

Dr. Phil Auger, Ph.D.  
Superintendent of Schools  
North Kingstown School Department  
100 Fairway Drive  
North Kingstown, Rhode Island 02852

Re: Complaint No. 01-14-1232  
North Kingstown School Department

Dear Dr. Auger:

This letter is to inform you that the U.S. Department of Education Office for Civil Rights (OCR) is closing the above-referenced complaint that was filed against the North Kingstown School Department (District). The complaint alleged that the Davisville Middle School (Davisville) contains elements (e.g., several building doors) that are not accessible to individuals with mobility impairments. As you know, prior to OCR completing its investigation, the District agreed to resolve the complaint allegations by taking the steps set out in the enclosed Agreement.

OCR opened this complaint pursuant to our jurisdiction under Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104 (Section 504), and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35 (Title II), both of which prohibit discrimination on the basis of disability. As a recipient of Federal financial assistance from the U.S. Department of Education, the District is subject to the requirements of Section 504. As a public entity, the District is subject to the requirements of Title II.

Before OCR suspended its investigation, the District had responded to OCR's data request with information about the Davisville, as well as copies of the District's policies and procedures for accommodating persons with disabilities. OCR followed up with the Complainant about the information provided, and OCR spoke by phone with District Counsel, the District's Director of Administration and the Principal at Davisville, to obtain basic accessibility information about the District's two middle schools, before agreeing that a resolution could be possible.

### **Legal Standards**

Section 504 and Title II both provide that no qualified person with a disability shall be denied the benefits of, or be excluded from participating in, a covered entity's programs/activities because the covered entity's facilities are inaccessible to or unusable by persons with disabilities, such as individuals with mobility impairments. The regulations implementing Section 504 and Title II each contain two different standards,

which depend upon the facility's date of construction, for determining whether a covered entity's programs/activities are accessible to, and usable by, persons with disabilities.

Under the Section 504 regulation, at 34 C.F.R. Section 104.22, buildings constructed before June 3, 1977 are generally considered *existing facilities*. The same is true under Title II for buildings constructed before January 26, 1992, as provided at 28 C.F.R. Section 35.150.

In existing facilities, a recipient need not make each aspect of the facility physically accessible to or usable by persons with disabilities, so long as each program or activity, when viewed in its entirety, is readily accessible to persons with disabilities. The Section 504 and Title II regulations provide that such "program accessibility" may be provided through non-structural means, such as relocation of programs to accessible locations, at 34 C.F.R. Section 104.22(b) and 28 C.F.R. Section 35.150(a)(b)(1), respectively.

To determine the accessibility and usability of programs and activities in "existing facilities," OCR considers the Uniform Federal Accessibility Standards (UFAS) when assessing the degree to which certain physical barriers may render the program inaccessible or unusable. In addition to the space in which a program is offered, OCR also considers a number of essential features that make a building or facility usable; these include but are not limited to entrances, bathrooms, accessible routes and alarms. OCR uses UFAS as a guideline when determining whether particular features of the "existing facilities" would effectively render a program/activity inaccessible to or unusable by persons with disabilities, rather than requiring strict compliance. Thus, departures from UFAS standards are permissible if the covered entity's programs/activities are actually accessible to and usable by persons with disabilities, either because another standard that provides similar access was used, or because programs are relocated to accessible locations as needed.

Finally, at 34 C.F.R. 104.22(f) and 28 C.F.R. Section 35.163(a), respectively, the Section 504 and Title II regulations require that covered entities ensure that interested persons can obtain information as to the existence and location of programs/activities that are accessible to and usable by individuals with disabilities. Relocation is an acceptable means of making programs/activities provided in existing facilities accessible; therefore, covered entities should have a policy and procedure in place for such relocation so that persons with disabilities can obtain information on the existence and location of accessible programs/activities, including how to request that such programs/activities be relocated.

### **Preliminary Investigation**

The Davisville is one of two middle schools serving the District. It was built in 1967 and is therefore an existing facility under both Section 504 and Title II, as the minimal updates that the District reported, and that the Complainant confirmed, do not fall within the meaning of new construction as defined at 34 C.F.R. Section 104.23.

In 2014, among other updates, the District installed mechanical door access systems for 15 classroom doors. Both parties confirmed that the width of each of these doorways is 28.5 inches when open to 90 degrees. The Complainant alleged that this width was too narrow to meet Title II standards, so that adding door opening-mechanisms would not make the classrooms accessible. The District asserted that the classrooms are actually accessible, because students who use electric wheelchairs at the Davisville are currently using these classrooms. The District noted that these students are assisted by an aide when entering the classrooms.

OCR provided technical assistance to the District regarding the UFAS standard, at Section 4.13, which requires that doorways be 32 inches wide, as a guideline of whether a doorway is usable by, and thereby accessible to, persons with disabilities. Although a covered entity need not strictly comply with UFAS in existing facilities in order to provide accessibility, as OCR explained to the District, this particular standard derived from the amount of space needed for an adult using a manual wheelchair to clear a doorway. Thus, although some students are currently able to access the classrooms, other individuals with disabilities might not be able to do so – for instance, employees, parents, or other students using non-electric wheelchairs.

Section 504 and Title II both provide that delivery of programs/activities at an alternative accessible site (such as another room or facility) is sufficient to meet the accessibility standards for programs and activities provided in existing facilities. The District noted that it has a second middle school, the Wickford Middle School (Wickford), at which the classroom doors are wider than 32 inches, and to which any inaccessible programs at Davisville could be relocated.

During a call with OCR on January 16, 2015, District staff reported, and the Complainant confirmed, that the width of the doors to classrooms, bathrooms, and other program/activity spaces at the Wickford were at least 32 inches, with the exception of the narrow entrance to the front office. District staff also reported that other important elements of the middle school programs and activities at the Wickford, such as building entrances, bathrooms, water fountains and a route to such elements, are accessible by persons with disabilities. The Complainant agreed with the District's account.

Accordingly, the District agreed to take the steps in the enclosed Agreement, to address the complaint allegation that classroom doors at the Davisville are not wide enough to be accessible to some persons with mobility impairments. OCR will monitor the District's implementation of the Agreement.

We also wish to advise you that the Complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

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, OCR will seek to protect all personal information, to the extent provided by law, that, if released, could constitute an unwarranted invasion of privacy.

We wish to thank you, District Counsel and your staff for your cooperation with OCR in this matter. If you have any questions concerning this letter, please contact Civil Rights Investigator Diana Otto at (617) 289-0073 or by email at [diana.otto@ed.gov](mailto:diana.otto@ed.gov), or Civil Rights Attorney Meighan McCrea at (617) 289-0052 or [meighan.mccrea@ed.gov](mailto:meighan.mccrea@ed.gov). You may also contact Team Leader/Civil Rights Attorney Allen Kropp at (617) 289-0120, or me at (617) 289-0111.

Sincerely

Joel J. Berner  
Regional Director

Enclosure

cc: Attorney Andrew D. Henneous