



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

ONE PETTICOAT LANE
1010 WALNUT STREET, SUITE 320
KANSAS CITY, MO 64106

REGION VII
ARKANSAS
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

September 26, 2019

Sent via email only to XXXXX@XXXXX.XXX

XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX

Moore Public Schools
1500 Southeast 4th St.
Oklahoma City, Oklahoma 73160

Re: Moore Public Schools
OCR Case Number: 07-19-1147

Dear XXXXX XXXXX:

On April 2, 2019, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Moore Public Schools (District), Moore, Oklahoma, alleging discrimination on the basis of disability. The complaint was referred to OCR by the U.S. Department of Justice (DOJ), Civil Rights Division, Disability Rights Section. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to OCR to resolve the complaint.

OCR is responsible for enforcing:

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

As a recipient of FFA from the Department and a public entity, the District is subject to Section 504 and Title II. Additional information about OCR and the laws we enforce is available on our website at <http://www.ed.gov/ocr>.

OCR notified the District in a letter dated May 24, 2019, that it would investigate whether the upper level spectator seating in the Westmoore High School (WHS) gymnasium is inaccessible to individuals with mobility impairments who cannot go up or down stairs, in violation of 28 C.F.R. §§ 35.149 – 35.151 and 34 C.F.R. §§ 104.21 – 104.23. OCR's May 24 letter also confirmed that another disability discrimination allegation by the Complainant regarding access

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

to a wheelchair accessible stall in a WHS restroom had been resolved through OCR's Rapid Resolution Process.

To protect individuals' privacy, OCR has not used the Complainant's name, names of her family members, or the names of District employees in this letter.

During its investigation to date, OCR reviewed documentation the District submitted, including District policies and procedures, information regarding the construction of WHS and alterations made to WHS, and blueprints of the WHS gymnasium at issue in this complaint. OCR also interviewed the Complainant by telephone on May 1, 2019. OCR made an onsite visit to the District on August 14, 2019. During the onsite visit, OCR interviewed the District's Section 504/Title II coordinator for complaints made by or on behalf of students (who is also the District's director of special services), the District's director of operations, the WHS principal, the WHS head volleyball coach, and an assistant WHS volleyball coach. In addition, OCR conducted a preliminary assessment of the accessibility of the upper level seating in the WHS gymnasium at issue, including the platform lift in the gymnasium used to transport individuals with mobility impairments to and from the upper level seating area.

Allegation – Accessibility of Spectator Seating

Legal Standard

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that benefits from or receives FFA. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a). Prohibited discrimination by a recipient or public entity includes: denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits, or services offered by that recipient or public entity; affording a qualified person with a disability an opportunity to participate in or benefit from aids, benefits, or services that is not equal to that afforded others; and providing a qualified person with a disability with aids, benefits, or services that are not as effective as those provided to others. 34 C.F.R. § 104.4(b)(1)(i)-(iv); 28 C.F.R. § 35.130(b)(1)(i)-(iv).

The Section 504 and Title II regulations also state that no qualified person with a disability shall, because a covered entity'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 of the entity's programs or activities. 34 C.F.R. § 104.21; 28 C.F.R. § 35.149. The regulations reference standards for determining whether an entity's programs, activities, and services are accessible to individuals with disabilities depending upon whether the facilities are determined to be existing construction, new construction, or alterations. The applicable standard depends upon the date of construction or alteration of the facility. 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, roads, walks, parking lots 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."

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 a 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 set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulation, public entities 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 public entities 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 public entities are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012.²

UFAS and ADAAG Requirements for Platform Lifts

The use of platform lifts is incorporated in UFAS as an "exception" in cases where elevators, ramps, and other alternatives are not feasible. UFAS Section 4.11, *Platform Lifts*, does not specify in detail the minimum acceptable features and characteristics of platform lifts but requires that platform lifts, when used, comply with the following UFAS provisions, as well as with "the applicable safety regulations of administrative authorities having jurisdiction": Section 4.2.4, *Clear Floor or Ground Space for Wheelchairs*; Section 4.5, *Ground and Floor Surfaces*; and Section 4.27, *Controls and Operating Mechanisms*. UFAS Section 4.11.3, *Entrance*, states that when platform lifts are used, they "should facilitate unassisted entry and exit from the lift."

Under ADAAG, platform lifts that comply with ADAAG Section 4.11, *Platform Lifts (Wheelchair Lifts)*, and applicable state or local codes may be used as part of an accessible route in altered portions of existing buildings and facilities, including additions to existing buildings. ADAAG Section 4.11.3, *Entrance*, states that if platform lifts are used, they must "facilitate

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 Department 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 alterations.

unassisted entry, operation, and exit from the lift in compliance with [ADAAG Section] 4.11.2.” ADAAG Section 4.11.2, *Other Requirements*, does not specify in detail the minimum acceptable features and characteristics of platform lifts, but requires that such lifts comply with the following ADAAG provisions when used: Section 4.2.4, *Clear Floor or Ground Space for Wheelchairs*; Section 4.5, *Ground and Floor Surfaces*; and Section 4.27, *Controls and Operating Mechanisms*. In addition, ADAAG Section 4.11.2, states that when platform lifts are used, they must comply with Section XX of the 1990 ASME (American Society of Mechanical Engineers) A17.1 Safety Code for Elevators and Escalators (ASME Safety Code).

Rule 2000.10a of the ASME Safety Code, *Key Operation*, applies to vertical platform lifts and states, in relevant part:

Operation of the [lift] car from the upper or lower landing and from the car shall be controlled by a key. The key-operated control shall be operated by a lock having a five-pin or five-disk combination with the key removable only in the “off” position. A key-operated switch shall be provided at each station which will allow a control switch at that station to become effective only when the key is in the “on” position. “Up” and “down” control switches at all stations shall be by means of a continuous pressure device.³

Factual Background Information

Construction of WHS Gym

WHS was originally constructed in 1988 and is not registered as a historic site. The District has made several alterations to WHS since it was built. In 1993, the District added classrooms on the northwest side of WHS, and in 2000 added more classrooms, restrooms, and a storm shelter to the west of the 1993 addition. As discussed in more detail below, in 2010, the District added a new gymnasium to the east side of WHS. In 2011, the District added additional classrooms to the west of the 2000 addition. The original WHS building contains two gymnasiums: a practice gym with one basketball court that does not have any fixed seating in it, and a competition gym with one basketball court and pullout bleachers. The practice gym and old competition gym are primarily used for athletic practices and P.E. classes.

The District began constructing a third WHS gymnasium (hereafter referred to as the “new gym”) on the east side of the WHS building in or around May of 2010. The new gym consists of a competition size basketball court with goals located on the east and west sides of the gym, ground floor level pullout bleacher seating on the north, south, and east sides of the court, and upper level fixed bleacher seating on the north and south sides of the court. The new gym was completed during the summer or fall of 2011.

³ The 2010 Standards require, in Section 410, *Platform Lifts*, that platform lifts comply with ASME A18.1 (1999 or 2003 edition) and state that platform lifts “shall not be attendant-operated and shall provide unassisted entry and exit from the lift.” The ASME A18.1 Standard recognizes two types of platform lifts – vertical platform lifts and inclined platform lifts – and addresses requirements for runway enclosures, electrical equipment and wiring, structural support, headroom clearances, access ramps, pits, and other features. The 2003 edition of the ASME A18.1 Standard does not require or prohibit key-operated controls for platform lifts.

The new gym is typically used for Oklahoma Secondary School Activities Association (OSSAA) sanctioned volleyball games, boys' and girls' basketball games, and wrestling matches (events in which WHS teams are participating), as well as for Special Olympics basketball events. The WHS cheer and pom squads occasionally hold events in the new gym as well. In addition, the WHS volleyball, basketball, wrestling, and cheer teams host athletic club tournaments at WHS as fundraisers for their teams. WHS teams do not play in the club tournaments, but earn money from ticket sales for the events and by selling concessions at the events. Aside from athletic events, the new gym is occasionally used for WHS band concerts and school assemblies.

When the District built the new gym, it included a platform lift in the northeast corner of the gym to allow individuals in a wheelchair and others with mobility impairments to access the upper level spectator seating in the gym. There are no amenities on the second floor of the gym (e.g., restrooms, concession stands), just spectator seating. The main doors to the gym are located on the west side of the gym and open into a lobby area with a concession stand and restrooms. To get to the platform lift from the lobby, individuals may either travel through the gym alongside the court to the back corner of the gym where the lift is located, or may go down a side hallway that runs parallel to the north side of the court.

The platform lift in the new gym is a vertical hydraulic lift that is enclosed in a concrete/stone hoistway. The outside of the lift is not identified by any signage. To enter the lift from the ground floor, an individual has to first unlock a full-sized door with a lever handle using a key. (This ground floor door automatically locks as a safety feature.) The lift floor is 36 inches wide and 60 inches deep. A wheelchair user would typically enter the lift facing forward. There are three sets of controls that may be used to operate the platform lift: two exterior control panels (one on the main floor and one on the second floor) and one control panel inside of the lift. The exterior control panels each have a keyhole for turning the lift on and off with a key and a button used to move the lift up and down. The control panel inside of the lift consists of a keyhole for turning the lift on and off with a key, a button used to move the lift up and down (with continuous pressure), and a round knob that must be pulled out in order for the lift to operate and may be pushed in to stop the lift and sound an alarm. The up/down button at each of the three control panels for the lift will only work if there is a key inserted into the keyhole located in the same panel and the key is turned to the on position.

To exit the lift on the second floor of the new gym, an individual in a wheelchair would move forward and push open the lift door. The upper level lift door remains unlocked as long as the lift is stopped at that level. An individual in a wheelchair would typically reenter the lift from the upper level facing forward, and upon reaching the ground level, would continue forward, push open the main floor door, and exit the lift. No key is required to exit the lift on the main floor; the door has an electric strike that unlocks and releases the door from the inside when the lift stops on the ground floor.

Spectator Use of Platform Lift in New Gym

According to the WHS principal, during the 2018-19 school year, when OSSAA sanctioned sporting events were held in the new gym, the general practice with regard to use of the platform

lift was for the administrator on site, or one of the off-duty police officers serving as security for the event, to approach individuals in a wheelchair and let them know that there is a platform lift in the gym they may use to access the upper level spectator seating. The principal indicated that there was always at least one administrator on site for these sporting events, and at least two security officers. If an individual in a wheelchair indicated that he or she wanted to sit in the upper level, one of the administrators on site would: accompany the individual to the lift; unlock the main floor lift door to allow the individual to enter the lift; and operate the lift using the exterior control panel or, if the individual in the lift did not feel comfortable exiting the lift by themselves on the second floor, ride up in the lift with the individual using the control panel inside the lift. The principal indicated that when possible, a second staff member would be at the top of the lift to help a person riding up in the lift exit onto the second floor. The principal also stated that during OSSAA sanctioned sporting events, there was always an administrator stationed on the second floor of the gym who could help an individual in a wheelchair go back downstairs in the lift when needed. The principal indicated that if a spectator notified someone at the concession stand about needing to use the lift, a concession stand worker could notify an administrator via walkie talkie.

The WHS principal told OCR that he and other WHS administrators do not typically attend non-OSSAA sanctioned sporting events held at WHS. Instead, the head coach and assistant coach(es) for the WHS team using an event as a fundraiser are responsible for serving as the “administrators in charge” for the event, and for operating the platform lift when needed by someone attending the event. The WHS principal told OCR that non-District employees are never permitted to operate the platform lift in the new gym, including students, parents, and others attending sporting events at WHS. He said the District always has someone available at events who is trained to operate the lift.

During the 2018-19 school year, there were three non-OSSAA sanctioned club volleyball tournaments held at WHS. All three gyms at WHS were used simultaneously during each tournament. To make room for two volleyball courts in the new gym, the ground floor bleachers were not pulled out for these club tournaments, and most spectators viewed the tournaments from the upper level seating area. The volleyball coaches OCR interviewed stated that although they prefer that spectators not sit on the ground level of the new gym during club volleyball tournaments, both for the players’ safety and the spectators’ safety, if spectators ask to do so, particularly if they have a mobility impairment that makes it difficult for them to walk to the platform lift, they are allowed to sit in a folding chair they bring with them or one provided by WHS in or near one of the “cubby areas” in the corners of the gym.

With regard to use of the platform lift during club volleyball tournaments, the coaches OCR interviewed stated that the protocol they followed during the 2018-19 school year was to get a set of keys to the platform lift from the WHS athletic director prior to the start of each tournament and leave the keys in the concession stand so they both could access them when needed. Although the keys were left in the concession stand, only the coaches were permitted to operate the platform lift during club volleyball tournaments. The volleyball coaches told OCR that once a club volleyball tournament started, they constantly rotated through the new gym, old competition gym, and practice gym, sometimes together and sometimes separately, to help make sure things were running smoothly. They said that when they were in the new gym, they would

proactively approach anyone who was watching the tournament from the ground level, particularly individuals who appeared to have a mobility impairment, to see if they wanted to use the platform lift to access the upstairs seating area. Both coaches indicated that even if individuals told them they did not want to go to the upstairs seating area, one of the coaches would check with them a second time to see if they had changed their mind and needed assistance getting upstairs.

The volleyball coaches told OCR that sometimes when they were walking around during a club volleyball tournament, a player or parent would grab them and let them know that a spectator needed to use the platform lift, or someone working in the concession stand would notify them – either by calling or texting the coaches on their cellphones or by sending a student-athlete helping out in the concession stand to find one of the coaches – that a spectator needed to use the lift. In those situations, the coach closest to the concession stand would go get the lift keys from the concession stand and accompany the spectator needing to use the platform lift, who would often be waiting for the coach near the concession stand, to the lift. Once at the lift, the coach would unlock the door to the lift so the spectator could get in and would operate the lift for the spectator using the exterior ground floor controls. Both coaches indicated that when they helped spectators with mobility impairments use the platform lift during a club tournament, they would advise them to have their companion inform someone at the concession stand when they were ready to return to the ground floor, and the concession stand would summon one of the coaches. They said they never had a situation where a spectator using the lift did not have a companion with him or her.

Complainant's Experience at XXXXX XX, 2019 Club Volleyball Tournament

The Complainant attended a one-day club volleyball tournament held at WHS on XXXXX XX, 2019, in which her daughter, who was not a District student, competed. WHS served as the site host for the tournament but did not organize the tournament, and the tournament was not an OSSAA sanctioned event. The Complainant's husband took their daughter to the tournament in the morning, and the Complainant planned to attend the tournament in the afternoon with the Complainant's grandmother (Grandmother), who uses a wheelchair. According to the Complainant, when her husband arrived at the tournament, he advised the ticket takers that someone would be coming to the tournament later that day in a wheelchair, and was told that the school had an "elevator" the individual could use to access the upstairs seating area in the new gym.

The Complainant told OCR that she and Grandmother arrived at WHS in the early afternoon to watch the volleyball tournament, specifically the Complainant's daughter's team. After the Complainant saw that the main floor bleachers in the new gym were not pulled out and spectators were sitting upstairs, she left Grandmother in the gym, went to the concession stand, and asked whether she and Grandmother could "go up the elevator." One of the adults working at the concession stand directed a student to go get the assistant volleyball coach to unlock the "elevator" for the Complainant and Grandmother. While the student was summoning the assistant coach, the Complainant went back into the gym and accompanied Grandmother to the lift.

According to the Complainant, when she and Grandmother got to the lift, it was locked, and the assistant coach was not there. She said a spectator who was on the upper level near the platform lift asked if they needed to use the lift, and she replied, “Yes.” She said the spectator replied that the assistant coach had just been there and left, and might have gone to get a key to the lift. The Complainant told OCR that she and Grandmother waited by the lift for approximately 20 to 30 minutes for the assistant coach to return, then gave up because they were missing the games they came to watch. They moved to one of the cubby areas near the front of the gym and watched the remainder of the tournament there. The Complainant told OCR that she thought she and Grandmother were tucked back enough to avoid getting hit by any volleyballs, but that after being at the tournament for a couple of hours, Grandmother was hit XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX, by a volleyball. The Complainant said Grandmother was not seriously injured by the volleyball but was embarrassed by the incident and hit hard enough that she later developed a bruise XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.

Neither of the volleyball coaches OCR interviewed recalled seeing Grandmother at the tournament on XXXXX XX, and they were not aware that Grandmother was hit by a volleyball until they were notified of this OCR complaint. The assistant volleyball coach told OCR she did not recall a student asking her to unlock the platform lift for Grandmother and would never ignore or turn down such a request. She said she did not remember seeing anyone in a wheelchair at the XXXXX XX tournament but remembered there being a spectator with a walker who said he or she did not want to sit upstairs because the walk to the platform lift was too far. The head volleyball coach told OCR that she recalled helping someone in a wheelchair use the platform lift during the XXXXX XX tournament, but said it was possible she was remembering a different club tournament. The head coach also recalled a spectator in a walker who chose to watch the XXXXX XX tournament from the ground floor because the spectator thought the walk to the platform lift was too far.

Additional Information

The District indicated in its response to OCR’s Data Request for this complaint that it did not know which accessibility standards (ADAAG or UFAS) it chose to apply when constructing the new gym.

District employees generally serve as the ticket takers for OSSAA sanctioned athletic events that are held in the new gym at WHS. For non-OSSAA sanctioned club events, parents of WHS student-athletes usually serve as the ticket takers. For both OSSAA sanctioned and non-OSSAA sanctioned events held in the new gym, the concession stand is usually staffed by parents who are Booster Club members for the sport being played.

Resolution

Based on the information gathered to date, OCR identified concerns regarding the accessibility of the upper level seating area in the new gym, including the District’s protocol for granting spectators access to the lift. Prior to the completion of OCR’s investigation into this complaint, the District indicated its interest in entering into a voluntary resolution agreement with OCR

pursuant to Section 302 of OCR’s *Case Processing Manual* and signed an Agreement (copy enclosed) on September 25, 2019, that resolves OCR’s concerns. The Agreement requires the District to post notices regarding the accessibility of WHS facilities, add signage regarding the platform lift and its location in the new gym, and develop and implement a plan that allows spectators with a mobility impairment to enter, operate, and exit the platform lift unassisted. In addition, the Agreement requires the District to provide training to WHS personnel regarding the platform lift. For more information, please consult the Agreement.

OCR considers this complaint resolved effective the date of this letter and will monitor the District’s implementation of the Agreement. When OCR concludes that the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume its investigation.

Recipients of federal funds are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by federal civil rights law. Complaints alleging such retaliation may be filed with OCR.

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, it will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

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.

If you have any questions regarding this matter, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/ XXXXX XXXXX

XXXXX XXXXX
Supervisory Attorney

Enclosure