



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

March 13, 2021

Dr. Brennan Asplen III  
Superintendent  
Sarasota County Schools  
1960 Landings Boulevard  
Bronson, Florida 32621

**Re: Complaint # 04-20-1492**  
**Letter of Resolution**

Dear Dr. Asplen:

This letter is to advise you of the outcome of the U.S. Department of Education (Department), Office for Civil Rights (OCR) complaint filed on September 14, 2020 against the Sarasota County School District (District). The Complainant alleged that the District discriminates against individuals with mobility disabilities at North Port High School (School) by failing to provide sufficient access to accessible designated seating in the School gymnasium.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits 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 these laws. Accordingly, OCR has jurisdiction to investigate this complaint.

OCR investigated the legal issue of whether the District fails to provide accessible seating in the School gymnasium, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.21-23, and Title II and its implementing regulation at 28 C.F.R. §§ 35.149-151.

During the investigation, OCR interviewed the Complainant and reviewed documents provided by the District including architectural drawings<sup>1</sup> that reference detailed measurements and include photographs of the gymnasium showing the designated accessible wheelchair and companion seating areas, including the entrances and designated accessible routes.

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<sup>1</sup> The District submitted detailed architectural drawings prepared by Ranon & Partners, Inc., Architects.  
*The Department of Education's mission is to promote student achievement and preparation for global competitiveness  
by fostering educational excellence and ensuring equal access.*  
[www.ed.gov](http://www.ed.gov)

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). Allegations under investigation may be resolved at any time when, prior to the completion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations, and the evidence obtained during the investigation will be consistent with applicable regulations. Following are the relevant legal standards and OCR's summary of the investigation, to date.

### **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 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.

#### *Existing Facilities*

The standards of program access that apply to an existing facility are found at 34 C.F.R. § 104.22 and 28 C.F.R. § 35.150. Both Section 504 and Title II require that the District shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. See 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a). This standard does not necessarily require that the District 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. See 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a). In choosing among available methods for meeting the program access requirements for existing facilities, the District 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. See 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b).

However, when all or part of an existing facility is altered in a manner that affects or could affect the usability of the facility or part of the facility, it shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities. See 34 C.F.R. § 104.23(b); 28 C.F.R. § 35.151(b).

#### *New Construction*

The implementing regulations of Section 504, at 34 CFR § 104.23, and Title II, at 28 CFR § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504), or January 26, 1992 (Title II), respectively. These facilities are considered "new construction or alterations." The Section 504 and Title II regulations provide that each facility or part of a facility which is altered by or for the use of a recipient in a manner that affects

or could affect the usability of the facility shall, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by individuals with disabilities. The Section 504 and Title II regulations set forth the specific accessibility standards to be used in new construction. See 34 C.F.R. § 104.23(c); 28 C.F.R. § 35.151(c).

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineates the American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped [ANSI 117.1-1961 (1971)] (ANSI) as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the Uniform Federal Accessibility Standards (UFAS) for facilities constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. § 35.151(c), delineates UFAS or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (1991 ADA Accessibility Standards) as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992.

The regulation implementing Title II and the ADA Standards for Accessible Design were amended in September 2010. Title II adopted new accessibility guidelines, the 2010 ADA Standards for Accessible Design (2010 ADA Standards), which became effective March 15, 2011. Title II, at 28 C.F.R. §35.151(c)(3), now provides, “If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 [ADA] Standards.” 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 UFAS, the ADA Standards for Accessible Design, or the 2010 ADA Standards.<sup>2</sup>

The Title II regulation, at 28 C.F.R. § 35.151(c), delineates UFAS or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (1991 ADA Accessibility Standards)<sup>3</sup> as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992.

The District reported that the School and gymnasium were constructed in 2000-2001 and no alterations have been made to the gymnasium. Therefore, OCR used the 1991 ADA Accessibility Standards in reviewing the designated accessible seating areas at issue in this complaint.

## **Facts**

### *Facility Access*

The District’s gymnasium provides a total of 1180 spaces for spectators, including 17 designated accessible wheelchair and companion spaces.

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<sup>2</sup> <https://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm> (Last accessed 3/05/2021)

<sup>3</sup> <https://www.ada.gov/1991standards/1991standards-archive.html> (Last accessed 3/05/2021)

Program Access

The Complainant is the parent of a student who was enrolled at the School. On November 29, 2019, the Complainant and his wife attended a basketball game in the School's gymnasium. The Complainant and his wife attempted to sit near the designated accessible wheelchair and companion seats during the game. However, the School's cheerleading team occupied the first three rows of the middle sections of the bleachers behind the designated accessible seating areas. The District and Complainant confirmed that the School's Athletic Director (Director) asked the Complainant to move a few rows up or to another section of the bleachers.

According to the Complainant, he advised the Director that, due to his mobility impairment, he needed to sit in an accessible seating area. However, the Complainant reported that the Director stated that the front row seats were reserved for the cheerleaders.<sup>4</sup> The Complainant stated that after his wife advised the cheer coach that he required access due to his mobility impairment, the cheer coach permitted them to remain in their chosen seats a few rows above the designated accessible seating area. However, the Complainant stated that they were crowded, and the cheerleaders made them feel uncomfortable. The Complainant also stated that the Director advised him that the District would designate the accessible seating spaces for the Complainant for future events held at the gymnasium.

On December 6, 2019, the Complainant and his wife attended another game in the gymnasium. Upon arrival, they searched for a designated accessible seating area but did not see any signage or locate any reserved accessible seating, as the Director had committed to them on November 29, 2019. They placed their chairbacks in the same bleacher section as the previous game, in the first available seats closest to the bottom, then went to volunteer. Upon return to their seats, a School Resource Officer advised the Complainant and his wife that the chairbacks were moved because the area was designated for cheerleaders. The Complainant reported that they were permitted to sit with the cheerleaders but reiterated that the seating was crowded.

According to the Complainant, the School Assistant Principal contacted him following the two games and stated the Chief of Police<sup>5</sup> said that he had caused trouble at the game and that he needed to meet with them before attending another game. The Complainant declined to meet with the Assistant Principal. The Complainant stated he spoke with the Assistant Principal who committed that going forward, the School would provide two folding chairs in the designated accessible wheelchair spaces on the ground level for their use. However, the Complainant did not attend the remaining 1-2 games of the season and the Complainant's son graduated from the School in May 2020.

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<sup>4</sup> The District denies much of the Complainant's allegations, including that the Complainant advised the Director or other District staff that, due to his disability, he required access to the designated accessible seating areas in the gymnasium.

<sup>5</sup> <https://www.sarasotacountyschools.net/Page/2420> (Last accessed 3/05/2021)

## **Analysis**

### *Facility Access*

OCR applied the 1991 ADA Accessible Standards in its review of the gymnasium since the District reported that the School and gymnasium were completed in 2000-2001. Based on the information provided to OCR, the District's gymnasium provides a total of 1180 spaces for spectators, including 17 designated accessible wheelchair and companion spaces. The 1991 ADA Accessible Standards require 13 wheelchair and companion seats. The District, therefore, provides sufficient designated wheelchair and companion seating in the gymnasium.

### *Program Access*

The evidence shows that on November 29, 2019 and on December 6, 2019, the Complainant attended two basketball games and attempted to sit in the lower bleachers with his portable chairback to accommodate his disability. During both games, the District requested that the Complainant and his wife relocate from their seats near the designated accessible wheelchair and companion seating area.

Prior to the conclusion of the investigation, the District offered to voluntarily resolve the complaint under Section 302 of OCR's CPM, and OCR determined there was sufficient evidence to support a voluntary resolution.

To resolve any compliance concerns raised in this complaint, the District will: (1) ensure that it provides priority access to the designated accessible seating at the School gymnasium for persons with disabilities and their companions that is consistent with Section 504, Title II and the 2010 ADA Standards; and (2) provide training for School administrators, faculty and staff who are responsible for monitoring the School's gymnasium seating to ensure that persons with disabilities and their companions have priority to the designated accessible seating locations consistent with Section 504, Title II and the 2010 ADA Standards.

OCR received the enclosed Resolution Agreement (Agreement), which when fully implemented, will resolve the issues identified above. OCR will monitor the District's implementation of this Agreement to ensure that it is fully implemented. If the District fails to implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

## **Conclusion**

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 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.

If you have any questions regarding this matter, please contact Edget Betru at (404) 974-9351, or me, at (404) 974-9356.

Sincerely,

/s/

Wendy Gatlin  
Compliance Team Leader

Enclosure