

March 20, 2018

James B. Milliken
Chancellor
The City University of New York
205 East 42nd Street
New York, New York 10017

Re: Case No. 02-17-2498
The City University of New York – York College

Dear Chancellor Milliken:

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 City University of New York – York College (the College). The complainant alleged that the College discriminates, on the basis of disability, because the men's bathrooms (Allegation 1) and elevators (Allegation 2) in the College's Academic Core Building (Building 1) and the Health and Physical Education Building (Building 2), as well as the entrances to Building 1 (Allegation 3), 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 also is 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. The College is a recipient of financial assistance from the Department and is a public postsecondary educational institution. 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 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 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 interviewed the complainant and reviewed documentation that the College provided. OCR also conducted an on-site inspection of a representative sample of men's bathrooms in Buildings 1; the one public men's bathroom in Building 2; elevators in Buildings 1 and 2; and, the exterior entrances to Building 1. OCR made the following determinations.

OCR determined that construction on Building 1 began in October 1980, and that construction on Building 2 began in June 1987. According to the College, the men's bathrooms and elevators in both buildings, as well as the exterior entrances to Building 1, have not been altered since original construction.

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 Buildings 1 and 2 are new construction under the regulation implementing Section 504.¹ The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities. The regulation implementing Section 504, at 34 C.F.R. § 104.23(c), delineates the American National Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physical Handicapped [ANSI 117.1 – 1961 (1971)] as the minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, but before January 18, 1991.²

With respect to Allegation 1, the complainant alleged that the men's bathrooms in Buildings 1 and 2 were inaccessible to individuals with disabilities. Specifically, the complainant alleged that the doors to the men's bathrooms in Buildings 1 and 2 are very heavy; the doors to the accessible bathroom stalls do not properly close to allow for privacy; and, the paper towel dispensers are too high. OCR identified several compliance issues pursuant to ANSI 117.1 – 1961 (1971) with respect to the men's bathrooms in Buildings 1 and 2:³

- The doors to all bathrooms inspected in Buildings 1 and 2 had a force that measured 9-15 lbs. ANSI 117.1 – 1961 (1971), Sections 5.6 and 5.3.1 require that an appropriate number of toilet rooms must be accessible and doorways shall be operable by a single effort.⁴
- With respect to the designated accessible stalls in all of the men's bathrooms inspected in Building 1, all had a doorway width of 30.5 inches. According to ANSI 117.1 – 1961 (1971), Section 5.6.2, the minimum doorway width is 32 inches.⁵

¹ Under the regulation implementing the ADA, at 34 C.F.R. § 35.151, construction or alterations commenced after January 26, 1992, is considered "new construction".

² The ANSI standards were revised multiple times between 1971 and 1991; however, the applicable standards for this case are the 1971 standards.

³ OCR also noted that some accessible stalls in Building 1 had faulty locking mechanisms, while many of the non-accessible stalls did not have similar issues.

⁴ Although the applicable standards do not define "a single effort," ANSI A117.1 - 1980, Section 4.13.11, required interior doorways to have a maximum force of 5 lbs. The 1980 standards were in existence at the time Buildings 1 and 2 were constructed; accordingly, it is reasonable to use the 5 lb. benchmark to determine what is meant by "a single effort."

⁵ In Building 2, the width of designated accessible stalls was 32 inches and therefore compliant.

- The pipes under almost all bathroom sinks in both Buildings 1 and 2 were exposed and not insulated. According to ANSI 117.1 – 1961 (1971), Section 5.6.3, drain pipes or hot-water pipes should be covered or insulated.

With respect to the height of the paper towel dispensers, OCR determined that the paper towel dispensers and hand dryers measured 41-48 inches in height and were in compliance with the standards.

With respect to Allegation 2, the complainant alleged that the elevators in Buildings 1 and 2 were inaccessible to individuals with disabilities. Specifically, the complainant alleged that the elevators in Buildings 1 and 2 were not properly leveled and closed too quickly. OCR determined that the elevators were fully compliant with ANSI A117.1 - 1980, Section 5.9. OCR did not find any evidence to substantiate that the elevators were not properly leveled or closed too quickly.

With respect to Allegation 3, the complainant alleged that the entrances to Building 1 are inaccessible to individuals with disabilities. Specifically, the complainant alleged that the exterior entrance doors to Building 1 are too heavy, and he often had to wait for someone to open the doors to enter the building. OCR identified the following compliance issue pursuant to ANSI 117.1 – 1961 (1971) with respect to the weight of the interior vestibule doors of the main entrance of Building 1:

- Each entrance to Building 1 had an exterior door, a vestibule, and then interior doors. All of the interior doorways required a force of at least 11 lbs. to open. ANSI 117.1 – 1961 (1971), Sections 5.2.1 and 5.3.1, require that at least one primary entrance to each building shall be usable by individuals in wheelchairs and doorways shall be operable by a single effort.

Before OCR conducted further investigation, the College expressed an interest in voluntarily resolving this case. In light of the College's willingness to address the compliance concerns identified by OCR without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate.⁶ On March 14, 2018, the District signed the enclosed resolution agreement, which addresses the compliance issues identified in this letter.

OCR will monitor the College's implementation of the Agreement. Upon the College's satisfaction of the commitments made under the Agreement, OCR will close the case.

This letter should not be interpreted to address the College'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.

⁶ The College informed OCR that all of the bathrooms, elevators, and entrances at issue in this case are currently slated for planned upgrade or improvement projects with an anticipated project completion date of June 30, 2020, for the bathrooms and elevators, and December 30, 2020, for entrances.

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 College 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 a 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, please contact Jonathon LeBeau, Compliance Team Investigator, at (646) 428-3790 or Jonathon.LeBeau@ed.gov; or R. Colin Power, Compliance Team Attorney, at (646) 428-3832 or R.Colin.Power@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: xxxxxx x xxxxx, Esq.