



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

December 18, 2013

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Judy Jonart
Superintendent
Butte School District No. 1
111 North Montana Street
Butte, Montana 59701

Re: Butte School District No. 1
OCR Reference No. 10131170

Dear Superintendent Jonart:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against Butte School District No. 1. The complaint alleged that, at XXXXXXXX: 1) the music room and gymnasium are inaccessible to students with mobility-impairments because access to the rooms requires the use of stairs; and 2) the restrooms are inaccessible to students with mobility impairments.

OCR has the authority to enforce section 504 of the Rehabilitation Act of 1974 and title II of the Americans with Disabilities Act of 1990. These laws prohibit disability discrimination in programs and activities receiving federal financial assistance from the U.S. Department of Education and by public entities, respectively. The district receives federal financial assistance from this Department and is a public entity.

OCR investigated whether the district is in compliance with the regulatory requirements of section 504 of the Rehabilitation Act of 1973 at 34 CFR 104.21 and title II of the Americans with Disabilities Act of 1990 (ADA) at 28 CFR 35.149 with respect to the accessibility of restrooms and access to the gymnasium floor and music room at West Elementary School.

OCR determined that the evidence supported a conclusion that the district failed to comply with Section 504 and Title II with regard to the accessibility of the student restrooms. OCR's findings of fact and conclusions, set forth below, are based upon information collected during its on-site visit to the school on November 19, 2013, and information provided by the complainant and the district.

Applicable Standards

The Section 504 and Title II regulations contain physical accessibility requirements. Both laws distinguish between existing facilities and new construction. Under Section 504, facilities constructed on or before June 3, 1977 are existing facilities, while new construction refers to facilities constructed after that date. See 34 CFR 104.22–104.23. Title II provides that existing facilities are those constructed on or before January 26, 1992, and facilities constructed after that date are considered new construction. See 28 CFR 35.150–35.151.

For existing facilities, Section 504 and Title II require that an institution operate its program so that, when viewed in its entirety, it is readily accessible to persons with disabilities (program accessibility standard). Under this standard, an institution is not required to make all existing facilities or every part of its facilities accessible, as long as the program or activity provided at each facility is readily accessible to persons with disabilities. See 34 CFR 104.22 and 28 CFR 35.150. An institution can provide program accessibility for existing facilities through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, or any other methods that result in making its programs or activities accessible to persons with disabilities.

The accessibility standard used for new construction depends on the date construction commenced. Construction commenced after June 3, 1977, through January 19, 1991, must comply with the American National Standards Institute standards (ANSI), ANSI A117.1-1961 (R1971). For construction commenced after January 19, 1991, through January 26, 1992, the Uniform Federal Accessibility Standards (UFAS) applies. Construction commenced after January 26, 1992 and before March 15, 2012, must comply with either the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) or UFAS; an institution may choose between ADAAG and UFAS for each facility, but must use the same standard for the entire facility. Construction commenced on or after March 15, 2012, must comply with the 2010 Americans with Disabilities Act Standards for Accessible Design (2010 Standards). New alterations to a facility are analyzed similarly to new construction.

Findings of Fact

XXXXXXXXXX was built in 1968. The district reported that there were no renovations or alterations to the school prior to 2013. In the summer and fall of 2013, the district renovated some elements of the school to address accessibility.

For those elements that were installed during the original construction, the ANSI standards are used as guidance. For elements renovated in 2013, the 2010 Standards apply.

Music Rooms

The school has two music rooms, one for choir and one for band. The two music rooms were completed as part of the original construction and no alterations to either room has occurred since initial construction. Neither of the two rooms required the use of stairs for access. Within each room were risers, which prevented access to the entire space; however, there was sufficient floor space on the lowest level of each room for a wheelchair user and other students.

Gymnasium

The gymnasium was completed as part of the original construction and there were no alterations to the space until 2013. During the fall of 2013, the district installed a lift to allow access from the main floor of the school to the gymnasium floor, which is on a lower level. The new lift provides an accessible route from the main floor of the school to the gymnasium floor.

Restrooms

The school has three sets of restrooms for student use. The restrooms were completed as part of the original construction and no alterations to the spaces occurred until 2013 when the district renovated 2 boys' and 2 girls' restrooms to provide an accessible water closet (toilet) and an accessible lavatory in each. The elements of the school's restroom facilities described below did not meet the applicable accessibility standards.

Force to operate soap dispensers: The soap dispensers were installed during the 2013 renovation. The force to operate the soap dispenser located in closest proximity to the designated accessible sink ranged from 7.5 to 10 pounds in both boys' restrooms and one girls' restroom. The 2010 Standards at 309.4 state that the force required to activate operable parts shall be 5 pounds maximum.

Force to operate flush controls:

The flush controls were installed during the original construction of the school. The force to operate the flush controls ranged from 10 pounds to 14 pounds in both boys' restrooms and one girls' restroom. ANSI is silent on the amount of force required to activate operable parts. The 2010 Standards at 309.4 state that the force required to activate operable parts shall be 5 pounds maximum.

Location of toilets in relationship to the side wall of the toilet stall: The toilets were installed during the original construction of the school. In the summer of 2013, the district installed new toilet stall walls. The centerlines of the designated accessible toilets in the 2 boys' restrooms were located 15 and 19 inches from the side wall. The 2010

Standards at 604.2 state that the centerline of the toilet shall be 16 inches minimum to 18 inches maximum from the side wall or partition.

Height of toilet seats: The toilets were installed during the original construction of the school. Since it is unknown whether the toilet seats are original or have been replaced in the 45 years since the school was built, OCR will use the 2010 Standards as guidance. The toilet seat height ranged from 15 to 16 inches in all four restrooms. The 2010 Standards at 604.4 state that the seat height of a water closet (toilet) above the finish floor shall be 17 inches minimum and 19 inches maximum measured to the top of the seat.

Flush control orientation: The toilets were installed during the original construction of the school. The flush controls in one girls' restroom were oriented toward the closed side of the toilet. ANSI is silent on the orientation of flush controls. The 2010 Standards at 604.6 state that flush controls shall be located on the open side of the water closet (toilet).

Obstruction of maneuvering space within the toilet stall: The designated accessible toilet stall in one girls' restroom included several obstructions. A changing table and a garbage can were located within the stall. The 2010 Standards at 604.8.1 state that wheelchair accessible stalls shall be 60 inches wide minimum by 59 inches deep minimum for floor mounted toilets. While the dimensions of the stall met these standards, the changing table and garbage can encroached on the clear floor space within the stall, leading to the maneuvering space being significantly less than required.

Lack of accessible urinal: The urinals were installed during the original construction of the school. The district did not alter the urinals in any way during the summer 2013 renovation; therefore, the ANSI standards are used as guidance. Both boys' restrooms had multiple wall-mounted urinals with the opening of the basin 24 inches from the floor. None were designated as accessible. ANSI 5.6.5 states that restrooms for men shall have wall-mounted urinals with the opening of the basin 19 inches from the floor, or shall have floor-mounted urinals that are on level with the main floor of the restroom.

With respect to clear floor space in front of the urinals, one of the boys' restrooms had only 46 inches of clear floor space. ANSI is silent on this issue. The 2010 Standards at 305.5 require a minimum of 48 inches clear floor space for forward approach.

Exposed pipes under sinks: The lavatories were installed during the summer 2013 renovation. The pipes under the designated accessible sinks in all four restrooms did not include insulation or any other means to limit contact. The district informed OCR that the insulation was on order and would be installed when received. The 2010 Standards at 606.5 state that water supply and drain pipes under sinks shall be insulated or otherwise configured to protect against contact.

Conclusion

The complainant alleged that the music room at XXXXXXXX is inaccessible to students with mobility-impairments because access to the room requires the use of stairs. OCR found that neither of the school's two music rooms required the use of stairs for access and that, although there were risers within the rooms, there was sufficient space for students using wheelchairs to have access to the rooms. Therefore, the evidence was insufficient for OCR to conclude that the district failed to comply with Section 504 and Title II with respect to this allegation.

The complainant alleged that the gymnasium at XXXXXXXX is inaccessible to students with mobility-impairments because access to the gymnasium requires the use of stairs. OCR found that, in the fall of 2013, the district installed a lift to provide access to the gymnasium from the main floor of the school. Therefore, OCR determined that the evidence is insufficient for OCR to conclude that the district failed to comply with Section 504 and Title II with respect to this allegation.

The complainant alleged that the restrooms at XXXXXXXXXX are inaccessible to students with mobility impairments. OCR found that certain elements of the school's restrooms, as described in the above findings of fact, did not meet the accessibility standards of Section 504 and Title II. Therefore, OCR determined that the district did not comply with Section 504 and Title II and their implementing regulations with respect to this allegation.

The district and OCR entered into discussions regarding the compliance concerns identified by OCR. As a result of these discussions, the district agreed to take the corrective actions set forth in the enclosed Settlement Agreement (agreement). We have concluded that upon full implementation of the commitments in the agreement, the district will be in compliance with Section 504 and Title II with respect to the compliance concerns identified. OCR will monitor the district's implementation of the agreement. After OCR determines that all terms in the agreement are satisfied, OCR will issue a final closure letter to the district.

The findings and conclusion presented in this letter apply only to the specific facts and issues of this complaint. This determination of compliance with Section 504 and Title II is contingent upon district's full implementation of the commitments set forth in the agreement. The district's failure to honor these commitments may result in further action by OCR with respect to this case.

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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

I thank you and your staff members for the cooperation extended to OCR during this investigation. If you have any questions regarding this letter, please contact Mark Farr, special projects coordinator, by telephone at (206) 607-1607, or by e-mail at mark.farr@ed.gov.

Sincerely,

/ s /

Sukien Luu
Supervisory Attorney
Seattle Office

Enclosure: Settlement Agreement

cc: Honorable Denise Juneau, Superintendent