



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

January 31, 2018

VIA ELECTRONIC MAIL

José L. Manzo
Superintendent
Oak Grove School District
6578 Santa Teresa Blvd.
San Jose, California 95119
jmanzo@ogsd.net

(In reply, please refer to case no. 09-18-1003.)

Dear Superintendent Manzo:

In a letter dated November 7, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), notified the Oak Grove School District (District) of the above-referenced complaint alleging discrimination on the basis of disability. In that complaint, the Complainant¹ alleged the following:

- 1) The District had failed to designate at least one employee to coordinate compliance with the regulations implementing Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, including coordination of investigations of complaints alleging noncompliance with the regulations; and
- 2) The following locations were not accessible to individuals with disabilities:
 - a. District Administration building located at 6578 Santa Teresa Blvd., San Jose, California 95119:
 - i. The parking lot does not have a sufficient number of accessible parking stalls for individuals with disabilities, and the single accessible parking stall located in this parking lot is incorrectly sized, signed, and does not have an access aisle;
 - ii. There is no accessible path of travel from the single parking stall designated for individuals with disabilities to the front entrance of the District Administration building;
 - iii. There is no accessible path of travel from the sidewalk to the front entrance of the District Administration building;

¹ In prior correspondence, OCR provided the District with the name of the Complainant. The Complainant's name is not included in this letter for privacy reasons.

- iv. The button to operate the doors at the front entrance of the District Administration building is non-operational; and
 - v. The School Board room does not have designated wheelchair seating or an accessible podium.
- b. Alex Anderson Elementary School at 5800 Calpine Dr., San Jose, California 95123:
- i. Parents and visitors with disabilities are prohibited from using accessible parking stalls on school grounds.

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.

OCR reviewed information provided by the Complainant and the District and conducted an interview with the Complainant. Prior to OCR completing its investigation, the District voluntarily agreed to address the areas of concern identified in the complaint. This letter summarizes the applicable legal standards, the allegations made in the complaint, and the terms of the resolution reached with the District.

Issue 1: Whether the District has failed to designate at least one employee to coordinate compliance with the regulations implementing Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, including coordination of investigations of complaints alleging noncompliance with the regulation.

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.7(a), require a recipient that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under Section 504. The Title II regulations, at 28 C.F.R. §35.107(a), contain a similar requirement for public entities that employ 50 or more persons to designate a compliance coordinator. The public entity shall make available to all interested persons the name, office address, and telephone number of the employee(s) designated as the compliance coordinator.

Findings to Date and Resolution

The Complainant alleged that she asked the receptionist at the District office for the name and contact information for the ADA Coordinator, and that the receptionist was unable to provide the name of an ADA Coordinator. The Complainant also alleged that the Superintendent told her that the District did not have an ADA Coordinator, but that

the Assistant Superintendent was responsible for handling complaints. The Complainant also alleged that the Assistant Superintendent's Assistant told her that the Assistant Superintendent was not the ADA Coordinator, but instead that the District's head of maintenance and facilities was the ADA Coordinator.

In response to the complaint, the District notified OCR that the Assistant Superintendent was designated as the District's Compliance Officer to investigate and resolve complaints of discrimination. In its initial response, the District did not provide any information demonstrating that the Assistant Superintendent had been designated to coordinate all of the District's efforts to comply with and carry out its responsibilities under Section 504 and Title II.

Prior to the completion of OCR's investigation, the District agreed to voluntarily resolve this allegation, and OCR determined that voluntary resolution was appropriate. Pursuant to the enclosed Resolution Agreement (Agreement), the District agreed to notify all District office staff that the Assistant Superintendent was the ADA Coordinator and to provide notice of the Assistant Superintendent's responsibilities in that regard.

Issue 2: Whether the following locations are not accessible to individuals with disabilities:

- a. District Administration building at 6578 Santa Teresa Blvd., San Jose, California 95119:*
 - i. Whether the parking lot does not have a sufficient number of accessible parking stalls for individuals with disabilities, and the single accessible parking stall located in this parking lot is incorrectly sized, signed, and does not have an access aisle;*
 - ii. Whether there is no accessible path of travel from the single parking stall designated for individuals with disabilities to the front entrance of the District Administration building;*
 - iii. Whether there is no accessible path of travel from the sidewalk to the front entrance of the District Administration building;*
 - iv. Whether the button to operate the doors at the front entrance of the District Administration building is non-operational; and*
 - v. Whether the School Board room does not have designated wheelchair seating or an accessible podium.*
- b. Alex Anderson Elementary School at 5800 Calpine Dr., San Jose, California 95123:*
 - i. Whether parents and visitors with disabilities are prohibited from using accessible parking stalls on school grounds.*

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).

Facts Gathered to Date and Resolution

The Complainant alleged that she attended a District school board meeting at the district administration building (the Building) and identified a number of accessibility issues. First, she alleged that the Building did not have sufficient numbers of accessible parking spaces because there was only one accessible parking space. She also alleged that the parking space was not the correct size to be van-accessible, did not have an access aisle, and did not have appropriate signage.

The Complainant also alleged that the path of travel from the accessible parking space to the entrance of the Building was not accessible. Specifically, she alleged that there was degraded asphalt where the parking lot connected to the sidewalk leading to the Building, and that the sidewalk leading to the Building entrance had excessive changes in level due to gaps in the sidewalk.

Finally, the Complainant alleged that the front door to the Building was not accessible because the automatic door opener was not operational, and that the room where the District holds school board meetings did not have appropriate wheelchair accessible seating or an accessible podium.

The District notified OCR that the Building was built in 1973. The District did not provide definitive information about when the accessible parking space was created. However, prior to the completion of OCR's investigation, the District agreed to voluntarily resolve all of the allegations with respect to the Building, and OCR determined that voluntary resolution was appropriate. The Agreement provides that the District will, consistent with the 2010 Standards, create accessible parking and an accessible path of travel from the accessible parking to the Building. The Agreement also provides that the District revise its processes to ensure that school board meetings are accessible to individuals with disabilities, including ensuring that the automatic door entry capability is activated for board meetings and that wheelchair accessible seating and an accessible microphone are available.

The complaint also alleged that sufficient accessible parking was not available at Alex Anderson Elementary School (the School). The complaint alleged that one of the School's parking lots that contained two accessible parking spaces was being blocked off and that she was told that the parking lot was only for staff. Prior to the completion of the investigation, however, the Complainant notified OCR that the issue had been resolved with School staff and that all of the accessible parking spaces were available. OCR therefore determined that there was insufficient evidence that the District was currently in violation of Section 504 or Title II as to the parking at the School.

Conclusion

Based on the commitments made in the enclosed Agreement, OCR is closing its investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the Agreement until the District is in compliance with Section 504, Title II, and their implementing regulations at issue in the case.

If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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.

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 harmed individual may file a complaint alleging such treatment.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this letter 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 law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Adam Fiss, Counsel for District (via email)