



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 21, 2015

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Dr. Douglas Dougherty
Superintendent
Seaside School District 10
1801 South Franklin Street
Seaside, Oregon 97138

Re: Seaside School District 10
OCR Reference Nos. 10151025, 10151033, and 10151124

Dear Superintendent Dougherty:

The U.S. Department of Education, Office for Civil Rights (OCR) is discontinuing its investigation of the referenced discrimination complaints against Seaside School District 10 based on the enclosed Voluntary Resolution Agreement (agreement).

The complaints alleged that the district is discriminating against individuals with disabilities because certain physical facilities and elements at three district schools, Seaside High School, Broadway Middle School, and Seaside Heights Elementary School, are inaccessible. The specific allegations raised by the complaints are listed in the attached appendices, where Appendix 1 details the allegations regarding Seaside High School for OCR Reference Nos. 10151025 and 10151124; Appendix 2 details the allegations regarding Broadway Middle School for OCR Reference No. 10151025; and Appendix 3 details the allegations regarding Seaside Heights Elementary School for OCR Reference No. 10151033.

OCR accepted these complaints for resolution under the authority of section 504 of the Rehabilitation Act of 1973, title II of the Americans with Disabilities of 1990, and their implementing regulations. Section 504 and Title II prohibit disability discrimination in programs and activities receiving federal financial assistance from the U.S. Department of Education and by public entities, respectively. The district receives federal financial assistance from the Department and is a public entity, and is therefore required to comply with these federal civil rights laws.

Under the Section 504 and Title II regulations, a school district is prohibited from excluding, denying, or discriminating against people with disabilities because its facilities are unusable by or inaccessible to them. See 34 CFR 104.21; 28 CFR 35.149. With

respect to existing facilities, a school district is required to operate each program or activity housed in the existing facility so that the program or activity, when viewed in its entirety, is readily accessible to and usable by people with disabilities. See 34 CFR 104.22(a); 28 CFR 35.150(a). Under the program accessibility standard, a school district is not required to make all existing facilities or every part of its existing facilities accessible, as long as the program or activity provided at each facility is readily accessible to persons with disabilities. See 34 CFR 104.22(a); 28 CFR 35.150(a)(1). A school district is permitted to provide program accessibility in existing facilities through such means as a redesign or acquisition of equipment, reassignment of services to accessible buildings, delivery of services at alternate accessible sites, alteration of existing facilities or construction of new facilities, or any other method that results in making its services, programs, or activities readily accessible to and usable by people with disabilities. See 34 CFR 104.22(b); 28 CFR 35.150(b)(1).

With respect to altered or newly constructed facilities, each facility or part of a facility that has been altered or newly constructed is required to be designed, constructed, and maintained in operable working condition, in compliance with the applicable accessibility design standard. See 34 CFR 104.23(a) and (b); 28 CFR 35.133(a), and 35.151(a) and (b). The specific accessibility standard that applies to an altered or newly constructed facility depends upon the date that the alteration or construction commenced. See 34 CFR 104.23(c); 28 CFR 35.151(c).

Additionally, Section 504 and Title II require a school district to ensure that interested persons can obtain information from the district about the existence and location of its accessible services, activities, and facilities, and designate at least one employee who will coordinate and carry out the district's efforts to comply with the Section 504 and Title II regulations, including the investigation of any disability discrimination complaints made under the district's grievance procedures. See 34 CFR 104.7 and 104.22(f); 28 CFR 35.107 and 35.163(a). A school district must also take continuing steps to provide notice of the district's designated employee, the availability of information about the district's accessible services, activities, and facilities, and that the district does not discriminate on the basis of disability. See 34 CFR 104.8; 28 CFR 35.106.

In accordance with section 302 of OCR's Case Processing Manual (CPM), a complaint may be resolved when the recipient expresses an interest in resolving the complaint before the conclusion of an investigation. When this occurs, the provisions of any agreement to resolve the complaint must be aligned with the complaint allegations and any information obtained during the discontinued investigation and must be consistent with applicable regulations.

Upon notifying the district of these complaints, the district's superintendent and accessibility consultant informed OCR that the district's schools were located in the state of Oregon's tsunami inundation zone, and that Oregon State law imposed

restrictions on certain types of alterations and new construction in the tsunami inundation zone. The district also provided OCR with information responsive to OCR's preliminary data request, including the district's Americans with Disabilities Act transition plans for Seaside High School, Broadway Middle School, and Seaside Heights Elementary School, which originally were published around 1994.

Based on OCR's review of the district's data response and the information provided by the complainant regarding the district's facilities, OCR determined that there was sufficient information about the facilities and elements at issue in the complaints to warrant an assessment of the district's facilities, a review of the district's disability discrimination policies and procedures, and interviews with district staff. However, OCR suspended its investigation based on the district's request to resolve the complaints pursuant to section 302 of the CPM.

Subsequent resolution discussions between OCR and the district resulted in the district signing the enclosed agreement, which, when fully implemented, will resolve the issues raised by the complaints. OCR has determined that the provisions of the agreement are aligned with all 32 complaint allegations and the information obtained thus far during OCR's discontinued investigation, and are consistent with the applicable Section 504 and Title II regulations.

The actions that the district will take under the agreement include: determining the specific accessibility standards that apply to the facilities in question; conducting an evaluation of the facilities and elements at Seaside High School, Broadway Middle School, and Seaside Heights Elementary School to assess whether they comply with the applicable accessibility standards; addressing any facilities or elements which are determined to be inaccessible; reviewing and revising the district's accessibility policies and procedures; designating an employee who will be responsible for providing accessibility information and addressing accessibility complaints for the district; and providing notice and/or training to parents, students, and district employees.

OCR will monitor the implementation of the agreement and will close the complaints when it has determined the terms of the agreement have been satisfied.

This letter sets forth OCR's determinations with respect to these three OCR complaints. 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. The complainant may have the right to file suit in federal court whether or not OCR finds a violation.

Thank you for the cooperation that you extended to OCR in resolving these complaints. If you have any questions about this letter, you may contact Christina “Tina” Meade, attorney, at (206) 607-1604 or at christina.meade@ed.gov.

Sincerely,

/ x /

Kelli Lydon Medak
Supervisory Attorney

Enclosures: Voluntary Resolution Agreement
Appendices

cc: Honorable Rob Saxton
Deputy Superintendent of Public Instruction