

September 16, 2016

P. Erik Gundersen
Superintendent of Schools
Pascack Valley Regional School District
46 Akers Avenue
Montvale, New Jersey 07645

Re: Case No. 02-13-1264
Pascack Valley Regional School District

Dear Superintendent Gundersen:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against Pascack Valley Regional School District (the District). The complainant alleged that the District failed to provide accessible parking (Allegation 1); an accessible exterior route (Allegation 2); and accessible seating (Allegation 3) for the Stadium at the Pascack Hills High School (School) football field.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that “[n]o qualified person with a disability shall, because a recipient’s facilities are inaccessible to or unusable by disabled persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.” The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149.

In reaching a determination regarding this complaint, OCR reviewed documentation that the complainant and the District submitted. OCR also interviewed the complainant, the complainant's companion, and District staff. Additionally, OCR conducted an on-site inspection of the Stadium at the School and the designated accessible parking areas for the Stadium on event days.

OCR determined that as of the filing of the complaint, the complainant was a person with a disability, who also had mobility impairment.¹ On Friday, September 14, 2012, the complainant and his companion attended a football game that the District held at the Stadium.

OCR determined that the Stadium was constructed in 1966; however, the District altered² the spectator seating in the Stadium (bleachers) beginning in 1999, when it converted the bleachers from wood to aluminum.³ OCR further determined that the District conducts programs, including sporting events (football, lacrosse, and soccer), high school graduation ceremonies, physical educational classes, and outside charitable events at the stadium, which are open to students and members of the public.

The regulation implementing Section 504, at 34 C.F.R. §104.23, categorizes facilities constructed or altered by, on behalf of, or for the use of a recipient after June 3, 1977, as “new construction”. Accordingly, OCR determined that the Stadium bleachers are new construction, as defined by the regulation implementing Section 504.⁴ The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities.⁵ The regulation implementing Section 504, at 34 C.F.R. § 104.23, requires that all buildings constructed or alterations to existing facilities made after January 18, 1991, must be in compliance with the Uniform Federal Accessibility Standards (UFAS), or it must be clearly evident that equivalent access is provided to meet the requirements of Section 504, such as through compliance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (AADAG).⁶

¹ The complainant passed away during the course of OCR's investigation.

² Pursuant to the Uniform Federal Accessibility Standards (UFAS) 3.5, the term “Alteration” as applied to a building or structure, means a change or rearrangement in the structural parts or elements, or in the means of egress or in moving from one location or position to another. It does not include normal maintenance, repair, reroofing, interior decoration, or changes to mechanical and electrical systems. The Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) 3.5 defines an alteration as “a change to a building or facility that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

³ The District informed OCR that its records indicated that in August 1999, the District began the alterations of the bleachers, which involved the conversion of the spectator seating from wood seating and floorboards to aluminum seating and floorboards; however, it could not confirm the specific date(s) on which that construction was completed.

⁴ The Stadium bleachers are also new construction as defined by the regulation implementing the ADA, at 34 C.F.R. § 35.151.

⁵ The regulation implementing the ADA contains a similar requirement at 34 C.F.R. 35.151.

⁶ Pursuant to the regulation implementing the ADA, at 28 C.F.R. § 35.151, new construction or alteration of existing facilities commenced after January 26, 1992, must be in conformance with UFAS, ADAAG, or equivalent

Stadium Parking

With respect to Allegation 1, the complainant alleged that the District failed to provide accessible parking at the Stadium to persons with mobility impairments. OCR determined that the District has two parking areas that individuals attending District-sponsored events at the Stadium use: the Administrative upper level parking lot (the Upper Lot) and the general School lower level parking lot (the Lower Lot). The Upper Lot is the parking lot that is located closest to the Stadium; it affords access to an upper level entrance to the homeside bleacher seating and field level entrances to the homeside and visitor bleacher seating. The Upper Lot has a total of 17 parking spaces. The Lower Lot is located immediately outside of the School and has a total of 291 spaces.

Section 208.2 of the 2010 ADA Standards states that where more than one parking facility is provided on a site, the number of accessible spaces provided on the site shall be calculated according to the number of spaces required for each parking facility. Pursuant to Section 208.2 of the 2010 ADA Standards, the minimum number of designated accessible spaces for a parking facility with 1 to 25 parking spaces is 1; and, the minimum number of designated accessible parking spaces required for a parking facility with 201 to 300 parking spaces is 7. Accordingly, the District is required to provide a minimum of 8 accessible parking spaces for individuals attending District-sponsored events at the Stadium; at least 2 of which must be van accessible. As of November 5, 2015, the District asserts that it has “dedicated a paved area adjacent to the southern end of the athletic field for seven (7) or more accessible parking spaces, including one (1) van space, to be used during events.”

The District stated that the Upper Lot is designated for handicapped parking for all District-sponsored events held at the Stadium. District staff informed OCR that on days that there are District-sponsored events at the Stadium, all 17 parking spots in the Upper Lot are available to attendees who can present an appropriate accessible ID or auto tags to an attendant in front of the entrance to this parking field.⁷ Section 208.3 of the 2010 ADA Standards provides that the location of the designated accessible parking spaces that serve a particular building or facility shall be located on the shortest accessible route from parking to the accessible entrance serving that facility. Exception 2 to 208.3.1 provides that designated accessible 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. OCR determined that before the District undertook any alterations of the dedicated paved area adjacent to the southern end of the athletic field to create additional parking, the Upper Lot provided greater accessibility to the Stadium in terms of distance; accordingly, the District could cluster all of the accessible parking spaces for District-sponsored events held at the Stadium into the Upper Lot. The District, however, did not provide, and OCR did not find any evidence to substantiate that prior to November 5, 2015, that the District had informed the complainant or other members of the general public of the availability of handicapped parking in the Upper Lot for District-sponsored events at the Stadium; or, that there was any signage indicating that the

standards. Beginning on March 15, 2012, all new construction or alterations of existing facilities must conform to the 2010 ADA Standards for Accessible Design (2010 ADA Standards).

⁷ The only other individuals permitted to park in the Upper Lot are school officials or visiting school officials who are required to attend the game day event, but they are told to park on grassy areas away from the 17 parking spaces.

Upper Lot was available for handicapped parking.⁸ The regulations implementing Section 504, at 34 C.F.R. § 104.22(f), and the ADA, at 28 C.F.R. § 35.163(a), require a recipient and/or a public entity to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of accessible services, activities, and facilities.

As of November 5, 2015, the District represented that it continues its practice of using the Upper Lot exclusively for handicapped parking for events at the athletic field. In order to have the appropriate number of spaces in the Upper Lot for District-sponsored events at the Stadium, the District would need to have 8 spaces (at least 2 of which are van accessible) in the Upper Lot that meet the requirements of Sections 208 and 502 of the 2010 ADA Standards; including with regard to width, accessible access aisles, floor and ground surfaces, vertical clearance, identification, and relationship to accessible routes. OCR identified compliance concerns with regard to the van accessibility requirements, width of access aisles, condition and slopes of the ground surfaces, and signage.

OCR also inspected the Lower Lot during the on-site visit. OCR determined that the Lower Lot is the parking lot closest to the School entrance. As stated above, the Lower Lot has a total of 291 spaces. Pursuant to Section 208.2 of the 2010 ADA Standards, the minimum number of designated accessible spaces for a parking facility with 201 to 300 parking spaces is 7; and, at least 2 of these spaces are required to be van accessible. OCR determined that the Lower Lot has 6 accessible parking spaces; none of which were designated as van accessible.⁹ Accordingly, OCR determined that the Lower Lot did not have a sufficient number of accessible parking spaces. OCR identified additional compliance concerns with regard to width of access aisles, signage, and proximity of the designated accessible spaces to the nearest designated accessible facility entrance.

On September 9, 2016, the District voluntarily entered into the attached resolution agreement. The District represented that it will bring the parking lots into compliance with the 2010 ADA standards, and will construct a new sports complex that will include renovations to the Stadium and Parking areas referenced herein, and the District agrees that all such construction shall be in accordance with the requirements of Section 504 and the ADA.

Exterior Route from Parking to the Stadium Entrances

With respect to Allegation 2, the complainant alleged that the District failed to provide an accessible exterior route to the Stadium entrances for persons with mobility impairments; particularly to the visitor's side of the Stadium. The complainant alleged that in order to enter the Stadium and proceed to the visitor's section, he had to walk from the Upper Lot, approximately 300-400 feet away, to the upper level entrance of the Stadium, near the top most bleacher of the home side. He then had to go down approximately 20 levels of bleachers; down a staircase and around half the football field, on the running track, to the visitor's side; and then

⁸ On or about November 5, 2015, the District provided photos and a requisition for permanent and temporary directional signage regarding the location of accessible parking for High School athletic events.

⁹ As of November 5, 2015, the District asserts it has created an additional van accessible parking space in the lower parking lot adjacent to the front entrance.

walk up steps to enter the visitor bleachers. The complainant reported that he did not see any accessible route marked for persons with disabilities on either the home or visitors' bleachers.

OCR determined that the Stadium has two entry points: at the upper level and field level of the Stadium. The upper level entrance is closest to the Upper Lot, and the newly created field level parking (field level lot) is closest to the field level entry. The home and visitor seating sections are at field level and are closest to the field level lot. Prior to the District's asserted creation of the field level lot, the Upper Lot was the closest lot to the stadium entry points. OCR noted that there was no directional signage posted anywhere along the exterior route from the Upper or field level lots to the Stadium. The District asserted that it now has temporary placards for days of events. OCR determined, and the District acknowledged, that the District did not designate any entrance to the Stadium as accessible for individuals with mobility impairments. Section 206.4.1 of the 2010 ADA Standards requires 60% of public entrances to comply with Section 404.

Route from the Upper Lot to the Upper Level Stadium Entrance

As stated above, the Upper Lot is located closest to the Stadium; and, the District stated that all 17 parking spaces in the Upper Lot are designated as handicapped accessible on days with District-sponsored events. OCR determined that the route from Upper Lot leads to the upper level entrance of the Stadium on the home side of the field, on the uppermost level of the bleachers. OCR confirmed that in order to enter the upper level of the Stadium from the Upper Lot, an individual is required to maneuver along an asphalt and concrete path that is 515 feet long. The path is sloped and winding, and its surface is cracked and uneven.

OCR determined that to access the visitor's side from the upper level entrance of the Stadium, an individual has to enter the Stadium at the top row of the home side bleachers; descend stairs down 20 rows of seats to the bottom of the bleachers; descend 8 steps from the bottom of the bleachers to the gate leading to the running track; maneuver around the base of the running track to the visitor bleachers located opposite side of the Stadium; and ascend a staircase with 3 steps to the entrance to the bottom of the visitor's side bleachers. As such, the route to the visitor's side bleachers from the Upper Lot and upper level entrance is not accessible to wheelchair users and individuals with mobility impairments.¹⁰

Route from Lower Lot to the Field Level Stadium Entrance

OCR determined that a spectator may directly access the field level entrance on the visitor's side of the Stadium by parking in the Lower Lot; however, the District has not designated the Lower Lot as the appropriate parking lot for mobility impaired individuals attending District-sponsored events at the Stadium. OCR determined that the exterior route from the Lower Lot to the field level entrance is an asphalt path, which is winding, on hilly terrain, not level, sloped, cracked and uneven, and leads through a wooded area to the emergency parking area for the Stadium (which is an area for emergency vehicle parking only). According to the District, the distance from the lower lot to the field level stadium entrance is approximately 925 feet, a total of 1,725 feet to the

¹⁰ OCR determined that visitor bleacher seating can be accessed directly only from the field level and does not have an uppermost entry point as home bleacher seating does.

gated entry to the visitor bleachers, and 1,474 feet to the gated field level entry to the homeside bleachers. During the site visit, it took the OCR investigators approximately 10 minutes to walk between the Lower Lot and the lower field level entrance of the Stadium. Based on all of the above, OCR determined that the exterior route from the lower lot to the field level stadium entrance is not an accessible route for the mobility impaired.

The District informed OCR that when it holds District-sponsored events at the Stadium, it can provide transportation from the Lower Lot to the lower field level entrance by golf cart; however, the District did not provide and OCR did not find any evidence that the District had informed the complainant or any other member of the public of the availability of this service; or that prior to the initiation of OCR's investigation, that it had a published policy or procedure in which members of the public could learn about the existence and availability of such a service. Additionally, the District informed OCR that its golf cart was also used prior to games for purposes other than transporting visitors to the field, such as field set-up, and might not be available if needed. Moreover, the District could not identify the individual(s) responsible for providing such service(s) or responding to requests for this service either in advance of or on game day.

Stadium Seating and Interior Routes

With respect to Allegation 3, the complainant alleged that the District failed to provide accessible Stadium seating for persons with mobility impairments; particularly with respect to the bleachers located on the visitor side of the Stadium. As stated above, OCR determined that the District altered the spectator seating in the Stadium (bleachers) beginning in 1999, when it converted the bleachers from wood to aluminum seating. OCR determined that the bleachers contain seating for approximately 1,686 people. There are 20 rows of bleachers on the home side of the field and fewer rows on the visitor side. OCR determined that the bleachers on the home side run nearly the full length of the football field (approximately 100+ yards). OCR determined that mobility impaired individuals, regardless of where they park, may enter the bleachers on the home side of the Stadium, i.e., at the upper level entrance. As stated above, OCR determined that there is no accessible interior route from the upper level entrance to the visitor's side; nor is there an accessible route from the Lower Lot to field level entrance.

At the time of the alteration, UFAS or ADAAG was the appropriate standard. ADAAG Section 4.1.3(19), which applies to assembly areas like the Stadium, required at the time of the District's alteration that assembly areas with a seating capacity of over 500 must have 6 wheelchair locations, plus 1 additional space for each total seating capacity increase of 100. Thus, pursuant to ADAAG, the Stadium, with a seating capacity of 1,686, was required to have a total of 18 wheelchair accessible seats. Additionally ADAAG Section 4.33.3 required that wheelchair areas be an integral part of any fixed seating plan and be provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public. ADAAG Section 4.33.3, however, contained an exception for bleacher seating that stated in pertinent part, "accessible viewing positions may be clustered for bleachers ... having sight lines that require slopes of greater than 5 percent. Equivalent

accessible viewing positions may be located on levels having accessible egress.”¹¹ OCR determined that the Stadium has no accessible wheelchair locations. The District acknowledged that the Stadium does not provide any wheelchair accessible seating, as all of the seating in the Stadium (on both the home and visitor sides) is bleacher seating, with no wheelchair seating.¹²

OCR determined that once an individual enters on the upper level, entrance is directly into the top tier seating of the Stadium; the individual can enter the bleachers on the home side of the Stadium at the 30 yard line (Entrance A) or the 40 yard line (Entrance B). OCR further determined that these entrances lead immediately to the uppermost row of 20 rows of bleacher seating; i.e., there is no turning space for a wheelchair as the aisle is not sufficiently wide, and the ramp/crosswalks leading to the stairs do not have landings that are compliant with accessibility standards. As such, the interior route to the bleachers at the upper level is not accessible to wheelchair users and individuals with mobility impairments. OCR identified other compliance concerns with regard to the interior routes to home and visitor side Stadium seating, including the lack of wheelchair spaces with choices of seating locations and viewing angles available to all other spectators, including the visitor stands.¹³

On September 9, 2016, the District voluntarily entered into the attached resolution agreement. The District represented that it will bring the exterior route from the parking area to the Stadium entrances, Stadium seating, and interior routes into compliance with the ADA standards;¹⁴ and construct a new sports complex that will include renovations to the Stadium and Parking areas referenced herein. The District agrees that all such construction shall be in accordance with the requirements of Section 504 and the ADA. OCR will monitor implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This letter 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. The complainant may file a private suit in federal court whether or not OCR finds a violation.

¹¹ Similarly, UFAS Section 4.33.3 required that “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 serves as a means of egress in case of emergency and shall be located to provide lines of site comparable to those for all viewing areas. EXCEPTION: Accessible viewing positions may be clustered for bleachers ... having sight lines that require slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.”

¹² With regard to sporting events such as football games, District representatives asserted that although the Stadium lacks accessible seating, individuals with mobility impairments were permitted to watch the games from positions directly on the track at field level in front of a hurricane style fence along the sideline that separates the bleachers from the field.

¹³ According to the DOJ publication “Accessible Stadiums” “wheelchair locations must be provided in all areas.” See fn. 21; 221.2.3 of the 2010 ADA Standards states that “Wheelchair spaces shall provide spectators with choices of seating locations and viewing angles available to all other spectators.”

¹⁴ See 28 C.F.R. 35.151(c)(5). The 2010 Standards for stadiums are summarized in the following publication: *Accessible Stadiums* <http://www.ada.gov/stadium.txt>.

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 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.

If you have any questions regarding OCR's determination, please contact Jane Tobey Momo, Senior Compliance Team Attorney, at (646) 428-3763 or jane.momo@ed.gov; or, Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXX X. XXXX, Esq.