UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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REGION XV
MICHIGAN
OHIO

March 6, 2020

Christine T. Cossler, Esq.
Walter Haverfield
1301 E. Ninth Street
Suite 3500
Cleveland, Ohio 44114

Re: OCR Docket No. 15-19-1003

Dear Ms. Cossler:

This letter is to notify you of the disposition of the above-referenced complaint filed on October 1, 2018, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Chardon Local School District (the District) alleging that the District engaged in discrimination on the basis of disability. Specifically, the complaint alleged that:

1. Near the football stadium at Chardon High School (the stadium), the designated-accessible routes from the ticketing booths to the home-team bleachers are not located near the corresponding circulation paths used by the general public.

2. The District's practice of temporarily reserving all spaces at the parking lot closest to the stadium (the stadium parking lot) as accessible parking only one hour before home games begin fails to provide sufficient access to accessible parking for home games.

3. The stadium parking lot lacks van-accessible spaces.

4. The stadium parking lot's designated-accessible spaces lack above-ground visible signs identifying the spaces as accessible.

5. The stadium's visitor bleachers lack a ramp and are inaccessible to persons with mobility impairments.

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 by recipients of 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 on the basis of disability by public entities. As a recipient of federal financial assistance from the Department and as a public entity, the District is subject these laws.

Based on the complaint allegations, OCR opened an investigation of the following legal issue: whether District programs and facilities are readily accessible to and usable by persons with disabilities as required by 34 C.F.R. § 104.21–23 and 28 C.F.R. § 35.149-151.

To conduct its investigation, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant. With respect to allegations 4 and 5, after a careful review and analysis of the information obtained during its investigation, OCR has determined that the evidence is sufficient to support a finding that the District violated the regulations implementing Section 504 and Title II as alleged. The bases for OCR's determination are explained below.

For the rest of the allegations, the information that OCR reviewed gave rise to compliance concerns. Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. In this case, the District expressed an interest in resolving the allegations 1, 2, and 3 prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On March 3, 2020, the District submitted the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

Summary of OCR's Investigation

According to the District, the area containing the circulation paths used by the general public from the ticketing booths to the home-team bleachers have not been altered since construction in 1999/2000.

Likewise, the area containing the routes designated as accessible by the District from the ticketing booths to the home-team bleachers have not been altered since construction in 1999/2000.

The District's counsel stated that the stadium parking lot had not been altered beyond minor pavement patching since construction in 1999/2000, although the Complainant said that the stadium parking lot had been repainted in 2018.

According to the Complainant, the stadium was constructed in 2000. The District's counsel confirmed that the stadium's last date of alteration was 1999/2000.

The District's counsel conceded that the stadium parking lot did not have above-ground visible signs identifying designated spaces as accessible. Likewise, the District conceded that the stadium's visitor's bleachers lack a ramp.

The Complainant told OCR that although the entirety of the stadium parking lot was reserved for persons with disabilities starting one hour before home football games began, he routinely found that the stadium parking lot was already full thirty minutes before the games began and that he noticed many cars occupying the stadium parking lot during those times did not appear to have accessible-parking permits.

The Complainant further stated that the District had other parking lots besides the stadium parking lot where people attending home football games could park.

Applicable Regulatory Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that benefits from or receives federal financial assistance. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a).

The Section 504 and Title II regulations contain standards for determining whether a school's programs, activities, and services are readily accessible to and usable by individuals with disabilities, depending on whether the facilities are determined to be existing facilities, new construction, or altered construction. The applicable standard depends on the date of construction or alteration of the facility and the nature of any alternation.

Under the Section 504 regulation, a facility will be considered new construction if construction began (ground was broken) on or after June 3, 1977. Under the Title II regulation, the applicable date for new construction is January 26, 1992. For new construction, the facility or newly constructed part of the facility must itself be readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(a); 28 C.F.R. § 35.151(a).

With regard to alterations, each facility or part of a facility that is altered by, on behalf of, or for the use of an institution after the effective dates of the Section 504 and/or Title II regulation in a manner that affects or could affect the usability of the facility or part of the facility must, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(b); 28 C.F.R. § 35.151(b).

Determining which standards apply to a given new construction or alteration depends upon the date the new construction or alterations took place. New construction and alterations after January 26, 1992, but prior to March 15, 2012, must conform to either UFAS or the 1991 Americans with Disabilities Act Standards for Accessible Design (the 1991 ADA Standards).

The U.S. Department of Justice (DOJ) published revised regulations for Titles II and III of the ADA on September 15, 2010. These regulations adopted revised enforceable accessibility standards called the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards). The 2010 ADA Standards went into effect on March 15, 2012, although entities had the option of using them for construction or alterations commencing September 15, 2010, until their effective date. For new construction and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards. In reviewing program access for an existing facility, the ADA Standards or UFAS may also be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service.

Specific standards

Standard 4.3.2 of the 1991 ADA Standards requires that "[a]t least one accessible route … shall be provided from … accessible parking … to the accessible building entrance they serve. The accessible route shall, to the maximum extent feasible, coincide with the route for the general public." Likewise, Standard 4.3.2 of UFAS requires that "[a]t least one accessible route … shall be provided from … accessible parking … to the accessible building entrance they serve."

Accessible routes have certain slope requirements that govern how steep they can be. Standard 4.3.7 of the 1991 ADA Standards requires that an "accessible route with a running slope greater than 1:20 is a ramp and shall comply with 4.8," which in turn requires that the maximum slope of a ramp is 1:12. The UFAS requires the same at Standard 4.3.7.

Standard 4.1.2(5)(a) of the 1991 ADA Standards states that if parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces shall be provided in each such parking area in conformance with the table below. However, spaces required by the table need not be provided in the particular lot. They may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience is ensured.

Total Parking in Lot	**Required Minimum Number of Accessible Spaces**
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100 over 1000

The UFAS likewise requires that if parking spaces are provided for employees or visitors, or both, then accessible spaces shall be provided in each such parking area in conformance with with a table identical to the table above from the 1991 Standards. However, an exception states that the total number of accessible parking spaces may be distributed among parking lots, if greater accessibility is achieved.

Standard 4.6.2 of the 1991 ADA Standards says that accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance. The UFAS likewise requires that accessible parking spaces that serve a particular building shall be the spaces located closest to the nearest accessible entrance on an accessible route.

Title II applies to both temporary and permanent services, programs, or activities. The relevant ADA standards can provide guidance to help event planners place temporary accessible parking spaces in appropriate locations.

Standard 4.1.2(5)(b) of the 1991 ADA Standards says that parking lots must have at least one space designated as "van accessible." The designation of van accessible spaces is optional under UFAS.

Standard 4.6.4 of the 1991 ADA Standards states that accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility and that such signs shall be located so they cannot be obscured by a vehicle parked in the space. The UFAS requires the same at Standard 4.6.4.

Analysis and Conclusion

Given that the stadium and stadium parking lot were constructed in 1999/2000, OCR determined that they qualify as new construction under Title II and Section 504. Furthermore, OCR applied the UFAS and 1991 ADA Standards, whichever aligned more closely to the 2010 ADA Standards, in its accessibility assessment of the allegations regarding the stadium and stadium parking lot.

In view of the District's admissions with regard to allegations 4 and 5, OCR found that these aspects of the stadium and stadium parking lot were in violation of Title II and Section 504. Specifically, OCR found that the lack of above-ground visible signs identifying designated-accessible spaces as accessible did not comply with Title II and Section 504. And OCR further found that the lack of a ramp to the visitor bleachers rendered the route to the visitor bleachers inaccessible to persons with mobility impairments, in violation of Title II and Section 504.

As stated above, with respect to allegations 1, 2, and 3, OCR did not complete its investigation in view of the District's request to resolve those allegations with an agreement prior to the conclusion of OCR's investigation.

On March 3, 2020, the District submitted the enclosed signed resolution agreement (the Agreement) to OCR. The provisions of the Agreement are aligned with the complaint allegations and the information obtained to date during the investigation and are consistent with applicable regulations. When fully implemented, the Agreement will resolve the allegations in the complaint.

This concludes OCR's investigation of the complaint and 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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR looks forward to receiving the District's first monitoring report by August 1, 2020. For questions about implementation of the Agreement, please contact XXXXX. He will be overseeing the monitoring and can be reached by telephone at XXXXX or by e-mail at XXXXX. If you have questions about this letter, please contact me by telephone at (216) 522-7640, or by e-mail at Sacara.Miller@ed.gov.

Sincerely,

Sacara E. Miller
Supervisory Attorney/Team Leader

Enclosure