



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

April 13, 2015

Kelly Staley
Superintendent
Chico Unified School District
1163 E. 7th Street
Chico, California 95928

(In reply, please refer to case no. 09-15-1081.)

Dear Superintendent Staley:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Chico Unified School District. The complaint alleged that the District discriminated against individuals on the basis of disability by maintaining physically inaccessible facilities, and retaliated against the Complainant¹ for reporting these deficiencies. OCR accepted the following issues for investigation.

1. Whether the District allows accessible areas to be blocked at its District office complex and does not make the complex otherwise accessible to persons with mobility impairments, because it:
 - a. allows vehicles to block accessible routes of travel between the public sidewalk, administration and conference buildings, and the accessible parking spaces; and
 - b. allows persons to park in the access aisle serving the accessible parking spaces.
2. Whether the District excluded persons with mobility impairments from participation in its program and activities because:
 - a. restrooms in its administration building are not accessible to individuals with disabilities; and
 - b. rugs in its conference building present slip and mobility hazards for persons with mobility disabilities.
3. Whether the District retaliated against the Complainant after she raised issues about the accessibility of its facilities and programs for persons with disabilities when it requested that the Complainant restrict her activities to dropping off and picking up her son at his school during a meeting on November XX, 2014.

¹ OCR notified the District of the identity of the Complainant when the investigation began. We are withholding her name from this letter to protect her privacy.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public educational entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the implementing regulations.

OCR gathered evidence through interviews with the Complainant and District personnel. OCR also reviewed documents provided by the District and the Complainant. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

Legal Standards

The program 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 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 of activity of the school district.

The Section 504 regulations, at 34 C.F.R. §104.22, and the Title II regulations, at 28 CFR §35.150, apply to “existing facilities”, defined as any facility or part of a facility where construction was commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that, with respect to existing facilities, a school district shall operate its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. Accessibility of existing facilities is determined not by compliance with a particular architectural accessibility standard, but by considering whether the program or activity, when viewed in its entirety, is accessible to and usable by individuals with disabilities.

The Section 504 regulations, at 34 C.F.R. §104.23, and the Title II regulations, at 34 C.F.R. §35.151, are applicable to “new construction or alterations”, defined as any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that each newly constructed facility or part of a facility shall be designed and constructed in such manner that it is readily accessible to and usable by persons with disabilities. The regulations further provide that each newly altered facility or part of a facility affecting accessibility shall, to the maximum extent feasible, be altered in such manner that the altered portion is readily accessible to and usable by persons with disabilities.

The regulations specify the Federal standard to be used in determining the accessibility of new construction and alterations. The Section 504 regulations, at 34 C.F.R. §104.23(c), delineate the American National Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physical Handicapped [ANSI 117.1 – 1961(1971)] as the minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991. UFAS sets forth the designated standard for facilities constructed or altered on or after January 18, 1991.

The Title II regulations, at 28 C.F.R. §35.151(c), delineate UFAS or the ADA Standards for Accessible Design, 1991 (1991 Standards) as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992, but prior to September 15, 2010. The ADA Standards for Accessible Design were amended in 2010 (2010 standards). If construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, then a school district may comply with either UFAS, the 1991 Standards, or the 2010 Standards. New construction and alterations that commence on or after March 15, 2012 must comply with 2010 Standards.

The Title II regulations, at 28 C.F.R. §35.133(a), require school districts to maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. This section recognizes that it is not sufficient to provide features such as accessible routes or parking if those features are not maintained in a manner that enables individuals with disabilities to use them.

The Section 504 regulations, at 34 C.F.R. §104.61, incorporate 34 C.F.R. §100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit school districts from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Section 504. The Title II regulations, at 28 C.F.R. §35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.

When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the school district, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the school district can provide a nondiscriminatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

Factual Summary and Determination

The District office complex is comprised of a main Administration Building which houses District offices, Annex C which houses additional offices as well as a conference room, and Annex B which houses other offices. The accessible entrance to the Administration Building is located in the rear of that building.

There is a designated accessible route leading from the public sidewalk up to the ramp leading to the accessible rear entrance. Both annexes are located in the rear of the Administration Building, and can be reached by a similar route leading to their ramped entrances. There is a parking lot adjacent to these buildings and the designated accessible parking spaces are located on an accessible route and nearest to the building entrances.

Issue I: Whether the District allows accessible areas to be blocked at its District office complex and does not make the complex otherwise accessible to persons with mobility impairments, because it:

- a. allows vehicles to block accessible routes of travel between the public sidewalk, administration and conference buildings, and the accessible parking spaces; and*
- b. allows persons to park in the access aisle serving the accessible parking spaces.*

Obstruction of Accessible Routes

The Complainant alleged that District and outside company delivery trucks parked behind the Administration Building in a manner that blocked the accessible route between the public sidewalk and the ramped building entrances and between the accessible parking spaces and the ramped building entrances. The District confirmed to OCR that during the 2014-15 school year there were occasions during which delivery or maintenance trucks operated by the District or outside companies would park directly behind the Administration Building, thereby obstructing the accessible paths of travel. The District reported that the Complainant complained about this practice to the drivers themselves, as well as to District personnel.

In its response to OCR's data request the District noted that it had recently created three separate parking spaces, with signage, for use by maintenance and delivery vehicles. The District instructed delivery and maintenance truck drivers to park only in the newly designated areas. OCR found no evidence that drivers continued to park in a manner that obstructed the accessible paths of travel after receiving this directive.

Based on a review of the evidence, OCR determined that some District maintenance workers and District and outside delivery truck drivers previously had a practice of parking in an unauthorized area of the Administration Building parking lot which obstructed the accessible route from the public sidewalk and/or the designated accessible parking spaces to the accessible building entrances. Therefore, the District did not meet its obligation under 28 C.F.R. §35.133(a) to maintain this accessible route so that it would be readily accessible to and usable by persons with disabilities. However, during the course of the investigation the District took action to effectively resolve this compliance concern. Specifically, the District designated parking spaces for delivery truck drivers and maintenance workers and instructed each driver to park only in the designated areas. Accordingly, OCR concludes that this issue has been resolved.

Obstruction of the Access Aisle

The District office complex parking lot provides two designated accessible parking spaces for use by individuals with disabilities. These two spaces share a common access aisle. The Complainant alleged that on a certain date in November 2014 a District Board of Trustee member with a disabled parking placard parked in the access aisle between the two accessible parking spaces in this parking lot.

A District administrator told OCR that he had observed a Board member's vehicle being parked in one of the accessible parking spaces in a manner that resulted in the fender portion of the vehicle extending into the access aisle area, but not in a significant way. During the course of the OCR investigation, the District reiterated to the Board member verbally and in writing that the access aisle needed to remain clear for loading and off-loading. The Board member agreed to make every effort to stay within the designated parking space area when parking in the future. OCR found no evidence that the Board member continued to park in a manner that obstructed the access aisle.

Based on a review of the evidence, OCR determined that there were one or more occasions during the 2014-15 school year in which a Board member authorized to park in a designated accessible parking space in the Administration Building lot parked her vehicle in a manner that partially obstructed the access aisle. Again, the District did not meet its obligation under 28 C.F.R. §35.133(a) to maintain the access aisle so that it would be readily accessible to and usable by persons with disabilities. However,

during the course of the investigation the District took action to effectively resolve this compliance concern. Specifically, the District advised the Board member that she must park within the parameters of the parking space itself, and she has agreed to do so in the future. Accordingly, OCR concludes that this issue has been resolved.

Issue II: Whether the District excluded persons with mobility impairments from participation in its program and activities because:

- a. restrooms in its administration building are not accessible to individuals with disabilities; and*
- b. rugs in its conference building present slip and mobility hazards for persons with mobility disabilities.*

Administration Building Restrooms

The Complainant alleged that there are no accessible restrooms in the Administration Building. The District reported that the Administration Building was constructed in 1928, and confirmed that there are no accessible restrooms in the building. There is currently one women's and one men's restroom in the building, and neither has been modified. The District informed OCR that it planned to convert the men's restroom to an accessible unisex restroom.

The District reported that Annex C, the conference building located behind the Administration Building, has a designated accessible unisex restroom. However, OCR identified the following compliance concerns with respect to this restroom: the approach to the toilet and the rear grab bar is obstructed by trash receptacles; the toilet seat cover holder is not mounted in an accessible location; it is unclear whether the paper towel holder and the toilet paper dispenser are mounted in accessible locations; the sink pipes are unwrapped and it is unclear if the handles are accessible; the soap dispenser is not mounted in an accessible location; and the mirror may be mounted too high. Also, the outside door to this restroom has signage saying that it is an accessible women's restroom, not a unisex restroom.

Because of the date of construction of the Administration Building and the lack of subsequent alterations to the restrooms located there, the District is responsible for operating each of its programs and activities taking place in that building so that, when viewed in the entirety, each is readily accessible to and usable by persons with disabilities (34 C.F.R. §104.22 and 28 CFR §35.150). Since restrooms are provided to employees and members of the public, this would include providing an accessible and usable restroom facility. The District confirmed that the restrooms located in the Administration Building are currently inaccessible. Although there is a restroom located in Annex C that has some accessible enhancements, Annex C is a separate building requiring individuals to travel outside to reach it, there is no indication that Annex C is open during all hours that the Administration Building is open, there is no signage directing individuals to the Annex C restroom, and OCR observed accessibility concerns with the restroom in Annex C as currently configured. Accordingly, OCR concluded that the District did not meet Section 504 and Title II existing facility requirements with respect to this issue. However, during the course of the investigation the District indicated that it was moving forward to convert one of the Administration Building restrooms into an accessible unisex restroom. The District agreed through a Resolution Agreement to complete this renovation and address the compliance concerns identified regarding the Annex C restroom.

Rugs in Annex C:

The Complainant alleged that there are rugs in Annex C that are hazardous for individuals using mobility devices.

The District reported to OCR through the data response that it previously had rugs in several areas of this building which were adhered to the floor with rug tape. It confirmed at the onset of the OCR investigation that the floors had been recently cleaned and the rugs had been removed and would not be returned.

OCR did not reach a conclusion as to whether the placement of rugs in Annex C obstructed accessible routes throughout the building because the District removed the rugs at the onset of our investigation. Because of this removal, OCR concludes that this issue, even if it had raised a compliance concern, has been resolved.

Issue III: Whether the District retaliated against the Complainant after she raised issues about the accessibility of its facilities and programs for persons with disabilities when it requested that the Complainant restrict her activities to dropping off and picking up her son at his school during a meeting on November XX, 2014.

District Board Policy and Administrative Regulation 3515.2 prohibit disruption of normal school operations. During the 2014-15 school year, the Complainant's son was enrolled in an afterschool program operated on Parkview Elementary School (School) grounds.

On September XX, 2014, afterschool program staff reported to the School principal that the Complainant engaged in disruptive behavior during the program's operation, including yelling at students, parents, and staff. The principal thereafter reported the situation to the Director of Educational Services. On September XX, program staff reported to the Director of Educational Services that she had been contacted by a parent stating that she and multiple other parents were concerned about the Complainant spending "excessive" amounts of time in the program and around their children. On October XX, the Complainant reportedly yelled at the School principal. On October XX, the Complainant reportedly yelled at cafeteria staff. On November X, the Complainant again reportedly yelled at program staff.

On November X, 2014, the Administrative Aide informed the Superintendent that the Complainant had come to the office requesting a meeting with the Superintendent and had complained about a van parked in front of the ramp leading to the Administration Building and blocking the accessible route.

On November X, 2014 afterschool program staff again reported to the School principal that the Complainant yelled at staff in the presence of parents and students.

On November XX, 2014, the Superintendent and an Assistant Superintendent met with the Complainant to come to an understanding of how they can best meet the needs of her child while also allowing the School to provide services to all students without interruption. The administrators shared their concern that the Complainant was disrupting the educational environment, and noted that they had received complaints from both staff and parents. The Assistant Superintendent told OCR that they agreed as a group that when the Complainant became upset over an issue at the School, she would contact either the Superintendent or the Assistant Superintendent, and would not address School site staff directly

about her concerns. He also stated that, because of her disruptive behavior, they told the Complainant that she should limit her presence on the School campus to dropping off and picking up her child.

The Complainant alleged to OCR that her ability to visit the School was restricted in retaliation for her reporting accessibility problems to the District.

On February XX, 2015, after school program staff again reported that the Complainant yelled at several staff persons in the presence of students and parents, including yelling in a teacher's face "you and I need to step outside."

By letter dated February XX, 2015, the District informed the Complainant that she had engaged in conduct which caused disruption of School's activities on numerous occasions during the 2014-15 school year. The District directed the Complainant to cease and desist from engaging in any further disruptive conduct at the School, and stated that failure to adhere to the directive could result in a withdrawal of consent for her to enter the School campus at all. The letter stated that the Complainant must now register with the principal or a designated staff member and explain the purpose of her visit prior to entering any location on campus.

The District provided OCR an example of a similar letter that had been sent during the 2014-15 school year to another parent who had engaged in inappropriate behavior at another elementary school. As a result, the parent was permitted to only bring her child to school and pick her up.

Based on its review of the evidence, OCR determined that the Complainant engaged in protected activity when on November X, 2014, she complained to the Superintendent, through his Administrative Aide, about a van blocking the accessible route to the Administration Building. The Complainant was subsequently subjected to adverse action when the Superintendent restricted her access to the School campus during a meeting on November XX. The factual circumstances suggest a preliminary connection between the protected activity and the adverse action because of their close proximity in time. However, OCR concluded that the District articulated a legitimate, non-retaliatory reason for its restriction on the Complainant's access to campus---her pattern of disruptive conduct that continued from September to November 2014 and resulted in repeated complaints from School staff and parents. OCR found no evidence that the reason provided was merely a pretext or that the adverse action was in fact retaliatory. The facts show that the District has a clear policy prohibiting disruption of school programs and activities, that the Complainant engaged in serious disruption on numerous occasions, and that restricting parental access to school campuses was a response used by the District with another disruptive parent as well. OCR further notes that, even after the meeting on November XX, the Complainant again engaged in disruptive conduct in the afterschool program at the School resulting in a written directive to cease and desist. Accordingly, OCR finds the District in compliance as to this issue.

Resolution

In conclusion, OCR identified compliance concerns with respect to the issues related to accessible routes and parking, but concluded that these concerns were resolved by action taken by the District during the course of the investigation. OCR found that the issue concerning rugs in Annex C was resolved at the onset of the investigation, so it reached no conclusion as to that issue. OCR determined that the District did not meet Section 504 and Title II existing facility accessibility requirements because it has no accessible restroom serving its Administration Building. Finally, OCR concluded that the District did not retaliate against the Complainant for complaining about accessibility problems when it restricted her access to her son's school campus in November 2014.

The District agreed to address the outstanding area of noncompliance through the attached Resolution Agreement, which requires the District to: construct an accessible unisex restroom in the Administration Building; modify the designated accessible restroom in Annex C; and, as an interim measure during construction, post signage on the current Administration Building restrooms directing individuals to the accessible restroom in Annex C.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor the District's implementation of the Resolution Agreement through completion. OCR is informing the Complainant of the complaint resolution by concurrent letter. Note that the Complainant may file a private lawsuit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual case 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. This letter sets forth OCR's determination in an individual OCR case. It 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 individual may file a complaint with OCR 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 appreciates the courtesy and cooperation extended by you and your staff, particularly Janet Brinson, Director, Educational Services, during the complaint resolution process. If you have any questions, please contact Julie Baenziger, at (415) 486-5502, or me, at (415) 486-5555.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Attachment

Cc: Janet Brinson, Director, Educational Services