



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX  
CALIFORNIA

February 24, 2016

Gabriela Mafi, Ed.D.  
Superintendent  
Garden Grove Unified School District  
10331 Stanford Avenue  
Garden Grove, CA 92840

(In reply, please refer to case no. 09-08-1030)

Dear Dr. Mafi:

On August 7, 2012, the U.S. Department of Education (Department), Office for Civil Rights (OCR), issued a letter finding the Garden Grove Unified School District (District) in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990, as amended (Title II) and their implementing regulations, with respect to the above-referenced case. The complaint alleged that the District discriminates against persons with disabilities because many of its facilities are inaccessible to or unusable by individuals with disabilities, including but not limited to the District's stadiums, performance facilities, restroom facilities, access routes, and parking areas.

OCR is responsible for enforcing Section 504, which prohibits discrimination on the basis of disability in any education program or activity operated by a recipient of Federal financial assistance. OCR is also responsible for enforcing Title II, which prohibits discrimination against individuals with disabilities who use the services of certain public entities. The District is a recipient of Federal financial assistance from the Department and a public education system, and is, therefore, subject to the requirements of Section 504 and Title II and their implementing regulations. OCR, therefore, has jurisdiction over this complaint.

**Summary of findings, Legal Standards and Resolution**

As explained in the 2012 letter of findings, OCR's investigation revealed that the District failed to comply with certain procedural requirements under Section 504 and Title II, and that the District discriminated against persons with disabilities because many of its facilities are inaccessible to or unusable by individuals with disabilities, including but not limited to the District's stadiums, performance facilities, restroom facilities, access routes, and parking areas. Due to the passage of time and several developments since the 2012 letter of findings was issued, OCR is providing additional information herein to supplement its findings and conclusions.

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

The regulations implementing Section 504 and Title II provide that no qualified person with a disability shall, because a school district's facilities are inaccessible to or unusable by disabled persons, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program, service, or activity of the school district, 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149, respectively.

The District is required under Section 504 and Title II to meet specific procedural requirements and include those procedures in its policies and procedures. Those requirements include the designation of a responsible employee to coordinate the District's efforts to comply with Section 504 and Title II, the adoption of grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and Title II, and notice that the District does not discriminate on the basis of disability. 34 C.F.R. §§ 104.7(a) and (b) & 104.8; 28 C.F.R. §§ 35.106 & 35.107(a) and (b).

In response to OCR's request for information, the District stated that it does not have established policies and grievance procedures for processing Section 504 and Title II complaints alleging inaccessible programs or activities. In subsequent communications, the District stated that such policies and procedures had been developed but, despite OCR's request, the District did not provide the required documents. In a review of the District's website in January 2016, OCR still could not find such policies and procedures. In addition, at its most recent visit in April of 2015, OCR did not find notice to the public or District staff of any process or individual identified who has the authority to ensure prompt barrier removal when a barrier to program participation is identified by a student, employee, parent, visitor, or other program participant or to otherwise coordinate the District's efforts to comply with Section 504 and Title II. As such, OCR continues to find that the District is out of compliance with these procedural requirements.

With respect to the accessibility of facilities, programs, activities, and services, the regulations contain two standards for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities. One standard applies to "existing facilities" while the other covers "new construction" and "alterations." The applicable standard of compliance depends upon the date of construction and/or the date of any alterations to the facility.

The Section 504 regulations, at 34 C.F.R. § 104.22, and the Title II regulations, at 28 C.F.R. § 35.150, apply to "existing facilities," and define them as any facility or part of a facility where construction was commenced prior to June 3, 1977 or January 26, 1992, respectively. The regulations provide that, with respect to existing facilities, the District shall operate its programs, services, and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities (hereinafter "the program accessibility standard"). The District may comply with the existing facility standard through the reassignment of programs, services, and activities to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, services, and activities, when viewed in its entirety, accessible to

individuals with disabilities. In choosing among available methods for redressing program inaccessibility, the District must give priority to those methods that offer programs, services, and activities to individuals with disabilities in the most integrated setting appropriate as well as methods that entail achieving access independently and safely. Under some circumstances, creating program access may require the removal of an architectural barrier.

The Section 504 regulations, at 34 C.F.R. § 104.22(f), also require the District to adopt and implement procedures to ensure that, as to existing facilities, interested persons can obtain information as to the existence and location of programs, services, activities, and facilities that are accessible to and usable by persons with disabilities. The Title II regulations, at 28 C.F.R. § 35.163(a), have a similar requirement. In addition, 28 C.F.R. § 35.163(b) requires a public entity to provide signage at all inaccessible entrances that direct users to accessible entrances or to a location at which they can obtain information about accessible facilities. The section also requires that the international symbol for accessibility be displayed at each accessible entrance to a facility.

In its investigation, OCR reviewed four of the District's facilities, Pacifica High School, Bolsa Grande Stadium, Garden Grove High School Stadium (hereinafter Garden Grove Stadium or GGHS Stadium), and Don Wash Auditorium. Except as noted below regarding certain aspects of the four facilities, all qualify as "existing facilities" based on the following construction dates: Pacifica High School (1964); Bolsa Grande Stadium (stadium constructed in 1962 and restrooms constructed in 1964); Don Wash Auditorium (constructed in 1955); and GGHS Stadium (constructed in 1950). As such, the District is required pursuant to Section 504 and Title II to operate each program, service or activity at these facilities so that, when viewed in its entirety, each program, service, or activity is readily accessible and usable by individuals with disabilities. 34 C.F.R. § 104.22 and 28 C.F.R. § 35.150.

The Section 504 regulations, at 34 C.F.R. § 104.23, and Title II regulations, at 28 C.F.R. § 35.151, also apply to "new construction or alterations," defined as any facility or part of a facility where construction was commenced after June 3, 1977 or January 26, 1992, respectively. The regulations provide that each facility or part of a facility constructed by, on behalf of, or for the use of the District shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. The regulations further provide that each facility or part of a facility altered by, on behalf of, or for the use of the District in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

During the pendency of this matter, on September 15, 2010, the U.S. Department of Justice published new regulations implementing Title II and included specific accessibility standards as part of the regulations. The new accessibility standards, the 2010 Standards for Accessible Design (2010 Standards), became the applicable construction standards for all new construction and alterations by public entities beginning on March 15, 2012, including new construction and alterations completed before March 15, 2012 that did not comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards

(UFAS). 28 C.F.R. § 35.151(c)(5). Thus, the 2010 Standards are the governing accessibility standard in this matter for all of the District's new or altered facilities. Both the Section 504 and Title II regulations provide that school districts may depart from the particular technical and scoping requirements of these architectural standards, if substantially equivalent or greater access and usability of the facility is provided. 34 C.F.R. § 104.23(c).

The District identified "alterations" at several facilities reviewed by OCR. These altered elements include: at Pacifica High School, the gymnasium bleachers; a boys' restroom in building C in 1997; and its three parking lots in 2007; and at Don Wash Auditorium/Garden Grove Stadium, alterations to the east parking lot in 2001 and to the west parking lot in 2002. Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992. 28 C.F.R. § 35.151 (b).

OCR's initial noncompliance findings are summarized below and explained in full detail in the previously issued letter of findings. Notably, OCR's April 2015 onsite survey found that some of the inaccessible elements cited in the 2012 letter of findings have been remedied or are in the process of being altered. The following elements have been or are in the process of being changed since the 2012 letter of findings was issued:

- Administration Building, Pacifica High School (pg. 5, attachment to 2012 letter of findings): The District is currently altering the Administration Building, and represents that the alterations will address elements that were inaccessible to individuals with disabilities. Once the alterations are completed, OCR will need to verify that the Administration Building provides accessible routes, entrances, and restrooms. While alterations are still being made, the District needs to provide an interim measures plan for providing access to the programs, services, and activities at the Administration Building;
- Buildings B, C, D, E, and F, Pacifica High School (pg. 5-9, attachment to 2012 letter of findings): The District has replaced some, but not all, inaccessible entrances in these buildings. The District represents that it will be completely replacing the classroom buildings (Buildings B, C, and D) in the future. Until such changes are made in Buildings B, C, D, the District needs to provide an interim measures plan for providing access to the programs, services, and activities in these buildings;
- Sporting Facilities and Fields, Pacifica High School (pg. 10, attachment to 2012 letter of findings): Partial, but not complete, access routes have been added to the outdoor sporting facilities;
- Swimming/Diving Pools, Pacifica High School (pg. 11, attachment to 2012 letter of findings): An accessible pool has been built on the campus of GGHS which may be used

by individuals with disabilities as an alternative to the Pacifica High School pool; However, the District must still place signage at the Pacifica High School pool alerting individuals to the accessible pool at GGHS and of the process by which to access it;

- Drinking Fountains, Pacifica High School (pg. 12, attachment to 2012 letter of findings): The inaccessible drinking fountains identified by OCR have been replaced by accessible fountains;
- Public Telephones, Pacifica High School (pg. 13, attachment to 2012 letter of findings): The inaccessible public telephones identified by OCR have been removed;
- Concession Stands, Bolsa Grande Stadium & GGHS Stadium (pg. 16 and 20, attachment to 2012 letter of findings): Counters have been modified to provide access to the concession stands at both stadiums;
- Bolsa Grande Stadium Restrooms (pg. 16-17, attachment to 2012 letter of findings): The men's and women's restrooms have been altered to be accessible; and,
- Don Wash Auditorium (pg. 18-19, attachment to 2012 letter of findings): The District has alteration plans for the Auditorium, which were approved by the State of California's Division of the State Architect. Once the alterations are completed, OCR will need to verify that the Auditorium is accessible to and usable by individuals with disabilities. While alterations are still being made, the District needs to provide an interim measures plan for providing access to the programs, services, and activities at the Auditorium.

With the exception of the above-stated alterations, OCR's original findings remain intact; specifically, as discussed in full detail in the 2012 letter of findings, OCR found that the programs, services, and activities offered by the District at the four facilities reviewed, each when viewed in its entirety, are inaccessible to and unusable by individuals with disabilities, in contravention of the regulations for Section 504 and Title II (34 C.F.R. §§ 104.22 and 104.23 and 28 C.F.R. § 35.150, respectively). Where the District had altered its facilities and Section 504 and Title II required the alteration to meet "new construction" standards to the maximum extent feasible, the District did not meet these standards.

In specific, during its investigation, OCR found dozens of physical barriers at each of the four facilities that it reviewed and the identified barriers largely mirrored those separately identified by the District's independent architect. The barriers prevent individuals with disabilities from accessing the District's programs, activities, and events that are being held at or in the facilities and serve to segregate such individuals from persons without disabilities.

The barriers identified by OCR included, in summary:

- inaccessible entrances to buildings;

- doors requiring too much force to open;
- inaccessible entrances to the restrooms in the facilities;
- lack of accessible stalls in the restrooms;
- lack of grab bars in the stalls;
- exposed hot water pipes and plumbing;
- inaccessible sinks, mirrors, and paper towel dispensers in the restrooms;
- inaccessible classrooms with no accessible seating within them even if entry could be gained;
- inaccessible food services and concession stands preventing food service such as lunch for students with disabilities at the high school;
- locker and shower rooms at the high school with inaccessible entry doors, showers, sinks, and faucets;
- an administration building at the high school without an accessible entrance or restroom;
- a gymnasium, softball field, baseball field, soccer field, and other sporting venues at the high school at which individuals with mobility impairments cannot watch the sporting events taking place there because of lack of an accessible route to them, inaccessible seating at them, and inaccessible restrooms;
- two football stadiums at which individuals with mobility impairments cannot attend and watch football games, track and field events, graduation ceremonies, and other events because of a lack of adequate accessible parking, insufficient routes of access to or within the stadiums, and lack of seating that is accessible to them at the stadiums; and,
- an auditorium at which individuals with mobility impairments cannot view any number of almost daily events or performances taking place because of the lack of accessible parking, seating, routes, an accessible entrance, and restroom.

Alternative accessible sites for nearly all the programs provided at the above-stated sites do not exist. Nor does the District currently have in place any reliable, announced, or systematic way to move programs to accessible sites if needed by an individual with a disability.

In addition, based on the District's responses and OCR site visits, including the most recent one in April of 2015, OCR found that the District was not in compliance with the Section 504 regulations, at 34 C.F.R. § 104.22(f), and the Title II regulations, at 28 C.F.R. § 35.163(a) because it failed to implement procedures, including through posting notice at each of the four facilities, to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of programs, services, and activities that are accessible to and usable by persons with disabilities.

### **Resolution Agreement**

Pursuant to section 303(b) of OCR's Case Processing Manual, the District and OCR engaged in lengthy negotiations, which began in 2008. On February 19, 2016, OCR received a signed copy

of the enclosed Agreement to Resolve (Agreement) from the District. Under the Agreement, among other things, the District will take the following actions:

- Review and revise (if necessary), and then submit for OCR's approval, its policies and procedures that provide for: the issuance of notice that disability discrimination is prohibited (34 C.F.R. § 104.8 and 28 C.F.R. § 35.106); the adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of disability discrimination (34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b)); and the designation of at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. § 104.7(a) and 28 C.F.R. § 35.107(a));
- Develop a policy stating that the District makes all of its programs, services and activities and all renovations and new construction in its school district readily accessible to and usable by persons with disabilities, consistent with the requirements of 34 C.F.R. §§ 104.22-104.23; and 28 C.F.R. §§ 35.150-35.151, which will be submitted to OCR for its review and approval. The District will then publish and effectively disseminate the policy to students, parents, guardians, staff, and employees;
- Operate each program, service, or activity at Pacifica High School, Bolsa Grande Stadium, GGHS Stadium, and Don Wash Auditorium so that, when viewed in its entirety, each program, service, or activity is readily accessible to and usable by individuals with disabilities as required by 34 C.F.R. § 104.22 and 28 C.F.R. § 35.150; and,
- Prominently post and maintain a notice on its website and at each entrance to GGHS Stadium, Bolsa Grande Stadium, Don Wash Auditorium, and buildings B, C, and D, and the gymnasium, and any offices at Pacifica High School where parents, visitors and others check in, providing notice of who to contact to obtain information about the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities, or if assistance is needed in accessing a program, service, or activity.
- At Pacifica High School:
  - Develop written interim measures for OCR's review and approval, to ensure that all programs, services, and activities, including those usually attended by parents and others, are made readily accessible to and usable by any person with a disability requiring access to the facilities;
  - Ensure that each accessible entrance and each accessible restroom is identified by the international symbol of accessibility, and that for any entrances and restrooms which are inaccessible, signs indicating the location of the nearest accessible entrance or restroom are posted;

- Install accessible doors with the appropriate entrance widths, appropriate thresholds, and appropriate door handles to the front entrance of the administration office;
- Install accessible doors with appropriate entrance widths, appropriate thresholds, and appropriate door handles to the gymnasium and the boys' and girls' locker rooms, to building B, building C, the cafeteria, the library, and the theatre;
- Modify at least one restroom for each gender in buildings B & D, the gymnasium, and the boys' and girls' locker rooms and the girls' restroom in building C so that it is accessible;
- Modify restrooms for each gender in the administration building so that they are accessible;
- Ensure that all of the school's sporting fields, venues, stadiums, and parks, including those for the school's varsity and junior varsity baseball and softball teams, soccer teams, and track and field teams, have accessible routes from the main school campus and from the student parking lot;
- Add at least one accessible shower in the shower room in the boys' and in the girls' locker room;
- Add the required number of accessible seats, including companion seating, for the junior varsity and varsity baseball and softball fields with spectator seating and the theatre, or provide a method which ensures that the programs, services, and activities at the theater are accessible;
- Add foodservice counters to the cafeteria that are of the appropriate dimensions, or add accessible tables to the cafeteria and provide necessary service to those tables;
- Modify the counter at the sixth food service line with a clear width of 58 inches at the outdoor cafeteria/snack bar so that it is accessible;
- Provide an accessible route to the stage area located in the theatre and the stage area located in the outdoor assembly area through means such as ramps or platform lifts, or provide a method which ensures that the programs, services, and activities located in the theater and the stage area are accessible;
- Ensure that an appropriate number of accessible seats and tables exist in the outdoor assembly area (the open space located between all the school's buildings) and in at least one room in building B and building C;



- Ensure that the reading and study areas, stacks, reference rooms, reserve areas, special facilities or collections, check-out counter(s), card catalogs, and magazine displays in the library are accessible, including the provision of accessible routes, adequate knee and toe clearance, adequate clear ground space, and comply with accessible reach ranges and operable parts, or the District may provide methods to ensure that the programs, services, and activities in the library are accessible;
  - Post signage at the school's pool informing individuals that an accessible pool is located at GGHS and of a process by which individuals can make immediate arrangements with the District to obtain access to the pool at GGHS;
  - Create sufficient accessible passenger loading zone(s);
  - Ensure that all accessible parking spaces in the lots and the passenger loading zone(s) have safe accessible routes to accessible building entrances;
  - Ensure that the woodshop, choral music, and NJROTC programs provided are readily accessible to and usable by any person with a disability, including the provision of accessible routes, adequate knee and toe clearance, adequate clear ground space, and comply with accessible reach ranges and operable parts, or the District may provide another method to ensure that the programs, services, and activities are accessible;
  - Provide designated accessible parking spaces connected to accessible routes in the staff parking lot and student (senior) parking lot consistent with sections 206 and 208 of the 2010 Standards;
  - Provide compliant access aisles and access routes for the existing three accessible parking spaces in the west (junior) parking lot by relocating the existing four accessible parking spaces in the west student parking lot to the opposite side of the parking lot (so that the spaces are closer to the Pacifica High School administration building). In the alternative, if the District desires to retain the current location of the spaces, it will create a new accessible route from the spaces to the nearest accessible building. The accessible route will not have sign posts within its boundaries, will not intersect and end at a non-disabled drop off zone, and will have an entrance to the school campus that remains open during regular school hours or has a reasonable means of requesting the entrance be opened;
  - Modify the boys' restroom in building C so that it comports with the 2010 Standards; and,
  - Provide accessible gymnasium seating that comports with the 2010 Standards.
- At Bolsa Grande and GGHS Stadiums:

- Retain an Independent Licensed Architect (“ILA”) knowledgeable about the architectural accessibility requirements of the ADA, to assist in the development and review of the District’s interim measures designed to provide access to the programs, services, and activities occurring at the stadiums;
- With the assistance of the ILA, develop for OCR’s review and approval an interim measures plan for the stadiums that will address the following elements: inaccessible seating in the home and visitor bleachers; the lack of accessible parking; the lack of an accessible route from any accessible parking to an accessible entrance; the lack of an accessible route from the entrance to the home and visitor seating; and the lack of an accessible route from any accessible seating to the field, concession stands, and restrooms;
- As part of renovation of the GGHS Stadium, provide compliant access aisles and access routes for the existing three accessible parking spaces in the west parking lot and provide access routes for the accessible parking in the east parking lot; and,
- As part of renovation of GGHS Stadium, create six accessible spaces with access aisles and access routes in the north parking lot that meet the requirements of the 2010 Standards.
- At Don Wash Auditorium, if the auditorium is used for programs, services, or activities during the alterations:
  - Retain an ILA to assist in the development and review of the District’s interim measures designed to provide access to the programs, services, and activities occurring at the auditorium; and,
  - With the assistance of the ILA, develop for OCR’s review and approval an interim measures plan for the auditorium that will address the following elements: inaccessible seating; the lack of accessible parking; the lack of an accessible route from any accessible parking to an accessible entrance; the lack of an accessible route from the entrance to seating; the lack of an accessible route from any accessible seating to the concessions and restrooms; the lack of an accessible stage and route to the stage; the lack of accessible restrooms; and the lack of an accessible entrance.
- Also, at Don Wash Auditorium:
  - Ensure that the auditorium provides accessible parking (where parking facilities are otherwise provided by the District);

- Ensure that the auditorium provides accessible passenger loading zones (where passenger loading zones are otherwise provided by the District);
  - Ensure that the auditorium provides accessible safe approaches from adjacent parking areas, passenger loading zones, walkways, and public transportation stops, if any, to the extent within the District's control and not in the public right-of-way;
  - If a water fountain is provided at the auditorium, ensure that an accessible water fountain on an accessible level is provided;
  - Ensure that the auditorium provides accessible men's and women's toilet rooms, on an accessible level, including a standard stall or one unisex accessible toilet room;
  - If a public telephone is offered at the auditorium, ensure that an accessible public telephone on an accessible level is provided;
  - Ensure that the auditorium includes signage identifying permanent rooms and spaces with raised and Braille characters, as well as directional signage;
  - Ensure that the auditorium includes at least one accessible means of vertical access (an accessible elevator, ramp, or lift) if any program, service or activity offered is located above or below the accessible entry level connecting the entry level and all levels on which the program, service, or activity is offered;
  - Ensure that for each accessible parking space, there is one safe accessible route to the accessible entrance;
  - Provide wheelchair spaces and companion seating at the auditorium consistent with sections 221, 801, and 802 of the 2010 Standards;
  - Provide compliant access aisles and access routes for the existing three accessible parking spaces in the west parking lot at the auditorium;
  - Provide access routes for the accessible parking in the east parking lot at the auditorium; and,
  - Create six accessible spaces to the north parking lot, including access aisles and access routes, complying with the 2010 Standards at the auditorium.
- Among other reporting requirements, provide to OCR an annual report during the effective dates of the Agreement which lists every new construction or alteration project that has commenced or completed, or for which plans have been developed, during the preceding fiscal year.

This Agreement is intended, when fully implemented, to resolve this complaint and remedy the District's Section 504 and Title II violations that were at issue in this complaint. OCR will monitor implementation of the Agreement until the District has fulfilled its terms and is in compliance with Section 504 and Title II and their implementing regulations at issue in this case.

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, a complaint may be filed 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, it will seek to protect, to the extent provided by the law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy. OCR is notifying the complainant of this resolution by concurrent letter. The complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR thanks the District for its cooperation during this investigation. If you have any questions regarding this letter, please contact OCR Attorneys Alan Konig at (415) 486-5527 or [alan.konig@ed.gov](mailto:alan.konig@ed.gov), or Laura Welp at (415) 486-5577 or [laura.welp@ed.gov](mailto:laura.welp@ed.gov).

Sincerely,

/s/

Laura L. Faer  
Chief Attorney

Cc: Dennis Walsh, Esq.

Enclosure