



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

June 28, 2018

Via Electronic Mail

Mr. Kevin Humphrey
Superintendent
Guajome Park Academy
2000 N. Santa Fe Ave
Vista, California 92083

(In reply, please refer to OCR Docket Number 09-18-1171.)

Dear Superintendent Humphrey:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Guajome Schools (Recipient). The Complainant alleged that the Recipient discriminated against the Student on the basis of disability.¹ Specifically, OCR investigated whether the Recipient excluded the Student because the Recipient's Park Primary Academy (Primary) campus is not accessible to individuals with disabilities.

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 an education system, the Recipient is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the Recipient. Prior to OCR completing its investigation and making a compliance determination, the Recipient expressed an interest in voluntarily resolving this matter pursuant to section 302 of OCR's Case Processing Manual (CPM), and OCR determined it was appropriate to do so. The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

Issue: Whether the Recipient discriminated against the Student on the basis of disability because the Primary campus is not accessible to individuals with disabilities.

¹ OCR previously provided the Recipient with the identities of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

Legal Standards

The regulations implementing Section 504 provides that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with disabilities, 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. The regulations contain two standards for determining whether a recipient/public entity's programs, activities, and services are accessible to individuals with disabilities. One standard applies to "new construction" and "alterations" while the other applies to "existing facilities." The applicable standard of compliance depends upon the date of construction and/or the date of any alterations to the facility.

New construction and alterations

The Section 504 regulations, at 34 C.F.R. § 104.23, apply to "new construction or alterations," defined as any facility or part of a facility where construction was commenced after June 3, 1977. For the purposes of Title II, "new construction or alterations" is defined as any construction of or alterations to a facility or a part of a facility on or after January 26, 1992. The regulations for each law 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 Section 504 regulations, at 34 C.F.R. § 104.23(c), specify 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. Facilities constructed or altered on or after January 18, 1991 are required to comply with the *Uniform Federal Accessibility Guidelines* (UFAS) (Appendix A to 41 C.F.R. subpart 101-19.6). Recipients may choose between applying the *2010 Standards for Accessible Design* (2010 Standards) (28 C.F.R. § 35.151 and 28 C.F.R. part 36, subpart D) or UFAS for any new construction or alteration commenced on or after March 15, 2012. 77 F.R. 14972, 14975 (Mar. 14, 2012).

With respect to Title II, public facilities constructed or altered on or after January 26, 1992 through September 14, 2010 are required to choose application of UFAS or the 1991 *ADA Standards for Accessible Design* (1991 Standards) (28 C.F.R. Part 36, App. A). Public facilities constructed or altered on after September 15, 2010 through March 14, 2012 are able to comply through the application of UFAS, the 1991 Standards, or the 2010 Standards. Effective March 15, 2012, new construction and alterations pursuant to Title II are required to comply with the 2010 Standards. New construction and alterations completed before March 15, 2012 that did not

comply with the 1991 Standards or UFAS (i.e., noncompliant new construction and alterations) were also subject to the 2010 Standards. 28 C.F.R. § 35.151(c)(5).

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, also apply to “existing facilities.” Section 504 defines existing facilities as any facility or part of a facility where construction was commenced prior to June 3, 1977. Existing facilities for the purposes of Title II are any facility or part of a facility where construction was commenced prior to January 26, 1992. 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.

The concepts of program access and facilities access are related, because it may be necessary to remove an architectural barrier in order to create program access. For example, a program offered exclusively in a particular building on a campus may not be accessible and usable to individuals with disabilities absent the provision of physically accessible features. Under such circumstances, 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 subject to Section 504, UFAS or the 2010 Standards may be used as a guide to understanding whether individuals with disabilities can participate in or benefit from the program, activity, or service. The 2010 Standards may be used as a guide to understanding whether individuals with disabilities can participate in or benefit from the program, activity, or service of a public entity subject to Title II. Specific details of the architectural standards are described below as needed.

Facts

The following facts are relevant to OCR’s analysis:

The Recipient is comprised of Park Academy (sixth through twelfth grade), which first opened on August 19, 2004; Learning Centers (kindergarten through twelfth grade independent study),

which first opened in August 2011²; and Park Primary Academy (kindergarten through fifth grade) (Primary), which first opened in August 2012. Eight portable buildings were added to the Primary campus with handicap accessible paths and ramps during summer of 2017 and were in use fall 2017.

During the 2017-2018 school year, the Student's sister was in the XXXXX grade at the Primary. The Student does not attend the Primary. The Student is blind, has cerebral palsy and uses a wheelchair. The Complainant volunteers on the parent board for the Primary and picks her daughter up from school after school every day.

The Recipient provided OCR with maps of the Primary campus, which show the path of auto traffic and parking, including all handicapped parking spaces. The maps also show that there are four handicap-designated parking spaces on either side of the designated drop off pick up area, within close proximity to Building A (the Primary's main office building). There are also two handicap-designated parking spaces near Building C, which is across the campus from the designated drop off pick up area.

Locked Gates

According to the Complainant, during the 2017-2018 school year, the Complainant and the Student could not access the Primary's upper playground area (where her daughter was receiving an award) because the gate at the end of the ramp was locked. The Complainant also told OCR that when she asked Primary staff to open the gate, they did not know where the gate key was. Therefore, the Complainant was unable to access the ramp, or take the Student up to the upper playground area.

On January XX, 2018, the Complainant sent the Superintendent an email stating, in relevant part, that she asked him to find the keys for the small ramp leading up to the upper playground so that her family could support her daughter in receiving an award. According to the Recipient, every staff member possesses a key to all gates; however, the staff was not aware of this fact. The Recipient told OCR that since becoming aware of this incident, it has reminded all Primary staff that they have the gate key.

Handicap-Designated Parking Spaces

According to the Complainant, on January X and XX, 2018, the Primary implemented a "rainy day" pick up/drop off route for vehicles to go through the staff parking lot to drop off and pick up students in the traffic circle. The route blocked off the handicap-designated parking spaces near the main office.

As a result, when she arrived to pick up her daughter on January X, 2018, the Complainant could not access the handicap-designated parking space. The Complainant then notified security (who was present in the parking lot) that the handicap-designated parking space she needed to access was blocked by other cars due to the alternative traffic route. Security informed her that the

² <http://www.ed-data.org/school/San-Diego/Vista-Unified/Guajome-Learning-Center>

space could not be unblocked and directed her to other handicap-designated parking spaces near the basketball courts, approximately 100 yards away from the front office. The Complainant informed OCR that she parked near the basketball courts, and carried the Student across campus in the rain. Later that day, the Complainant met with the Recipient's Administrator of School Culture & Climate (Administrator), who informed the Complainant that the staff would be debriefed about their obligations to provide access to handicap-designated parking spaces, and that the incident would not occur again.

On January XX, 2018, the Complainant could not access the handicap-designated parking spaces by the main office again (due to the rainy day pick up/drop off route) and campus security again directed her to the handicap-designated parking spaces near the basketball courts. According to the Complainant, after approximately 15 minutes, the Administrator came out to ensure that the handicap-designated parking spaces by the main office were accessible, and the cars blocking the handicap-designated parking spaces were moved. Later that day, the Complainant sent the Superintendent an email stating that the handicap-designated parking spaces by the main office were blocked during the last two days, and that she was told by security to find somewhere else to park. According to the Recipient, after being informed of the incident, the Administrator addressed the security team and directed them not to block handicap-designated parking spots in the rainy day traffic pattern.

On January XX, 2018, the Recipient's school safety committee met to address the rainy day route. The committee discussed notifying parents of traffic safety procedures and to not block handicap-designated parking spaces.

On February XX, 2018, the Recipient sent out an "all call" to all families, which informed them of a forecast of rain and included language about not blocking the handicap-designated parking spaces. The rainy day route was also posted on the Recipient's website and sent in an email.

On June X, 2018, the Complainant told OCR that the parking issue has been resolved, and that she has not experienced any other issues with accessing the handicap-designated parking spots since January 2018.

Analysis

OCR found that the Primary was constructed in 2012 (and modified in the summer of 2017); as such, the Primary qualified as a new construction and falls under the 2010 Standards.

OCR also found that on January XX, 2018, the Complainant sent the Recipient's Superintendent an email (1) asking him to find the keys to the upper playground area, as it was inaccessible due to the locked gate at the end of the handicap-designated ramp, and (2) informing him that the handicap-designated parking spots were inaccessible due to the Primary's rainy day route. With respect to the locked gate, the Primary told OCR that every teacher has a key to all gates, but were not aware of this fact. Since the incident, all Primary staff has been reminded of the fact that they possess all gate keys. The Recipient also told OCR that once it became aware of the handicap-designated parking space issue, the Recipient's safety committee met to implement a

more appropriate rainy day route (that did not block access to handicap-designated parking spaces), and informed all families of this new route.

Based on OCR's review of the information provided by the Complainant and Recipient, OCR identified concerns that the Primary's handicap-designated parking spots were inaccessible on January XXX and XXXX; and that the Complainant was not able to take the Student to the playground area because the gate was locked and staff did not know that they each had a key to unlock it. OCR is also concerned that the Recipient did not have an accessibility plan in place to ensure that all parts of the Primary's campus (including its playgrounds and parking lots) are accessible to individuals with disabilities at all times (not only on rainy days).

Prior to the conclusion of the investigation, on June 8, 2018, the Recipient expressed interest in entering into a voluntary resolution during the course of OCR's investigation, and OCR determined that it was appropriate to do so. To address the concerns identified by OCR during its investigation, the Recipient, without admitting to any violation of law, entered into the enclosed resolution agreement (Agreement) on June 28, 2018. The Agreement requires the Recipient to: 1) assess all parking lots and pathways at the Recipient and develop an accessibility plan, as needed, to ensure that the Primary is in compliance with the 2010 Standards; 2) provide training and a written guidance memorandum to all Recipient and Primary administrators and staff on the Recipient's obligations to provide program and physical access to persons with disabilities (including students, staff, and visitors to the campus); and 3) designate a Primary administrator to whom the Complainant will contact and report if she experiences any accessibility issues at the Recipient.

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 the complaint allegations. OCR will monitor the implementation of the resolution agreement until the Recipient is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the resolution agreement, OCR will close the case.

OCR's determination in this matter should not be interpreted to address the Recipient'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 Recipient may not harass, coerce, intimidate, retaliate, 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 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 OCR Attorney Naghmeh Ordikhani at (415) 486-XXXX or Naghmeh.Ordikhani@ed.gov, or Nezhia Rae Burkes at (415) 486-XXXX or Nezhia.Burkes@ed.gov.

Sincerely,

/s/

Naghmeh Ordikhani
Acting Team Leader