

August 22, 2016

Mr. Stephen Fisher  
Superintendent  
New Castle Community Schools  
322 Elliott Avenue  
New Castle, Indiana 47362

Re: OCR Case No. 05-16-1178

Dear Mr. Fisher:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against New Castle Community Schools (Corporation) alleging discrimination based on disability.

Specifically, the complaint alleges that the Corporation is discriminating against individuals with disabilities because there is no designated accessible seating for individuals with disabilities for events at the New Castle Fieldhouse (Fieldhouse).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 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 Corporation is subject to the requirements of Section 504 and Title II.

During the investigation, OCR reviewed information provided by the Complainant and the Corporation. Prior to the completion of OCR's investigation, the Corporation expressed interest in resolving the complaint in accordance with Section 302 of OCR's *Case Processing Manual* (CPM). The Corporation executed the enclosed Resolution Agreement (Agreement) on August 16, 2016.

This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the complaint was resolved.

### **Applicable Legal Standards**

Accessibility, existing facilities: The implementing regulations of Section 504, at 34 C.F.R. § 104.22, and Title II, at 28 C.F.R. § 35.150, are applicable to any facility or part of a facility where construction commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that with regard to such facilities, termed “existing facilities,” the Corporation will operate the programs, activities and (as to Title II) services so that, when viewed in their entirety, the programs, activities, and services are readily accessible to and usable by persons with disabilities. The Corporation may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alterations of existing facilities or any other methods that result in making each of its programs, activities, and services accessible to disabled persons. The Corporation is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of the statute, the Corporation must give priority to methods that offer the programs, activities, and services to disabled persons in the most integrated setting appropriate. The implementing regulation of Section 504, at 34 CFR § 104.22(f), provides that the recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and locations of services, activities, and facilities that are accessible to and usable by persons with disabilities. The implementing regulation of Title II, at 28 C.F.R. § 35.163(a), provides that public entities must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of accessible services, activities and facilities.

Accessibility, new construction: The implementing regulations of Section 504, at 34 C.F.R. § 104.23(b), and Title II, at 28 C.F.R. § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. These facilities are termed “new construction or alterations.” The regulations provide that each facility or part of a facility which is altered by or for the use of a recipient in a manner that affects or could affect the usability of the facility shall, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities. The regulations specify the accessibility standard to be used in determining the accessibility of the alterations based on the date of construction or renovation.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineated the American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped [ANSI 117.1-1961 (1971)] (ANSI) as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the Uniform Federal Accessibility Standards (UFAS) for facilities constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. § 35.151(c), delineated UFAS, or The Americans with Disabilities Accessibility Guidelines for Buildings and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992.

The regulation implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (2010 Standards). The regulation, at 28 C.F.R. § 35.151(c)(3), now provides, “If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards.” OCR uses UFAS as a guideline for assessing the accessibility of existing facilities.

### **Policies and Procedures**

The Corporation’s policies and procedures governing nondiscrimination and accommodating individuals with disabilities can be found on the Corporation’s website.<sup>1</sup> Corporation Policy 2260 states that the Corporation will provide an opportunity to participate in all school-sponsored services, programs, or activities without discrimination. Corporation Policy 2260.01 guarantees that each service program or activity operated in an existing facility will be readily accessible to, and usable by, individuals with disabilities, and new construction and alterations to existing facilities will be accessible when viewed in their entirety. Under this policy, an individual requiring an accommodation should notify the Assistant Superintendent as far as possible prior to a school-sponsored function, program, or meeting if the individual requires special assistance or services, and provide information on which services the individual requires.

### **Facts**

The Complainant alleges that there is no designated accessible seating for individuals with disabilities for events at the Fieldhouse. The Complainant said that when he spoke to the athletic director, he asked about seating for individuals with disabilities. He said he had previously been told that the Corporation offered folding chairs for patrons with disabilities. He said he has a mobility impairment. He said that when he attended games at the Fieldhouse, no one ever helped him, and he just sat at the top of the bleachers. He said the Fieldhouse is touted as the world’s largest high school gymnasium, as it seats close to 10,000. He said the seating is stadium-style, where patrons descend toward the floor.

The Complainant said that the top of the stadium is like a running track, and the athletic director told him he did not like to clutter up the top with folding chairs. He said the athletic director told him that the next time he came in, he should ask for the athletic director, who would assess the situation and determine whether to accommodate his request. He said he also told the athletic director that his parents had attended a game and his stepfather almost lost his balance because there was no handrail for the descent. The Complainant heard that there is a one-person elevator to descend, but a relative told him it does not work.

The Corporation informed OCR that the Fieldhouse was constructed in 1959 and that it was renovated in 1978, with the addition of an auxiliary gym, wrestling room, and carpeting on the concourse, and in 1990, with the installation of 48 exit doors. The Corporation also provided School Board meeting minutes from 2013, which indicated that the Corporation considered, but rejected the installation of handrails in the Fieldhouse.

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<sup>1</sup> <http://www.neola.com/newcastle-in/>

The Corporation provided OCR a list of events held in the Fieldhouse, which included volleyball games, basketball games, wrestling meets, dance competitions, fundraisers, and the Corporation's graduation. The Corporation did not indicate whether there are alternate locations where any of these events could be held.

The Corporation also provided photographs that showed the Fieldhouse is a "pit"-style, with doors entering onto a running track encircling the top of the Fieldhouse and seats on a descending basis from the track. The Corporation also provided a picture of a wheelchair lift attached to stairs, but did not indicate where the stairs go.

In August 2016, the Corporation informed OCR that it has made improvements to the Fieldhouse and would provide pictures to OCR. The Corporation also indicated that it had "ordered some signage" and was awaiting its arrival.

### **Analysis and Conclusions**

In accordance with Section 302 of OCR's CPM, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the Corporation expressed interest in resolving the complaint.

On August 16, 2016, the Corporation executed the enclosed Agreement, when fully implemented, will address OCR's compliance concerns. The provisions of the Agreement are aligned with the allegations in the complaint and the information obtained during OCR's investigation, and is consistent with the applicable regulations. OCR will monitor the implementation of the Agreement until the Corporation is in compliance with Section 504 and Title II regulations at issue in this case.

This concludes OCR's investigation of the complaint and should not be interpreted to address Corporation's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

The 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.

Please be advised that the Corporation 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 Complainant may file another complaint 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 privacy.

The Complainant may file a private suit in Federal court, whether or not OCR finds a violation.

OCR would like to thank the Corporation for the cooperation and courtesy extended to OCR during our investigation. In particular, we wish to thank Ms. Jena Schmidt. If you or any of your staff members have any questions regarding this matter, please contact Sherry Rosenblum, Equal Opportunity Specialist, at (312) 730-1601 or by email at [Sherry.Rosenblum@ed.gov](mailto:Sherry.Rosenblum@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Ms. Jena Schmidt