



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 26, 2021

Via Email Only

XXXXXXXXXXXXXXXXXX

Director of Schools
Bristol Tennessee City Schools
615 Martin Luther King Jr. Blvd.
Bristol, Tennessee 37620
Email: XXXXXXXXXXXX

Re: OCR Complaint # 04-21-1038
Resolution Letter

Dear XXXXXXXX:

On November 7, 2020, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint filed against Bristol Tennessee City Schools (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the football stadium at Tennessee High School (Stadium) does not provide designated accessible seating for persons with disabilities.

OCR investigated the complaint pursuant to 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; and, Title II of the Americans with Disabilities Act of 1990 (Title II), 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. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws. Therefore, OCR has jurisdiction over this complaint.

OCR investigated the legal issue of whether the District failed to provide designated accessible seating spaces at the Stadium, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§104.21-104.23, and the Title II implementing regulation at 28 C.F.R. §§35.149-35.151.

Prior to the completion of OCR's investigation, the District requested to voluntarily resolve this complaint. Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved before the conclusion of an investigation, when the recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the investigation because OCR has identified issues that can be addressed through a resolution agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during its investigation, to date, that formulated the development of the Resolution Agreement.

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by fostering educational excellence and ensuring equal access.*

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Legal Standards

The regulations implementing Section 504 at 34 C.F.R. § 104.21 and Title II at 28 C.F.R. § 35.149, state that no person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which Section 504 and Title II apply.

The Section 504 and Title II regulations contain two standards for determining whether a school's programs, activities, and services are accessible to individuals with disabilities. One standard applies to existing facilities, and the other covers new construction and alterations. The applicable standard depends upon the date of construction or alteration of the facility.

Accessibility of Existing Facilities

For existing facilities, the regulations require an educational institution 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. This standard does not necessarily require that the institution 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. 34 C.F.R. §104.22(a); 28 C.F.R. § 35.150(a). Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. The applicable date under the Title II regulation is January 26, 1992. In choosing among available methods for meeting the program access requirement for existing facilities, the institution 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. 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).

Section 504 also requires a recipient to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities in existing construction that are accessible to and usable by persons with disabilities. 34 C.F.R. § 104.22(f).

Accessibility of New Construction

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).

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). 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 ADA 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 ADA Standards, at 36 C.F.R. Part 1191, appendices B and D.

Summary of Information Obtained to Date

The District provided OCR with the dates of construction and renovation of the Stadium, a current blueprint of the Stadium, and aerial and other photos of the Stadium's seating and access points. According to the District, the Stadium (known as the "Stone Castle") was constructed in 1934. In 1970, the District installed portable bleachers in the end zone. In 1991, the District made major structural repairs to the home bleachers. In 2004, the District added synthetic plank seats to the home bleachers. In August 2015, the District added aluminum bleacher seats and handrails to the existing home bleachers. The District stated that the Codes Enforcement Authority considered this project to be a restoration that did not change the function of the Stadium; therefore, it was not an alteration.

According to the information provided by the District, the Stadium does not have accessible seating spaces in the home or visitor's bleachers, as defined by the 2010 ADA Standards. However, the District advised OCR that it does provide accommodations at the Stadium for individuals with mobility disabilities. According to the District, the home side of the Stadium, the upper walkway of the bleachers is accessible from the alleyway through three entrances. Attendees with mobility disabilities can enter the upper walkway and sit on the seating near the entryways. According to the District, attendees who use wheelchairs may remain seated in their wheelchairs and sit near the entrances on the upper walkways. On the visitor's side of the Stadium, attendees with mobility disabilities may enter the visitor's bleachers through the vomitorium accessing the lower walkway to reach the seating on the lower walkway. During special events, such as graduation, a section of the football field on the visitor's side is cordoned off to create a designated accessible seating location, and attendees with mobility disabilities may sit on the field. The District advised OCR that it has retained an architect who has developed an architectural plan to renovate the entire Stadium, which includes ensuring that the Stadium complies with the 2010 ADA Standards.

Since the District added aluminum bleacher seats and handrails to the existing home bleachers after March 15, 2012, OCR used the 2010 ADA Standards¹ to evaluate the Stadium's designated accessible seating, including accessible routes.

Applicable ADA Standards

Assembly Areas. Per 2010 ADA Standards § 221.1, assembly areas shall provide wheelchair spaces, companion seats, and designated aisle seats complying with 221 and 802. Per 2010 ADA Standards § 221.2, wheelchairs spaces complying with § 221.2 shall be provided in the assembly areas with fixed seating. Per 2010 ADA Standards § 221.2.1.1, wheelchair spaces complying with 802.1 shall be provided in accordance with Table 221.2.1.1 below.

¹ <https://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm#titleII> (Last accessed 3/30/2021)

Table 221.2.1.1

Number of Seats	Minimum Number of Required Wheelchair Spaces
4 to 25	1
26 to 50	2
51 to 150	4
151 to 300	5
301 to 500	6
501 to 5000	6, plus 1 for each 150, or fraction thereof, between 501 through 5000
5001 and over	36, plus 1 for each 200, or fraction thereof, over 5000

Companion Seats. Per 2010 ADA Standards § 221.3, at least one companion seat complying with § 802.3 shall be provided for each wheelchair space required by § 221.2.1. In row seating, companion seats shall be located to provide shoulder alignment with adjacent *wheelchair spaces*. The shoulder alignment point of the *wheelchair space* shall be measured 36 inches (915 mm) from the front of the *wheelchair space*. The floor surface of the companion seat shall be at the same elevation as the floor surface of the *wheelchair space*. 2010 ADA Standards § 802.3.1. Companion seats shall be equivalent in size, quality, comfort, and amenities to the seating in the immediate area. Companion seats shall be permitted to be movable. 2010 ADA Standards § 802.3.2.

Designated Aisle Seats. Per ADA Standards § 221.4, at least 5% of the total number of aisle seats provided shall comply with § 802.4 and shall be the aisle seats located closest to the accessible routes. Team or player seating areas serving areas of sport activity shall not be required to comply with § 221.4. Each designated aisle seat shall be identified by a sign or marker. 2010 ADA Standards § 802.4.2.

Accessible Routes. At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve. 2010 ADA Standards § 206.2.1.

Signage. Per 2010 ADA Standards § 216.6, 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.

On February 1, 2021, the District expressed an interest in resolving this complaint pursuant to OCR's CPM § 302. Based on the information reviewed during its investigation, to date, OCR determined that voluntary resolution is appropriate to resolve this complaint.

The District signed the enclosed Agreement which, when fully implanted, will resolve the complaint allegations. The Resolution Agreement (Agreement) requires the District to 1) retain or confer with a consultant who is knowledgeable about the accessibility requirements of Section 504 and Title II; 2) the District's consultant will conduct an accessibility survey of the Stadium to ensure that the Stadium's seating areas and routes to and from these areas are in compliance with the 2010 ADA Standards. The District's consultant will examine the Stadium's seating areas and the routes to and from these areas and develop a written Accessibility Plan (Plan), identifying

the modifications that are necessary to ensure that the seating areas and routes to and from these areas are accessible to and usable by persons with disabilities in accordance with Section 504, Title II, and the 2010 ADA Standards; 3) the District's Plan will: (a) Install designated accessible seating area(s) in the Stadium that provides the required number of wheelchair spaces, companion seats, and designated aisle seats; (b) Ensure that the designated accessible seating areas in the Stadium, include the installation of designated accessible routes that connect the accessible parking to the nearest accessible entrance to the Stadium; (c) Ensure that directional signage indicates the location of the nearest accessible entrance complying with § 404 from the designated accessible parking spaces; and (d) Ensure that the designated accessible seating areas are marked with the International Symbol of Accessibility.

The provisions of the Agreement are aligned with the complaint allegations and the information obtained during the investigation, to date, and are consistent with applicable regulations. OCR will monitor the implementation of the Agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

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. OCR would also like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, 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. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR is committed to prompt and effective service. If you have any questions, please contact Senior Attorney XXXXXXXXXXXX, or by email at XXXXXXXXXXXX, or the undersigned at XXXXXXXXXXXX.

Sincerely,

XXXXXXXXXXXXXXXXXX
Compliance Team Leader