



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

December 19, 2014

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Mr. Ron Wilkinson
Superintendent
Bend-La Pine School District 1
520 NW Wall Street
Bend, Oregon 97701-2699

Re: Bend-La Pine School District 1
OCR Reference No. 10141312 (Skyview Middle School)
OCR Reference No. 10141357 (Ponderosa Elementary School)

Dear Superintendent Wilkinson:

This is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is discontinuing its investigation of the referenced discrimination complaints against the Bend-La Pine School District 1 (the district), based on the enclosed Voluntary Resolution Agreement (agreement) which addresses the complaint allegations.

The complaints alleged that the district is discriminating against individuals with disabilities because certain physical elements at two district schools, Skyview Middle School (MS) and Ponderosa Elementary School (ES), are inaccessible. Specifically, it is alleged that Skyview MS (Reference No.10141312) is inaccessible in the following ways:

1. The flag pole is not on an accessible route.
2. The accessible parking spaces in the parking lot at the front of the building are not located closest to the main entrance.
3. The curb ramps serving the access aisles in the front of the building are too steep.
4. The curb ramp at the drop-off loading zone at the front of the building is too steep, and has a deteriorating surface, which does not provide a stable and firm surface.
5. The surface of the basketball courts has large cracks with changes in level and elongated openings.
6. The pedestrian route connecting the outdoor courtyard with the basketball court is too steep.

7. The outdoor courtyard surface is not maintained and is deteriorating, and does not provide a stable and firm surface.
8. The pedestrian path connecting the accessible parking at the back of the building with the outdoor sports fields is too steep and does not comply with the accessible curb ramp requirements (e.g., no landing or flared sides, etc.).
9. The exterior doors at the rear, front, and side entrances are too heavy to open.
10. The doors to the regular education classrooms, the life skills rooms, the art room, and the shop room are too heavy to open.
11. In all regular education classrooms and the life skills restroom, the sinks have insufficient knee and toe clearance; the pipes under the sinks lack insulation; and the sink faucet controls are out of reach for wheelchair users and require twisting and turning.
12. In all regular education classrooms and the life skills restroom, the paper towel and soap dispensers are out of reach for wheelchair users.
13. The sink in the art room is too high.
14. The shower room controls in the life skills classroom are too high.
15. The pencil sharpeners in the life skills rooms, the art room, and the shop room are outside of reach range for wheelchair users.
16. The appliances and built-in cabinetry in the life skills kitchen are out of reach range and do not provide sufficient clear floor space and knee clearance for wheelchair users.
17. The library's two catalog counters are too high.
18. The drinking fountain by the elevator does not provide a water flow of at least 4 inches high.
19. The eyewash station installed in the sink in the shop room is too high.
20. The display racks and counter in the counseling office are too high.
21. The coat hooks in the nurse's office are too high.
22. The cafeteria food line counter and tray line are too high.
23. The lunch tables with attached seating in the cafeteria do not provide sufficient clear floor space for wheelchair users.

It is also alleged that Ponderosa ES (Reference No. 10141357) is inaccessible in the following ways:

1. The swing set play areas have changes in level at entrances; have unstable and loose bark chips for surfaces; and have wells under the swings.
2. Two play structure areas have changes in level at entrances, and have unstable loose bark chips for surfaces.
3. Outdoor tables do not provide sufficient knee clearance for wheelchair users.
4. The greenhouse is not on an accessible route connecting it to the school campus; has a steep slope and change in level at the door; and has tables which are too high.
5. Classroom and common “pod” area sinks do not provide sufficient knee clearance for wheelchairs users.
6. The paper towel dispensers and soap dispensers in classrooms and common “pod” areas are out of reach for wheelchair users.
7. The drinking fountains in classrooms and common “pod” areas are too high and do not provide sufficient knee clearance for wheelchair users.
8. The main entrance doors in front of the building are too heavy to open; open and close too quickly; and do not always open when the actuator is pressed.
9. Individuals with disabilities have been unable to use the actuator to the main entrance of the building because it has been blocked by a sign during school events.
10. The doors to the lunch room and the multipurpose room, where the stage is located, are too heavy to open.
11. Individuals with disabilities have been unable to access the stage during school events because public displays, such as silent auction items, have blocked the entrances to the ramp, which provides access the stage.

OCR accepted these complaints for resolution under the authority of section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990, and their implementing regulations. Section 504 and Title II 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, and is therefore required to comply with these laws.

Under the Section 504 and Title II regulations, a school district is prohibited from excluding, denying, or discriminating against people with disabilities because its facilities are unusable by or inaccessible to them. See 34 CFR 104.21; 28 CFR 35.149. This means that with respect to existing facilities, a school district is required to operate each program or activity housed in the existing facility so that the program or activity, when viewed in its entirety, is readily accessible to and usable by people with disabilities. Under this program accessibility standard, a school district is not required to make all existing facilities or every

part of its existing 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; 28 CFR 35.150. A school district can provide program accessibility in existing facilities through such means as redesign of equipment, re-assignment 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. See 34 CFR 104.22; 28 CFR 35.150. In contrast, newly constructed and altered facilities are required to be designed and constructed in compliance with the applicable accessibility design standards. See 34 CFR 104.23(a) and (b); 28 CFR 35.151(a) and (b). The specific accessibility standards that apply to a newly constructed or altered facility depends on the date that the construction or alteration commenced. See 34 CFR 104.23(c); 28 CFR 35.151(c).

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. In such a case, the provisions of any agreement must be aligned with the complaint allegations and information obtained during the discontinued investigation and must be consistent with applicable regulations.

In these cases, the district requested to resolve the complaints prior to the conclusion of OCR's investigation. Subsequent discussion with the district resulted in the district signing the enclosed agreement, which when fully implemented, will resolve the issues raised by the complaints. The actions that the district will take under the agreement include: reviewing facility maintenance policies and procedures to ensure that the district maintains its accessible features at the schools; conducting an assessment to ensure that the facilities at Skyview MS and Ponderosa ES comply with applicable accessibility standards; addressing any facilities which are determined to be inaccessible; designating an employee who will be responsible for providing accessibility information and addressing accessibility complaints at the schools; and providing notice and/or training to school employees.

OCR will monitor the district's implementation of the agreement and will close the complaints when OCR determines that the terms of the agreement have been satisfied.

This letter sets forth OCR's determination in these individual OCR complaints. 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.

Thank you for the cooperation that you and your staff extended to OCR in resolving these complaints. If you have any questions, you may contact Nicholas Rock, Equal Opportunity Specialist, by telephone at (206) 607-1636, or by e-mail at nicholas.rock@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Voluntary Resolution Agreement

cc: Rob Saxton, Deputy Superintendent of Public Instruction

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Attorney & Shareholder, Bryant, Levlien & Jarvis, PC