



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

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REGION IV
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July 31, 2019

Dr. Bill Cleveland
Superintendent
Homewood City Public Schools
450 Dale Avenue
Homewood, Alabama 35209

Re: OCR Docket #04-19-1092

Dear Dr. Cleveland:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Homewood City Schools (District), which was referred to OCR by the U.S. Department of Justice on November 16, 2018. The Complainant alleged that the District discriminated against persons with disabilities at Homewood High School (School). Specifically, the Complainant alleged that the School's gymnasium entrance is inaccessible to individuals with disabilities.¹

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance (FFA). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 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. As a recipient of FFA from the Department and a public entity, the District is subject to the provisions of Section 504 and Title II.

OCR proceeded with an investigation of the following legal issue:

Whether the District discriminated against persons with disabilities by failing to provide an accessible entrance to the School's gymnasium for persons with mobility impairments, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.21-23 and the Title II implementing regulation at 28 C.F.R. § 35.149.

¹ The Complainant stated that the only doors with level access were sealed due to construction renovations.

In its investigation, OCR interviewed District staff and reviewed documentation that the District provided, including copies of District policies that address disabilities and nondiscrimination; a copy of the District's 2018-2019 Student Code of Conduct; photographs of the applicable accessible routes and entrances to the two gyms; a map of the campus indicating the location of the gymnasiums; and a floor plan for the school gymnasiums that identifies all designated accessible entrances.

Additionally, on February 25, 2019, OCR conducted an on-site inspection of the entrance into the School's Practice gym; the entrance into the School's Competition gym; and the accessible routes leading to the above-referenced entrances.

The following is a summary of OCR's observations and compliance concerns that resulted in the resolution of this matter.

Applicable Regulations and Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.21, and the Title II regulation, at 28 C.F.R. § 35.149, provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a recipient's programs or activities because the recipient's facilities are inaccessible to or unusable by individuals with disabilities.

The regulations implementing Section 504 and Title II each contain two standards for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility. Under the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977; under the Title II regulation, existing facilities are those for which construction began prior to January 27, 1992. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under Section 504 and Title II standards.

For existing facilities, the Section 504 regulation, at 34 C.F.R. § 104.22, and the Title II regulation, at 28 C.F.R. § 35.150, require a recipient 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. The recipient may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities and services accessible to persons with disabilities. In choosing among available methods of meeting the requirements, a recipient must give priority to methods that offer programs, activities and services to persons with disabilities in the most integrated setting appropriate.

With respect to newly constructed facilities, the Section 504 regulation, at 34 C.F.R. § 104.23(a), and the Title II regulation, at 28 C.F.R. § 35.151(a), require that the recipient design and construct the facility, or part of the facility, in such a manner that it is readily accessible to and usable by individuals with disabilities. In addition, for new alterations that affect or could affect facility

usability, the Section 504 regulation, at 34 C.F.R. § 104.23(b), and the Title II regulation, at 28 C.F.R. § 35.151(b), require that, to the maximum extent feasible, the recipient alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

The new construction provisions of the Section 504 and Title II regulations also set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulation, a recipient had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADA Accessibility Standards) for facilities constructed or altered after January 26, 1992 and prior to September 15, 2010. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that recipient had a choice of complying with either UFAS, the ADA Accessibility Standards, or the 2010 ADA Standards for Accessible Design (2010 ADA Standards)². The Title II regulation provides that recipients are required to comply with the 2010 ADA Standards for construction or alterations commencing on or after March 15, 2012. While the Section 504 regulations have not been amended to formally adopt the 2010 Standards, a recipient may use the 2010 ADA Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 ADA Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, appendices B and D.

Background

The District informed OCR that the School, which was constructed in 1971-1972, is in the beginning phases of a 108,000 square foot expansion to its existing facilities, to include construction to areas outside of its gymnasiums.

Demolition began during summer 2018 and construction began on October 25, 2018, the first of several phases that included demolition of the field house, most of the concourse and the fine arts building on the west side of the campus. Construction is expected to continue until at least March 2020. The District has represented to OCR that “new construction will fully comply with the latest building standards/code requirements.”

Factual Findings

The School has two gyms: a Practice gym and a Competition gym. The scheduled events, athletic or nonathletic activities, that take place in the Competition gym include the following:

- Physical Education Classes (every period of every school day);
- Pep Rallies encompassing the entire student body (4-5 times per year);
- Boys Basketball Games/practices (3 teams);
- Girls Basketball Games/practices (2 teams);

² Located at: <http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm#cl> (Last accessed 7/31/2019).

- Girls Volleyball Games/practices (3 teams);
- Wrestling Matches/practices (1 team);
- Air Force JROTC (practice drills in the gym once or twice per month); and,
- Basketball Camps in the summer hosted by coaches at the School.

During basketball and volleyball seasons, the Competition gym is used daily for practices and/or games.

The entrances to the Practice gym and the Competition gym are on a level route with no stairs, changes in levels, or ramps. The District informed OCR that once inside the Practice gym or the Competition gym, floor seating is available for any person with a mobility impairment.³

Accessible Route to Practice Gym Entrance

The 2010 ADA Standards require that floor and ground walking surfaces be stable, firm, and slip resistant, and that any changes in level between $\frac{1}{4}$ and $\frac{1}{2}$ inch shall be beveled with a running slope not steeper than 1:20 (5%). In addition, the cross slope of walking surfaces shall not be steeper than 1:48 (2.1%). See 2010 ADA Standards §§ 402; 403.

OCR determined that the accessible route leading to the Practice gym entrance was smooth and exhibited no cracking; and it was stable, firm, and slip resistant. From the designated accessible parking spaces, the accessible route leading to the facility begins with a sloped pathway (discussed directly below). The pathway leads around a turn to the right where the entry doors are located. OCR determined that the running slope at three different points on the accessible route measured, 3.9%; 6.6%; and 6.2%. The cross slope at three different points on the accessible route measured, 1.3%, .9%, and .7%.

Ramp⁴

There was a ramp along the designated accessible route to the Practice gym; the rise for the ramp run was not greater than the 30 inches maximum, and the width and length of the landing measured at least 60 inches. The ramp did not change direction. However, the running slope of the ramp at three different points exceeded the maximum slope of 8.33%; the running slope measured 12.7%, 12.5%, and 2.5%. The cross slope at three different points measured .5%, 1.0%, and 2.5%. See 2010 ADA Standards § 405.

³ OCR determined that the bleacher seating in the Competition gym is only accessible via stairs or with a portable platform lift. During its review, OCR determined that the platform lift utilized by the District did not comply with § 410 of the 2010 ADA Standards because the platform lift did not provide unassisted entry and exit from the lift. During its investigation, OCR pursued a resolution of this issue with the District. In response, the District completed an independent, comprehensive assessment to evaluate the feasibility of installing a platform lift that would comply with 2010 ADA Standards § 410. The District's independent consultant concluded that the District could not install a permanent platform lift in the Competition Gym that would comply with § 410 of the 2010 ADA Standards. Therefore, the District agreed to immediately terminate using the non-compliant platform lift. Further, the District agreed that for all activities in the Competition gym, the District will continue to offer courtside seating to persons with mobility impairments and their companions, on the home and visitor side of the court.

⁴ An accessible route with a running slope greater than 1:20 (5%) is a ramp. The ramp at issue did not have a rise greater than 6 inches; therefore, handrails are not required. 2010 ADA Standard § 405.8.

Therefore, OCR determined that the running slope and cross slope of the accessible route leading to the Practice gym exceeded the allowable measurements pursuant to the 2010 ADA Standards.

The above-described ramp leads to a first set of doors that provide access into the Practice gym. Those doors consisted of a row of three doors on the eastern side of the gym. The doors, without any vision panels, met 2010 ADA Standard § 404 with regard to hardware, threshold, and sufficient clear width. Additionally, entrance was level and clear and provided sufficient maneuvering clearance consistent with 2010 ADA Standards §§ 404.2.3 and 404.2.4.

The second set of doors to the Practice gym provide access to an outside hall area and the Competition gym. The doors, without any vision panels, met 2010 ADA Standard § 404 with regard to hardware, threshold, and sufficient clear width. Additionally, the entrance was level and clear and provided sufficient maneuvering clearance consistent with 2010 ADA Standards §§ 404.2.3 and 404.2.4.

Accessible Route from the Practice Gym to the Competition Gym

The route from the Practice gym to the Competition gym is located in an enclosed outside space, without a ceiling; however, at the time of OCR's onsite inspection, there were temporary walls erected. This space was created as a walkway during the ongoing construction period.

OCR determined that this designated accessible route was stable, firm, and slip resistant and met 2010 ADA Standard §403.5.1 with respect to width. The access route is more than 65" wide; 2010 ADA Standard §403.5.1 requires a minimum width of 36". However, OCR determined that the designated accessible route had running slopes ranging from .3% to 9.9%. Running slopes greater than 5% were not compliant with 2010 ADA Standard §403.3. OCR also determined that the cross slopes of the designated accessible route ranged from .7% to 3.4%. Cross slopes greater than 2% were not compliant with 2010 ADA Standard §403.3.

The accessible route described above leads to a third set of double doors, which lead to a hall area inside of the Competition gym. The doors, without any vision panels, met 2010 ADA Standard § 404 with regard to hardware, threshold, and sufficient clear width. Additionally, the entrance was level and clear and provided sufficient maneuvering clearance consistent with 2010 ADA Standards §§ 404.2.3 and 404.2.4.

From the hall area described above, there are a fourth set of double doors to the left, which serve as the entrance into the Competition gym. The doors that included vision panels, met 2010 ADA Standard § 404 with regard to hardware, threshold, and sufficient clear width. Additionally, the entrance was level and clear and provided sufficient maneuvering clearance consistent with 2010 ADA Standards §§ 404.2.3 and 404.2.4.

Signage indicating accessible entrances

The 2010 ADA Standards require that designated accessible entrances have signs compliant with §§ 216 and 703 of the 2010 ADA Standards. OCR identified additional compliance issues with respect to the designated accessible entrance lacking signage bearing the International Symbol of Accessibility. Specifically, OCR determined that signage for the above-described sets of doors did not comply with 2010 ADA Standards §§ 216 and 703, which provides detailed requirements for signage including style, mounting height, raised characters and numbers, and the International Symbol of Accessibility.

Conclusion

On July 22, 2019, the District agreed to implement the enclosed resolution agreement (Agreement), which addresses the compliance issues identified above regarding the exterior accessible routes and signage. The corrective actions include: a) modification of the accessible route leading to the designated accessible entrance into the Practice gym so that the running slope of the accessible route is no more than 1:20 and the cross slope of the accessible route is no more than 1:48; b) modification of the ramp so that the running slope of the ramp is no more than 1:12 and the cross slope is no more than 1:48; c) modification of the exterior accessible route leading from the Practice gym to the Competition gym so that the running slope of the accessible route is no more than 1:20 and the cross slope is no more than 1:48; and, d) providing signage compliant with the 2010 ADA Standards at the entrance to the Practice gym and the Competition gym, as well as providing compliant directional signage. The Agreement, when fully complied with, will address the compliance issues noted by OCR.

OCR will monitor the implementation of the 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.

This concludes OCR's investigation of the complaint and 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 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 have a right to file a private suit in federal court whether or not OCR finds a violation.

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.

Please be advised that the District may not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

OCR will proceed with monitoring the resolution agreement, 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 Mr. Scott at (404) 974-9252, or ronald.scott@ed.gov.

Sincerely,

Melanie Velez
Regional Director

Enclosure