



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

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

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February 9, 2017

Dr. Warren Pouncey
Superintendent
Jefferson County School District
2100 18th Street South
Birmingham, AL 35209

Re: Docket # 04-16-1600

Dear Dr. Pouncey:

On August 15, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint filed against the Jefferson County School District (District). The Complainant alleges that the District discriminates against the mobility impaired on the basis of disability. Specifically, the Complainant alleges that on August 13, 2016, his son was unable to utilize the elevator to gain access to the lower level concession stand at the Pinson High School (School) stadium. The Complainant also alleges that the band had an event on August 27, 2016 and a car was blocking the accessible route to the school.

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 issues for investigation:

1. Whether the District failed to make the concession stand accessible to the mobility impaired, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.4(a), 104.21, 104.22(a); the Title II implementing regulation at 28 C.F.R. §§ 35.130(a), 35.149, 35.150(a) and (b)(1).
2. Whether the accessible route to the school is blocked by parked cars, thereby making it inaccessible to the mobility impaired in noncompliance with Section 504 and its implementing regulation at Section 504 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).

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With regard to the first issue concerning the access to the concession stands, the Complainant advised OCR on December 13, 2016, that this issue had been resolved. The Complainant stated the District provided him the elevator key to gain access to the lower level concession stand. Based on the District's action to resolve this issue, OCR will take no further action regarding Issue 1.

Applicable Regulatory Requirements

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 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 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).

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 (ADAAG) or equivalent standards. Public entities have a choice of

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which standard to follow. However, once an entity selects a standard for a facility, the same standard must be used for the entire facility. The District applied ADDAG regulations as the guide to ensure compliance in design and construction of the District's access route. OCR, therefore, used ADAAG standards, in analyzing the District's access route.

Factual Findings – Issue 2

The Complainant alleged that on August 27, 2016, mobility impaired individuals were unable to utilize the accessible route to the school because the accessible route was blocked by a parked car.

The District stated that very few records exist on the construction of Pinson Valley High School (School). The land for the School was acquired in 1970 and the original School was built in 1971. The football stadium was built in 1972. The library and ten classes were added in 1974. Vocational classes and the concessions area were added 1976. Another addition consisting of the performing arts center, science classroom/labs, a band suite, a choral suite were completed in 2008. The athletic field house was added in 2009.

The accessible route referenced in the complaint was renovated in 2010. According to the District, ADDAG was used for the renovation of the accessible route. On December 19, 2016, OCR inspected the accessible route to the school and found that the accessible route was readily available for the mobility impaired. The accessible route from the Main Parking Lot to the School was previously addressed by OCR in Complaint #04-09-1456. No cars were blocking the accessible route and the access route was stable, firm and slip resistant. The Principal stated he was not aware of the accessible route leading to the School being blocked by a car on August 27, 2016.

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), which, when fully implemented, will resolve the complaint issue. The Agreement will require the District to paint the curb cuts in front of the School to indicate that it is a no parking zone and thereby ensuring the accessible route is readily available to the mobility impaired.

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.

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.

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