



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

February 10, 2014

Christopher Steinhauser
Superintendent
Long Beach Unified School District
1515 Hughes Way
Long Beach, California 90810

(In reply, please refer to case no. 09-11-1220 and 09-11-1780.)

Dear Superintendent Steinhauser:

The U.S. Department of Education, Office for Civil Rights, has completed its resolution process for the above-referenced complaints filed against the Long Beach Unified School District, alleging discrimination on the basis of disability due to physically inaccessible facilities at Wilson High School (School). After the original complaint was accepted for investigation, the complainant raised numerous additional accessibility allegations which were incorporated into the ongoing investigation. The allegations covered specific portions of the following areas: parking; passenger loading zone; restrooms; campus and building entrances and exits; elevators and lifts; accessible routes; signage; evacuation plan; Cafeteria; Auditorium and other assembly area seating, dressing, and/or performance areas; West Campus athletics field; Football Stadium; and swimming pools.

OCR opened the investigation under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and their implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by certain public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

At the onset of the resolution process the District expressed an interest in resolving the complaints through a voluntary agreement. Under Article III, Section 302 of OCR's Case Processing Manual, a complaint may be resolved before the conclusion of an investigation when the recipient/public entity expresses an interest in such a resolution. OCR gathered preliminary evidence through reviewing documents provided by the complainant and the District, interviewing the complainant and District personnel, and conducting several on-site visits at the School. The following is a summary of the

applicable legal standards, compliance concerns identified through the preliminary investigation, and resolution of these compliance concerns.

The program accessibility requirements of the Section 504 implementing regulations are found at 34 C.F.R. §§104.21-104.23; comparable sections of the Title II implementing regulations are found at 28 C.F.R. §§35.149-35.151. Both 34 C.F.R. §104.21 and 28 C.F.R. §35.149 provide that no qualified person with a disability shall, because a school district's facilities are inaccessible to or unusable by disabled persons, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program of activity of the school district.

The Section 504 regulations, at 34 C.F.R. §104.22, and the Title II regulations, at 28 CFR §35.150, apply to “existing facilities”, defined as any facility or part of a facility where construction was commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that, with respect to existing facilities, a school district shall operate its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. Accessibility of existing facilities is determined not by compliance with a particular architectural accessibility standard, but by considering whether the program or activity, when viewed in its entirety, is accessible to and usable by individuals with disabilities.

The Section 504 regulations, at 34 C.F.R. §104.23, and the Title II regulations, at 34 C.F.R. §35.151, are applicable to “new construction or alterations”, defined as any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that each newly constructed facility or part of a facility shall be designed and constructed in such manner that it is readily accessible to and usable by persons with disabilities. The regulations further provide that each newly altered facility or part of a facility affecting accessibility shall, to the maximum extent feasible, be altered in such manner that the altered portion is readily accessible to and usable by persons with disabilities.

The regulations specify the Federal standard to be used in determining the accessibility of new construction and alterations. The Section 504 regulations, at 34 C.F.R. §104.23(c), delineate the American National Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physical 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. UFAS sets forth the designated standard for facilities constructed or altered on or after January 18, 1991.

The Title II regulations, at 28 C.F.R. §35.151(c), delineate UFAS or the ADA Standards for Accessible Design, 1991 (1991 Standards) as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992, but prior to September 15, 2010. The ADA Standards for Accessible Design were amended in 2010 (2010 standards). If construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, then a school district may comply with either UFAS, the 1991 Standards, or the 2010 Standards. New construction and alterations that commence on or after March 15, 2012 must comply with 2010 Standards.

Through its preliminary investigation, OCR identified compliance concerns in the following areas of the School:

- parking on the basketball court area on West Campus during events such as football games;
- locked elevators and lifts throughout campus, as well as some locked campus gated entrances;
- signage, including Braille features, on: various campus entrances/exits; Building 100 entrances/exits, rooms, and accessible routes; lifts throughout campus; various restrooms throughout campus; one Building 200 classroom entrance/exit; some Building 400 classroom entrances/exits; some Building 500 elements; Auditorium entrances/exits; Gymnasium exterior entrances/exits; Career Center entrances/exits; and the home team Football Stadium locker room entrance;
- door hardware, width, and/or opening force on some doors in the following buildings: Building 100, Building 400; Building 500; the Auditorium; the Gymnasium; and the Career Center;
- restrooms or restroom features in the following buildings or facilities: Building 100; Building 200; Building 300; Building 400; the Auditorium; and the Football Stadium;
- other features in the Auditorium, including: classrooms; dressing rooms; seating; and internal route to the performance area;
- features on the West Campus athletics field, including: sloped entrance to West Campus on Ximeno Avenue; path of travel to seating; seating; and water fountain;
- seating in the swimming pool viewing area, and means of entry and exit to the teaching and competition swimming pools;
- tables in the School cafeteria;
- sloped or stepped entrances to the Building 400 Graphic Arts classroom and to the Career Center;
- evacuation plan;
- notice of accessible features, and 48 hour notice of the need for accessibility-related accommodations; and
- features in the Football Stadium, including: ticket booths; paths of travel; accessible seating areas; and home team locker room entrance.

OCR did not identify compliance concerns regarding several other areas on campus. OCR found that the parking area and passenger loading zone about which the complainant raised allegations, are on City, not District, property. OCR did not observe compliance concerns with respect to: the designated accessible route to Counseling/Educational Records Office in Building 100; entrances to boy's locker room area; or the cafeteria counters, doors, and work area. OCR also found that although cafeteria menus are not provided in Braille, the School provides effective notice of this information to blind students through other means.

In addition, under an overall program access standard OCR did not identify compliance concerns with respect to other allegations raised. OCR confirmed that dance classes are generally held on the second level of the Gymnasium which is not accessible

because of stairs. However, the classes are moved to an accessible downstairs location if a mobility-impaired student wishes to participate. OCR noted that the Playhouse drama facility in Building 100A stage is made accessible through use of a portable ramp, and there is no fixed audience seating in that room. Finally, OCR found that the Choral room in Building 400 may be reached through an accessible route interior to the building by use of an elevator. OCR learned that this room is not used as an assembly area but only for dance and choral practices. Therefore, fixed seating in this room, which does not include wheelchair spaces, is not used for performances. OCR noted that, although the stage is not accessible, it is not used due to its small size. There is ample floor space for a wheelchair to observe and/or participate in those practices apart from the fixed seating area and the small stage.

As noted above, at the beginning of OCR's investigation the District expressed an interest in taking action to resolve the allegations in both cases. As the investigation progressed, OCR informed the District of the compliance concerns identified and the District has taken action to resolve some of the compliance concerns. In addition, on February 2, 2014, the District submitted a Resolution Agreement, a copy of which is attached, to address the outstanding compliance concerns.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of the two complaints as of the date of this letter. This concludes OCR's investigation of the complaint 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. OCR will monitor the District's implementation of the Resolution Agreement. OCR is informing the complainant of the complaint resolution by concurrent letter.

This letter sets forth OCR's determination in individual OCR cases. 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 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, another complaint may be filed alleging such treatment.

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

OCR would like to thank District representatives, particularly Nancy Mahan Lamb, for their courtesy and cooperation in resolving this case. If you have any questions about this letter please contact Stanley Toledo at 415-486-5562.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Enclosure

Cc: Nancy Mahan Lamb