



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

December 16, 2015

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Mr. Colt Gill
Superintendent
Bethel School District 52
4640 Barger Drive
Bethel, Oregon 97402

Re: Bethel School District 52
OCR Reference No. 10151226

Dear Superintendent Gill:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is discontinuing its investigation of the referenced complaint of disability discrimination against the Bethel School District 52 (District) based on the enclosed Voluntary Resolution Agreement (agreement), which the District signed to address the complaint allegation.

The complaint alleged that the District discriminated against a person with a mobility disability who uses a wheelchair, when she was denied an opportunity to attend a wrestling competition at Willamette High School on the evening of January 7, 2015, because the competition was held in an inaccessible 2nd floor gymnasium, which could only be accessed by stairs.

OCR accepted this complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973, title II of the Americans with Disabilities Act of 1990, and their implementing regulations. These laws prohibit disability discrimination in programs and activities that receive 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 civil rights laws.

The specific legal issue that OCR investigated in this complaint was whether the District discriminated against a qualified individual with a disability, because the gymnasium facilities at Willamette High School (gym facilities) are inaccessible to or unusable by individuals with disabilities, by excluding her from participation in and/or denying her the benefits of its services, programs, or activities.

The regulations implementing Section 504 at 34 CFR 104.21-23 and Title II at 28 CFR 25.149-151 provide, among other requirements, that no qualified individuals with disabilities shall, because a school district's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of the school district or be subjected to discrimination by the school district.

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. See 34 CFR 104.22(a); 28 CFR 35.150(a). 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(a); 28 CFR 35.150(a)(1). A school district is permitted to provide program accessibility in existing facilities through such means as a re-design or acquisition of equipment, re-assignment of services to accessible buildings, delivery of services at alternate accessible sites, alteration of existing facilities or construction of new facilities, or any other method that results in making its services, programs, or activities readily accessible to and usable by people with disabilities. See 34 CFR 104.22(b); 28 CFR 35.150(b)(1).

With respect to altered or newly constructed facilities, generally, each facility or part of a facility that has been altered or newly constructed is required to be designed, constructed, and maintained in operable working condition, in compliance with the applicable standard for accessibility design. See 34 CFR 104.23(a) and (b); 28 CFR 35.133(a), and 35.151(a) and (b). The specific accessibility standard that applies to an altered or newly constructed facility depends upon the date that the alteration or construction commenced. See 34 CFR 104.23(c); 28 CFR 35.151(c).

Additionally, Section 504 and Title II require a school district to ensure that interested persons can obtain information from the district about the existence and location of its accessible services, activities, and facilities, and designate at least one employee who will coordinate and carry out the district's efforts to comply with the Section 504 and Title II regulations, including the investigation of any disability discrimination complaints made under the district's grievance procedures. See 34 CFR 104.7 and 104.22(f); 28 CFR 35.107 and 35.163(a). A school district must also take continuing steps to provide notice of the district's designated employee, the availability of information about the district's accessible services, activities, and facilities, and that the district does not discriminate on the basis of disability. See 34 CFR 104.8; 28 CFR 35.106 and 35.107(a).

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of OCR's investigation, the recipient expresses an interest in resolving the complaint.

In this case, the District requested to resolve the complaint prior to the conclusion of OCR's investigation. When this occurs, the provisions of any agreement to resolve the complaint must be aligned with the complaint allegation and any information obtained during the discontinued investigation, and must be consistent with applicable regulations.

The preliminary information obtained by OCR during its investigation showed that the complainant, who is a qualified individual with a disability who uses a wheelchair, was unable to attend a wrestling meet held open to the public on January 7, 2015, between two private wrestling organizations (the Willamette Wrestling Club and the Fern Ridge Wrestling Club) because the wrestling meet was held in the high school's upper gymnasium, which could only be accessed by stairs. The information indicates that there is a lower gymnasium on the ground floor of the school.

The District informed OCR that the January 7, 2015, event was sponsored by the Willamette Wrestling Club who rented the District's upper gymnasium for a wrestling scrimmage. The District stated that although there is a process in place which requires third parties to hold competitions, like wrestling meets, in the accessible lower gymnasium, the upper gymnasium was inadvertently rented for the January 7, 2015, event because the clubs believed that the scrimmage was a practice, and not a formal competition.

The actions that the District will take under the agreement include:

1. determining what accessibility standards the gym facilities are required to comply with and assessing whether they comply with the applicable standards;
2. developing and implementing a plan to address any elements of the gym facilities that do not comply with the applicable accessibility standards;
3. revising its policies and procedures to ensure that any athletic events and activities held at Willamette High School are scheduled in accessible facilities, accessibility concerns raised by visitors are promptly resolved, and that interested persons can obtain accurate accessibility information about District facilities;
4. providing written notice to students, parents, employees, organizations which lease, rent, or use District facilities, and other interested individuals of the District's commitment to provide accessible programs, services, and facilities in compliance with Section 504 and Title II, of its revised policies and procedures, and the name and contact information of the employee who is responsible for addressing accessibility questions and concerns (designated employee);
5. providing training to the designated employee and other employees who are significantly involved in scheduling events in District facilities of the relevant changes made under the agreement; and

6. providing the complainant with individual relief, including notifying her of the District's actions taken under the complainant agreement, providing her with a list of upcoming athletic events at the gym facilities and inviting her to attend an event of her choice at no cost, and giving her the name and contact information of the designated employee who will be available to address any future accessibility concerns.

OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by January 15, 2016.

This letter sets forth OCR's determination in an individual OCR complaint and should not be interpreted to address the District's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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, OCR 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 the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions about this letter, please do not hesitate to contact Caitlin Burks, Attorney, by telephone at (206) 607-1620, or by e-mail at caitlin.burks@ed.gov.

Sincerely,

/X/

Paul Goodwin
Team Leader

Enclosure: Voluntary Resolution Agreement

cc: Dr. Salam Noor, Deputy Superintendent of Public Instruction