



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

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

REGION IV

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March 25, 2020

Via Electronic Mail Only: wgonsoulin@jefcoed.com

Walter B. Gonsoulin Jr., Ph.D.
Interim Superintendent
Jefferson County Schools
2100 18th Street South
Birmingham, Alabama 35126

**Re: Jefferson County Schools (Alabama)
OCR Complaint No. 04-19-1609
Letter of Resolution**

Dear Dr. Gonsoulin:

On September 29, 2019, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint filed by the Complainant against Jefferson County Schools (District) alleging discrimination on the basis of disability. The Complainant alleged that on September 29, 2019, the District obstructed or permitted the obstruction of the designated accessible route on the visitors' side of Pinson Valley High School's stadium. More specifically, he alleged that individuals were sitting and collecting tickets on the accessible route to the stadium, which was also blocked by a tent, hay bales, and tables, and this obstructed the use of the accessible route by persons with disabilities during the Pride of Valley Marching Competition at the stadium.

OCR enforces 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 recipients of Federal financial assistance from the Department from discriminating on the basis of disability, and 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, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Based on the allegations, OCR opened for investigation the following legal issue:

- Whether the District failed to make the visitor's side of the stadium accessible to people with disabilities on or around September 29, 2019, in noncompliance with Section 504 and

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its implementing regulation at 34 C.F.R. §§ 104.21 – 104.23; and, Title II and its implementing regulation at 28 C.F.R. §§ 35.149 – 35.151.

Before OCR completed its investigation, the District offered, and OCR agreed, to resolve the allegation by entering into a resolution agreement. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint "may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation." Set forth below is a summary of the evidence that OCR obtained thus far in its investigation, which serves as the basis of the resolution agreement entered into by the District.

Legal Standards

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 regulation, at 34 C.F.R. §§ 104.22-104.23, and the Title II regulation, at 28 C.F.R. § 35.150-35.151, contain different standards, based on when a facility was constructed, for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities.

Summary of Investigation

The Complainant alleged that on September 29, 2019, he planned to take his youngest son, who has Kabuki Syndrome, other medical conditions, and mobility disabilities, to the Pride of the Valley Marching competition, which was being held in the Willie Adams stadium of Pinson High School (School), a District school. Before the event began, the Complainant went to the stadium and observed that the accessible route to the stadium was blocked with a tent, tables, and bales of hay. The Complainant told OCR that the accessible route to the stadium is the paved route to the visitors' stadium seating area.

OCR's investigation to date included the review of photographs, which show that on September 29, 2019 at about 2:36 pm, a blue tent, a table, three bales of hay, plants, and other fall decorations were obstructing what appears to be the accessible route to the stadium. The photographs further reveal that several individuals were sitting and standing under the tent and that occupied and unoccupied lawn chairs were under the tent as well. The photographs also show the following handwritten signs on neon green paper, "Welcome to the Pride of the Valley," "Happy Fall," and "Admission \$5," that had been placed on the chain gate surrounding the stadium.

OCR did not complete the investigation to determine whether the route to the stadium is accessible to or usable by individuals with disabilities during event days in compliance with Section 504 and Title II prior to receiving the request from the District to resolve this matter. However, OCR's investigation to date identified a concern that on September 29, 2019, the designated accessible route to the stadium was obstructed for individuals with disabilities. The District has agreed to resolve this concern.

Resolution Agreement

To remedy the allegation raised by OCR's complaint, the District agreed to implement the provisions of the attached Resolution Agreement (Agreement), which when fully implemented, will resolve the issue in this complaint.

The Agreement is aligned with the complaint allegation and the information obtained thus far and is consistent with applicable regulations under Section 504 and Title II. OCR will monitor the District's 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 with Section 504 and Title II.

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. The Complainant may file a private lawsuit in federal court regardless of whether OCR finds a violation.

This letter sets forth OCR's determination in an individual 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 duly authorized OCR officials and made available to the public.

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 possible, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Finally, OCR reminds the District that intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. 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 proceed with monitoring the 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 complaint, please contact Ms. XXX, the assigned attorney, at (404) XXX-XXXX or XX@ed.gov.

Sincerely,

/s/

Arthur Manigault
Compliance Team Leader

Enclosure (Resolution Agreement)

cc: Samantha Smith (*via electronic mail only to sksmith@bishopcolvin.com*)