



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD., SUITE 310
DENVER, CO 80204-3582

REGION VIII

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September 25, 2023

Christopher Gutierrez
Superintendent
West Las Vegas School District
179 Bridge Street
Las Vegas, NM 87701

By email only to: christopher_gutierrez@wlvs.org

Re: OCR Complaint No. 08-23-1371
West Las Vegas School District

Dear Superintendent Gutierrez:

This letter advises you of the resolution of the above-referenced complaint filed with our office alleging that the West Las Vegas School District (the District) discriminates against persons with mobility disabilities in the following ways:

1. At Don Cecilio Martinez Elementary School (DCMES)
 - a. The designated accessible parking spaces are not properly marked and lack the required signage, and the District does not ensure that the parking spaces are available for disabled persons, the persons for whom they are intended.
 - b. The District does not ensure the ramps along the accessible route to the entrance(s) to the school are clear of debris.
 - c. The student bus unloading/loading area does not have a curb ramp that connects the bus area to a route that connects to a school entrance.
 - d. The push button on the one door with an automated door opener is not operating.
2. At the District Softball/Baseball Complex (Complex)
 - a. The designated accessible parking spaces serving the Complex are not properly marked, and the space designated as van accessible lacks an access aisle.
 - b. There is no accessible path of travel to the portable toilet(s) serving the complex.
3. At West Las Vegas Middle School (WLVMS) and West Las Vegas High School (WVLHS)

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

- a. The District does not ensure the sidewalks that are part of an accessible route are clear of debris.
- b. The designated accessible parking spaces at the school(s) are not clearly marked.

At the conclusion of the investigation, OCR reached a mixed determination pursuant to Section 303(c) of *OCR's Case Processing Manual* (CPM). As it relates to allegations #1a, b, and c, #2(b), and #3(a), OCR dismissed these allegations under CPM Section 110(d) because OCR determined the District took actions to address any potential compliance concerns and determined that the issues were resolved.¹ Regarding Allegation #1(d), OCR found pursuant to CPM Section 303(a) that the District does not discriminate as alleged.² Lastly, as it relates to allegation #2(a) and #3(b), the District expressed a desire to resolve the complaint allegations before OCR concluded its investigation pursuant to CPM Section 302, and OCR determined that the allegations relating to the parking were appropriate for resolution pursuant to CPM Section 302.³ The reasons supporting OCR's findings and determinations are set forth below.

Jurisdiction

OCR enforces Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations 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. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

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 "existing facilities" while the other applies to "new

¹ CPM Section 110(d) provides that OCR will dismiss an allegation, or, if appropriate, a complaint in its entirety, when OCR obtains credible information indicating that the allegation raised by the complainant has been resolved, and there are no systemic allegations.

² CPM Section 303(a) provides that OCR will issue findings to the parties when OCR determines that the preponderance of the evidence does not support a conclusion that the recipient failed to comply with applicable statutes and regulations.

³ CPM Section 302 provides that allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations 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.

construction” and “alterations.” 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.

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 or 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).

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.

Summary of Investigation and Conclusion

OCR reviewed information provided by the District regarding the allegations in the complaint and regarding the four District facilities identified. OCR also reviewed information provided by the Complainant. In addition, OCR conducted an on-site inspection at the facilities.

Don Cecilio Martinez Elementary (Allegation #1)

The Complainant that, at DCMES: (a) the designated accessible parking spaces are not properly marked and lack the required signage, and that the District does not ensure that accessible parking is available to disabled persons, the persons they are intended for; (b) the District does not ensure that exterior ramps along the routes from the west parking lot to the main entrance are clear of debris; (c) the student bus unloading/loading area does not have a curb ramp that

connects the bus area to a route that connects to a school entrance; and (d) the push button on the one door with an automated door opener is not operating.

Background

The elementary school was constructed in 1939. In 2001, the District built an addition to the existing building. The 2001 addition included six new classrooms; a gymnasium; cafeteria kitchen; restrooms; a parking lot (west side) with 22 spaces, of which 3 were designated as accessible; new routes with five ramps connecting the new addition to the existing school; and a new accessible entrance with an automatic door opener at the point where the addition and the existing building meet. In 2015, the District added more parking for visitors to the elementary school, bringing the total number of parking spaces to 42.

Analysis

During the investigation of this complaint, the District reported that it had taken actions to resolve the concerns specific to the parking spaces, the curb ramp at DCMES, and the presence of debris on the ramps.

Regarding the parking space markings and signage, the District provided OCR evidence showing it had refreshed the markings of the current, designated accessible parking spaces, and installed signage that complies with the 2010 Standards § 502, both of which make it clearer that the spaces are intended for persons with disabilities. The District also committed to sending reminders to the community that the parking is reserved for persons with disabilities and to have maintenance and office staff take note of the spaces throughout the day. When it is observed that spaces are occupied and the vehicle does not have the proper documentation (i.e., state approved license plate, placard, or hangtag), law enforcement will be contacted.

Regarding the student bus loading and unloading area, while onsite, OCR found that the student bus operations are conducted along a public street that has residential housing on the one side and the school entrance on the opposite side. Though the city street was widened for a short distance in front of the school to allow for a bus pull-up space that is at least 96” wide, and there are curb ramps located at the major intersections at each end of the sidewalk that runs parallel to the face of the school, the accessible route connecting the area to the entrance included the 6” street curb but no curb ramp. The District reported that it had remedied this concern by installing a curb ramp and access aisle that complies with the 2010 Standards § 503.

Regarding the ramps on the DCMES campus and the presence of debris, although OCR did not note the presence of debris on the ramps during its onsite inspection, the District did acknowledge there are times when rubber mulch is easily displaced due to student activity and at least covers the lower landing of a ramp that connects the school building to a basketball court/play area. The District reported that it reminded DCMES staff and the District’s maintenance division of the District’s maintenance policy (Policy #7), which applies to all sites and includes daily, weekly, and monthly requirements for maintenance of building and grounds,

including routes. The policy provides that sweeping sidewalks, driveways, lobbies, corridors, and entryways should occur daily, while sweeping of the parking lots and gutters should occur at least weekly. The District explained that when it is made aware of areas that require attention, during the school year, maintenance staff makes a good faith effort to timely respond and clear the area. To assist maintenance staff in ensuring the route remains clear, the District provided evidence to OCR showing it has purchased a blower to make it easier to remove any debris more quickly.

Based on our review of the information gathered on our site visit and as submitted by the District (photographs and measurements), OCR determined that any concerns specific to parking markings and signage, the curb ramp, and debris on the ramps at the school, are resolved and are therefore dismissed under CPM Section 110(d) as of the date of this letter.

Lastly, regarding the push button for the automatic door at the main entrance, OCR found during the site visit that the push button was operating. Consequently, OCR determined there is no current compliance concern.

Softball/Baseball Sports Complex (Allegation #2)

The Complainant alleged the designated accessible parking spaces serving the Complex are not properly marked, and the space designated as van accessible lacks an access aisle. The Complainant further alleged that there is no accessible path of travel to the portable toilet(s) serving the Complex.

Background

Construction of the Complex is occurring over three phases, which began in 2021. Phases I and II are complete and include new turf fields, dugouts, and bleachers. Phase III, which is currently ongoing, includes the concession stand, restrooms, maintenance storage, press boxes, and indoor batting cages.

Analysis

As it relates to parking serving the Complex, OCR's investigation found that the Complex is located immediately next to WLVMs and as such, uses the parking lots of the WLVMs for sporting events at the Complex. Therefore, any issue relating to parking marking, signage, and access aisles, is addressed in the WLVMs section below.

Regarding the portable toilet(s), OCR found that until the restrooms of Phase III are complete, the District provides a pair of temporary, portable toilets for attendees of events to use, one of which is sized and designated as an accessible toilet with the required signage.

The District acknowledged that the portable toilets were not located on an accessible route; however, the District subsequently reported that it had relocated the portable toilets such that

they were part of the accessible route that connects the parking lot to the areas of sports activity. While onsite, OCR confirmed that the portable toilets had been relocated to a spot along the accessible route, thereby ensuring the portable toilets were readily accessible to and usable by attendees with disabilities. Accordingly, OCR determined this allegation is dismissed under Section 110(d) of our CPM because it has been resolved.

West Las Vegas Middle School and West Las Vegas High School (Allegation #3)

The Complainant alleged that the District does not ensure the sidewalks that are part of an accessible route at the schools are clear of debris, and that the designated accessible parking spaces at the schools are not clearly marked. As noted above, the Complainant also alleged that a van accessible space at WLVMS (which also serves the Complex), does not include an access aisle.

Background

WLVMS was constructed in 1987, with building additions in 1988, 1989 and 2015 (gymnasium), and alterations to the surrounding parking because of the gymnasium addition in 2015. There are eight parking spaces designated as accessible at WLVMS, all of which are part of an accessible route that connects to the school's main entrance, the school gymnasium, and to the Complex.

WLVHS was constructed in 1998, with building additions and renovations completed as part of the five-phases of construction of the high school, in 2000, 2001, 2002, and 2004. There are a total of 14 parking spaces designated as accessible and are located on the shortest route connecting to the school's main entrance.

Analysis

Regarding the concern about debris along the routes, like DCMES, OCR did not observe debris along the accessible routes at either school (WLVMS or WLVHS). Nonetheless, as has already been explained in this letter, the District took steps to resolve concerns relating to the maintenance of routes and ensuring they are cleared of debris as necessary. Accordingly, this allegation is also resolved and therefore, is dismissed under Section 110(d) of our CPM.

As it relates to parking at both schools, after submitting its initial response, the District reported to OCR that based on its own evaluation of the parking at both schools, it was currently making alterations to the parking to ensure compliance with the 2010 Standards § 502. More specifically, the District identified that for the accessible spaces at both schools, although there are ground markings identifying the spaces as reserved for persons with disabilities, several spaces either do not have the signage required, or, in several other instances where signage is present, the signage was not installed at the proper height of at least 60 inches above the ground surface, as measured to the bottom of the sign [§ 502.6]. The District stated that it has already ordered new signage and support posts and that it anticipates that installation could be accomplished soon, likely within a few weeks. The District also identified that for the four accessible spaces (1-van and 3-

standard) at WLVMS that are located near the school's main entrance and are likely the spaces identified in the complaint as lacking a required access aisle, the District has begun altering the spaces through a redesign so that the spaces are compliant. [§ 502.3]

Based on its actions to date, the District expressed a desire to resolve these remaining issues through a voluntary resolution agreement (Agreement). Based on our analysis of the available information and our onsite visit, OCR determined that resolving the allegation through an Agreement with the District is appropriate pursuant to CPM Section 302.

Summary

OCR reached a mixed determination pursuant to CPM Section 303(c). OCR dismissed the following portions of Allegations #1 through #3 under CPM Section 110(d) because OCR determined the District took actions to address any potential compliance concerns and determined that the issues were resolved: the portion of Allegation #1 relating to parking marking, signage, the curb ramp, and debris on ramps; the portion of Allegation #2 relating to the portable toilet; and the portion of Allegation #3 relating to debris on the accessible routes..

For the portion of allegation #1 relating to the push button, OCR found the District did not discriminate as alleged.

For the portions of Allegation #2 and Allegation #3 relating to parking (signage and access aisles), before OCR made an investigative compliance determination, the District requested to voluntarily resolve these portions of the allegations in the complaint, and OCR determined that these allegations were appropriate for resolution pursuant to CPM Section 302. On September 19, 2023, OCR received the District's signed 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. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. 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 the School or 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, 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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, please contact [redacted], the Equal Opportunity Specialist assigned to this complaint, at [redacted].

Sincerely,

Tom Rock

Thomas M. Rock
Supervisory Attorney