



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

November 28, 2014

Carmen Fariña
Chancellor
New York City Department of Education
52 Chambers Street
New York, New York 10007

Re: Case No. 02-14-1352
New York City Department of Education

Dear Chancellor Fariña:

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 the New York City Department of Education (NYCDOE). The complainant alleged that the buildings that house NYCDOE's Q355 (Building 1) and Q251 and Q356 (Building 2) lack an interior accessible route between the accessible entrance in Building 2 and the auditorium in Building 1.¹

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 NYCDOE 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

¹ Buildings 1 and 2 are connected by a passageway (discussed more fully below).

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.

Building 1 was constructed in 1963, and the building itself has not been altered since that date. Building 2 was constructed in 1973 and a ramp to its main entrance was constructed in 2002; but Building 2 has not otherwise been altered. 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, Buildings 1 and 2 are existing facilities under the regulation implementing Section 504.² 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.³ Accordingly, each program or activity operated in Buildings 1 and 2, 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.

Neither Building 1 nor 2 are designated as “accessible” schools by the NYCDOE; therefore, the NYCDOE does not enroll students with mobility impairments in the educational programs located in either Building 1 or 2.⁴

Building 1 adjoins and is connected to Building 2 by a passageway on the second floor; the passageway contains two flights of stairs.⁵ The auditorium at issue in this complaint is located on the first floor of Building 1, and may be reached by entering either Building 1 or Building 2. Building 1’s entrance includes a staircase. Therefore, a mobility impaired individual cannot access Building 1’s auditorium by using Building 1’s entrance. Building 2’s entrance is accessible, by way of an entrance ramp; and Building 2 has an elevator, which provides access to the second floor.⁶ However, there is no accessible route from Building 2 to Building 1 that would allow a mobility impaired individual that enters Building 2 to access the auditorium in Building 1.

The schools housed in both Buildings 1 and 2 both use Building 1’s auditorium for graduations, assemblies, and theatre productions. The NYCDOE advised OCR that if an individual with a mobility impairment who plans to attend a school program or event notifies the principal of the school in question prior to the event, the principal will move the event to an accessible location, such as the multi-purpose room on the first floor of Building 2. However, the NYCDOE’s website does not contain information about program accessibility related to Buildings 1 or 2; and the NYCDOE did not substantiate that it otherwise disseminates information about its policy of

² Buildings 1 and 2 are also existing facilities under the ADA. Under the ADA, an existing facility includes facilities that were constructed, or for which construction was commenced, prior to January 26, 1992, the effective date of the regulation implementing the ADA.

³ The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149-35.150.

⁴ See <http://schools.nyc/Offices/OSP/Accessibility.htm>.

⁵ The NYCDOE advised OCR that the buildings were connected when Building 2 was constructed in 1973.

⁶ There is a multipurpose room located on the first floor of Building 2, which is accessible to individuals with mobility impairments.

relocating programs and activities from the auditorium in Building 1 to the multi-purpose room in Building 2. Therefore, OCR identified a compliance concern with respect to the NYCDOE's program accessibility policy related to the auditorium in Building 1, and its notification of parents or community members regarding its program accessibility policy. OCR noted the compliance concerns in Appendix A.

OCR determined that the NYCDOE must develop an alternate plan and written procedures for moving events in Building 1's auditorium to accessible locations; and notify students, parents and members of the public about the procedures, or make structural alterations in accordance with the applicable accessibility standard to address the accessibility concerns noted in Appendix A.

On November 26, 2014, the NYCDOE agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in this letter. OCR will monitor the implementation of the resolution agreement. If the NYCDOE fails to implement the terms of the resolution agreement, OCR will resume its investigation of the complaint.

This letter should not be interpreted to address the NYCDOE'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 have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the NYCDOE 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 any questions about OCR's determination, please contact Richard L. Anderson, Compliance Team Investigator, at (646) 428-3781 or richard.anderson@ed.gov, or James Moser, Compliance Team Attorney, at (646) 428-3792 or james.moser@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Enc.

cc: Robin Greenfield, Esq.

Appendix A⁷
Existing Facilities
School Building Q355

Building/Facility	Q355
Date of Construction	1963
Accessibility Issues:	<p><u>Routes to Auditorium</u> The NYCDOE must correct one of the following accessibility concerns in order to provide an accessible route to the auditorium:</p> <ul style="list-style-type: none"> • The entrance to Building Q355 features a flight of stairs [2010 Standards 206.2.1 - At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.] • The interior route from the accessible entrance of the School Building that houses Q251 and Q356, to the auditorium in School Building Q355 is not accessible because the route features two flights of stairs. [2010 Standards 201.2.4-At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility which are otherwise connected by a circulation path unless exempted by 206.2.3 Exceptions 1 through 7.]

⁷ Any alterations would need to be made consistent with current accessibility standards. Therefore, all citations refer to the 2010 ADA Standards for Accessible Design.