



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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September 18, 2023

Via electronic mail to: Addison.Davis@hcps.net

Mr. Addison Davis
Superintendent
Hillsborough County Public Schools
901 E. Kennedy Boulevard
Tampa, Florida 33602

Re: OCR Complaint #04-22-1674

Dear Mr. Davis:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Hillsborough County Public Schools (District) on September 6, 2022, alleging discrimination on the basis of disability. The Complainant filed the complaint on behalf of her granddaughter. This letter will refer to the Complainant's granddaughter as the Student.

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

OCR investigated the following issues:

1. Whether the District discriminated against the Student on the basis of disability, in violation of Section 504 and its implementing regulation at 34 C.F.R. §§ 104.4, 104.33, and Title II and its implementing regulation at 28 C.F.R. § 35.130.
2. Whether the School's student restrooms and the designated accessible parking spaces located in the public parking lot(s), including the route to the designated accessible entrance(s), are accessible to persons with mobility impairments, in compliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.21-23, and Title II and its implementing regulation at 28 C.F.R. §§ 35.149-151.¹

¹ OCR's investigation of the student restrooms was limited to the restroom located in the Student's classroom.

OCR reviewed documents provided by the Complainant and the District including the Student's physician recommendations, Student's Section 504 Plan and conference notes, map of classrooms and restrooms at Town and Country Elementary School (School), photographs of the School's parking lots, accessible routes and classroom facilities. In addition, OCR interviewed the Complainant, the School Principal and the School's Section 504 Chairperson.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. §104.4(a), (b)(1)(i)-(iv) and (vii) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: (i) deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (iii) provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; (iv) provide different or separate aid, benefits, or services to person with disabilities or to any class of person with disabilities unless such action is necessary to provide qualified person with disabilities with aid, benefits, or services that are as effective as those provided to others; or (vii) otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The regulations implementing Section 504 at 34 C.F.R. §104.21, and Title II at 28 C.F.R. §35.149, state that no 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 to which Section 504 and Title II apply. The Section 504 and Title II regulations contain two standards for determining whether a District's programs, activities, and services are accessible to individuals with disabilities. One standard applies to existing facilities and the other covers new construction and alterations. The applicable standard depends upon the date of construction or alteration of the facility.

For existing facilities, the regulations require an educational institution 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. This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program, or activity. 34 C.F.R. §104.22(a); 28 C.F.R. §35.150(a). Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. The applicable date under the Title II regulation is January 26, 1992. In choosing among available methods for meeting the program access requirement for existing facilities, the institution is required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. 34 C.F.R. §104.22(b); 28 C.F.R. §35.150(b).

For new construction, the facility (or newly constructed part of the facility) must itself be readily accessible to and usable by persons with disabilities. 34 C.F.R. §104.23(a); 28 C.F.R. §35.151(a). With regard to alterations, each facility or part of a facility that is altered by, on behalf of, or for the use of an institution after the effective dates of the Section 504 and/or Title II regulation in a manner that affects or could affect the usability of the facility or part of the facility must, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities. 34 C.F.R. §104.23(b); 28 C.F.R. §35.151(b). For an entity covered by Section 504, new construction, and alterations after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, individuals with disabilities (ANSI). New construction and alterations between January 18, 1991, and January 26, 1992, must conform to Uniform Federal Accessibility Standards (UFAS). New construction and alterations after January 26, 1992, must conform to UFAS or the Americans with Disabilities Act Accessibility Guidelines (ADA Standards for Accessible Design) or equivalent standards. The regulation implementing Title II and the ADA Standards for Accessible Design were amended in September 2010. Title II adopted new accessibility standards, the 2010 ADA Standards for Accessible Design (2010 ADA Standards), which became effective March 15, 2011. Title II 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 [ADA] Standards.

During OCR's investigation, the District provided documentation showing the School was constructed in 1962. A permit was issued in 2002 for a campus-wide renovation, maintenance, repair, sitework and demolition project. However, District staff were not able to find any documents for an addition or alteration that occurred in 2002 to the present. The District represented that they only completed routine repairs since 2002.

Accordingly, OCR determined that the School is an "existing" facility as defined by Section 504. Therefore, OCR used ANSI 117.1-1961 to evaluate compliance with the standards at issue in this complaint. For existing facilities, each part of the program or activity, when viewed in its entirety, must be readily accessible and usable to individuals with disabilities.

A brief overview of the ANSI standards applicable to the issues in this complaint include the relevant provisions for parking, accessible routes and accessible entrances as follows:

ANSI - Parking lots (§ 4.3):

4.3.1 spaces that are accessible and approximate to the facility should be set aside and identified for use by individuals with physical disabilities.

4.3.2 a parking space open on one side allowing room for individuals in wheelchairs or individuals on braces and crutches to get in and out of an automobile onto a level surface, suitable for Wheeling and walking, is adequate.

4.3.3 parking spaces for individuals with physical disabilities when placed between 2 diagonal or head on parking spaces should be 12 feet wide

4.3.4 care in planning should be exercised so that individuals in wheelchairs and individuals using braces and crutches are not compelled to wheel or walk behind parked cars

4.3.5 consideration should be given their distribution of spaces for use by individuals with disabilities in accordance with the frequency and persistency of parking needs

4.3.6 walks shall be in conformity with 4.2.

In addition, ANSI § 5.3.1 states that doors shall have a clear opening of no less than 32 inches when open and shall be operable by one single effort.

Factual findings

During the 2022-2023 school year, the Student, who uses a wheelchair, was enrolled in the third grade at the School. The Complainant told OCR that on August 8, 2022, during orientation at the School, she provided the School Principal with a doctor's note regarding the Student's medical condition. The doctor's note states: "[the Student] is being followed for Juvenile Dermatomyositis. . . In addition, this student has rash and proximal weakness. She is immune compromised so is more susceptible to infection." A follow-up doctor's note dated August 9, 2022, states: "Please note that [the Student] may need to be transported via wheelchair on campus when her muscles are weak this year."

On Wednesday, August 10, 2022, the first day of school, the Complainant gave the School Principal the note regarding the Student's use of a wheelchair. The Complainant requested use of a manual wheelchair until the Student's customized power wheelchair arrived. The Complainant asserts that the Principal told her that the District only allows power wheelchairs. In addition, the Complainant stated that the Principal said the Student could attend school that day but could not use her manual wheelchair until they had a nurse to push the wheelchair for the Student. The Principal told OCR that the first day of school was the first time the Complainant raised the issue of the wheelchair. The Principal also told OCR that he advised the Complainant that they would need to train staff before the Student used the wheelchair at school.

The Complainant told OCR that the Principal called the District Coordinator for nursing staff (Nursing Coordinator). The Complainant talked to the Nursing Coordinator who asked her to fill out a Medically Fragile form to request the assignment of an aide. The Complainant stated the Nursing Coordinator said the Student could not begin school until the District secure an aide.

The Complainant told OCR that the Student did not want to miss the first day of school and decided to walk. The Complainant and the Principal confirmed that the Principal walked the Student to class that day. The Complainant explained that when the Student returned home from school, she complained of extreme pain and her ankles were red. She walked through school again on the next day, and afterwards complained that her ankles were inflamed.

The Complainant stated that on the following Monday there was still no aide available so she called the Principal and Nursing Coordinator, but they would not respond to her request for updates. The Complainant did not allow the Student to attend School from August 12 – 19, 2022 because the District did not assign an aide for the Student. The Student's attendance record shows excused absences on these days.

On August 18, 2022, the Complainant called the School Board to file a complaint because the School was not allowing the Student to use a manual wheelchair. The Deputy Director of Schools assured her that a nurse or aide would be in place by August 22, 2022. From August 22 through August 26, 2022, the District assigned an aide to assist the Student. A contract agency nurse was assigned to assist her on August 29, 2022.

On August 30, 2022, the District developed an Emergency Plan of Action (health care plan) that provided among other modifications, “wheelchair use as ordered, may transfer to chair as tolerated.”

In August 2022, the School held its first lockdown drill. During the drill, the Student’s class gathered in the restroom located inside the classroom. The Complainant asserted that during this first lockdown drill, the Student was directed to walk in a closet inside the classroom because the doorway to the restroom was not wide enough to accommodate the wheelchair. She stated she talked to the teacher about this, and the teacher told her that the next time there was a drill, the Student could either sit on the toilet or a milk crate. The District contended, however, that after the first lockdown drill, the Student walked into the restroom along with the rest of the class. Following the drill, the teacher called the Complainant to ask how she would like her to handle future lockdowns. According to the teacher, they decided to bring a chair into the restroom for the Student to sit on so she would not have to stand. The District followed this procedure for the second lockdown drill in September 2022.

The District provided OCR with photographs and measurements of the restroom in the Student’s classroom which reflects a clear opening width of 36 inches. *See* ANSI § 5.3.1

On September 1, 2022, the District determined the Student was eligible for a Section 504 Plan (Plan). The Plan included the following accommodations:

- Provide one-on-one adult assistance as needed for wheelchair navigation inside and outside the classroom.
- Student will not participate in physical education but will remain with her class during this time (allowing her to be in her wheelchair).
- Student will be provided a small chair in the restroom during lockdowns (drill or other) to sit on (classmates and teacher will also be in the restroom).
- Student will be evacuated with the class (during fire drills) and kept in the shade as much as possible.
- During tornado drills, the Student will be evacuated with the other children into the center hall outside the classroom in her wheelchair.

During the third lockdown drill in October 2022, the Student, using her wheelchair, accompanied her teacher, the nurse, and the rest of the class as they evacuated to the restroom.

The Complainant asserted to OCR that the School only has two designated accessible parking spaces and the first space in front of the Principal’s office is generally occupied. She stated that the second parking space is located behind the bus parking area across a grassy median from the cafeteria entrance. In order to access the School, the Complainant stated that she has to push the

Student's wheelchair across the grassy strip onto the driveway then up a curb cut to the entrance. The Complainant stated that there is no sidewalk from the parking space to the cafeteria entrance and also states that there is no automatic door opener.²

The District's Compliance Director told OCR that a second accessible parking space was added to the School's public parking lot in response to the Complainant's concerns that the existing space in front of the Principal's office was usually occupied.

The District provided aerial photos showing the employee parking lot on the side of the School which includes a total of 24 parking spaces and two designated accessible parking spaces. In the public parking area in front of the School, there are a total of 20 parking spaces which includes two designated accessible parking spaces. Both designated accessible parking spaces have an adjacent access aisle and are marked with signs showing the international symbol of accessibility.

Both designated accessible parking spaces are located across a grassy median. During the course of the investigation, the District also added a designated accessible route to provide access between the newly added designated accessible parking space in the public lot to the designated accessible entrances to the School.

In a follow-up interview with OCR, the Complainant told OCR that the Student's teacher was very hard on her and alleges that the teacher said to the Student, "you were walking then, why can't you walk now?" In response to the Complainant's request, the District assigned a different teacher for the Student. According to the Complainant, the Principal fired the Student's aide in January 2023 without explanation. Although the Complainant reported that the Student returned to the School and uses her custom wheelchair, she does not feel comfortable until she has a 1:1 aide again. The Complainant confirmed that she is satisfied with the District's response to her designated accessible parking concerns.

Referring to the Student's absences in August 2022, the Complainant told OCR that the Student's report card noted that the Student could improve her performance by attending school regularly. The *Attendance* section of the Student's report card for the first and second grading periods reflects that the Student was absent seven days in the first period and two days for the second. The report card also notes, "Your child's progress could be helped by:" [one of two options:] "Attending School Regularly" and "Getting to School on Time." The District placed an "X" as placed in the box for attending school regularly for the first grading period. As stated above, the Student's attendance record shows that the District excused the Student's absences in August 2022.

The Complainant told OCR that School's website does not include the name and contact information for the District's Section 504 coordinator. OCR reviewed the School's website which includes the 2022-2023 Student Code of Conduct handbook.³ The handbook references the District's notice of nondiscrimination and includes the name, title, and contact information of the person designated to handle inquiries regarding the District's nondiscrimination policies.

² The Federal accessibility standards do not require automatic door openers.

³ [Student Code of Conduct / Overview \(hillsboroughschools.org\)](https://www.hillsboroughschools.org) (Last accessed 8/27/2023)

Analysis

The evidence shows that the District delayed assigning a staff member to assist the Student with her wheelchair. As a result, the District's delay denied the Student the opportunity to access the programs, services and activities at the School in August 2022, in violation of Section 504 and Title II with respect to Issue 1.

During the course of the investigation, OCR also confirmed that the door to the restroom located inside the Student's classroom provides the minimum clear opening width consistent with ANSI. In addition, OCR reviewed documentation from the District that it provides two (2) designated accessible public parking spaces that comply with the requirements of ANSI. Accordingly, OCR found insufficient evidence that the District is in non-compliance with Section 504 and Title II with respect to Issue 2, as alleged.

Conclusion

On September 18, 2023, the District signed a resolution agreement (Agreement) that will resolve the issues identified during the course of its investigation. The Agreement requires the District to evaluate the Student for compensatory services and provide training to School faculty, staff and administrators on the requirements of Section 504 and Title II, to include the prohibition of different treatment and access for students with mobility disabilities. OCR will monitor the implementation of the Agreement until the District complies, in full, with the terms and the statute(s) and regulation(s) at issue in the complaint.

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 a right to file a lawsuit 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 any individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. 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, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about this letter, please contact Philip Weltner, Senior Attorney, at (202) 987-1891 or me, at (404) 974-9356.

Sincerely,

A handwritten signature in blue ink that reads "Wendy Gatlin". The signature is written in a cursive, flowing style.

Wendy Gatlin
Compliance Team Leader

Enclosure