



**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

October 11, 2023

By email only to [redacted content]

Dr. Marceline Catlett
Superintendent
Fredericksburg City Public Schools
210 Ferdinand Street
Fredericksburg, VA 22401

Re: Case No. 11-23-1431
Fredericksburg City Public Schools

Dear Superintendent Catlett:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of this complaint filed against Fredericksburg City Public Schools, which we will refer to as the School Division. The complaint alleged that the School Division discriminates against individuals on the basis of disability because it fails to provide accessible parking and bleachers in [redacted content] Stadium at [redacted content] High 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. 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 School Division. Before OCR completed its investigation, the School 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.

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

www.ed.gov

Evidence Obtained to Date

The Complainant alleged that [redacted content] Stadium does not have accessible parking for individuals with disabilities; does not have an accessible route to the visitor's side bleachers; and does not have accessible bleachers. The School Division provided OCR with information indicating that the Stadium was constructed in [redacted content]; is owned and operated by the City of [redacted content], not the School Division; and that there have been no updates or alterations to the Stadium since its original construction. It noted that even though it does not own the facility, it operates athletic events for the School out of the Stadium. The School Division further informed OCR that the Stadium has a [redacted content] parking lot located within its perimeter where individuals with disabilities can park to access the field, though to date it has not indicated how individuals with mobility impairments can traverse the [redacted content] route to the Stadium. Moreover, the School Division informed OCR that the front row seats on the bleachers are made available for individuals with disabilities. However, the Complainant informed OCR that the [redacted content] seats on the bleachers did not provide a clear line of sight to view the athletic event, and there was no clear path to get to the seats in the front row. To date, the School Division has not provided, nor has OCR otherwise found, evidence to indicate how an individual with a disability can access the route to the Stadium or clearly view the event.

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.

Analysis

Because the School Division provided information indicating that the Stadium has not been altered or updated, it must comply with the standard for existing facilities, which requires that a school division 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 ensure that the School's programs held at the Stadium were readily accessible to and usable by individuals with disabilities, consistent with Section 504 and Title II. Specifically, OCR has concerns that the School Division does not have a plan in place for its events held at the Stadium to provide individuals with disabilities with access to programs and activities at the Stadium, including accessible routes from the parking lot and appropriate sight lines from the bleachers.

Prior to OCR investigating further, 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 [redacted content], the School Division agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the identified violations. OCR will monitor the School Division's implementation of the agreement until the School Division is in compliance with the terms of the agreement and the statutes and regulations at issue.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the School 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 School 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 School 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, or Amy Fellenbaum at Amy.Fellenbaum@ed.gov.

Sincerely,

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

cc: [redacted content]