



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

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

January 27, 2017

Dr. April Howard
Superintendent
Jackson County School District
1660 Winder Hwy
Jefferson, GA 30549

Re: Docket # 04-16-1574

Dear Dr. Howard:

On August 3, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint filed against the Jackson County School District (District). The Complainant alleges that the District discriminates against the mobility impaired on the basis of disability. Specifically, the Complainant alleges the Jackson County High School band is blocking the accessible route and parking spaces near the gym.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. The District is subject to the provisions of Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12121 *et seq.*, 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 Section 504 and Title II.

OCR opened the following legal issue for investigation:

- Whether the accessible route and parking spaces near the gym are blocked, thereby making it inaccessible to the mobility impaired, in noncompliance with Section 504 and its implementing regulations at 34 C.F.R. §§ 104.4(a), 104.21, 104.22(a); and, Title II at 28 C.F.R. §§ 35.130(a), 35.149, 35.150(a) and (b)(1).

Applicable Regulatory Requirements

The Section 504 implementing regulation states that no qualified 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 applies. 34 C.F.R. § 104.21. The Section 504 regulations contain standards for determining whether a District's programs, activities, and services are accessible to individuals with disabilities, depending upon whether the facilities are determined to be existing, new construction or 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). The Section 504 regulation also requires a recipient to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities in existing construction that are accessible to and usable by persons with disabilities. 34 C.F.R. § 104.22(f).

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).

For an entity covered by Section 504, new construction and alterations after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI). New construction and alterations between January 18, 1991, and January 26, 1992, must conform to Uniform Federal Accessibility Standards (UFAS). New construction and alterations after January 26, 1992, must conform to UFAS or the Americans with Disabilities Act Accessibility Guidelines (1991 ADAAG or 1991 ADA Standards) or equivalent standards. New construction and alterations after March 15, 2012, must conform to the 2010 ADA Standards for Accessible Design (2010 ADA Standards). Public entities have a choice of which standard to follow. However, once an entity selects a standard for a facility, the same standard must be used for the entire facility. In reviewing program access for an existing facility, the ADA Standards or UFAS may also be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service. The District applied the 2010 ADA regulations as the guide to ensure compliance in design and construction of the District's parking lots and gym.

OCR, therefore, used the 2010 ADA Standards, in analyzing the District's parking lot, and access route.

Factual Findings

The Complainant alleged that mobility impaired individuals are unable to utilize the accessible route and parking spaces near the gym because the band blocks the parking spaces and the accessible route when it is practicing. The Complainant provided photographs showing that the band blocking the accessible parking spaces and obstructing the accessible route. The gym referenced in the complaint was constructed in 2013.

According to the Director of Administrative Services, the District used the 2010 ADA Accessibility Guidelines during the construction of the gym and renovations to the parking lot. The parking lot has 473 regular parking spaces with 16 ADA accessible spaces. District personnel stated that the band practices three days a week in the parking lot during football season and they will resume practice during the summer. The band practices on Monday, Wednesday, and Thursday from 3:45-5:30 or 6:30pm. However, the band does not practice in the parking lot on days with athletic events in the gym, on the softball field, or on the football field. On event days the band is provided field space for practice.

On October 26, 2016, during an onsite investigation, OCR inspected the parking area near the gym. OCR determined that there was ample accessible parking, the parking was located on the shortest accessible route to the gym and the route was stable firm and slip resistant. OCR found that the accessible route and parking spaces near the gym are blocked and not accessible to the mobility impaired during band practice.

Prior to the conclusion of OCR's investigation the District expressed an interest in resolving the complaint issues pursuant to Section 302 of OCR's Complaint Processing Manual (CPM). Pursuant to OCR's procedures, a complaint may be resolved when, before the conclusion of an investigation, the recipient requests to resolve the complaint. Based on the foregoing, OCR accepted the District's request to resolve the complaint issue, and the District entered into the enclosed Resolution Agreement (Agreement) on January 27, 2017, which, when fully implemented, will resolve the complaint issue.

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. You may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 monitor the District's implementation of the attached Agreement to ensure that it is fully implemented and that the District is in compliance with the statutes and regulations at issue in this complaint.

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, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

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.

If you have any questions about this letter, please contact Ms. Phyllis Kane, at (404) 974-9388.

Sincerely,

/s/

Virgil Hollis
Compliance Team Leader

Enclosure