



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS -- REGION VII

September 30, 2015

XXXXX X XXXXX
Office of Legal Counsel
The University of Oklahoma
Evans Hall
660 Parrington Oval, Suite 213
Norman, Oklahoma 73019

Re: Docket # 07072018

Dear XXXXXXXXX:

On December 20, 2006, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the University of Oklahoma (University), Norman, Oklahoma, alleging discrimination on the basis of disability. This letter is to confirm the University has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

Specifically, the Complainant alleged the University:

1. treats patrons with disabilities at Memorial Stadium (Stadium) who use wheelchairs differently than patrons who do not require wheelchair spaces and companion seating (accessible seating) because the University requires patrons who require wheelchair spaced/companion seating (a) to initially purchase fixed-seating tickets before the day of the game/event (event), and (b) to visit the Athletics Ticket Office (Ticket Office) located immediately west of the Stadium on the day of the event to exchange their fixed seating tickets for wheelchair spaces/companion seating tickets, while non-disabled patrons do not have to exchange their tickets or make an extra trip to the Ticket Office on the day of the event to do so;
2. discriminates against Stadium patrons on the basis of disability because the Stadium has an insufficient number of accessible seating for people who use wheelchairs; and
3. discriminates against Stadium patrons on the basis of disability because the accessible seating is not appropriately dispersed throughout the Stadium.

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OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. 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 University is subject to these laws. Additional information about the laws OCR enforce is available on our website at <http://www.ed.gov/ocr>.

Prior to the completion of OCR's investigation, the University submitted a signed Agreement (copy enclosed) on September 30, 2015, that, when fully implemented, will address the allegations of this complaint. The following is a summary of the information obtained to date regarding OCR's investigation of the University stadium ticketing policy and accessibility.

Allegation 1: Ticketing Policy

The complainant identified Witness 1 who told OCR that accessible seating tickets for events at the Stadium were not available to purchase before the day of the event. Witness 1 also told OCR the University's ticketing policy required patrons to first purchase tickets for fixed seating prior to the day of the event and then, on the day of the event, to visit the University's ticket office immediately west of the Stadium to exchange their fixed-seat tickets for accessible seating tickets. The complainant and Witness 1 alleged the ticketing policy was discriminatory on the basis of disability because patrons with a disability who need accessible seating are unable to purchase tickets for the actual seats prior to the event and are required to go to the ticket office on the day of the event to obtain tickets.

According to a letter dated February 13, 2007 to OCR from the University's Executive Associate Athletic Director, the ticketing policy required patrons who wished to purchase accessible seating to present at the ticketing office on the day of the event to ensure that tickets for accessible seating are limited to patrons requiring such locations. At the ticket office, patrons were required to verify and identify the need for accessible seating, at which time a ticket for fixed seats would be exchanged for accessible seating.

The Department of Justice published regulations at 28 C.F.R. § 35.138 regarding tickets for accessible, which went into effect on March 15, 2011. The new regulations provide that

venues cannot require proof of disability as a condition for purchasing tickets for accessible seating.

The University's website information regarding purchasing accessible seating has been revised; it now states:

If wheelchair accessible or special accommodation seating is needed, whether a ticket is purchased from the ticket office or otherwise acquired, a person may contact the Box Office Manager at (405) 325-3315 to arrange for the exchange of tickets in advance of the game or on game day. Exchanges can be made at the OU Athletics Ticket Office on the west side of Gaylord Family Oklahoma Memorial Stadium. Subject to availability, the ticket office will use its best efforts to provide accessible seating in a location comparable to the original tickets. Ticket exchanges are handled on a first-come, first-serve basis.

Likewise, a person who has ticket(s) in wheelchair accessible seating who does not need such seating must bring in their tickets for exchange prior to the game or on game day when Will Call opens to the OU Athletics Ticket Office on the west side of Gaylord Family Oklahoma Memorial Stadium.¹

The published ticketing policy does not contain all of the requirements of 28 C.F.R. § 35.138, including specifically stating that the University does not require proof of disability or indicating the locations of accessible seating for persons with disabilities. Therefore, the Agreement provides that the University shall review all existing ticketing policies, procedures, and informational materials regarding Stadium events, and will take any necessary action to ensure that those policies, procedures, and informational materials comply with the requirements of 28 C.F.R. § 35.138. The Agreement also provides that the University will train appropriate staff on the implementation of the ticketing policy.

Allegation 2: Number of Wheelchair Spaces

Witness 1 told OCR that, based on his observations, the stadium does not have the legally required number of accessible seats.

Accessibility standards are based on construction and/or alterations dates. With respect to Section 504 requirements, facilities constructed or altered prior to January 18, 1991, must meet American National Standards Institute (ANSI) guidelines. Construction or alterations to facilities after January 18, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulations, public entities currently have a choice of adopting either UFAS or the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or altered after January 26, 1992.

¹ http://www.soonersports.com/ViewArticle.dbml?&DB_OEM_ID=31000&ATCLID=208803890, accessed September 30, 2015.

The 2010 ADA Standards for Accessible Design (2010 Standards) were adopted by the Department of Justice (DOJ) in September 2010. The 2010 Standards took effect on March 15, 2012, and replace DOJ's prior standards. When adopted, the 2010 Standards were immediately available for use as an alternative to the original 1991 standards. Between September 15, 2010 and before March 15, 2012, educational institutions could choose between the 1991 Standards and the 2010 Standards. Facilities constructed or altered on or after March 15, 2012, must comply with the 2010 Standards.

OCR reviewed the Stadium seating to determine if it is readily accessible to and usable by individuals with disabilities. OCR's on-site visit to the Stadium on June 4, 2008, confirmed the Stadium has 196 wheelchair spaces.

In the construction of the east side upper deck, the University added 4,449 seats. ADAAG 4.1.3(19) requires 45 wheelchair accessible seats. The 2010 Standards require 34 seats. There are 45 wheelchair seats in the east side upper, therefore the University meets the 2010 Standards for the east side upper deck.

The new east side suites added 2,265 seats, which require 23 wheelchair accessible seats pursuant to the 1992 ADAAG, or 18 pursuant to the 2010 Standards. There are 23 wheelchair seats in the east side suites, therefore, the University met the 2010 Standards for the east side suites.

The older areas of the stadium were built before 1991, which was before the current required number of seats was established. There are 128 wheelchair spaces in the older stadium area. In 2002, the University waterproofed the stadium due to concerns of water intrusion inside the stadium. As part of the waterproofing project, the old fiberglass covered wooden benches were removed and new aluminum benches were installed in the same configuration as the previous benches. The University's website states the stadium capacity is 82,112; therefore, applying the new construction and alteration scoping provisions, the 2010 Standards require the stadium to have a minimum of 422 wheel chair spaces.²

On November 8, 2013, the attorney for the University told OCR that the University Board of Regents met on October 23, 2013, to be briefed on the update to the stadium master plan. She provided OCR with the agenda item online that reported on the update to the stadium master plan by the architectural firm which is the current master plan and project architect. The anticipated master plan work will include the comprehensive examination of the stadium, including team facilities, infrastructure, disability seating, the press box, south end zone, seating, suites, club and other premium seating options in all areas of the stadium, entry and arrival, and all other aspects of stadium features and operations.

² OCR refers to the 2010 standards because the 2010 Standards require fewer accessible seats than the prior standards. The 1991 Standards essentially require wheelchair spaces equal to 1% + 1 of total seating. Under the 2010 Standards, for seating capacities exceeding 5,000, the number required is 36, plus 0.5% of the number of seats in excess of 5,000.

The University asked to resolve the complaint prior to the completion of OCR's investigation. The Resolution Agreement requires the University to complete the Stadium Master Plan, which shall include a comprehensive examination of the accessibility in all areas of the Stadium, including parking, accessible routes, restrooms, concession areas, elevators, ticket booths, and any other areas used by the public. The University will provide OCR a written outline of the aspects of the revised Stadium Master Plan that address the seating and other accessibility matters outlined in Section II.C of this Agreement (Accessibility Plan) for OCR's review. The University will work collaboratively with OCR to revise the Accessibility Plan to resolve any questions or concerns raised by OCR with respect to accessibility prior to or during the construction.

Allegation 3: Dispersal of Wheelchair Spaces

Witness 1 told OCR that based upon observations during his last visit to the stadium, the accessible seats are not properly dispersed throughout the stadium.

OCR reviewed the stadium and determined most wheelchair spaces are on the south and east side of the Stadium, in an area largely corresponding to where guests of the visiting team are seated. On the first viewing level, there are seven wheelchair spaces and seven companion seats located on the west side of the Stadium; there are four sections on the east side and five sections on the south side having wheelchair/companion seating, for a total of 34 wheelchair spaces and 34 companion seats on the east side and 87 wheelchair spaces and 87 companion seats on the south side. This results in 128 wheelchair spaces and 128 companion seats on the first level. For the second viewing level of the Stadium, four sections on the east side have a total of 23 wheelchair spaces and 22 companion seats. For the third viewing level of the Stadium, six sections on the east side have a total of 45 wheelchair spaces and 45 companion seats.

Wheelchair spaces are dispersed in the east side upper deck and the new east side suites. However, the accessible seating in the other sections of the stadium is not dispersed and therefore that seating does not comply with the 2010 Standards.

The Agreement requires the University to ensure that all wheelchair spaces and companion seating comply with the integration of seating, lines of sight, horizontal and vertical dispersion, companion seating, and aisle seating requirements in the 2010 Standards and that the seating configuration disperses wheelchair spaces and companion seats around the field of play.

The Stadium Master Plan and subsequent renovations to the Stadium will be submitted and reviewed by OCR as described in Allegation 2 above.

RESOLUTION AGREEMENT

As noted above, prior to the conclusion of OCR's investigation and before OCR made a finding regarding whether the University was in compliance with Section 504 and Title II, the University requested to resolve the complaint. On September 30, 2015, the University signed the enclosed voluntary Resolution Agreement (Agreement) which, when fully implemented, will resolve the complaint. The provisions of the Agreement are aligned with the complaint allegation and the information obtained during OCR's investigation, and are consistent with the applicable regulations.

OCR considers the allegation of this complaint resolved effective the date of this letter and will monitor the University's implementation of the Agreement. When OCR concludes the University has fully implemented the terms of the Agreement, OCR will close the complaint. If the University fails to carry out the Agreement, OCR may resume the investigation.

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 the right to file a private suit in Federal court whether or not OCR finds a violation.

OCR is committed to high quality resolution of every case. If you have any questions, please contact XXXXX XXXXX, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXX.XXXX@ed.gov.

Sincerely,

/s/

Joshua Douglass
Chief Attorney

Enclosure