



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

November 8, 2017

Dr. Desmond Blackburn
Superintendent
Brevard County School District
2700 Judge Fran Jamieson Way
Viera, Florida 32940

Re: Complaint #04-16-1099

Dear Dr. Blackburn:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint, which the Complainant filed on November 16, 2015, against the Brevard County School District (District), alleging discrimination on the basis of disability. The Complainant states that there is an accessible entrance to the Rockledge High School Stadium (Stadium) adjacent to the accessible parking spaces, but the entrance is locked at all times. Specifically, the Complainant alleges that the District does not allow persons with disabilities to use the accessible route adjacent to the accessible parking spaces to enter the Stadium.

As a recipient of Federal financial assistance from the Department, the District is subject to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. As a public entity, the District is also subject to the provisions of Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Sections 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability. Accordingly, OCR has jurisdiction over this complaint.

OCR proceeded with investigation of the following legal issue:

Whether the District discriminated against persons with disabilities by failing to allow persons with disabilities to use an accessible route to the Stadium, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.21 and the Title II implementing regulation at 28 C.F.R. §35.149.

Pursuant to Section 302 of OCR's Case Processing Manual (CPM), a complaint may be resolved when, before the conclusion of an investigation, the recipient asks to resolve the complaint. Prior to the conclusion of the investigation, the District informed OCR of its desire to take voluntary action necessary to resolve the allegation in the complaint. OCR agreed with the District's proposed voluntary resolution pursuant to Section 302 of the CPM.

During its investigation, OCR reviewed Stadium architectural schematics and seating maps and reviewed Stadium parking information. In addition, on May 4, 2016, OCR met with District officials and conducted an onsite visit to take preliminary accessibility measurements and discuss the Stadium accessibility issues.

While onsite, OCR discussed its concerns about deficiencies related to Stadium accessibility with District officials and they welcomed an opportunity to correct the non-compliance issues. In accordance with Section 302 of OCR's CPM, it is appropriate to resolve this complaint at this juncture because OCR's investigation has not proceeded to a point where OCR can issue detailed overall findings with respect to the provision of access to all of the District's programs, services, and activities at the Stadium for persons with disabilities. In order to complete its investigation, OCR would need to conduct further onsite visits to gather additional information regarding toilet rooms, concession and ticketing stands, and other Stadium features. In addition, OCR would need to conduct additional interviews with various District staff.

In order to resolve the complaint, the District agreed to enter into a Resolution Agreement (RA), which is aligned with the complaint allegation and the information obtained during the investigation. The RA is consistent with applicable Section 504 and Title II regulations. The following is a summary of OCR's observations and deficiency concerns that resulted in the District's agreement to voluntarily resolve this matter.

Applicable Regulations and Legal Standards

The regulations implementing Section 504 and Title II, at 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149, respectively, state that no qualified individual with a disability shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by a recipient because the recipient's facilities are inaccessible to or unusable by persons with disabilities. The Section 504 and Title II regulations contain different standards, based on when a facility was constructed or altered, for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities.

Accessibility of Existing Facilities

The standards of program access that apply to an existing facility are found at 34 C.F.R. § 104.22 and 28 C.F.R. § 35.150. Both Section 504 and Title II require that the District shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. See 34 C.F.R. § 104.22 (a); 28 C.F.R. § 35.150 (a). This standard does not necessarily require that the District 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. See 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a). In choosing among available methods for meeting the program access requirements for existing facilities, the District 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. See 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b).

However, when all or part of an existing facility is altered in a manner that affects or could affect the usability of the facility or part of the facility, it shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities. See 34 C.F.R. § 104.23(b); 28 C.F.R. § 35.151(b).

Accessibility of New Construction

The implementing regulations of Section 504, at 34 CFR § 104.23, and Title II, at 28 CFR § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504), or January 26, 1992 (Title II), respectively. These facilities are considered “new construction or alterations.” The Section 504 and Title II regulations provide that each facility or part of a facility which is altered by or for the use of a recipient in a manner that affects or could affect the usability of the facility shall, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by individuals with disabilities. The Section 504 and Title II regulations set forth the specific accessibility standards to be used in new construction. See 34 § 104.23 (c); 28 C.F.R. § 35.151 (c).

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineates the American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped (ANSI 117.1-1961 (1971) (ANSI)) as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the Uniform Federal Accessibility Standards (UFAS) for facilities constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. § 35.151(c), delineates UFAS or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADA Standards for Accessible Design) as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992.

The regulation implementing Title II and the ADA Standards for Accessible Design was amended in September 2010. Title II adopted new accessibility guidelines, the 2010 ADA Standards for Accessible Design (2010 ADA Standards), which became effective March 15, 2011. Title II, at 28 C.F.R. §35.151(c)(3), now provides, “If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 [ADA] Standards.”

As noted above, OCR staff conducted an onsite visit on May 4, 2016 to review the Stadium. The following summarizes the accessibility concerns that OCR identified during that onsite visit:

Background

The Stadium was built in 1968 and the District added wheelchair accessible ramps and designated accessible seating areas in the home and visitors bleachers in approximately 1995. In 2012, the District also modified the restrooms in Building 3 in order to comply with the ADA.

Based on the dates of the alterations in 2012, OCR applied the “new construction” standards in its review of the Stadium and applied the 2010 ADA Standards for Accessible Design in evaluating the District’s compliance.

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

www.ed.gov

The stadium and the parking lot meet the definition of a “facility” under the Section 504 and Title II regulations (see 34 C.F.R. § 104.3(i) and 28 C.F.R. § 35.104). The Stadium is comprised of the structure, the route into and around the Stadium, as well as the parking lots surrounding the Stadium.

OCR analyzed whether there is an accessible route leading to and through the Stadium which is firm, stable, and slip resistant and whether the accessible route was on the shortest possible route from the designated accessible parking to an accessible entrance; and whether the District provides a sufficient number of designated accessible parking spaces at the Stadium.

Summary of Information Obtained to Date

During its onsite visit, OCR reviewed the Stadium’s designated accessible parking, designated accessible route into the Stadium and designated accessible seating and discovered potential concerns regarding the designated accessible route into the Stadium. OCR also observed concerns with respect to the designated accessible parking outside the Stadium.

In order to comply with the accessibility requirements of the 2010 ADA Standards, the District agreed to provide the required number of wheelchair accessible seats and companion seats, in proportion to the total number of seats in the Stadium and disperse them in a variety of locations around the Stadium. The District will ensure that the designated accessible wheelchair seats will be dispersed in a variety of locations around the Stadium and will provide lines of sight as required by the 2010 ADA Standards. The District will also ensure that the paths of travel for spectators do not obstruct the lines of sight of the designated wheelchair accessible seating areas. The District will also ensure that the designated accessible wheelchair seating locations comply with the §§ 221 and 802 of the 2010 ADA Standards. In addition, the District will erect mounted accessible signage that complies with the requirements of the 2010 ADA Standards §502.6 at each designated accessible parking space at the Stadium.

In order to make findings regarding the designated accessible parking, designated accessible routes into and throughout the Stadium and designated accessible wheelchair and companion seating, OCR would have to secure additional data from the University and conduct additional onsite(s).

Minimum number of accessible parking spaces.

The Stadium does not have a paved parking lot. Rather, Stadium spectators park in a grassy area that surrounds the Stadium. The only exception is four, designated accessible parking spaces on each side of the Stadium. Because the Stadium does not have a traditional paved parking lot, OCR could not determine the total number of parking spaces. However, the District currently provides a total of eight paved designated-accessible parking spaces at the Stadium. Pursuant to Table 208.2 of the 2010 ADA Standards, the District has provided a sufficient number of designated accessible parking spaces at the Stadium. However, where accessible parking spaces

are provided, the spaces must also comply with §502 of the 2010 ADA Standards, as described immediately below.

Designated accessible parking spaces.

During OCR's onsite inspection, OCR determined that all eight, designated accessible parking spaces at the Stadium measured greater than 96 inches wide minimum. 2010 ADA Standards § 502.2, Figure 502.2. The parking spaces on both the visitor and home sides of the stadium measured as follows: Parking Space #1 – 11 feet, 3 inches, Parking Space #2 – 11 feet, 6 inches. Parking Space #3 – 11 feet, 6 inches, and Parking Space #4 – 11 feet, 4 inches. However, the access aisle for each parking space was less than 60 inches minimum. 2010 ADA Standards § 502.3, Figure 502.3. Therefore, the eight designated accessible spaces were not in compliance with §§ 502.2 and 502.3 of the 2010 ADA Standards.

Accessible Routes.

During its onsite visit, OCR noted that there is no unobstructed accessible route into the Stadium that complies with §402 of the 2010 ADA Standards. Specifically, there is a sidewalk between the four paved designated-accessible parking spaces which leads to a gate directly into the Stadium. The sidewalk is level with the four accessible paved parking spaces. Inside the gate, the sidewalk leads directly to the ramp that provides access to the bleachers and the designated, accessible seating for persons with disabilities. However, the gate which provides access to the accessible sidewalk and the designated accessible seating area remains locked during all sporting events.

Parking - Signage.

OCR noted that there is mounted signage that includes the universal symbol of accessibility; in addition, each parking space includes a designation on the ground for each of the four paved designated-accessible parking spaces. Each accessible space is labelled "van accessible" in compliance with § 502.6 of the 2010 ADA Standards. However, during its on-site, OCR noted that the paint was faded and recommends that the District re-stripe the designated accessible parking spaces. See §§216.5 and 502.6 of the 2010 ADA Standards.

Resolution

The District proposed to voluntarily address OCR's accessibility concerns and the enclosed RA, signed by the District on October 23, 2017, will fully resolve the complaint when fully implemented. Among other things, the RA will require the District to work with a consultant knowledgeable about the accessibility requirements of the 2010 ADA Standards in order to develop a Seating Plan for OCR's review and approval. The Seating Plan shall comply with the 2010 ADA Standards and will describe a timetable for providing designated wheelchair accessible seats and companion seats, in proportion to the total number of seats in the Stadium. The Seating Plan will ensure that the District completes all modifications no later than September 1, 2018. The Seating Plan will ensure that the designated accessible wheelchair seats will be dispersed in a variety of locations around the Stadium and will provide lines of sight as

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

www.ed.gov

required by the 2010 ADA Standards. The District will also ensure that the paths of travel for spectators do not obstruct the lines of sight of the designated wheelchair accessible seating areas. The District's Plan will ensure that the designated accessible wheelchair seating locations comply with the 2010 ADA Standards §§ 221; 802. Finally, the District shall erect mounted accessible signage that comply with the requirements of the 2010 ADA Standards §502.6 at each designated accessible parking space at the Stadium.

OCR will monitor the implementation of this RA to ensure that it is fully implemented. If the District fails to fully implement the RA, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive such a request, we 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.

Pursuant to OCR procedures, we have reminded the District that no recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint or participated in any manner in an investigation in connection with a complaint.

OCR will proceed with monitoring the RA, effective the date of this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this matter, please contact Michelle Vaughan, General Attorney, at (404) 974-9398, or Virgil Hollis, Compliance Team Leader, at (404) 974-9366.

Sincerely,

Melanie Velez
Regional Director

Enclosure