



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

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REGION IV
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September 24, 2018

Dr. Warren Craig Pouncey
Superintendent
Jefferson County School District
2100 18th Street South
Birmingham, AL 35209-1298

Re: Complaint # 04-18-1425

Dear Dr. Pouncey:

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 April 13, 2018, against the Jefferson County School District (District), alleging discrimination on the basis of disability. The Complainant alleged that the District discriminated on the basis of disability by preventing XXXX and XXXX from accessing the designated accessible parking spaces at the Pinson Valley Elementary School Softball Stadium (Stadium) on or around March 6, 2018 and April 12, 2018 and by allowing food trucks to block the designated accessible route to the home side of the Stadium during games on or around April 12, 2018.

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 an investigation of the following legal issues:

1. Whether the District failed to make the Pinson Valley Elementary School (School) softball stadium (Stadium) accessible to people with disabilities on or around March 6, 2018 and April 12, 2018 by obstructing the entrance to the accessible parking spaces during games, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.4(a), 104.21, 104.22(a); and, the Title II implementing regulation at 28 C.F.R. §§ 35.130(a), 35.149, 35.150(a) and (b)(1).
2. Whether the District failed to make the School Stadium accessible to people with disabilities on or around April 12, 2018 by allowing a food truck to park on the accessible path the home seating section of the Stadium, in noncompliance with the Section 504

implementing regulation at 34 C.F.R. §§ 104.4(a), 104.21, 104.22(a); and, the Title II implementing regulation at 28 C.F.R. §§ 35.130(a), 35.149, 35.150(a) and (b)(1).

During its investigation, OCR reviewed Stadium architectural schematics and parking space information. In addition, on August 21, 2018, OCR met with District officials and conducted an onsite visit to take preliminary accessibility measurements and discuss the Stadium accessibility issues. OCR also reviewed the relevant documents submitted by the Complainant and interviewed the Complainant. Based on its investigation, OCR found sufficient evidence to support a finding of noncompliance with Issues #1 and #2. The attached Resolution Agreement, when fully complied with, resolves the noncompliance issue. Set forth below is a summary of OCR's findings.

Applicable Regulations and Legal Standards

The regulations implementing Section 504 and Title II, at 34 C.F.R. §104.4(a) and 28 C.F.R. §35.130(a) 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 under any program or activity which receives Federal financial assistance.

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.

The accessibility requirements of Section 504 are found at 34 C.F.R. §§ 104.21-104.23. Comparable sections of the Title II regulations are found at 28 C.F.R §§ 35.149-35.151. Both regulations provide generally that no qualified individual with a disability shall, because facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or denied the benefits of services, programs, or activities, or be subjected to discrimination.

The Stadium meets 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 spaces immediately adjacent to the Stadium.

In September 2010, the U.S. Department of Justice (DOJ) released its final rule updating the Title II regulations. Among other significant changes, DOJ adopted the entirety of the 2004 ADA Accessibility Guidelines (ADA Standards for Accessible Design) as the revised standards for physical accessibility under Title II. The 2010 ADA Standards for Accessible Design (2010 ADA Standards), which took effect on March 15, 2012, consist of the 2004 ADA Standards for

Accessible Design and the requirements under 28 C.F.R. §35.151. These include the scoping and technical requirements for parking lots in the 2010 ADA Standards.

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).

Background

The Stadium was built in the 1970s. In 2006-2007, a concession stand and restrooms were constructed. In response to a Resolution Agreement with OCR, improvements were made to the accessible route, parking spaces, restrooms, entrances, home and visitor seating areas, and signage in 2013.

2010 ADA Standards for Accessible Design¹

The District renovated the softball Stadium in 2013 in response to a Resolution Agreement with OCR in complaint # 04-11-1392. The District applied the 2010 ADA Standards for Accessible Design, Appendix A to 28 C.F.R. Part 36, (2010 ADA Standards) to ensure compliance in the design and construction of the softball Stadium. OCR, therefore, used the 2010 ADA Standards in evaluating the accessibility of the softball Stadium. Any areas of concern or noncompliance would need to be corrected using the 2010 ADA Standards.

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

The following Sections of the 2010 ADA Standards were used to determine compliance for the Stadium:

Section 206 Accessible Route

206.4 Entrances. Entrances shall be provided in accordance with 206.4. Entrance doors, doorways, and gates shall comply with 404 and shall be on an accessible route complying with 402.

206.4.2 Parking Structure Entrances. Where direct access is provided for pedestrians from a parking structure to a building or facility entrance, each direct access to the building or facility entrance shall comply with 404.

¹ Located at: <http://www.ada.gov/regs2010/2010ADAStandards/2010ADASTandards.htm#c1>

208 Parking Spaces

208.1 General. Where parking spaces are provided, parking spaces shall be provided in accordance with 208.

208.2 Minimum Number. Parking spaces complying with 502 shall be provided in accordance with Table 208.2 except as required by 208.2.1, 208.2.2, and 208.2.3. Where more than one parking facility is provided on a site, the number of accessible spaces provided on the site shall be calculated according to the number of spaces required for each parking *facility*.

Table 208.2 Parking Spaces	
Total Number of Parking Spaces Provided in Parking Facility	Minimum Number of Required Accessible Parking 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
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total

Table 208.2 Parking Spaces	
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000

Advisory 208.2 Minimum Number. The term "parking facility" is used in Section 208.2 instead of the term "parking lot" so that it is clear that both parking lots and parking structures are required to comply with this section. The number of parking spaces required to be accessible is to be calculated separately for each parking facility; the required number is not to be based on the total number of parking spaces provided in all of the parking facilities provided on the site.

208.3 Location. Parking facilities shall comply with 208.3.

208.3.1 General. Parking spaces complying with 502 that serve a particular building or facility shall be located on the shortest accessible route from parking to an entrance complying with 206.4.

216 Signs

216.5 Parking. Parking spaces complying with 502 shall be identified by signs complying with 502.6.

216.6 Entrances. Where not all *entrances* comply with 404, *entrances* complying with 404 shall be identified by the International Symbol of Accessibility complying with 703.7.2.1. Directional signs complying with 703.5 that indicate the location of the nearest entrance complying with 404 shall be provided at entrances that do not comply with 404.

Advisory 216.6 Entrances. Where a directional sign is required, it should be located to minimize backtracking. In some cases, this could mean locating a sign at the beginning of a route, not just at the inaccessible entrances to a building.

302 Floor or Ground Surfaces

302.1 General. Floor and ground surfaces shall be stable, firm and slip resistant and shall comply with 302.

402 Accessible Routes

402.1 General. Accessible routes shall comply with 402.

403 Walking Surfaces

403.1 General. Walking surfaces that are a part of an accessible route shall comply with 403.

403.2 Floor or Ground Surface. Floor or ground surfaces shall comply with 302.

502 Parking Spaces

502.1 General. Car and van parking spaces shall comply with 502. Where parking spaces are marked with lines, width measurements of parking spaces and accessible aisles shall be made from the centerline of the markings.

EXCEPTION: Where parking spaces or access aisles are not adjacent to another parking space or access aisle, measurements shall be permitted to include the full width of the line defining the parking space or access aisle.

502.2 Vehicle Spaces. Car parking spaces shall be 96 inches (2440 mm) wide minimum and van parking spaces shall be 132 inches (3350 mm) wide minimum, shall be marked to define the width, and shall have an adjacent access aisle complying with 502.3.

EXCEPTION: Van parking spaces shall be permitted to be 96 inches (2440 mm) wide minimum where the access aisle is 96 inches (2440 mm) wide minimum.

502.3 Access Aisle. Access aisles serving parking spaces shall comply with 502.3. Access aisles shall adjoin an accessible route. Two parking spaces shall be permitted to share a common access aisle.

Advisory 502.3 Access Aisle. Accessible routes must connect parking spaces to accessible entrances. In parking facilities where the accessible route must cross vehicular traffic lanes, marked crossings enhance pedestrian safety, particularly for people using wheelchairs and other mobility aids. Where possible, it is preferable that the accessible route not pass behind parked vehicles.

502.3.1 Width. Access aisles serving car and van parking spaces shall be 60 inches (1525 mm) wide minimum.

502.3.2 Length. Access aisles shall extend the full length of the parking spaces they serve.

502.3.3 Marking. Access aisle shall be marked so as to discourage parking in them.

Advisory 502.3.3 Marking. The method and color of marking are not specified by these requirements but may be addressed by State or local laws or regulations. Because these requirements permit the van access aisle to be as wide as a parking space, it is important that the aisle be clearly marked.

502.3.4 Location. Access aisles shall not overlap the vehicular way. Access aisles shall be permitted to be placed on either side of the parking space except for angled van parking spaces which shall have access aisles located on the passenger side of the parking space.

Advisory 502.3.4 Location. Wheelchair lifts typically are installed on the passenger side of the vans. Many drivers, especially those who operate vans, find it more difficult to back into parking spaces than to back out into comparatively unrestricted vehicular lines. For this reason, where a van and a car share an access aisle, consider locating the van space so that the access aisle is on the passenger side of the van space.

502.4 Floor and Ground Surfaces. Parking spaces and access aisles serving them shall comply with 302. Access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

Advisory 502.4 Floor and Ground Surfaces. Access aisles are required to be nearly level in all directions to provide a surface for wheelchair transfer to and from vehicles. The exception allows sufficient slope for drainage. Built up curb ramps are not permitted to project into the access aisles and parking spaces because they would create slopes greater than 1:48.

502.5 Vertical Clearance. Parking spaces for vans and access aisles and vehicular routes serving them shall provide a vertical clearance of 98 inches (2490 mm) minimum.

Advisory 502.5 Vertical Clearance. Signs provided at entrances to parking facilities informing drivers of clearances and the location of van accessible parking spaces can provide useful customer assistance.

502.6 Identification. Parking space identification signs shall include the international Symbol of Accessibility complying with 703.7.2.1. Signs identifying van parking spaces shall contain the designation “van accessible”. Signs shall be 60 inches (1525 mm) minimum above the finish floor or ground surface measured to the bottom of the sign.

Advisory 502.6 Identification. The required “van accessible” designation is intended to be informative, not restrictive, in identifying those spaces that are better suited for van use. Enforcement of motor vehicle laws, including parking privileges, is a local matter.

Factual Findings

Minimum number of accessible parking spaces. The Stadium has a separate general parking lot. Patrons park in the general parking lot and walk down a slope and grassy area to access the Stadium. The only exception is five designated accessible parking spaces at the bottom of the slope. Because the Stadium uses a separate lot for general parking, OCR did not count the spaces in the general parking lot for purposes of calculating the required number of accessible parking spaces. The Stadium has five paved accessible parking spaces in accordance with §208 of the 2010 ADA Standards.

Designated accessible parking spaces.

During OCR's onsite inspection, OCR noted that all five designated accessible parking spaces measured greater than 96 inches (8 feet). The parking spaces measured as follows: Parking Space #1 – 8 feet, 1 inch, Parking Space #2 – 8 feet, 9 inches, Parking Space #3 – 9 feet, 1 inch, Parking Space #4 – 8 feet, 9 inches, Parking Space #5- 8 feet, 11 inches. The access aisle for each parking space was greater than 60 inches minimum. The access aisles measured as follows: Aisle #1- 6 feet, 6 inches, Aisle #2- 5 feet, 1 inch, and Aisle #3- 8 feet, 3 inches. The immediate right of Parking space #5 was also striped to the edge of the blacktop. Therefore, the five accessible spaces are in compliance with §§ 502.2; 502.3 of the 2010 ADA Standards.

Accessible Routes. From the road, a gate is in front of a short slope that provides an accessible route to the five accessible parking spaces. The gate is composed of two metal gates with hinges on each side of the road that meet in the middle of the road. From the accessible parking, there is a level path of blacktop and concrete to the press box, home seating area, and visitors seating area. The gate was open during OCR's onsite. However, the Complainant provided photos of a closed gate that appeared to be locked during game events. In addition, the Complainant provided a picture of a food truck blocking the accessible path on April 12, 2018. Accordingly, the District was not in compliance with the requirements §402 of the 2010 ADA standards on April 12, 2018.

Location. During its onsite, OCR noted that the five paved accessible parking spaces provide direct access the Stadium and the designated accessible seating area. The locations of the five paved accessible spaces are on the closet and direct accessible route to the accessible seating in the Stadium. OCR found that the District is in compliance with §402 of the 2010 ADA standards.

Signage. OCR found that there are mounted universal signs of accessibility, in addition to a symbol painted on the ground, for each of the five paved accessible parking space. One accessible space is labelled "van accessible". OCR found that the District is in compliance with §502.6 of the 2010 ADA Standards.

Vertical Clearance. The accessible parking spaces and passenger loading zones provide a vertical clearance of 98 inches minimum in accordance with §502.5 of the 2010 ADA Standards.

Ground & Floor Surfaces. OCR determined that the ground and walking surfaces on and around the five paved accessible parking spaces provide walking surfaces with a running slope no greater than 1:20 in compliance with §402 of the 2010 ADA Standards; Chapter 4 of the 2010 ADA Standards.

Conclusion

Accordingly, OCR finds, using a preponderance of the evidence standard, that there is sufficient evidence to support a finding that the District failed to make the School softball Stadium accessible to people with disabilities by obstructing the entrance to the accessible parking spaces during games in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§104.4(a), 104.21, 104.22(a); and the Title II implementing regulation at 28 C.F.R. §§35.130(a), 35.149, 35.150(a) and (b). OCR also finds, using a preponderance of the evidence standard, that there is sufficient evidence to support a finding that the District failed to make the School softball Stadium accessible to people with disabilities by blocking the accessible path to the home seating section of

the Stadium in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§104.4(a), 104.21, 104.22(a); and the Title II implementing regulation at 28 C.F.R. §§35.130(a), 35.149, 35.150(a) and (b).

The District has entered into the enclosed Resolution Agreement (Agreement) to remedy the noncompliance issues in this complaint and, when fully implemented, will resolve these issues. The Agreement requires the District to develop a plan to ensure that the gate at the entrance of the designated accessible parking lot will remain open during all softball games or other activities held at the Stadium. The Agreement also requires the District to ensure that the designated accessible route to the home and visitor seating remains unobstructed.

OCR will monitor the implementation of this Agreement to ensure that it is fully implemented. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II. The Complainant may file a private suit in federal court whether or not OCR found a violation.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. 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 complaint. 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.

Please be advised that the District may not 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. If that occurs, the Complainant or other individual may file a complaint with OCR alleging such treatment.

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.

OCR is committed to a high quality resolution of every case. If you have any questions regarding this matter, please contact Malicia Hitch, General Attorney, at (470) 231-1994 or Michelle Vaughan, Acting Compliance Team Leader, at (404) 974-9398.

Sincerely,

Melanie Velez
Regional Director

Enclosure

CC: XXXX XXX (District Counsel) via email w/enclosure