



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

February 17, 2023

By email only to XXXXXXXX

XXXXXX  
Interim Superintendent of Schools  
XXXXXX  
XXXXXX  
XXXXXX, VA XXXXXX

Re: Case No. 11-22-1517  
XXXXXXXXXXXXXXXXXX

Dear Dr. XXXXX:

This letter is to advise you of the outcome of the investigation that the U.S. Department of Education, Office for Civil Rights (OCR) conducted of the complaint filed against Frederick County Public Schools, which we will refer to as the School Division. The Complainant alleged that the School Division discriminated against individuals on the basis of disability because it failed to provide accessible bleachers in the gymnasium at XXXXX.

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. The School Division receives federal financial assistance from the Department of Education and is a public entity, so OCR has jurisdiction over it pursuant to Section 504 and Title II.

During its investigation to date, OCR reviewed information provided by the Complainant and the Division. Before OCR completed its investigation, the Division expressed interest in resolving the allegation pursuant to Section 302 of OCR's *Case Processing Manual*, which states that 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 because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

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### **Evidence Obtained to Date**

The Complainant alleged that the bleachers in the School's gymnasium were not accessible to individuals with disabilities, including not having handrails. The School Division informed OCR that the gymnasium was constructed between 1978 and 1979. To date, the School Division has not provided, nor has OCR otherwise found, evidence to indicate that programs in the gymnasium were readily accessible to and usable by individuals with disabilities. OCR determined that the gymnasium, including the bleachers, is currently undergoing renovations for the first time since it was constructed. The School Division contracted with an architectural engineering firm on XXXXX and selected a contractor for the renovations on XXXX. On XXXXX, the School Division submitted a purchase order for new bleachers and stated that the current bleachers would be removed from the gymnasium on XXXXX. According to the Division, the construction for the gymnasium will be completed in the XXXXX.

### **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 school district's programs or activities because the school 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 school 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 school 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 school 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 school 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 school 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 school 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, school districts 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 school districts 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 school 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 school 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**

The School Division informed OCR that it constructed the bleachers after XXXXX, but prior to XXXXX. Therefore, the School Division's bleachers should have complied with the ANSI Standards, which were in effect when the School Division initially completed construction. The ANSI standards do not articulate minimum accessibility standards for bleacher seating in indoor or outdoor facilities. As such, OCR cannot conclude that the bleachers fail to comply with the minimum accessibility requirements of ANSI. Instead, OCR must apply the standard for existing facilities, which requires that a school district operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. Based on the evidence reviewed to date, OCR has concerns that the School Division failed to have a plan in place to ensure that the School's programs in the gymnasium were readily accessible to and usable by individuals with disabilities, consistent with Section 504 and Title II.

Prior to OCR investigating further and reaching a compliance determination regarding the issue investigated, the School Division expressed interest in voluntarily resolving this complaint. Because OCR's preliminary investigation has revealed potential concerns that can be addressed in a resolution agreement, OCR has determined that voluntary resolution prior to the conclusion of the investigation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) is appropriate in this case.

## **Conclusion**

On XXXXX, the School Division executed the enclosed Resolution Agreement (Agreement), which when fully implemented, will address the compliance concerns. The provisions of the Agreement are aligned with the allegation in the complaint and the information obtained during OCR's investigation to date and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division'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 School Division 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 against the Division 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, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the Division's cooperation in the resolution of this complaint. If you have any questions, please contact the OCR attorneys assigned to this complaint, Michael Gerton at [Michael.Gerton@ed.gov](mailto:Michael.Gerton@ed.gov) or Amy Fellenbaum at [Amy.Fellenbaum@ed.gov](mailto:Amy.Fellenbaum@ed.gov).

Sincerely,

Jennifer Barmon  
Team Leader, Team III  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: XXXXX