



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

October 22, 2014

Donna Whitley-Smith
Superintendent
Page County Schools
735 West Main Street
Luray, Virginia 22835

RE: OCR Complaint No. 11-14-1252
Letter of Findings

Dear Mrs. Whitley-Smith:

This letter is to notify you of the outcome of the discrimination complaint filed with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (the Department), on May 15, 2014, against Page County Public Schools (the Division), in particular, Page County High School (the School). The Complainant alleged the Division discriminated against individuals with disabilities (mobility impairments) by: (1) providing an insufficient number of accessible parking spaces at the softball, baseball, and football fields, and; (2) providing an insufficient number of accessible seats at the football field and in the gymnasium where basketball games are held.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Legal Standards

Both Section 504 (at 34 C.F.R. § 104.21) and Title II (at 28 C.F.R. § 35.149) provide that no qualified individual with a disability shall, because a division's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the district's programs or activities. The accessibility requirements of the Section 504 implementing regulation are found at 34 C.F.R. §§ 104.21-104.23. Comparable sections of the Title II implementing regulations are found at 28 C.F.R. §§ 35.149-35.151.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The regulations implementing Section 504 and Title II contain two standards for determining whether a division's programs and activities or facilities are accessible to individuals with disabilities. One standard applies to existing facilities; the other covers new construction and alterations. The applicable standard depends upon the date of construction and/or alteration of the facility.

For existing facilities, Section 504 (at 34 C.F.R. § 104.22) and Title II (at 28 C.F.R. § 35.150) require a division to operate each program or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. This standard does not require that a division make each existing facility or every part of an existing facility accessible if alternative methods are effective in providing overall access to the program or activity. Under the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977; under the Title II regulation, existing facilities are those for which construction began prior to January 27, 1992. This is viewed as program access.

Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under the Section 504 and Title II standards. With respect to newly constructed facilities, Section 504 (at 34 C.F.R. § 104.23(a)) and Title II (at 28 C.F.R. § 35.151(a)) require that the facility be designed and constructed in such a manner that it is readily accessible to and usable by individuals with disabilities. In addition, for new alterations that affect or could affect facility usability, Section 504 (at 34 C.F.R. § 104.23(b)) and Title II (at 28 C.F.R. § 35.151(b)) require that, to the maximum extent feasible, the facility be altered in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

The new construction provisions of the Section 504 and Title II regulations also set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulation, divisions had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or altered after January 26, 1992 and prior to September 15, 2010. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that divisions had a choice of complying with one of the following: UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards).¹ The Title II regulation provides that divisions are required to comply with the 2010 ADA Standards for Accessible Design for construction or alterations commencing on or after March 15, 2012.² If an element does not meet these requirements of the applicable standard at the time of construction the standard applied to fix the problem is the current standard, in this case the 2010 Standards. Additionally, if the facility meets the 2010 Standards, there is no further determination required as to whether it met the standard at the time of construction. Therefore

¹ The 2010 ADA Standards for Accessible Design consist of 28 C.F.R. § 35.151 and the 2004 ADAAG at 36 C.F.R. Part 1191, appendices B and D.

² After the U.S. Department of Education revises its Section 504 regulation to formally adopt the 2010 Standards in lieu of UFAS, use of the 2010 Standards will be required to comply with Section 504.

OCR will consider if each facility meets the 2010 Standard; if it does not OCR will look to the applicable standard or program access.

2010 Standards

Parking (Section 208): requires that if parking is provided, then accessible spaces need to be provided. The amount of spaces is:

| Total Number of Parking Spaces Provided in Parking Facility | Minimum Number of Required accessible Parking Spaces |
|--|---|
| 1 to 25 | 1 |
| 26 to 50 | 2 |
| 51 to 75 | 3 |
| 76 to 100 | 4 |
| 101 to 150 | 5 |
| 151 to 200 | 6 |
| 201 to 300 | 7 |
| 301 to 400 | 8 |
| 401 to 500 | 9 |
| 501 to 1000 | 2 percent of total |
| 1001 and over | 20, plus 1 for each 100, or fraction thereof, over 1000 |

Each space is required to have an access aisle of sixty inches adjacent to it (§502.3). Additionally, one in six of the accessible spaces, but no fewer than one, is required to have an access aisle 96 inches wide (van accessible) (§208.2.4). Additionally, each spot is to be located on the shortest accessible route of travel from the parking facility to an accessible entrance (§208.3.1). Finally there needs to be signage sixty inches above the finished floor with the symbol of accessibility and for van accessible spaces signage should also denote that (§502.6). OCR applies the 2010 standard to parking because parking lots generally are repainted regularly, which requires use of the standard in effect at the time of painting. All three standards AGAAG, UFAS, and the 2010 Standard all have similar requirements for parking lots, except the 2010 Standard requires more van accessible parking spaces, one in six, compared to the one in eight under AGAAG or UFAS.

Seating (Section 221): Where fixed seating is provided accessible wheelchair locations shall be provided as follows:

| Number of Seats | Minimum Number of Required Wheelchair Spaces |
|------------------------|---|
| 4 to 25 | 1 |
| 26 to 50 | 2 |
| 51 to 150 | 4 |
| 151 to 300 | 5 |
| 301 to 500 | 6 |
| 501 to 5000 | 6, plus 1 for each 150, or fraction thereof, between 501 through 5000 |
| 5001 and over | 36, plus 1 for each 200, |

| Number of Seats | Minimum Number of Required Wheelchair Spaces |
|-----------------|--|
| | or fraction thereof, over 5000 |

Additionally, there needs to be at least one companion seat provided with each wheelchair space (§221.3). The 2010 Standards also requires disbursement of seating in various lines of sight which provide spectators with choices of seating locations and viewing angles that are substantially equivalent to, or better than, the choices of seating locations and viewing angles available to all other spectators (§221.2.3).

Accessible Routes (Section 206.2.1): At least one *accessible* route shall be provided within the site from *accessible* parking spaces and *accessible* passenger loading zones; public streets and sidewalks; and public transportation stops to the *accessible* building or facility entrance they serve.

Analysis

On August 18, 2014, OCR conducted on-site visits to many of the facilities.

Football Field:

The football field was constructed in 1963. However, based on visual inspection, it has been updated with new bleachers and other features. OCR believes that the updates occurred after 1963 but before the 1990's. The Division could not provide specific dates for these renovations. To determine if this facility is readily accessible, OCR considered if, viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. One way to do this is to consider if the facility meets 2010 Standards. If it meets this standard, no further analysis is required.

Parking: The parking lot has 126 spaces and five accessible spaces that meet the requirements of 2010 Standards except that it lacks vertical signage. There is an accessible path of travel from the parking spaces to the spectator entrance to the football field and to the seating.³ OCR identified a compliance concern because of the lack of vertical signage.

Seating: There are 312 seats on the visitor's side bleachers and 432 seats in the home side bleachers. Since both seating areas appear to be older than 1977, a program access standard applies. The Division reported to OCR there were eight and twelve accessible seats on each side, respectively. OCR determined that number of seats in each area is acceptable under a program access standard and, viewed in its entirety, the seating is readily accessible and usable by individuals with disabilities. Therefore, OCR did not identify any concerns with the seating area.

While OCR did not identify any concerns with the number of accessible seats, OCR identified concerns with the *location* of the accessible seating. The accessible seating is at the top of the

³ OCR will note the Complainant filed this complaint about a fence that was constructed in the parking lot which reduced the number of parking spaces. Even through there was a reduction in parking this is not *per se* discrimination as there is adequate accessible parking based on the size of the lot with the reduced number of spaces. OCR will note this fence was installed for safety reasons.

bleachers, which are built into the side of the hill. It is located adjacent to the parking lot in two separate areas across an aisle from each other. The aisle is used to access the bleachers below. One of the two seating areas is clearly marked and painted appropriately; however, the second area is not. Additionally, the Division told OCR that folding chairs are available for companion seating, but there is no way for patrons to be made aware of this, such as by signage. Finally, there is a row of bleachers in front of the accessible seating; if patrons stand in these seats, they would obstruct the view for persons in the accessible seats. As discussed above, the legal standard here is program access. OCR determined that the lack of signage and row of bleachers in front of the accessible seats do not comport with the program access standard. To resolve these concerns, the Division has agreed to remove these bleachers to enable clear sight lines for persons in the accessible seats and post a sign indicating that companion seating is available to persons with disabilities upon request.

Baseball Field:

The Division told OCR the baseball field was constructed in 1991 in its initial data response; subsequently it told OCR it was constructed in 1989 based on a picture in a yearbook. Regardless of whether it was constructed in 1989 or in 1991, OCR determined that the field is not accessible.⁴ Specifically, ANSI 4.2 requires walks to have a slope no greater than five percent. Here, the path of travel between the parking area and the field (the road between the two) has a slope greater than ten percent. Also, the baseball field has no accessible path of travel from the parking/road to the field as there is a large staircase. In addition, there is no accessible seating provided at the field – only bleachers accessed by stairs.⁵ The baseball field has two sets of the bleachers each with 130 seats and no accessible seats and no path of travel connecting the seats and the parking, which does not meet UFAS. As a result, OCR identified compliance concerns with the baseball field.

During the course of the investigation, the Division suggested building some accessible parking spaces close to the field and adding some accessible seating on a path of travel to those spaces. This would create an accessible route and provide accessible seating which would make the facility compliant with the 2010 Standard, which would remedy the compliance concerns.

Softball field:

There is parking on an accessible route to the softball field. Specifically, there are 276 spaces in the lot that serves the softball field and the main school building and there are five and eight accessible spaces, respectively. OCR did not identify any concerns with the number of accessible spaces as the parking lot is required to have a total of seven spaces and it has twelve. However there is not vertical signage for every space at the softball field, which is a violation of the 2010 Standard.

Gymnasium:

⁴ The field does not comply with the ANSI accessibility standards, which applies to facilities constructed in 1989, and has a lesser standard than facilities constructed in 1991.

⁵ If constructed in 1989, the seating would not need to be accessible under ANSI. Instead, the bleachers would have to meet UFAS standards, which have similar requirements to the 2010 standard.

The gymnasium was constructed in 2009. There are 525 seats on each side of the bleachers, thus a total of 1,050, which would require eleven accessible seats. If each section was looked at individually, seven accessible seats would be required on each side. There are eight accessible spaces with companion seating on each side of the bleachers, and additional accessible seats can be added by moving the first row of bleachers back and providing folding chairs as companion seating. Based on this information, OCR did not identify any concerns with accessible seating provided.

Conclusion

As discussed above, OCR identified violations regarding the Division's compliance with Section 504 and Title II at the School. To resolve these concerns, the Division voluntarily entered into the attached Resolution Agreement, signed on October 15, 2014. Once the Resolution Agreement is fully implemented, the Division will be in compliance with Section 504 and Title II with respect to the issues addressed herein. OCR will monitor the Division's progress in implementing the Resolution Agreement. Failure to implement the Resolution Agreement could result in OCR's reopening the complaint investigation.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division'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 the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law. Please be advised that the Division may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

We appreciate the Division's cooperation during the resolution of this complaint. If you have any questions, feel free to contact the attorney assigned to the complaint, Judith Risch at 202-453-5925 or judith.risch@ed.gov.

Sincerely,

/s/

Kay Bhagat
Team Leader

Enclosure: Resolution Agreement