



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

September 28, 2018

Christopher R. Hoffman  
Superintendent  
Elk Grove Unified School District  
9510 Elk Grove-Florin Road  
Elk Grove, CA 95624

(In reply, please refer to case no. 09-17-1632.)

Dear Superintendent Hoffman:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Elk Grove Unified School District (District). The Complainant alleged that the District discriminated against the Student<sup>1</sup> on the basis of disability at a District elementary school (School). Specifically, OCR investigated the following issues:

1. Whether the multi-purpose room stage is not accessible because the lift from the ground level to the stage level does not function.
2. Whether the doors to the staff bathroom, main office, the library, and the multipurpose room require excessive force to open.
3. Whether the designated disability parking spaces are not accessible for use to pick up students after school because the parking lot is closed off by cones after school.
4. Whether the walkway from the School parking lot to sidewalk has a curb with no ramp.
5. Whether the School's grade 1-6 play area is not accessible to students with disabilities because it has no accessible features.

OCR is responsible for enforcing 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. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing 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. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public education system, the District is subject to Section 504, Title II, and their implementing regulations.

---

<sup>1</sup> OCR previously provided the District with the identity of the Complainant and Student, and we are withholding their names from this letter to protect personal privacy.

OCR began its investigation by gathering and reviewing documents and correspondence provided by the Complainant and the District, and by conducting interviews. After careful review of the information gathered in the investigation, we concluded that the District did not violate Section 504 and Title II with regard to the first and fourth issues OCR investigated. For the reasons discussed herein, OCR is dismissing the third issue. Prior to OCR completing its full investigation, the District voluntarily agreed to address OCR's areas of concern regarding the second and fifth issues prior to completion of the investigation. This letter summarizes the applicable legal standards, the facts gathered to date during the investigation, and the terms of the resolution reached with the District.

*Issue #1) Whether the multi-purpose room stage is not accessible because the lift from the ground level to the stage level does not function.*

*Issue #2) Whether the doors to the staff bathroom, main office, the library, and the multipurpose room require excessive force to open.*

*Issue #3) Whether the designated disability parking spaces are not accessible for use to pick up students after school because the parking lot is closed off by cones after school.*

*Issue #4) Whether the walkway from the School parking lot to sidewalk has a curb with no ramp.*

## **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, 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149, respectively.

The regulations contain two standards for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities. One standard applies to "existing facilities" while the other covers "new 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, apply to "existing facilities," and define them as any facility or part of a facility where construction was commenced prior to June 3, 1977 or January 26, 1992, respectively. 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.

Under some circumstances, the concepts of program access and facilities access are related. This is because it may be necessary to remove an architectural barrier to create program access. A program offered exclusively in a particular building on a campus may not be accessible absent a ramp or accessible washroom to the particular building. Under such circumstances, in evaluating existing facilities, 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, the Uniform Federal Accessibility Guidelines (UFAS) may be used as a guide to understanding whether individuals with disabilities can participate in or benefit from the program, activity, or service.

Pursuant to 28 U.S.C. 35.150(a)(3), a public entity is not required to take an action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

#### New Construction/Alterations

The Section 504 regulations, at 34 C.F.R. § 104.23, and Title II regulations, at 28 C.F.R. § 35.151, also apply to “new construction or alterations,” defined as any facility or part of a facility where construction was commenced after June 3, 1977 or January 26, 1992, respectively. The

regulations 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 regulations specify the 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 provisions of UFAS set forth the designated standard for facilities constructed or altered on or after January 18, 1991. The Title II regulations (28 C.F.R. § 35.151(c)) delineate UFAS or ADAAG as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992.

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).

The Title II and Section 504 regulations provide that recipients/public entities may depart from the particular technical and scoping requirements of these architectural standards, if substantially equivalent or greater access and usability of the facility is provided. 34 C.F.R. § 104.23(c); 28 C.F.R. § 35.151(c). Deciding which of the available accessibility standards must be used is determined based on the date of commencement of physical construction. 28 C.F.R. § 35.151(c).

### **Factual Findings**

- The Student was in XXXXX grade in the 2017-18 school year, and had a Section 504 plan that included a licensed vocational nurse (LVN) supervising the Student at all times. The Complainant informed OCR that the Student sometimes used a wheelchair that is self-propelled outdoors and sometimes used a walker in the classroom.
- The Principal informed OCR that she sees the Student using a wheelchair while outside, and her wheelchair and a walker indoors, such as in the classroom. She stated the Student currently has a LVN, including during lunch and recess. The Student's LVN informed OCR that between July, 2017 and December, 2017, the Student only used a wheelchair outside, and might have used a walker once a week during that period, but after February, 2018, the Student has only used a wheelchair as a mobility device, and not the walker.

- The District informed OCR that the School was originally constructed in 1997, and that after a new classroom building was constructed which required play area equipment to be moved, the existing play area in the southeast corner of the School campus was constructed in 2006. The District informed OCR that it used the Title II regulations' accessibility standards, the 2010 Standards for Accessible Design (2010 Standards), specifically Section 240, for the construction of the play area in 2006, and any changes since.

*Multipurpose room.*

- The Complainant informed OCR that for the entire time the Student has attended the School, the lift in the multipurpose room that moves from ground level to a stage level elevated approximately four to five feet higher has not worked, and has been used to store boxes. He stated that about three to four times per year, the multi-purpose room was used for awards ceremonies, presentations, or similar activities where some, or all, of the Student's classmates were on the elevated stage to receive an award from the Principal, for example, but because the lift was filled with boxes and other materials, the Student did not have access to the stage during these events. This occurred as recently as at end of the 2016-17 school year in June, 2017. The Complainant stated he was once present, and saw the Student staying at the base of the stairs while the rest of the class was up on the stage.
- The Principal informed OCR that if she sees any objects, such as boxes, on the lift, she removes them immediately. She stated that the mechanical lift is in working order, and can be used for people or to lift heavy objects to the stage level, and that there is an outside ramp for the same purpose, but that no person has requested to use the lift to go to the stage level. The Student's XXXXXX and XXXXX grade teachers, and LVN informed OCR that they never saw any objects of any kind on the lift. Only one of them once saw the lift in operation, when it was being used by a school staff member.
- The District informed OCR that after receiving notice of the OCR complaint, its Maintenance and Operations Department tested the multi-purpose room lift, and found it to be in good working order. The District provided OCR with a State of California-issued permit showing a March 14, 2017 date of inspection that expires March 14, 2018.
- The Principal informed OCR that there were between approximately five and eight events held during the 2016-17 school year—the Student's XXX grade year—that the Student would have attended, and where she would also have been present. She stated that the School is a four-track year-around school, and that there were three "off track" assemblies, and one end-of-year, but that during none of them was the stage used by any students. She stated that there were one or two other unnamed assemblies during which the stage was not used. She stated that there were two assemblies during which students receiving an award would have been called from the audience to come forward: a 6<sup>th</sup> Grade Promotion Assembly, and a National Elementary Honor Society Induction Assembly, but the Student did not attend either of these two assemblies. She denied ever leaving the Student on the ground level near the stairs while other students were on the stage receiving an award from her, because she said she never used the stage for this purpose. She stated that she always

stood at a podium with a microphone on the ground level. She stated she never saw or heard about anyone saying the Student was being left at the stairs while other students were on the stage.

- The Student's XXXXXX and XXXXX grade teachers, and LVN informed OCR that they estimated having seen several assemblies or ceremonies in the Multi-purpose room during a school year where the Principal, the Student and other students were present. They stated the Principal was always on the ground level, usually with a podium and microphone, calling students up to receive awards, but they never saw the Principal on the stage. They never saw the Student staying at the base of the stairs while the rest of the class was up on the stage. Some observed other students who, after receiving an award, might have occasionally walked up a stair or two while waiting for other students to receive their awards and that some students did this, and some students did not. They stated that the Principal remained on the ground level, and that they never saw the Student alone at the ground level without classmates around her.

### *Doors*

- The Complainant identified doors he claimed require excessive force for the Student to open and that were impossible for wheelchair users, like the Student, to open. He stated that while the Student's current Section 504 plan includes a LVN accompanying the Student at all times, the LVN was sometimes in the Office, and working as the School nurse, instead of being with the Student. He stated that there were other days when the LVN was not at work due to sickness or other absences. During those days, the Student was unable to use the doors.
- The District informed OCR that it understands that the 2010 standards require that interior doors open with no more than five pounds of opening force. It acknowledged that after it received the OCR complaint, it modified some doors (interior and exterior) that had exceeded five pounds of force to open, and stated that all interior doors currently meet the 2010 standards.
- OCR investigated whether all of the doors identified by the Complainant were accessible to and useable by the Student as described below.

### Staff Restroom

- The Complainant identified the staff restroom near the library as the restroom used by the Student approximately two to three times per day for personal toileting. He stated that the door was too heavy for the Student to operate on her own; it was impossible for the Student to open this door without assistance. When she cannot open the staff restroom door, she had to sit in her own waste.
- The Principal, the Student's XXXXXX and XXXXX grade teachers, and LVN informed OCR that the staff restroom is the restroom used by the Student for the purpose described by

the Complainant. The door is kept locked and requires a key to open. They stated they had never seen the Student try to open the door on her own, found or saw her sitting in her own waste, nor had any of them ever been told by anyone else who saw these things take place.

#### Main Office

- The Complainant informed OCR that the Student cannot operate this door without assistance, and that the Student uses the Main Office door twice per day as she goes through this door because it is closest to the accessible parking spaces in the parking lot.
- The Principal informed OCR that the Student may go through the Back Main Office door with the LVN, and has used the Front Main Office door when her parents drop her off at school after school has started, and accompany her into the Main Office, or when picking her up early, when the Student has a LVN with her to operate the Front Main Office door. She stated that either a parent or the Student's LVN was with the Student at all times to operate these doors.
- The Principal, the Student's XXXXXX and XXXXX Grade teachers, and LVN informed OCR that none of them had observed the Student try to open either Main Office doors on her own, nor had any of them ever been told by anyone who saw this take place.

#### Library

- The Complainant informed OCR that the Student cannot operate this door without assistance, and that the Student uses the Library door once per week on average, and more if there is a special event in the Library.
- The Principal, the Student's XXXXXX and XXXXX grade teachers and LVN informed OCR that the library door is kept locked and requires a key to open. The teachers stated that they use a student from the class as a "door holder" after the door is unlocked. The door holder holds the door open while the class enters or exits the library. They all stated they had never seen the Student try to open the door on her own, nor had any of them ever been told by anyone who saw this take place.

#### Multi-purpose Room

- The Complainant informed OCR that the Student cannot operate this door without assistance, and that the Student uses the Multi-purpose Room door daily for lunch but the doors are normally propped open, which does not create a problem with access during lunch. However, the Student cannot use this door without assistance if she is trying to enter the room for an event, such as an awards ceremony, presentation, or other event where her class is also likely to be using the room.
- The Principal and the Student's LVN informed OCR that the Multi-purpose Room's two doors are kept propped open during school hours. The Principal, the Student's XXXXXX

and XXXXX grade teachers and LVN informed OCR that they had never seen the Student try to open either of the two Multi-purpose Room doors on her own, nor had any of them ever been told by anyone else who saw this take place.

#### *Parking lot cones*

- The Complainant informed OCR that cones were placed at the entrance to the School parking lot during student pick-up at the end of the school day (at one end of the parking lot nearest the accessible parking spaces) and the School marks the other end of the parking lot with an “exit only” sign. He stated that the placement of the cones near the exit created an obstruction to reaching the accessible parking spaces without driving over the cones. The Complainant informed OCR that he drove the wrong way entering the exit and was told by the Principal not to do so.
- The District informed OCR that the parking lot with accessible parking spaces was observed by District office personnel and School Administrators to verify the parking lot remains open during student drop-off and pick-up times, and during School business hours. The District claimed that the Complainant wanted to avoid waiting in the line of cars to enter the lot behind other parents, and requested the ability to enter the “exit only” exit and drive against the flow of traffic, which the District denied.
- The Complainant provided OCR with photographs that he estimated were taken in October, 2017 that showed orange traffic cones in the parking lot near the exit placed to block the westward lane flow of parking lot traffic, which also could have blocked access to the accessible parking spaces. He stated that the cones were there between November 2016 and November 2017, and were placed there by the School at approximately 2:05 or 2:10 PM, and that the pick-up period begins at 2:30 PM. He stated that if he arrived before the cones were placed, he generally had access to the accessible parking spaces, but if not he usually drove over the cones with his car to park in an accessible parking space.
- The Principal informed OCR that the flow of traffic during pick-up, which on regular school days starts at 2:35 pm and lasts about 15 minutes, follows an easterly direction through the parking lot. She stated that from approximately November, 2016 to July, 2017, School staff placed cones to block westward traffic in the parking lot so that parents would not drive the wrong way through the exit, against the flow of traffic. She stated the cones near the exit were no longer used and were discarded in July, 2017 when the School acquired new directional signage for drivers that marked the exit as “exit only.” She stated that currently, the Complainant is able to arrive at the accessible parking spaces by following the flow of traffic through the parking lot.

#### *Parking lot walkway*

- The District informed OCR that at the time the existing play area was constructed in 2006, the Division of State Architect required an ADA review and improvements, including parking lot improvements.

- The Complainant informed OCR that there is a walkway within the parking lot recently painted as a crosswalk, located about halfway between the entrance to the parking lot and the entrance to a nearby building used by the Student. He stated that the crosswalk terminates at the curb, but there is no apron and a steep curb making it impossible to navigate with a wheelchair. He stated that there typically was a crossing guard stationed at this crosswalk during student pick-up times.
- The Complainant stated to OCR in an interview that the crosswalk located nearest the entrance to the parking lot off of XXXXXXXX XXXX XXXXX is accessible to and usable by the Student, and that the Student used it without any concerns
- The District informed OCR that along the accessible route, a crosswalk leads from the accessible parking spaces in the parking lot to the sidewalk near the School entrance, and that there is a ramp joining the surface of the parking lot and the sidewalk. The District noted there is a mid-lot crosswalk in the parking lot that is intended to provide a safe area for pedestrians to navigate the parking lot and drop-off/pick-up lanes, but that it does not connect to an accessible parking space, an entrance, or any other accessible elements, and is not an accessible route of travel.

#### **Analysis and Resolution for Issues #1 - #4**

With regard to the multi-purpose room lift, OCR found insufficient evidence to conclude that the Student was isolated during events in the Multi-purpose room as alleged by the Complainant. The State inspection permit and observations from at least one witness were sufficient for OCR to conclude that the lift is operational. The Principal and other staff witnesses informed OCR that the Principal conducted assemblies from a podium on the floor of the Multi-purpose room, and that the Student was not isolated from assemblies when she was unable to access the stage where her classmates received awards. OCR found that there was insufficient evidence to conclude that the District was out of compliance with Section 504, Title II, or their implementing regulations with regard to this issue.

Regarding the interior, library, staff restroom, and multi-purpose room doors, the District informed OCR that force required to open interior doors was consistent with the requirements of the 2010 Standards, or was adjusted to comply with those standards after the initiation of this investigation. The Complainant alleged that several doors were nonetheless too heavy to be accessible to, or usable by, the Student. OCR found that the staff restroom door is kept locked, and is not intended to be used, nor did OCR find any evidence it was used, by the Student unless the Student's LVN was present. The preponderance of the evidence showed that the Student did not use the library door without it being unlocked by an adult, and kept open by a student assistant. The preponderance of the evidence showed that the Student did not use the Multi-purpose Room doors on her own, which also were kept open during school hours. There is insufficient evidence to support a conclusion that these doors at the School identified by the Complainant were not accessible to and usable by the Student.

Regarding the main office doors, the preponderance of the evidence showed that the Student did not use the main office doors without a parent or the Student's LVN present. However, OCR was unable to determine without additional investigation whether, in those circumstances when the parent was not with the Student, the Student could use the main office doors, or whether students without disabilities were able to access the office without the assistance of a parent. This information created a concern about whether the main office doors were accessible to the Student as it appeared she cannot use either main office door unassisted and the District may not require the parent to assist the Student on those occasions when she is being dropped off late to School. Before OCR made findings about whether the main office doors were accessible to and usable by the Student, the District requested to resolve the issue with a §302 Resolution Agreement in which it will develop a plan that will ensure the Student can use the main office doors with an aide.

As to the cones and the availability of accessible parking spaces, OCR found that the cones that were placed in the parking lot nearest the exit could have acted as a temporary barrier to accessible parking spaces for some parking lot users. According to School staff, the cones were removed in approximately November, 2017 during OCR's investigation, and never used again. The Complainant informed OCR that while he could not be certain about the dates, the School has stopped placing cones in this area. Accordingly, OCR is dismissing this allegation pursuant to Case Processing Manual section 108(i) because it obtained credible information that indicated that the allegation was currently resolved and was no longer appropriate for investigation.

With regard to the walkway in the parking lot, OCR found that the parking lot has a designated crosswalk, leading to a curb cut that the Complainant stated to OCR is accessible to and usable by the Student. The District is not required, under the 2010 Standards, to maintain a second accessible crosswalk in the parking lot. Accordingly, OCR found that there was insufficient evidence to conclude that the District was out of compliance with Section 504, Title II, or their implementing regulations with regard to this issue

*Issue #5) Whether the School's grade 1-6 play area<sup>2</sup> is not accessible to students with disabilities because it has no accessible features.*

### **Legal Standard - Playgrounds**

A play area meets the definition of a "facility" under the Section 504 and Title II regulations. A play area facility is comprised of the structure or equipment installed to provide play activities, the route into and around the playground area, as well as the surface surrounding the structure or equipment.

Until recently, there were no Federally-adopted accessibility design standards that carried the authority of a regulation and specified their application to the unique features of play areas. The U.S. Architectural and Transportation Barriers Compliance Board (Access Board) issued its Final Accessibility Guidelines for Play Areas (Guidelines) in 2000. In 2004, the Access Board

---

<sup>2</sup> The School's other play area separated from this play area is used exclusively by kindergarteners, and is not subject to this complaint.

issued a revised version of the ADA Standards for Accessible Design that included Guidelines (known as the 2004 ADAAG; see 75 F.R. 56177, September 15, 2010). In September 2010, the U.S. Department of Justice released the 2010 ADA Standards, which took effect March 15, 2012. The 2010 ADA Standards include specific requirements for play areas, and for this complaint they included the requirements for play components and an accessible route.

### **Information Gathered to Date**

The Complainant informed OCR that the Student cannot propel her self-propelled wheelchair or operate her walker in the wood fiber surface of the play area. He stated that the Student can only play on the equipment with her LVN aide present, but that during recess, the aide is on break. The LVN stated she is present on the playground with the Student during the lunch and afternoon recess, which are the two times during the day the Student has access to the play area. The Complainant informed OCR that this has been true for the LVN currently assigned to the Student, but was not consistently true with prior LVNs who worked with the Student. The Student's LVN informed OCR that she is present with the Student during two daily recess periods, but that the Student usually distances herself from the LVN, trying, like other students, to get some freedom from adults and to be and play with her friends. The route to the play area was not identified as a concern by the Complainant.

The Complainant wrote in his complaint that he wanted other activities for the Student and her friends to engage in, such as a ball, ring toss, similar games, sidewalk chalk, or board games. He wrote in the complaint that the Student participates in Physical Education, and completes several rounds around the track, but because of the lack of accessible activities during recess, the Student only sits alone and watches her friends at play. During his OCR interview, after mentioning the LVN putting the Student on a swing, the Complainant stated he also wanted bouncing balls or a tether ball, which the School has but which were not kept inflated, as well as chalk and board games.

The Complainant informed OCR he observed that the Student wanted to, but was unable to, operate her self-propelled wheelchair through the engineered wood fiber surface of the play area. He stated that he wanted the Student, who has a lot of mobility, to play in the play area on play components of all types on the conditions that the Student uses her leg braces and that the Student's LVN—or the equivalent of such a District employee—accompanies her to support her because she is unable to stand unsupported.

The Student's XXXXXX and XXXXX grade teachers and LVN informed OCR that they have observed the Student playing alone and with friends during recess, with a toy that has sidewalk chalk on one end, as well as with a tetherball, and another ball. They stated that the Student does not use the play area, and that neither of the Student's parents ever told them they wanted the Student to use the play area or otherwise had any concerns about the Student's play activities.

The District installed play components in the School play area in 2006, and since October 5, 2017, and play areas are required to have a certain number of elevated and ground-level components, and accessible surfaces.

Play Area Components

Where provided, play components shall comply with Section 240 of the 2010 Standards, which provides for the number and variety of ground-level play components (GLCs) required to be on an accessible route, and it is the GLCs which determined the required number of elevated components (EPCs) to be provided in the play area.<sup>3</sup>

Ground and Elevated Components

The 2010 Standards categorize play components as either “ground” components or “elevated” components. A GLC is defined as a play component that is approached and exited at the ground level. An EPC is a play component that is approached above or below grade that is part of a composite play structure consisting of two or more play components attached or functionally linked to create an integrated unit providing more than one play activity. The 2010 Standards require a minimum number of GLCs to be provided on an accessible route based on the number of EPCs:

Number of elevated play components	Minimum number of ground-level components required to be on accessible route	Minimum number of different types of ground-level components required to be on accessible route
1	Not applicable	Not applicable
2 to 4	1	1
5 to 7	2	2
8 to 10	3	3
11 to 13	4	3
14 to 16	5	3
17 to 19	6	3
20 to 22	7	4
23 to 25	8	4
More than 25	8, plus 1 for each additional 3, over 25, or fraction thereof	5

**Table 240.2.1.2**

The District provided color photographs and descriptions of play components, and aerial maps of the School campus and play area.

There are 17 EPCs depicted in the play area, and under the provision of Table 240.2.1.2, a minimum of six GLCs must be on an accessible route, which must represent at least three different types of play. Play types or experiences described in Advisory 240.2.1 of the 2010 Standards include, but are not limited to, experiences such as rocking, swinging, climbing,

<sup>3</sup> see <https://www.access-board.gov/guidelines-and-standards/recreation-facilities/guides/play-areas/components-and-accessible-routes>, at p. 1/4

spinning, and sliding.<sup>4</sup> More than three types of play are offered by the School's play area's six GLCs, which might describe the general experience provided as hopping, banging, socializing, strategizing, twisting, pretending, and balancing.

According to the Access Board, a composite play structure with fewer than 20 EPCs may use a transfer system instead of ramps to connect at least 50 percent of the EPCs.<sup>5</sup> Also, under the 2010 Standards, EPCs may connect other EPCs as part of a composite play structure accessible route. No ramp is used in the School's play area, and the transfer system, starting at the transfer platform, appeared to connect more than the minimum of 50 percent of the EPCs.

Section 240.2.1.1 of the 2010 Standards requires that where GLCs are provided, GLCs of at least one of each type shall be on an accessible route, and comply with Section 1008.4. However, Section 105 of the 2010 Standards provides an advisory to explain that if the use zone<sup>6</sup> of a playground is not entirely surfaced with an accessible material, at least one accessible route within the use zone must be provided from the perimeter to all accessible play structures or components within the playground.<sup>7</sup> The Advisory section provides the basis for the conclusion that playground use zones may be entirely surfaced with an accessible material. The District informed OCR that the entire surface of the play area is surfaced with compliant engineered wood fiber, discussed in more detail below.

Advisory Section 303.3 of the 2010 Standards requires changes in level exceeding ½ inch to comply with Section 405 (Ramps) or Section 406 (Curb Ramps). Because the entrance ramp to the play area is not a curb ramp, Section 405 is applicable. Section 405 requires a ramp's running slope not to exceed 1:12 (8.33%) and a cross slope not to exceed 1:48 (2%), §§405.2, 405.3. According to the Access Board, the suggested tolerance under Section 104.1.1 of the 2010 Standards for the cross slope for accessible ramps is +0.5%.

### Play Area Surfaces

The 2010 Standards incorporate sections of the standards from the American Society for Testing and Materials (ASTM). Specifically, ASTM F 1292 covers playground use zone and impact attenuation of surfaces. Additionally, ASTM F 1951 establishes a uniform means to measure the characteristics of surface systems in order to provide performance specifications to select materials for use as an accessible surface under and around playground equipment. The ASTM F standards provide specific testing standards to determine if the surface is firm, stable, and resilient to ensure the surface is safe and accessible to children who are playing. The Access

---

<sup>4</sup> also described in <https://www.access-board.gov/guidelines-and-standards/recreation-facilities/guides/play-areas/play-component>, at p. 1/3.

<sup>5</sup>see <https://www.access-board.gov/guidelines-and-standards/recreation-facilities/guides/play-areas/components-and-accessible-routes>, at p. 2/4, and elsewhere in Access Board materials. Also Section 240.2.2 and 1008.2.1 of the 2010 Standards.

<sup>6</sup> Section 106.5 Defined Terms of the 2010 Standards defines use zone as, "The ground level area beneath and immediately adjacent to a play structure or play equipment that is designated by ASTM F 1487 (incorporated by reference, see "Referenced Standards" in Chapter 1) for unrestricted circulation around the play equipment and where it is predicted that a user would land when falling from or exiting the play equipment."

<sup>7</sup> Section 105 Referenced Standards, Advisory 105.2.3 ASTM.

Board guidance on what surfaces meet the ASTM standards includes poured in place rubber, tiles, engineered wood fiber, hybrid surface systems.<sup>8</sup> For engineered wood fiber, the Access Board has also advised that “[i]n most instances it is necessary for the loose material to be installed in layers, watered and compacted in order to achieve an accessible route and level clear ground space at equipment.”<sup>9</sup> To be in compliance with ASTM F 1951 standard, the Access Board suggests in guidance that ground surfaces must be inspected and maintained regularly and frequently depending on the amount of use, and the type of surfacing installed.<sup>10</sup>

As mentioned above, Section 105 of the 2010 Standards provides an advisory to explain that if the use zone of a playground is not entirely surfaced with an accessible material, at least one accessible route within the use zone must be provided from the perimeter to all accessible play structures or components within the playground. The School’s entire play area is surfaced with engineered wood fiber material.

*Facts – lab testing of wood fiber*

The play area is enclosed by a rectangular oval concrete curb around the structure to contain the wood fiber. The District provided five engineered wood fiber test reports, conducted on-site at a company in Georgia, and not at the School, which were dated December, 2015 and one of which showed the wood fibers met or exceeded the ASTM F 1951 standard for wheelchair use when it was tested in an indoor laboratory.

*Facts - installation of wood fiber*

Regarding the installation of the wood fiber play area surface, the Deputy Superintendent informed OCR that he reviewed the construction plans for the play area, and obtained information from District staff who visited and inspected the play area in May, 2018. The concrete curb around the play area, drainage, and wood fiber material (“Fibar”) were installed as required in the construction plans. He stated Fibar wood fiber has been refreshed with the same product, and that the current fill level is an average of 15 inches. The soil below the wood fiber is sloped toward a sub-drain, and he reported that the cleanouts for the sub-drain are located where required on the construction plans.

*Facts - maintenance of wood fiber*

The Risk Manager and Deputy Superintendent informed OCR that annually, District Risk Management inspects and audits play area wood fiber at the School, which is completed by a District Certified Playground Safety Inspector. He stated that School custodians are trained about the requirements for the wood fiber surface, and are reminded to routinely inspect the play

---

<sup>8</sup> see <https://www.access-board.gov/guidelines-and-standards/recreation-facilities/guides/surfacing-the-accessible-playground>.

<sup>9</sup> see <https://www.access-board.gov/guidelines-and-standards/recreation-facilities/guides/surfacing-the-accessible-playground/6-recognize-that-proper-installation-is-key>

<sup>10</sup> see <https://www.access-board.gov/guidelines-and-standards/recreation-facilities/guides/play-areas/accessible-routes>, p5/10.

area surface, and to redistribute wood fiber as necessary, but not to add needed wood fiber. Custodians contact District Risk Management and either Risk Management staff or a vendor to install new wood fiber when it is needed.

The District provided photographs and descriptions of the path of travel from the asphalt area surrounding the play area, into the play area using a ramp and then around play components.

#### *Facts - ramp into play area from asphalt*

Photographs from the District showed that at one end of the rectangular oval concrete curb around the play area, there is an opening in the curb and a concrete ramp that slopes down into the play area that is intended to serve as an accessible entrance, the design plan for which was depicted in an architectural ramp drawing provided by the District. A District photograph of the point at which the concrete ramp ends and the wood fiber surface begins shows an even transition between the two surfaces, with no appreciable drop in level. The Deputy Superintendent measured the running slope of the ramp at 6.6% and the cross slope at 2.3%.

#### **Analysis and Resolution**

The 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. The District applied the 2010 Standards to the play area at the School. In some cases, even a facility that meets the 2010 Standards may not be accessible to, and usable by, an individual student with a disability. Under such circumstances, a school district may need to make modifications to ensure that the program, as a whole, is accessible to and usable by that student.

While the Complainant did not allege that there was an inadequate number of play components in the School play area, he noted that the Student often could not get to and use what was there. OCR's review of the information provided to date by the District and Complainant did not raise concerns that the play area did not meet the requirements of the 2010 Standards with respect to the number and range of play components. The information reviewed by OCR suggested that the play surface could meet the standards regarding accessibility. With regard to the accessible route, the ramp into the play area and its reported cross slope of 2.3% as constructed is within the 2.0% cross slope standard with a 0.5% suggested tolerance. However, OCR did not directly observe the play area or measure the slope of the ramp.

The Complainant informed OCR that the Student is unable to operate her wheelchair on the play surface and that, for this reason, she is unable to use the play area. This information raised concerns as to whether the play area is accessible to her. However, before OCR made findings as to whether the route from the asphalt to play components—including the ramp into the play area and the engineered wood fiber surface—were part of an accessible route, whether the play area, taken as a whole, as well as the main office doors (as discussed above) were accessible to the Student as a matter of program accessibility, the District indicated its interest in voluntary resolution regarding the play area and main office doors issues and OCR agreed that such a

resolution would be appropriate to resolve the issues and concerns raised. For this reason, OCR did not complete its investigation or reach determinations as to whether the District violated Section 504, Title II, and their implementing regulations in connection with the play area or main office doors.

## **Conclusion**

On September 26, 2018, the District entered into the attached Resolution Agreement (Agreement), which when implemented, is intended to resolve the concerns identified by OCR regarding issues two and five that were under investigation. Under the terms of the Agreement, the District agreed to develop a plan for the Student to use the play area and the main office doors with adult assistance in the most integrated setting appropriate to the Student using methods that will entail achieving access independently and safely as appropriate.

Based on the above referenced agreement, OCR is closing the investigation phase of this case. This concludes OCR's investigation of this 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. Based on the commitments made in the Agreement, OCR is closing this complaint as of the date of this letter and notifying the Complainant concurrently.

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 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 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, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about this letter, please contact the case resolution team.

Sincerely,

/s/

Ava DeAlmeida Law  
Acting Team Leader

cc: Robert Pierce  
Deputy Superintendent (*via electronic copy only*); Enclosure