



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 22, 2022

VIA ELECTRONIC MAIL

Toni Presta
XXXXXXXXXXXX
Superintendent
Jefferson Union High School District
699 Serramonte Boulevard, Suite #100
Daly City, CA 94105

Re: OCR Complaint No. 09-22-1334

Dear Superintendent Presta:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Jefferson Union High School District (District). The complaint alleged that the District discriminated on the basis of disability. Specifically, OCR investigated the following issue:

- 1) Whether the District excludes members of the public with disabilities from attending the District's board of trustees (Board) meetings in person by not providing sufficient accessible parking spaces at the meeting site.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving 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. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District receives funds from the Department and is therefore subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the District and statements provided in the District's data response. OCR also conducted an on-site visit of the District.

After careful review of the information gathered in the investigation, OCR identified a concern that the District is out of compliance with Title II and Section 504 and their implementing regulation with respect to the issue investigated. Prior to OCR completing its investigation and making a compliance determination, the District expressed an interest in voluntary resolution

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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.

Legal Standards

The regulations implementing Section 504 and Title II provide that no qualified person with a disability shall, because a District'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 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.

New Construction/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 Physically 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, 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 District 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 program, service, or activity offered within an existing facility, when viewed in its entirety, is accessible to and usable by individuals with disabilities. The District 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 District 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 building at 699 Serramonte Boulevard (Building) was constructed in 1970, and room 200, where board meetings are held, was built at that same time. According to the District, there were no subsequent alterations to the building itself. The District was not able to provide a definitive answer to the question of when or whether the parking lot was last resurfaced.

Two parking lots serve the Building, parking lot A (Lot A) and parking lot B (Lot B). On August 19, 2022, OCR visited Parking Lots A and B. As of the date of the site visit, OCR found that Lot A had 63 total parking spaces including 4 accessible parking spaces, while Lot B had at least 54 parking spaces including 3 accessible parking spaces. The Building has 2 entrances, one of which opened to parking Lot A, while the other entrance opened to Lot B.

The width and vertical/horizontal slope measurements of all 7 accessible parking spaces were within the allowable width and slope range permitted by the 2010 Americans with Disabilities Act Standards for Accessible Design (2010 Standards). OCR also noted, however, that Lot A and Lot B had no van accessible parking spaces or signs identifying van accessible parking, and that there were no access aisles for any of the accessible parking spaces.

Analysis

Because the District to date was not able to provide a precise determination about when the parking lot was last resurfaced, OCR was not able to definitively determine what standards would apply to this analysis. However, regardless of the standard under which this is analyzed, OCR identified a concern that programs and services at the district office were not readily accessible to individuals with disabilities because all the parking spaces lacked access aisles and because there was no signage identifying van accessible parking spaces.

To respond to that concern, prior to the close of the investigation, the District entered into a resolution agreement agreeing to install van accessible parking spaces in Lot A and Lot B, identification for each accessible parking space, and access aisles for each accessible parking space.

Overall Conclusion

This concludes the investigation of this complaint.

Under Section 302 of the CPM, the allegation under investigation may be resolved at any time when, prior to the conclusion of the investigation, the District expresses an interest in resolving the allegation and OCR determines that it is appropriate to resolve it because OCR's investigation has identified concerns that can be addressed through a resolution agreement. Because the District expressed their willingness to enter into an agreement to resolve OCR's concerns, OCR determined that it is appropriate to resolve this complaint under Section 302 and notified the Complainant of the District's interest in resolution on August 31, 2022.

To address the complaint allegations and OCR's concerns identified in the investigation, the District, without admitting to any violation of law, entered into the enclosed resolution agreement. Under the Resolution Agreement, the District will first submit a proposal to OCR detailing how it will modify Lots A and B to add van accessible parking, access aisles for accessible parking spaces, and identification of each accessible parking space. The District will subsequently confirm when they have implemented their proposal.

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 evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of the resolution agreement and the statutes and regulations at issue in the case.

OCR's determination in this matter 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. 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 District may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because they filed a complaint or participated in the complaint resolution process. If this happens, an individual may file another complaint alleging retaliation.

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, personally identifiable 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 Susanne Mao at Susanne.mao@ed.gov.

Sincerely,

/s/

Blake Thompson
Deputy Chief Attorney

Cc: Director of Bond Projects/Construction Stefanie Phillips at XXXXXXXXXXXX