



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
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PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

April 3, 2018

Dr. Michael Martirano
Superintendent
Howard County Public Schools
10910 Clarksville Pike (Route 108)
Ellicott City, PA 21042

OCR Complaint No. 03171334

Dear Dr. Martirano:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received a complaint on August 1, 2017 against the Howard County Public Schools (the District). The complaint alleges that the District discriminated on the basis of disability. Specifically, the complaint alleges that the District's Atholton High School (the School) is not accessible to persons with disabilities in the following areas:

- 1) There are not a sufficient number of accessible doors to enter/exit the School;
- 2) The doors to the men's room are too heavy for use by persons with mobility impairments; and
- 3) It does not have an appropriate emergency evacuation route for use by 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 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 prohibits discrimination on the basis of disability by public entities, such as public elementary and secondary education systems.

As the District is a recipient of federal funds and is a public entity, it is subject to Section 504 and Title II of the ADA.

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

Pursuant to OCR's complaint processing procedures, OCR will dismiss a complaint where the same or similar allegations filed with OCR involve the same operative facts that have been resolved by another federal, state or local civil rights enforcement agency, all allegations were investigated and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR. OCR will also dismiss a complaint where the complaint filed by the Complainant or someone other than the Complainant against the same recipient raises the same or similar allegations based on the same operative facts that was previously dismissed or closed by OCR. Additionally, OCR will dismiss a complaint allegation when OCR obtains credible information indicating that the allegation raised by the complaint has been resolved, and there are no systemic allegations. In such a case, OCR will attempt to ascertain the apparent resolution. When OCR determines that there are no current allegations appropriate for further resolution, the complaint will be closed. OCR will also dismiss an allegation if the allegation, on its face or as clarified fails to state a violation of one of the laws OCR enforces.

Allegation 1

Allegation 1 was previously considered and addressed by the Maryland State Department of Education (MSDE) and by OCR. In January of 2017, the MSDE conducted an onsite compliance review of the accessibility of several schools in the District, including the School at issue in this complaint. As a result of this onsite review, it was determined that the automatic door at the main entrance to the School was inoperable and lacked a symbol of accessibility. Thereafter, the District entered into a Voluntary Compliance Plan with the MDSE in which it agreed to take corrective actions and it warranted to the MSDE that it completed this work as of May 6, 2017.

Additionally, in OCR #03171122, the Complainant alleged that the School's only accessible entrance was not working. By letter dated May 22, 2017, OCR closed this complaint on the basis that the electronic opener at the accessible door at the School's main entrance had been repaired, following the District's submission of a video showing that the door was fully functional.

Upon receiving the instant complaint, the District sent another video to OCR which was recorded on January 23, 2018, showing that this same door located at the School's main entrance was still fully functional. The District also reported in its response to OCR that a receiver on the door was repaired on September 6, 2017. Therefore, based on this information, OCR determined that there have been no changes in the status of the door since the prior OCR complaint was closed, other than some routine maintenance performed to keep the door in working order.

To the extent that the Complainant is also alleging in the instant complaint that there are not a sufficient number of accessible doors to enter and exit the School, none of the

accessibility standards which provide the guidelines for making facilities accessible in compliance with Section 504 and Title II of the ADA prescribe a specific number of accessible entrances which must be provided as part of an accessible route to a facility; rather, whether an entrance is required to be made accessible depends on its date of construction and/or renovation. The District reported that the School was originally constructed in 1964 and the main entrance with the accessible door and electronic opener was added after this date; no other entrances to the School were modified or altered. The District reported that it followed the 2010 ADA Standards for Accessible Design (2010 ADA Standards) with regard to the construction of the main entrance. Based on the information provided by the District, any other remaining entrances to the School are governed by the existing construction standard, pursuant to which the District must provide program accessibility.¹ Therefore, under the applicable standards, the District is not required to provide additional accessible entrances to the School and it is sufficient for the District to provide access to its programs at the School by maintaining one accessible door at the School's main entrance.² The information submitted by the District establishes that it satisfies these standards and the Complainant's allegation as it pertains to the number of accessible entrances at the School does not state a violation of Section 504 or Title II of the ADA. Accordingly, OCR is dismissing this allegation effective the date of this letter.

Allegation 2

The District reported that all of the doors to each of the restrooms at the School were modified since the original date of construction of the building and that it applied the 2010 ADA Standards in these renovations. With regard to door opening force, the 2010

¹ Pursuant to the existing construction standard at 34 C.F.R. § 104.22, a recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to persons with disabilities. 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. A recipient may comply with the requirements 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 34 C.F.R. § 104.23, or any other methods that result in making its program or activity accessible to persons with disabilities. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirement of this section, a recipient shall give priority to those methods that serve persons with disabilities in the most integrated setting appropriate. Title II of the ADA at 28 C.F.R. § 39.150 incorporates the same standard for existing construction.

² The District reported to OCR that there are six additional entrances to the School, and all of them are accessible. However, OCR did not evaluate the accessibility of any other entrances at the School, as they are not required to be accessible under the applicable existing construction/program accessibility standard given their date of construction and based on their status as not having been altered.

ADA Standards provide that the force for pushing or pulling open a door or gate other than fire doors shall be a maximum of five pounds.

Allegation 2 was also previously considered and addressed by the MSDE with a resolution process acceptable to OCR in its recent onsite compliance review of the accessibility of the School. As part of that compliance review, it was determined that the opening force for many of the doors at the School needed to be adjusted to 5 pounds, including all of the doors to the men's bathrooms in the School. Thereafter, the District entered into a Voluntary Compliance Plan with the MDSE to take these corrective actions and it warranted to the MSDE that it completed this work as of July 14, 2017, including that all of the closure hardware on each of these doors was brought into compliance with the 2010 ADA Standards. In its response to the instant complaint, the District reported to OCR that there have been no changes in the status of these doors. Accordingly, OCR is dismissing this allegation effective the date of this letter.

Allegation 3

Upon receiving the instant complaint, the District confirmed to OCR that it is its practice to rely on areas of refuge and shelter in place for its evacuation plans for students with disabilities. Additionally, it provided OCR with copies of the actual evacuation plans for students with disabilities attending the School, including students with mobility impairments. All of the evacuation plans for students with mobility impairments provide that if they are on the first floor of the school building at the time of the emergency, they shall leave their classrooms with the assistance of specifically identified personnel, and follow the same exit floor plan as their classmates; if they are located on the second floor of the school building, these evacuation plans specify that the elevator is not to be used and specific personnel are identified who will accompany the students to the stairwell near the elevator where they will wait to be assisted by emergency personnel. Additionally, the District reported to OCR that it is currently in the process of bidding to purchase evacuation equipment for use with students with disabilities and that these devices will be installed in every school in the District.

The United States Access Board (the Access Board) provides guidance on the interpretation and implementation of ADA accessibility standards. The Access Board guidance concerning an accessible means of egress in a multi-story facility provides that an accessible means of egress must lead to exit stairways, horizontal exits, or to elevators equipped with standby power. These are locations where those unable to use stairs can await assisted rescue by emergency responders. Accordingly, the District's evacuation plans for students with mobility impairments, which require them to shelter in place and await rescue from emergency personnel, comply with the accessibility standards and do not give rise to a violation under Section 504 or Title II of the ADA. The District further represented to OCR that it provides an accessible evacuation route on the first floor of the School, and that there is an accessible route on the second floor

of the two-story building leading to the areas of refuge. Therefore, OCR is dismissing this allegation effective the date of this letter.

Additionally, on March 28, 2018, the Complainant informed OCR that the District has satisfactorily addressed and resolved all of the allegations in his complaint. Accordingly, OCR is dismissing this complaint effective the date of this letter and OCR is closing its file in this matter.

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 thank the District and particularly its legal counsel, for its cooperation during the investigation of this complaint. If you have any questions, please contact Dale Leska, the OCR investigator for this complaint, at 215-656-8562 or dale.leska@ed.gov.

Sincerely,



Vicki Piel
Supervisory Attorney/Team Leader

cc: Mark Blom, Esq.