



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

July 16, 2026

Dr. Randal O'Brien, Interim Superintendent

Via e-mail only to: [redacted content]

Re: Tarkington ISD (Texas)
OCR Case Number: 06-24-1873

Dear Dr. O'Brien:

This is to notify you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Tarkington Independent School District (District), in Cleveland, Texas. The Complainant alleged the District discriminates against students with disabilities as the playground located at Tarkington Elementary School (School) is inaccessible to individuals with mobility impairments.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Sections 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of federal financial assistance from the Department and a public entity, the District must comply with Section 504, Title II and their implementing regulations.

Summary of OCR's Investigation to Date

OCR reviewed photographs of the playground and aerial images of the school campus, including the playground, swing sets, and the route connecting them to the school building, provided by the District. Based on this review and discussions with District representatives, OCR identified compliance concerns regarding the surface on which the playground and swing sets are located. OCR also identified a compliance concern regarding the apparent lack of an accessible route from the school building to the playground and swing sets. To resolve this complaint, the District entered into the attached Resolution Agreement (Agreement) which, when implemented, will address the Section 504 and Title II compliance concerns. The applicable legal standards, factual findings, and reasons for the determinations in this matter are summarized below.

Applicable Legal Standards

Both the Section 504 and Title II implementing regulations provide generally that no qualified individual with a disability shall, because an entity'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 entity. A playground is a

facility under these regulations. A playground facility includes the play equipment, the routes into and around the play area, and the surface surrounding the equipment. The accessibility of these elements is evaluated under the facility-accessibility requirements of Section 504, Title II, and the 2010 ADA Standards for Accessible Design.

The 2010 Standards include scoping and technical requirements for play areas, including requirements for accessible routes and accessible ground surfaces. Although Title II contains a safe harbor provision for certain elements in existing facilities, that provision does not apply to play areas. Therefore, play areas constructed before March 15, 2012, must comply with the 2010 Standards for the elements addressed by those Standards.

An accessible route must connect the school building or other site arrival points to the playground and must extend into and throughout the play area. As part of the facility, the accessible route must comply with the technical requirements in the 2010 Standards, including those related to firmness, stability, width, slope, and cross-slope. When a route from the building to the playground is not accessible, the facility does not meet Section 504 and Title II requirements.

The ground surface within and around the play area is also a required facility element. Because this surface forms part of the accessible route and directly affects usability for individuals with mobility impairments, it must be firm, stable, and maintained in operable working condition. The 2010 Standards specify the required characteristics of accessible playground surfacing. Surfaces that are not firm or stable, that have significant level changes, or that are not maintained in usable condition do not meet these requirements.

The Standards stress the importance, and the requirement, of ongoing care and maintenance of the playground surface. Ground surfaces must be inspected and maintained regularly to ensure continued compliance. The type of surface material selected and play area use levels will determine the frequency of inspection and maintenance activities. In addition, the Title II regulation requires a public entity 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 pursuant to the regulation.

Findings of Fact

The photos provided by the District show a play area containing various play components and a separate swing-set area, divided by natural grass and a raised border. Neither the playground nor the swing-set area appears to have an accessible route from the school building. To reach either area, an individual would have to cross natural grass.

The photos also show that the ground surfaces beneath both the playground equipment and the swing sets consist of wood mulch, which appears uneven in multiple locations. The photos seem to indicate that both areas sit on an uneven surface and that no accessible route connects the school building to either the playground or the swing sets.

In discussions with OCR, the District acknowledged concerns regarding the accessibility of the playground and indicated that it has begun taking steps to address these issues, including

consulting with a playground accessibility company and developing plans for improvements to the playground area.

Analysis

The apparent absence of an accessible route from the school building to the playground and swing sets raises concerns under the accessibility requirements of Section 504, Title II, and the 2010 ADA Standards, which require an accessible route composed of a firm, stable, and slip-resistant surface. Natural grass does not meet these requirements and cannot serve as an accessible route.

Similarly, the wood-mulch surfacing in both the playground and swing-set areas appears uneven and therefore may not meet the Standards' requirements for accessible ground surfaces within a play area. Uneven or unstable mulch can impede accessibility for individuals with mobility impairments and may not satisfy the requirement that surfaces be firm, stable, and maintained.

Based on these observations, OCR identified compliance concerns involving the ostensible absence of an accessible route from the school building to the playground and swing sets and relating to the possibly inaccessible ground surfaces in both areas.

Conclusion

The District expressed an interest in resolving the complaint prior to the conclusion of OCR's investigation pursuant to Section 302 of [Case Processing Manual \(CPM\) \(Feb. 19, 2025\)](#). OCR determined resolution is appropriate because OCR's investigation to date identified issues that can be addressed through a resolution agreement (Agreement).

The attached Agreement requires the District to conduct a self-assessment to assess whether the playground and swing sets are physically accessible in compliance with Section 504, Title II, and the 2010 ADA Standards, and to remedy any identified areas of noncompliance. The District agreed to implement the Agreement, which will address the compliance concerns OCR identified in this case. OCR will monitor the implementation of the Agreement until it determines that the District has satisfied the commitments made under the Agreement.

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. 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. The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, or discriminate against any individual because that individual has filed a complaint or participated in the complaint resolution process. If this happens, that individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, 5 U.S.C. § 552, 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.

If you have any questions, please contact the attorney assigned to this complaint, Selim Fiagome, at (214) 661-9620, or by e-mail at Selim.Fiagome@ed.gov.

Sincerely,

/s/

Tiffany Gray
Acting Team Leader