



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

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REGION XV
MICHIGAN
OHIO

May 11, 2020

Via E-mail Only to hoadley_todd@dublinschools.net

Todd F. Hoadley, Ph. D.
Superintendent
Dublin City Schools
5175 Emerald Parkway
Dublin, OH 43017-1068

Re: OCR Docket No. 15-20-1079

Dear Dr. Hoadley:

This letter is to notify you of the disposition of the above-referenced complaint filed on November 14, 2019, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Dublin City School District (the District). The complaint alleged that the Dublin City School District (the District) discriminated against a visiting student (the Student) on the basis of disability. Specifically, the complaint alleged that that the visitor stadium at Dublin's high school is inaccessible (has no ramps).

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.

During its investigation to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and you.

Pursuant to OCR's *Case Processing Manual* (CPM), OCR may promptly attempt to resolve complaints through an expedited case processing approach called the rapid resolution process (RRP). OCR determined that this complaint was appropriate for RRP because the District verified that it was interested in immediately resolving the complaint. Accordingly, OCR contacted the Complainant and the District to obtain necessary information to make a compliance determination.

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 allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On May 11, 2020, the District signed 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

On January 15, 2020, OCR staff interviewed the Complainant. XXXX SENTENCE REMOVED XXXXX. The away game was at the Dublin City School District. When they arrived, the Complainant noticed that the away-team bleachers were inaccessible (didn't have any ramp access). XXXX SENTENCE REMOVED XXXXX. XXXX SENTENCE REMOVED XXXXX. The Complainant clarified that the home-side bleachers were fully accessible.

On February 19, 2020, OCR staff spoke with the District Superintendent about the allegation and explained that OCR had designated the case for RRP. The Superintendent told OCR that the bleachers were constructed in the early 1970s at another location and then moved to the current location in 1988. The Superintendent also stated that the bleachers were renovated in the last ten years, and that he had gone to look at them, and that they did not have any ramps. The Superintendent requested to enter into a 302 agreement with OCR.

Applicable Regulatory Standards

Based on the complaint's allegations, OCR investigated the legal issue of 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.

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.

Existing facilities

Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. Under Title II, existing facilities are those for which construction began on or before January 26, 1992.

New construction and alterations

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.

- For an entity covered by Section 504 and Title II, new construction and alterations begun after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI).
- New construction and alterations begun between January 18, 1991, and January 26, 1992, must conform to the Uniform Federal Accessibility Standards (UFAS). Compare 45 C.F.R. § 84.23(c) (1977) and 34 C.F.R. § 104.23(c) (1981), with 34 C.F.R. § 104.23(c) (2012).
- 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.

Analysis and Conclusion

Given that the bleachers were moved to the high school in 1988, and renovated no earlier than 2010, OCR determined that the visitor bleachers qualify as new construction under Section 504 and Title II. Because the date of the renovation is unclear, the controlling standards are either UFAS / 1991 ADA Standards, or the 2010 ADA 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.

Likewise, the 2010 ADA Standards have similar requirements regarding an accessible route and for ramps when the slope exceeds a certain level of steepness along that route. See Standards 206.2 (accessible route).

Under both of the above referenced ADA Standards, a lack of ramps, as admitted to by the District, is a compliance concern. Specifically, OCR found that the lack of a ramp to the visitor bleachers rendered the approach to the visitor bleachers inaccessible to persons with mobility impairments.

Prior to the conclusion of OCR’s investigation, the District requested that OCR resolve these concerns pursuant to Section 302 of OCR’s CPM, which provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegations. Apart from the enclosed signed resolution agreement, the District has also represented that, moving forward, it will have the visiting band (along with the home band) sit at ground level in opposite end zones, which will address the issue of providing equal access to visiting bands; pending the full implementation of the resolution agreement.

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. The 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 harmed 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 have the right to 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 XXXXX, or by e-mail at XXXXX.

Sincerely,

/s/

Sacara E. Miller
Supervisory Attorney/Team Leader

Enclosure