



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

July 15, 2020

Chancellor Robert E. Johnson
University of Massachusetts Dartmouth
285 Old Westport Rd,
North Dartmouth, MA 02747
Via email to: chancellor@umassd.edu

Re: Complaint No. 01-9-2105
University of Massachusetts Dartmouth

Dear Chancellor Robert E. Johnson:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the complaint we received on March 13, 2019 against the University of Massachusetts Dartmouth (University). The Complainant alleged that the University discriminates against persons with disabilities and/or mobility impairments on the basis of disability. Specifically, the complaint alleged that that the University's athletic events are inaccessible to persons with disabilities and/or mobility impairments for the following reasons:

1. the University's Tripp Center athletics facility lacks the requisite number of accessible parking spaces (Allegation 1);
2. that the shuttle used to transport persons with disabilities to the Tripp Center lacks a lift for wheelchairs (Allegation 2);
3. that the University's bleachers at the Tripp Center lack an accessible route (ramps with handrails) to access accessible seating (Allegation 3);
4. that the women's restroom at the Tripp Center lacks an accessible stall with appropriate grab bars (Allegation 4);
5. that the designated restroom for persons with disabilities and/or mobility impairments at the Tripp Center lacks an access to an elevator or other means sufficient to allow re-entry to the sporting event (Allegation 5); and
6. that the doors from the restroom to the sporting area at the Tripp Center require excessive force to open (Allegation 6).

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 any program or activity receiving 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 University receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

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

In reaching a determination, OCR reviewed documents provided by the Complainant and the University; interviewed the Complainant and University faculty/staff; and conducted a site visit on July 16, 2019. After carefully considering all of the information obtained during the investigation, OCR made the following findings:

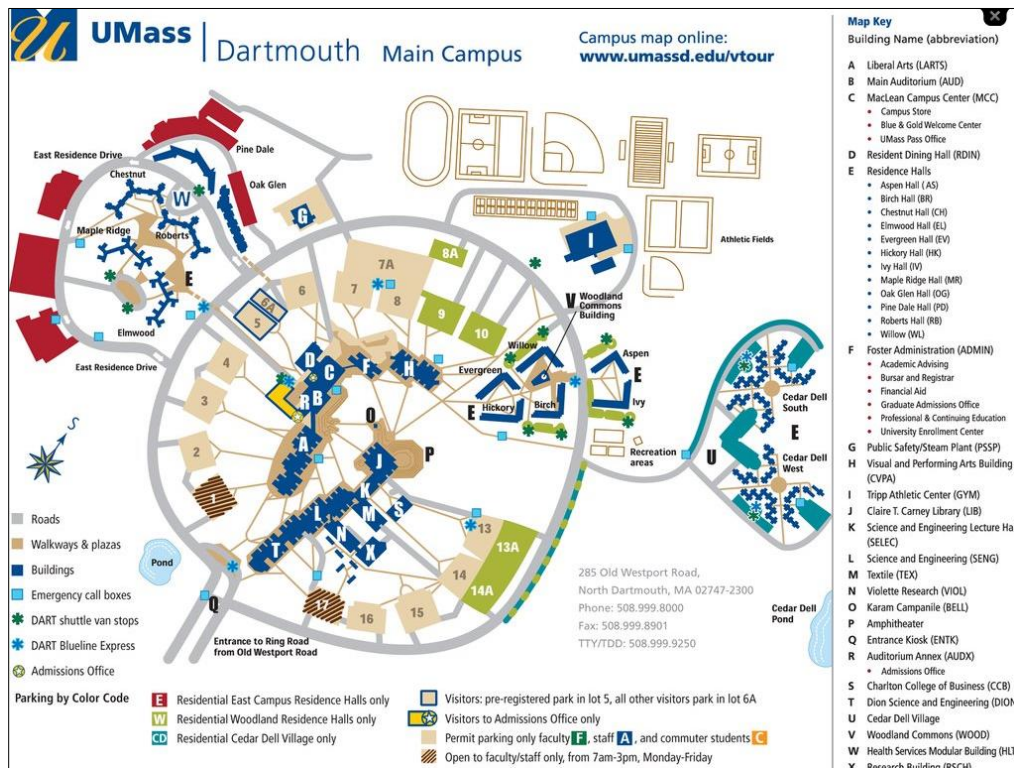
- OCR found sufficient evidence of a violation of Section 504 and Title II with respect to Allegations 1 and 2, which the University agreed to resolve through the enclosed resolution agreement.
- OCR found insufficient evidence to support Allegation 5.
- Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, the University expressed an interest in resolving Allegations 3, 4, and 6. OCR made no findings with respect to these allegations and determined that a voluntary resolution is appropriate.

OCR’s findings and conclusions are discussed below.

Background

1. Parking

The Complainant advised OCR that while attending a sporting event at the University on February 22, 2019, accessible parking was limited (see map below) and she was bused from accessible parking at a dispersed parking lot to the University’s Tripp Athletic Center (Center).



The University acknowledged to OCR that it has limited parking at the Center lot, and that it utilizes a third party transportation service to provide on-campus transportation to sporting events from three additional parking lots – Lot 13, Lot 6, and Lot 5. The University advised OCR that the parking lots are re-striped and re-paved on a five-year cycle, meaning that all lots have been re-paved and re-striped no later than February of 2014.

Center Lot

The Center lot contains 37 total spaces, of which 4 are designated accessible. The lot features a route to public transportation that does not require the use of stairs. During its onsite on July 16, 2019, OCR observed that one of the handicapped signs was twisted so that the symbol was not visible from a front approach to the accessible parking space. OCR also observed that the lot contained a parking space with “van accessible”¹ measurements, however, the space was not designated as such with any signage. Finally, OCR also determined that the exterior accessible route from the Center lot accessible parking spaces to the designated accessible entrance to the Center featured a portion of its run that exceeded a slope of 1:20.

Lot 13

Parking lot 13 contains 154 total spaces, of which 7 are designated accessible. The lot features a route to a public transportation stop that does not require the use of stairs. During its onsite on July 16, 2019, OCR determined that of the seven accessible spaces, none were designated as a van accessible space. OCR also determined that of the seven designated accessible parking spaces featuring signs with the international symbol of accessibility mounted more than 60 inches above the ground, one sign was twisted so as not to be visible from a forward approach to the parking space, and one sign was missing.

Lot 6

Parking lot 6 contains 145 total spaces, of which 6 are designated accessible. The lot features a route to a public transportation stop that does not require the use of stairs. During its onsite on July 16, 2019, OCR determined that of the six designated accessible parking spaces, none are designated as a van accessible parking space.

Lot 5

Parking lot 5 contains 108 total spaces, of which 5 are designated accessible. The lot features a route from the parking lot to a public transportation stop that does not require the use of stairs. During its onsite on July 16, 2019, OCR determined that of the five designated accessible parking spaces, none are designated as a van accessible parking space.

¹ The parking space measured 11 feet five inches wide with a five-foot access aisle, in compliance with the requirements for a van accessible parking space pursuant to Section 502.2 of the 2010 Standards.

2. Shuttle Service

The University advised OCR that it has available shuttle buses with operable wheelchair lifts, and OCR inspected a shuttle bus with a wheelchair lift at its onsite on July 16, 2019. The Complainant advised OCR that the van deployed on February 22, 2019 lacked a lift, and the University conceded that the van deployed on that date lacked a lift. The University advised OCR that if the van driver had been informed of the need for an accessible van, an accessible van was available and could have been deployed on the evening of February 22, 2019.

3. Bleachers

The University advised OCR that the bleachers in the sporting arena were installed in 1971 and have not been altered since, and that the lower level of the arena is the current designated area of the arena for individuals with mobility impairments. During OCR's July 16, 2019 onsite, OCR inspected the arena and bleachers and took photographs of the bleachers. The bleachers are automated, and when engaged extend out into the arena for spectators to view competitions. OCR determined that the retractable bleachers extend the entire length of one side of the arena and are constructed of wood. OCR determined that the arena's bleachers do not feature any wheelchair spaces or companion seats, lack rails or ramps, and the viewing areas that would be available for disabled persons (on the ground in front of the bleachers, although not designated as such) are not horizontally or vertically dispersed to provide equal access and lines of sight.

4. Women's Restroom Stalls

The Complainant advised OCR that the women's restroom on the second floor lacked an accessible stall with rails or bars, and that there was no elevator connecting the second floor with the ground floor. The University advised OCR that the upper level of the Center, including its restrooms, are not the public area for sporting events and have not been renovated or altered since 1971. The University further advised that the women's restrooms on the ground floor are the designated accessible restrooms for the Center that can be utilized by the public, including visitors attending sporting events with mobility impairments.

Ground Floor Restroom

During its onsite on July 16, 2019, OCR reviewed the designated accessible restroom on the lower level of the Center, and the unrenovated restrooms on the upper level of the Center. OCR determined that at least one restroom (the lower level restroom) was available to the public and was accessible, although it lacked signage identifying it as such with the international symbol of accessibility. OCR also made the following observations about the lower level restroom:

- the existing sign on the designated accessible restroom on the lower level contained tactile characters (Braille) and was mounted 62.5 inches above the floor;
- the door to the women's restroom on the lower level required 13-15 pounds of force to open; and
- grab bars were present on the side and rear walls of the restroom stall(s).

Upper Level Women's Restroom

OCR determined that the upper level restrooms were unrenovated and lacked accessible stalls with grab bars. The restrooms also lacked directional signage to the designated accessible restrooms on the ground floor.

5. Lack of Elevator

The Complainant also advised OCR there were ramps leading into the building, but there was no way to get to the seating for the athletic event because it would have required walking up several stairs. At OCR's onsite on July 16, 2019, the University advised OCR that the main entrance to the building, which featured a ramp to the second floor, was **not** the accessible entrance to the public sporting event arena on the ground floor. Additionally, the University advised OCR that the main entrance is not a public area for sporting events. The entrance to the Tripp Center was constructed in 1971 and has not been altered since that date.

At OCR's onsite on July 16, 2019, OCR found that the Center's arena and bleachers for sporting events are located on the ground floor and are accessed through the separate accessible entrance, although it was not identified with the international symbol of accessibility. OCR also observed that the main entrance, which was not the designated accessible entrance to the arena and bleachers, lacked directional signage directing visitors to the designated accessible entrance.

6. Doors to Arena

The Complainant also advised OCR that the doors to the sporting arena were extremely heavy to operate, however, the University claimed to have remediated this condition. During its onsite on July 16, 2019, OCR determined that the force required to open the doors to the arena and bleachers leading from the interior route from the designated accessible entrance and the designated accessible restroom was 8 pounds of force.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.21, provides that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a University's programs or activities because the University's facilities are inaccessible to or unusable by individuals with disabilities. The Title II regulation, at 28 C.F.R. § 35.149, contains a similar prohibition for public entities.

The regulations implementing Section 504 and Title II each contain two standards for determining whether a University's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility. 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. Facilities constructed or altered on or

after these dates are considered newly constructed or altered facilities under Section 504 and Title II standards.

For existing facilities, the Section 504 regulation, at 34 C.F.R. § 104.22, and the Title II regulation, at 28 C.F.R. § 35.150, require a University to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. The University may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities and services accessible to persons with disabilities. In choosing among available methods of meeting the requirements, a University must give priority to methods that offer programs, activities and services to persons with disabilities in the most integrated setting appropriate.

The regulation implementing Section 504 requires that “[a] recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to [persons with disabilities.]” 34 C.F.R. § 122(a). Accordingly, each program or activity operated at the arena, when viewed in its entirety, must be readily accessible to individuals with disabilities. The regulation implementing Section 504 does not require a recipient to make structural changes to existing facilities where it can effectively achieve compliance through means such as (but not limited to) redesign of equipment, or reassignment of classes or other services to accessible buildings or locations. 34 C.F.R. § 122(b). However, if no effective alternatives can be provided to achieve program accessibility, a recipient is required to make necessary structural changes. These changes, in turn, are to be made consistent with the requirements for new construction.

With respect to newly constructed facilities, the Section 504 regulation, at 34 C.F.R. § 104.23(a), and the Title II regulation, at 28 C.F.R. § 35.151(a), require that the University design and construct the facility, or part of the facility, 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, the Section 504 regulation, at 34 C.F.R. § 104.23(b), and the Title II regulation, at 28 C.F.R. § 35.151(b), require that, to the maximum extent feasible, the University alter the facility 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 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) although deviations from UFAS are permitted if such deviations provide substantially equivalent or greater access to and usability of the facility. Under the Title II regulation, Universities 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 Universities had a choice of complying with either UFAS, ADAAG, or the 2010 ADA Standards for

Accessible Design (2010 Standards). The Title II regulation provides that Universities are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012. While the Section 504 regulations have not been amended to formally adopt the 2010 Standards, a University may use the 2010 Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, appendices B and D.

An overview of the applicable legal standards in this case are shown in the chart below:

Component of Facility	Date Constructed/Renovated	Applicable Standard
Parking Lots	Past 5 years – No later than 2015	2010 ADA Standards
Shuttle Service (Parking)	Past 5 years – No later than 2015	2010 ADA Standards
Bleachers	1971	Existing Facility
Women’s Restroom	Upper Level – 1971 Lower Level – 2012-2013	Upper Level – Existing Facility Lower Level – 2010 ADA Standards
Lack of Elevator	1971	Existing Facility
Doors to Arena	1971	Existing Facility

Allegation 1:

The Complainant alleged that the University’s athletic events are inaccessible to persons with disabilities and/or mobility impairments because the University’s Tripp Center athletics facility lacks the requisite number of accessible parking spaces (Allegation 1).

Legal Standard

Because the parking lots were restriped in the past five years (a date after March 15, 2012), the Title II regulation provides that the 2010 ADA Standards for Accessible Design are applicable. Section 208.2 of the 2010 Standards requires a minimum of two accessible spaces for a parking lot as set out in the chart below:

Minimum Number of Accessible Parking Spaces

Total Parking Spaces Per Parking Facility	Minimum Accessible Parking Spaces (car & van)	Minimum Van-Accessible Parking (1 of 6 accessible spaces)
1 to 25	1	1
26 to 50	2	1
51 to 75	3	1
76 to 100	4	1
101 to 150	5	1
151 to 200	6	1

Analysis

All of the parking lots – Center Lot (37 spaces/4 accessible), Lot 13 (154 spaces/7 accessible), Lot 6 (145 spaces/6 accessible), and Lot 5 (108 spaces/5 accessible) – had the minimum number of accessible parking spaces required by the 2010 Standards. However, three of the parking lots (Lot 13, Lot 6, and Lot 5) lacked a van accessible parking space, as required by Section 208.2.4 of the 2010 Standards. Additionally, OCR observed that several of the lots contained signage that appeared inconsistent with the 2010 Standards during its onsite on July 16, 2019. These potential violations are noted below:

Center Lot

- Section 502.6 of the 2010 Standards requires that parking space identification signs shall include the International Symbol of Accessibility. OCR determined that one of the signs with the international symbol of accessibility was twisted so as not to be visible from a forward approach to the parking space.
- Section 208.2.4 and 502.6 of the 2010 Standards require that for every 6 or fraction of 6 accessible parking spaces, at least one must be designated as a van accessible parking space, and signs identifying van parking spaces shall contain the designation “van accessible.” OCR determined one accessible parking space had the dimensions considered to be “van accessible,”² but was not designated as such.
- OCR also determined that the exterior accessible route from the Center lot accessible parking spaces to the designated accessible entrance to the Center featured a portion of its run had a slope that exceeded 1:20 in violation of Section 403.3.

Lot 13

- Section 502.6 of the 2010 Standards requires that parking space identification signs shall include the International Symbol of Accessibility. OCR determined that one of the signs with the international symbol of accessibility was twisted so as not to be visible from a forward approach to the parking space.

Conclusion

OCR determined that there was sufficient evidence to establish, by a preponderance of the evidence, that although the University’s parking lots contained the requisite number of designated accessible parking spaces, they lacked certain elements required by the 2010 Standards, such as van accessible parking spaces, or appropriately visible or undamaged signage. Accordingly, OCR has negotiated a resolution agreement to address Allegation 1.

² The parking space measured 11 feet five inches wide with a five-foot access aisle, in compliance with the requirements for a van accessible parking space pursuant to Section 502.2 of the 2010 Standards.

Allegation 2:

The Complainant alleged that that the University’s athletic events are inaccessible to persons with disabilities and/or mobility impairments because the shuttle used to transport persons with disabilities to the Tripp Center lacks a lift for wheelchairs (Allegation 2).

Legal Standard

Because the parking lots were restriped in the past five years (a date after March 15, 2012), the Title II regulation provides that the 2010 ADA Standards for Accessible Design are applicable. Section 208.3.1 of the 2010 ADA Standards addresses the provision of shuttle services and provides in pertinent part as follows:

208.3.1 General. *Parking spaces complying with 502 that serve a particular building or facility shall be located on the shortest accessible route from parking to an entrance complying with 206.4 In parking facilities that do not serve a particular building or facility, parking spaces complying with 502 shall be located on the shortest accessible route to an accessible pedestrian entrance of the parking facility.*

EXCEPTIONS:

- 1.*** *All van parking spaces shall be permitted to be grouped on one level within a multi-story parking facility.*
- 2.*** *Parking spaces shall be permitted to be located in different parking facilities if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance or entrances, parking fee, and user convenience.*

(Emphasis added). If the University chooses to provide a shuttle to provide “substantially equivalent or greater accessibility”, as permitted in the exception to Section 208.3.1, then it must also comply with 34 CFR Section 104.4(b)(1)(i), which provides that “a recipient in providing any aid, benefit or service, may not . . . deny a qualified handicapped person the opportunity to participate or benefit from the aid, benefit, or service.” A shuttle service, therefore, complies with Title II and Section 504 if it provides equally accessible service to handicapped individuals.

Analysis

In this case, the University conceded that the van deployed to pick up the Complainant on February 22, 2019 lacked a lift. The University, however, advised OCR that it has available shuttle buses with operable wheelchair lifts, and OCR inspected a shuttle bus with a wheelchair lift at its onsite on July 16, 2019. The University asserted that if the van driver had been informed of the need for an accessible van, one was available and could have been deployed on the evening of February 22, 2019.

The University advised OCR that it disseminates an email announcement to the campus community prior to athletic events to inform individuals of the parking specifications for the event, including the provision of shuttles, as well as special parking access for disabled persons near the athletics center. The University, however, did not provide, and OCR did not find, any information to establish that the University has communicated a policy or procedure, or posted one on its website, to advise or notify the public or visitors to the University’s sporting events that they may, or how they may, request a wheelchair accessible shuttle bus.

OCR determined that there was sufficient evidence to establish, by a preponderance of the evidence, that the University has not developed a policy or procedure, or posted one on its website, to notify the public, or visitors to the University’s sporting events, of the availability of accessible vans or the manner in which to request that one be made available. As a result of the University’s failure to do so, (1) there was not “substantially equivalent or greater accessibility” provided to handicapped individuals, and (2) the shuttle service being provided was not equally accessible to handicapped individuals, as required by Section 208.3.1 of the 2010 Standards. Accordingly, OCR has negotiated a resolution agreement to address Allegation 2.

Allegation 3:

The Complainant alleged that that the University’s athletic events are inaccessible to persons with disabilities and/or mobility impairments because the University’s bleachers at the Tripp Center lack an accessible route (ramps with handrails) to access accessible seating.

Legal Standard

Because the Tripp Center was constructed in 1971 and the bleachers have not been renovated since that time, this is an “existing facility” under Title II and Section 504. To determine the accessibility and usability of programs in “existing facilities,” OCR considers UFAS and/or the 2010 Standards when assessing the degree to which certain physical barriers may render the program inaccessible or unusable. OCR does not require strict compliance with UFAS or ADAAG for “existing facilities;” rather, OCR uses these standards as a guideline when determining whether particular features of the “existing facilities” would effectively render the program inaccessible to or unusable by persons with disabilities. Used as a guide, the UFAS standard for bleachers is set forth below:

4.33.3* PLACEMENT OF WHEELCHAIR LOCATIONS. *Wheelchair areas shall be an integral part of any fixed seating plan and shall be dispersed throughout the seating area. They shall adjoin an accessible route that also serves as a means of egress in case of emergency and shall be located to provide lines of sight comparable to those for all viewing areas.*

EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies, and other areas having sight lines that require slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.

Under the UFAS standard, wheelchairs “may be clustered for bleachers” and equivalent accessible viewing “may be located on levels having accessible egress.” Also used as a guide, the 2010 Standard provides:

221.2.2 Integration. *Wheelchair spaces shall be an integral part of the seating plan.*

Advisory 221.2.2 Integration. *The requirement that wheelchair spaces be an "integral part of the seating plan" means that wheelchair spaces must be placed within the footprint of the seating area. Wheelchair spaces cannot be segregated from seating areas. For example, it would be unacceptable to place only the wheelchair spaces, or only the wheelchair spaces and their associated companion seats, outside the seating areas defined by risers in an assembly area.*

221.2.3 Lines of Sight and Dispersion. *Wheelchair spaces shall provide lines of sight complying with 802.2 and shall comply with 221.2.3. In providing lines of sight, wheelchair spaces shall be dispersed. Wheelchair spaces shall 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. When the number of wheelchair spaces required by 221.2.1 has been met further dispersion shall not be required.*

EXCEPTION: *Wheelchair spaces in team or player seating areas serving areas of sport activity shall not be required to comply with 221.2.3.*

Advisory 221.2.3 Lines of Sight and Dispersion. *Consistent with the overall intent of the ADA, individuals who use wheelchairs must be provided equal access so that their experience is substantially equivalent to that of other members of the audience. Thus, while individuals who use wheelchairs need not be provided with the best seats in the house, neither may they be relegated to the worst.*

Unlike UFAS, Section 221.2.2 of the 2010 Standard requires that wheelchair spaces be “an integral part of the seating plan.” Additionally, Section 221.2.3 of the 2010 Standards requires that “wheelchair spaces shall be dispersed,” so that “experience is substantially equivalent to that of other members of the audience.”

Analysis

The applicable regulation, 34 CFR § 104.22(b), provides that a “recipient [must] operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons.” The regulation goes on to state that although a recipient is “not required to make structural changes in existing facilities,” a recipient must “give priority to those methods that serve handicapped persons in the most integrated setting appropriate.” In this case, the University

advised that wheelchair users could sit in front of the bleachers, but OCR did not determine whether the University provides “different locations” from which wheelchair users can “enjoy unobstructed views” of athletic competitions on the court.

Prior to the conclusion of OCR’s investigation of Allegation 3 and pursuant to Section 302 of OCR’s *Case Processing Manual*, the University expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate.³ Subsequent discussions between OCR and the University resulted in the University signing the enclosed Agreement which, when fully implemented, will address Allegation 3. OCR will monitor the University’s implementation of the Agreement.

Allegation 4:

The Complainant alleged that the University’s athletic events are inaccessible to persons with disabilities and/or mobility impairments because the women’s restroom at the Tripp Center lacks an accessible stall with appropriate grab bars.

Legal Standard

Because the Tripp Center was constructed in 1971 and the upper level women’s restrooms have not been renovated since that time, they are an “existing facility” under Title II and Section 504. To determine the accessibility and usability of programs in “existing facilities,” OCR considers UFAS and/or the 2010 Standards when assessing the degree to which certain physical barriers may render the program inaccessible or unusable. OCR does not require strict compliance with UFAS or ADAAG for “existing facilities;” rather, OCR uses these standards as a guideline when determining whether particular features of the “existing facilities” would effectively render the program inaccessible to or unusable by persons with disabilities.

Because the ground floor women’s restroom was updated in 2012-2013, the 2010 ADA Standards for Accessible Design are applicable. Section 609 of the 2010 ADA Standards addresses grab bars in toilet facilities and provides in pertinent part as follows:

609 Grab Bars

609.3 Spacing. *The space between the wall and the grab bar shall be 1 1/2 inches (38 mm). The space between the grab bar and projecting objects below and at the ends shall be 1 1/2 inches (38 mm) minimum. The space between the grab bar and projecting objects above shall be 12 inches (305 mm) minimum.*

EXCEPTION: *The space between the grab bars and shower controls, shower fittings, and other grab bars above shall be permitted to be 1 1/2 inches (38 mm) minimum.*

609.4 Position of Grab Bars. *Grab bars shall be installed in a horizontal position, 33 inches (840 mm) minimum and 36 inches (915 mm) maximum above*

³ The *Case Processing Manual* is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

the finish floor measured to the top of the gripping surface, except that at water closets for children's use complying with 604.9, grab bars shall be installed in a horizontal position 18 inches (455 mm) minimum and 27 inches (685 mm) maximum above the finish floor measured to the top of the gripping surface. The height of the lower grab bar on the back wall of a bathtub shall comply with 607.4.1.1 or 607.4.2.1.

609.5 Surface Hazards. *Grab bars and any wall or other surfaces adjacent to grab bars shall be free of sharp or abrasive elements and shall have rounded edges.*

609.6 Fittings. *Grab bars shall not rotate within their fittings.*

609.7 Installation. *Grab bars shall be installed in any manner that provides a gripping surface at the specified locations and that does not obstruct the required clear floor space.*

609.8 Structural Strength. *Allowable stresses shall not be exceeded for materials used when a vertical or horizontal force of 250 pounds (1112 N) is applied at any point on the grab bar, fastener, mounting device, or supporting structure.*

Analysis

During its onsite on July 16, 2019, OCR observed that grab bars were present on the side and rear walls of the restroom stall(s) of the ground floor restroom. However, OCR identified other concerns with respect to the ground floor restroom and compliance with the 2010 Standards. Specifically, OCR observed a lack of directional signage to the ground floor restroom from the inaccessible upper level restrooms (Section 216.8), the lack of signage containing the international symbol of accessibility on the ground floor women's restroom (Section 703.7.2.1), the height of the signage on the lower level restroom (Section 703.4.1), and the force required to open the door to the ground floor restroom.

Prior to the conclusion of OCR's investigation of Allegation 4 and pursuant to Section 302 of OCR's *Case Processing Manual*, the University expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the University resulted in the University signing the enclosed Agreement which, when fully implemented, will address Allegation 4. OCR will monitor the University's implementation of the Agreement.

Allegation 5

The Complainant alleged that that the University's athletic events are inaccessible to persons with disabilities and/or mobility impairments because the University's Tripp Center athletics facility lacks access to an elevator or other means sufficient to allow re-entry to the sporting event.

Legal Standard

Because the Tripp Center was constructed in 1971, this is an “existing facility” under Title II and Section 504. To determine the accessibility and usability of programs in “existing facilities,” OCR considers UFAS and/or the 2010 Standards when assessing the degree to which certain physical barriers may render the program inaccessible or unusable. OCR does not require strict compliance with UFAS or ADAAG for “existing facilities;” rather, OCR uses these standards as a guideline when determining whether particular features of the “existing facilities” would effectively render the program inaccessible to or unusable by persons with disabilities.

Analysis

OCR determined that the Center’s arena and bleachers for sporting events are located on the ground floor and are accessed through a separate accessible entrance, albeit one which has not heretofore been identified with appropriate signage with the international symbol of accessibility. Additionally, the main entrance, which leads to the second floor, is not a public area for sporting events, and the University advised OCR that it was constructed in 1971 and has not been altered since that date.

OCR determined that the second floor of the Center was an “existing facility” under the regulation implementing Section 504. Additionally, because the arena and bleachers are served by the accessible entrance on the lower level, which features an accessible restroom, there would not be a need for a visitor to a sporting event to re-enter from the upper level or to enter the second floor. The Complainant did not provide, and OCR did not find, any information to establish that the second floor of the Center featured unique programs or activities such as sports activities open to the public that are offered in the arena and bleacher on the ground floor, which are accessed through the accessible entrance to the ground floor.

Based on the foregoing, OCR determined that there was insufficient evidence to establish, by a preponderance of the evidence, that the University’s athletic events are inaccessible to persons with disabilities and/or mobility impairments due to the lack of access to an elevator.

Allegation 6

The Complainant alleged that that the University’s athletic events are inaccessible to persons with disabilities and/or mobility impairments because the doors to the sporting area (the arena and bleachers) at the Tripp Center require excessive force to open.

Legal Standard

Because the Tripp Center was constructed in 1971, this is an “existing facility” under Title II and Section 504. To determine the accessibility and usability of programs in “existing facilities,” OCR considers UFAS and/or the 2010 Standards when assessing the degree to which certain physical barriers may render the program inaccessible or unusable. OCR does not require strict compliance with UFAS or ADAAG for “existing facilities;” rather, OCR uses these standards as a guideline when determining whether particular features of the “existing facilities” would

effectively render the program inaccessible to or unusable by persons with disabilities. Used as a guide, the UFAS standard for doors is set forth below:

4.13.11* DOOR OPENING FORCE. *The maximum force for pushing or pulling open a door shall be as follows:*

- (1) *Fire doors shall have the minimum opening force allowable by the appropriate administrative authority.*
- (2) *Other doors.*
 - (a) *exterior hinged doors: (Reserved).*
 - (b) *interior hinged doors: 5 lbf (22.2N)*
 - (c) *sliding or folding doors: 5 lbf (22.2N)*

These forces do not apply to the force required to retract latch bolts or disengage other devices that may hold the door in a closed position.

Under the UFAS standard, interior doors can require no more than 5 pounds of force, while exterior doors are not regulated. Also used as a guide, the 2010 Standard is similar to the UFAS standard. According to the 2010 Standard:

404.2.9 Door and Gate Opening Force. *Fire doors shall have a minimum opening force allowable by the appropriate administrative authority. The force for pushing or pulling open a door or gate other than fire doors shall be as follows:*

1. *Interior hinged doors and gates: 5 pounds (22.2 N) maximum.*
2. *Sliding or folding doors: 5 pounds (22.2 N) maximum.*

These forces do not apply to the force required to retract latch bolts or disengage other devices that hold the door or gate in a closed position.

Analysis

During its onsite on July 16, 2019, OCR found that the force required to open the interior doors to the arena and bleachers leading from the designated accessible entrance was 8 pounds of force. While UFAS and the 2010 Standards and UFAS are only reference points, 8 pounds of force exceeds the requirements of both standards.

Prior to the conclusion of OCR's investigation of Allegation 6 and pursuant to Section 302 of OCR's *Case Processing Manual*, the University expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the University resulted in the University signing the enclosed Agreement which, when fully implemented, will address Allegation 6. OCR will monitor the University's implementation of the Agreement.

Conclusion

With respect to Allegations 1, and 2, OCR determined that there was sufficient evidence to establish, by a preponderance of the evidence, that the University's athletic events are inaccessible to persons with disabilities and/or mobility impairments in the ways outlined above.

With respect to Allegation 5 OCR determined that there was insufficient evidence to establish, by a preponderance of the evidence, that the University's athletic events are inaccessible to persons with disabilities and/or mobility impairments in the ways alleged.

The complainant has a right to appeal OCR's determination of Allegation 5 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Finally, with respect to Allegations 3, 4, and 6, the District requested to resolve this complaint before OCR completed its investigation and no findings were made.

Beyond the allegations made in the Complaint, OCR identified the following concerns:

- (a) the main entrance, which was not the designated accessible entrance to the arena and bleachers, lacked directional signage directing visitors to the designated accessible entrance to the arena and bleachers where sporting competitions take place;
- (b) the accessible entrance to the sporting arena and bleachers lacked signage identifying it as the accessible entrance with the international symbol of accessibility;
- (c) in the center lot – one of the accessibility signs was twisted so that the symbol was not visible from a front approach to the accessible parking space, there was no designated van accessible parking space, and a portion of the exterior accessible route from the center lot to the designated accessible entrance to the Center featured a portion of its run exceeded 1:20 (or .05), the slope measured .077 (which is greater than .05);
- (d) in lot 13 – none of the seven accessible spaces were designated as a van accessible space, and one of the seven designated accessible spaces had a sign that was twisted so as not to be visible from a forward approach to the parking space, and one sign was missing;
- (e) in lot 6 – none of the six designated accessible parking spaces are designated as a van accessible parking space;
- (f) in lot 5 – none of the five designated accessible parking spaces are designated as a van accessible parking space;
- (g) the designated accessible restroom on the lower level lacked signage identifying it as such with the international symbol of accessibility, the signage it had with tactile characters was mounted higher than 60 inches, and the force required to open the door

(13-15 pounds of force) exceeded the maximum. Additionally, the unrenovated restrooms on the upper level lacked directional signage directing persons with disabilities to the accessible restroom on the lower level.

The Resolution Agreement will ensure the University either develops a plan to provide program access, or if it cannot provide program access, makes necessary structural changes resolving concerns identified in Appendix A (existing facilities). Additionally, the Resolution Agreement will ensure the University makes structural modifications addressing concerns identified in Appendix B (new construction).

On May 26, 2020, the University agreed to implement the enclosed Resolution Agreement (Agreement), which commits the University to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the University is designed to resolve the issues of noncompliance. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the University deemed compliant when the University enters into an agreement that, fully performed, will remedy the identified areas of noncompliance. OCR will monitor closely the University's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information if necessary to determine whether the University has fulfilled the terms of the Agreement. Once the University has satisfied the commitments under the Agreement, OCR will close the case. As stated in the Agreement entered into by the University on May 26, 2020, if the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the University'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.

Please be advised that the University may not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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, it 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.

Sincerely,

/s/

Thomas Rodrigues
Regional Director

Enclosure

cc: XXXXXXXXXXXXXXXXXXXXXXXXXXXX
By email to XXXXXXXXXXXXXXXXXXXXXXXX:

Appendix A⁴
Existing Facility
Arena and Bleachers

Building/Facility	Tripp Athletic Center Arena and Bleachers
Date of Construction	1971
Accessibility Issues:	<p><u>Main Entrance</u></p> <ul style="list-style-type: none"> • The main entrance, which was not the designated accessible entrance to the arena and bleachers, lacked directional signage directing visitors to the designated accessible entrance. <ul style="list-style-type: none"> ○ Section 216.6 of the 2010 Standards provides that “where not all entrances comply with Section 404 (i.e., are accessible). . . Directional signs complying with 703.5 that indicate the location of the nearest entrance complying with 404 shall be provided at entrances that do not comply with 404.” <p><u>The designated accessible entrance</u></p> <ul style="list-style-type: none"> • The accessible entrance to the sporting arena and bleachers on the ground floor lacked signage identifying it as the accessible entrance with the international symbol of accessibility. <ul style="list-style-type: none"> ○ Section 216.6 of the 2010 Standards provides that “where not all entrances comply with Section 404 . . . entrances complying with 404 shall be identified with the International Symbol of Accessibility complying with 703.7.2.” <p><u>The upper level restrooms</u></p> <ul style="list-style-type: none"> • The unrenovated upper level restrooms lacked directional signage directing persons with disabilities to the designated accessible toilet room on the lower level. <ul style="list-style-type: none"> ○ Section 216.8 of the 2010 Standards provides that “where existing toilet rooms or bathing rooms do not comply with 603 (i.e. are not accessible), directional signs indicating the location of the nearest toilet room or bathing room complying with 603 within the facility shall be provided.” <p><u>The doors to the bleachers/stands</u></p> <ul style="list-style-type: none"> • The force required to open the doors to the arena and bleachers leading from the interior route from the designated accessible entrance and the designated accessible restroom was 8 pounds of force. <ul style="list-style-type: none"> ○ Section 404.2.9 of the 2010 Standards provides that the force for pushing or pulling open a door or gate other than fire doors shall be as follows: Interior hinged doors and gates: 5 pounds maximum.

⁴ Because any alterations would need to be made consistent with current accessibility standards, all citations refer to the 2010 ADA Standards for Accessible Design.

	<p><u>Bleachers/stands</u></p> <ul style="list-style-type: none">• The viewing areas that would be available for disabled persons (on the ground in front of the bleachers, although not designated as such) may not be horizontally or vertically dispersed to provide equal access and lines of sight.<ul style="list-style-type: none">○ 34 CFR § 104.22 requires that although a recipient is “not required to make structural changes in existing facilities,” a recipient must “give priority to those methods that serve handicapped persons in the most integrated setting appropriate.” The University shall designate spaces in multiple locations from which spectators who use wheelchairs can view games with unobstructed views and are able to sit with companions.
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**Appendix B
New Construction (2010 Standards)**

Building/Facility	Center Lot
Date of Construction	Re-Striped Parking Lots within past 5 years (i.e. later than 2014)
No. of Accessible Spaces	4 of 37
Accessibility Issues:	<ul style="list-style-type: none"> • One of the four signs designating an accessible parking space is twisted and cannot be seen on a forward approach to the parking space. <ul style="list-style-type: none"> ○ Section 502.6 of the 2010 Standards requires that parking space identification signs shall include the International Symbol of Accessibility. • The lot lacked a designated van accessible parking space. <ul style="list-style-type: none"> ○ Section 208.2.4 and 502.6 of the 2010 Standards require that for every 6 or fraction of 6 accessible parking spaces, at least one must be designated as a van accessible parking space, and [s]igns identifying van parking spaces shall contain the designation “van accessible.” • The slope of the exterior accessible route from the center lot to the designated accessible entrance to the arena and bleachers features a portion of its run that exceeded 1:20 (or .05), the slope measured .077 (which is greater than .05). <ul style="list-style-type: none"> ○ 403.3 of the 2010 Standards requires that the slope of walking surfaces shall not be steeper than 1:20.

Building/Facility	Lot 13
Date of Construction	Re-Striped Parking Lots within past 5 years (i.e. later than 2014)
No. of Accessible Spaces	7 of 154
Accessibility Issues:	<ul style="list-style-type: none"> • One of the signs designating an accessible parking space is twisted and cannot be seen on a forward approach to the parking space. <ul style="list-style-type: none"> ○ Section 502.6 of the 2010 Standards requires that parking space identification signs shall include the International Symbol of Accessibility. • One of the accessible parking spaces lacks a sign. <ul style="list-style-type: none"> ○ Section 502.6 of the 2010 Standards requires that parking space identification signs shall include the International Symbol of Accessibility. • The lot lacked a designated van accessible parking space. <ul style="list-style-type: none"> ○ Section 208.2.4 and 502.6 of the 2010 Standards require that for every 6 or fraction of 6 accessible parking spaces, at least one must be designated as a van accessible parking space, and [s]igns identifying van parking spaces shall contain the designation “van accessible.”

Building/Facility	Lot 6
Date of Construction	Re-Striped Parking Lots within past 5 years (i.e. later than 2014)
No. of Accessible Spaces	6 of 145
Accessibility Issues:	<ul style="list-style-type: none"> • The lot lacked a designated van accessible parking space. <ul style="list-style-type: none"> ○ Section 208.2.4 and 502.6 of the 2010 Standards require that for every 6 or fraction of 6 accessible parking spaces, at least one must be designated as a van accessible parking space, and [s]igns identifying van parking spaces shall contain the designation “van accessible.”

Building/Facility	Lot 5
Date of Construction	Re-Striped Parking Lots within past 5 years (i.e. later than 2014)
No. of Accessible Spaces	5 of 108
Accessibility Issues:	<ul style="list-style-type: none"> • The lot lacked a designated van accessible parking space. <ul style="list-style-type: none"> ○ Section 208.2.4 and 502.6 of the 2010 Standards require that for every 6 or fraction of 6 accessible parking spaces, at least one must be designated as a van accessible parking space, and [s]igns identifying van parking spaces shall contain the designation “van accessible.”

Building/Facility	Shuttle Bus Notification Policy
Date of Construction	Re-Striped Parking Lots within past 5 years (i.e. later than 2014)
Accessibility Issues:	<ul style="list-style-type: none"> • The University has not developed a policy or procedure, or posted one on its website, to notify the public, or visitors to the University’s sporting events, of the availability of accessible vans or the manner in which to request that one be made available <ul style="list-style-type: none"> ○ An Exception to Section 208.3.1 of the 2010 Standards provides that “parking spaces shall be permitted to be located in different parking facilities if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance or entrances, parking fee, and user convenience.”

Building/Facility	Tripp Athletic Center Arena and Bleachers
Date of Renovation	2012-2013
Accessibility Issues:	<p><u>The designated accessible restroom</u></p> <ul style="list-style-type: none"> • The signage on the renovated toilet room on the lower level of the Center lacked the International Symbol of Accessibility. <ul style="list-style-type: none"> ○ Section 216.8 of the 2010 Standards provides that “where existing toilet rooms or bathing rooms do not comply with 603, the toilet rooms or bathing rooms complying with 603 shall be identified by the International Symbol of Accessibility complying with 703.7.2.1.” • The existing sign on the designated accessible toilet room on the lower level, which contained tactile characters (Braille), was not

	<p>mounted so that the baseline of the highest character was no more than 60 inches above the floor (at 62.5 inches).</p> <ul style="list-style-type: none">○ Section 703.4.1 of the 2010 Standards requires that tactile characters on signs shall be located 48 inches (1220 mm) minimum above the finish floor or ground surface, measured from the baseline of the lowest tactile character and 60 inches (1525 mm) maximum above the finish floor or ground surface, measured from the baseline of the highest tactile character. <ul style="list-style-type: none">● The lower level toilet room door required 13-15 pounds of force to open.<ul style="list-style-type: none">○ Section 404.2.9 of the 2010 Standards requires that the force for pushing or pulling open a door or gate other than fire doors shall be as follows: Interior hinged doors and gates: 5 pounds maximum.
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