



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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May 18, 2023

Tracy Dorland  
Superintendent  
Jefferson County Public Schools  
1829 Denver West Drive #27  
Golden, CO 80401

By email only to [supt@jeffco.k12.co.us](mailto:supt@jeffco.k12.co.us)

Re: OCR Complaint No. 08-23-1212  
Jefferson County Public Schools

Dear Superintendent Dorland:

This letter advises you of the resolution of the above referenced complaint alleging that the Jefferson County Public Schools (District) at Columbine High School (School) discriminates against persons on the basis of disability because the route that connects the nearby city intersection to the School's main entrance is too steep for persons with mobility disabilities.

We initiated an investigation under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

### Summary of Investigation

OCR notified the District of the complaint allegation and provided the District an opportunity to respond to our request for data relating to the allegation. The District responded to OCR's request by informing OCR that it has already conducted an accessibility review of the representative area and that it had determined that alterations to the pedestrian route connecting the city street and the School's main entrance are necessary. Consequently, the District expressed a desire to resolve the allegations in this complaint through a voluntary resolution agreement.

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

### 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.

#### *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, the Uniform Federal Accessibility Guidelines (UFAS)) or the

2010 Standards for Accessible Design (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 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).

### Analysis and Conclusion

The Complainant explained that on December 10, 2022, she observed an individual with a disability using a wheelchair who was attempting to navigate the route (a sidewalk) that connects the southwest corner of the nearby city intersection to the main entrance of the School. The Complainant stated that because the individual could not get up the walk due to excessive slopes, she chose to exit her vehicle and assist the individual up the walk and to the entrance of the School.

Under each of the accessibility standards there are requirements generally for routes within sites. Under each of the accessibility standards (ANSI-1971, the 1991 Standards, UFAS, and the 2010 Standards), the running slope of walks that are a part of routes shall be no greater than 5 percent (1:20).<sup>1</sup> In most instances, where a walk that is part of a designated accessible route has a running slope greater than 1:20 (5 percent), it is a ramp and therefore, is subject to additional requirements (i.e., handrails).

Absent a comprehensive response from the District, OCR conducted a review of the representative area using publicly available current and historical imagery. OCR's review noted that it appears that in or around July 2021, the District made alterations to the area immediately surrounding the main entrance of the School and to a portion of the route identified in the complaint.<sup>2</sup>

As noted above, the District reported that it had conducted an accessibility review of the representative area, and based on the results of its own accessibility review, it desired to make alterations to the route to ensure the route complies with the 2010 Standards. OCR determined that resolving the outstanding concern with an agreement pursuant to Section 302 of OCR's CPM, without concluding the investigation, was appropriate in this instance.

On May 15, 2023, 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 Section 504 and Title II, and the 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

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<sup>1</sup> See ANSI § 4.2; UFAS and 1991 Standards § 4.3.7; and 2010 Standards § 403.3.

<sup>2</sup> The images indicate that a portion of the walk was demolished and reconstructed when adding a fire hydrant immediately adjacent to the walk.

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 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 retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

If you have any questions, please contact Dan Kowalski, the OCR investigator assigned to this complaint, at 303-844-4537, or [daniel.kowalski@ed.gov](mailto:daniel.kowalski@ed.gov).

Sincerely,

/S/

Thomas M. Rock  
Supervisory Attorney

Enclosure: Resolution Agreement

Cc (via email only): Alyssa Burghardt, Esq.  
District Counsel