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

XXXX

Brent Williams
Superintendent
Lenoir County Public Schools
P.O. Box 729
Kinston, NC 28502-0729

Re: OCR Complaint No. 11-16-1462
Letter of Findings

Dear Mr. Williams:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX against Lenoir County Public Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of disability (XXXX). Specifically, the complaint alleged that:

1. The District discriminated against the Student based on disability:
   a. by failing to provide an accessible main entrance door to the School; and
   b. when it failed to provide the Student with XXXX, as required by his Individualized Education Program (IEP).

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.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District, and interviewed the Complainant.

After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegation 1a. Before OCR completed its investigation, the

District expressed a willingness to resolve Allegation 1b by taking the steps set out in the enclosed Resolution Agreement.

OCR's findings and conclusions are discussed below.

Allegation 1a: The District discriminated against the Student based on disability by failing to provide an accessible main entrance door to the School.

Background

The Complainant alleged that the main entrance to the School is not accessible XXXX.

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

The regulations implementing Section 504 and Title II each contain two standards for determining whether a District's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility. Under the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977; under the Title II regulation, existing facilities are those for which construction began prior to January 27, 1992. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under Section 504 and Title II standards.

For existing facilities, the Section 504 regulation, at 34 C.F.R. § 104.22, and the Title II regulation, at 28 C.F.R. § 35.150, require a District 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. The District may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities and services accessible to persons with disabilities. In choosing among available methods of meeting the requirements, a District must give priority to methods that offer programs, activities and services to persons with disabilities in the most integrated setting appropriate.

With respect to newly constructed facilities, the Section 504 regulation, at 34 C.F.R. § 104.23(a), and the Title II regulation, at 28 C.F.R. § 35.151(a), require that the District design and construct the facility, or part of the facility, in such a manner that it is readily accessible to and usable by individuals with disabilities. In addition, for new alterations that affect or could affect facility usability, the Section 504 regulation, at 34 C.F.R. § 104.23(b), and the Title II regulation, at 28

C.F.R. § 35.151(b), require that, to the maximum extent feasible, the District alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

The new construction provisions of the Section 504 and Title II regulations also set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulation, District had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or altered after January 26, 1992 and prior to September 15, 2010. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that District had a choice of complying with either UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards). The Title II regulation provides that District are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012. While the Section 504 regulations have not been amended to formally adopt the 2010 Standards, a district may use the 2010 Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, appendices B and D.

Analysis

As previously noted, the Complainant's allegation was limited to XXXX (i.e., the door was not sufficiently wide); the Complainant asserted that this was not accessible pursuant to Section 504 and the ADA. OCR determined that the groundbreaking for the School began in 2007 and construction was completed in 2009. According to the applicable ADAAG standards, a door opening "shall provide a clear width of 32 inches (815 mm) minimum." The District provided photographic evidence documenting that the front door of the School has a width of at least 32 inches. Accordingly, OCR found insufficient evidence to conclude that the District failed to provide an accessible main entrance door to the School, and it will take no further action with respect to Allegation 1a.

Allegation 1b: The District discriminated against the Student based on disability when it failed to provide the Student with XXXX, as required by his Individualized Education Program (IEP).

Background

During the XXXX school year, the Student was a XXXX student in the District who received special education services XXXX pursuant to his IEP for XXXX. XXXX SENTENCE REDACTED XXXX. At an IEP meeting on XXXX, the IEP Team determined that the Student would continue to receive XXXX special education services as XXXX for the XXXX school

year. Specifically, the IEP, with a start date of XXXX, required that the Student receive the following services XXXX: XXXX SENTENCE REDACTED XXXX.

At an IEP meeting on XXXX, the IEP Team determined that the Student would no longer receive XXXX services, but instead would receive special educations services XXXX. This change was reflected in an IEP dated XXXX.

Legal Standard

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.

Analysis

The Complainant alleged that in XXXX, the District held a meeting at the School and that after the meeting, the Student started XXXX services stopped, although the services in the Student's IEP were not changed.

The Director of Exceptional Children's Services (the Director) emailed the Complainant on XXXX acknowledging that the Student was entitled to compensatory services for XXXX and XXXX sessions. She indicated that the XXXX would each provide XXXX hours of compensatory services to the Student. She informed the Complainant of the following schedule for the delivery of services: XXXX. The Complainant alleged that the Student could not handle the schedule proposed by the Director.

As stated above, prior to the end of OCR's investigation of Allegation 1b, the District expressed a willingness to resolve the allegation by taking the steps set out in the enclosed Resolution Agreement.

Conclusion

On April 19, 2018, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the District's implementation of the Agreement to ensure that

the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into the by the District on April 19, 2018, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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 regarding this letter, please contact Jennifer Barmon, the OCR attorney assigned to this complaint, at 202-453-6751 or Jennifer.barmon@ed.gov, or Tracey Solomon, the OCR investigator assigned to this complaint, at (202) 453-5930 or Tracey.Solomon@ed.gov.

Sincerely,

/s/

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

Enclosure

cc: Carolyn Walker and Gretchen Cleevely, Tharrington Smith, L.L.P.