



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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August 4, 2020

Sent via email only to: mayorsoffice@perthamboynj.org

Honorable Wilda Diaz
Mayor
The City of Perth Amboy
260 High Street
Perth Amboy, New Jersey 08861

Re: Case No. 02-20-4013
Perth Amboy Free Public Library

Dear Ms. Diaz:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), in the above-referenced complaint filed against the Perth Amboy Free Public Library (the Library). The Complainant alleged that the Library discriminates on the basis of disability because the Library's main entrance and the entrance to the Children's Library are inaccessible to individuals with disabilities.

OCR 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, including public libraries. The Library is a public entity subject to the ADA. Therefore, OCR has jurisdictional authority to investigate this complaint under the ADA.

The regulation implementing the ADA, at 28 C.F.R. § 35.149, provides that no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

During the course of the investigation, OCR reviewed information that the Complainant, the Library, and the City of Perth Amboy (the City) provided to OCR. The City owns and operates the Library and maintains its facilities. OCR determined that the Library building was constructed in 1903. Under the regulation implementing 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. Accordingly, the Library is an existing

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facility under the ADA. The regulation implementing the ADA, at 28 C.F.R. § 35.149-35.150, requires a public entity to operate each service, program or activity conducted in existing facilities so that the service, program or activity, when viewed in its entirety, is readily accessible to individuals with disabilities. The regulation implementing the ADA does not require a public entity to make structural changes to existing facilities. A public entity may comply through means such as redesign or acquisition of equipment, reassignment of services to accessible buildings or locations, or assignment of aides to beneficiaries. Where programs or activities cannot or will not be made accessible using alternative methods, structural changes may be required in order for public entities to comply.

According to a floor plan that the Library submitted, the Library consists of one building with two levels, the Upper Level and Lower Level. Patrons access the Library's main entrance by ascending six steps from street level in the front of the building to the entrance, which opens into the Upper Level of the building. Inside the main entrance in the building, there are interior steps that lead down to the Lower Level of the building. The Children's Library is located on the Lower Level.

According to documentation that the Library provided to OCR, in 2013, the City initiated a reconstruction project to make the interior and exterior of the Library accessible. This was to include the construction of a new interior and exterior stairway, intended to provide a second means of egress and area of refuge accessible from both the main Library and the Children's Library; provide for safe navigation between the Upper and Lower Levels of the Library building, which is currently only provided by an internal stairway; and provide a barrier-free accessible side entrance and access to a limited-use/limited access handicapped lift, providing access to both the main entrance and the entrance to the Children's Library on the Lower Level.

Under the regulation implementing the ADA, at 34 C.F.R. § 35.151, construction or alterations commenced after January 26, 1992, are considered "new construction." Accordingly, OCR determined that the areas affected by the reconstruction project initiated in 2013 constitute new construction pursuant to the regulation implementing the ADA. The regulation implementing the ADA, at 28 C.F.R. § 35.151, requires that each facility or part of a facility constructed or altered by, on behalf of, or for the use of a public entity, after January 26, 1992, shall be designed and constructed in such a manner that the facility, or part of the facility, or the altered portion of the facility is readily accessible to and usable by individuals with disabilities. Beginning on March 15, 2012, all new construction or alterations of existing facilities must conform to the 2010 ADA Standards for Accessible Design (2010 ADA Standards).

The Library provided photographs of the side of the building exterior that depict a ramp next to three steps, but the Library stated that the staircase and lift at the side entrance are not presently in working order. Information the City provided to OCR indicated that the City's general contractor's construction did not conform to the City's specifications, and the contractor ultimately defaulted on its contract with the City. At the time of the instant complaint, the City advised OCR that it is creating new bid documents for the reconstruction of the Library's exterior side entrance and other improvements to comply with the 2010 ADA Standards. The reconstruction is anticipated to begin on or about September 1, 2020.

The Library stated that it provides a service to individuals who are restricted to their home by delivering books to them on a weekly basis, upon request. Otherwise, the Library does not have a formal written policy or procedure to ensure that each service, program, and activity conducted in the Library and Children's Library, when viewed in its entirety, is readily accessible to individuals with disabilities.

On August 4, 2020, the Library voluntarily entered into the attached resolution agreement to resolve the complaint, in accordance with Section 302 of OCR's Case Processing Manual. OCR will monitor implementation of the resolution agreement. If the Library fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This letter should not be interpreted to address the Library'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 Library 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, 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 Crystal Johnson, Senior Equal Opportunity Specialist, at (646) 428-3821 or crystal.johnson@ed.gov; or Eric Bueide, Senior Attorney, at (646) 428-3851 or eric.bueide@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXXXXXX.