



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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May 1, 2017

Dr. Nikki C. Woodson
Superintendent
Metropolitan School District of Washington Township
8550 Woodfield Crossing Blvd.
Indianapolis, IN 46240

Re: OCR Docket # 05-17-1012

Dear Dr. Woodson:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint filed against Metropolitan School District of Washington Township (District), alleging discrimination on the basis of disability.

Specifically, the complaint alleged that the District discriminates against individuals with disabilities by failing to make the football field at North Central High School accessible to individuals with disabilities.¹

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and 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.

During its investigation, OCR reviewed information provided by the Complainant and the District and visited the District. Based on its investigation, OCR determined that portions of the Stadium were not accessible to individuals with disabilities and that portions of the Stadium are accessible to individuals with disabilities. The District expressed interest in resolving the remaining issues. Discussions between OCR and the District resulted in the District signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the issues raised in the complaint.

¹ Upon request from the District for clarification, OCR informed the District counsel that the allegation referred to the entire facility used for football games (hereinafter the Stadium), not merely the playing field.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Legal Standards

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

Accessibility, existing facilities: The implementing regulations of Section 504, at 34 C.F.R. § 104.22, and Title II, at 28 C.F.R. § 35.150, are applicable to any facility or part of a facility where construction commenced prior to June 3, 1977 (Section 504), or January 26, 1992 (Title II), respectively. The regulations provide that with regard to such facilities, termed "existing facilities," the District will operate the programs, activities and (as to Title II) services so that, when viewed in their entirety, the programs, activities, and services are readily accessible to and usable by persons with disabilities. The District may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alterations of existing facilities or any other methods that result in making each of its programs, activities, and services accessible to disabled persons. The District is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of the statutes, the District must give priority to methods that offer the programs, activities, and services to disabled persons in the most integrated setting appropriate.

The implementing regulation of Section 504, at 34 C.F.R. § 104.22(f), requires a recipient to adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and useable by individuals with disabilities.

Accessibility, new construction: The implementing regulations of Section 504, at 34 C.F.R. § 104.23(b), and Title II, at 28 C.F.R. § 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 termed "new construction or alterations." The regulations provide that each facility or part of a facility which is altered by or for the use of a recipient or public entity in a manner that affects or could affect the usability of the facility must, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities. The regulations specify the accessibility standard to be used in determining the accessibility of the alterations based on the date of construction or renovation.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineated 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), delineated UFAS or The Americans with Disabilities Accessibility Guidelines for

Buildings and Facilities (ADAAG) 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 ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (2010 ADA Standards). The Title II regulation, 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 must comply with the 2010 [ADA] Standards.”

Facts and Analysis

The complaint indicated that the “entire football field area” is not accessible, with no ramps and no accessible restrooms. The complainant indicated that she had to carry her child up cement stairs.

The District informed OCR that the Stadium has a seating capacity of 3500 on the home side and 3500 on the visitors’ side. The District also indicated that the Stadium’s seating areas, restrooms, and concessions facility were constructed in 1956 and that the restrooms on the home side, which include a men’s restroom, a women’s restroom, and a family restroom, were renovated in 2007. The District further indicated that the water fountains, which are located on the home side of the Stadium, were installed in 2007. The District informed OCR that the parking lot immediately north of the Stadium was constructed at some time between 1972 and 1979 and most recently restriped in 2016.

The parking lot and the home side restrooms and drinking fountains are new construction under both Section 504 and Title II, while the remainder of the Stadium is an existing facility under Section 504 and Title II. OCR applied the 2010 ADA Standards to assess the accessibility of the parking lot and UFAS to assess the accessibility of the home side restrooms and drinking fountains. For the remainder of the Stadium, OCR used the 2010 ADA Standards as a guideline to determine whether the District is providing access to the applicable programs, activities, and services.

The evidence established that there is no designated seating at the Stadium for individuals with disabilities and no signage directing individuals with disabilities where to sit. However, the District asserted that it meets the program accessibility standard with regard to providing seating for individuals with disabilities who wish to view events occurring at the Stadium, because these individuals may choose where to sit on the track for events and have appropriate seating available in front of the bleachers for track meets. In order to make a determination regarding whether the District complies with Section 504 and Title II with regard to seating, OCR would need to obtain additional information regarding the location of seats available on the track for each event held at the Stadium, including whether there were unobstructed views in multiple locations for each event, and would need to interview individuals with disabilities who have attended these events in order to ascertain the options that were conveyed to them.

OCR determined that the following areas of the Stadium are compliant with the applicable accessibility standards:

- The parking lot immediately north of the Stadium has a sufficient number of parking spaces designated as accessible for individuals with disabilities, all of which are appropriate sizes for cars and contain an access aisle adjacent to the spaces.
- The route from the parking lot to the Stadium is accessible.
- The ticket windows and concessions windows have large open spaces that allow an approach by an individual in a wheelchair.
- The home side men's and women's restrooms have accessible entrances and accessible interior routes to all locations; in both restrooms, the mirrors are at appropriate heights, the sink is accessible, the soap dispenser is at an appropriate level, and the designated accessible stalls are appropriately sized with a wide enough door and appropriately located and sized toilet and grab bars, and a sufficient number of urinals in the men's restroom is accessible.
- The home side family restroom has an accessible entrance and sufficient space inside; in the restroom, the mirrors are at appropriate heights, the sink is accessible, the soap dispenser is at an appropriate level, and there is an appropriately sized toilet and appropriately located and sized grab bars.
- On the visitors' side, the men's and women's restrooms have sufficiently wide doors and an accessible interior route, as well as sinks of appropriate dimensions and a soap dispenser above the sink at an appropriate height, and one mirror in the women's restroom is an appropriate height.

OCR determined that the following areas of the Stadium do not comply with the applicable accessibility standards.

- While the parking lot immediately north of the Stadium has an appropriate number of parking spaces for cars designated as accessible for individuals with disabilities, none of these spaces is designated as van-accessible and there is no mounted signage at any of the spaces.
- The ticket and concessions windows are too high for an individual in a wheelchair.
- One drinking fountain has a spigot that is too high and the other does not have sufficient knee space underneath.
- In the home side men's and women's restrooms, the paper towel dispenser control knobs are too high and, in the stalls designated as accessible, there is no space between the grab bar and the toilet paper dispenser mounted below it.
- In the home side family restroom, the paper towel dispenser control knob is too high.
- In the visitors' side men's restroom, the door closes too quickly, the mirror over the sink is too high, the pipes below the sink are not insulated, the paper towel dispenser control knob is too high, the urinals are too high, and there is not an accessible toilet stall in the restroom.
- In the visitors' side women's restroom, the pipes below the sink are not insulated, the paper towel dispenser control knob is too high, and there is not an accessible toilet stall in the restroom.

OCR determined that if the home side restrooms are made fully accessible, the visitors' side restrooms do not need to be accessible in order to provide access to the programs, activities, and services at the Stadium; however, signage must be provided directing attendees to accessible restrooms.

Conclusion

As noted above, OCR determined that portions of the Stadium are accessible to individuals with disabilities and portions are not; therefore, OCR determined that the evidence established that the District had not complied with the implementing regulations of Section 504, at 34 C.F.R. §§ 104.21 – 104.23, and Title II, at 28 C.F.R. §§ 35.149 – 35.151. The District signed an Agreement that will resolve the identified violations. In addition, prior to OCR making a determination regarding the seating at the Stadium, the District signed the Agreement that also resolves that portion of the complaint.

Under the Agreement, the District will ensure: that the parking lot located immediately to the north of the Stadium has a sufficient number of parking spaces, including designated van-accessible spaces, for individuals with disabilities attending events at the Stadium and that each space contains appropriately mounted signage; that it provides at the Stadium at least one drinking fountain at an appropriate height and with sufficient leg space, paper towel dispensers in each of the restrooms on the home side at an appropriate height, and sufficient space between grab bars and toilet paper dispensers in the toilet stalls designated as accessible in the men's and women's restrooms on the home side; and that it provides signage outside the restrooms on the visitors' side of the Stadium directing them to accessible restrooms on the home side of the Stadium. In addition, the District agreed to develop and implement a plan to provide access for individuals with disabilities to the programs, activities, and services at the Stadium with regard to tickets and concessions and also to develop and implement a plan to provide access for individuals with disabilities to the programs, activities, and services at the Stadium with regard to seating. OCR will monitor the District's implementation of the Agreement.

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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a 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. In the event that OCR receives 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.

The complainant may file a private suit in Federal court, whether or not OCR finds a violation.

We wish to thank you and your staff for your cooperation and courtesy during our investigation. In particular, we would like to thank Mr. Jonathan L. Mayes, counsel for the District. If you have any questions, please contact me at (312) 730-1611 or Jeffrey.Turnbull@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. Jonathan L. Mayes