



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

November 12, 2021

By email at Lenkere@pitt.k12.nc.us

Dr. Ethan Lenker
Superintendent
Pitt County Schools
1717 West Fifth Street
Greenville, NC 27834

Re: OCR Complaint No. 11-21-1209
Resolution Letter

Dear Dr. Lenker:

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 received on May 18, 2021 against Pitt County Schools, which we will refer to as “the District”. The Complainant alleges that the District is discriminating against patrons of softball games at Farmville Central High School on the basis of disability. Specifically, the Complainant alleges that the District fails to:

1. Provide accessible bathrooms and an accessible route of travel to the bathrooms for patrons with disabilities attending softball games at the School; and
2. Provide an accessible route of travel and accessible seating at the softball facilities at the School.

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. 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. 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 documents provided by the Complainant and the District; interviewed the Complainant and the District’s Counsel; and viewed a video recording of a media broadcast regarding the Complainant’s allegations.

Before OCR completed its investigation, the District expressed a willingness to resolve the allegations pursuant to Section 302 of OCR’s *Case Processing Manual*, which states that

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

allegations may be resolved prior to OCR making a determination if the school expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them through a resolution agreement. OCR's investigation also identified an additional concern that is appropriate to resolve through a resolution agreement and have provided technical assistance in this letter. The following is a summary of the evidence obtained by OCR during the investigation to date.

Facts

The Complainant alleges that the softball facility's bathroom is not accessible. Specifically, the Complainant explained that the bathroom is located in an adjacent parking lot. He alleged that there is a dirt ramp to the bathroom that washes away during the rain, there is a four to six inch rise to enter the bathroom facility, the doors to enter the bathrooms are too narrow, and there is no railing inside the bathroom stalls. The Complainant stated that the bathroom was constructed in 1989 and was upgraded in 2021. The District indicated that the bathroom facility at issue was constructed in 1973 or 1974, and the roof was replaced in the 2019-2020 school year. The District indicated that the bathroom was used by bus drivers employed by the District and was not intended for use by the softball players or spectators. The District acknowledged, and the documentation supports, that the bathroom is not in good shape and that the bathroom is used by some patrons of the School's softball facility.

The Complainant also alleges that the School's softball facility is located down in a valley from the School's parking lot and there is a drop of at least three feet to access it. He alleged that there are no handrails or ramps to access the bleachers or concession stand at the facility, and that the softball facility's bleachers are also not wheelchair accessible. The Complainant stated that the School's softball facility was built between 1992 and 1994 and was upgraded in 2011. The Complainant also stated that he complained to the District XXXX that the School's softball facility was not accessible. The District confirmed that the School's softball facility is not accessible. The District indicated that it was unaware when the softball field, bleachers and concession stand were constructed, but noted that the field was built "sometime between the date that the school was constructed¹ and 1979." The District added that it made repair to the facility in 2017.

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

¹ OCR notes that the high school opened in 1971.

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 school 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 evidence to date does not clearly indicate when the softball field was initially constructed. The District was unaware of the date of construction, but also states that it was between approximately 1971 and 1979 although it did not appear on a site map until 1989. The Complainant disputed these dates and stated that it was constructed between 1992 and 1994. There is also a dispute about the initial date of construction of the bathroom. The District stated that it was 1973 or 1974, while the Complainant stated it was 1989. The bathroom does not appear on the site map. Nonetheless, irrespective of the dates of initial construction, the District concedes that there have been repairs to both the bathroom and the softball field in the 2019-2020 school year and 2017 respectively. As such, the evidence to date indicates that the District may have altered at least parts of these facilities since 2017. For purposes of this analysis, OCR will thus apply the 2010 Standards.

OCR has concerns that the District may not be in compliance with Section 504 and Title II because it has not provided an accessible bathroom and an accessible route of travel to the bathroom facility for patrons with disabilities attending softball games. Although the District indicated that the bathroom facility adjacent to the field are not intended to be used by patrons of the softball fields, the documentation supports that the adjacent bathroom facility is being used by patrons of the softball field and that this bathroom facility is not accessible, as alleged, because the route of travel does not appear to be level to the entrance or be constructed of a surface that is stable. Further, as discussed below, because the route of travel to the softball facility is not accessible, the adjacent bathroom facility also does not appear to be accessible from the School's softball facility.

OCR also has concerns that the District may not be in compliance with Section 504 and Title II because it failed to provide an accessible route of travel and accessible seating, at a minimum, due to the topography, at the softball facilities at the School. The District confirmed that there was not an accessible route of travel and accessible seating at the softball facilities at the School.

Additionally, during the investigation, OCR identified an additional concern² pertaining to adequate accessible parking for patrons with disabilities attending softball games at the School. Section 208 and Chapter 5 of the 2010 Standards requires that accessible spaces be set aside and identified for use by individuals with disabilities and be on a level surface suitable for wheeling

² The Complainant alleged, and the documentation supported, that he had raised concerns to the District about the accessibility issues with the softball facility and the bathrooms. Section 504 and Title II require school districts to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints. Based on the documentation received to date, OCR has concerns that the District did not promptly respond or implement any remedy to address the Complainant's accessibility complaints. The District is advised to review and revise their policy and procedures and provide any necessary staff training to ensure that, Section 504 and Title II accessibility concerns or complaints are promptly investigated and, any noncompliance findings are promptly addressed to include implementing interim measures when necessary.

and walking. OCR's review of the District's documentation shows the parking lot adjacent to the softball facility currently used by the patrons of the softball field does not have designated accessible parking. OCR also has concerns that the surface may not be suitable for wheeling.

Conclusion

Prior to OCR conducting interviews of District staff or an on-site of the District's facilities, the District requested to voluntarily resolve the allegations. The District has indicated that it is constructing a new softball facility for the School prior to the softball season for the 2022-2023 school year. On November 1, 2021, the District's Board approved the purchase of the land to construct the new facility. The District agrees to ensure that the new softball facility, including but not limited to seating, bathrooms, and parking, is constructed in compliance with the 2010 Standards.

On November 10, 2021, the District signed the enclosed Resolution Agreement which, when fully implemented, will address the complaint allegations and OCR's additional concern resolved under 302. The provisions of the agreement are aligned with the allegations and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. Please review the enclosed agreement for further details. OCR will monitor the District's implementation of the agreement until the District has fulfilled the terms of the agreement.

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. OCR would like to make you aware that individuals who file complaints with OCR 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 Jan D. Gray, the OCR attorney assigned to this complaint, at 202-245-8010 or Jan.Gray@ed.gov.

Sincerely,

Zorayda Moreira-Smith
Acting Team Leader, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc: XXXXX, Board Counsel