



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

March 3, 2014

Cami Anderson
State District Superintendent
Newark Public Schools
2 Cedar Street #1
Newark, New Jersey 07102

Re: Case No. 02-13-1332
Newark Public Schools

Dear Superintendent Anderson:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against Newark Public Schools (the District). The complainant alleged that the Jewish Renaissance Medical Center (JRMC), located within the District's Quitman Street Community School (the School) is inaccessible to individuals with mobility impairments because the School lacks an accessible entrance and the interior route to the JRMC within the School is inaccessible.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that “[n]o qualified person with a disability shall, because a recipient’s facilities are inaccessible to or unusable by individuals 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 this part applies.” The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149.

In its investigation, OCR inspected the facilities in question to determine whether these were accessible to persons with disabilities. OCR also interviewed the complainant and District staff, and reviewed documentation that the District submitted. OCR made the following determinations.

OCR determined that the School was constructed in 1963, and has not been renovated since that date. The regulation implementing Section 504, at 34 C.F.R. §104.22, categorizes facilities constructed on or before June 3, 1977, as “existing facilities”. Accordingly, the school building is an existing facility under the regulation implementing Section 504. The regulation implementing Section 504 requires a recipient to operate each program or activity conducted in existing facilities so that the program or activity, when viewed in its entirety, is readily accessible to individuals with disabilities. Accordingly, each program or activity operated in the school building, when viewed in its entirety, must be readily accessible to individuals with disabilities. The regulation implementing Section 504 does not require a recipient to make structural changes to existing facilities. A recipient may comply through means such as redesign of equipment, or reassignment of classes or other services to accessible buildings or locations. 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 determined that the JRMC offers unique programs, such as medical and dental care and youth counselling. OCR determined that in order to access the JRMC, an individual typically enters the School through its main entrance. The main entrance of the school is not accessible, since one must climb approximately 10 stairs in order to gain entrance.

During OCR’s onsite inspection, the District Building Supervisor advised OCR that “Entrance 5”, which is a side entrance, is an accessible entrance that can be used by individuals with mobility impairments to enter the School. OCR determined that the door threshold at “Entrance 5” was too high at $\frac{3}{4}$ inches; and the door was locked from the outside, with no method of notifying an attendant to gain entry. OCR further determined that there is no directional signage at the main entrance or

the route leading to the main entrance indicating that “Entrance 5” is an accessible entrance.

Once inside the School at “Entrance 5”, OCR determined there is an accessible route to the JRMC except that the interior door pressure on the door leading to the main hallway route from “Entrance 5” toward the JRMC was too great at 11 pounds, and a garbage pail and chairs blocked the JRMC’s entryway maneuvering clearance.

Although an existing facility, the JRMC offers unique programs to the public. Therefore, the District must have an alternate plan to ensure that each program and activity conducted in the JRMC, when viewed in its entirety, is readily accessible to individuals with disabilities; or make structural changes to the main entrance or “Entrance 5”, and to the route and entrance to JRMC, in order to meet the applicable accessibility standards.

On February 27, 2014, the District entered into the attached resolution agreement to resolve the allegation. OCR will monitor implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This letter 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.

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

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, it 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.

If you have questions about OCR's determination, please contact Richard Anderson, Compliance Team Investigator, at (646) 428-3781 or Richard.anderson@ed.gov; or Eric Bueide, Compliance Team Attorney, at (646) 428-3851 or Eric.Bueide@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Gerald Bland