



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

915 2<sup>ND</sup> AVE., SUITE 3310  
SEATTLE, WA 98174-1099

January 13, 2015

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Dr. Linda Reksten  
Superintendent  
Polson School District No. 23  
111 4<sup>th</sup> Avenue E  
Polson, Montana 59860

Re: Polson School District No. 23  
OCR Reference No. 10151031

Dear Superintendent Reksten:

This is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is discontinuing its investigation of the above-referenced complaint against the Polson School District No. 23 (the district) based on the enclosed Voluntary Resolution Agreement (agreement), which addresses the complaint allegation. The complaint alleged that the district is discriminating against individuals with disabilities because it fails to provide curb ramps in the sidewalk in front of the Cherry Valley Elementary School.

OCR accepted this complaint 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, including pedestrian routes, are unusable by or inaccessible to them. See 34 CFR 104.21; 28 CFR 35.149. Generally, newly constructed and altered facilities, such as accessible routes, 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). Additionally, newly constructed or altered street level pedestrian walkways are required to contain curb ramps at intersections to streets, roads, or highways. See 28 CFR 35.151(i).

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 this case, the district requested to resolve the complaint prior to the conclusion of OCR's investigation. Subsequent discussions with the district resulted in the district signing the enclosed agreement, which when fully implemented, will resolve the issue raised by the complaint. The actions that the district will take under the agreement include: (a) reviewing facility and/or disability policies and procedures to ensure that any newly constructed or altered sidewalks will be accessible; (b) conducting an assessment to ensure that the public sidewalk at Cherry Valley Elementary School complies with applicable accessibility standards; (c) altering the sidewalk if it is determined to be inaccessible; (d) providing notice to students, parents, employees and members of the community of any alterations made under the agreement; and (e) providing training to certain school employees, including the Title II coordinator.

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

This letter sets forth OCR's determination in an individual OCR complaint. 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 extended to OCR in resolving this complaint. If you have any questions, you may contact Caitlin Burks, Attorney, by telephone at (206) 607-1620, or by e-mail at [caitlin.burks@ed.gov](mailto:caitlin.burks@ed.gov); or you may contact Amy Kim, Attorney, by telephone at (206) 607-1621, or by e-mail at [amy.kim@ed.gov](mailto:amy.kim@ed.gov).

Sincerely,

Paul Goodwin  
Team Leader

Enclosure: Voluntary Resolution Agreement

cc: Denise Juneau, Superintendent of Public Instruction  
Fleming & O'Leary, PLLP