

#### 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 PENNSYLVANIA WEST VIRGINIA

April 10, 2023

Via Email Only / roberts@mtsd.org Dr. Ian Roberts Superintendent of Schools Millcreek Township School District

Re: OCR Case No. 03-23-1014

Dear Dr. Roberts:

- 1. In periods of inclement weather, snow is not immediately removed along accessible walkway between buildings and near/around entrances.
- 2. Handicapped accessible parking spots are being used as drop off/pickup lanes before and after school, making it impossible to park.
- 3. The partially covered route/walkway between the schools is not accessible.
- 4. The first floor designated handicapped accessible bathroom at McDowell Intermediate High School is not accessible.
- 5. The automated functions (pushbuttons, etc.) of the main handicapped accessible entrance doors to the schools operate sporadically.
- 6. The Complainant experiences difficulty in getting accessibility concerns addressed by the District's Director of Facilities.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of federal financial assistance from the Department and as a public entity, the District is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation of the following issue to determine whether the District is discriminating against individuals on the basis of disability: whether qualified individuals with disabilities are being excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any of the District's programs or

activities because portions of District's facilities are inaccessible to or unusable by individuals with disabilities, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.21 and the Title II implementing regulation at 28 C.F.R. § 35.149.

During the course of RRP, OCR reviewed information provided by the Complainant and the District, interviewed the Complainant, and had several discussions with District staff. Based on the information obtained, OCR has determined that allegations 2, 3, 5, and 6 are resolved.

Prior to the completion of OCR's investigation of allegations 1, 4, and 7, the District expressed a willingness to voluntarily resolve this case pursuant to Section 302 of OCR's Case Processing Manual (CPM) and signed a resolution agreement to address these allegations on April 10, 2023. The following is a discussion of the relevant legal standards and the information obtained by OCR during our investigation that informed the development of the Resolution Agreement.

## Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.21, and the Title II regulation, at 28 C.F.R. § 35.149, provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a recipient's programs or activities because the recipient's facilities are inaccessible to or unusable by individuals with disabilities.

The regulations implementing Section 504 and Title II each contain two standards for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility. Under the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977; under the Title II regulation, existing facilities are those for which construction began prior to January 27, 1992. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under Section 504 and Title II standards.

For existing facilities, the Section 504 regulation, at 34 C.F.R. § 104.22, and the Title II regulation, at 28 C.F.R. § 35.150, require a recipient to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. The recipient may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities and services accessible to persons with disabilities. In choosing among available methods of meeting the requirements, a recipient must give priority to methods that offer programs, activities and services to persons with disabilities in the most integrated setting appropriate.

With respect to newly constructed facilities, the Section 504 regulation, at 34 C.F.R. § 104.23(a), and the Title II regulation, at 28 C.F.R. § 35.151(a), require that the recipient design and construct the facility, or part of the facility, in such a manner that it is readily accessible to and usable by individuals with disabilities. In addition, for new alterations that affect or could affect the usability of the facility, the Section 504 regulation, at 34 C.F.R. § 104.23(b), and the Title II regulation, at 28 C.F.R. § 35.151(b), require that, to the maximum extent feasible, the recipient alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

The new construction provisions of the Section 504 and Title II regulations also set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulation, recipients had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or altered after January 26, 1992 and prior to September 15, 2010. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that recipients had a choice of complying with either UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards). The Title II regulation provides that recipients are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012. While the Section 504 regulations have not been amended to formally adopt the 2010 Standards, recipients may use the 2010 Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, appendices B and D.

# **Background and Factual Summary**

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On December 21, 2022, the District provided OCR with a list of actions it had either taken, was in the process of taking, or intended to take to address allegations 1-6, as follows:

### Allegation #1 - Snow Removal at School Entrances

The District reported that maintenance and custodial staff, prior to the beginning of each school day at MSHS and MIHS, clear all parking lots and sidewalks, including the walkway between the buildings at or near or around the entrances. In addition, individual custodians located within MSHS and MIHS address the entrances and sidewalks multiple times during each snow day. Specifically, the custodians clear and salt the entrances and sidewalks throughout the day, depending on the amount of snow that is accumulating during the day. The District noted that the city of Erie, Pennsylvania, near where the schools are located, receives, on average, 100 inches of snow per year. The removal of snow, depending on the type of storm, is removed within a reasonable period of time, under these circumstances.

The District reported that the Principal of MIHS met with school custodians to review the removal of snow and addressed the areas of concern raised by the Complainant, including the areas between the buildings and door entrances. The Principal also addressed these issues with the District's Custodial Coordinator.

### Allegation 2 - Access to Designated Handicapped Accessible Parking Spots

The District reported that the Principal of MIHS met with the District's Engineer, Director of Secondary Education, and the Supervisor of School Safety, to discuss how to address the issue of non-disabled individuals utilizing the handicap parking spaces near the front of MIHS as drop off/pickup lanes. As a result, additional safety cones were obtained and will be placed by custodians on a daily basis to guide traffic away from these parking spaces before and after school to prevent non-disabled individuals from using them for drop-off and pick-up of students. The Principal worked with the custodial team to review this process. He has also been in contact with the Complainant regarding this process.

## Allegation 3 - Accessible Walkway Between the Schools

The District acknowledges that the grading of the ramp along the partially covered walkway between the schools, based upon the existing terrain, may present an issue. There is, however, a wheelchair accessible sidewalk that runs between the schools. The District also noted that, at the present time, there is a van that travels between the schools for disabled and injured students. The District also owns a wheelchair accessible van that can be used for the Student for transportation between the schools.

### Allegation 4 - Designated Accessible Bathroom on First Floor of MIHS

### Allegation 5 - Functioning of Main Entrance Doors

The District acknowledged that there has been sporadic malfunctioning of the doors. The District's Engineer investigated the electrical cause of the malfunction and determined that new controllers were required. These parts were ordered for repair. On February 6, 2023, Counsel informed OCR that parts were installed for the handicapped accessible entrance doors, and they now function without issue. The Complainant confirmed this as well on March 22, 2023.

### Allegation 6 - Communication with School District Officials

On February 9, 2023, the District expressed to OCR an interest in voluntarily resolving the complaint in accordance with Section 302 of the CPM.

### Analysis and Conclusion

Pursuant to the CPM, at Section 110(d), OCR will close or dismiss an allegation if OCR obtains credible information indicating that the allegation has been resolved and there is no systemic allegation. Here, the District has sufficiently demonstrated that it has taken steps to ensure that: designated handicapped accessible parking spaces are no longer blocked from being accessed; there are avenues of access between the schools, aside from the covered walkway specifically identified by the Complainant, including transportation; main entrance doors have been repaired and are functioning; and that the Complainant XXXXXXX may raise any accessibility concerns directly to the Principal of either school and/or the District's Director of Student Services. Based on this information, OCR has determined that allegations 2, 3, 5, and 6 are resolved and is closing these allegations in accordance with Section 110(d) of the CPM effective the date of this letter.

OCR identified concerns with respect to allegations 1 and 4. Despite the District's initial outreach to custodial staff concerning snow removal, information provided by the Complainant shows that it was not sufficiently addressed during a more recent snow event. And the District acknowledged that there are accessibility issues with the first floor bathroom at MIHS but is in the early stages of addressing them.

### XX - Paragraph redacted - XX

Pursuant to Section 302 of the CPM, the District requested to resolve the case through a voluntary resolution agreement. The District signed the enclosed Agreement on April 10, 2023 which, when fully implemented, will address allegations 1, 4 and 7 of this complaint. Specifically, the Agreement requires the District to prepare and distribute memorandums to pertinent staff concerning snow removal and future scheduling of classes. The Agreement also requires the

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District to evaluate the first floor bathroom at MISH, to identify any accessibility issues with the bathroom, and to remediate those issues in a timely manner and in accordance with applicable standards of accessibility. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation of the complaint. 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation during the investigation and resolution of the complaint. If you have any questions, you may contact Michael Wesley, investigator, at 215-656-6908 or by email at michael.wesley@ed.gov.

Sincerely,

/s/

Christina M. Haviland Supervisory Attorney Office for Civil Rights

Enclosure

cc: Timothy M. Sennett, Esq., General Counsel - Knox McLaughlin Gornall & Sennett, P.C.