



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

June 4, 2018

Via Mail and Facsimile (804) 796-7178

Donald R. Fairheart
Interim Superintendent
Chesterfield County Public Schools
P.O. Box 10
Chesterfield, Virginia 23832-0001

RE: OCR Complaint No. 11-18-1104
Resolution Letter

Dear Mr. Fairheart:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on XXX against Chesterfield County Public Schools (the District). The Complainant alleged that the District discriminated against a student (the Student) at XXX (the School) on the basis of disability since XXX by failing to repair a broken wheelchair lift XXX at the School.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. Following is a summary of the relevant legal standards and information obtained by OCR during the investigation.

Legal Standard

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 school district's programs or activities because the school district's facilities are inaccessible to or unusable by individuals with disabilities.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

Information Gathered During the Investigation

XXX PARAGRAPH REDACTED XXX

In the course of its investigation, OCR learned that the District replaced the Lift in XXX. The District provided OCR with an inspection certificate showing that the replacement lift was operational on XXX, as well as correspondence showing that appropriate training had occurred XXX.

OCR also reviewed internal correspondence among District personnel and contemporaneous documentation showing that the Lift had broken twice in XXX, and that the Lift was completely out of service by XXX.¹ The documents that OCR reviewed reflect efforts by District personnel to repair, and then replace the Lift, including efforts to order replacement parts, pursue a temporary ramp or replacement lift when it became clear that repair was not possible, and secure bids for a permanent replacement.

The Complainant alleges that the District did not inform her that the Lift was broken until XXX. Contemporaneous documentation indicates that between XXX and XXX, the District considered but may not have taken appropriate or timely measures to ensure that the Student was able to access XXX.²

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint on May 14, 2018.

¹ While the District's narrative states that the Lift was repaired following a malfunction on XXX, an additional work order dated XXX suggests that the Lift may not have been operational at that time.

² While the District ultimately XXX, that move did not occur until XXX, approximately XXX after the District became aware that the Lift was not operational.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on June 1, 2018, which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening 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 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, 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 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 in the resolution of this complaint. If you have any questions, please contact Kathyne Love, the OCR attorney assigned to this complaint, at 202-453-6948 or Kathyne.Love@ed.gov.

Sincerely,

David Hensel
Team Leader, Team III
District of Columbia Office
Office for Civil Rights

Enclosure

cc: XXX