UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

July 29, 2016

Dr. Mark Richardson
Superintendent
Santa Maria Joint Union High School District
2650 Skyway Drive
Santa Maria, California 93455

(In reply, please refer to case no. 09-16-1180.)

Dear Superintendent Richardson:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Santa Maria Joint Union High School District (District). OCR investigated whether the Ernest Righetti and Santa Maria High Schools sports stadiums have adequate disabled parking, and an accessible path of travel from disabled parking to each respective stadium.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, and its implementing regulation. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990, as amended, and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the regulations.

To investigate this complaint, OCR reviewed documents and information provided by the Complainant and the District; and visited both school sites on May 6, 2016. The following is a summary of the applicable legal standards, OCR's findings identified and concerns raised based on information gathered to date, areas reviewed and measured and the reasons for the resolution of this complaint.

Legal Standards

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

The regulations contain two standards for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities. One standard applies to "existing facilities" while the other covers "new construction" and "alterations." The applicable standard of compliance depends upon the date of construction and/or the date of any alterations to the facility.

Existing Facilities

The Section 504 regulations, at 34 C.F.R. § 104.22, and the Title II regulations, at 28 C.F.R. § 35.150, apply to "existing facilities," and define them as any facility or part of a facility where construction was commenced prior to June 3, 1977 or January 26, 1992, respectively. The regulations provide that, with respect to existing facilities, the recipient shall operate its programs, services, and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities (hereinafter "the program accessibility standard").

Accessibility of existing facilities is determined not by compliance with a particular architectural accessibility standard, but by considering whether a recipient program, service, or activity offered within an existing facility, when viewed in its entirety, is accessible to and usable by individuals with disabilities. The recipient may comply with the existing facility standard through the reassignment of programs, services, and activities to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, services, and activities, when viewed in their entirety, accessible to individuals with disabilities. In choosing among available methods for redressing program inaccessibility, the recipient must give priority to those methods that offer programs, services, and activities to individuals with disabilities in the most integrated setting appropriate as well as methods that entail achieving access independently and safely.

Under some circumstances, the concepts of program access and facilities access are related. This is because it may be necessary to remove an architectural barrier to create program access. A program offered exclusively in a particular building on a campus may not be accessible absent a ramp or accessible washroom to the particular building. Under such circumstances, in evaluating existing facilities, facility accessibility standards may be used to guide or inform an understanding of whether persons with disabilities face barriers to participating in the program, service, or activity provided in a particular facility. In reviewing program accessibility for an existing facility, the Uniform Federal Accessibility Guidelines (UFAS) may be used as a guide to understanding whether individuals with disabilities can participate in or benefit from the program, activity, or service.

Pursuant to 28 U.S.C. 35.150(a)(3), a public entity is not required to take an action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance

would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

New Construction/Alterations

The Section 504 regulations, at 34 C.F.R. § 104.23, and Title II regulations, at 28 C.F.R. § 35.151, also apply to "new construction or alterations," defined as any facility or part of a facility where construction was commenced after June 3, 1977 or January 26, 1992, respectively. The regulations provide that each facility or part of a facility constructed by, on behalf of, or for the use of the recipient/public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. The regulations further provide that each facility or part of a facility altered by, on behalf of, or for the use of the recipient/public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

The regulations specify the standard to be used in determining the accessibility of new construction and alterations. The Section 504 regulations, at 34 C.F.R. § 104.23(c), delineate the American National Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physical Handicapped (ANSI 117.1 – 1961 (1971)) as the minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977 and before January 18, 1991. The provisions of UFAS set forth the designated standard for facilities constructed or altered on or after January 18, 1991. The Title II regulations (28 C.F.R. § 35.151(c)) delineate UFAS or ADAAG as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992.

On September 15, 2010, the United States Department of Justice published new regulations implementing Title II and included specific accessibility standards as part of the regulations. These accessibility standards, the 2010 Standards for Accessible Design (2010 Standards), became the applicable construction standards for all new construction and alterations by public entities beginning on March 15, 2012, including new construction and alterations completed before March 15, 2012 that did not comply with ADAAG or UFAS. 28 C.F.R. § 35.151(c)(5).

The Title II and Section 504 regulations provide that recipients/public entities may depart from the particular technical and scoping requirements of these architectural standards, if substantially equivalent or greater access and usability of the facility is provided. 34 C.F.R. § 104.23(c); 28 C.F.R. § 35.151(c). Deciding which of the available accessibility standards must be used is determined based on the date of commencement of physical construction. 28 C.F.R. § 35.151(c).

Notice & Signage

The Section 504 regulations, at 34 C.F.R. § 104.22(f), also require the recipient to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of programs, services, activities, and facilities that are accessible to and usable by persons with disabilities. The Title II regulations, at 28 C.F.R. § 35.163(a), have a similar requirement for public entities. In addition, 28 C.F.R. section 35.163(b) requires a public entity to provide signage at all inaccessible entrances that direct users to accessible entrances or to a location at which they can obtain information about accessible facility entrances. The section also requires that the international symbol for accessibility be displayed at each accessible entrance to a facility.

Background and Overview

The Complainant in this case is mobility impaired and requires an accessible pathway from accessible parking to the Ernest Righetti High School stadium and Santa Maria High School stadium. Prior to the 2014-2015 school year, the Complainant had been allowed to park in a dirt lot near each respective stadium; however, in the 2014-2015 school year, the District closed the dirt lots to public parking. All patrons were required to use pre-existing parking lots further from each respective stadium. The Complainant made several requests to continue utilizing the dirt lot for his personal access to the stadiums; however, the District refused the Complainant's requests.

The Complainant filed this complaint with OCR on January 19, 2016, requesting OCR require the District provide him with the same access he had prior to 2014-2015 school year. OCR sought to determine if both high schools have adequate accessible parking and an accessible path of travel from parking to each respective stadium.

Factual Findings and Analysis

Santa Maria High School

Based on document review and an interview with the facility director, Santa Maria High School's parking, signage, and accessible routes all fall under the ADAAG analysis, as the last new construction, upgrades, and restriping of the accessible parking lots occurred in December of 2010. 28 C.F.R. § 35.151(c)(5).

As discussed further below, Santa Maria High School has three parking lots with accessible parking, and one accessible path of travel to the stadium from each accessible parking area. However, the length of the paths of travel is significant and may pose a barrier to program access at the stadium for the Complainant, who is in a wheelchair.

- Parking Lot One on Stowell Street near the District's facilities maintenance building has the requisite number of accessible and van accessible parking spaces all within ADAAG specifications. Lot 1 has negligible slope and requisite signage, thus meeting the requirements. The path of travel follows the same

route as non-disabled patrons follow. All sidewalks, slopes, surfaces, and curb cuts meet ADAAG requirements for accessibility. However, the distance from the Stowell Parking Lot to the stadium gate is approximately 439 yards.

- Parking Lot Two on Thornburg Street is adjacent to the Santa Maria High School baseball stadium. Lot Two has a requisite number of accessible and van accessible parking spaces all within ADAAG specifications. The Lot has negligible slope and requisite signage. The path of travel follows the same route as non-disabled patrons follow. All sidewalks, slopes, surfaces, and curb cuts meet ADAAG requirements for accessibility. However, the distance from the Thornburg Parking Lot 2 to the stadium gate is approximately 281 yards.

- Parking Lot Three on Thornburg Street is adjacent to the Santa Maria High School softball field. Lot Three has a requisite number of accessible and van accessible parking spaces all within ADAAG specifications. The Lot has negligible slope and requisite signage. The path of travel follows the same route as non-disabled patrons follow. All sidewalks, slopes, surfaces, and curb cuts meet ADAAG requirements for accessibility. However, the distance from the Thornburg Parking Lot Three to the stadium gate is approximately 265 yards.

OCR fully examined Santa Maria High School's accessible parking areas and paths of travel, and found the School to be accessible under ADAAG. However, OCR found that the paths of travel from accessible parking to the Santa Maria High School stadium are quite lengthy, such that they may pose a barrier to the Complainant's individual ability to access programs at the stadium.

Ernest Righetti High School

Based on document review and interview with facility director, OCR found that the last new construction at Ernest Righetti High School occurred May 3, 2012. As such, the 2010 ADA Standards are applicable to all parking/signage/accessible routes. 28 C.F.R. § 35.151(c)(5). OCR gathered needed information regarding paths of travel for Ernest Righetti High School during its site visit on May 6, 2016 and had concerns that two of the paths may not be compliant with the 2010 ADA Standards.

However, prior to completing its investigation and analysis in the individual issues at Santa Maria High School and the class-wide allegation regarding accessibility of parking and paths of travel at Ernest Righetti High School, the District expressed an interest in proactively resolving the allegations through a Resolution Agreement (Agreement) pursuant to section 302 of the Case Processing Manual.

Conclusion

The District has signed the enclosed Agreement, which, when fully implemented is intended to address all of the issued raised in this complaint. The Agreement requires the District to determine the best way to provide program access to the Complainant for those programs he attends at the schools' stadiums, and requires the District to ensure

that ERHS is fully compliant under the 2010 ADA standards through self-assessment of path of travel accessibility and barrier removal for all mobility impaired individuals at ERHS. Based on the commitments made in the agreement, OCR is closing the investigation of this complaint as of the date of this letter. This concludes OCR's investigative process and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

OCR will monitor the implementation of the agreement until the District fully implements the provisions of the Agreement. OCR is informing the Complainant of this complaint resolution by concurrent letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. If OCR receives such a request, it 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.

OCR would like to thank the District's representatives, particularly Reese Thompson, Facilities Director, for their courtesy and cooperation in resolving this case. If you have any questions about this letter please contact David Howard, at (415) 486-5523, or via email at david.howard@ed.gov.

Sincerely,

/s/

James M. Wood
Team Leader

Enclosure