



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

April 28, 2023

Via e-mail only to: [redacted]

Sarah Kutscher, Esq.
Of Counsel
Gingo & Bair Law
Summit One, 4700 Rockside Road, Suite 440
Independence, Ohio 44131

Re: OCR Docket No. 15-22-1578

Dear Ms. Kutscher:

This letter is to notify you of the disposition of the above-referenced complaint filed on September 21, 2022, with the U.S. Department of Education, Office for Civil Rights (OCR), against Campbell City Schools (the District) alleging that the District discriminated against individuals based on disability. Specifically, the complaint alleged that the football stadium at the District's Memorial High School (the Stadium) is not accessible to individuals with mobility impairments because it does not provide accessible route(s) to the football field and accessible 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 of Education and as a public entity, the District is subject to these laws.

Based on the complaint allegation, OCR opened an investigation of the following legal issue: whether qualified individuals with disabilities were excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any of the District's services, programs or activities because the District's facilities are inaccessible to or unusable by individuals with disabilities, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.21 and the Title II implementing regulation at 28 C.F.R. § 35.149.

During its investigation to date, OCR reviewed documents provided by the Complainant and the District. OCR also reviewed information that is publicly available online. Prior to the conclusion of the OCR's investigation, the District expressed its interest in resolving this complaint under Section 302 of the OCR's *Case Processing Manual*.

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

Summary of OCR's Investigation

According to the complaint, individuals visited the Stadium to attend a football game in September 2022. During the event, the visitor section of the stadium was closed, and as a result, individuals with mobility impairments had no access to the field due to lack of ramp and the only available route included multiple flights of stairs. The complaint also stated that there was limited seating available to individuals with mobility impairments at the Stadium. The complaint alleged that the Stadium is not accessible to individuals with mobility impairments because it does not provide accessible route(s) to the football field and accessible seating.

During the investigation, OCR reviewed information publicly available regarding the Stadium. According to the information on ohiostadiums.com, the Stadium was opened in 1936 and was fully renovated in 2005. According to this website, the seating capacity at the Stadium is 7,200.¹ OCR also reviewed the Stadium through Google Earth. Ariel imagery recorded that the Stadium provides two sets of bleachers flanking a football field surrounded by a multiple-lined track. One set of bleachers appears to be the home side (east), emblazoned with the District's initials, and a second set of bleachers, possibly a visitor section, to the west.

In response to the complaint allegation, the District provided additional information regarding the Stadium. According to the District, the original construction of the Stadium occurred more than 25 years ago. The District started a complete renovation of the Stadium 2003 that proceeded in the following phases: Phase I: Stadium (June 23, 2003); Phase II: Grading (December 19, 2003); Phase III: Bleachers and Spectator Seating (February 25, 2004) and Phase IV: Track, Field, Concession and Ticket Booth (May 11, 2004). The District reported that since the 2004 renovation, it repaired the spectator seating on the visitor side in the spring/summer of 2015 due to damage sustained during a May 2015 storm. Documents the District provided indicate that this repair work involved removal and replacement of damaged portions of the visitor seating, such as guardrails, handrails, aluminum decking, and bench seat boards, etc.; the District also provided several photographs showing the damage that had occurred to the spectator seating. When asked about any and all additions and alterations/renovations that have been made to each available ramp and route since it was constructed, the District reported that the ramp and route-site was initiated during Phase I of the complete renovation, but that no additional work had been done since.

The District reported that no alterations or renovations were needed (or made) to accommodate individuals with disabilities since the original construction beyond the renovation of the Stadium initiated in 2003. The District did not identify to OCR any accessibility standards that it had used in making renovations at the Stadium in 2003-2004. The District reported that the visitor's side of the Stadium has a total of 2,505 seats, including 24 seats accessible to individuals with mobility impairments, and the home side has a total of 3,449 seats, including 43 seats accessible to individuals with mobility impairments.

The District did not provide any information as to whether the Stadium provides appropriate signage or how accessible seating is designated with appropriate markings.

¹ <http://ohiostadiums.com/stadium.php?id=1759>. (OCR accessed 1/24/2023)

When requested to explain all available ramp(s) and route(s) provided from the parking lot to the spectator seating on the home and visitor sides of the Stadium and to the football field, the District provided an ariel image of the Stadium with applied markings to indicate ticketing gates, field access, accessible seating in both home and away bleachers, and ramp access to visitor seating. The District also provided a drawing showing visitor seating layout. This drawing shows the location of the ramp and landing spaces on the left side of the bleachers and provides the dimensions for the ramp elements; the ramp slope is 1:12, the ramp width is 55 inches and the landing space is measured at 61.5 inches in length, providing space for change in direction (180 degree). The drawing also indicates the locations for wheelchair spaces, showing a total of eighteen wheelchair spaces (measured “net 33 inches”); nine sets of two adjacent wheelchair spaces are spread throughout on the first row. The drawing suggests that companion spaces are provided next to wheelchair spaces. The District did not provide any similar information for home bleacher seating.

OCR’s additional review of this image indicates that three ticket gates are provided at the Stadium: one ticket gate in the west near the visitor side bleachers (visitor gate); and two ticket gates in the east near the home side bleachers. The visitor gate provides field access on the ground level; the image indicates that the football field cannot be accessed from the home bleachers on the ground level. The District marked the “access route” from the home bleacher seating to the field with red arrows in this image. OCR notes that the red arrows marked by the District appear to indicate that one would need to traverse from the east Stadium parking via the sidewalk to the south of the field, outside the Stadium, to access the field level and visitor gate. The image also includes what appears to be a large concrete parking lot just west of the visitor gate, but the District did not indicate to OCR whether this lot would be open for use as a parking lot during events.

OCR noted that if Stadium attendees were required to park in the east lot (near the home side), it would not provide the shortest distance from the parking lot to the visitor entrance. However, if the lot on the visitor side would be in use for parking, the information OCR reviewed to date raises concerns that this lot does not appear to be in compliance due to lack of markings for accessible parking spaces. The District also did not provide any information regarding the specifications for wheelchair spaces located on the home side or regarding the routes leading to the accessible seating locations at the Stadium.

The District also provided a copy of a memorandum dated December 20, 2022, from the superintendent to District facilities and maintenance personnel, advising to either open both sides of the Stadium while the Stadium is in use or, if a single-side use of the Stadium is needed, use the visitor side to ensure individuals with mobility impairments not only have access to seating but also access to the football field.

OCR requested additional information about these elements from the District; however, prior to receiving the additional information, the District requested to voluntarily resolve the complaint.

Legal Standard

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 construction, 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. OCR generally interprets "readily accessible" to mean, in pertinent part, that persons with mobility impairments can use the facility in which the program or activity is conducted without assistance from others. Carrying a person who uses a wheelchair is expressly prohibited as a method of providing access to existing facilities except in manifestly exceptional circumstances not present in this case. See Nondiscrimination in Federally Assisted Programs, Policy Interpretation No. 3, 43 Fed. Reg. 18630 (Aug. 14, 1978); 28 C.F.R. Part 35, Appendix B.

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.

DOJ's *Title II Technical Assistance Manual* provides further guidance on the self-evaluation and transition plan requirements. The manual states that DOJ expected that many public entities would reexamine all their policies and practices even if they had already completed a self-evaluation under Section 504, as programs and functions may have changed significantly since the Section 504 self-evaluation was completed; actions that were taken to comply with Section 504 may not have been implemented fully or may no longer be effective; and Section 504's coverage has been changed by statutory amendment.

DOJ's manual further instructed that a public entity's self-evaluation identifies and corrects those policies and practices that are inconsistent with Title II's requirements, and that, as part of the self-evaluation, a public entity should:

- 1) identify all of the public entity's programs, activities, and services; and
- 2) review all the policies and practices that govern the administration of the public entity's programs, activities, and services.

This includes, among other things, examining each program to determine whether any physical barriers to access exist and identifying steps that need to be taken to enable these programs to be made accessible when viewed in their entirety.

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 more than 25 years ago, while other publicly available information indicated that it was opened in 1936. The District reported that the Stadium was completely renovated in 2003-2004 and the spectator seating on the visitor side

was repaired in 2015. The District confirmed to OCR that no alteration or modification was made to accommodate individuals with disabilities beyond the renovation of the Stadium initiated in 2003.

Any new construction or alteration from January 27, 1992, but prior to March 15, 2012, was required to conform to UFAS or the 1991 ADA Standards. A 1996 DOJ technical assistance guidance titled, “Accessible Stadiums,”² issued when the 1991 ADA Standards were in effect, indicates that the ADA required new stadiums to be accessible to people with disabilities so that they can enjoy equal access to entertainment, recreation, and leisure with their family and friends. This guidance further instructs the following as to key features of accessible stadiums:

- Wheelchair accessible seating is required. At least one percent of the seating must be wheelchair seating locations. Each wheelchair seating location is an open, level space that accommodates one person using a wheelchair and has a smooth, stable, and slip-resistant surface.
- Accessible seating must be an integral part of the seating plan so that people using wheelchairs are not isolated from other spectators or their friends or family.
- A companion seat must be provided next to each wheelchair seating location. The companion seat is a conventional seat that accommodates a friend or companion.
- Wheelchair seating locations must be provided in all areas including sky boxes and specialty areas.
- Removable or folding seats can be provided in wheelchair seating locations for use by persons who do not use wheelchairs so the facility does not lose revenue when not all wheelchair seating locations are ticketed to persons who use wheelchairs.
- Whenever more than 300 seats are provided, wheelchair seating locations must be provided in more than one location. This is known as dispersed seating. Wheelchair seating locations must be dispersed throughout all seating areas and provide a choice of admission prices and views comparable to those for the general public.
- Wheelchair seating locations must be on an accessible route that provides access from parking and transportation areas and that connects to all public areas, including concessions, restaurants, restrooms, public telephones, and exits.
- Wheelchair seating locations must provide lines of sight comparable to those provided to other spectators. In stadiums where spectators can be expected to stand during the show or event (for example, football, baseball, basketball games, or rock concerts), all or substantially all of the wheelchair seating locations must provide a line of sight over standing spectators. A comparable line of sight, as illustrated in the figure below, allows a person using a wheelchair to see the playing surface between the heads and over the

² <https://www.ada.gov/stadium.pdf>.

shoulders of the persons standing in the row immediately in front and over the heads of the persons standing two rows in front.

- In addition to wheelchair seating locations, at least one percent of all fixed seats in all seating areas must be aisle seats with no armrest, or with a removable or folding armrest, on the aisle side. These seats accommodate people who have a mobility disability but who wish to use a seat that is not a wheelchair seating location.
- An accessible route must connect the wheelchair seating locations with the stage(s), performing areas, arena or stadium floor, dressing or locker rooms, and other spaces used by performers.

The 1991 ADA Standards, at Section 4.1.3 (19), 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. Section 4.1.3 (19) also required that signage notifying patrons of the availability of such seats shall be posted at the ticket office.

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 serves 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 applied to alterations to existing facilities, and required that an alteration that affected or could affect the usability of or access to an area containing a primary function 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 was readily accessible to and usable by individuals with disabilities, unless such alterations were 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 required 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; Section 4.8.2 required the maximum slope of a ramp in new construction shall be 1:12, Section 4.8.3 required the minimum clear width of a ramp shall be 36 inches, and Section 4.8.4 required that if ramps change direction at landings, the minimum landing size shall be 60 inches by 60 inches. Section 4.6.2 of the 1991 ADA Standards required

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. Section 4.6.2 also required that in parking facilities that do not serve a particular building, accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.³

For new construction and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards⁴. 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 of the 2010 ADA Standards provides that assembly areas shall provide wheelchair spaces, companion seats and designated aisle seats complying with Sections 221 and 802, and Section 221.2 of the 2010 ADA Standards requires the wheelchair spaces be provided in assembly areas with fixed seating.

Section 221.2.3 of the 2010 ADA Standards requires that wheelchair spaces provide certain lines of sight and dispersion; however, in case of bleachers, the wheelchair spaces shall not be required to be provided in rows other than rows at points of entry to bleacher seating. Points of entry to bleacher seating may include, but are not limited to, cross aisles, concourses, vomitories, and entrance ramps and stairs. Vertical, center, or side aisles adjoining bleacher seating that are stepped or tiered are not considered entry points. Advisory 221.2.3.2 Vertical Dispersion Exception 2. Furthermore, Sections 206, 402, and 403 of the 2010 ADA Standards set forth the requirements for accessible routes, including walking surfaces. Section 405.7.4 requires that ramps that change direction between runs at landings shall have a clear landing 60 inches minimum by 60 inches minimum.

Section 802.1 of the 2010 ADA Standards provides specifications for wheelchair spaces in assembly areas. Section 802.1.2 requires a single wheelchair space to be 36 inches wide minimum and, where two adjacent wheelchair spaces are provided, each wheelchair space shall be 33 inches wide minimum. Section 802.1.3 requires that, where a wheelchair space can be entered from the front or rear, the wheelchair space shall be 48 inches deep minimum and, where a wheelchair space can be entered only from the side, the wheelchair space shall be 60 inches deep minimum. Section 802.1.4 requires that wheelchair spaces shall adjoin accessible routes which shall not overlap wheelchair spaces.

Section 221.3 of the 2010 ADA Standards requires that at least one companion seat complying with Section 802.3 shall be provided for each wheelchair space required by 221.2.1. Section 802.3.1 requires that, in row seating, companion seats shall be located to provide shoulder alignment with adjacent wheelchair spaces and the shoulder alignment point of the wheelchair space shall be measured 36 inches (915 mm) from the front of the wheelchair space. Section 802.3.1 further requires that the floor surface of the companion seat shall be at the same

³ <https://www.ada.gov/1991standards/adastd94-archive.pdf>.

⁴ <https://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm>

elevation as the floor surface of the wheelchair space. Section 802.3.2 requires that companion seats shall be equivalent in size, quality, comfort, and amenities to the seating in the immediate area. Companion seats shall be permitted to be movable.

Section 208.3.1 of the 2010 ADA Standards requires that parking spaces complying with Section 502 that serve a particular building or facility shall be located on the shortest accessible route from parking to an entrance complying with Section 206.4. Where parking serves more than one accessible entrance, parking spaces complying with Section 502 shall be dispersed and located on the shortest accessible route to the accessible entrances. In parking facilities that do not serve a particular building or facility, parking spaces complying with Section 502 shall be located on the shortest accessible route to an accessible pedestrian entrance of the parking facility.

Analysis

The information obtained to date indicates that the Stadium was initially opened in 1936 and completely renovated between 2003 and 2004. The District reported that, while the bleachers on the visitor side were repaired in 2015 due to the damages sustained from a storm, the District did not make any alterations or renovations to accommodate individuals with disabilities beyond the complete renovation of the Stadium initiated in 2003. The District did not provide OCR any information as to which accessibility design standard it used; therefore, OCR applied the 1991 ADA Standards to determine compliance of the relevant Stadium alterations from 2003-2004.

The 1991 ADA Standards required assembly areas, such as the Stadium, to provide wheelchair locations as an integral part of any fixed seating plan and these wheelchair areas to adjoin an accessible route that also served as a means of egress in case of emergency. Section 4.33.3 of the 1991 ADA Standards required that at least one companion fixed seat be provided next to each wheelchair seating area. The evidence obtained to date indicates that the visitor side bleachers provide a total of 2,505 seats, including 24 wheelchair spaces. OCR finds that while this does not meet the requirement set forth at Section 4.1.3(19) of the 1991 ADA Standards, which would require 26 wheelchair spaces on the visitor side, it complies with Section 221.2.1 of the 2010 ADA Standards, which requires 19 wheelchair spaces. The 2010 ADA Standards would apply to any modifications to the Stadium the District undertakes now. The evidence supports that companions can sit next to each wheelchair space provided on the visitor side bleachers.

The evidence indicates that the home side bleachers provide total of 3,449 seats including 43 seats accessible to individuals with mobility impairments, complying with the Section 4.1.3(19) of the 1991 ADA Standards, which would have required 35 wheelchair spaces on the home side. However, the District's information did not provide any details regarding these accessible seats. Also, the District did not provide any information about whether the Stadium provides appropriate signage at its ticket office(s) notifying patrons of the availability of accessible seating, which is required by Section 4.1.3 (19) of the 1991 ADA Standards and the Section 504 and Title II regulations.

The evidence obtained to date indicates that a ramp is provided to the visitor side bleachers with a slope of 1:12 and the ramp width is 55 inches, which generally complies with Sections 4.8.2 and 4.8.3 of the 1991 ADA Standards. The landings provided at this ramp also appear to comply with Section 4.8.4 of the 1991 ADA Standards, which required that if ramps changed direction at

landings the minimum landing size shall be 60 inches by 60 inches; the District reported that the landing is measured at 61.5 inches and the width of the landing appears to be over 100 inches (55 inches x 2). However, OCR did not verify that the structure meets the drawing specifications. The evidence also indicates that the home side bleachers do not require a ramp to access the wheelchair spaces as these spaces can be accessed on the ground level, but OCR could not confirm whether this access is provided without any barriers as the District's information did not demonstrate such access.

Regarding the route(s) to the football field, the evidence obtained to date indicates that the football field can be accessed from the visitor side gate, but this gate was not always open; the complaint stated that during at least one football game in September 2022, the visitor section was closed and there was no access for individuals if they could not walk to the football field. During OCR's investigation, the District reported that on December 20, 2022, its superintendent wrote to facilities and maintenance personnel, directing them to either open both sides of the Stadium while the Stadium is in use or, if a single-side use of the Stadium is needed, use the visitor side to ensure individuals with mobility impairments not only have access to seating but also access to the football field. However, this could still raise a compliance concern that there are no designated accessible parking spaces serving the visitor's side of the Stadium located on the shortest accessible route of travel from adjacent parking to an accessible entrance. The District must consider multiple factors in meeting the accessibility standards, including whether parking is accessible, and located on the shortest accessible route of travel from adjacent parking to an accessible entrance to the Stadium.

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, 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 April 25, 2023, 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 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. 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 District 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 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, it 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.

OCR looks forward to receiving the District's first monitoring report by September 25, 2023. For questions about implementation of the Agreement, please contact Suwan Park and Sarah Poppleton who will be overseeing the monitoring. Ms. Park can be reached by telephone at (216) 522-4972 or by e-mail at Suwan.Park@ed.gov, and Ms. Poppleton can be reached by telephone at (216) 522-2674 or by e-mail at Sarah.Poppleton@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