



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

500 WEST MADISON ST., SUITE 1475  
CHICAGO, IL 60661-4544

**REGION V**  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

December 20, 2016

XXXXXXX  
Superintendent  
Waterloo Community School District  
Education Service Center  
1516 Washington Street  
Waterloo, IA 50702

Re: OCR Docket #05-16-1384

Dear XXXXXXXX:

The U. S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed with OCR against Waterloo Community School District (District) alleging discrimination on the basis of disability.

Specifically, the complaint alleged that, beginning in spring 2016 and continuing to the present, the District discriminates against individuals with disabilities by not permitting them use of an accessible route to the baseball facility at the Waterloo West High School (School).

OCR is responsible for enforcing 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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 - 12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II prohibits 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 is subject to these laws.

During its investigation, OCR reviewed information provided by the Complainant and the District, including blueprints/photographs of the District's parking facilities adjacent to the baseball field and the designated accessible routes from the parking facility to the baseball facility. OCR's determinations are set forth below.

### **Legal Standards**

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

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 ADA Standards). The Title II 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 policy interpretation, for new construction and alterations commenced on or after September 15, 2010, allows recipients of Federal financial assistance from the Department to use an additional alternative accessibility standard, the 2010 ADA Standards, in lieu of UFAS for the purpose of complying with Section 504.

### **Facts and Analysis**

The Complainant asserted that beginning with the 2016 baseball season and continuing to the present, the District no longer allows patrons to park and enter the baseball stadium for School baseball games via a non-District parking lot adjacent to the southwest side of the

facility, which is closest to the bleachers. Instead, the District requires patrons attending baseball games to park in its high school parking lot adjacent to the southeast side of the baseball stadium, enter the baseball stadium at an outfield gate and walk on a grass route along the left outfield line, the left field baseline, and then along the press box to bleachers. The Complainant alleged that the District's new route of ingress to the baseball field is inaccessible to individuals with physical mobility impairments.

The District informed OCR that the baseball facility at the school was originally constructed in approximately 1952 as part of a complex that includes a softball facility and tennis courts. All subsequent renovations, alterations, and additions, including the main addition to the complex—a baseball hitting facility that includes a building structure, have been made by the Booster Club through the use of volunteers, donated funds and in-kind activities such that the District does not possess any records regarding those activities. The District concedes for purposes of the instant complaint that alterations and/or renovations to the baseball facility commenced after March 15, 2012. Therefore, the 2010 ADA Standards apply to the route from parking to the baseball and softball facilities.

The District is required to have an accessible route from the parking facility to its baseball facility. Pursuant to the 2010 ADA Standards, an accessible route must be at least 36 inches wide and have a firm, stable, slip resistance surface. The running slope along the accessible route must not be steeper than 1:20 and the cross slope must not be steeper than 1:48 (502.4).

The District informed OCR that until spring 2016, most individuals visiting the baseball and softball facilities would have access to the facilities by parking in an adjacent non-District parking lot owned by the local hospital. Parking in the hospital lot provided an accessible route to both facilities. In the spring 2016, the hospital administration reversed its position and prohibited the use of that parking lot for users and spectators of the sports complex that included the baseball and softball facilities. The lack of access to the hospital parking lot required people wanting to access the complex to use the District's high school parking lot adjacent to the southeast side of the baseball facility, which do not provide an accessible route to the complex. The District informed OCR that, in April 2016, the District obtained a quotation from a construction corporation to construct an accessible route from the District's parking lot to the complex, including the baseball and softball facilities. The accessible route would consist of a sidewalk with the required grade and slope installed from the west end of the high school parking lot in between the tennis and baseball facilities, and continuing to the entrance of the softball facility and to the restrooms in between the softball and baseball facilities. The District reported that, although work on this project has already commenced, it is not completed.

OCR has, therefore, determined that the District is not in compliance with the Section 504 regulations, at 34 C.F.R. 104.23, and Title II regulations, at 28 C.F.R. § 35.151, with regard to the accessible route to the baseball facility.

Overall Conclusion

Based on the above, OCR has determined that the District is not in compliance with Section 504, at 34 C.F.R. § 104.23, and Title II, at 28 C.F.R. § 35.151, with respect to this complaint. The District has provided the enclosed agreement to OCR, which, when fully implemented, will correct the compliance problems found in this investigation. OCR will monitor the agreement to ensure compliance.

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.

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 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 received 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.

We wish to thank you and the District staff for their cooperation in this investigation. In particular, we wish to thank XXXXXXXX, District counsel. If you have any questions, please contact XXXXXXXX, OCR Attorney, at XXXXXXXX or XXXXXXXX.

Sincerely,

XXXXXXX  
Supervisory Attorney

Enclosure