



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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September 25, 2020

Via Email, only

Dr. James E. McCoy
Superintendent
Lee County Board of Education
2410 Society Hill Road
Opelika, Alabama 36804
Email: McCoy.Mac@lee.k12.al.us

**RE: OCR Complaint No. 04-14-1425
Resolution Letter**

Dear Dr. McCoy:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received on February 19, 2014 against the Lee County School District (District). The Complainant alleged that the District discriminated against her and other individuals who use wheelchairs on the basis of disability. Specifically, the Complainant alleged that the Smiths Station High School (School) Stadium seating area, restrooms and designated accessible routes to and from these areas are inaccessible to individuals who use wheelchairs.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

OCR opened the following issue for investigation: whether the District discriminated against the Complainant and other individuals who use wheelchairs on the basis of disability by not providing access to the School Stadium seating area, restrooms, and designated accessible routes, in non-compliance with the regulation implementing Section 504 at 34 C.F.R. §§ 104.4, 104.21, 104.22, 104.23; and Title II at 28 C.F.R. §§ 35.130, 35.149, 35.150 and 35.151.

Before OCR completed its investigation, the District requested to voluntarily resolve this complaint. Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved before the conclusion of an investigation, when the recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the investigation because OCR has identified issues that can be addressed through a resolution agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standards

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

The Section 504 and Title II regulations contain two standards for determining whether a school's programs, activities, and services 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 or alteration of the facility.

For existing facilities, the regulations require an educational institution 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. This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program, or activity. 34 C.F.R. §104.22(a); 28 C.F.R. § 35.150(a). Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. The applicable date under the Title II regulation is January 26, 1992. In choosing among available methods for meeting the program access requirement for existing facilities, the institution is required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b).

For new construction, the facility (or newly constructed part of the facility) must itself be readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(a); 28 C.F.R. § 35.151(a). With regard to alterations, each facility or part of a facility that is altered by, on behalf of, or for the use of an institution after the effective dates of the Section 504 and/or Title II regulation in a manner that affects or could affect the usability of the facility or part of the facility must, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(b); 28 C.F.R. § 35.151(b).

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, a recipient had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADA Accessibility Standards)¹ 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 recipient had a choice of complying with either UFAS, the ADA Accessibility Standards, or the 2010 ADA Standards for Accessible Design (2010 ADA Standards)². The Title II regulation provides that recipients are required to comply with the 2010 ADA 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 ADA Standards, a recipient may use the 2010 ADA Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 ADA Standards consist of 28 C.F.R. §35.151 and the 2004 ADA Standards, at 36 C.F.R. Part 1191, appendices B and D.

According to the District, the School Stadium football field was built in the mid 1970’s and the visitors’ bleachers were renovated in 2015. According to the District, the School and parking lots were constructed in 2009. During its investigation, OCR found that on game day, the School parking lot and the Chuckey Doak Middle School parking lot (which was built in 1959 and renovated in 2010) is used because the football field is located across a road between the two schools. Patrons walk down the road from each parking lot to enter the football stadium. According to the District, the parking on the football stadium premises is restricted to individuals with disabilities who have a state-issued disability parking placard.

Since the District renovated the parking lot prior to March 15, 2012, OCR used the 1991 *ADA Accessibility Standards* in evaluating the accessibility of the parking areas. OCR’s analysis is set forth below.

Minimum number of accessible parking spaces. According to the ADA Accessibility Standards § 4.1.2(5)(a), if parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces complying with 4.6 shall be provided in each such parking area in conformance with the table below. Spaces required by the table need not be provided in the particular lot. They may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience is ensured.

Total Parking in Lot	Required Minimum Number of Accessible 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

¹ <https://www.ada.gov/1991standards/1991standards-archive.html#Anchor-16919> (Last accessed September 1, 2020)

² <https://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm> (Last accessed September 1, 2020)

Total Parking in Lot	Required Minimum Number of Accessible Spaces
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20 plus 1 for each 100 over 1000

Minimum size of accessible parking spaces. Pursuant to ADA Accessibility Standards 4.1.2(5)(b), one in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 inches wide minimum and shall be designated “van accessible” as required by 4.6.4. Builders may, however, opt to use the exception described in § A4.6.3 by installing parking spaces in conformance with the “Universal Parking Design.” Under this design, all accessible spaces are 132 inches wide with a 60 inch access aisle. Use of the Universal Parking Design eliminates the need to include additional signage designating spaces as “van accessible.”

Curb Ramps. Pursuant to §§ 4.7.1 and 4.7.7, curb ramps shall be provided wherever an accessible route crosses a curb. Curb ramps shall have a detectable warning complying with 4.29.2. The detectable warning shall extend the full width and depth of the curb ramp.

Location. Pursuant to § 4.6.2, accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance. In parking facilities that do not serve a particular building, accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.

Signage. Pursuant to § 4.6.4, each accessible space shall be designated reserved by a sign showing the symbol of accessibility. Such signs shall be located so they cannot be obstructed by a vehicle parked in the space.

Vertical Clearance. Pursuant to § 4.6.5, accessible passenger loading zones must allow for minimum vertical clearance of 114 inches and the same minimum clearance must be allowed along at least one vehicle access route to such areas from site entrance(s) and exit(s).

Ground & Floor Surfaces. Pursuant to § 4.5.1, ground and floor surfaces along accessible routes and in accessible rooms and spaces including floors, walks, ramps, stairs, and curb ramps, shall be stable, firm, and slip-resistant.

Accessible Routes. In order to ensure compliance with § 4.3.2: (1) At least one accessible route within the boundary of the site shall be provided from public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve. The accessible route shall, to the maximum extent feasible, coincide with the route for the general public; and (2) At least one accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

Accessible Entrances. Entrances required to be accessible by 4.1 shall be part of an accessible route complying with 4.3. Such entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks, if available. They shall also be connected by an accessible route to all accessible spaces or elements within the building or facility. Pursuant to § 4.1.2(7)(c), accessible entrances, when not all are accessible, shall be identified by the International Symbol of Accessibility; inaccessible entrances shall have directional signage to indicate the route to the nearest accessible entrance.

Background

As previously noted, the Complainant alleged that the School Stadium seating area, restrooms and designated accessible routes to and from these areas are inaccessible to individuals who use wheelchairs. Specifically, the Complainant alleged that the following areas are inaccessible at the Smith's Station T.C. Briton Football Field to individuals with disabilities:

1. Home Stadium Seating Area- The designated wheelchair seating area for individuals who use wheelchairs is separate from others and does not provide companion seating. In addition, the Band Conductor uses the platform level area of the designated wheelchair seating area and obstructs access for individuals who use wheelchairs.
2. Home & Visitor's Restrooms- the toilet stalls and sinks are inaccessible to individuals who use wheelchairs
3. There is no designated accessible route to and from the following:
 - a. Home seating area;
 - b. Home seating to home restrooms;
 - c. Home seating to visitors' restroom; and,
 - d. Home seating to concession area.

Factual Findings

Issue: Whether the District discriminated against persons with disabilities by failing to make the School's Stadium parking, restrooms, seating and concession areas accessible to persons with disabilities.

During the investigation, the Complainant identified the area around the School's Stadium as the nearest parking lot for persons with disabilities; however, the unpaved parking area is not accessible because it is not *firm, stable and slip resistant*. In addition, the Complainant stated that the Stadium seating, restrooms, and concessions are not accessible.

On April 6, 2011, OCR conducted an onsite inspection of the School Stadium to evaluate the District's compliance with the accessibility requirements of Section 504 and Title II. Set forth below are OCR's findings. On April 15, 2011, the District provided OCR with their corrective action proposal for the noncompliance issues identified set forth below.

- **Designated Parking for Persons with Disabilities at the Stadium**

Minimum number of accessible parking spaces. There are no accessible designated parking spaces or lots for persons with disabilities at the Stadium. Rather, the District uses the parking lots located at the School and the middle school for parking during game days.

Because patrons must park at the School and middle school on game days, OCR inspected the parking lot for both school parking lots. For the School, there are a total of 220 student parking spaces, including six (6) designated accessible parking spaces for persons with disabilities and an additional 86 teacher parking spaces, including four (4) designated accessible parking spaces for persons with disabilities. OCR found that the designated accessible parking spaces in the student parking lot are not clearly marked. At the middle school, there are a total of 144 general parking spaces in front of the school with two (2) designated accessible parking spaces for persons with disabilities; there are a total of ten (10) general parking spaces on the side of the school, including three (3) designated accessible parking spaces for persons with disabilities; and a total of fifty-five (55) teacher parking spaces in the rear of the school with four (4) designated accessible spaces for persons with disabilities.

Pursuant to §§ 4.1.2(5)(a) & 4.6.1 of the ADA Accessibility Standards, the District is required to provide a minimum number of seven (7) designated accessible parking spaces for the 220 total parking spaces in the student lot; however, there were total of six (6) designated, accessible spaces in the student lot. For the middle school, the District is required to provide a minimum of seven (7) designated, accessible parking spaces for the 209 parking spaces. The middle school has nine (9) designated, accessible parking spaces; therefore, the District has provided a sufficient number of designated accessible parking space at the middle school.

Based on the forgoing, OCR finds that the District has not provided a sufficient number of designated accessible parking spaces for persons with disabilities at the Stadium. OCR also found that the District has not provided the minimum number of designated accessible parking spaces at the School's student lot.

Minimum size of accessible parking spaces. During OCR's onsite inspection, OCR found that, at the School, there are ten (10) designated accessible parking spaces. All of the accessible spaces measured 96 inches wide or greater and all of the access aisles measured 60 inches wide or greater. At the middle school, there are a total of nine (9) designated, accessible parking spaces. All of the designated, accessible spaces measured 96 inches wide or greater and the access aisles measured 60 inches wide or greater. OCR confirmed that the District's designated accessible parking spaces at the School and middle school complied with the requirements of § 4.1.2(5)(b) of the ADA Accessibility Standards.

Curb Ramps. The School's curb ramps to access the building from the parking lots were stable, firm and slip resistant; the curb ramps are a minimum of 36 inches wide, five inches high, and the slope is four degrees. Accordingly, the curb ramps comply with § 4.7 of the ADA Accessibility Standards.

Location. OCR found that the designated accessible parking spaces at the School and the middle school are located on the shortest accessible route of travel from the designated accessible parking spaces to the entrances of the buildings comply with § 4.6.2 of the ADA Accessibility Standards.

Signage. At the School and middle school, the District did not provide the mounted universal signage of accessibility for each designated accessible parking space. Each designated accessible parking space was marked with the International symbol of accessibility on the ground and the signage is obstructed when a vehicle is parked in the space. Therefore, OCR found that the District has not complied with § 4.6.4 of the ADA Accessibility Standards.

Vertical Clearance. OCR confirmed that the designated accessible parking spaces and loading zones have vertical clearance, which exceed the required clearance in compliance with § 4.6.6 of the ADA Accessibility Standards.

Ground & Floor Surfaces. OCR confirmed that the designated accessible parking, access aisle(s) and accessible routes all comply with § 4.5 at the School and the middle school. However, the ground and floor surfaces at the Stadium on game days do not comply with § 4.5 of the ADA Accessibility Standards.

Accessible Routes. OCR inspected the routes/walkways from the designated accessible parking spaces at the Stadium to the designated accessible parking, restrooms, seating, and concession areas. OCR found that there are no designated accessible routes/walkways to the designated accessible parking, restrooms, seating, and concessions from the nearest designated accessible parking lot to the Stadium which is in non-compliance with § 4.3 of the ADA Accessibility Standards.

At the School, OCR found that the route/walkway located near the designated accessible parking spaces in the student parking lot requires individuals to cross a two-way driveway to access a curb ramp onto the designated accessible route at the side of the building. There is no marked crosswalk from the designated accessible parking to access the curb ramp on the side entrance of the building.

At the middle school, OCR found that there is no route/walkway connecting the two designated accessible parking spaces next to the ramp at the front entrance of the building. Individuals with disabilities would have to travel behind another designated accessible parking space and in the flow of traffic to access the ramp at the front entrance of the building. In the rear of the middle school, there are two designated accessible parking spaces facing the wall at the rear of the building with the flow of traffic behind it and two designated accessible parking spaces directly across from the two spaces against the wall. There is no accessible route/walkway connecting the two designated accessible parking spaces to provide access to the rear entrance of the building.

Accordingly, the District has not complied with § 4.3.2 of the ADA Accessibility Standards.

- **Restrooms, Seating and Concessions for Persons with Disabilities at the Stadium**

At the football stadium, there is one women's restroom with two stalls and one men's restroom with one stall located at the bottom level of the press box behind the home side of the football field. OCR inspected the women's restroom and noted that there are no rear grab bars behind the toilet in at least one stall. Further, the women's restroom did not have signage complying with § 4.30 and the pipes under the two sinks were not insulated. The men's restroom did not have

signage complying with § 4.30; grab bars to the side and rear of the toilet, or insulated pipes under one sink. The District stated that port-a-potties are also used on game days. The port-a-potties are placed near the field house and end zone, and in the designated parking area for persons with disabilities.

Regarding the Stadium seating and concessions, there are no designated accessible seating areas for persons with disabilities and their companion on the home or visitor's side of the Stadium and the concession stands were not located on a designated accessible route. The District stated that it provides portable concessions trailers on game days; the District explained that the portable concession trailers are placed at the top of the home side seating area near the restrooms and at bottom of the hill near the field house and end zone, and in the designated parking area for persons with disabilities.

Based on its onsite inspection, OCR determined that the men's and women's restrooms at the Stadium do not meet the requirements of the ADA Accessibility Standards. The men's and women's restrooms do not have door hardware that have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate in compliance with § 4.13.9 of the ADA Accessibility Standards. OCR also noted that there are no designated seating areas for persons with disabilities on the home and visitors' side of the Stadium. Finally, the District must ensure that the concession trailers are mounted on a designated accessible route/walkway to ensure that they are accessible to persons with disabilities in compliance with the accessibility requirements of Section 504 and Title II.³

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement (Agreement) on September 8, 2020 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case.

This concludes OCR's investigation of the complaint. 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 have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must 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.

³ <https://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm> (Last accessed 9/01/2020)

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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Michelle Vaughan, the OCR attorney assigned to this complaint, at 404-974-9398 or michelle.vaughan@ed.gov.

Sincerely,

Arthur Manigault
Compliance Team Leader

Enclosure

cc: David Canup, Attorney for the District
Email: djc@LanierFord.com