



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

July 27, 2017

Martha Brotan  
Director  
New Haven Free Public Library  
133 Elm Street  
New Haven, Connecticut 06510

Re: Complaint No. 01-17-4008  
New Haven Free Public Library

Dear Director Brotan:

The Office for Civil Rights (OCR) of the U.S. Department of Education has concluded its investigation in the above-referenced complaint that was filed against the City of New Haven's (City's) Ives Main Branch Public Library (Library). This Complaint was filed under the Americans with Disabilities Act of 1990 (ADA). The Complainant alleged that the Library is not accessible to persons with mobility impairments because it lacks an accessible public restroom for women on its main and lower levels.

OCR received information from the Complainant and from City employees indicating that the Library's women's restroom on the main floor was routinely closed to the public, and that the women's restroom on the lower level, where patrons are directed from the main level, was not accessible to persons who have mobility impairments. Based on this information, the City has entered into a resolution agreement (Agreement) to ensure that there are accessible restrooms available for patrons with mobility impairments, on both the main and lower levels of the Library. The details of our findings and the corrective actions to be taken by the City are set forth in more detail below.

### **Jurisdiction**

This investigation was conducted pursuant to Title II of the ADA and its implementing regulation at 28 C.F.R. Part 35 (Title II), which prohibit discrimination on the basis of disability by a public entity. Because the Library is operated with public funds, and is part of or an instrumentality of the local government of the City, OCR has determined that the Library is a public entity and thus is subject to Title II. OCR is the Federal agency designated by the U.S. Department of Justice to enforce Title II with respect to public libraries.

### **Issue**

Based on the allegation, OCR investigated the following legal issue:

Whether the City is discriminating against persons with mobility impairments, on the basis of disability, by failing to provide access to a physically accessible restroom, in violation of 28 C.F.R. Sections 35.149, 35.150 and 35.151.

### **Legal Standards**

Physical accessibility requirements for public entities, including services, programs, and activities made available by local governments, are addressed by the Title II implementing regulations at 28 C.F.R. Sections 35.149 through 151.

The regulation implementing Title II, at 28 C.F.R. Section 35.149, states that no person with a disability shall, because a local government entity'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 in any service, program, or activity of any public entity.

Title II applies a dual legal standard to determine accessibility, differentiating between "existing facilities" and "new construction." Under Title II, facilities constructed prior to January 26, 1992, the effective date of its implementing regulation, are considered "existing facilities" and must meet a program access standard. Facilities that are constructed, or parts of facilities that are altered, on or after the regulation's effective date, are considered "new construction" and must meet a facility access standard set out in 28 C.F.R. Section 35.151.

In this case, although the Library was constructed prior to January 26, 1992, the City indicated that the restrooms in question on the main level and on the lower level were renovated recently (i.e., subsequent to January 26, 1992), and consequently, the Library must meet the facility access standard. To determine whether a facility meets accessibility standards, OCR uses the Americans with Disabilities Act Accessibility Guidelines (ADAAG) as a guide. Under revisions to the Title II implementing regulations, 28 C.F.R. Part 35, effective March 15, 2011, facilities considered new construction are subject to the 2010 Standards for Accessible Design, (2010 Standards) which consist of the 2004 ADAAG and the requirements of Section 35.151. See U.S. Department of Justice, [Americans with Disabilities Act Title II Regulations: Nondiscrimination on the Basis of Disability in State and Local Government Services](https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.pdf) (Sep. 15, 2010), available at [https://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.pdf](https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.pdf)

### **Factual Findings and Analysis**

The facts in this case are largely undisputed. Although the Library has a women's restroom on the main level that is usable by persons with mobility impairments, there is frequently a sign posted in front of the restroom noting that it is "not in service" and directing patrons to use the ADA accessible restroom on the lower level, as demonstrated by this photo that the Complainant provided:



Prior to OCR going onsite at the Library, the City's Architectural Capital Projects Coordinator informed OCR that he had inspected the women's restroom on the lower level and confirmed that the restroom was, in fact, not accessible, to persons with mobility impairments who use wheelchairs, because it lacked a stall that was wide enough to fit a wheelchair.

The City's Title II Coordinator subsequently did a more thorough assessment of the accessibility features of the restrooms located on both the main and lower levels of the Library. Based on this assessment, the City asked to resolve this complaint by entering into the enclosed Agreement under which it will take steps to modify both the main and lower level women's restrooms to ensure that they are ADA compliant. Under the Agreement, the City will create a plan, for OCR's review, that ensures physical access to the restrooms in compliance with the 2010 Standards. Based on the assurances in the Agreement, OCR is closing its investigation of this complaint. OCR will monitor the City's implementation of this Agreement pursuant to the reporting requirements in the Agreement.

OCR's determinations only address the specific allegation and legal issue identified in this complaint and do not pertain to the City's compliance with other aspects of Title II, or any other laws enforced by OCR. This letter is issued by OCR to address an individual OCR case, and 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 note that the relevant nondiscrimination laws enforced by OCR prohibit the City from retaliating against, intimidating, or harassing anyone who files a complaint with our office or participates in an OCR investigation. Such allegations may form the basis of another OCR complaint.

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.

We would like to thank you and the City's Legal Department for your cooperation in resolving this matter. If you have any questions regarding this letter, you may contact Eric D. Olick, Senior Civil Rights Attorney, by telephone at (617) 289-0021, or by electronic mail at [Eric.Olick@ed.gov](mailto:Eric.Olick@ed.gov).

Sincerely,

Lisa Cloutier  
Compliance Team Leader

cc: Alison Lanoue, Esq., Legal Department  
Michelle Duprey, Esq., ADA Coordinator

Enclosure