



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XV
MICHIGAN
OHIO

March 7, 2022

Via E-mail Only to [redacted]

Susan L. Oppenheimer, Esq.
Senior Attorney
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4291

Re: OCR Docket No. 15-21-1377

Dear Ms. Oppenheimer:

This letter is to notify you of the disposition of the above-referenced complaint filed on September 8, 2021, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Canal Winchester Local Schools (the District) alleging that the District discriminated against individuals with mobility impairments, including a District student (the Student), based on disability. Specifically, the Complainant alleged that the District's high school football stadium, Mike Locke Stadium, is not accessible to individuals with mobility impairments because there are no ramps to access the home and visitor bleachers, the home and visitor bleachers do not provide accessible seating, and there is no companion seating. The Complainant also alleged that the District's high school baseball and softball fields are not accessible to individuals with mobility impairments because there are no accessible routes to the fields from the parking lot, the home and visitor bleachers do not provide accessible seating, and there is no companion seating.

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 to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation of the following legal issue to determine whether the District is discriminating against individuals on the basis of disability: whether qualified persons with disabilities are being denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any district programs or activities because its facilities are inaccessible to or unusable by persons with disabilities, in violation of

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the Section 504 implementing regulation at 34 C.F.R. §§ 104.21-23 and the Title II implementing regulation at 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. Prior to the conclusion of the investigation, the District requested to resolve this complaint under Section 302 of OCR's *Case Processing Manual*.

Summary of Investigation to Date

As part of its investigation, OCR interviewed the Complainant. [sentences redacted]

The Complainant alleged that the School's football stadium, also known as Mike Locke Stadium, and the fields used for baseball and softball located near the School building, do not provide accessible wheelchair seating. The Complainant also alleged that there are no accessible routes from the high school parking lot to the ball fields. The Complainant stated that the spectators use the same parking lot provided for the high school building to attend the games.

- **Football Stadium**

The Complainant stated that the stadium bleachers for both the home and visitor sides are elevated and are only equipped with stairs. The Complainant stated that there are no ramps to access the bleachers' bench seating, making it impossible for the Student or other individuals with mobility impairments to access the bleachers. In addition, the Complainant stated that there is no accessible seating in the bleachers for individuals who have mobility impairments. [sentence redacted]

[paragraph redacted]

According to the District, stadium construction began in June of 1991 and was completed on May 1, 1993. The original construction on the spectator seating (bleachers) also occurred during this time. The District reported that individuals with disabilities that cannot access the stands are provided seating on the track.

Regarding alterations made to the stadium, the District reported that in spring/summer 2010 an athletic booster group paid to install turf at the stadium. In addition, the District reported that the athletic boosters paid to build a brick entryway and arch outside the entrance of the stadium and a brick wall to recognize donors. The District also reported that in summer of 2011 it added chain-link fabric to the front guardrails of the bleachers as a safety precaution. The District reported that there were no other changes, upgrades or modifications performed on the bleachers since they were installed.

Regarding ramps and routes at the stadium, the District reported that there are two "ramps" (curb cuts) entering the stadium -- one for the visitor side and one for the home side. There are no ramps to the seating in the bleachers. The District reported that construction on the ramps/routes was completed with the stadium construction and that there were no changes or renovations

made to these ramps/routes since then. The District also reported that there were no alterations or renovations made to accommodate individuals with disabilities at the stadium.

- Baseball and Softball Fields

The Complainant stated that the School's baseball and softball fields do not have accessible routes to the fields and the fields do not provide any wheelchair accessible seating. Although the Complainant told OCR that the School uses one field for both baseball and softball games, the evidence shows that the School has a separate field for each sport. The Complainant said that the field she was describing provides a small set of bleachers behind the backstop which is insufficient seating for all spectators. The Complainant stated that there is also not an accessible route from the parking lot to the bleachers at the ball field. The Complainant stated that the area is all grass and difficult to walk over because it is rutted and uneven. [sentence redacted.] The Complainant said that due to the lack of seating and the difficulty in walking to the bleachers, some spectators bring their own lawn chairs and sit in the parking lot to attend the games. [sentence redacted.]

The District provided OCR with information regarding the School's baseball and softball fields, including a satellite aerial image of the fields. The satellite aerial image show that there are three fields located to the west of the school building and its parking lot. The District explained that the baseball field is located at the top northwest corner from the building with two bleachers behind the backdrop, a practice field is located right below the baseball field, and the softball field is located right below the practice field. The School's parking lot is located between the stadium and the school building, and the softball field is located right next to this parking lot on the west side.

The District reported that the softball field was included in the stadium construction project, which began in June of 1991 and was completed on May 1, 1993. The District reported that the softball field does not provide any spectator seating and provides no concrete at the field; only grass surrounds the softball field, which indicates that there is no route, accessible or otherwise, to the softball field from the accessible parking, and spectators walk through the grass to get to the field. The District also reported that spectators bring their own chairs. Regarding alterations made to the softball field, the District reported that a scoreboard was added to the field but the installation date is unknown. The District reported that it did not make any alterations related to constructing routes or building ramps to accommodate individuals with disabilities at the softball field.

The District reported that the baseball field and dugouts date back to an unknown date in the 1970s and the concrete pad for the bleachers, the concrete walkways by the first and third baseline dugouts, and the bleachers were installed between 2010-2012. When OCR asked for more specific information, the District stated that the current bleachers had been used at the baseball field for some time, but that these bleachers were portable and could be moved. The District's athletic boosters club offered to make the bleachers permanent by installing them into the concrete. As a result, the District does not have any written records about the pouring of the concrete or installation of the bleachers. When the District made further inquiries to the booster club, it found that there was an estimate dated September 11, 2009, for the pouring of concrete around the backstop and first and third base and the District believes the bleachers were installed

between September 2009 and spring 2010, before the start of the baseball season. The District reported that the bleachers are provided for both home and visitor seating and that the field includes a concrete area added between 2010 and 2012 surrounding the first and third baselines and backstop area of the baseball field, which allows for persons using wheelchairs to sit on a level with their peers. Photos provided by the District indicate that there are three seating areas on concrete: bleachers at the first and third base, and a space behind the backstop and that the seating for individuals using wheelchairs as described by the District is adjacent to the bleachers on the concrete at ground level.

The information submitted by the District indicates that there is no accessible route to the baseball field or the practice field from the accessible parking and to access the fields; an individual would have to walk through the grass. Regarding any other alterations made at the baseball field, the District reported that batting cages located outside the baseball field were added between 2007 and 2009, a bullpen along the third baseline was added between 2012 and 2014, and a scoreboard was added in 2010. The District also reported that an arch outside the baseball field at the entrance was added but the installation date is unknown. The District reported that it did not make any alterations related to constructing routes or building ramps to accommodate individuals with disabilities at the baseball field.

Legal 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). Prohibited discrimination by a recipient or public entity includes denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits, or services offered by that recipient or public entity; affording a qualified person with a disability an opportunity to participate in or benefit from aids, benefits, or services that is not equal to that afforded others; and providing a qualified person with a disability with aids, benefits, or services that are not as effective as those provided to others. 34 C.F.R. § 104.4(b)(1)(i)-(iii); 28 C.F.R. § 35.130(b)(1)(i)-(iii).

The Section 504 and Title II regulations also state that no qualified person with a disability shall, because a covered entity's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any of the entity's programs or activities. 34 C.F.R. § 104.21; 28 C.F.R. § 35.149. The regulations reference standards for determining whether an entity's programs, activities, and services are accessible to individuals with disabilities, depending upon whether the facilities are determined to be existing, new construction, or alterations. The applicable standard depends upon the date of construction or alteration of the facility.

For existing facilities, the regulations require an educational institution 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. This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are

effective in providing overall access to the service, program, or activity. 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a). Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. Under the Title II regulation, existing facilities are those for which construction began on or before January 26, 1992.

To provide program access in existing facilities, an institution may use such means as redesign of equipment, reassignment of classes or other services to accessible buildings, alteration of existing facilities, construction of new facilities, or any other methods that result in making its program or activity accessible to persons with disabilities. A recipient is not required to make structural changes in existing facilities where other methods are effective in providing program access. However, in choosing among available methods for providing program access, the institution is required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b). Where programs or activities cannot or will not be made accessible using alternative methods, structural changes may be required in order for recipients to comply.

The Section 504 regulation also requires a recipient to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities in existing construction that are accessible to and usable by persons with disabilities. 34 C.F.R. § 104.22(f). The Title II regulation also requires, at 28 C.F.R. § 35.163, that a public entity ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

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). 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. 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).

For an entity covered by Section 504, new construction and alterations 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 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 UFAS or the 1991 Americans with Disabilities Act (ADA) Standards for Accessible Design (the 1991 ADA Standards) or equivalent 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.

The Section 504 regulation, at 34 C.F.R. § 104.22(e), also required that, in the event that structural changes to existing facilities were necessary to meet the program accessibility requirement of 34 C.F.R. § 104.22(a), recipients develop, within six months of the effective date of this part of the regulation (June 3, 1977), a transition plan setting forth the steps necessary to complete such changes. Similarly, the Title II regulation states that, where structural changes in facilities were to be undertaken to comply with the program accessibility obligations under 28 C.F.R. § 35.150, the changes were to be made within three years of January 26, 1992, but as expeditiously as possible. 28 C.F.R. § 35.150(c). Public entities employing 50 or more persons were required to develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. Public entities were required to provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan was required to be made available for public inspection. Transition plans are required to, at a minimum:

- (i) identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
- (ii) describe in detail the methods that will be used to make the facilities accessible;
- (iii) specify the schedule for taking the steps necessary to achieve compliance with 28 C.F.R. § 35.150 and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (iv) indicate the official responsible for implementation of the plan.

The Title II regulation, as amended, states that elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 ADA Standards or UFAS are not required to be modified in order to comply with the requirements set forth in the 2010 ADA Standards. However, this safe harbor does not apply to those elements in existing facilities for which there were neither technical nor scoping specifications in the 1991 ADA Standards.

The District reported that the stadium construction began in June 1991 and the current spectator seating was also constructed at this time, and the softball field construction also began at this time. The District reported that the baseball field construction started in the 1970s and the facility's permanent spectator seating was added between 2009-2010.

As stated above, any new construction and alterations that commenced from January 18, 1991, to January 26, 1992, must conform to UFAS.¹ Section 4.1.2 (18)(a) of UFAS provides that if places of assembly, such as stadiums, are provided, such places must provide a specified number of wheelchair locations based on the seating capacity of the assembly area.

Under UFAS, wheelchair locations must comply with Section 4.33, which provides that wheelchair areas shall be an integral part of any fixed seating plan and shall be dispersed throughout the seating area. UFAS provided an exception in case of bleachers allowing accessible viewing positions may be clustered.

The scoping requirements in UFAS for alterations, at Section 4.1.6, state that, for alterations to existing facilities, if existing elements, spaces, essential features, or common areas are altered, then each such altered element, space, feature, or area shall comply with the applicable provisions of 4.1.1 to 4.1.4 of 4.1, Minimum Requirements. Section 4.1.1 requires that at least one accessible route complying with 4.3 be provided within the boundary of the site from public transportation stops, accessible parking spaces, passenger loading zones if provided, and public streets or sidewalks to an accessible building entrance; and at least one accessible route complying with 4.3 connect accessible buildings, facilities, elements, and spaces that are on the same site. Section 4.3 of UFAS sets forth the requirements for accessible routes. Section 4.3.2 requires, in relevant part, at least one accessible route within the boundary of the site shall be provided from public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve; and at least one accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site. Section 4.5 of UFAS requires ground and floor surfaces along accessible routes to be stable, firm, and slip-resistant, and Section 4.8 sets forth requirements for ramps.

Any new construction or alteration from January 27, 1992, but prior to March 15, 2012, must conform to UFAS or the 1991 ADA Standards.

The 1991 ADA Standards, at Section 4.1.3, provided that in places of assembly with fixed seating accessible wheelchair locations were to comply with Sections 4.33.2, 4.33.3, and 4.33.4 and also sets forth minimum required wheelchair locations based on seating capacity. Section 4.33.3 of the 1991 ADA Standards required that wheelchair areas be an “integral part of any fixed seating plan” and “be provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public.” This section required wheelchair areas to adjoin an accessible route that also serve as a means of egress in case of emergency and also required that at least one companion fixed seat be provided next to each wheelchair seating area. When the seating capacity exceeded 300, wheelchair spaces were to be provided in more than one location. Readily removable seats could be installed in wheelchair spaces when the spaces were not required to accommodate wheelchair users. In case of bleachers, accessible view positions could be clustered and equivalent accessible viewing positions located on levels having accessible egress.

Section 4.1.6 of the 1991 ADA Standards applies to alterations to existing facilities, and requires that an alteration that affects or could affect the usability of or access to an area containing a

¹ <https://www.access-board.gov/aba/ufas.html#>.

primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope.

Section 4.3 of the 1991 ADA Standards set forth the requirements for accessible routes. Section 4.3.2 requires in relevant part that at least one accessible route within the boundary of the site be provided from public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve and that the accessible route, to the maximum extent feasible, coincide with the route for the general public; and that at least one accessible route connect accessible buildings, facilities, elements, and spaces that are on the same site. Section 4.5 of the 1991 ADA Standards required ground and floor surfaces along accessible routes to be stable, firm, and slip-resistant. Section 4.8 set forth the requirements for ramps.²

For new construction and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards. Sections 221 and 802 of the 2010 ADA Standards set forth the requirements for assembly areas, such as stadiums, including the number and location of required wheelchair spaces and companion seats, integration of seating, lines of sight requirements, companion seating requirements, designated aisle seating requirements, and the spatial dimensions of the seating, companion seating, and line-of-sight requirements. For example, Section 221.1 provides that assembly areas shall provide wheelchair spaces, companion seats and designated aisle seats complying with Sections 221 and 802, and Section 221.2 requires the wheelchair spaces be provided in assembly areas with fixed seating. Section 221.2.3 requires the wheelchair spaces provide certain lines of sight and dispersion; however, in case of bleacher, the wheelchair spaces shall not be required to be provided in rows other than rows at points of entry to bleacher seating. Furthermore, Sections 206, 402 and 403 of the 2010 ADA Standard set forth the requirements for accessible routes, including walking surfaces.³

Analysis, Resolution and Conclusion

Regarding the District's football stadium, the information obtained to date indicates that the stadium construction began in June 1991 and the current spectator seating at the stadium was also constructed at that time. This is new construction under Section 504 and the standards under UFAS apply to the stadium and its seating. UFAS requires assembly areas, such as the stadium, to provide wheelchair spaces, which must be an integral part of any fixed seating plan. The information gathered during OCR's investigation, however, indicates that the stadium and its spectator seating do not provide any wheelchair spaces. Furthermore, the information indicates that no ramps are provided to the spectator seating (bleachers) on both sides. The District reported that individuals with disabilities who cannot access the stands are provided seating on the track, which is not an integral part of any fixed seating plan, nor dispersed in all seating areas, and does not provide comparable lines of sight for all viewing areas. Safety is an additional concern with this location. Based on this information, OCR has determined that the District has not complied with Section 504 and Title II by not providing wheelchair spaces at the

² <https://www.ada.gov/1991standards/adastd94-archive.pdf>.

³ <https://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm>

stadium and not providing ramps to the seating at the stadium under the standards of UFAS. The stadium also does not comply with the 2010 ADA Standards.

Regarding the School's baseball and softball fields, the softball field is considered new construction, and is required to comply with UFAS or the 1991 ADA Standards based on the date of construction. Depending on when the baseball field was constructed in the 1970s, it might also be new construction under Section 504. In that case, the ANSI Standards would apply. The seating and several other alterations to the baseball field were made in 2009-2010 and are required to comply with UFAS or the 1991 ADA Standards to the maximum extent feasible.

The District acknowledged that the fields do not have accessible routes to the fields. The information obtained to date indicates that individuals with mobility impairments cannot independently reach the fields because of grassy pathways.

Regarding the seating provided at the high school baseball field, the information indicates that the bleachers and concrete pathway surrounding the bleachers were constructed between September 2009 and spring 2010 before the start of the baseball season. As these additions were started in September 2009 or early 2010, the bleachers in the baseball field must conform to UFAS or the 1991 ADA Standards. The evidence suggests that the seating is not in compliance with either of these standards. Specifically, the District reported that the backstop area of the baseball field provides for wheelchair access to the field and allows those in a wheelchair to sit on a level with their peers. However, both the UFAS and the 1991 ADA Standards require that wheelchair areas be an integral part of any fixed seating plan and an appropriate number of wheelchair locations must be provided depending on the size of the bleachers. In addition, the 1991 ADA Standards require that at least one companion fixed seat be provided next to each wheelchair seating area.

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 concerns that can be addressed through a resolution agreement. In this case, the District expressed an interest in resolving the allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On March 7, 2022, 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.

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 April 1, 2022. For questions about implementation of the Agreement, please contact Ms. Chandra Baldwin. She will be overseeing the monitoring and can be reached by telephone at (216) 522-2669 or by e-mail at Chandra.Baldwin@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-4709, or by e-mail at John.Cohen@ed.gov.

Sincerely,

/s/

John Cohen
Supervisory Attorney/Team Leader

Enclosure