



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

September 24, 2020

Dr. Ameca Thomas
Superintendent
Laurens County School District 55
District 55 Administrative Office
301 Hillcrest Drive
Laurens, South Carolina 29360

Re: OCR Complaint No. 11-19-1254
Letter of Findings

Dear Dr. Thomas:

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 March 15, 2019 against Laurens County School District 55 (the District). The Complainant alleges that the District discriminated against individuals with disabilities, specifically mobility impairments. Specifically, the complaint alleges that at a regional high school wrestling tournament hosted at Laurens District 55 High School on February 15, 2019 (the Event), the District failed to provide:

1. accessible seating;
2. an accessible route of travel inside the gym to the seating provided; and,
3. an accessible route of travel between the seating provided and the bathroom facilities.

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 District and the District and School's website; OCR also interviewed the Complainant, the Complainant's witness and the District's representative. After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 and Title II, which the District agreed to resolve through the enclosed resolution agreement. OCR's findings and conclusions are discussed below.

Background

The Complainant indicated that on February 15, 2019, the School hosted the South Carolina High School League Upper State Wrestling Tournament. Information about the Event showed that this tournament, which is a regional, multi-team tournament, was held on the main floor of the School's gym. OCR's understanding of the Event is that, to make space to host multiple teams and players, at least some of the first-floor seating of the gym was retracted. According to pictures of the gym available online, the School's gym has a lower section, that appears to be accessed from the first floor. The gym also has a second, upper tier, that is accessed from the 2nd floor.

Facts

The Complainant alleged there were no provisions at the Event for patrons with disabilities. The Complainant specifically alleged that no accessible seating was provided and that the ushers required a patron with a mobility impairment to negotiate at least one flight of stairs to the upstairs balcony seating. The Complainant alleges that when he requested (to the ushers supervising to the event) accessible seating on the first floor of the gym due to the patron's severe disability, it was denied. He was informed that only the wrestling teams and people associated with the teams were permitted to sit on the first floor of the gym and that the patron had to sit on the second floor of the gym. The Complainant alleged that the second-floor seating was not accessible and that this patron had excessive difficulty navigating the route to the second floor and the second-floor seating. Subsequently, the patron with a mobility impairment had to use the bathroom during the Event and, because there were no available restroom facilities on the second floor, the patron was required to again negotiate the stairs to use the bathroom facilities on the first floor. The Complainant indicated that when he again complained to the ushers regarding accessible seating, they again denied his request to allow the patron to sit on the first floor. The Complainant indicated that the ushers then summoned Event security. OCR interviewed the Complainant's witness, who confirmed the Complainant's account of the events. However, the Complainant's witness also indicated that after a significant amount of time arguing with the Event staff and security regarding the seating issue and after the patron used the bathroom facilities, the patron was allowed to sit on the first-floor bottom bleacher with the team. The witness indicated that this was the only patron they observed who was allowed to sit on the first floor and that no companion seat was provided. The witness stated that at the February 2020 Event, a bottom bleacher was pulled out on the first floor with a handicap sticker on it, but no companion seating was observed. The witness also confirmed that the second-floor seating was inaccessible.

The District confirmed in its response that the School hosted the Upper State Wrestling Tournament in February 2019. The District also confirmed that the second-floor seating is not accessible and that all accessible seating and the bathroom facilities are on the first floor of the gym. The District also confirmed that there is not an accessible route of travel to the second-floor seating or between the second-floor seating and the bathrooms. The District asserted that there is an accessible route of travel from accessible seating on the first floor and the bathroom facilities. According to the District's representative, the gym's seating capacity for athletics is 2,330. The District also indicated that for graduation in the gym (or similar events), the District can add an additional 500 seats on the floor.

Regarding the Event, the District indicated that the School's Athletic Director and Assistant Athletic Director were in charge of the event. The District indicated that they used a crowd management company for gate management and security at the Event (the Company). The District indicated that the Company provided customer service-oriented event personnel for sporting and special events and that the Company personnel would have been the first point of contact for any patrons at the Event.

The District indicated that they have no record of any complaints regarding accessible seating or the bathroom facilities in the School gym prior to this complaint. However, the District indicated that the Assistant Athletic Director did receive a complaint at the Event regarding accessible seating, which according to the District was resolved. OCR reviewed documentation provided by the District, which indicated that the Assistant Athletic Director did receive an inquiry at the Event from the Company's coordinator as to whether there was a section designated for accessible seating. The Assistant Athletic Director indicated that he responded that the entire first floor of the gym was available for patrons with disabilities and that he should relocate any wrestling participants if the location was needed for accessible seating. Based on his recollection of the time this occurred and the other information obtained in the investigation, this interaction appears to have occurred after the patron with a disability was first denied accessible seating and required to sit on the second floor of the gym. The District was unable to provide any further information regarding this incident. The District indicated that accessible seating was provided on the first floor at the 2020 Event but was unable to provide further details regarding the number of accessible seats, companion seating, signage, training of personnel working the 2020 Event or photographs of the accessible seating.

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.

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 District 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 District 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 District must give priority to methods that offer programs, activities and services to persons with disabilities in the most integrated setting appropriate.

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 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 Districts 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.

If OCR finds that a recipient has not met the accessibility requirements of the applicable standard at the time of the alleged incident, OCR then applies the current standard, in this case the 2010 Standards, to address the issue and resolve the allegation. .

Analysis

The Complainant alleged that there was no accessible seating provided at the Event and a patron with a disability was required to sit in inaccessible seating on the second floor that did not have an accessible route of travel to the seating or from the seating to the bathroom facilities. While the gym may be accessible when the seating on the first floor of the gym is available, OCR considered in this investigation whether patrons with disabilities were provided with accessible seating at this Event. Evidence provided to OCR indicates that at least part of the seating on the first floor was either retracted or unavailable due to the nature of the Event.

The District confirmed that the second-floor seating is not accessible and that all accessible seating and the bathroom facilities are on the first floor of the gym. The District also confirmed that there is not an accessible route of travel to the second-floor seating or between the second-floor seating and the bathrooms. In addition, according to the documentation provided by the District, the second-floor seating is only accessed by stairs. The District did not provide any information to OCR disputing the account provided by the Complainant (that the patron with a disability was directed to the inaccessible second-floor on the day of the Event), but did assert that there is an accessible route of travel to the first-floor accessible seating and between the first-floor accessible seating and the bathrooms.

The District indicated that the School was constructed in 1972 and it utilized ADAAG and UFAS as the relevant compliance standards for the gym. Because of the similarities between the two compliance standards, OCR uses ADAAG here for analysis purposes. Under ADAAG 4.1.3 (19), in places of assembly with fixed seating, six wheelchair locations are required where the seating capacity in the assembly area is between 301 and 500 and 1 additional wheelchair location is required for each total seating capacity increase of 100. These locations are also required to comply with ADAAG 4.33.2, 4.33.3, 4.33.4. In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office. Where a team or player seating area contains fixed seats and serves an area of sport activity, the seating area shall contain the number of wheelchair spaces required by ADAAG 4.1.3(19)(a), but not less than one wheelchair space. Wheelchair spaces shall comply with ADAAG 4.33.2, 4.33.3, 4.33.4 and 4.33.5. They are required to adjoin an accessible route that also serves as a means of egress in case of emergency. At least one companion fixed seat shall be provided next to each wheelchair seating area. Further, under ADAAG 4.3.8, an accessible route does not include stairs, steps, or escalators.

Thus, under ADAAG, the School was required to provide a minimum of 24 accessible seats at the Event (based on a total seating capacity of 2,330 seats). Based on a preponderance of the evidence considering all of the information provided to OCR, OCR finds sufficient evidence that

the School violated Section 504 and Title II when the School did not provide the minimum number of accessible seats or the required signage at the Event.

In order to resolve this allegation, for future events similar to the Event, using Section 221.2.1.1 of the 2010 Standards, six wheelchair location seats are required in an assembly area with up to 500 seats and 1 seat for each additional 150 seats. Thus, the School would need to provide 19 wheelchair accessible seating in this assembly area during athletic events and 23 accessible seats during other events in this assembly area. Moreover, the accessible seating must be otherwise consistent with the 2010 Standards under Section 221 and 802, including providing adequate sight lines, proper widths, and appropriate companion seats.

OCR also finds sufficient evidence that the District violated Section 504 and Title II when accessible routes between seating and restroom facilities were not provided to patrons with disabilities at the Event. Based on evidence provided, OCR found that personnel responsible for interacting with the public did not have knowledge of the requirements for accessible seating or an accessible route and directed the patron to the inaccessible seating. It is also clear from the record that patrons with disabilities on the second floor did not have an accessible route of travel to the restrooms on the first floor on the day of the Event. As discussed above, the path of travel between the first and second floor is through the use of stairs. The information provided by the District, the Complainant and the witness also indicates that the Company personnel for the Event were not initially aware that the first-floor seating was to be used for accessible seating. Even if the matter was later resolved and the patron was permitted to sit on the first floor eventually, this occurred after the patron was required to climb up and down the stairs.

For future events similar to the Event, to comply with Section 504 and Title II using the 2010 Standards, the School would be required to provide a safe accessible route to accessible seating and from the accessible seating to the bathrooms under Section 206 and Chapter 4 (Sections 401-406 and 410). Under the Section 206.2.2, at least one accessible route shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site.

Conclusion

On September 22, 2020, 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. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant when the District enters into and fulfills the terms of a resolution agreement. 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 visits and may request information as necessary to determine whether the District has fulfilled the terms of the Agreement. If the District fails to implement the Agreement, OCR may initiate proceedings to enforce the specific terms and obligations of the Agreement. Before initiating such proceedings, OCR will 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, especially Mr. XXXXXXXX. If you have any questions, please contact Jan Gray, the OCR attorney assigned to this complaint, at 202-453-6028 or Jan.Gray@ed.gov.

Sincerely,

Kristi R. Harris
Team Leader, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure: Resolution Agreement

cc: XXXXXXXX