



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 22, 2020

Via Electronic Delivery: neely.kirwan@hoodriver.k12.or.us

Neely Kirwan
Chief Administrative Officer
Director of Curriculum & Instruction
Hood River County School District
1011 Eugene Street
Hood River, Oregon 97031

Re: Hood River County School District
OCR Reference No. 10201149

Dear Ms. Kirwan:

This letter is to inform you of the disposition of the above-referenced complaint against Hood River County School District (District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complainant alleges that the district is discriminating against individuals with disabilities, based on disability, by failing to provide accessible facilities at several district locations. Specifically, the complainant alleged that:

1. There is an insufficient number of designated accessible parking spaces, including van accessible spaces, at Hood River Valley High School (high school), the district's administrative office facility, and the district's bus transportation facility.
2. The designated accessible parking spaces lack appropriate signage at Westside Elementary School (ES), Mid Valley ES, Parkdale ES, Cascade Locks ES, Wy'east Middle School (WMS), the high school, and the district's administrative office facility.
3. The designated accessible parking spaces have slopes that exceed applicable accessibility standards at Mid Valley ES, Parkdale ES, the high school, and the district's administrative office facility.
4. The designated accessible parking spaces at the WMS athletic fields have no striping, no van accessible parking space; no access aisles; lack appropriate signage; and have obstacles including dumpsters and dirt mounds.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

5. The WMS football bleachers are not accessible because access is limited to stairs and there are no areas below the bleachers for spectator seating.
6. The WMS football bleachers have no accessible route to adjacent restrooms.
7. The high school football west bleachers are not accessible because the ramp is too steep, does not have a level landing, and has no drop off rail on either side.
8. The high school baseball bleachers are not accessible because there is no accessible route to the north or south ramps from the parking lot; the ramps are too steep; do not have a level landing; have rocks obstructing the surfaces; and the handrails are not long enough or free of sharp or abrasive elements.
9. The softball bleachers are not accessible due to uneven, muddy terrain leading up to the concrete pad.
10. The high school baseball indoor training facility is not accessible because (a) there are steps leading down from the parking lot on the north side; and (b) the route to the south side from the parking lot has loose rock and uneven dirt and grass surface.
11. The high school gymnasium is not accessible because all entry doors do not meet applicable width requirements; the upper gym is accessible only by stairs; entrance doors to staff restrooms and two interior public restrooms do not meet applicable width requirements; and the boys restroom does not have an accessible toilet stall, mirror, towel dispenser, or insulated pipes under the sink.

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 to enforce Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibits disability discrimination in programs and activities receiving federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits disability discrimination by public entities. The District receives federal financial assistance from this Department and is a public entity. Therefore, it is required to comply with Section 504 and Title II.

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 C.F.R. §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 C.F.R. §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 C.F.R. §104.22 and 28 C.F.R. §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.

Based on OCR's investigation to date, OCR has a concern that the District may not be in compliance with Section 504 and Title II with regard to the identified physical accessibility allegations. The complaint included detailed descriptions of alleged physical accessibility concerns, including current dimensions of areas of concern such as parking spaces, ramps, railings, steps and locations of bleachers that do not appear to meet the 2010 Standards. In addition, during the course of the investigation, the District informed OCR that they were in the process of developing plans for future work necessary to ensure compliance with applicable accessibility standards.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before OCR issues its final determination, the recipient expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve the issues under investigation with an agreement. In light of the District's willingness to address the concerns identified by OCR comprehensively 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, which when fully implemented, will address the issue raised in this 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.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in 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 August 14, 2020.

Thank you for your cooperation during the resolution of this complaint. If you have any questions, please contact Tania Lopez, senior attorney, at (206) 607-1623 or via email at tania.lopez@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure