



**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

July 14, 2023

By email only to RMaxey@horrycoutyschools.net

Superintendent Rick Maxey
Horry County Schools
335 Four Mile Road
P.O. Box 260005
Conway, South Carolina 29526

Re: OCR Case No. 11-23-1154
Horry County Schools

Dear Superintendent Maxey:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against Horry County Schools (the District). The Complainant alleged that the District discriminates against individuals with disabilities by failing to properly maintain and repair the elevator at XXXXX.

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 in programs and activities that receive 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 against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance. The District receives federal financial assistance from the Department and is a public entity, so OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents and information provided by you and the District. Based on all of the evidence obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 and Title II, which the District agreed to resolve through the enclosed resolution agreement. OCR's findings and conclusions are discussed below.

Legal Standards

The Section 504 and Title II regulations, at 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149 require school districts to ensure that their facilities are accessible to and usable by qualified persons with disabilities so that they are not excluded from a district's programs or activities. A school district must also maintain accessible features and equipment in operable working condition, though

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temporary or isolated interruptions or mechanical issues are acceptable if they do not persist beyond a reasonable period of time. 28 C.F.R. §35.133.

In addition, the Section 504 regulation, at 34 C.F.R. § 104.33(a), requires school districts to provide a free and appropriate public education (FAPE) to each qualified student with a disability who is in the school district's jurisdiction. 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. As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

The Section 504 regulation, at 34 C.F.R. § 104.34(a), requires a school district to educate a student with a disability with students without disabilities to the maximum extent appropriate to the needs of the student with a disability. A school district must place a student with a disability in the regular educational environment unless the district demonstrates that it cannot satisfactorily educate the student in the regular environment even with the use of supplementary aids and services.

Facts and Analysis

The Complainant alleged that, as a result of the District's purported failure to properly maintain and repair the elevator at XXXXX, two students were denied access to some of their Fall 2022 classes. The evidence submitted by the District includes documentation that the elevator was installed in 2006 and a February 8, 2023 statement from the XXXXX Principal in which she stated the following:

The elevator at XXXXX has not worked properly since the beginning of school. The first work order... was entered on 8/8/23, prior to the start of school. Additional work orders were entered through the fall.... Initially, staff was able to "reset" the elevator and it would function properly. In November, we were told the elevator had a power surge that made it inoperable.

Additionally, during a March 6, 2023 videoconference attended by District staff, the owner of the elevator company that services the District's elevators confirmed that the elevator was still out of service and would continue to be out of service beyond the end of the 2022-2023 school year (which, for students, is June 2, 2022). These statements and other evidence, including elevator repair records and work orders, establish that the XXXXX elevator was largely inoperable during the 2022-2023 school year, and that the service disruption was not a temporary or isolated interruption.

The Complainant provided information indicating that, during the 2022-2023 school year, there were two students with mobility-related disabilities (Students 1 and 2) who had classes on the second floor of the XXXXX during the Fall of 2022. Student 1, as a result of his disability, must use the elevator to access the second floor. In its February 14, 2023 narrative response to OCR, the District stated that:

Accommodations were afforded to [Student 1] while the elevator was inoperable. During the first semester of the 2022-23 school year, the student took the online XXXXX course in the media center located on the first floor of XXXXX. [Student 1] had access to the media specialist who is certified in XXXXX.

In a statement dated February 8, 2023, the XXXXX Principal confirmed that the District provided this accommodation.

However, the teacher of the XXXXX course provided OCR with a statement in which she asserted that the above accommodation was “not fair” to Student 1 because it resulted in him being isolated from the rest of the class and denied him the opportunity students in the class had to collaborate with other students. She added that the media specialist, whose duties did not include assisting Student 1, was not available to Student 1 in the media center because he was assisting the substitute teacher in the classroom while the teacher was on maternity leave for most of the Fall 2022 classes. Additionally, during a March 24, 2023 telephone interview by OCR staff, the XXXXX of Student 1 stated that she and Student 1 had requested that the XXXXX class be taught in a first floor classroom and that, over their objections, the Principal insisted on him attending class from the media center, as a result of which Student 1 “was having panic attacks.”

Student 2 was also not able to use the elevator during Fall 2022 classes. The District stated to OCR on February 24, 2023 that it accommodated her “by [her] being allowed to work in a downstairs location of the building at any time requested.” The XXXXX Principal provided the following additional details at that time.

We agreed that [Student 2] would come to me when she did not feel well going up and down the stairs. I would reach out to her XXXXX teacher, who was on the second floor, for [Student 2’s] work, which was typically digital, and [Student 2] would complete it in the media center. Additionally, I changed her advisory class to a teacher on the first floor to minimize her going upstairs as much as possible. [Student 2] and her XXXXX were satisfied with this arrangement.

During a March 24, 2023 interview of Student 2 and her XXXXX by OCR staff, they explained that Student 2 was unable to participate in class virtually through the use of the computer in the media center, and that they were not satisfied with this arrangement.

Based on the above discussion, OCR determined that the fact that the elevator was inoperable for most of the school year denied students with disabilities, including Students 1 and 2, access to District programs or activities. This also may have resulted in a denial of FAPE.

On July 13, 2023, the District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the identified violations. OCR will monitor the District’s implementation of the agreement until the District is in compliance with the terms of the agreement and the statutes and regulations at issue.

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. OCR would like to make you aware that individuals who file complaints with OCR 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 against the District 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, OCR 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact me at (202) 245-8014 or Dan.Greenspahn@ed.gov.

Sincerely,

Dan Greenspahn
Team Leader, Team 1
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Kenneth Generette, District Counsel