



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

XXXX

Mark R. Garrett
Superintendent
McDowell County Schools
334 South Main Street
Marion, North Carolina 28752

Re: OCR Complaint No. 11-17-1602
Letter of Findings

Dear Superintendent Garrett:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX against McDowell County Schools (the District). The Complainant alleged that, during the XXXX semester, the District discriminated against individuals on the basis of disability (mobility impairments) by failing to:

1. Make the McDowell High School football stadium (the Stadium) accessible to and usable by them;
2. Provide the legally required numbers of accessible parking spaces for them at the parking lots that serve the Stadium; and
3. Provide them with accessible restrooms at the Stadium.

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.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District; and interviewed the Complainant and District staff.

After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 and Title II with respect to Allegations 1 and 2. However, OCR is dismissing Allegation 3 because, after the Complainant clarified the allegation

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

during the course of the investigation, it now fails to state a violation of the laws enforced by OCR. OCR's findings and conclusions are discussed below.

Background

On XXXX, the Complainant, who is in a wheelchair, attempted to attend a football game XXXX at McDowell High School. Upon arrival, he found that the handicap accessible gate was locked. According to the Complainant, several staff members attempted to assist him; however, the Complainant stated that there was only one key available to unlock the gate. He noted that it took approximately XXXX before the gate was opened and he was able to watch the rest of the game.¹ He stated that he missed approximately XXXX of that football game.

In their response to the allegation, the District did not deny the relevant facts of what happened on XXXX. Specifically, the District states that, due to ongoing construction, there was only one key available to unlock the accessible gate, but that key was "inadvertently" taken by District staff without unlocking it first.

Allegation 1: *The District has discriminated against individuals with a disability (mobility impairment) by failing to make the McDowell High School football stadium (the Stadium) accessible to and usable by them.*

Legal Standard

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 District's programs or activities because the District'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 District'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.

With respect to newly constructed facilities, the Section 504 regulation, at 34 C.F.R. § 104.23(a), and the Title II regulation, at 28 C.F.R. § 35.151(a), require that the District design and construct the facility, or part of the facility, in such a manner that it is readily accessible to and usable by individuals with disabilities. In addition, for new alterations that affect or could affect facility

¹ The District stated that the Complainant missed approximately 45 minutes, but nonetheless conceded that he missed a portion of the game.

usability, the Section 504 regulation, at 34 C.F.R. § 104.23(b), and the Title II regulation, at 28 C.F.R. § 35.151(b), require that, to the maximum extent feasible, the District alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

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. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulation, District 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. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that District had a choice of complying with either UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards). The Title II regulation provides that District 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 District 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.

Analysis

As previously noted, the District did not dispute the relevant facts of the Complainant's allegation, including the fact that a key was missing on XXXX, resulting in the Complainant missing a portion of the football game. According to the response provided by the District, when the Assistant Principal finally returned to unlock the gate, he apologized to the Complainant for the error.

The District provided OCR with pictorial evidence that the gate in question was replaced by a new gate in XXXX. According to the District, the new gate is now the main entrance to the stadium. The District stated, and OCR confirmed, that the new gate consists of a "large drive through gate located beside a handicap accessible gate."

OCR reviewed the photos and spoke with the Superintendent regarding the gate. According to the Superintendent, "the walk through gate portion of the handicap accessible entrance is unlocked during the day for student access and remains unlocked until all activities are completed in the facility. It is the main entrance to the stadium now that all construction is complete. The entire facility is locked up at night to protect it." When asked specifically about any procedures that were put in place, the Superintendent clarified that he was not aware of any written policies concerning ensuring that the gate was always accessible to individuals with disabilities. OCR also spoke with the Complainant regarding the new gate. In response, the Complainant stated that he has not seen the new gate. He indicated that his only concern was

that, on the day at issue, no one had the key to the gate. He added that if this is remedied, he did not have any further concerns regarding entry into the stadium.

Based on the above information, OCR finds that, although the District has replaced the gate in question, there is sufficient evidence to conclude that the District's failure to unlock the gate on XXXX denied individuals with disabilities, including the Complainant, access to a program using District facilities, in contravention of Section 504 and Title II. OCR finds that the creation of a new gate does not resolve this issue because the District admitted that it still locks the new gate every night, and it did not indicate that it has a written procedure or back-up plan in place addressing how to deal with a situation in which a District staff member inadvertently forgets to unlock the gate.

Allegation 2: *The District has discriminated against individuals with a disability (mobility impairment) by failing to provide the legally required numbers of accessible parking spaces for them at the parking lots that serve the Stadium*

According to the District's response, there are 416 parking spaces in the Stadium parking lot. Of this number, six spots are designated for individuals with disabilities. OCR determined that the stadium had significant alterations in XXXX. Accordingly, all components of the Stadium, including its parking lot, must be consistent with the 2010 ADA Standards of Accessible Design (the 2010 Standards). According to Section 208.2 of the 2010 Standards, a parking facility with 416 parking spaces is required to have, at a minimum, nine accessible parking spaces. Thus, OCR finds that the District is not in compliance with Title II with respect to the requisite number of parking spaces.

Allegation 3: *The District has discriminated against individuals with a disability (mobility impairment) by failing to provide them with accessible restrooms at the Stadium.*

OCR is dismissing Allegation 3 under Section 108(a) of OCR's *Case Processing Manual* because it does not state a violation of Section 504 and Title II. As clarified in a XXXX email, the Complainant is specifically concerned with the privacy of the restroom located by the concession stand (i.e. no lock on the door). The regulations implementing Section 504 and Title II do not require that a restroom be private in order for a restroom to be accessible. Because the regulations do not have a privacy requirement, OCR is dismissing this allegation as of the date of this letter and will take no further action with respect to it.

Conclusion

On May 7, 2018, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional

visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into by the District on May 7, 2018, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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 regarding this letter, please contact Kendra Riley, the OCR attorney assigned to this complaint, at 202-453-5905 or kendra.riley@ed.gov.

Sincerely,

/s/

David Hensel
Team Leader, Team III
Office for Civil Rights
District of Columbia Office

Enclosure