



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

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NEW JERSEY  
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VIRGIN ISLANDS

February 10, 2014

James Parla, Ed.D.  
Superintendent of Schools  
Hamilton Township School District  
90 Park Avenue  
Hamilton, New Jersey 08690

Re: Case No. 02-13-1309  
Hamilton Township School District

Dear Superintendent Parla:

This letter is to notify you of the determination made by the U. S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the Hamilton Township School District (the District). The complainant alleged that District facilities were inaccessible to the disabled as follows: the building housing the District's Department of Student Services Office lacks an accessible entrance and route from the building's entrance to the Student Services Office (Allegation 1); the doorways for each preschool class restroom located at Mercerville Elementary School (Mercerville), Sunnybrae Elementary School (Sunnybrae), University Heights Elementary School (University Heights), Wilson Elementary School (Wilson), and Yardville Elementary School (Yardville) are too narrow (Allegation 2); there is no accessible route from the main entrance to the preschool classroom at Mercerville (Allegation 3); and the main entrances to Mercerville, Sunnybrae, and Yardville schools are not accessible to individuals with mobility impairments (Allegation 4). The complainant further alleged that the District discriminated against her son (the Student), on the basis of his disability, by failing to provide him with accessible restroom facilities in order to potty train him in accordance with the preschool curriculum for school year 2012-2013 (Allegation 5).

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 is also 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 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.

In its investigation, OCR reviewed information that the District and the complainant submitted. OCR also conducted an on-site inspection of District facilities.

With respect to Allegation 1, the complainant alleged that the building housing the Student Services Office lacks an accessible entrance and route from the building's entrance to the Student Services Office. Specifically, the complainant alleged that the main entrance to the building has stairs, and that there are also stairs inside the building leading to the Student Services Office where student evaluations are conducted.

OCR determined that the building housing the Student Services Office was constructed in 1965 and the District leases the property. The regulation implementing Section 504, at 34 C.F.R. § 104.22, categorizes facilities built prior to June 3, 1977, as "existing facilities". Accordingly, OCR determined the building that houses the Student Services Office is an existing facility under Section 504.<sup>1</sup> 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.<sup>2</sup> Accordingly, each program or activity operated in the building housing the Student Services Office, 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.

District personnel stated that the building housing the Student Services Office also houses records for students with disabilities and the offices for the Director of Student Services and Programs, Child Study Team members, and administrative staff. District personnel stated that the public does not generally enter this building, unless attending a pre-arranged meeting. The District acknowledged that the building housing the Student Services Office is inaccessible to persons with mobility impairments; however, the District asserted that if a parent or student cannot access the Student Services Office, arrangements can be made to meet with parent(s) and/or student(s) in an alternate accessible location, such as accessible schools within the District, homes, or other accessible locations in the community. Further, the District provided information regarding alternate arrangements it has previously provided to parents and/or students who were unable to access the Student Services Office. The District explained that generally, it notifies a parent and/or student of the procedure to request a meeting in an alternate location in the letter sent to confirm the scheduled meeting at the Student Services Office. Accordingly, OCR determined that the District has an alternate plan for making meetings with parents/guardians accessible.

With respect to Allegation 2, the complainant alleged that the doorways for each preschool class restroom located at the Mercerville, Sunnybrae, University Heights, Wilson, and Yardville schools are too narrow. OCR determined that Sunnybrae does not offer a preschool program. OCR determined that Mercerville, Yardville, University Heights and Wilson were constructed prior to 1977; therefore, each is considered an "existing facility" as defined by the regulations implementing Section 504 and the ADA.

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<sup>1</sup> The building housing the Student Services Office is also an existing facility 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.

<sup>2</sup> The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149-35.150.

The District acknowledged that the Mercerville and Yardville schools are generally not accessible to students with mobility impairments; and, asserted that preschool students with mobility impairments would be assigned to attend University Heights or Wilson schools. School districts may satisfy their obligations to make programs accessible to parents or students who have disabilities by reassigning children to a school facility that is accessible. If a school district chooses to offer reassignment of the child to make programs or activities accessible, it must ensure that the reassignment does not result in additional cost to the parent or guardian. Additionally, the alternate school must have comparable programs.

OCR determined that although Mercerville and Yardville are both inaccessible, the District offers comparable pre-school programs at University Heights and Wilson.<sup>3</sup> OCR determined that Mercerville is located 8.6 miles from University Heights and 4 miles from Wilson. Yardville is located 10 miles from University Heights and 3.9 miles from Wilson. The District stated that it always transports special education students to schools to which they are assigned regardless of the location. The District acknowledged that restrooms located in the preschool classrooms at Wilson and University Heights are not accessible to students with mobility impairments; however, the District asserted that the restroom located in the nurse's office across the hallway from both schools' preschool classroom was the designated accessible restroom for preschool students.<sup>4</sup> OCR inspected the restrooms in the nurse's office at University Heights and Wilson, and identified the compliance concerns outlined in Appendices A and C. On February 10, 2014, the District agreed to implement the enclosed resolution agreement to address OCR's compliance concerns regarding Allegation 2.

With respect to Allegation 3, the complainant alleged that there is no accessible route from the main entrance to the preschool classroom at Mercerville. As stated above, the District acknowledged that Mercerville is not an accessible school, and that preschool students with mobility impairments would be assigned either to University Heights or Wilson, both of which have comparable preschool programs to Mercerville. OCR determined that the preschool classrooms at University Heights and Wilson are otherwise accessible to mobility impaired preschool students, other than the concerns identified above regarding the nurse's restroom at each school.

With respect to Allegation 4, the complainant alleged that the main entrances to Mercerville, Sunnybrae, and Yardville schools are not accessible to students with mobility impairments. As stated above, the District acknowledged that Mercerville and Yardville are not accessible to students with mobility impairments. OCR determined that students with mobility impairments assigned to Mercerville or Yardville would instead be assigned to University Heights, Wilson or Sunnybrae.<sup>5</sup> OCR determined that University Heights, Wilson and Sunnybrae generally offer comparable elementary school programs to Mercerville<sup>6</sup> and Yardville; plus additional offerings.<sup>7</sup> OCR conducted an on-site inspection of University Heights, Wilson, and Sunnybrae and

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<sup>3</sup> OCR determined that with respect to preschool programming, Mercerville, Yardville, University Heights and Wilson offer two, half day sessions for preschool students with disabilities; one session is integrated and the other session is nonintegrated.

<sup>4</sup> The District advised OCR that students and adults with mobility impairments are the intended users for the restroom in the nurse's office at Wilson and University Heights.

<sup>5</sup> OCR determined that Sunnybrae is located 5 miles from Mercerville and 1.2 miles from Yardville.

<sup>6</sup> OCR determined that Mercerville offers a unique program, as it is the only elementary school in the District with a second grade inclusion class for autistic students. OCR determined that the District has a plan for moving the programs and activities at Mercerville to an accessible location should the need arise. Specifically, the District will move the second grade inclusion class to an accessible school; i.e., Wilson, Sunnybrae or University Heights.

<sup>7</sup> OCR determined that the three elementary schools, like all of the elementary schools in the District, offer kindergarten through fifth grade regular education programming. Sunnybrae is the only school in the District to offer a fourth and fifth grade self-contained autistic class and the only designated accessible school in the District to offer kindergarten, first, third, fourth, and fifth grade inclusion classes. Mercerville offers a second grade self-contained autistic class, which would be moved to an accessible school should a mobility impaired student enroll; i.e., Wilson, Sunnybrae or University Heights. University Heights and Wilson are the only designated accessible schools in the District that offer two, half day sessions for preschool students with disabilities; one session is integrated and the other session is nonintegrated.

identified compliance concerns regarding the main entrances (see attached Appendices A, B and C). On February 10, 2014, the District agreed to implement the enclosed resolution agreement to address OCR's compliance concerns regarding Allegation 4.

With respect to Allegation 5, the complainant alleged that the District discriminated against the Student, on the basis of his disability, by failing to provide him with accessible restroom facilities in order to potty train him in accordance with the preschool curriculum for school year 2012-2013. Specifically, the complainant alleged that because the restroom was inaccessible as a result of a narrow doorway, District staff could not potty train the Student as the curriculum dictates.

OCR determined that the Student was assigned to Wilson and for school year 2013-2014. As stated above, OCR determined that the designated accessible restroom at Wilson (the nurse's restroom) was not accessible to the mobility impaired. With regard to the issue of potty training, OCR determined that the Student's Individualized Education Program (IEP) did not contain any provisions regarding potty training for school year 2012-2013. OCR determined that the District's preschool curriculum does not include potty training; rather, at the beginning of each school year, the parents of preschool students are advised that potty training will be supported only upon request from the parents and only if the parents are potty training the student at home. District personnel informed OCR that the complainant never requested potty training while the Student attended Wilson.<sup>8</sup> The complainant stated that she told the preschool teacher that she could ask the student if he wanted to sit on the toilet daily, but if he was not interested that would be sufficient. The complainant further stated that she did not want staff to force toilet training on the student. OCR determined that the Student was not potty trained while he attended Wilson during school year 2012-2013.<sup>9</sup>

Based on the foregoing, OCR determined that the District's preschool curriculum does not include potty training; and, the Student's IEP did not contain any provisions regarding potty training. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District discriminated against the Student, on the basis of his disability, by failing to provide him potty training during school year 2012-2013. The compliance concerns regarding the accessible restroom facilities at Wilson will be addressed in the attached resolution agreement.

OCR will monitor the implementation of the enclosed resolution agreement, which the District signed in order to resolve the complainant's allegation. 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.

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<sup>8</sup> Moreover, the Student's teacher at Wilson recalled that the complainant told her at some point early in the year that the student was not working on toilet training and that the Student's doctor had indicated he was not ready.

<sup>9</sup> According to the District, the Student's diaper was changed in the classroom in the same manner as all the other students who were not potty trained. OCR further determined that NJOSEP issued a complaint investigation report with its findings on XXXXXXXXXX, XX XXXX. NJOSEP concluded that the Student was not denied FAPE because he was XXX XXXXX XXXXXXXXX.

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, we 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 regarding OCR's determination, please contact David Krieger, Compliance Team Attorney, at (646) 428-3893 or [david.krieger@ed.gov](mailto:david.krieger@ed.gov); Tracey R. Beers, Senior Compliance Team Attorney, at (646) 428-3804 or [tracey.beers@ed.gov](mailto:tracey.beers@ed.gov); or Felice Bowen, Compliance Team Leader at (646) 428-3806 or [felice.bowen@ed.gov](mailto:felice.bowen@ed.gov).

Very truly yours,

/s/

Timothy C.J. Blanchard

Encl.

**Appendix A<sup>10</sup>**  
**University Heights Elementary School**

Building Component	Door – Main Front Entrance
Accessibility Issues	<ul style="list-style-type: none"> <li>▪ Buzzer = 50.5” above the ground. [ADA 2010 Standards, Section 308.2.1 – Where a forward reach is unobstructed, the high forward reach shall be 48 inches (1220 mm) maximum and the low forward reach shall be 15 inches (380 mm) minimum above the finish floor or ground. [ADA 2010 Standards Section 308.3.1 – Where a clear floor or ground space allows a parallel approach to an element and the side reach is unobstructed, the high side reach shall be 48 inches (1220 mm) maximum and the low side reach shall be 15 inches (380 mm) minimum above the finish floor or ground.]</li> </ul>

Building Component	Unisex Restroom – Nurse’s Office
Accessibility Issues	<ul style="list-style-type: none"> <li>▪ Pipe is not insulated. [ADA 2010 Standards, Section 606.5 – Drain pipes under sink shall be insulated.]</li> <li>▪ No grab bars on rear wall. [ADA 2010 Standards, Section 604.5 – Grab bars for water closets shall comply with 609. Grab bars shall be provided on the side wall closest to the water closet and on the rear wall.]</li> <li>▪ Grab bar on side wall = 36” long. [ADA 2010 Standards, Section 604.5.1 – The side wall grab bar shall be 42 inches (1065 mm) long minimum.</li> <li>▪ Mirror = 48” above finished floor. [ADA 2010 Standards, Section 603.3 – Mirrors should be mounted with the bottom edge of the reflecting surface no higher than 40” above the finish floor.]</li> <li>▪ Flush control is located on the wall side and not the open side. [ADA 2010 Standards, Section 604.6 – Flush controls shall be hand operated or automatic. Hand operated flush controls shall comply with 309. Flush controls shall be located on the open side of the water closet except in ambulatory accessible compartments complying with 604.8.2.]</li> </ul>

<sup>10</sup> All citations refer to the 2010 ADA Standards for Accessible Design.

**Appendix B<sup>11</sup>**  
**Sunnybrae Elementary School**

Building Component	Door – Main Front Entrance
Accessibility Issues	<ul style="list-style-type: none"> <li>▪ Door Width = 31.5". [ADA 2010 Standards, Section 404.2.3 – Door openings shall provide a clear width of 32 inches (815 mm) minimum.]</li> <li>▪ Threshold = .75". [ADA 2010 Standards, Section 404.2.5 – Thresholds, if provided at doorways, shall be ½ inch (13 mm) high maximum. Raised thresholds and changes in level at doorways shall comply with 302 and 303.]</li> <li>▪ Buzzer = 56" from the ground. [ADA 2010 Standards, Section 308.2.1 – Where a forward reach is unobstructed, the high forward reach shall be 48 inches (1220 mm) maximum and the low forward reach shall be 15 inches (380 mm) minimum above the finish floor or ground.] [ADA 2010 Standards, Section 308.3.1- Where a clear floor or ground space allows a parallel approach to an element and the side reach is unobstructed, the high side reach shall be 48 inches (1220 mm) maximum and the low side reach shall be 15 inches (380 mm) minimum above the finish floor or ground.]</li> </ul>

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<sup>11</sup> All citations refer to the 2010 ADA Standards for Accessible Design.

**Appendix C<sup>12</sup>**  
**Wilson Elementary School**

<b>Building Component</b>	<b>Door – Main Front Entrance</b>
Accessibility Issues	<ul style="list-style-type: none"> <li>▪ Buzzer = 50” from the ground. [ADA 2010 Standards, Section 308.2.1 – Where a forward reach is unobstructed, the high forward reach shall be 48 inches (1220 mm) maximum and the low forward reach shall be 15 inches (380 mm) minimum above the finish floor or ground.] [ADA 2010 Standards, Section 308.3.1- Where a clear floor or ground space allows a parallel approach to an element and the side reach is unobstructed, the high side reach shall be 48 inches (1220 mm) maximum and the low side reach shall be 15 inches (380 mm) minimum above the finish floor or ground.]</li> <li>▪ Threshold = .75”. [ADA 2010 Standards, Section 404.2.5 – Thresholds, if provided at doorways, shall be ½ inch (13 mm) high maximum. Raised thresholds and changes in level at doorways shall comply with 302 and 303.]</li> </ul>

<b>Building Component</b>	<b>Unisex Restroom – Nurse’s Office</b>
Accessibility Issues	<ul style="list-style-type: none"> <li>▪ Pipe is not insulated. [ADA 2010 Standards, Section 606.5 – Drain pipes under sink shall be insulated.]</li> <li>▪ No grab bars on rear wall. [ADA 2010 Standards, Section 604.5 – Grab bars for water closets shall comply with 609. Grab bars shall be provided on the side wall closest to the water closet and on the rear wall.]</li> <li>▪ Grab bar on side wall = 36” long. [ADA 2010 Standards, Section 604.5.1 – The side wall grab bar shall be 42 inches (1065 mm) long minimum.</li> <li>▪ Mirror = 47” from the finished floor. [ADA 2010 Standards, Section 603.3 – Mirrors should be mounted with the bottom edge of the reflecting surface no higher than 40” above the finish floor.]</li> <li>▪ Flush control is located on the wall side and not the open side. [ADA 2010 Standards, Section 604.6 – Flush controls shall be hand operated or automatic. Hand operated flush controls shall comply with 309. Flush controls shall be located on the open side of the water closet except in ambulatory accessible compartments complying with 604.8.2.]</li> <li>▪ Trash receptacle obstructs accessible route. [ADA 2010 Standards, Section 307.5 – Protruding objects shall not reduce the clear width required for accessible routes.]</li> </ul>

<sup>12</sup> All citations refer to the 2010 ADA Standards for Accessible Design.