



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

May 7, 2020

Via Email to the Administrative Assistant to the Superintendent
XXXXX: XXXXX

Dr. James Epps, Jr.
Superintendent
York County School District 4
2233 Deerfield Drive
Fort Mill, SC 29715

Re: OCR Complaint No. 11-20-1066
Resolution Letter

Dear Dr. Epps:

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 November 7, 2019 against York County School District 4 (the District). The Complainant alleged that the District discriminated against persons with disabilities. Specifically, the complaint alleged that the Bob Jones Stadium at Fort Mill High School (the School) is inaccessible because it lacks wheelchair ramps and handrails for the bleachers on the visitor's side of the stadium.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, 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), 42 U.S.C. §§ 12131 et seq., 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.

During the investigation, OCR reviewed information and documentation provided by the Complainant and the District. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint. OCR determined that it is appropriate to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual*, because the investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

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 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.

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 recipient 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 recipient 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, 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. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that recipients 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 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.

Findings of Fact

The Complainant alleged that the Stadium is inaccessible to persons with disabilities, because it lacks wheelchair ramps, as well as handrails for steps leading up to the bleachers on the visitor's side of the Stadium. The Complainant stated that XXXXX, and it is XXXXX to climb stairs without rails; and, he had observed that a few people with wheelchairs had attended games in the Stadium, but they were unable to access the bleachers.

The District provided OCR with information indicating that the Stadium was constructed in or around and was opened in August 1985. The District completed bleacher repairs and refurbishing to the Stadium in September 1997. Thereafter, in July 2000, the District added bathrooms and locker rooms to the Stadium. Finally, in June 2014, the District added additional locker rooms, bathrooms, and concession facilities to the Stadium, which also included the creation of a plaza entrance and the addition of accessible ADA seating platforms and ramps on the "home" side of the Stadium. However, the District did not provide any information in this regard regarding the visitor's side of the Stadium. Finally, in June 2014 the District added additional accessible ADA parking for the Stadium.

Analysis

When OCR contacted the District about OCR's request for data, the District's Counsel (Counsel) informed OCR that the District already had planned to renovate the Stadium to comply with the applicable physical accessibility guidelines. District Counsel stated that the District was working with architects and a civil engineer in developing a plan to renovate the Stadium, to include the visitor's side of the stadium, such that the District anticipated that the renovation would occur during the summer of 2020; the District also provided OCR with documents from February 2020 evidencing the planning process.

As such, the District requested to resolve the complaint pursuant to a resolution agreement obtained under Section 302 of OCR's *Case Processing Manual*. Because OCR has identified a concern regarding the accessibility of the Stadium under Section 504 and Title II, as the Complainant alleged, OCR has determined that entering into a resolution agreement is appropriate.

Conclusion

On May 7, 2020, the District signed the enclosed Resolution Agreement (the 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. If you have any questions, please contact Abony Alexander, the OCR attorney assigned to this complaint at abony.alexander@ed.gov.

Sincerely,

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

Enclosure

cc (Via Email): David T. Duff, Counsel for the District, XXXXX