



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200, ROOM 1545
SAN FRANCISCO, CA 94102

August 31, 2023

Dr. Gene Block, Ph.D.
Chancellor
University of California, Los Angeles
405 Hilgard Avenue
Los Angeles, CA 90095

By email only to: chancellor@ucla.edu

Re: University of California, Los Angeles
OCR Case No. 09-23-2083

Dear Chancellor Block:

This letter notifies you of the resolution of the above-referenced complaint to the U.S. Department of Education (Department), Office for Civil Rights (OCR) against the University of California, Los Angeles (University). The complainant alleged that the University discriminated against his wife on the basis of disability when they attended a soccer match at the Wallis Annenberg Stadium (Stadium). Specifically, OCR investigated whether the University excluded individuals with disabilities from participating as spectators at soccer matches at the Stadium because the visitors' bleachers have no ramps and no accessible seating.

OCR enforces 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 also enforces 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. As a public entity and a recipient of federal financial assistance from the Department, the University is subject to Section 504 and Title II.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the complainant and the University. Prior to OCR completing its investigation and making a compliance determination, the University expressed an interest in voluntary resolution pursuant to section 302 of OCR's *Case Processing Manual* (CPM), and OCR determined it was appropriate to do so. The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

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

Legal Standards

The regulations implementing Section 504 and Title II provide that no qualified person with a disability shall, because a university'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 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.

New Construction/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, 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 university 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 program, service, or activity offered within an existing facility, when viewed in its entirety, is accessible to and usable by individuals with disabilities. The university 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 university 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.

Notice & Signage

The Section 504 regulations, at 34 C.F.R. § 104.22(f), also require the university 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.

Facts

The complainant told OCR that he and his wife, an individual with a mobility impairment, attended a soccer match at the Stadium as fans of the visiting team. The complainant said that while the seating on the home side of the Stadium has accessible bleachers, the visitor side of the Stadium does not. More specifically, the complainant reported that there are no stairs, handrails, nor disabled seating on the visitor side and his wife had to try to climb up the bleachers to locate a seat.

The University told OCR that the Stadium sits on an athletic field that was built in or prior to 1967. The University subsequently renovated the west side of the field, with phase one of renovations occurring between August 2018 and December 2021. The phase one renovations included installation of temporary seating on the west side of the Stadium. The phase two renovations commenced in summer 2022 and also focused on the west side of the field. Renovations included installation of new temporary bleachers that seat approximately 2,292 individuals and that are currently in place today.

Parking Lot 4, an underground parking structure, is located beneath the Stadium. The University said that it believes the bleachers on the east side of the field, which seat 810 spectators, were installed shortly after the University completed remodeling and expansion of Parking Lot 4 in or around 1999. The University does not believe those bleachers have been remodeled or renovated since that time.

The University told OCR that the Stadium does not explicitly designate separate seating areas for spectators of the visiting and home teams. Attendees purchase general admission tickets without seat assignments and seating is available on a first-come-first-served basis on both sides of the field.

According to the University, the Stadium has a total of 24 wheelchair spaces, 24 companion seats (durable folding chairs that are provided as necessary to any individual accompanying an attendee in a wheelchair), 23 semi-ambulatory seats, and 21 aisle seats with no arms rests. The University told OCR that there are 18 wheelchair spaces and 18 companion seats (durable folding chairs), 23 semi-ambulatory seats, and 21 aisle seats with no arm rests on the west side of the field, and six wheelchair spaces and six companion seats at the ground level on the east side of the field.

The University described the accessible seating on the east side of the field as “temporary” and said that such seating is “implemented on a game-by-game or event-by-event basis” by marking off a 30x48 inch space to accommodate each wheelchair and companion seat.

The University did not have a photograph of the wheelchair accessible seating deployed on the east side of the field, due to the temporary nature of the seating. However, OCR reviewed an engineering plan and photograph of the southeast side of the field where the accessible seating may be set up (on either natural grass or artificial turf) between the field entrance and bleachers. The photo did not contain any signage to notify individuals with disabilities as to the location of the accessible seating.

According to the University, the Stadium bleachers on the west side have ramps that comply with the building code and accessibility requirements. The University provided engineering plans dated August 2022 that depict bleachers and the bleacher ramps that the University explained are located on the renovated, temporary bleachers (on the west side of the field).

Analysis

As noted above, the Stadium sits on an athletic field that was built in or prior to 1967. The University commenced installation of the bleachers on the east side of the field in or around 1999 and installation of the new temporary bleachers on the west side of the field in the summer of 2022. The Stadium seats 810 spectators on the east side of the field and 2,292 spectators on the west side of the field, for a total of 3,102 spectators.

OCR found that the bleachers on the west side of the field were installed in the summer of 2022; as such the bleachers are considered “new construction” and fall under the 2010 Standards. Section 221.2.1.1 of the 2010 Standards specifies the requisite number of wheelchair accessible spaces based on the seating capacity of an assembly area. The west side of the field seats 2,292 spectators and therefore must have 18 wheelchair spaces to comply with the 2010 Standards. With 18 wheelchair accessible spaces located on the west side of the field, such bleacher seating is compliant with both Section 504 and Title II.

Because the bleachers on the east side of the field were installed in or around 1999, the bleachers are also considered “new construction” under Section 504 and Title II and evaluated for compliance with the UFAS or the 1991 Standards. The University could not identify which standard was used in the construction of the east-side bleachers. Based on OCR’s review of the information provided by the University, OCR has identified concerns that the east-side bleachers are not compliant with either of the applicable standards with regard to the numbers, locations, and signage of the accessible seating in that area.

Sections 4.1.2(18)(a) of the UFAS and 4.1.3(19)(a) of the 1991 Standards specify the requisite number of wheelchair accessible spaces based on the seating capacity of an assembly area. The east side of the field seats 810 spectators and therefore must have 17 wheelchair accessible seats to comply with the UFAS, or 10 wheelchair accessible seats to comply with the 1991 Standards. The University stated that six wheelchair spaces were provided, fewer than the required amount.

Furthermore, Section 4.33.3 of the UFAS and the 1991 Standards require wheelchair areas to be an integral part of any fixed seating plan and be located to provide lines of sight comparable to those for all viewing areas. Based on the information and photograph provided by the University, the designated wheelchair seating area is located on the ground level near the goal on the south side of the field, segregated from the rest of the spectators seated in the bleachers with inferior lines of sight. In addition, the University did not provide evidence of any signage that would notify individuals with disabilities as to the location of the accessible seating. Therefore, OCR is concerned that the University has failed 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 at the Stadium.

Prior to the conclusion of the investigation, the University expressed interest in entering into a voluntary resolution during the course of OCR's investigation, and OCR determined that it was appropriate to do so.

Overall Conclusion

This concludes the investigation of this complaint.

To address the complaint allegations and OCR's concerns identified in the investigation, the University, without admitting to any violation of law, entered into the enclosed resolution agreement. The Resolution Agreement requires the University to provide the required amount of accessible seating for spectators adjacent to the east-side bleachers, including an accessible route to the seating and appropriate signage to identify the accessible seating location(s).

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 evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the resolution agreement until the University is in compliance with the terms of the resolution agreement and the statutes and regulations at issue in the case.

OCR's determination in this matter should not be interpreted to address the University'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 University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege

under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by the law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of privacy if released.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorney Robert Paping at robert.paping@ed.gov or Lead Investigator Ellen Moy at ellen.moy@ed.gov.

Sincerely,

/s/

Ava De Almeida Law
Team Leader

cc: Robert M. Swerdlow
Principal Campus Counsel