



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
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October 5, 2015

IN RESPONSE, PLEASE REFER TO: 03151135

Dr. Ronald Grevera
Superintendent
Greater Nanticoke Area School District
Administrative Complex
427 Kosciuszko Street
Nanticoke, PA 18634-2690

Dear Dr. Grevera:

This is to notify you of the resolution of the complaint that was filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Greater Nanticoke Area School District (the District), alleging discrimination on the basis of disability. XXXXXX (the Complainant) alleged that XXXXXX (the School) is not readily accessible to persons with disabilities because it does not have designated accessible restrooms. XXXXXX.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35 (Title II). Title II prohibits discrimination on the basis of disability by public entities.

Because the District receives Federal financial assistance from the Department and is a public entity, the District is subject to these laws. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Allegation 1 - Accessibility of Bathrooms

Legal Standards

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The Section 504 regulation at 34 C.F.R. Section 104.21 states that no qualified person with a disability shall, because a recipient'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 under any program or activity operated by the District.

The following are the applicable accessibility standards for the School's bathrooms, based on the information provided by the District regarding the dates of the renovations and alterations.

34 C.F.R. Section 104.22 – Existing facilities

(a) *Accessibility.* A recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

Additionally, the Section 504 regulation at 34 C.F.R. Section 104.23(c)(3) does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

34 C.F.R. Section 104.23 New construction

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent

feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

28 C.F.R. Section 35.151 – New Construction and Alterations

(c)(1) Accessibility standards and compliance date: If physical construction or alterations commence after July 26, 1992, but prior to September 15, 2010, then new construction and alterations subject to this section must comply with either the UFAS or the 1991 Standards except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) of the 1991 Standards shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(c)(5) Noncomplying new construction and alterations: Newly constructed or altered facilities or elements covered by §§ 35.151(a) or (b) that were constructed or altered before March 15, 2012, and that do not comply with the 1991 Standards or with UFAS shall before March 15, 2012, be made accessible in accordance with either the 1991 Standards, UFAS, or the 2010 Standards.

The Title II ADA regulations at 28 C.F.R. § 35.149 (discrimination prohibited); 28 C.F.R. § 35.150 (existing facilities); and 28 C.F.R. § 35.151 (new construction and alterations), contain equivalent provisions to Section 504 regarding accessibility.

Facts and Analysis

OCR procedures provide that a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a resolution agreement. The provisions of the resolution agreement must be aligned with the complaint allegations and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the District, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the District requested to resolve Allegation 1 through a Voluntary Resolution Agreement (the Agreement). OCR made partial findings regarding the accessibility of the School's bathrooms, based on the information provided by the District prior to its request to resolve this allegation. On October 5, 2015, the District signed a Voluntary Resolution Agreement to address this allegation. Accordingly, OCR is concluding its investigation of this complaint. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the District's implementation of the Agreement.

Applicable Accessibility Standards

The District reported that the School was built in 1970. In July 2013, the District made renovations to all four of its restrooms; specifically, the District reported that all of the bathroom partitions/stalls in the 1st and 2nd floor boys' and girls' restrooms were replaced. According to the District, the sinks, toilets, and urinals have been replaced only if damaged or inoperable. All fixtures such as toilet paper dispensers, soap dispensers, and paper towel dispensers have been replaced multiple times. The entrances into the restrooms are part of the original construction of the building, and have not been renovated.

Based on this information, OCR applied the following accessibility standards:

- OCR applied the American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped (ANSI 1971 Standards) to the entrances of the bathrooms, since they are part of the original construction of the building and have not been altered. Accordingly, OCR made factual findings as to whether the exterior of the bathroom complies with the ANSI 1971 Standards. OCR determined that none of the entrances to the four bathrooms complied with ANSI 1971 because there is insufficient maneuvering clearance to open the doors and access the entrances which would prevent an individual in a wheelchair from entering any of the bathrooms. Accordingly, this space does not comply with ANSI Standards for turning space (Section 3.2.2: the average turning space required (180 and 360 degrees) is 60 by 60 inches) and also does not comply with the ANSI Standards for toilet rooms (Section 5.6: it is essential that an appropriate number of toilet rooms, in accordance with the nature and use of a specific building or facility, be made accessible to, and usable by, the physically handicapped). Therefore, there is sufficient evidence to determine that the entrances to the School's bathrooms are inaccessible.
- Although the building is existing construction, the bathroom stalls, the maneuvering space within the stalls, and all of the fixtures inside of the stalls fall under the 2010 ADA Standards for Accessible Design (ADA 2010 Standards) for new construction as they have all been altered on or after March 12, 2012. OCR made factual findings as to whether the designated accessible bathroom stalls and their interiors comply with the ADA 2010 Standards. None of the designated accessible bathroom stalls complied with 2010 ADA Standards for Toilet Compartments (ADA Standards 213.3.1, where toilet compartments are provided, at least one toilet compartment shall comply with 604.8.1, standards for wheelchair accessible toilet stalls.) Therefore, there is sufficient evidence to determine that the designated accessible toilet stalls in the School's bathrooms are inaccessible.
- As to all of the other fixtures inside of the bathrooms for which the District did not submit documentation regarding dates of renovations, the District agreed to address through a Voluntary Resolution Agreement.

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Legal Standards

The regulation implementing Section 504 at 34 C.F.R. § 104.33 requires that recipients that operate a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. An appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nondisabled persons are met and are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36. Implementation of an Individualized Education Program developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard.

Section 504 and the ADA have equivalent standards and Title II is interpreted consistently with the provisions of Section 504 with regard to FAPE. Title II is interpreted as adopting the standards of Section 504 in areas where Title II has not adopted a different standard. Therefore, OCR will apply Section 504.

Facts and Analysis

XXX-paragraph redacted-XXX

This letter is not intended, nor should it be construed, to cover any other issues regarding the District's compliance with Section 504, Title II and their implementing regulations that may exist and are not discussed herein.

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.

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.

If you have any questions, please contact Mr. Dale Leska at 215-656-8562 or Dale.Leska@ed.gov. Additionally, please also feel free to me at 215-656-8522 or Vicki.Piel@ed.gov as well.

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure