



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

**June 3, 2016**

IN RESPONSE, PLEASE REFER TO: 03161068

Dr. William Hite  
Superintendent  
The School District of Philadelphia  
440 N. Broad Street  
Philadelphia, PA 19130

Dear Dr. Hite:

This is to notify you of the resolution of the complaint that you filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the School District of Philadelphia (the District), alleging discrimination on the basis of disability. The Complainant alleges that the District's XXXXXX (the School) is not accessible for persons with disabilities; specifically persons with mobility impairments.

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>.

Legal Standards

The accessibility requirements of the Section 504 regulation are found at 34 C.F.R. Sections 104.21-104.23. Comparable provisions of the Title II regulation are found at 28 C.F.R. Sections 35.149-35.151. Both regulations provide 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 recipient.

Accessibility, existing facilities: The implementing regulations of Section 504, at 34 C.F.R. § 104.22, and Title II, at 28 C.F.R. § 35.150, are applicable to any facility or part of a facility where construction commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that with regard to such facilities, termed "existing facilities," the District will operate the programs, activities and (as to Title II) services so that, when viewed in their entirety, the programs, activities, and services are readily accessible to and usable by persons with disabilities. The District may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alterations of existing facilities or any other methods that result in making each of its programs, activities, and services accessible to disabled persons. The District is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of the statute, the District must give priority to methods that offer the programs, activities, and services to disabled persons in the most integrated setting appropriate. The implementing regulation of Section 504, at 34 CFR § 104.22(f), provides that the recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and locations of services, activities, and facilities that are accessible to and usable by persons with disabilities. The implementing regulation of Title II, at 28 C.F.R. § 35.163(a), provides that public entities must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of accessible services, activities and facilities.

Accessibility, new construction: The implementing regulations of Section 504, at 34 C.F.R. § 104.23(b), and Title II, at 28 C.F.R. § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. These facilities are termed "new construction or alterations." The regulations provide that each facility or part of a facility which is altered by or for the use of a recipient in a manner that affects or could affect the usability of the facility shall, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities. The regulations specify the accessibility standard to be used in determining the accessibility of the alterations based on the date of construction or renovation.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineated the American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped [ANSI 117.1-1961 (1971)] (ANSI) as a minimum standard for determining accessibility for facilities constructed or altered on or after

June 3, 1977, and before January 18, 1991, and the Uniform Federal Accessibility Standards (UFAS) for facilities constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. § 35.151(c), delineated UFAS, or The Americans with Disabilities Accessibility Guidelines for Buildings and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed, or altered on or after January 26, 1992.

The regulation implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (2010 ADA Standards). The regulation, at 28 C.F.R. § 35.151(c)(3), now provides, “If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards.” OCR uses the accessibility standards as a guideline for assessing the accessibility of existing facilities.

### Factual Background and Analysis

- The Complainant alleges that the School is not accessible for persons with mobility impairments.
- The District reported that the School was built in approximately 1930; the exact dates are unknown as the records regarding groundbreaking and completion dates could not be located.
- The District stated that the following renovation projects have been completed within the last 20 years:
  - 1998/1999 – Roof Replacement.
  - 1998/1999 – Toilet Room Modernization.
  - 1999/2000 – Electrical Service
  - 1999/2000 – Door Replacement.
  - 2001/2002 – Asbestos Abatement.
  - 2002/2003 – Boiler Replacement.
  - 2006/2007 – Kindergarten to Eighth Grade Expansions and Renovations including renovations to the IMC, Science Room and Smart Room.
- Regarding the bathroom renovations, the District reported that all bathrooms in the School, including all fixtures in the bathrooms, were renovated during 1998-1999. The District provided the following summary of work done: wall demolition, new walls, toilet partitions, toilet room accessories, tile and finish work, as well as modernization of mechanical and electrical systems.
- Regarding the door replacement project, the District reported that all stairway and exterior doors were replaced during 1999/2000. No other doors were included in this project.

- Regarding the science room renovations in 2006-2007, the District reported that there was one science room in which a wall was removed to enlarge the room; new light fixtures were installed along with new ceiling grid and tile, new case work and sinks, storage cabinets, and demonstration table; also, all walls were painted and new anti-skid VCT flooring was installed.
- Regarding the renovations to the Smart Rooms and the Instructional Materials Center (IMC) in 2006-2007, the District reported that none of the renovations involved structural modifications which impacted the usability of these rooms.
- The District also stated that the School does not have a permanent wheelchair ramp. The District advised OCR that persons with disabilities can obtain assistance with accessibility at the School upon request; the District provided a copy of the applicable policy to OCR.
- Based on the dates of construction, OCR determined that a program accessibility standard applied to the entirety of the School with the exception of the following elements and components of the School building: all of its bathrooms; the stairway and exterior doors; and the Science Room. For each of these elements and components which were renovated in a manner which impacted their usability, the standard for new construction applies given that the renovations were made after the effective date for new construction. Based on the date of renovations to the bathrooms, stairway and exterior doors, and Science Room, the applicable accessibility standards are the UFAS or 1991 ADA Standards for Accessible Design (1991 Standards).

#### Request to Resolve Complaint through a Voluntary Resolution Agreement

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, the information obtained during the investigation, 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, on January 12, 2016, the District requested to resolve this complaint through a Voluntary Resolution Agreement (the Agreement). On June 3, 2016, the District signed a Voluntary Resolution Agreement with OCR to resolve the allegation in this complaint. 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.

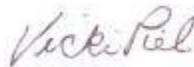
This letter is not intended, nor should it be construed, to cover any other issues regarding the District's compliance with Section 504, Title II and their implementing regulations that may exist and are not discussed herein. The Complainant may have the right to fil a private suit in federal court, whether or not OCR finds a violation.

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](mailto:Dale.Leska@ed.gov). Additionally, please also feel free to me at 215-656-8522 or [Vicki.Piel@ed.gov](mailto:Vicki.Piel@ed.gov) as well.

Sincerely,

A handwritten signature in cursive script that reads "Vicki Piel".

Vicki Piel  
Team Leader/Supervisory Attorney  
Philadelphia Office

Enclosure

CC: General Counsel Michael Davis & Assistant General Counsel Audrey L. Buglione & Legal Secretary Lisa M. Nicas (all via email with encl.)