



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION II

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February 15, 2017

Linda E. Johnson  
President  
Brooklyn Public Library  
10 Grand Army Plaza  
Brooklyn, New York 11238

Re: Case No. 02-16-4041  
Brooklyn Public Library

Dear President Johnson:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the Brooklyn Public Library (the BPL). The complainant alleged that the designated accessible route and the designated accessible entrance to the BPL's Brooklyn Heights Interim Library branch (the branch) are inaccessible to individuals with disabilities.

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 and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the 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, including public libraries. The BPL is a recipient of financial assistance from the Department and is a public library. 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 no qualified individual 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.

OCR interviewed the complainant during the course of the investigation. OCR also reviewed information that the BPL submitted, and conducted an on-site inspection of the branch facilities. OCR made the following determinations.

The complainant alleged that the designated accessible route and the designated accessible entrance to the branch are inaccessible to individuals with disabilities. Specifically, the complainant asserted that the designated accessible exterior route to the branch's designated accessible entrance has cracks and potholes, and

is too narrow because the route is obstructed by two rows of cars. The complainant further asserted that the accessible entrance door is too heavy, and there is no buzzer or automatic door opener to assist persons with mobility impairments to enter the branch.

OCR determined that the building housing the branch (the Chancery) was originally constructed in 1846, and the BPL leases the property. The main entrance to the branch is not accessible insofar as there are steps to enter the premises. There is a designated accessible entrance around the corner from the main entrance. The branch displays a large banner at the gate of the branch's main entrance, which informs visitors that an accessible entrance can be found around the corner, with an arrow pointing towards the designated accessible entrance. The BPL's website also informs the public of the location of the accessible entrance.

On or about November 11, 2016, during the course of OCR's investigation, the BPL installed a new door at the branch's accessible entrance, and repaved the exterior route to the accessible entrance. The regulation implementing Section 504, at 34 C.F.R. § 104.23, categorizes facilities constructed or altered by, on behalf of, or for the use of a recipient after June 3, 1977, as "new construction." Accordingly, OCR determined that the branch's accessible entrance and exterior route are new construction under the regulation implementing Section 504. Under the regulation implementing the ADA, at 28 C.F.R. § 35.151, construction or alterations commenced after January 26, 1992, is considered "new construction." The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities. The regulation implementing the ADA contains a similar requirement at 28 C.F.R. § 35.151. New construction or alteration of existing facilities commenced after March 15, 2012, must conform to the 2010 ADA Standards for Accessible Design (2010 ADA Standards).

OCR inspected the designated accessible route and the designated accessible entrance to the branch. OCR determined that the entrance conformed to the 2010 ADA Standards, including with regard to opening force. OCR also determined that the designated accessible route conformed to the 2010 ADA Standards with regard to the surface (i.e., the route was stable, firm, and slip resistant, and did not contain cracks and potholes); and, the BPL no longer permits two rows of cars on the accessible route. OCR identified some compliance issues with the designated accessible route regarding its running and cross slopes. Specifically, the running slope was 5.6%, and the 2010 ADA Standards require that floor and ground surfaces have a running slope no steeper than 1:20 or 5.0%; and, the cross slope was 8.1%, and the 2010 ADA Standards require that floor and ground surfaces have a cross slope no steeper than 1:48 or 2.08%. Accordingly, OCR determined that the BPL was in violation of the regulation implementing Section 504, at 34 C.F.R. § 104.23, and the ADA, at 28 C.F.R. § 35.151.

On February 10, 2017, the BPL agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified in this letter. OCR will monitor the implementation of the resolution agreement.

This letter should not be interpreted to address the BPL'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 BPL 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, 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.

If you have any questions about OCR's determination, please contact Diane Castro, Compliance Team Investigator, at (646) 428-3808 or [diane.castro@ed.gov](mailto:diane.castro@ed.gov); or David Krieger, Compliance Team Attorney, at (646) 428-3893 or [david.krieger@ed.gov](mailto:david.krieger@ed.gov).

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: XXXXX XXXXX, Esq.