



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
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November 25, 2019

Sent via email only to jmeloche@chclc.org

Dr. Joseph Meloche
Superintendent of Schools
Cherry Hill Public Schools
45 Ranoldo Terrace
Cherry Hill, New Jersey 08034

Re: Case No. 02-19-1330
Cherry Hills Public Schools

Dear Dr. Meloche:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the Cherry Hills Public Schools (the District). The complainant alleged that the District discriminated on the basis of disability, because the theater at Cherry Hill High School West (the School) did not have the required number of accessible seats; the turning radius at the seats was insufficient; and, the aisles leading to the accessible seats were too steep.

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 District is a recipient of financial assistance from the Department and is a public elementary and secondary 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 “[n]o 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 reviewed documentation that the District and the complainant provided. Additionally, OCR conducted an on-site inspection of the theater, including its designated accessible entrances; interior accessible routes; and, accessible seating. OCR made the following determinations.

The District advised OCR that the theater was constructed between August 2001 and May 21, 2004. Further, the District advised OCR that the theater was designed using standards set forth by the State of New Jersey Uniform Construction Code, and the American National Standards Institute (ANSI).

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.” 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.” Accordingly, the theater is considered “new construction” under both Section 504 and the ADA.

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 34 C.F.R. § 35.151. The regulation implementing Section 504, at 34 C.F.R. § 104.23, requires that all facilities constructed or alterations to existing facilities made after January 18, 1991, be in compliance with the Uniform Federal Accessibility Standards (UFAS), or it must be clearly evident that equivalent access is provided to meet the requirements of Section 504, such as through compliance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). Pursuant to the regulation implementing the ADA, at 28 C.F.R. § 35.151, new construction or alteration of existing facilities commenced after January 26, 1992, must be in conformance with UFAS, ADAAG, or equivalent standards. Accordingly, OCR determined that the theater must comply with UFAS, ADAAG, or equivalent standards.¹

The complainant stated that the theater contained only five designated wheelchair accessible seats, and that the District had installed a soundboard in an area reserved for designated wheelchair accessible seating.² The complainant also stated that the designated wheelchair accessible spaces in the front row of the theater protruded in the walkway between the front row seating and the pit; and, did not provide the required turning radius. The complainant further stated that the slope of the aisle leading to wheelchair accessible seats in the front row was too steep.

During OCR’s on-site inspection, OCR determined that there are two entrances to the theater from the School hallway; the main entrance and a second entrance. OCR determined that the main entrance is the designated accessible entrance from the School hallway. The main entrance consists of two sets of two double-leaf doors, side by side, in a series, separated by a vestibule (for a total of eight doors).³ OCR determined that the District did not identify the main entrance with

¹ Beginning March 15, 2012, all new construction or alterations of existing facilities must conform to the 2010 Americans with Disabilities Act Standards for Accessible Design.

² The complainant provided photographs of the designated area to OCR, which were taken after the soundboard had been installed.

³ The second entrance from the School hallway consists of a double-leaf door that leads to a set of steps to the front of the theater.

the International Symbol of Accessibility, nor did it provide directional signage to the accessible main entrance to the theater at the inaccessible second entrance, as required by ADAAG Section 4.1.2(7)(c) and UFAS Section 4.1.1(7).⁴ Further, OCR determined that the door pull force for the doors at the main entrance exceeds the maximum door pull force of 5 lbs. specified in ADAAG Section 4.13.11 and UFAS Section 4.13.11.

The District advised OCR that it had three areas within the theater with designated wheelchair accessible seating spaces: sections 1, 2 and 3. Section 1 is located in the front row of the theater. Sections 2 and 3 are located in an area that separates the orchestra section from the mezzanine section of the theater.

During OCR's on-site inspection, OCR determined that the designated wheelchair accessible seating areas in section 1 adjoin the routes on the far right and left sides of the theater, facing the stage, Route 1 and Route 2, respectively. Routes 1 and 2 connect to the accessible route that separates the orchestra section from the mezzanine section (Route 3), on which the wheelchair accessible seating areas in sections 2 and 3 are located.

OCR identified accessibility issues regarding the running and cross slopes of Route 2; however, Route 1 complies with the requirements of ADAAG Section 4.3 and UFAS Section 4.3, including the slope, and is an interior accessible route connecting the main entrance and designated wheelchair accessible areas in section 1. According to ADAAG Section 4.1.3(1)(a) and UFAS Section 4.1.2(1), at least one accessible route complying with 4.3 shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility. Therefore, OCR determined that Route 1 satisfies the requirements of ADAAG and UFAS with respect to section 1. As stated previously, Route 3 is an accessible route that connects the main entrance to the designated wheelchair accessible areas in sections 2 and 3.

The District informed OCR that there are a total of 1003 fixed seats in the theater, of which 12 are designated wheelchair accessible spaces. For assembly areas over 500 seats, ADAAG Section 4.1.3(19) requires 6 wheelchair accessible areas plus 1 additional space for each total capacity increase of 100.⁵ Accordingly, OCR determined that the District was required to have 11 designated wheelchair accessible locations to meet the standards set forth in ADAAG, and allegedly provided 12. Pursuant to ADAAG Section 4.33.3, at least 1 companion fixed seat shall be provided next to each wheelchair seating area.⁶ Accordingly, the District was required to have a minimum of 11 fixed companion seats (1 next to each seating area) in order to meet the standards set forth in ADAAG. ADAAG Section 4.33.2 requires that each wheelchair seating space be a minimum of 33" wide and 48" in depth; and, if 2 wheelchair spaces are placed next to each other, the space be a minimum of 66" wide and 48" in depth.

With respect to section 1, the District provided a theater floor plan indicating that section 1, located in the front row of the theater, contained five designated wheelchair accessible spaces. During

⁴ UFAS requires signage at the accessible entrance but does not require directional signage at the non-accessible entrance; except at historical preservation sites.

⁵ For assembly areas over 1000 seats, UFAS 4.1.2(18)(a) requires 20 wheelchair accessible areas plus one additional space for each total capacity increase of 100.

⁶ UFAS does not require companion seating.

OCR's on-site inspection, however, OCR determined that the District had removed regular fixed seats located in the front row of the theater to create three designated wheelchair accessible areas (section 1(a) – 49" wide; section 1(b) – 134" wide; and, section 1(c) – 45.5" wide), each separated by one regular fixed companion seat (24.5" wide each), measuring approximately 272.5" in total width. OCR determined that the total width of the three sections was not sufficient to accommodate five designated wheelchair accessible spaces and five fixed companion seats. OCR did not observe that the front row of the theater protruded into the walkway between the front row seating and the stage, as alleged; and, OCR determined that the accessible route between the front row and the pit area was of an appropriate width and did not require an additional turning radius. Specifically, ADAAG Section 4.2.3 requires a clear floor space of 60" in diameter; and, OCR determined that the width of the area between the front row and the pit ranged from 69.75"-84.75"; and, the depth of section 1 was greater than 60" along the entire length of the front row. Additionally, there was no obstruction within the accessible route that would require an additional turning space per ADAAG 4.3.3, which requires the accessible route to have a minimum clear width between 36"-48" (depending on the nature and size of the obstruction) if a person in a wheelchair must make a turn around an obstruction. OCR determined that no such obstruction existed in the accessible route of the front row. UFAS Sections 4.2.3 and 4.3.3 contain the same measurement requirements.

With respect to section 2, the District provided a theater floor plan indicating that section 2 contained five designated wheelchair accessible areas. During OCR's on-site inspection, OCR determined that section 2 was located directly behind the last row of the orchestra seating section. OCR further confirmed that the District had previously installed soundboard equipment in section 2, but OCR observed that the District had removed the soundboard equipment. OCR determined section 2 has a width of 284.5" and a depth of 115". OCR determined that section 2 does not contain any fixed companion seats. OCR determined that section 2 could accommodate at most four wheelchair accessible spaces, plus four fixed companion seats, as required by ADAAG Section 4.33.3.

With respect to section 3, the District provided a theater floor plan indicating that section 3 contained two designated wheelchair accessible spaces. During OCR's on-site inspection, OCR determined that section 3 was located near the entrance doors. OCR determined that section 3 has a width of at least 66" and a depth of 66"; however, OCR determined that section 3 did not include any fixed companion seats, as required by ADAAG Section 4.33.3. OCR determined that section 3 could accommodate at most one wheelchair space plus one fixed companion seat as required by ADAAG Section 4.33.3.

Based on the foregoing, OCR determined that Sections 1, 2 and 3 do not have sufficient overall space to accommodate eleven designated wheelchair accessible spaces and the requisite number of fixed companion seats next to each wheelchair seating space.

On November 25, 2019, the District signed the enclosed resolution agreement to resolve the above-mentioned compliance issues. OCR will monitor the implementation of the resolution agreement. Upon the District's satisfaction of the commitments made under the Agreement, OCR will close the case.

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 have the right to 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 the individual 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, OCR 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 Lisa Khandhar, Compliance Team Attorney, at (646) 428-3778 or lisa.khandhar@ed.gov; Jocelyn Panicali, Compliance Team Attorney, at (646) 428-3796 or jocelyn.panicali@ed.gov; or me, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Paul H. Green, Esq. (via email)