



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 1, 2023

Via e-mail only to: bub.derek@westada.org

Dr. Derek Bub
Superintendent
West Ada School District
1303 East Central Drive
Meridian, Idaho 83642

Re: West Ada School District
OCR Reference No. 10231052

Dear Dr. Bub:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the referenced complaint of disability discrimination against the West Ada School District. OCR investigated whether the District discriminates against individuals with disabilities at XXXXXXXX by providing: (1) inaccessible exterior routes; (2) inaccessible play area surfaces; and (3) inaccessible playground equipment.

As explained below, prior to the 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 issues under investigation.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit disability discrimination in programs and activities receiving federal financial assistance. OCR also investigated this complaint under the authority of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulations at 28 C.F.R. Part 35, which prohibit disability discrimination by public entities. The District is a recipient of federal financial assistance from the Department and is a public entity, and it is therefore subject to Section 504 and Title II.

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 Section 504 and Title II regulations require that a school district's new construction and alterations be designed and constructed so that the facilities or part of the facilities are readily accessible to and usable by individuals with disabilities, if the construction commenced after June 3, 1977, for purposes of Section 504, and after January 26, 1992, for purposes of Title II. 34 CFR § 104.23; 28 CFR § 35.151. The Title II regulations also require that a school district maintain in operable working condition its accessible facilities and equipment. 28 CFR § 35.133(a).

OCR's investigation to date indicates that XXXXXXXXXXXX was originally constructed by the District in 1997 and has undergone alterations since then, and that the School site offers three separate playgrounds, which students use during multiple recesses. OCR reviewed information provided by the Complainant and the District. The information indicates: (1) there may be cracks and heaving in the accessible exterior routes connecting the School building with the playgrounds; (2) the playgrounds may have uneven wood chip surfaces; and (3) each of the playgrounds may not provide a sufficient variety of ground level play components and/or a sufficient number of elevated play components connected by a transfer system or ramp. Based on the foregoing, OCR has a concern that the District's exterior routes, playground surfaces, and playground equipment at XXXXXXXXXXXX may not be readily accessible to and usable by individuals with disabilities as required by Section 504 and Title II.

In accordance with § 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 allegations and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during an investigation. In this case, the District requested to resolve the complaint before OCR concluded its investigation. Based on the District's willingness to address the concerns identified by OCR comprehensively without further investigation, OCR determined that it is appropriate to enter into a voluntary resolution agreement. 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 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 individual 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.

OCR will monitor the implementation of the Agreement and will close the monitoring of the Agreement when OCR determines that the District has complied with the terms of the Agreement and the statutes and regulations at issue in this complaint.

Thank you for the cooperation that you and the District's staff extended to OCR in resolving this complaint. If you have any questions regarding this letter, please contact Margot Stevens, attorney, at (202) 987-1245 or margot.stevens@ed.gov

Sincerely,

David Kauffman
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Ms. Anne S. Magnelli, Partner (via e-mail only to: amangelli@ajhlaw.com)
Ms. Amy White, General Counsel (via e-mail only to: white.amy@westada.org)