comply with the requirements set forth in the 2010 Standards; this is called a safe harbor. However, 28 C.F.R. § 35.150(b)(2)(ii) provides the safe harbor provision does not apply to those elements in existing facilities that were not subject to supplemental requirements, which includes play areas or playgrounds. Thus, play areas built before March 15, 2012, must comply with the 2010 Standards. However, although preferable for an entity to meet the 2010 Standards, if it is not possible to achieve compliance with the 2010 Standards in an existing setting, the requirements for program accessibility provide enough flexibility to permit the covered entity to pursue alternative approaches to provide accessibility.

Discussion

The 2010 Standards, at §§ 206, 240, 302, 304, 402, 403, and 1008, contain numerous detailed requirements for play areas, but the primary requirements relate to the following: play components, the routes to and from the play area, the routes within the play area, and the ground surfaces.

1. Play Area Components

The 2010 Standards require that where play components are provided, they shall comply with § 240.2 (the section entitled “Play Components”).

A ground level play component (GLC) is defined as a *play component* that is approached and exited at the ground level. Examples of GLCs include spring rockers, swings, diggers, and stand-alone slides. When distinguishing between the different types of GLCs, the general experience provided by the play component should be considered. Examples of different types of experiences include, but are not limited to, rocking, swinging, climbing, spinning, and sliding.

An ELC is defined as a *play component* that is approached above or below grade and that is part of a composite play structure consisting of two or more *play components* attached or functionally linked to create an integrated unit providing more than one play activity.

The 2010 Standards require that where GLCs are provided, at one of each type shall be on an accessible route. Where ELCs are provided, at least 50% shall be on an accessible route, and GLCs shall be provided in the following numbers:

Number of elevated play components provided	Minimum number of ground-level play components required to be on accessible route	Minimum number of different types of ground-level play components required to be on accessible route
1	Not applicable	Not applicable
2 to 4	1	1
5 to 7	2	2
8 to 10	3	3
11 to 13	4	3
14 to 16	5	3
17 to 19	6	3
20 to 22	7	4
23 to 25	8	4
More than 25	8 plus 1 for each additional 3 over 25, or fraction thereof	5

2. Routes to and Through Play Areas

The 2010 Standards, at §§ 302 and 403, require accessible routes to, from, and within a play area. To be accessible, the routes must comply with the relevant width and slope requirements in the 2010 Standards. Further, all ground surfaces of routes must be stable, firm, and slip resistant.¹ As noted above, the 2010 Standards also require at least one of each type of GLC to be on an accessible route and at least 50% of ELCs to be on an accessible route. Where there are less than 20 ELCs, transfer systems (e.g., transfer platforms, transfer supports, and transfer steps) shall be permitted to connect ELCs.

3. Play Area Surfaces

The 2010 Standards also address play area surfaces. With regard to play area surfaces, the 2010 Standards incorporate certain sections of the standards from the American Society for Testing and Materials (ASTM). Specifically, the 2010 Standards incorporate ASTM F-1292 and ASTM F-1951. ASTM F-1292 addresses impact attenuation of surfaces in playground use zones. Additionally, ASTM F-1951 establishes a uniform means to measure the characteristics of surface systems in order to provide performance specifications to select materials for use as an accessible surface under and around playground equipment. The ASTM F standards provide specific testing standards to determine if the surface is firm, stable, and resilient to ensure the surface is safe and accessible to children who are playing. The Access Board² also has provided guidance on what surfaces meet the ASTM standards. They are: poured-in-place rubber, tiles, engineered wood fiber, and hybrid surface systems. For engineered wood fiber, the Access Board has advised that “[i]n most instances it is necessary for the loose material to be installed in layers, watered and compacted in order to achieve an accessible route and level clear ground space at equipment.”³

Factual Findings

The School, which enrolls students in grades two through eight, has two playgrounds. One playground is primarily in use by the School’s fourth through eighth grade students (PG1). The other playground is primarily in use by the School’s second and third grade students (PG2)

¹ The latter two requirements listed here (accessible routes and providing a stable, firm, and slip-resistant ground surface) are identical to the analogous requirements that already existed in the 1991 ADA Standards and UFAS. These were generally applicable accessibility requirements that applied to elements of play areas, although they did not contain the additional technical and scoping requirements for play areas that were first set forth in the 2010 ADA Standards.

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

³ See <https://www.access-board.gov/ada/guides/chapter-10-play-surfaces/#6-recognize-that-proper-installation-of-play-surface-systems-is-key>

PG1: Play Components and Routes To and From and Through the Play Areas

With regard to play components, PG1 contains two composite play structures directly adjacent to each other (added in 2014) and a nearby, stand-alone dome climber (added in 2009). In total, the PG1 play area has eight ELCs (four slides and four climbers). The PG1 play area has four GLCs providing three different types of play experiences (two talk tubes (pretend), one chinning bar (swinging), and one dome climber (climbing)). At least 50% of the ELCs are connected via transfer systems that include transfer platforms, steps, and supports which comply with the 2010 Standards.

With regard to ground surface, the PG1 ground surface in the use zone under and around the two composite structures is loose-filled engineered wood fiber (EWF). OCR noted during its site visit that it appears level and does meet the 2010 Standards in maintaining a particular height (i.e., at transfer platforms); however, the surface is overly soft and does not appear to have been sufficiently compacted upon installation and/or regular maintenance. OCR also noted the ground surface under and around the nearby stand-alone dome climber is a mix of sand and grass, which is not included as a ground surface option in guidance and standards discussed above.

With regard to accessible routes, the routes connecting the school building to the entry areas at the PG1 play structures and to the boundary of the nearby dome climber are also largely comprised of dirt and gravel, which are not included as options for ground surfaces in the guidance and standards discussed above.

PG1: Gaga Ball Pit

OCR notes that in addition to the PG1 play components identified above, PG1 also includes a wooden Gaga ball pit⁴ that was donated in 2018. The Gaga ball pit does not have an opening for entering the pit (e.g., a hinged swing gate with latch). In addition, the ground surface surrounding the Gaga ball pit is a combination of dirt and pea gravel. OCR notes that the Gaga ball pit was constructed after March 15, 2012, and therefore, must comply with the 2010 Standards for its construction. However, because the Gaga ball pit falls within the area of sport activity under the 2010 Standards, the Gaga ball pit's floor and ground surface do not need to be stable, firm, and slip resistant. Nonetheless, the 2010 Standards still require of the School to provide an accessible route to all areas of sport activity.

⁴ "Gaga" is a variant of dodgeball that is played in a Gaga ball "pit". The game combines dodging, striking, running, and jumping, with the objective of being the last person standing. Players hit the ball at each other with their hands and are eliminated if the ball strikes them on or below the knee.

PG2: Play Components and Routes To and From and Through the Play Areas

With regard to play components, PG2 contains one composite play structure and numerous stand-alone GLCs. In total, the play area has five ELCs (two slides and three climbers), of which 50% are connected via transfer systems that include transfer platforms, steps, and supports which comply with the 2010 Standards; and ten GLCs that are dispersed throughout the play area. The PG2 GLCs provide four different types of play experiences (two water tables and a water-drainage feature controlled by a teacher (interactive); one plastic kitchen playset; one mock-up wooden vanity with countertop and sink; one mock-up miniature wooden bus; one mock-up café (pretend); one stand-alone crawl tube (crawling); and two stand-alone recycled construction tires (climbing/crawling)).

With regard to accessible routes, one of the play areas in PG2 has a raised curb that ranges from 3-6" in height and lacks any openings. The raised curb travels through the large play area, and as a result, it divides the large play area into three smaller play areas.

Play area 1 (PA1) is completely encircled by the curb, includes the composite play structure and three standalone GLCs (pretend-type), and has a ground surface composed of EWF that is level, firm, and meets required measurements for height at the transfer system and at seats.

Play area 2 (PA2) also has three stand-alone GLCs (two recycled tires and one crawl tube) and is similarly encircled by the curb. With regard to the ground surface of PA2, it has a ground surface composed entirely of sand, which is not an option for accessible ground surfaces as discussed above.

Play area 3 (PA3) contains the remaining 4 standalone GLCs (two water tables, one water-drainage activity, and one mock-up vanity). PA3 is a rectangular shaped area with two sides sharing a portion of the curbing of PA1 and PA2 and two sides connecting to the concrete walk from the nearby school building. With regard to the ground surface of PA3, it has a ground surface also composed of sand, which is not an option that meets standards as discussed above.

PG1 and PG2: Ground Surfaces - EWF

With regard to the use of EWF material, OCR noted that while the EWF surface found in PG1 and PG2 had recently been raked and did not show much undulation, the material did not appear firm. During our on-site visit, the Director provided OCR a copy of a document provided to her by the distributor of the EWF in use entitled, "IPEMA Certificate of Compliance" dated February 17, 2012. OCR noted that while the certificate does state that the EWF, here identified as "Premium Engineered Virgin Wood Fiber," does conform with ASTM F1292-09 for impact attenuation and safety, there is nothing to indicate whether the material, when installed properly, would also meet ASTM F-1951. A review of the distributor's website found the

recommended installation instructions for the material identified on the IPME certification and a frequently asked questions (FAQ) document supplied by IPEMA. The FAQ document explains generically that, “Engineered Wood Fiber meets the specifications of the ASTM F-1951 Standard for Accessibility according to the Americans with Disabilities Act (ADA), provided there is proper drainage, it is installed correctly, and it is appropriately maintained.”

Assuming the IPEMA FAQ document infers that proper installation of the EWF at the School would result in compliance with ASTM F-1951, we reviewed the EWF installation instructions provided for on the distributor’s website. The instructions state that it is recommended to use a layering method with “...a minimum of nine inches of compressed (EWF) material,” on top of loose fill pea gravel and sub-base. The instructions further provide that after covering the entire area with an initial amount of EWF (5-6”), it should be watered in with a heavy flow of water so that is saturated, and then the play area should be rolled with a water-filled lawn roller in two directions across the remaining area. Once rolled initially, another layer should be applied, watered, and rolled.

After our on-site visit, the Director explained that she did not know how the EWF was initially installed on the playgrounds in or around September 1996. She also told OCR that on a yearly basis, the playgrounds with EWF are assessed to determine if more EWF is needed to maintain a depth of 6” in use zones to comply with safety requirements. The Director explained to OCR that if a top-off is needed, the EWF is brought in on a truck and dumped on the playground for School volunteers to distribute the EWF around the play structures with shovels and wheelbarrows. The Director did not indicate whether the EWF top-off is watered and compacted after it is spread across the existing layer.

Resolution

Before OCR had made an investigative compliance determination, the School requested to voluntarily resolve the allegations of the complaint pursuant to Section 302 of OCR’s CPM. Therefore, OCR did not proceed to conduct a comprehensive review of the accessibility of the playgrounds, and negotiated the attached Resolution Agreement, in accordance with its case processing procedures. OCR has determined that the Resolution Agreement is aligned with the allegations concerning playground accessibility and is consistent with applicable law and regulations. Accordingly, OCR is closing its investigation with respect to this issue and will monitor Satori Charter’s implementation of the Resolution Agreement.

This concludes OCR’s investigation of the complaint and should not be interpreted to address Satori Charter’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 the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that Satori Charter must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. 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@ed.gov.

Sincerely,

/S/

Thomas M. Rock
Supervisory General Attorney

Enclosure