

August 5, 2015

Mr. Mickey Blevins
Director of Schools
McMinn County Schools
3 South Hill Street
Athens, Tennessee 37303

Re: Complaint No. 04-15-1203

Dear Mr. Blevins:

On February 10, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint filed against the McMinn County School District (District), alleging discrimination on the basis of disability. Specifically, the complaint alleges that the District discriminates against persons with disabilities because Central High School (School) football stadium bleachers have no ramps or any mechanism to assist persons with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 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 Section 504 and Title II.

OCR initiated an investigation of the of the issue of whether the District discriminates against persons with disabilities at the School because the football stadium is inaccessible to and unusable by persons with disabilities, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.21-104.23, and Title II and its implementing regulation at 28 C.F.R. §§ 35.149-35.151.

Applicable Legal Standards

The Section 504 implementing regulation states that no qualified person with a disability shall, because a recipient'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 program or activity to which Section 504 applies. 34 C.F.R. § 104.21. The Title II regulation contains a similar provision for public entities at 28 C.F.R. § 35.149. The Section 504 and Title II regulations contain standards for determining whether a school'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. The applicable date under the Title II regulation is January 26, 1992. In choosing among available methods for meeting the program access requirement for existing facilities, 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). 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).

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).

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). New construction and alterations after January 26, 1992, must conform to UFAS or the Americans with Disabilities Act Standards for Accessible Design (ADA Standards) or equivalent 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. With regard to stadiums, these design standards require a choice of admission prices (if applicable) and views comparable to those for the general public. The term “integration” is used to describe the relationship of wheelchair spaces with other seats on the same row as well as with seats in the row in front or behind.

Where a recipient has only one, existing construction facility large enough to hold athletic events or performances, and therefore the recipient cannot relocate such programs for persons with disabilities, the facility must be rendered, when viewed in its entirety, accessible. Further, in addressing whether programs at an existing stadium are, in their entirety, readily accessible to

and usable by persons with disabilities in an integrated manner, OCR will look at access to both home and visitor seating.

In communication with OCR, District representatives stated that they planned to make the stadium facilities “ADA-compliant.” OCR therefore applied the ADA Standards in analyzing the information obtained to date and drafting the resolution agreement and will apply 2010 ADA Standards throughout the monitoring process.

Summary of Investigation

Upon notification of this complaint, the District requested to voluntarily resolve this complaint under Section 302 of OCR’s *Case Processing Manual*. Pursuant to these procedures, a complaint may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the complaint and signs a resolution agreement that addresses the complaint allegations. In such circumstances, the provisions of the resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations.

Prior to submitting data requested by OCR, the District informed OCR that the School stadium was built around 1967. In 1997, the District reconstructed the east side bleachers and added an area for wheelchair spaces. The District provided OCR with pictures of that area, which is located at the beginning of the first row of bleachers. Based on the pictures and a brief discussion with the District, it appears the area for wheelchair spaces has an obstructed line of sight because all patrons entering the bleachers from that end will have to pass in front of the persons in wheelchairs. Additionally, it is possible that patrons may stand in the area along the front rail of the bleachers, and further block the views of persons in wheelchairs.

Resolution Agreement

On July 30, 2015, the District signed the attached Resolution Agreement (Agreement), which once implemented, will fully address the complaint allegation in accordance with the requirements of Section 504 and Title II. The Agreement requires the District to beginning no later than the 2015-2016 football and/or athletic season develop a plan of construction in phases (Phase I, II, and III) for renovating the stadium facilities to ensure accessibility in accordance with the 2010 ADA Standards. The District will take interim measures to provide program access to both home and visitor team spectators with mobility impairments. The interim measures will include placing portable accessible restrooms at each end of the field and ensuring there is no line of sight interference for the wheelchair spaces. The District will also provide training to its stadium and maintenance staff to ensure that accessible routes and facilities are not blocked and are kept free of debris.

OCR will monitor the District’s implementation of the attached Agreement to ensure that it is fully implemented and that the District is in compliance with the statutes and regulations at issue in this complaint.

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 Complainant 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, we 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.

Thank you for your cooperation and the cooperation of District staff during the resolution of this complaint. We look forward to receiving your first monitoring report by August 31, 2015. If you have any questions, please contact Ms. Angela Collins, Senior Attorney, at (404) 974-9346, or me, at (404) 974-9356.

Sincerely,

Wendy Gatlin
Compliance Team Leader

Enclosure