



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

July 1, 2015

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

(In reply, please refer to case no. 09-12-1329.)

Dear Superintendent Steinhauser:

The U.S. Department of Education, Office for Civil Rights, has completed its resolution process for the above-referenced complaint filed against the Long Beach Unified School District (District), alleging the following:

1. The District excluded disabled individuals from participation in programs or activities because the following facilities are not accessible to individuals with disabilities:
 - a. The parking lot and ramp at the Truancy Center due to staff parking in the access aisle of the disabled parking space;
 - b. The vehicles to transport students to the Truancy Center;
 - c. The entrances to Building 4 at the Emergency Operation Center building;
 - d. The parking lot, building, and restrooms at Willows Special Education Head Start Program; and
 - e. The main office at Willard Elementary School.
2. The District at Wilson High School excluded special education students enrolled in special day classes from school-wide events held in the auditorium and the regular physical education program.

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

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

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.

OCR received intermittent data responses from the District, gathered evidence through reviewing documents provided by the Complainant and the District, and interviewing the Complainant. However the District began to take action to address the issues raised in the complaint prior to OCR reviewing such data, and simultaneously expressed an interest in resolving the issues raised in the complaint prior to OCR reviewing such evidence or conducting an on-site.

Prior to the conclusion of the OCR investigation, and before OCR reached compliance determinations, the District expressed an interest in taking action to resolve the allegations in this complaint. Under Article III, Section 302 of OCR's Case Processing Manual a complaint may be resolved before the conclusion of an investigation when the District expresses an interest in such a resolution and agrees to a resolution that is aligned with the complaint allegations and consistent with applicable regulations. The District and OCR began a lengthy negotiation process to resolve the allegations raised in this complaint and on June 19, 2015, the District provided OCR with a signed Resolution Agreement (Agreement). As such, OCR is closing the investigative activity of this matter as of the date of this letter.

Legal Authority

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. The Uniform Federal Accessibility Standards (UFAS) set 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 UFAS, the 1991 Standards, or the 2010 Standards. New construction and alterations that commence on or after March 15, 2012 must comply with the 2010 Standards.

Conclusion

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor the District's implementation of the Resolution Agreement through completion. OCR is informing the Complainant of the complaint resolution by concurrent letter. Note that the Complainant may file a private suit in federal court whether or not OCR finds a violation.

This concludes OCR's investigative process 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 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.

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 with OCR 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, Esq., for their courtesy and cooperation in resolving this case. If you have any questions about this letter please contact G. Anthony Brown, at (415) 486-5547, or me, at (415) 486-5555.

Sincerely,

/s/

James Wood
Team Leader

Enclosure

Cc: Nancy Mahan Lamb, Esq.