



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

March 8, 2019

VIA ELECTRONIC MAIL AND U.S. MAIL

Loren Kleinrock
Interim Superintendent
San Marino Unified School District
1665 West Drive
San Marino, CA 91108
superintendent@smusd.us

(In reply, please refer to # 09-18-1069.)

Dear Superintendent Kleinrock:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the San Marino Unified School District (the District). The complaint alleged that that the District discriminated against individuals with disabilities because the bleachers, restrooms, and parking for the football field at San Marino High School (the School) were not accessible to individuals with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. 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. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public school district, the District is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the District and through a site visit to the School on March 12, 2018. OCR also interviewed the individual who filed the complaint (the Complainant). Based on this investigation, OCR found that the District was not in compliance with Section 504 and Title II and their implementing regulations with respect to certain aspects of the bleachers, restrooms, and parking, as described below.

The applicable legal standards, factual findings, and resolution of this matter are summarized below.

Legal Standard

The regulations implementing Section 504 and Title II provide that no qualified person with a disability shall, because a recipient or public entity's facilities are inaccessible to or unusable by persons with disabilities, 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; 28 C.F.R. § 35.149. The regulations contain two standards for determining whether a recipient/public entity's programs, activities, and services are accessible to individuals with disabilities. One standard applies to "new construction" and "alterations" while the other applies to "existing facilities." The applicable standard of compliance depends upon the date of construction and/or the date of any alterations to the facility.

New construction and alterations

The Section 504 regulations, at 34 C.F.R. § 104.23, apply to "new construction or alterations," defined as any facility or part of a facility where construction was commenced after June 3, 1977. For the purposes of Title II, "new construction or alterations" is defined as any construction of or alterations to a facility or a part of a facility on or after January 26, 1992. The regulations for each law provide that each facility or part of a facility constructed by, on behalf of, or for the use of the recipient or 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 Section 504 regulations, at 34 C.F.R. § 104.23(c), specify the American National Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically 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. Facilities constructed or altered on or after January 18, 1991 are required to comply with the Uniform Federal Accessibility Guidelines (UFAS) (Appendix A to 41 C.F.R. subpart 101-19.6). Recipients may choose between applying the 2010 Standards for Accessible Design (2010 Standards) (28 C.F.R. § 35.151 and 28 C.F.R. part 36, subpart D) or UFAS for any new construction or alteration commenced on or after March 15, 2012. 77 F.R. 14972, 14975 (Mar. 14, 2012).

With respect to Title II, public facilities constructed or altered on or after January 26, 1992 through September 14, 2010 are required to choose application of UFAS or the 1991 ADA Standards for Accessible Design (1991 Standards) (28 C.F.R. Part 36, App. A). Public facilities constructed or altered on after September 15, 2010 through March 14, 2012 are able to comply through the application of UFAS, the 1991 Standards, or the 2010 Standards. Effective March 15, 2012, new construction and alterations pursuant to Title II are required to comply with the 2010 Standards. New construction and alterations completed before March 15, 2012 that did not

comply with the 1991 Standards or UFAS (i.e., noncompliant new construction and alterations) were also subject to the 2010 Standards. 28 C.F.R. § 35.151(c)(5).

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, also apply to “existing facilities.” Section 504 defines existing facilities as any facility or part of a facility where construction was commenced prior to June 3, 1977. Existing facilities for the purposes of Title II are any facility or part of a facility where construction was commenced prior to January 26, 1992. 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’s 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.

The concepts of program access and facilities access are related, because it may be necessary to remove an architectural barrier in order to create program access. For example, a program offered exclusively in a particular building on a campus may not be accessible and usable to individuals with disabilities absent the provision of physically accessible features. Under such circumstances, 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 subject to Section 504, UFAS or the 2010 Standards may be used as a guide to understanding whether individuals with disabilities can participate in or benefit from the program, activity, or service. The 2010 Standards may be used as a guide to understanding whether individuals with disabilities can participate in or benefit from the program, activity, or service of a public entity subject to Title II. Specific details of the architectural standards are described below as needed.

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.

Factual Findings

The Complainant, an individual with a mobility impairment, told OCR that she attended a football game at the School's field as a fan of a visiting team. The Complainant reported that she parked in an accessible parking space on the east side of the field and only observed two accessible parking spaces in that lot. The Complainant reported that after the game she needed to use the restroom and she visited the restrooms by the concession stand near the entrance. She reported that the stalls were too narrow and there were no handrails, and that she therefore had a difficult time getting her walker into the stall area and getting on and off the toilet. She reported that she was not aware of any other accessible restrooms available at the field.

Seating

The District told OCR that the football field bleachers were originally constructed in 1953 and that the home bleachers were rebuilt in 1979. The 1979 construction plans for the rebuilding of the home bleachers stated that the visitors' bleachers were "existing permanent bleachers" that were not altered at that time. The football field and track were also replaced in 2005 when the grass football field was replaced with artificial turf. The School also modified the home bleachers in 2009 to add 167 plastic seats with backing on top of the existing metal bleachers.

On both sides of the field, the bleachers can only be reached by walking up stairs. There are no ramps or other accessible routes to get up into the bleachers. In the District's response to the complaint, the District reported that spectators in wheelchairs have two options for where to sit to watch football games, either on the track near the end zone in the southeast corner of the field, or on an elevated concrete walkway next to the bleachers on the visitors' side. On OCR's site visit, School staff told OCR that wheelchair users who come to football games generally sit in a third area, an asphalt area between the track and the home bleachers between approximately the 10-yard line and 25-yard line on the field. School staff said that during games players on the sideline were required to stand between the two 25-yard lines.

OCR inspected the path of travel from the parking lot to the elevated area next to the visitors' bleachers that had been originally identified by the District as accessible seating. The route goes up a gradual hill and through a gate and then along the northern side of the field. OCR observed that the "seating area" identified by the District is simply a portion of that walkway. That portion of the walkway is flat and would provide a reasonable view of the field and space for companion seating, but it is isolated from all other fans. There is no signage marking the area as a location for accessible seating or marking an accessible route to that area.

Restrooms

The main restrooms for the football field are located by the concession stand near the southeast corner of the field. As acknowledged by the District, these restrooms are not accessible. The District was not able to locate the plans to provide an exact date that the restrooms were constructed, but the District's representative told OCR that the District believes the restrooms were built in 1969.

The District told OCR that there are also accessible women's restrooms in the women's "field house" adjacent to the northeast corner of the field, and accessible men's restrooms as part of the gym, which is located further away and southeast of the field. According to the District, the women's restrooms in the field house were constructed in 2003, and the men's restrooms in the gym were last modernized in 2006.

School staff told OCR that during football games the accessible women's restroom was open but that the accessible men's restroom in the gym is locked. School staff told OCR that if an individual in a wheelchair needed to use an accessible men's restroom, they would need to find a staff person to ask for it to be unlocked. There was no signage directing spectators to the location of accessible restrooms.

OCR assessed the path of travel from the potential accessible seating locations to the accessible restrooms. OCR found that the most direct route to the men's restroom would require descending a slope with a grade of up to eight percent down from the field to the walkway that leads to the gym. OCR also found that once a wheelchair user approached the gym, the path of travel had cross-slopes ranging from three to five percent and also included a walkway without handrails that had a running slope of approximately 6.5%.

Parking

School staff told OCR that the parking lot on the east side of the School served as the primary entrance to the football field. The District provided a site accessibility plan dated January 15, 2004 showing revisions made to the parking lot on the east side of the School, including adding more accessible parking spaces and restriping the existing spaces.

OCR determined that there are eight accessible parking spaces in the eastern parking lot, which contained approximately 103 total parking spaces. The parking lot serves the football field as well as several other buildings on campus. The accessible parking spaces were dispersed across the lot in various locations in front of entrances to the various buildings. In addition to the two parking spaces nearest the football field, the parking lot included three other sets of two parking spaces that serve the entrances to the performing arts building, the theater, and the visual arts building. One of the two parking spaces nearest the entrance to the football field was van accessible.

OCR also visited a separate parking lot on the west side of the football field. That lot contains approximately 128 parking spaces and two were accessible. The spaces were marked with a

symbol of accessibility on the ground but did not have a sign in front of the parking space and did not contain any markings indicating that the parking space was van accessible.

Analysis

Seating

As noted above, both the home and visitors' bleachers were originally built in 1953, but the home bleachers were rebuilt in 1979.

Home Bleachers

The Section 504 regulations originally issued on May 4, 1977 provided that for new construction (construction commenced after the effective date of June 3, 1977) "[e]ach facility or part of a facility constructed by, or on behalf of, or for the use of a recipient shall be designed and constructed in such a manner that the facility or part of the facility is readily accessible to and usable by handicapped persons."¹

OCR determined that because the home bleachers were rebuilt in 1979 (after the June 3, 1977 effective date in the regulations), the bleachers were "new construction" under Section 504. OCR found that the District did not comply with the regulations promulgated under Section 504 for new construction by making the bleachers accessible and usable to the maximum extent possible. The seating is not accessible because individuals with disabilities are not able to use the seating in the bleachers, which can only be reached by walking up a set of stairs. Instead, the seating area currently used by spectators in wheelchairs (in front of the home bleachers) is segregated from the rest of the spectators and has obstructed views because the home team's players stand directly between the spectators and the game for the portions of the game where the ball is in the middle portion of the field.

The Resolution Agreement therefore provides that the District will create accessible seating adjacent to the home bleachers for individuals with disabilities.

Visitors Bleachers

The visitors' bleachers were constructed in 1953 and are therefore existing facilities under Section 504 and Title II and are evaluated under a program access standard. The program access determination for existing facilities is evaluated not by compliance with a particular architectural accessibility standard, but by considering whether a recipient's program, service, or activity offered within an existing facility, when viewed in its entirety, is accessible to and usable by individuals with disabilities.

The District told OCR that individuals in wheelchairs wanting to sit on the visitors' side can sit on a flat, elevated area next to the visitors' bleachers or that spectators in wheelchairs can sit on

¹ 45 C.F.R. § 84.23(a) (1977). The current Section 504 regulations also include similar language at 34 C.F.R. § 104.23.

the track. Under a program access standard, OCR found that under these circumstances for seating built in 1953, the District is not required to also make the visitors' bleachers accessible, given that the District will have seating options that are accessible and usable for individuals with disabilities.

However, as noted above, the Section 504 and Title II regulations require that recipients 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.² OCR found that the District was not in compliance with these provisions of the Section 504 and Title II regulations because the District did not provide any signage that notified individuals with disabilities as to the location of accessible seating. As a result, individuals like the Complainant were not aware of even the limited accessible seating options that the District now offers.

As such, the resolution agreement provides that the District will ensure that individuals with disabilities can obtain information as to the existence and location of accessible services, activities, and facilities at the field, including signage identifying accessible seating locations and other accessible features.

Restrooms

As noted above, the main restrooms serving the football field were built in 1969 and are inaccessible. Based on the date of construction, these restrooms are existing facilities under Title II and the Rehabilitation Act. However, as described below, the question of restroom accessibility is also impacted by the provisions in the Title II regulations regarding alterations to facilities, given that the District installed a new football field and track in 2005 and replaced the grass football field with an artificial turf field.

The Title II regulations provide specific rules for alterations of an element that constitutes a "primary function" of a facility. The regulations provide that "[a]n alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities."³ The same language appears in Section 4.1.6(2) of the 1991 Standards.

The regulation provides that the accessibility improvements described above are not required to the extent the cost of the improvements would be disproportionate to the cost of the overall alteration, meaning that "the cost [of the accessibility improvements] exceeds 20% of the cost of the alteration to the primary function area."⁴ The regulation specifies that "[w]hen the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to

² 34 C.F.R. § 104.22(f) and 28 C.F.R. § 35.163(a).

³ 28 C.F.R. § 35.151(b)(4)(i).

⁴ 28 C.F.R. § 35.151(b)(4)(iii).

the extent that it can be made accessible without incurring disproportionate costs.”⁵ That is, if the cost of the improvements exceeds 20% of the alteration to the primary area, the District is required to spend up to the 20% cap, but not exceed it.

OCR found that the 2005 replacement of the grass football field with an artificial turf surface constituted an alteration that “affect[ed] the usability of the facility or part of the facility.”⁶ OCR also found that the alteration to the field was an alteration to a primary function of the facility. The Title II regulations define a “primary function” as “a major activity for which the facility is intended.”⁷ The field is a “major activity for which the facility is intended” and thus constitutes a primary function.

Because the installation of the turf field was an alteration to a primary function of the facility, the District was required to make the path of travel to the field and the restrooms serving the field readily accessible to and usable by individuals with disabilities except to the extent the cost of such alterations exceeded 20% of the cost of the installation of the field. Here, the District did not make any such changes and the main restrooms for the football field (the “restrooms ... serving the altered area”) are inaccessible. OCR therefore found that the District is required to provide accessible restrooms, as reflected in the resolution agreement.

OCR also found that, even under a program access standard (that is, even if the field had not been altered), the restrooms serving the field were not accessible to and usable by individuals with disabilities. The only accessible men’s restroom is locked during football games with no information alerting individuals with disabilities how to open it. Furthermore, there was no signage that indicated where accessible restrooms were located, which meant that individuals like the Complainant had no way of knowing that there are alternatives to the inaccessible restrooms near the field’s entrance. Furthermore, the path of travel to the men’s restroom in the gym was not accessible because of the slope and cross slope. That path of travel included sections that had running slopes of 6.5% to 8% (the maximum allowable running slope under Section 403.3 of the 2010 Standards is 1:20, or 5%) and cross-slopes ranging from three to five percent (and the maximum allowable cross slope under Section 403.3 of the 2010 Standards is 1:48, or approximately 2%).

Parking

Because the parking lots were last modified before 2010, OCR applied the 1991 Standards as to parking. Section 4.1.2(5)(a) of the 1991 Standards provides the required number of spaces for parking lots of different sizes, as shown in the table below. Section 4.1.2(5)(b) also requires that at least one out of every eight accessible spaces be van accessible. The required number of accessible spaces is calculated separately for each parking lot on a site.

⁵ 28 C.F.R. § 35.151(b)(4)(iv)(A).

⁶ 28 C.F.R. § 35.151(b)(1).

⁷ 28 C.F.R. § 35.151(b)(4)(i).

<u>Total Parking in Lot</u>	<u>Required Minimum Number of Accessible Spaces</u>
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100 over 1000

The chart below shows the number of accessible parking spaces in each of the two parking lots that serve the football field.

Lot	Number of Parking Spaces	Number of Accessible Spaces	Required Number of Accessible Spaces under 1991 Standards	Number of Van Accessible Spaces
East	103	8	5	1
West	128	2	5	2

Eastern Lot

As shown in the table above, under the 1991 Standards, the parking lot on the east side of the field, which had approximately 103 total parking spaces, must have at least 5 accessible parking spaces, at least one of which must be van accessible. Because the east parking lot contained eight accessible parking spaces (three more than required), 1 of which was van accessible, OCR determined that the parking lot on the east side of the football field complied with Section 504 and Title II with respect to the number of accessible parking spaces. OCR also found that the lot had the required number of van accessible spaces (one).

The Complainant reported that only two of the accessible parking spaces in the eastern parking lot are located adjacent to the football field entrance. However, the fact that the accessible parking spaces are dispersed throughout the parking lot and are not all next to the football field is consistent with the requirement in Section 4.6.2 of the 1991 Standards that “[i]n buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.” OCR therefore found that the dispersal of the parking spaces did not violate Section 504 or Title II.

Western Lot

With respect to the parking lot on the west side of the football field, there are 128 parking spaces and two of those spaces are designated as accessible, including at least one van accessible space.

The 1991 Standards would require that a parking lot of that size have five accessible parking spaces, meaning that the west parking lot has *three less* accessible parking spaces than required. However, as noted above, the eastern parking lot has *three more* parking spaces than required, since there are eight accessible spaces but only five are required.

OCR therefore determined whether the location of additional accessible parking spaces in the eastern lot could serve to comply with Section 504 and Title II, despite the shortage of accessible parking spaces in the western lot. The 1991 Standards allow accessible features to be located in alternate locations if those locations provide equivalent or greater access. Specifically, Section 2.2 of the 1991 Standards provides that “[d]epartures from particular technical and scoping requirements of this guideline by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility.” The 2010 Standards specifically apply that principle to parking spaces, noting in Section 208.3 that “[p]arking spaces shall be permitted to be located in different parking facilities if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance or entrances, parking fee, and user convenience.”

OCR found that the placement of three additional accessible parking spaces in the eastern lot instead of the western lot offered substantially equivalent access. The lots are roughly equal distance from the field and offer similar access. As such, OCR found that the fact that the western lot has only two accessible parking spaces does not constitute a violation of Section 504 and Title II.

As noted above, the accessible parking spaces in the western parking lot are marked with a symbol of accessibility on the ground but did not include a sign or any marking that the parking space was van accessible. Section 4.6.4 of the 1991 Standards required that “accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility ... [and van accessible spaces] shall have an additional sign ‘Van-Accessible’ mounted below the symbol of accessibility. Such signs shall be located so they cannot be obscured by a vehicle parked in the space.”

OCR therefore found that the accessible parking spaces in the western parking lot were not in compliance with the 1991 Standards because they were not marked by a sign. The Resolution Agreement therefore requires that the District ensure that all accessible parking spaces at the School are marked by signage consistent with the 2010 Standards.

Overall Conclusion

This concludes the investigation of this complaint.

To address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegations and the information obtained by OCR during its investigation. The Resolution Agreement requires the District to provide accessible seating for fans adjacent to the home bleachers, to provide accessible restrooms, and to add appropriate signage to the accessible parking spaces.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently. When fully implemented, the resolution agreement is intended to address the complaint allegations. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the resolution agreement, OCR will close the case.

OCR's determination in this matter 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. 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, retaliate, 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Blake Thompson, Civil Rights Attorney, at (415) 486-XXXX or at blake.thompson@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

Cc (by email): XXXXXXXX XXXXXXXX
 XXXXXX XXXXXXXX, Assistant Superintendent, San Marino Unified