



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

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MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

August 13, 2020

SENT VIA ELECTRONIC MAIL

Mr. Steve Betando  
Superintendent  
Morgan Hill Unified School District  
15600 Concord Circle  
Morgan Hill CA 95037

(In reply, please refer to # 09-20-1027.)

Dear Superintendent Betando:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Morgan Hill Unified School District (District). On October 17, 2019, OCR received a complaint alleging that the District discriminated against individuals with disabilities because the District's Live Oak High School football stadium (stadium) is not accessible. Specifically, the complaint alleged that the stadium's bleachers, path of travel, and parking lots are 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, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving 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. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District is a public entity that receives funds from the Department and is therefore subject to Section 504, Title II, and their implementing regulations.

OCR investigated the allegations by reviewing documentation provided by the District and speaking with the District. OCR also interviewed the Complainant. Prior to OCR reaching a final determination in this matter, the District expressed an interest in voluntarily resolving the allegation and OCR determined it was appropriate to resolve the allegation without further investigation pursuant to Section 302 of OCR's Case Processing Manual (CPM).<sup>1</sup> On August 5, 2020, the District agreed to implement the enclosed Resolution Agreement (Agreement) to

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<sup>1</sup> OCR's CPM is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

resolve the allegation and OCR's concern. This letter summarizes the legal standards, applicable facts, and the basis for the Agreement.

## **Findings of fact**

### Seating

The District told OCR that the football field bleachers were originally constructed in 1973, and other than replacing benches as needed, there have been no alterations or modifications to the bleachers.

In 2014, the District replaced the football grass with synthetic turf. In 2016, the District replaced the football score board and constructed a new football announcers' booth.

For both the visitor and home bleachers, ramps provide accessible routes to get up into the bleachers. Once in the bleachers, there is no accessible seating for disabled individuals. In the District's response to the complaint, the District reported that individuals in wheelchairs could sit on the track during football games.

### Path of Travel to Seating

The route from the parking lot to the stadium is a paved pathway, until entering the gate to the stadium, where the pathway changes to gravel.

### Parking

The District informed OCR that the student parking lot is closest to the primary entrance to the football stadium. The District reported that the student parking lot was resurfaced and striped in 2006, then upgraded in 2008, and the District added solar arrays in 2010. The District stated that the student parking lot has five accessible parking spaces, three van accessible spaces, and 370 total parking spaces. According to the District, the staff parking lot is approximately 1300 feet from the football stadium entrance. The District reported that the staff parking lot has eight accessible disabled parking spaces and a total of 118 parking spaces. In the student parking lot, there are two accessible parking spaces located at the entrance to the stadium, and three accessible parking spaces are located next to the tennis courts, which are approximately 500 feet from the stadium entrance. There are an additional two accessible parking spaces located next to the Theater, which is approximately 950 feet from the stadium entrance. The staff parking lot has a total of eight accessible parking spaces, located approximately 1300 feet from the stadium entrance.

The photos the District provided show that all of the accessible parking spaces are marked with a symbol of accessibility on the ground and a sign in front of the parking space indicating that the parking space was either disabled or van accessible.

### **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 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/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 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. § 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.

### **Analysis**

#### Seating

OCR determined that the home and visitor bleachers were built in 1973, and therefore are 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 program, service, or activity offered within an existing facility, when viewed in its entirety, is accessible to and usable by individuals with disabilities. OCR identified a compliance concern that the football stadium may not be accessible to and usable by individuals with disabilities because the District reported that the bleachers do not have accessible seating available.

As noted above, the Section 504 and Title II regulations at 34 C.F.R. § 104.22(f) and 28 C.F.R. § 35.163(a) 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. As such, OCR also identified a further compliance concern that individuals with disabilities may not be aware of the location of the accessible facilities at the stadium since there is not signage identifying accessible seating locations.

#### Path of Travel

The path of travel is paved from the accessible parking lots until one reaches the stadium entrance. As shown in the photos provided by the District, after passing the stadium entrance, the path of travel to the bleachers is gravel. Since the gravel path of travel within the stadium is level, it did not raise a compliance concern.

#### Parking

Since the parking lots were modified in 2008 and 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.

<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. 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
Student	370	5	5	3
Staff	118	8	5	0

Student Lot

As shown in the table above, under the 1991 Standards, the student parking lot, which has 370 total parking spaces, must have at least eight accessible parking spaces, at least one of which must be van accessible. Because the student parking lot contains eight accessible parking spaces, it appears that the parking lot on the student parking lot complies with Section 504 and Title II with respect to the number of accessible parking spaces. The student parking lot also appears to have more than the required number of van accessible spaces (three).

The Complainant reported that only two of the accessible parking spaces in the student 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 does not have a concern that the dispersal of the parking spaces violates Section 504 or Title II.

### Staff Lot

With respect to the staff parking lot, there are 118 parking spaces and eight of those spaces are designated as accessible. The staff parking lot does not have any van accessible spaces. The 1991 Standards would require that a parking lot of that size have five accessible parking spaces, meaning that the staff parking lot has three more accessible parking spaces than required.

Section 4.1.2(5)(b) also requires that at least one out of every eight accessible spaces be van accessible. OCR therefore reviewed whether the location of additional van accessible parking spaces in the student lot could provide for compliance under Section 504 and Title II despite the shortage of accessible van parking spaces in the staff 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.”

While the staff parking lot does not have any van accessible spaces, the student parking lot has three van accessible spaces (two more than required), which are located closer to the football stadium entrance than the staff parking lot.

As noted above, the accessible parking spaces in the student and staff parking lots are marked with a symbol of accessibility on the ground and a sign that the parking spaces are either disabled or van accessible. OCR therefore does not have any concerns about the accessibility of the staff or student parking lots.

As described above, OCR identified concerns as to the accessibility of the football stadium bleachers, and information as to the existence and location of accessible facilities at the stadium, including signage identifying accessible seating locations. In order to make a final determination, OCR would need to conduct an onsite investigation, as well as interviewing any District staff members identified as likely to have relevant information.

Prior to OCR reaching a final determination for each of the allegations, the District expressed an interest in voluntarily resolving the allegations. OCR determined it was appropriate to resolve the allegations and the concerns it identified without further investigation pursuant to Section 302 of the CPM. As such, on August 5, 2020, the District agreed to implement the enclosed Agreement to resolve the allegations and OCR’s concerns.

## Conclusion

Based on the commitments made in the enclosed 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 Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

This 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, 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.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact the San Francisco OCR office at (415) 486-5555.

Sincerely,

/s/

James Wood  
Team Leader

Enclosure

cc: Anessa Espinosa  
Facilities Director