



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 21, 2021

Via E-mail Only to: elipkind@missoulacounty.us

Dr. Erin Lipkind
Missoula County Superintendent of Schools

Re: Potomac School District No. 11
OCR Reference No. 10211106

Dear Superintendent Lipkind:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Potomac School District No. 11 with the U.S. Department of Education, Office for Civil Rights (OCR). The complaint alleged that the District discriminated against students and other persons with disabilities by failing to provide accessible parking and accessible playground equipment at the Potomac Elementary School.

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 allegation.

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. These statutes prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance from the U.S. Department of Education and by public entities, respectively. The District is a recipient of federal financial assistance from this Department and is a public entity.

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

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The regulations implementing Section 504 at 34 C.F.R. § 104.21 and Title II at 28 C.F.R. § 35.149 prohibit a qualified individual with a disability from being excluded from participation in, or being denied the benefits of the services, programs, or activities of a public entity because a public entity's facilities are inaccessible to or unusable by individuals with disabilities.

The investigation to date indicated that Potomac Elementary School currently has three distinct parking areas and two distinct play areas. OCR has gathered information provided to it by the Complainant and the District as well as publicly available information. Based on the information gathered to date, OCR has identified a concern regarding the accessibility of the parking areas and play areas.

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 allegation 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 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.

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 reports under the agreement are due by **November 19, 2021** and were submitted to OCR on October 21, 2021. Thank you for your timely submission. OCR will review these reports and respond in accordance with the agreement.

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 Andrew Jennings, Attorney, by telephone at (206) 607-1606, or by e-mail at andrew.jennings@ed.gov.

Sincerely,

Paul Goodwin
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: John P. Rouse, Principal, Potomac Elementary School
Via E-mail Only to: jrouse@potomacschoolmontana.us

Kevin Twidwell, Counsel for the District
Via E-mail Only to: ktwidwell@kalevalaw.com