



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

October 30, 2018

Dr. Robert P. Grimesey, Jr.
Superintendent
Moore County Schools
5277 Hwy, 15-501 South
P.O. Box 1180
Carthage, North Carolina 28327

RE: OCR Complaint No. 11-17-1355
Resolution Letter

Dear Dr. Grimesey:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on April 12, 2017 against Moore County Schools (the District). The Complainant alleged that the District discriminates against individuals on the basis of disability at North Moore High School (the School). Specifically, the complaint alleged that the following areas of the School are not accessible to or usable by individuals with mobility impairments:

1. Auditorium

- a. The main entrance to the auditorium is inaccessible, and it lacks appropriate signage;
- b. The auditorium lacks accessible bathrooms and/or does not permit access to accessible bathrooms in other areas of the School building; and
- c. The elevator that leads to the orchestra pit and seating in the auditorium is inaccessible because it requires the use of a key.¹

2. Designated Parking Lot for Auditorium

- a. There is not an accessible route from the auditorium to its designated parking lot, and the route:
 - i. Has a slope that is too steep;
 - ii. Includes storm drains with large holes that allow wheelchairs and other mobility aids and equipment to become stuck;
 - iii. Includes washout and other erosion debris in the pathway; and

¹ The Complainant asserted that individuals requiring the use of the elevator must search for School personnel who have a key in order to gain access; and the School does not post or otherwise provide contact information for individuals who possess a key.

- iv. Is unsafe because it is a roadway, and it requires individuals to navigate around illegally parked cars.
- b. The parking spaces are located on a lot that is not appropriately graded (lot is not flat and level); and
- c. The parking spaces do not include access aisles.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.21, and the Title II regulation, at 28 C.F.R. § 35.149, provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a recipient's programs or activities because the recipient's facilities are inaccessible to or unusable by individuals with disabilities.

The regulations implementing Section 504 and Title II each contain two standards for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility. Under the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977; under the Title II regulation, existing facilities are those for which construction began prior to January 27, 1992. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under Section 504 and Title II standards.

For existing facilities, the Section 504 regulation, at 34 C.F.R. § 104.22, and the Title II regulation, at 28 C.F.R. § 35.150, require a recipient to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. The recipient may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities and services accessible to persons with disabilities. In choosing among available methods of meeting the requirements, a recipient must give priority to methods that offer programs, activities and services to persons with disabilities in the most integrated setting appropriate.

The new construction provisions of the Section 504 and Title II regulations also 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, recipients 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. The Title II regulation provides that recipients are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012. While the Section 504 regulations have not been amended to formally adopt the 2010 Standards, a recipient may use the 2010 Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, Appendices B and D.

Resolution

Prior to the completion of OCR's investigation, the District expressed an interest in engaging in a voluntary Resolution Agreement pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), which states: *[a]llegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation.*²

On October 23, 2018, the District signed a Resolution Agreement (copy enclosed) that, when fully implemented, will resolve the allegations and issues in this investigation. The provisions of the Resolution Agreement (the Agreement) are aligned with the allegations and issues raised by the Complainant and the information obtained during OCR's investigation, and are consistent with applicable law and regulation.

The Agreement requires the District to:

- A. Provide accessible parking to serve the School's Auditorium/Gymnasium³ Building (Building 6) and athletic facilities in compliance with the 2010 Standards or provide documentation to demonstrate that these standards have already been met⁴;

² OCR's *Case Processing Manual* may be accessed at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

³ OCR determined that the School's auditorium and gymnasium are on either side of a central interior corridor in a shared building.

⁴ During the course of OCR's investigation, OCR determined that the School had a large parking lot located downhill from the School, which also served the athletic fields located on the opposite side of the lot from the School. However, the School also has several accessible parking spaces in a small lot adjacent to the auditorium; the smaller lot is closer to the auditorium than the larger lot. In response to this complaint, in May 2017, the School added six accessible parking spaces, two of which are van accessible, and access aisles in the small parking lot adjacent to the auditorium. The small parking lot connects to two accessible routes, one that joins the top of the roadway in front of the auditorium and the building's entrance ramp, while the other connects to a sidewalk that accesses the auditorium's southeastern entrances. OCR determined that the existence of sufficient, reallocated accessible parking in the small parking lot removes the need for the School to provide accessible parking for and an accessible route to *the auditorium* from the large, main parking lot.

- B. Provide an accessible route from the School's accessible parking spaces to the accessible entrance of Building 6 in compliance with the 2010 Standards or provide documentation to demonstrate that such an accessible route already exists;
- C. Provide at least one accessible entrance to Building 6 in compliance with the 2010 Standards or demonstrate that such an accessible entrance already exists;
- D. Add appropriate signage directing individuals to accessible parking for Building 6, the Building 6 auditorium lift, and the accessible bathroom in Building 6, as well as ensure appropriate signage indicating the location of accessible entrances in Building 6, in compliance with the 2010 Standards, or, to the extent applicable, provide documentation to demonstrate such signage already exists;
- E. Ensure that the vertical platform lift to accessible seating in the auditorium of Building 6, which is a component of the accessible route in an existing building, meets the 2010 Standards, requiring unassisted entry, exit, and operation of the lift, and also that it offers program access in accordance with Section 504;
- F. Verify that the designated accessible bathroom for Building 6 complies with the Americans with Disability Act of 1990 (ADA) standards applicable at the bathroom's installation in 2003. If the bathroom does not comply with the standards, then the District will modify those elements of the bathroom that are noncompliant in accordance with the 2010 Standards to ensure that the bathroom is accessible. The District will also ensure that the accessible route to the accessible bathroom provides program access, in accordance with Section 504 and the 2010 Standards, is readily available and open, and remains free from obstructions; and, that the bathroom is readily accessible for staff, students, and authorized visitors at all times during school hours when Building 6 is open and during public events at Building 6, whether District/School-sponsored or otherwise, in accordance with Section 504.
- G. Maintain in operable working condition those features of facilities and equipment that are required by law to be readily accessible to and usable by persons with disabilities. This includes ensuring accessible routes are clear of debris and other objects that impede or obstruct travel but does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

Please review the enclosed Agreement for further details.

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

This concludes OCR's investigation of the complaint. This letter 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. 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.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an 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 retaliation complaint with OCR.

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

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Deborah Kelly or Amy S. Williams, the OCR investigator and attorney assigned to this complaint, at 202-453-5909 or deborah.kelly@ed.gov, or at 202-453-5933 or amy.williams2@ed.gov, respectively.

Sincerely,

Letisha Morgan
Team Leader, Team II
District of Columbia Office
Office for Civil Rights

Enclosure

cc: XXXX (via email)