



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

April 16, 2019

Sent via email

Mr. Kent Kern
Superintendent
San Juan Unified School District
3738 Walnut Avenue
Carmichael, CA 95608

(In reply, please refer to OCR case number 09-19-1051.)

Dear Superintendent Kern:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the San Juan Unified School District (District). On November 6, 2018, OCR notified the District of the complainant's complaint alleging that the District discriminates on the basis of disability. Specifically, OCR investigated whether the restrooms at the District's Special Education Center were accessible to adults 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 a public entity, the District is subject to Section 504, Title II, and their implementing regulations.

In its investigation, OCR reviewed documents provided by the District and visited and surveyed the public restrooms at the Special Education Center. OCR's investigation found that there was sufficient evidence to support a noncompliance finding on the issues investigated. On April 11, 2019, the District agreed to implement the enclosed Resolution Agreement (Agreement) to remedy the violations found by OCR. This letter summarizes the legal standards, applicable facts, and OCR's analysis and conclusion.

A. Legal Standards: Facility and Program Access

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.

1. 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.

The concepts of program access and facilities access are related. Under some circumstances, it may be necessary to remove an architectural barrier or barriers 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) (Appendix A to 41 C.F.R. subpart 101-19.6), 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 C.F.R. § 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.

2. 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 the ADA Standards for Accessible Design (ADAAG) (28 C.F.R. Part 36, App. A) as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992.

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).

B. Findings of fact

The Special Education Center is located in Carmichael, California. It was constructed in approximately 1959 as an elementary school, and in 1998, the two restrooms currently used as the public restrooms were renovated. The building became the Special Education Center in 2004. The Special Education Center has offices and also serves as the location for meetings with parents, such as IEPs, due process hearings, resolution meetings, and community meetings. According to the District, all visitors are provided with keys to the accessible restrooms. If there is a community meeting, the restroom doors are left unlocked. Room 15 is the room typically used for meetings with parents. It is a moderate sized conference room with a moveable table and chairs. The route to the restrooms is accessible. The public restrooms are located in a building labeled “Restrooms and Rooms 10-14” on the side.

Women’s restroom

- Entrance: The restroom entrance is accessible, except that it does not have a sign designating the restroom as accessible on the latch side. There is a sign located on the door that is unreadable due to vandalism.
- Toilet stall: The women’s restroom contains four toilet stalls, one of them intended to be accessible. The intended accessible stall is large, measuring 65 inches wide by 99 inches in length. It has a door that swings in and is 90 inches wide. The toilet is wall-mounted with the flush control on the open side. The toilet seat height measures 16 inches above the finish floor. The toilet centerline from the side wall is 15 inches. The grab bar on the rear wall measures 36 inches in length and is mounted with the top of the gripping surface at 27¾ inches above the finish floor. The grab bar on the side wall measures 48 inches in length and is mounted with the top of the gripping surface at 27¾ inches above the finish floor. There is ½ inch of distance between the grab bars and the walls. The toilet paper dispenser is mounted below the side grab bar, approximately 35 inches from the rear wall, and 1½ inches below the side grab

bar. The toilet stall has a dispenser of toilet seat covers mounted on the rear wall above the toilet at 62 inches height.

- Lavatories: There are three identical lavatories in the restroom, at least one of which may be approached and utilized by a person using a wheelchair. The lavatory measures 29½ inches at the top and 26¼ inches to the bottom edge above the finish floor. The lavatory is 18½ inches deep. The pipes are uncovered but only cold water service is provided.
- Mirror: In addition to mirrors above the lavatories, a full length mirror is provided in the restroom.

Men's restroom

- Entrance: The restroom entrance is accessible, except that it does not have a sign designating the restroom as accessible on the latch side. There is a sign located on the door that is unreadable due to vandalism.
- Toilet stall: The men's restroom contains one toilet stall that is intended to be accessible. The stall is large, measuring 64 inches wide by 99 inches in length. It has a door that swings out and is 90 inches wide. The toilet is wall-mounted with the flush control on the open side. The toilet seat height measures 16 inches above the finish floor. The toilet centerline from the side wall is 15½ inches. The grab bar on the rear wall measures 36 inches in length and is mounted at 28 inches high above the finish floor. The grab bar on the side wall measures 48 inches in length and is mounted at 28 inches high. There is ½ inch of distance between the grab bars and the walls. The toilet paper dispenser is mounted below the side grab bar, approximately 35 inches from the rear wall, and ½ inches below the side grab bar. The toilet stall has a dispenser of toilet seat covers mounted on the rear wall above the toilet at 60 inches height.
- Lavatories: There are three identical lavatories in the restroom, at least one of which may be approached and utilized by a person using a wheelchair. The lavatory measures 29¾ inches at the top and 26¼ inches to the bottom edge above the finish floor. The depth of the lavatory is 18½ inches. The pipes are uncovered but only cold water service is provided.
- Mirror: One mirror is provided in the men's restroom above one of the lavatories. The bottom reflective edge is at 52 inches above the finished floor.
- Urinals: The restroom includes 3 urinals, including one with an elongated rim measuring 16¼ inch above the finish floor.

C. Analysis and conclusions of law

The women's and men's restrooms at issue were originally constructed in 1959 and some alterations were completed in 1998, including alterations to create an accessible toilet stall by adding grab bars. The toilets and lavatories in each restroom have not been altered. OCR identified the following elements in the restrooms that do not currently meet the design standards for Section 504 or Title II:

- At each restroom entrance, the District has not provided a sign at the latch side of each door, designating the room and that the restroom is accessible.¹
- The grab bars in the toilet stall were installed in 1998 and were installed at an incorrect height and this would impact the ability of a person with a disability to use the toilet. In addition, the side grab bar in the women's restroom accessible toilet stall is mounted with only ½ inch between the wall/backing and the edge of the grab bar.²
- In each restroom, the toilet seat cover dispenser for the designated accessible stall is located behind the toilet at does not meet the requirements to enable a person with a disability to reach the covers.³
- The toilet seat height and centerline from the wall in each restroom's designated accessible toilet stall do not meet the standards for alterations. However, since the toilets were not moved during alterations, OCR concluded that if the grab bar height and distance from the wall and the toilet seat cover dispenser location and heights are corrected, then the height and centerline of the toilet will meet the program access requirements.⁴

¹ Under the new construction and alterations standards of UFAS, spaces required to be accessible shall be indicated with permanent signs pursuant to §§ 4.1.1(7), 4.1.6(1)(a) and the requirements of § 4.30. Section 4.30.6 requires that interior signage be located alongside the door on the latch side, mounted at a height of between 54 to 66 inches above the finished floor. Interior signage shall meet the other requirements of § 4.30 and Figure 43 with respect to character proportion, color contrast, raised colors or symbols, and the use of the International Symbol of Accessibility. Under the new construction and alterations standards of ADAAG, spaces required to be accessible shall be indicated with permanent signs pursuant to §§ 4.1.1, 4.1.6(1)(b) and the requirements of § 4.30. Section 4.30.6 requires that interior signage be located alongside the door on the latch side, mounted at a height of between 60 inches above the finished floor to the centerline of the sign. Interior signage shall meet the other requirements of § 4.30 and Figure 43 with respect to character proportion, character height, raised and Brailled characters and pictorial symbol signs, finish and contrast, and the use of the International Symbol of Accessibility.

² Under the new construction and alterations standards of ADAAG and UFAS, a toilet stall with an inward-swinging door and a wall-mounted water closet must be a minimum of 92 inches deep by 60 inches wide (ADAAG, § 4.17.3 and Fig. 30; UFAS, Section 4.17.3 and Fig. 30). The toilet seat height shall be 17 to 19 inches above the floor (ADAAG§ 4.16.3; UFAS § 4.16.3). Toilet paper dispensers shall be within reach, or no further than 36 inches from the rear wall (ADAAG § 4.17.3 and Fig. 30; UFAS § 4.17.3 and Fig. 30). Accessible toilet stalls should have grab bars at the rear and side of the toilet, at a height of 33-36 inches above the floor, with the rear grab bar a minimum of 36 inches in length and the side grab bar a minimum of 40 inches in length (ADAAG § 4.17.3 and Fig. 30; UFAS § 4.17.3 and Fig. 30). The centerline of the toilet from the side wall shall be 18 inches (ADAAG § 4.17.3 and Fig. 30; UFAS § 4.17.3 and Fig. 30). There shall be 1½ inches between the grab bars and the walls they are mounted on (ADAAG § 4.26.2; UFAS § 4.26.2).

³ Pursuant to § 4.27.3 of ADAAG and UFAS, the highest operable part of dispensers shall be placed within at least one of the reach ranges specified in §§ 4.2.5 and 4.2.6 of ADAAG and UFAS. Under § 4.2.5, where the clear floor space allows a forward approach by a wheelchair user, the maximum height of the operable part shall be 48 inches. Where a dispenser can be approached parallel, allowing a side reach, the maximum height of the operable part shall be 54 inches (§ 4.2.6).

⁴ See *infra*, footnote 2.

- In each restroom, there is at least one lavatory which can has sufficient clear floor space for a person using a wheelchair to approach. The bottom edge of the lavatories do not meet the design standards of UFAS or ADAAG.⁵ However, since the fixtures were not altered in 1998 and they provide sufficient knee and toe clearance to be usable to a person using a wheelchair, OCR concluded that they provide program access in compliance with Section 504 and Title II.
- In the men's restroom, none of the mirrors are mounted at a height accessible to persons with disabilities.⁶

In summary, OCR concluded that in order to provide accessible restrooms for individuals with disabilities at the Special Education Center, the District is required to alter the restrooms in the Special Education Center. As such, the District entered into the enclosed Agreement to address the violations identified in this case.

The Agreement includes but is not limited to:

- Altering the signs at the entrances of the women's and men's public restrooms;
- Altering the grab bars at the designated accessible toilets in the women's and men's public restrooms;
- Providing toilet seat cover dispensers at an accessible reach height in the designated accessible toilet stalls in the women's and men's public restrooms; and
- Providing a mirror at an accessible height in the men's public restroom.

Under Title II, alterations completed before March 15, 2012 that did not comply with ADAAG or UFAS are required to comply with the 2010 Standards. 28 C.F.R. § 35.151(c)(5). Therefore, all alterations described in the Agreement will be made in accordance with the 2010 Standards.

D. Conclusion

Based on the commitments made in the enclosed 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 Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

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

⁵ Under the new construction and alterations standards of ADAAG and UFAS, lavatories shall be mounted with the rim or counter surface no higher than 34 inches above the finished floor, with clearance of at least 29 inches above the finished floor to the bottom of the apron (ADAAG § 4.19.2; UFAS § 4.19.2). The depth of the lavatory shall be a minimum of 17 inches, measured from the front of the apron to the back wall (ADAAG Figs. 31, 32; UFAS Figs. 31, 32).

⁶ Under the new construction and alterations standards of ADAAG and UFAS, the bottom edge of the reflecting surfaces shall be mounted with the bottom edge no higher than 40 inches (ADAAG § Section 4.19.6; UFAS § Section 4.19.6).

by a duly authorized OCR official and made available to the public. A 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, 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, we 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 Laura Welp at the San Francisco OCR office at (415) 486-55XX, or laura.welp@ed.gov.

Sincerely,

/s/

Naghmeh Ordikhani
Team Leader

Enclosure

cc: Linda Simlick, General Counsel
(By e-mail only)