



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

April 20, 2017

Ms. Jacqueline Byrd
Office of the Superintendent
Polk County Public Schools
1915 South Floral Avenue
Bartow, Florida 33831
jacqueline.byrd@polk-fl.net

Re: OCR Complaint No. 04-17-1035

Dear Ms. Byrd:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint filed by the Complainant on October 11, 2016, against the Polk County Public Schools (District), alleging discrimination on the basis of disability by blocking accessible parking spaces designated for persons with disabilities attending the home football games. Specifically, the Complainant alleged that on August 26, and September 2 and 9, 2016, during the home football games for Lakeland High School (School) being held at Bryant Stadium, the stadium's Disabled Parking signs were covered with signs designating those spaces for event staff only.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance (FFA); and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District receives funds from the Department and is a public entity, and therefore is subject to these laws. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the legal issue of whether the District subjected persons with disabilities to discrimination based on their disability, by blocking or making unusable, the accessible parking spaces designated for disabled persons at Bryant Stadium during School home football games, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.21.

OCR reviews evidence under a preponderance of the evidence standard. Under a preponderance of the evidence standard, OCR evaluates the evidence obtained during an investigation to determine whether the greater weight of the evidence was sufficient to support a conclusion that the recipient failed to comply with a law or regulation enforced by OCR, or whether the evidence was insufficient to support such a conclusion. Based on the preponderance of the evidence, OCR determined that there was sufficient evidence to establish non-compliance with Section 504 as alleged as set forth below.

Regulatory Standards

The Section 504 implementing regulations at 28 C.F.R. § 104.21 provides that no person with a disability shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity because a recipient's facilities are inaccessible to or unusable by persons with a disability. Additionally, the Section 504 implementing regulations, at 34 C.F.R. §§ 104.22-23, provide details on what standards are to be employed to make facilities, programs and activities accessible, depending on whether such facility is an 'existing facility' or 'new construction.'

In reviewing program access for an existing facility, the Americans with Disabilities Act Standards for Accessible Design (ADA Standards) or the Uniform Federal Accessibility Standards may also be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service. According to section 4.6.2 of the UFAS, parking spaces for disabled people and accessible passenger loading zones that serve a particular building shall be the spaces or zones located closest to the nearest accessible entrance on an accessible route. In separate parking structures or lots that do not serve a particular building, parking spaces for disabled people shall be located on the shortest possible circulation route to an accessible pedestrian entrance of the parking facility.

Factual Findings and Analysis

The School football games are held at the city of Lakeland's stadium called Bryant Stadium (the stadium), and the District, as the party who is sponsoring or conducting the program or event, is solely responsible for the supervision of participants and staff at such programs or events, per a Shared Facilities Agreement with the city. A number of accessible parking spaces are provided at the stadium and such are designated with the appropriate signage.

The District has determined that the actions alleged in this OCR complaint did occur, and the District has informed OCR of the same. Although the District represented that they do not know the identity of the person/s who posted the signs that covered the disabled parking signs, they acknowledge that the school principals are responsible for supervising all staff at their school games taking place at the stadium. The District did not proffer a legitimate reason for these actions, but they presented information which showed that upon learning about the incidents, the District provided training to all school principals at a January 19, 2017 meeting, and such training was administered by the Assistant Superintendent for Learning Support. The District also represented that it would ensure that this did not happen again.

Based on the foregoing, OCR finds there is a preponderance of evidence of noncompliance with the Section 504 regulation at 34 C.F.R. § 104.21, as alleged in the complaint. OCR commends the District for its candor and for already taking action to address this noncompliance.

The District has also offered to remedy any further concerns as a part of the enclosed Agreement, which when fully implemented, will fully resolve the issue in this complaint. The Agreement requires the District 1) publish a statement (approved by OCR) on its websites informing the public that accessible parking spaces with designated signage for individuals with disabilities are, and will be, available at each home game at the stadium; 2) send a letter (with OCR

approval) reminding principals, athletic directors, as well as Booster Club members and event staff working games at the stadium, about the accessibility requirements of the Section 504 implementing regulations at Sections 104.21-23, with regard to parking, advise that District policy prohibits discrimination against persons with disabilities, which includes blocking accessible parking spaces at District/school-sponsored events, and that such spaces shall not be blocked or closed for any reason; and 3) provide OCR with pictures taken during each home football game by a certain date at the stadium, showing that the parking spaces with designated signage for persons with disabilities are open and accessible.

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. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's noncompliance with any other regulatory provision or address any issue 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.

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, 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.

This concludes OCR's consideration of this complaint. OCR appreciates the District's cooperation. If you have any questions about this letter, please contact Ms. Angela Collins, Senior Attorney, at (404) 974-9346, or me at (404) 974-9408.

Sincerely,

/s/

April England-Albright, Esq.
Supervisory General Attorney

Enclosure

cc: Wes Bridges, Esq.
General Counsel for the District