



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

August 13, 2019

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Dr. Gene Sementi
Superintendent
West Valley School District No. 363
2805 North Argonne Road
Spokane, Washington 99212

Re: West Valley School District No. 363
OCR Reference No. 10191112

Dear Dr. Sementi:

This letter is to inform you of the disposition of the above-referenced complaint filed against the West Valley School District No. 363 (district) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complaint alleged that the district is discriminating on the basis of disability because the play area at the Millwood Kindergarten Center (play area) is inaccessible to individuals with disabilities. Specifically, the complaint alleged that there is no accessible route to and within the play area and the play area lacks accessible play components.

As explained below, prior to completion of OCR's investigation, the district expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegations.

OCR investigated this case under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), and their implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities receiving federal financial assistance. Title II prohibits disability discrimination by public entities. The district receives federal financial assistance from the Department and is a public entity. Therefore, the district is required to comply with these federal civil rights laws.

The regulation implementing Section 504 at 34 C.F.R. § 104.21 provides that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by disabled persons, be denied the benefits of, excluded from participation in, or otherwise be subjected to

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discrimination under any program, service, or activity of the recipient. The regulation implementing Title II at 28 C.F.R. § 35.149 provides that no qualified individual with a disability shall, because a public entity'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 a public entity, or be subjected to discrimination by any public entity.

OCR's investigation to date included reviewing information provided by the complainant and the district. Based on that review, OCR has concerns that certain elements of the play area may be inaccessible to or unusable by individuals with disabilities.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the entity expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation. In this case, the district requested to resolve the complaint prior to the conclusion of OCR's investigation. In light of the district's willingness to comprehensively address the concerns identified by OCR without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate. Subsequent discussions with the district resulted in the district signing the enclosed agreement.

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.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in federal court regardless of OCR's determination.

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.

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 September 4, 2019.

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Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Charlotte Cunningham, Attorney, by telephone at (206) 607-1610, or by e-mail at charlotte.cunningham@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Voluntary Resolution Agreement