

June 6, 2014

Dr. Glenn Fortmayer, Superintendent  
Southeast U.S.D. # 247  
506 South Smelter  
Cherokee, Kansas 66724

Re: OCR Docket Nos. 07141046 and 07141047

Dear Superintendent Fortmayer:

On December 12 and 13, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received complaints alleging discrimination on the basis of disability by the Southeast U.S.D. # 247 (District), Cherokee, Kansas. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

The complaint alleged the District's administrative office parking lot, the Weir Elementary School and parking lot, and the Cherokee Elementary School and parking lot are not accessible to individuals with mobility impairments.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA).
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

OCR inspected District buildings identified by the complainant to determine compliance with the accessibility requirements of Section 504, found at 34 C.F.R. §§ 104.21-104.23, and Title II, 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 school district's facilities are inaccessible to or unusable by persons with disabilities, be excluded

from participation in, denied the benefits of, or otherwise be subjected to discrimination by that school district. Additionally, 34 C.F.R. § 104.22(f) and 28 C.F.R. § 35.163 require recipients to adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by disabled persons.

The Section 504 and Title II regulations contain two standards for determining whether a District's programs, activities and services are accessible to individuals with disabilities. One standard applies to existing facilities and the other covers new construction and alterations. The applicable standard depends upon the date of construction and/or alteration of the facility. Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977; the applicable date under the Title II regulations is before January 26, 1992.

For existing facilities, 34 C.F.R. § 104.22(a) and 28 C.F.R. § 35.150(a) require a District to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. This standard does not necessarily require that a District make each existing facility or every part of an existing facility accessible if alternative methods are effective in providing overall access to the service, program, or activity.

Facilities constructed or altered on or after the above dates are considered new construction or alterations under Section 504 and Title II standards. With respect to newly constructed facilities, 34 C.F.R. § 104.23(a) and 28 C.F.R. § 35.151(a) require each facility be readily accessible to and usable by individuals with disabilities. With respect to alterations, 34 C.F.R. § 104.23(b) and 28 C.F.R. § 35.151(b) require alterations that affect usability be readily accessible to and usable by disabled persons to the maximum extent feasible.

Facilities constructed or altered on or after June 3, 1977 but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards A117.1-1961. On or after January 18, 1991, but prior to January 26, 1992, new construction or alterations must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). After January 26, 1992, but prior to September 15, 2010, new construction or alterations must comply with either the UFAS or the Americans with Disabilities Act Accessibility Guidelines 1991 Standards (1991 Standards). On or after September 15, 2010, and before March 15, 2012, the new construction and alterations may comply with one of the following: the Americans with Disabilities Act Accessibility Guidelines 2010 Standards (2010 Standards), UFAS, or the ADAAG Standards.

The Department of Justice (DOJ) in September 2010, adopted the 2010 ADA Standards for Accessible Design (2010 Standards). The 2010 Standards took effect on March 15, 2012 and replace DOJ's original ADA standards. DOJ's standards apply to facilities covered by the ADA, including places of public accommodation, commercial facilities, and state and local government facilities. OCR applies the 2010 Standards to buildings or features constructed or altered after March 15, 2012. The 2010 Standards may be accessed at [http://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards\\_prt.pdf](http://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards_prt.pdf).

The District informed OCR of the groundbreaking and/or dates of alterations for the Administrative Office, Weir and Cherokee Elementary Schools. The following information was provided by the District:

	<u>Groundbreaking</u>	<u>Alteration Date</u>
District Office	1972	2007
Weir Gym	1936	
Weir Main Bldg.	1916	
Weir South Wing	1993	
Cherokee Main Bldg.	1925	1957Gym; Additions to main building in 1987 and 1997
Cherokee West Wing	1997	
Cherokee East Wing	2000	

OCR inspected the District's Administrative Office parking lot, the Weir Elementary School and parking lot, and the Cherokee Elementary School and parking lot. In the District's data response, the District indicated that new construction and alterations commenced in 1997, 2000, and 2007 were completed using the 1991 Americans with Disabilities Act Accessibility Guidelines (1991 Standards). As a result, OCR primarily utilized the 1991 Standards for its accessibility survey of the District. Prior to OCR's site visit, the District also indicated that it had commenced alterations to several building features and areas in order to provide greater access to students and other persons with mobility impairments.

Prior to the completion of OCR's investigation, the District submitted a signed agreement (copy enclosed) on June 5, 2014, that when fully implemented, will address the issues assessed in this compliance review. The Agreement requires the District to complete the remedial measures identified in the Compliance Charts, which are incorporated by reference into the Agreement. The District will provide OCR with periodic status updates on progress implementing the agreement. Each status update will identify the action steps which were completed and include a description of the alteration.

The Agreement also requires the District to adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities, in accordance with 34 C.F.R. § 104.22(f) and 28 C.F.R. § 35.163.

OCR will monitor the implementation of the Agreement and the District's actions to ensure the District's compliance with Section 504 and Title II. The District has agreed to provide data and other information in a timely manner in accordance with the reporting requirements of the Agreement. OCR will conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues in the review. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume the investigation.

This resolution letter and Agreement are intended to address only those issues that are included in the Agreement or discussed in the resolution letter. They are not formal statements 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.

The Agreement and this letter are not intended and should not be construed to address the District's compliance with the regulations implementing Section 504, Title II, or any other statutes enforced by OCR that are not specifically addressed herein. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at [XXXXX.XXXXX@ed.gov](mailto:XXXXX.XXXXX@ed.gov).

Sincerely,

/s/Kelli Douglas

Kelli Douglas  
Supervisory Attorney

Enclosure

cc: Brad Neuenswander  
Kansas Commissioner of Education