UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
Renaissance Tower
1201 Elm Street, Suite 1000
Dallas, TX 75270

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

[XXXX XXXX XXXX]

[XXXX to end of address line]

Sent via electronic mail only to: [XXXX]

RE: OCR Complaint Ref. No. 06-22-1184

Dear [XXXX XXXX]:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint filed against the Quitman School District (QSD or District), in Quitman, Mississippi. The complaint, which was received in our office on [XXXX XXXX XXXX], alleged that the District discriminates on the basis of disability, in that the Quitman High softball field and restroom facility are inaccessible to or unusable by persons with disabilities (i.e., the access aisles do not have a level surface and the restroom does not comply with accessibility standards).

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department or an agency that has delegated investigative authority to this Department are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibits 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. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by certain public entities, including elementary and secondary educational institutions. The QSD is a recipient of Federal financial assistance from the Department and is a public elementary and secondary educational institution. Therefore, OCR has jurisdiction over this complaint under Section 504 and Title II.

Based on the complaint allegations and OCR's jurisdictional authority, OCR opened the following legal issue for investigation:

> Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination at the District's High School Softball Field

because access aisles and the restroom facility are inaccessible to or unusable by persons with disabilities, in violation of Section 504 and its implementing regulations, at 34 C.F.R. §§ 104.21(a), (b), and 104.23, and Title II and its implementing regulations, at 28 C.F.R. §§ 35.149, 35.150(a), (b), and 35.151.

Legal Standard

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 an entity'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 entity. The regulations implementing Section 504 and Title II each contain two standards for determining whether an entity's facilities are accessible to or usable by persons with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility.

Both Section 504 and Title II prohibit discrimination on the basis of disability in the programs and activities of covered entities. The regulation implementing each statute requires entities subject to the statute to provide "program accessibility" in programs and activities offered in existing facilities. In addition, each regulation establishes design and construction standards for new and altered facilities.

Existing Facilities

An existing facility under Section 504 is any facility that was constructed, or for which construction was commenced, prior to June 3, 1977, the effective date of the Section 504 regulation. Under Title II, an existing facility includes facilities that were constructed, or for which construction was commenced prior to January 26, 1992, the effective date of the Title II regulation.

For existing facilities, both Section 504 and Title II require public entities and recipients to operate programs or activities so that the programs and activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities. (The specific language of Title II also refers to services). Neither regulation requires public entities or recipients to make all existing facilities or every part of the existing facility accessible to and usable by individuals with disabilities, if the [service], activity, or program as a whole is accessible.

Under both regulations, program accessibility for existing facilities can be achieved by making nonstructural changes such as the redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, or delivery of services at alternate accessible sites. Priority consideration, however, must be given to offering the programs or activities in the most integrated setting appropriate. It should be noted that if no effective alternatives can be provided to achieve program accessibility, a recipient or public

entity is required to make necessary structural changes. These changes are to be made consistent with the requirements for new construction.

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.) In these cases, public entities/recipients that are covered under both Title II and Section 504 must meet the standards for existing construction under Title II and also the applicable accessibility standards for new construction and alterations under Section 504.

New Construction and Alterations

Both Section 504 and Title II require that a new or altered facility (or the part that is new or altered) be accessible to and usable by individuals with disabilities. However, there are differences in the applicable accessibility standards for new construction and alterations. Alterations standards recognize that structural impracticability or technical infeasibility may be encountered; however, new construction standards must be used in alterations whenever possible.

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, districts had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) 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 districts had a choice of complying with one of the following: UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards).[1] The Title II regulation provides that districts are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012.[2] For the purposes of Title II compliance, a public entity must comply with the 2010 Standards as of March 15, 2012, even if the Uniform Federal Accessibility Standards (UFAS) remains an option under the Section 504 regulations after that date.

Summary of the Evidence Obtained to Date and Proposed Resolution

OCR began its investigation of this complaint by requesting written records from the QSD, which OCR reviewed. The QSD's information reflected that the restrooms at the District's High School softball and baseball facilities were constructed in 1999 and serve both sports. Further, the District indicated that subsequent to its receipt of OCR's Notification Letter, dated March 8,

[1] The 2010 ADA Standards for Accessible Design consist of 28 C.F.R. § 35.151 and the 2004 ADAAG at 36 C.F.R. Part 1191, appendices B and D.

[2] The U.S. Department of Education revised its Section 504 regulations to formally adopt the 2010 Standards in lieu of UFAS. The Section 504 regulations now require the use of the 2010 Standards in new construction and renovations.

2022, the QSD retained an architectural firm to conduct an assessment of the alleged accessibility issues regarding the restrooms serving these facilities. Based on the assessment conducted, the District acknowledged that the restrooms require accessibility modifications. The QSD relayed to OCR that it would bring the restrooms into compliance with the Section 504 and Title II regulations. Also, the District identified as additional accessibility concerns noncompliant sidewalk and paving from the parking lot to the High School baseball and softball fields and associated restroom facilities, and insufficient accessible signage at such facilities. The District further relayed to OCR that it plans to increase the number of parking spaces by two by adding spaces near the fields with the two spaces to be placed as indicated in the hand-marked aerial drawing provided with its response, and that it plans to provide signage to indicate the reserved seating areas for individuals with disabilities at the baseball and softball fields. The District relayed to OCR that it intended to remedy these accessibility issues.

Prior to OCR investigating further and reaching a compliance determination regarding the issue investigated, the District expressed interest in voluntarily resolving this complaint. Because OCR's investigation has revealed potential concerns which can be adequately addressed in a resolution agreement, OCR has determined that voluntary resolution prior to the conclusion of investigation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) is appropriate in this case.

The District voluntarily submitted the enclosed Voluntary Resolution Agreement (Agreement) to OCR, signed by the District's Superintendent on [XXXX XXXX XXXX]. The provisions of the Agreement are aligned with the complaint allegations and the information obtained during OCR's preliminary investigation and are consistent with applicable law and regulations. OCR has determined that the Agreement, upon full implementation by the District, satisfactorily resolves the allegations presented in the complaint. The dates for implementation and specific actions are detailed in the enclosed Agreement. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the District's implementation of the Agreement. Please be advised that if the District fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

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 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.

If you have any questions regarding this letter or the Agreement, please contact Marvin Macicek, the investigator assigned to the complaint, at (214) 661-9636, or at Marvin.Macicek@ed.gov. You may also contact me, at (214) 661-9647, or at Cristin.Hedman@ed.gov.

Sincerely,

Cristin Hedman Sparks
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

Enclosure: Voluntary Resolution Agreement