UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

June 12, 2015

Reference: 06-14-1592

Dr. Telena Wright, Superintendent
Argyle Independent School District
800 Eagle Drive
Argyle, Texas 76226

Dear Dr. Wright:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint filed against the Argyle Independent School District (District). The complaint, which OCR received on September 1, 2014, alleged discrimination based on disability. Specifically, the complainant alleged that the District's website is inaccessible to individuals with visual impairments; and that several District facilities are inaccessible to individuals with mobility impairments.

OCR is responsible for determining whether organizations or entities that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 *et seq*., and its implementing regulation, at 34 C.F.R. Part 104 (2012), which prohibits discrimination on the basis of disability. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132 *et seq*., and its implementing regulation, at 28 C.F.R. Part 35 (2012). Under Title II, OCR has jurisdiction over complaints of disability discrimination filed against public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to both Section 504 and Title II.

Based on the complaint allegations OCR opened the following legal issues for investigation:

1. Whether the District's discriminates against individuals with disabilities by maintaining a website that is inaccessible to individuals with visual impairments, in violation of Section 504 (34 C.F.R. § 104.4), and Title II (28 C.F.R. § 35.130, and 28 C.F.R. § 35.160);

2. Whether the District discriminates against individuals with disabilities because certain aspects of the Hilltop Elementary School are physically inaccessible to individuals with mobility impairments (e.g., accessible entrances not identified, and perimeter barriers and unstable surfaces at the play area), in violation of Section 504 (34 C.F.R. §§104.21 - 104.23) and Title II (28 C.F.R. §§ 35.149 - 35.151);

3. Whether the District discriminates against individuals with disabilities because certain aspects of the Argyle Middle School are physically inaccessible to individuals with mobility impairments (e.g., accessible entrances not identified; lack of accessible routes to the athletic fields; lack of accessible parking at the athletic fields; and accessible parking near the Middle School building does not serve vans or wheelchair lifts), in violation of Section 504 (34 C.F.R. §§104.21 -104.23) and Title II (28 C.F.R. §§ 35.149 - 35.151); and

4. Whether the District discriminates against individuals with disabilities because certain aspects of the Argyle High School are physically inaccessible to individuals with mobility impairments (e.g., accessible entrances not identified;, lack of accessible routes to the athletic fields, lack of accessible seating at the baseball fields, lack of accessible routes an accessible parking for the baseball fields, and lack of curb cuts for cross-street pathways) , in violation of Section 504 (34 C.F.R. §§ 104.21 -104.23) and Title II (28 C.F.R. §§ 35.149 - 35.151).

Legal Standards

Website & Emerging Technology Accessibility

Both Section 504 and Title II state that individuals with disabilities shall not be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. Additionally, the Title II regulations have requirements for communications, which state in pertinent part that a public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

On June 29, 2010, OCR and the U.S. Department of Justice Civil Rights Division jointly issued a Dear Colleague Letter that addressed the use of emerging technologies. The letter states that schools ought not to purchase, require or recommend use of any dedicated electronic book reader "unless or until the device is fully accessible to individuals who are blind or have low vision," or they needed to "provide reasonable accommodation or modification so that a student can acquire the same information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use."

On May 26, 2011, OCR issued a Dear Colleague Letter which included Frequently Asked Questions (FAQ) and further clarified its June 29, 2010 Dear Colleague Letter. The FAQ makes clear that the June 29, 2010 Dear Colleague Letter also applies to elementary and secondary institutions and clarifies that students with disabilities, especially students with visual impairments, are to be afforded "the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students." The FAQ explains that the educational institution must ensure that students with disabilities can access the educational opportunities and benefits with "substantially equivalent ease of use" as students without disabilities. Should the educational institution use a device that is not fully accessible, the institution must provide "accommodations or modifications that permit [students with

disabilities] to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner." The FAQ also makes clear that an accommodation or modification that is available only at certain times or under certain conditions (such as when an aide is available to read to the student) will not be considered "equally effective and equally integrated" where other students have access to the same information at any time and any location, as is the case with a website or other online content. Additionally, the FAQ states that online programs are covered under the June 29, 2010 and May 26, 2011 Dear Colleague Letters and stresses the importance of planning to ensure accessibility from the initial design. The policies set forth in these documents apply to all forms of information technology. OCR relies on these general principles in assessing the accessibility and effectiveness of communication.

Physical Accessibility

The accessibility requirements of the Section 504 implementing regulations are found at 34 C.F.R. §§ 104.21-104.23. Comparable sections of the Title II implementing regulations are found at 28 C.F.R. §§ 35.149-35.151. Both 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149 provide generally that no qualified individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by disabled individuals, be excluded from participation in, or denied the benefits of services, programs or activities; or otherwise be subject to discrimination by the recipient. The regulations implementing Section 504 and Title II each contain two standards for determining whether a recipient's/public entity's facilities are accessible to or usable by persons with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility.

For purposes of determining accessibility, a "facility" is defined at 34 C.F.R. § 104.3(i) to include "all or any portion of buildings, structures, equipment, roads, walks, parking lots or other real or personal property or interest in such property." Under 28 C.F.R. § 35.104, a "facility" means "all or any portion of buildings, structures, sites, complexes, equipment, ... walks, ...or other real or personal property, including the site where the building, property, structure or equipment is located." Interpretive guidance to the Title II regulation issued by the U.S. Department of Justice states that the term "facility" includes both indoor and outdoor areas where human-constructed improvements, structures, equipment or property have been added to the natural environment.

For "existing facilities," the regulations require a recipient/public entity to operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This standard does not require a recipient/public entity to make each existing facility or every part of an existing facility physically accessible if alternative methods are effective in providing access to the service, program, or activity in question. The standard for program accessibility in existing buildings requires the recipient to make the program, not the building, accessible.

For "new construction," the regulations require that the newly constructed facilities or parts of facilities be designed and constructed in such a manner that they are readily accessible to and usable by individuals with disabilities. For new alterations that affect or could affect usability,

the regulations require, to the maximum extent feasible, the alterations to be made in such manner that the altered portion(s) of the facility is/are readily accessible to and usable by individuals with disabilities.

Play Areas

A "play area" meets the definition of "facility" under the Section 504 and Title II regulations, 34 C.F.R. § 104.3(i) and 28 C.F.R. § 35.104. A "play area" is defined in the 2010 ADA Standards for Accessible Design as, "A portion of a site containing play components designed and constructed for children." The 2010 ADA Standards for Accessible Design clarify that a "play component" is "An element intended to generate specific opportunities for play, socialization, or learning. Play components are manufactured or natural; and are stand-alone or part of a composite play structure."

The 2010 ADA Standards for Accessible Design were the first to affirmatively impose a duty on public entities to ensure that play areas are accessible to individuals with disabilities. The applicable requirements are listed in section 1008 of the 2010 ADA Standards for Accessible Design. Even though no accessibility standards existed before the 2010 ADA Standards for Accessible Design that were specifically targeted for play areas, the U.S. Department of Justice has clarified that there is no "safe harbor" provision (such as the date of construction of the play area) which allows entities to be absolved from compliance with the 2010 ADA Standards for Accessible Design as they relate to play areas.

ASTM F 1292-99 and ASTM F 1292-04 establish a uniform means to measure and compare characteristics of surfacing materials to determine whether materials provide a safe surface under and around playground equipment. These standards are referenced in the play areas requirements of the 2010 ADA Standards for Accessible Design when an accessible surface is required inside a play area use zone where a fall attenuating surface is also required. ASTM F 1951-99 establishes a uniform means to measure the characteristics of surface systems in order to provide performance specifications to select materials for use as an accessible surface under and around playground equipment. Surface materials that comply with this standard and are located in the use zone must also comply with ASTM F 1292. The test methods in this standard address access for children and adults who may traverse the surfacing to aid children who are playing.

During the course of OCR's investigation, the District requested to voluntarily resolve the complaint allegations prior to OCR's completion of its investigation. On June 12, 2015, the District submitted the enclosed Resolution Agreement, which OCR has determined addresses the compliance concerns raised in this complaint and which, when fully implemented, will resolve this complaint.

OCR will monitor the implementation of the Agreement by the District to determine whether the commitments made by the District have been implemented consistent with the terms of the Agreement. Although verification of the remedial actions taken by the District can be accomplished by a review of reports and other documentation provided by the District, in some instances, a future monitoring site visit may be required to verify actions taken by the District. If the District fails to implement the Agreement, as specified, OCR will resume its investigation. If

the District determines a need to modify any portion of the Agreement, the District may submit proposed revisions to OCR.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. 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.

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.

We thank you for the cooperation extended to us during the course of this investigation. If you have any questions regarding this letter, you may contact Tanya Oliveira, Attorney, at (214) 661-9679 or me at (214) 661-9608, or paul.coxe@ed.gov.

Sincerely,

Paul Edward Coxe
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

cc:

XXXX, Attorney
Abernathy, Roeder, Boyd & Hullet, P.C.
XXXX