



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

230 SOUTH DEARBORN ST., 37<sup>TH</sup> FLOOR  
CHICAGO, IL 60604

**REGION V**  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

June 16, 2020

Dr. Beth Niedermeyer  
Superintendent  
Noblesville Schools  
Sent via email only to [beth\\_niedermeyer@nobl.k12.in.us](mailto:beth_niedermeyer@nobl.k12.in.us)

Re: OCR Docket #05-20-1126

Dear Dr. Niedermeyer:

The U.S. Department of Education (Department), Office of Civil Rights (OCR), has completed its complaint resolution activities in connection with the above-referenced complaint against Noblesville Schools (Corporation) alleging discrimination on the basis of disability.

Specifically, the complaint alleged that the Corporation is discriminating against individuals with disabilities by failing to provide sufficient accessible seating for events at the football stadium at Noblesville High School (School).

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 Corporation is subject to these laws.

During the investigation, OCR reviewed information provided by the Complainant and the Corporation. Prior to the completion of OCR's investigation, the Corporation expressed interest in resolving the complaint in accordance with Section 302 of OCR's *Case Processing Manual* (CPM). The Corporation executed the enclosed Resolution Agreement (Agreement) on June 11, 2020.

**Legal Standards**

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

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 Corporation 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 Corporation 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 Corporation 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 statute, the Corporation must give priority to methods that offer the programs, activities, and services to disabled persons in the most integrated setting appropriate.

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 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 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 Standards). The 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 shall comply with the 2010 Standards.”

### **Facts**

The Complainant alleged that in \_\_\_\_\_, \_\_\_\_\_ visited the School to watch a football game at Beaver Materials Field (Stadium). \_\_\_\_\_ said the visitors’ bleachers were inaccessible because they did not have a ramp to the bleacher seating. Because one of the

Complainant's friends was in a wheelchair, the Complainant said \_\_\_\_\_ had to stand off to the side of the bleachers during the game.

The Stadium was built in 1969 and has a total seating capacity of 4,200.

On March 24, 2020, the Corporation informed OCR that it was in the process of adding a ramp to the visitors' bleachers at the Stadium. The construction of the ramp was originally scheduled to begin on or approximately April 6, 2020, but because of Indiana's mandated closure of school districts throughout the state to prevent the spread of COVID-19, the Corporation was not able to begin this construction project as scheduled. In May 2020, the Corporation informed OCR that construction would occur in June 2020 but has not yet documented completion of this project.

### **Analysis and Conclusion**

In accordance with Section 302 of OCR's CPM, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. The Corporation expressed interest in resolving this complaint. OCR has concerns regarding the lack of ramps in the Stadium's visitors' side bleachers, but has not completed its investigation to determine whether the absence of a ramp renders the programs, activities, and services at the Stadium inaccessible to individuals with disabilities. The Corporation informed OCR that it is in the process of making the Stadium bleachers physically accessible, including by building a ramp.

On June 11, 2020, the Corporation executed the enclosed Agreement, which when fully implemented, will address the compliance concerns. The provisions of the Agreement are aligned with the allegation in the complaint and the information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the Corporation's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

The 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 Corporation 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 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. 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 privacy.

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

OCR would like to thank the Corporation for the cooperation and courtesy extended to OCR during our investigation. In particular, we wish to thank Mr. Andrew A. Manna, the Corporation's Counsel. If you or any of your staff members have any questions, please contact Alonzo Rivas, at (312) 730-1684 or by email at [Alonzo.Rivas@ed.gov](mailto:Alonzo.Rivas@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc. Mr. Andrew A. Manna (sent via email to [Andrew@cchalaw.com](mailto:Andrew@cchalaw.com))