



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

June 24, 2016

Gayle Garbolino-Mojica
Superintendent
Placer County Office of Education
360 Nevada Street
Auburn, California 95603

(In reply, please refer to OCR Docket Number 09-16-1056)

Dear Superintendent Garbolino-Mojica:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Placer County Office of Education (Office of Education). The Complainant alleged that the Office of Education discriminated against her on the basis of disability.¹ Specifically, OCR investigated the following allegations:

1. Whether the Office of Education excluded the Complainant from participation in its programs and activities because the Office of Education's building at 360 Nevada Street is not accessible to individuals with disabilities.
2. Whether the Office of Education did not have a "transition plan" for structural changes to existing facilities to ensure accessibility for individuals with disabilities in violation of Title II of the Americans with Disabilities Act (Title II).
3. Whether the Office of Education failed to provide a prompt and equitable response to Complainant's complaint submitted on December X, 2015.

OCR investigated this complaint pursuant to its authority under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990, as amended. Section 504 and its implementing regulation prohibit discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. The Office of Education

¹ OCR previously provided the Office of Education with the identity of the Complainant. We are not including her name in this letter to protect her privacy.

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

receives Department funds and is a public education system and is therefore subject to the requirements of Section 504 and Title II and their implementing regulations.

With respect to allegation two, in the course of its investigation, the Office of Education provided OCR with a copy of its transition plan, which was also provided to the Complainant on February 17, 2016. Pursuant to Section 110(e) of the OCR's Case Processing Manual (CPM), OCR will administratively close allegations in a complaint when "the allegations raised by the complaint have been resolved, and there are no systemic allegations." Because the Office of Education resolved this allegation by providing OCR and the Complainant with a copy of its transition plan, OCR is administratively closing its investigation with regard to allegation two.

To investigate allegations one and three, OCR conducted an interview with the Complainant and reviewed documents and other information provided by the Office of Education. Prior to OCR completing its investigation, the Office of Education voluntarily agreed to address the areas of concern identified by OCR with respect to the issues investigated. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the Office of Education.

Allegation One: *Whether the Office of Education excluded the Complainant from participation in its programs and activities because the Office of Education's building at 360 Nevada Street ("Building") is not accessible to individuals with disabilities.*

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 disabled persons, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program, service, or activity of the recipient, per 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149, respectively. The Title II regulations, as 28 C.F.R. § 35.133, provide that a public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities.

On September 15, 2010, the United States Department of Justice published new regulations implementing Title II and included specific accessibility standards as part of the regulations. These accessibility standards, the 2010 Standards for Accessible Design (2010 Standards), became the applicable construction standards for all new construction and alterations by public entities beginning on March 15, 2012, including new construction and alterations completed before March 15, 2012 that did not comply with ADAAG or UFAS. 28 C.F.R. § 35.151(c)(5).

Facts Gathered to Date and Analysis

Complainant alleged that the entrance to the Building was not accessible to individuals with mobility impairments. She also alleged that the parking lot was not accessible to individuals with mobility impairments and that there was no accessible route from public transportation to the entrance to the building. Based on the facts gathered to date, OCR had concerns that there may not be an accessible route to the building from the parking lot and from public transportation because of the slope to the front of the building and because there was no walkway from the public sidewalk to the front of the building. However, pursuant to Section 302 of the OCR's CPM, prior to the conclusion of and to address the concerns raised in OCR's investigation of the complaint, the Office of Education, without admitting to any violation of law, entered into the enclosed resolution agreement, which is aligned with the complaint allegation and the information obtained by OCR during its investigation. As part of that resolution agreement, the Office of Education agreed to undertake construction to make the path of travel from the parking areas and public sidewalk accessible under the 2010 Standards.

Allegation Three: *Whether the Office of Education failed to provide a prompt and equitable response to Complainant's complaint submitted on December X, 2015.*

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulations, at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

OCR examines a number of factors in evaluating whether a public entity's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, parents, and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Facts Gathered to Date and Analysis

The Complainant raised concerns to Office of Education regarding accessibility issues with the Office of Education's building at as early as October XX, 2015 in a conversation with Office of Education staff in front of the building. She also made a written complaint via email under the Uniform Complaint Procedure on December X, 2015. The Office of Education responded to the complainant by email requesting that she fill out a Uniform Complaint Procedure form, the Office of Education's discrimination complaint resolution

procedure, and did not appear to provide a substantive written response to her email complaint beyond providing Complainant with a copy of the Office of Education's Transition Plan. These facts raised concerns regarding whether the Office of Education promptly and equitably responded to her December X, 2015, complaint.

Pursuant to Section 302 of the OCR's CPM, prior to the conclusion of and to address the concerns raised in OCR's investigation of the complaint, the Office of Education, without admitting to any violation of law, entered into the enclosed resolution agreement, which is aligned with the complaint allegation and the information obtained by OCR during its investigation. In the resolution agreement, the Office of Education has agreed to provide a written response to the complainant regarding her December X, 2015 complaint by August 1, 2016. The Office of Education will also finalize a disability-specific grievance procedure that is compliant with Title II and Section 504 and their implementing regulations, and provide a guidance memorandum and training to staff regarding that procedure, after receiving OCR approval.

Conclusion

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently. When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the Office of Education is in compliance with the statutes and regulations at issue in the case, in particular 34 C.F.R. §§ 104.7(b) and 104.21, and 28 C.F.R. § §35.107(b) and 35.149.

OCR's determination in this matter should not be interpreted to address the Office of Education's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 Office of Education 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 Complainant may file another 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Blake Thompson, Civil Rights Attorney, at (415) 486-5630.

Sincerely,

/s/

Zachary Pelchat
Team Leader