

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

DAYNIAH MANDERSON, on behalf of
herself and others similarly situated,

Charging Party,

-against-

THE NEW YORK CITY DEPARTMENT OF
EDUCATION, and THE CITY OF NEW
YORK,

Respondents.

No.

State of New York)
) : ss
County of New York)

DAYNIAH MANDERSON SUMMARY

I have been employed by the New York City Department of Education as a classroom teacher since 2003. I have worked in the same public school building as an eighth grade English teacher since 2008. Because I am a person with a disability and because I use an electric wheelchair for mobility, I have been subjected to ongoing discrimination. For instance, I have been unable to use the restroom at work since 2008 because my school does not have a ADA compliant bathroom and a facility that is large enough to accommodate my needs as an electric wheelchair user and a person with a disability. I also am being denied the benefit of access to safety and am not being included in safety plans in the event of an emergency at the school.

On many occasions, I have informed my employer about this discrimination and have requested reasonable accommodations, but these requests have not been met, have been incomplete, or have been ignored. I believe that I have been, and continue to be, discriminated against because of my disability in violation of the Americans with Disabilities Act (“ADA”) and the New York City Human Rights Law (“NYCHRL”). I also have reason to believe many others

with mobility disabilities are similarly discriminated against because of the systemic inaccessibility of public schools within New York City.

AFFIDAVIT OF DAYNIAH MANDERSON

I, Dayniah Manderson, believe that my employer, the New York City Department of Education has, and continues to, discriminate against me on the basis of my disability by denying me a reasonable accommodation. In support of this Charge, I allege the following:

GENERAL FACTS

1. I have Spinal Muscular Atrophy Type II and use a power wheelchair for mobility. I have used a wheelchair my whole life.

2. I have been an eighth grade English Teacher at the same New York City (“the City”) Department of Education (“DOE”) public middle school building in the Bronx since 2008. In 2015 my school, called Urban Assembly Academy of Civic Engagement at the time, consolidated and I was placed at Mott Hall Community School, which is in the same building. I am a tenured DOE teacher with a Master’s degree in School Building Leadership from New York University.

3. As explained below, I believe that the City DOE has discriminated against me because of my disability and has failed to provide me with required reasonable accommodations. I have spoken with or heard about other employees who work for the City DOE who have also been denied reasonable accommodations, leading me to believe that this is a systemic problem.

DENIED ACCESS TO RESTROOM FACILITIES

4. I have taught on the same floor in the same school building since 2008. I generally arrive at work around 7:15 AM and remain at work until approximately 3:00 PM, except for Mondays when I have to stay until around 5:15 PM for parent outreach and staff development. Approximately four to five times a year, I stay at work until around 7:30 PM for parent-teacher

conferences, and therefore remain in the school building with no restroom access for over 12 hours on those days.

5. I have not been able to use the restroom at work since I began teaching in that building in 2008. There are no accessible staff restrooms in my entire school building. In addition, no female student restrooms in the building provide enough space for my personal care attendant to assist me in transferring from my wheelchair to the toilet. As further described below, on multiple occasions I have mentioned to various school leadership that I am unable to use the restrooms at work because the school building lacks a stall that can accommodate my needs, but I have never been provided with a useable accommodation.

6. My physician has warned me that not being able to use the toilet for this many hours on an ongoing basis could result in a long-term negative impact on the function of my kidneys, and on my overall health. I am very concerned about this potential impact on my general health, which is already vulnerable due to my Spinal Muscular Atrophy.

7. Because of my lack of access to a restroom at work, I am forced to limit my consumption of fluids and food at work, in an attempt to reduce bladder discomfort. I avoid taking antibiotics, muscle relaxers or other prescription pills that must be taken with a significant amount of water. Avoiding these prescriptions has negative implications for my general health and well-being. I am also forced to take time off from work when starting necessary antibiotic regimes, so I can consume the necessary amount of water without having to worry about not having an accessible restroom.

8. The lack of restroom access also causes me anxiety, frustration, sleeplessness, fatigue and stress. It has caused me to feel marginalized and dehumanized. My distress regarding my inability to access a restroom facility has been exacerbated by the DOE's continual disregard

of my multiple requests, and by the DOE's ongoing failure to provide a reasonable accommodation.

9. Due to the lack of accessibility, I estimate that I have had to leave work early to use the restroom approximately ten to fifteen times over the last eight years. However, this issue is particularly pressing on Mondays when all teachers are required to remain in the building until 5:15 PM for staff team meetings and parent outreach.

10. Due to my inability to access the restroom, I most recently asked my Assistant Principal ("AP") in person if I could depart the building at 4:45 PM on Mondays and conduct my parent outreach from home. However, my AP denied my request to leave 30 minutes early and said I must remain in the building because all teachers are expected to follow the rules, and that I cannot receive "favorable treatment." I am not looking for favorable treatment, but rather a reasonable accommodation to account for the fact that I cannot use the restroom at work like the other teachers.

11. On February 12, 2018, I emailed the DOE to memorialize my verbal requests that they modify a restroom at my workplace so that I would be able to use the restroom at work as a reasonable accommodation. (Exhibit 1) In response via email on March 19, 2018, I was told by a representative from the DOE's Office of Accessibility Planning that "[t]his project will take some time," but that it was being worked on. (Exhibit 2)

12. While the DOE did eventually renovate a bathroom on the third floor, the toilet the DOE installed is too low to the ground for me to safely transfer to, which could lead to my sustaining injury. (Exhibit 3) I raised this concern to the DOE in person, emphasizing my continued inability to use the restroom at work due to the toilet's low height. In response, the DOE provided a temporary, unstable "booster toilet seat," which is not permanently installed and can shift during transfer. Because the "booster toilet seat" is a safety hazard, I continue to be unable to

use the restroom at work. This also poses a safety hazard to my personal care attendant.

Furthermore, since the installation, many of my colleagues have complained to me about their having to use such a low toilet, which has made me feel singled out as the reason for their issue and has caused me humiliation and embarrassment.

13. I emailed the DOE on May 20, 2019, again asking the DOE to provide a toilet that I could use safely. (Exhibit 4) My email reiterated that the “booster toilet seat” is not in a fixed position, can shift during transfer, and places me at risk of falling. *Id.* My email also noted my concerns pertaining to potential resentment on the part of my colleagues, and that “I need not mention the health risks that are posed by not having access to a bathroom that complies with ADA standards.” *Id.*

14. I was subsequently verbally told by a DOE employee that the DOE would look into this and see what it can do. At that point, I assumed and strongly hoped the DOE would address this concern over the 2019 summer break, when few students are in the building. However, when I returned to the school building in the fall of 2019, I was very disheartened to see that the accommodation was still not provided.

15. I emailed the DOE again on January 6, 2020, yet again raising concerns about the toilet height as well as the chronically broken automatic door opener for that same restroom. (Exhibit 5) When the door opener is broken I lose all access to the accessible restroom. Even though I cannot use the toilet I still utilize the space, when available, to wash my hands or to have a bit of privacy.

16. DOE officials traveled to my school on January 8, 2020, and assured me that the situation would be addressed. However, as of March 2020, the automatic door opener was still broken and there has been no attempt made to safely raise the height of the toilet seat. As such, I

continue to be denied a reasonable accommodation, and continue to be unable to use the restroom at work.

17. Even if the DOE were to accommodate me by providing a stable toilet seat for the third floor restroom, there is still no sufficiently accessible restroom on the first floor. The auditorium is on the first floor, where I attend assemblies, ceremonies, and graduations. The first floor of the school building is also often used by the general public and by parents and guardians for voting, parent-teacher conferences, and after school activities, and also houses the cafeteria, teacher's lounge, and gymnasium.

DENIED ACCESS TO THE EMERGENCY PREPAREDNESS PLANS AND FACILITIES

18. I have also faced barriers accessing the Fire Safety Room at my school building, which is my designated evacuation point in the event of an emergency. Instead of maintaining a clear egress path to the window in the Fire Safety Room, the room is used to store items that completely block the exit path. This dangerous situation puts myself, other staff, and students at risk of harm during an emergency situation. When the room is obstructed, I cannot navigate in my electric wheelchair to the window and therefore cannot be safely evacuated from the building. I also worry because the equipment that is stored in the Fire Safety Room includes books and computers which are highly combustible.

19. I have complained multiple times to my AP about the room inappropriately being used to store school equipment, therefore putting me at risk during an emergency. I have repeatedly asked the AP for an accommodation by ensuring there is a clear path from the door to the window, but no action has been taken.

20. On February 1, 2019, I emailed DOE leadership to express my concern that the Fire Safety Room's "usefulness as a zone of safety is seriously limited due to various obstructions (bicycles, toolkits, and other objects) that block the path to the window that the fire department

needs in order to gain access. These obstructions may frustrate and delay the first responders in any emergency when seconds truly may make the difference between life and death.” (Exhibit 6)

This email notes that “[t]his is the third time I have brought this matter to the attention of the administrative team.” *Id.*

21. Despite having raised these concerns no action was taken. On October 3, 2019, I was forced to email DOE leadership again to state that the “SAFE room, needs to allow clear access to the fire department to rescue persons with disabilities or those needing physical help during an emergency.” (Exhibit 7)

22. At one point during a routine safety check, the Fire Department told the AP that the room was full of barriers, meaning it was not an effective evacuation room. The AP only temporarily addressed these concerns, but within a few weeks the Fire Safety Room was again so overly full that it could no longer function effectively as a safe evacuation space for myself and others.

23. As of March 2020, the path of travel to the exit window continues to be littered with multiple obstructions, which places me and others at risk in the event of an emergency. (Exhibit 8)

**OTHER INSTANCES OF DISCRIMINATION
AND DENIALS OF REASONABLE ACCOMMODATIONS**

24. The 75 students that I teach all write in weekly journals, which I then grade. I do not have enough time during my work day to complete all the grading during the hours I am in the school building. Due to my disability, it is a significant hardship for me to carry the journals home. As a result, I asked my AP for the reasonable accommodation of allowing my students to write in online journals so I could grade them from my home computer. This would also benefit

my students who would have remote access to their journals. However, my AP denied this request, stating the need to be "consistent."

25. I am significantly more limited than my peers in my ability to transfer amongst DOE schools or apply for leadership positions given that the vast majority of DOE schools are physically inaccessible, leading to my lack of access to promotional opportunities into an administrative role, despite my strong credentials, professional qualifications, and desire to advance into such a position. In October 2018, I wrote an op-ed for USA Today about the discrimination I faced attempting to obtain a school leadership position in the DOE. (Exhibit 9)

26. I request that the EEOC investigate all of the claims I make in this Charge on a class-wide basis.

Dated: May 6, 2020

DocuSigned by:
Dayniah Manderson
6268F2023F38400

Dayniah Manderson

Bronx County

Sworn to before me this sixth day
of ~~4~~ May 2020

Torie Atkinson
(Notary Public)

New York County

my commission expires 4/4/2024

02AT6339714

Torie Atkinson

Made pursuant ~~to~~ to Executive Order 202.7