



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

December 19, 2014

Reference: 06142083

Dr. F. Dominic Dottavio, President
Tarleton State University
Office of the President
Box T-0001
Stephenville, Texas 76402

Dear Dr. Dottavio:

This letter is to inform you of the determination of the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, regarding the resolution of the above-referenced complaint filed against Tarleton State University (TSU), Stephenville, Texas, which OCR received on February 21, 2014. The complaint alleged that TSU discriminates against individuals with disabilities by failing to provide the following at TSU's football stadium (the Stadium):

1. accessible parking spaces in the parking areas located on the east and west sides of the Stadium;
2. accessible ticket counters located on the east and west sides of the Stadium;
3. an accessible ramp located on the east side main entry to the Stadium and next to the ticket counter; and
4. an accessible route of travel to the bleachers located on the west side of the Stadium.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance, either from the Department or from an agency that has delegated investigative authority to the Department (recipients), are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations, at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging disability discrimination against public entities, such as public preschools, elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries.

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

TSU is both a recipient of Federal financial assistance from the Department and a public entity. Therefore, OCR has jurisdiction to investigate this complaint under Section 504 and Title II.

OCR opened this complaint for investigation because we determined that the complainant's allegation, if proven true, would constitute disability discrimination in violation of Section 504 and Title II. Specifically, OCR opened an investigation of the following legal issue:

Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by TSU because the parking areas, ticket counters, a ramp, and the route of travel to the bleachers at the Stadium are inaccessible to or unusable by persons with disabilities, in violation of Section 504 and Title II, at 34 C.F.R. §§ 104.21-104.23, and 28 C.F.R. §§ 35.149-35.151, respectively.

The findings set forth below are based upon a review of information provided by the complainant and TSU. OCR conducted an on-site inspection of the Stadium on May 14, 2014. During the investigation, OCR identified compliance concerns consistent with the issue that we investigated. TSU submitted the enclosed Resolution Agreement (Agreement) dated December 10, 2014, to memorialize the steps that it will take to resolve the identified compliance concerns. OCR has determined that the Agreement, when fully implemented, will satisfactorily resolve the compliance concerns. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor TSU's efforts to implement the Agreement. Please be advised that if TSU fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

In order to determine whether TSU failed to make its facilities readily accessible to and usable by individuals with disabilities, OCR first reviewed available data in response to OCR's data request, which was received on May 7, 2014, relative to the facilities identified above. Additionally, OCR conducted an on-site visit on May 14, 2014, to perform a physical inspection of the facilities, including taking applicable measurements and photographs.

Legal Standards

The accessibility requirements of the Section 504 implementing regulations are found at 34 C.F.R. §§ 104.21-104.23. Comparable sections of the Title II implementing regulations are found at 28 C.F.R. §§ 35.149-35.151. Both 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149 provide generally that no qualified individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by disabled individuals, be excluded from participation in, or denied the benefits of services, programs or activities; or otherwise be subject to discrimination by the recipient.

For purposes of determining accessibility, a **facility** is defined at 34 C.F.R. § 104.3(i) to include “all or any portion of buildings, structures, equipment, walks, . . . or other real or personal property or interest in such property.” Under 28 C.F.R. § 35.104, a **facility** means “all or any portion of buildings, structures, sites, complexes, equipment, . . . walks, . . . or other real or personal property, including the site where the building, property, structure or equipment is located.” Interpretive guidance to the Title II regulation issued by the U.S. Department of Justice states that the term **facility** includes both indoor and outdoor areas where human-constructed improvements, structures, equipment or property have been added to the natural environment.

Existing Facilities/New Construction:

The regulations implementing Section 504 and Title II contain two standards for determining whether the recipient’s programs, activities, and services are accessible to individuals with disabilities. One standard applies to existing facilities; the other is applicable to new construction including alterations. The applicable standard depends upon the date of construction and/or alteration of the facility.

Section 504

Under the Section 504 regulations, an **existing facility** is defined as any facility that was already constructed, or for which groundbreaking had begun, prior to June 3, 1977 (the effective date of the Section 504 regulation). Recipients of Federal financial assistance must operate each program or activity so that the program or activity when viewed in its entirety is readily accessible to persons with disabilities. The regulation does not require that structural changes be made to existing facilities if other methods (e.g., relocating activities or using alternative sites) may be effective in providing access and achieving compliance; i.e., a recipient is not required to make each of its existing facilities or every part of a facility accessible. In choosing among methods for meeting program accessibility requirements, a recipient is to give priority to those methods that serve persons with disabilities in the most **integrated setting appropriate**.

As with Title II, discussed below, the standard for program accessibility in existing buildings requires the recipient to make the *program, not the building*, accessible. For new construction, it is the physical facility itself whose accessibility is determinative.

Facilities constructed on or after June 3, 1977, and parts of existing facilities altered after that date are deemed **new construction** and must comply with 34 C.F.R. § 104.23. That section requires that each facility or part of a facility constructed on behalf of, or for the use of a recipient shall be designed and constructed so as to be readily accessible to and usable by persons with disabilities.

For buildings constructed on or after June 3, 1977, through January 18, 1991, recipients under Section 504 are deemed to be in compliance with the Section 504 regulation through compliance with the American National Standard Institute (ANSI) Standards A117.1-1961 (R 1971) or substantially equivalent standards. Effective January 18, 1991,

the Uniform Federal Accessibility Standards (UFAS) superseded the ANSI standards. All new construction and alterations to existing facilities made after January 18, 1991, should meet the minimum requirements of UFAS to be deemed in compliance with Section 504. The Section 504 regulation provides that deviation from particular technical and scoping requirements of UFAS are permitted if “substantially equivalent or greater access to and usability of the building is provided.”

Note: While Section 504 provides that compliance with the provisions of ANSI (UFAS after January 18, 1991) constitutes compliance with the provisions of Section 504, compliance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) would also constitute compliance with Section 504 requirements. Thus, a recipient that is a public entity could opt to comply with the ADAAG standards and would be in compliance with both Section 504 and Title II.

Title II

Under Title II, an **existing facility** includes facilities that were already constructed, or for which groundbreaking had begun, prior to January 26, 1992 (the effective date of the Title II regulation). As with Section 504, recipients must operate each program or activity so that the program or activity when viewed in its entirety is readily accessible to and usable by persons with disabilities. This standard does not necessarily require that a recipient make each existing facility or every part of an existing facility accessible if alternative methods are effective in providing overall access to the service, program or activity.¹

Under Title II, all construction begun on or after January 26, 1992, is considered **new construction** and must be readily accessible and usable by individuals with disabilities. As to structures built or altered on or after January 26, 1992, compliance with either UFAS (Appendix A to 41 C.F.R. Part 101-19.6) or the Department of Justice guidelines pursuant to ADAAG (Appendix A to 28 C.F.R. Part 36) or equivalent standards would constitute compliance with Title II. Public entities have a choice of which standards they want to follow.

The Title II regulation provides that the design, construction or alteration of facilities in conformance with UFAS or with ADAAG shall be considered to comply with the regulatory requirements. Public entities have a choice of which standards they want to follow. An exception exists, however, with respect to the elevator exemption in ADAAG – public entities that choose to follow ADAAG are not entitled to the elevator exemption in ADAAG. Public entities can deviate from either standard “when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.” (28 C.F.R. § 35.151(c))

¹ For certain portions of a program or facility (e.g., restroom facilities, elevators, doors) some form of physical access must logically be provided in order for mobility-impaired individuals to have access to the program, service, or activity. When examining these portions, accessibility was analyzed using the standard dimensions of a modern wheelchair that appear in ADAAG Figure A3, and consideration was given to common physical impairments, such as an inability to grasp or twist with one’s hand.

Note: The Department of Justice has stated that a public entity would be free to adopt either UFAS or ADAAG in constructing different facilities. However, once the choice of standards has been made, the entity must consistently utilize that standard in the construction of the particular facility for which it was adopted.

Depending on the date of construction, some facilities may be **existing facilities** for purposes of Title II but may also constitute **new construction** under Section 504, e.g., buildings constructed on or after June 3, 1977, but before January 26, 1992.² In these cases, public entities/recipients that are covered under both Title II and Section 504 must meet the standards for existing facilities under Title II and also the applicable accessibility standards for new construction and alterations under Section 504.

Title II has requirements similar to those of the Section 504 regulation with respect to the accessibility of programs, activities, and facilities administered by state and local government agencies. However, the Title II regulation does not displace any of the rights or remedies provided by Section 504 that provide greater or equal protection to individuals with disabilities.

Note: For existing facilities, whether a particular program or activity is accessible is determined not by compliance with an architectural accessibility standard but by considering whether the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. However, in an assessment of program accessibility in existing facilities, standards such as ADAAG and UFAS may be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service. ADAAG and UFAS are the architectural standards that constitute compliance with the Title II requirements for new construction and alterations; UFAS also constitutes compliance with the Section 504 requirements for new construction and alterations.

Note: For existing facilities (under both Section 504 and Title II), lack of accessible support facilities such as parking spaces, signage, restrooms, public telephones and drinking fountains does not necessarily limit access to the program. For example, if support facilities such as rest rooms are not accessible, an assessment should be made to determine whether sufficient numbers of accessible restrooms in other buildings exist that are reasonably convenient, usable in inclement weather, and appropriate to the use of the facility.

OCR policy provides that buildings in which a student may spend extended periods of time (e.g., dormitories, libraries, student activity centers, or buildings that house entire academic departments) should meet a higher degree of accessibility than those in which a student spends relatively short periods of time. Usage of the building is an important factor in all program accessibility determinations.

² Facilities constructed on or after January 26, 1992, will be considered new construction under both Title II and Section 504.

Note: As previously mentioned, while 34 C.F.R. § 104.23 of the Section 504 regulations established the new construction standard of UFAS (Appendix A to 41 C.F.R. Part 101-19.6), 28 C.F.R. § 35.151(c) of the Title II regulations established two standards for accessible new construction and alteration - UFAS or ADAAG (Appendix A to 28 C.F.R. Part 36). Section 204(b) of the Americans with Disabilities Act (ADA) provides that Title II regulations must be consistent not only with Section 504 regulations but also with the ADA. Based on this provision, the Department of Justice has determined that a public entity is entitled to choose to comply either with ADAAG or UFAS.

The Stadium

During the investigation, OCR was able to establish the dates of construction and alterations for the Stadium. TSU informed OCR that the Stadium, which was completed in 1977, is used to host athletic and non-athletic events, including but not limited to: football practice and games; track practice and events; commencements (secondary location); and student events. The Stadium is bordered east and west by hard-surfaced parking lots. TSU reported to OCR that the Stadium was renovated in 1977, 1989, 1996, 1997, and 2007. With respect to the renovations, TSU informed OCR that the Original Pressbox (Building 537) and the Stadium including the East Side Ticket Booth (Building 540) and Bleachers were renovated in 1977. In 1989, TSU renovated the West Side Ticket Booth/Concessions Stand/Restrooms (Building 557) and the Center Section of the Bleachers. In 1996, TSU renovated the Northeast Side Concessions Stand/Restrooms/Storage (Building 543). In 1997, the West Side Bleachers were renovated (i.e., north and south side expansion). Recent renovations to the west stands have increased seating capacity to 7,000 spectators for athletic events. In 2007, TSU renovated the Concessions Stand and Restrooms (Building 570). TSU informed OCR that it applied the Architectural Barriers Texas Accessibility Standards (TAS) when designing applicable new construction and renovation projects. TSU further informed OCR that TAS standards are considered the equivalent of ADAAG. OCR used ADAAG standards as a guide to the areas identified in this complaint and also cited the TAS. Further, a review of information gathered during the on-site visit revealed that the Stadium was scheduled for renovation in the near future. However, TSU officials informed OCR that they were still in the “conceptual stages” of the renovations as of the date of the on-site visit.

Allegation Number One:

The complaint alleged that TSU fails to provide accessible parking spaces in the parking areas located on the east and west sides of the Stadium.

Parking at the Stadium

The complainant reported to OCR that there were not sufficient parking spaces designated for individuals with disabilities in the parking lot located west of the Stadium. He also stated that the parking lot located on the east of the Stadium only has four (4)

parking spaces designated for persons with disabilities, none of which are van accessible, even though there are 200 parking spaces in the parking lot.

TSU officials informed OCR that the Stadium has 998 parking spaces, including 21 spaces designated for persons with disabilities. However, the parking lots are subdivided into three sections identified as Parking Area 1, Parking Area 2, and Parking Area 3. Parking Areas 1 and 2 are located on the west side of the Stadium and Parking Area 3 is located on the east side of the Stadium.

Parking Area 1, which is located on the west side of the Stadium, had 150 parking spaces, including six spaces designated for persons with disabilities. ADAAG and TAS 4.1.2(5)(a) require a minimum of five accessible parking spaces in parking lots containing between 101 and 150 parking spaces. Parking Area 1, therefore, contains the required number of accessible parking spaces as specified in ADAAG and TAS.

Parking Area 2, which is located on the west side of the Stadium, had 295 parking spaces, including 5 spaces designated for persons with disabilities. According to ADAAG 4.1.2(5)(a), Parking Area 2 does not contain the required number of spaces (i.e., 7) designated for persons with disabilities for parking lots containing from 201 to 300 parking spaces. TSU will need to designate an additional two accessible parking spaces in Parking Area 2 to meet the ADAAG and TAS requirement.

Parking Area 3, which is located on the east side of the Stadium, had 547 parking spaces, including 12 spaces designated for persons with disabilities. ADAAG 4.1.2(5) (TAS Table 208.2) requires that parking lots with 501 to 1,000 parking spaces have two percent of the total number of spaces designated for persons with disabilities. According to ADAAG and TAS, the required number of parking spaces for Parking Area 3 is 10. There were 12 accessible parking spaces in Parking Area 3, which exceeds the required number of accessible parking spaces by 2 accessible parking spaces.

ADAAG and the TAS require that one of every eight accessible parking spaces, but at least one, be designated as van accessible. In addition, ADAAG and TAS 4.6.3 require that accessible parking spaces (including van accessible spaces) be at least eight feet wide. ADAAG 4.1.2(5) provides that access aisles adjacent to accessible spaces shall be at least five feet wide, unless they serve a van accessible space, in which case they must be at least eight feet wide.

During the on-site visit, OCR reviewed the accessible parking spaces located in Parking Area 3, which is on the east side of the Stadium. TSU officials informed OCR that during game days the entire first row of spaces is designated as “accessible parking”; however, they did not indicate whether they create access aisles. They only indicated that they bring in temporary signs to designate the accessible parking spaces. The front right accessible parking space measured 98.5 inches wide and 233.5 inches long. The vertical sign showing the international symbol of accessibility was 82 inches from the ground to the bottom of the sign. The two accessible parking spaces shared an access aisle that

measured 68.5 inches wide by 9 feet long. The accessible parking space on the left measured 102.5 inches wide by 217 inches long. These two accessible parking spaces meet ADAAG and TAS requirements.

There were two designated accessible parking spaces that measured 101 inches wide by 213 inches long. The van accessible designated space had the same width. The access aisle for the van accessible space was not square, instead it was triangular (See Figures 3-5) and measured 88 inches at the widest and 57 inches at the narrowest. Additionally, there were another two designated parking spaces near the building that measured 105 inches wide and 240 inches long and were designated van accessible. The access aisle for these spaces measured 72 inches at its narrowest point and 104 inches at its widest point.

Parking Area 3 had additional accessible parking spaces that were located in front of a building at the right side (when facing the Stadium) of the parking lot. There were two designated accessible parking spaces that measured 101 inches wide by 213 inches long. The van accessible designated space had the same width. The access aisle for the van accessible space was not square, instead it was triangular and measured 88 inches at the widest and 57 inches at the narrowest. Additionally, there were another two designated accessible parking spaces located near the building that measured 105 inches wide and 240 inches long and were designated van accessible. The access aisle for these spaces measured 72 inches at its narrowest and 104 inches at its widest. OCR identified compliance concerns with respect to the width of the access aisles for three designated van-accessible parking spaces located in the parking lot in the east side of the Stadium. As previously stated, a van accessible parking space was 101 inches wide and 213 inches long. This parking space meets the width requirement in ADAAG and TAS. However, the access aisle for the van accessible parking space was triangular and measured 88 inches or 7 feet 4 inches at the widest point and 57 inches or 4 feet 9 inches at the narrowest point. The access aisle does not meet the eight-foot width requirement in accordance with ADAAG and TAS. The investigation revealed that there were an additional two van-accessible parking spaces that measured 105 inches wide and 240 inches long with a shared access aisle that measured 105 inches or 8 feet and 9 inches at the widest point and 72 inches or 6 feet at the narrowest point. OCR found that the two additional van accessible parking spaces met the minimum width requirement (i.e., 96 inches). However, ADAAG requires that the access aisles for van accessible parking spaces be a minimum of 96 inches or 8 feet wide. Accordingly, all three parking spaces located in the east side of the Stadium that were designated as van-accessible parking spaces cannot be counted as such.

Further, OCR reviewed the parking spaces located at the front corner of the main east side parking lot, which was near the weight room. The parking spaces were angled spaces. The designated van accessible space (Parking space 1) measured 139.5 inches wide and 259 inches long with an access aisle that was 186.5 inches wide. Parking space 2 was also 259 inches long and was 104 inches wide; it had a shared access aisle with

Parking space 3. Parking space 3 measured 259 inches long and 104 inches wide. All signs measured 60.5 inches from the ground to the base of the sign. These accessible parking spaces meet ADAAG and TAS requirements.

OCR reviewed the accessible parking on the west side of the Stadium, which is in three locations – near the ticket counter, near the entrance to the intramural fields, and near the football field house (i.e., Parking Areas 1 and 2). There were two parking spaces near the football field house. Parking space 1 measured 8 feet 10 inches wide and 19 feet 6 inches long with a shared access aisle that measured 5 feet wide. Parking space 2 measured 8 feet wide and 19 feet 6 inches long. The signs for both spaces measured 72.5 inches to the base of the sign. These two accessible parking spaces meet ADAAG and TAS requirements. There were three accessible parking spaces near the intramural field entrance. Parking space 1 measured 8 feet 9 inches wide and 18 feet long with a shared access aisle of 4 feet 9 inches. The access aisle for Parking space 1 is not wide enough (i.e., 60 inches or 5 feet in accordance with ADAAG and TAS). Parking space 2 measured 8 feet 7 inches wide and 18 feet long with a shared access aisle of 5 feet. Space 3 measured 8 feet 7.25 inches wide by 18 feet long. The signs for all three spaces measured 6 feet 3 inches to the bottom of the sign. Parking spaces 2 and 3 meet ADAAG and TAS requirements.

There were six designated accessible parking spaces near the ticket counter. Three were to the right of the entrance and three were to the left of the entrance. For the three to the right of the entrance, Parking space 1 measured 19 feet 1.5 inches long by 8 feet 3 inches wide with a shared access aisle that was 52 inches wide. The access aisle is not wide enough (i.e., 5 feet or 60 inches). Parking space 2 measured 8 feet 3 inches wide and 19 feet 1.5 inches long with a shared access aisle that measured 4 feet 6 inches wide. This access aisle is not wide enough (i.e., 5 feet or 60 inches). Parking space 3 measured 8 feet 7 inches wide and 19 feet 1.5 inches long. For the additional three located at the left of the entrance, Parking space 1 measured 8 feet 8 inches wide and 19 feet 5.5 inches long with a shared access aisle that measured 5 feet 3.5 inches wide. Parking space 2 measured 8 feet 7.5 inches wide and 19 feet 5.5 inches long with a shared access aisle that measured 5 feet 4 inches. Parking space 3 measured 8 feet 8 inches wide and 19 feet 5.5 inches long. The signs measured 55.5 inches, 58.75 inches and 57.25 inches from the ground to the bottom of the sign, respectively. OCR did not note any obstructions for any of the parking signs. However, OCR identified concerns with regard to the height of 3 signs showing the international symbol of accessibility for accessible parking spaces located at the west side of the Stadium. The three signs measured at 55.5 inches, 58.75 inches, and 57.25 inches from the ground to the bottom of the sign. ADAAG requires that such signs shall be located so that they cannot be obscured by a vehicle parked in the space. OCR has determined that the bottom of the signs should be placed higher than 60 inches or 5 feet.

Allegation Number Two:

The complainant alleged that TSU failed to provide accessible ticket counters located on the east and west sides of the Stadium.

Ticket Counters at the Stadium

The complainant informed OCR that the ticket counter located on the west side of the Stadium has two ticket windows that are 46 inches high. The complainant also informed OCR that the ticket counter located on the east side of the Stadium has two windows that are 45 inches high.

TSU informed OCR that the ticket counters located on the east and west sides of the Stadium were constructed in 1977 and 1989, respectively. TSU acknowledged that the ticket counters on the east and west sides of the Stadium were higher than specified in the TAS. Further, TSU stated that it planned on undertaking renovations to ensure compliance with the applicable accessibility standards.

During the on-site visit, OCR reviewed the ticket counters located on the east and west sides of the Stadium. A review of the west side ticket counter (1989) revealed that it measured 45.75 inches to the ledge. Each window was 24 inches wide and the window measured 41.5 inches tall. With regard to the east side ticket counter (1977), the height from the ground to the counter of each ticket window was 45 inches. The width of the counter was 40.25 inches and the width of the window was 34.5 inches.

According to ADAAG and TAS at 7.2 (Sales and Service Counters, Teller Windows, Information Counters):

“(2) At ticketing counters, teller stations in a bank, registration counters in hotels and motels, box office ticket counters, and other counters that may not have a register but at which goods or services are sold or distributed, either:

- (i) a portion of the main counter which is a minimum of 36 inches in length shall be provided with a maximum height of 36 inches; or
- (ii) an auxiliary counter with a maximum height of 36 inches in close proximity to the main counter shall be provided; or
- (iii) equivalent facilitation shall be provided (e.g., at a hotel registration counter, equivalent facilitation might consist of (1) provision of a folding shelf attached to the main counter on which individuals with disabilities can write, and (2) use of the space on the side of the counter or at the concierge desk, for handing materials back and forth).”

OCR determined that the height of the counters located on the east side and west sides of the Stadium exceeded the required height as specified in ADAAG and TAS 7.2. As previously stated, TSU informed OCR that it planned on renovating the ticket counters to ensure compliance with the applicable accessibility standards.

Allegation Number Three:

The complainant alleged that TSU failed to provide an accessible ramp located on the east side main entry to the football stadium and next to the ticket counter; and an accessible route of travel to the bleachers located on the west side of the Stadium.

Accessible Routes to the Stadium

The complainant informed OCR that, on the main entry to the football field, which is located on the east side of the Stadium, “the entry ramp next to the ticket counter is not anti-slip.” The complainant also informed OCR that “the under side of the west bleachers are hazards to the visually impaired.” He further stated that parts of the west bleachers are suspended.

ADAAG and TAS at 4.1.2(1) require the following: “At least one accessible route complying with 4.3 shall be provided within the boundary of the site from public transportation stops, accessible parking spaces, passenger loading zones, if provided, and public streets or sidewalks, to an accessible building entrance.” ADAAG and TAS at 4.30.7 state that facilities and elements required to be identified as accessible by 4.1 shall use the international symbol of accessibility. ADAAG and TAS at 4.3.3 also state that the minimum clear width of the accessible route shall be 36 inches except at doors” ADAAG and TAS at 4.4.2 require that halls, corridors, passageways, aisles, or other circulation spaces shall have 80 inches minimum of clear head room (Note: If vertical clearance of an area adjoining an accessible route is reduced to less than 80 inches (nominal dimension), a barrier to warn blind or visually-impaired persons shall be provided.) ADAAG and TAS at 4.5.2 state that changes in level up to ¼ of an inch may be vertical and without edge treatment. Changes in level between ¼ of an inch and ½ of an inch shall be beveled with a slope no greater than 1:2. Changes in level greater than ½ of an inch shall be accomplished by means of a ramp that complies with 4.7 or 4.8. ADAAG and TAS at 4.5 require that ground and floor surfaces along accessible routes and in accessible rooms along spaces including floors, walks, ramps, stairs, and curb ramps, shall be stable, firm, and slip-resistant, and shall comply with 4.5.

OCR reviewed the accessible route from the ticket counter to the seating at the Stadium. OCR observed that there were two routes to enter the Stadium. The first route had a significant slope and was clearly not accessible. However, TSU officials informed OCR during the on-site visit that this was not the designated accessible route to the Stadium. During the investigation, TSU officials acknowledged there was no permanent signage indicating the accessible route to the Stadium. OCR observed that the accessible route to the entrance and the bleachers at the Stadium, which was identified by TSU officials during the on-site visit, was smooth, stable, firm, and slip-resistant. The width of the route was greater than 36 inches. The route was level with no changes in slope. The slope coming off of the accessible route to the concessions stand measured 7.5 degrees. OCR noted that the ramp was not part of the accessible route to the entrance on the east

side of the Stadium. OCR observed that there were no obstructions and no protruding objects along the accessible route leading to the bleachers on the west side of the Stadium. The head room was greater than 80 inches.

Based on this, OCR determined that there is an accessible route to the Stadium in accordance with ADAAG and TAS 4.1.2(2) (Accessible Sites and Exterior Facilities: New Construction). TSU agreed to procure and post the appropriate signs showing the accessible route to the Stadium in accordance with ADAAG and TAS requirements. Based upon our analysis of the evidence, we have concluded that TSU is not in compliance with Section 504 and Title II because certain facilities and programs are not readily accessible to and usable by individuals with disabilities at the Stadium. As previously stated, TSU submitted an Agreement that fully addresses OCR's compliance concerns. OCR will monitor TSU's progress in the implementation of the Agreement and will conduct on-site monitoring visits, as necessary. This concludes OCR's investigation of the complaint and should not be interpreted to address TSU'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 have the right to file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that TSU 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 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. 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.

We appreciate your cooperation and that of your staff, especially the assistance provided to OCR by Dr. Joni E. Baker, during the course of this investigation. If you have any questions regarding this letter, please contact Mr. Justin T. Evans, Team Leader, at (214) 661-9600.

Sincerely,

Taylor D. August
Director
U.S. Department of Education
Office for Civil Rights, Dallas Office

Enclosure

cc: Dr. Joni E. Baker, Ph.D., Director
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