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3 Summit Park Drive, Suite 400  
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Re: OCR Docket #15-07-1225

Dear Messrs. Hirt and Peters:

This letter is to notify you of the disposition of the above-referenced complaint filed against the Parma City School District (the District), which the U.S. Department of Education (Department), Office for Civil Rights (OCR), received on August 14, 2007, and which alleged discrimination on the basis of disability. Specifically, the complaint alleged that:

1. The District's website was not accessible to persons with disabilities.
2. Students with disabilities at Pleasant Valley Elementary School were provided with emergency-related services that were different from, and not as effective as, those provided to students without disabilities.
3. Specific elements of thirteen of the District's schools and facilities were inaccessible to persons with disabilities. (These specific allegations are described in the accessibility section of this letter).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing 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. Title II prohibits discrimination on the basis of disability

by public entities. As a recipient of Federal financial assistance from the Department and as a public school system, the District is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following issues:

- Whether the District is affording qualified persons with disabilities an opportunity to participate in and benefit from the District's website and emergency-related services that is not equal to or as effective as that afforded others in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4(b) and the Title II implementing regulation at 28 C.F.R. § 35.130(b).
- Whether qualified persons with disabilities are, because the District's facilities are inaccessible to or unusable by persons with disabilities, denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any District program or activity in violation of 34 C.F.R. §§ 104.21-23 and 28 C.F.R. §§ 35.149-151.

### **Summary of Findings**

During the course of its investigation, OCR found that: the District's website is inaccessible to persons with disabilities because it is generally unusable by people who use assistive technology, such as screen readers; the District treats persons with disabilities differently with regard to emergency procedures at Pleasant Valley Elementary School by (1) failing to include them in fire and other emergency evacuation drills; (2) not providing appropriate signage and two-way communication devices in the area of refuge; and (3) not providing equivalent procedures for assisting them to safety in emergencies as those provided to other students; and some elements of the District's facilities alleged to be inaccessible were inaccessible to or unusable by persons with disabilities. OCR also found that some of the accessibility allegations were moot because the District had closed the facilities at issue. In addition, OCR found that some portions of the facilities that the Complainant alleged to be inaccessible met the applicable accessibility requirements. OCR further found that the District has already taken actions to bring some of the facilities found not to be in compliance with the applicable accessibility standards into compliance, and the District entered into the enclosed Commitment to Resolve to address the remaining non-compliance findings. The bases for OCR's findings are explained in detail below.

## Website Allegation

- **Applicable Regulatory Standards**

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(b)(1)(ii), prohibits a recipient from affording a qualified individual with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others. The regulation, at 34 C.F.R. § 104.4(b)(1)(iii), further requires a recipient to provide students with disabilities with aids, benefits and services that are as effective as those provided to students without disabilities. The regulation, at 34 C.F.R. § 104.4(b)(1)(iv), also provides that recipients may not on the basis of disability provide different aids, benefits or services to students with disabilities except when necessary to provide such students with aids, benefits or services that are as effective as those provided to others. The Title II implementing regulation contains similar requirements at 28 C.F.R. § 35.130(b)(1)( ii-iv).

At the commencement of the investigation, the Title II regulation, at 28 C.F.R. § 35.160, provided:

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

On March 15, 2011, a revised version of 28 C.F.R. § 35.160 took effect. The current regulation adds “companions” with disabilities to the list of protected individuals, defining “companion” as a family member, friend, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate. The revised regulation provision also provides more specific detail regarding ensuring effective communication (changes emphasized in bold below):

(2) **The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.** In determining what types of auxiliary aids and services are necessary, a public entity shall give primary

consideration to the requests of individuals with disabilities. **In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.**

The U.S. Department of Justice has instructed that covered entities under the Americans with Disabilities Act (ADA) are required to provide effective communication, regardless of whether they generally communicate through print media, audio media, or computerized media such as the Internet. Covered entities that use the Internet for communications regarding their programs, goods or services must be prepared to offer those communications through accessible means as well. Title II requires that programs and services offered by state and local governments, including public educational settings, be accessible to individuals with disabilities unless creating such access causes a fundamental alteration or undue burden.

OCR has repeatedly held that the term “communication” in this context refers to the transfer of information, including but not limited to the verbal presentation of a lecturer, the printed text of a book, and the resources of the Internet. In analyzing whether communication with a person with a disability is as effective as that provided to nondisabled persons, OCR considers the timeliness of delivery, accuracy of translation, and provision of the communication in a manner and medium appropriate to the significance of the message and the abilities of the individual with a disability. Therefore, all school programs or activities — whether in a “brick and mortar,” online, or other “virtual” context — must be operated in a manner that complies with Federal disability discrimination laws. It is not sufficient to merely provide access to individuals with disabilities; the communication must actually be as effective as that provided to others.

OCR’s long-standing nondiscrimination requirements mean that schools must provide the technology that they use to provide educational benefits, services, or opportunities in a manner that is fully accessible to students who have disabilities; otherwise, schools must provide accommodations or modifications to ensure that the benefits of their educational program are provided to these students in an equally effective and equally integrated manner. Students with vision impairments must be afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students. In addition, although this might not result in identical ease of use compared to that of students without disabilities, the school still must ensure equal access to the educational benefits and opportunities afforded by the technology and equal treatment in the use of such technology.

To determine if a program, service, or activity delivered online or through a website provides equal access to persons with disabilities, OCR considers such factors as whether persons with disabilities have the same ease of use, ready access, completeness of information, functionality, and timeliness of response.

Although OCR does not enforce Section 508 of the Rehabilitation Act, which requires Federal agencies to make their electronic and information technology accessible to people with disabilities, Section 508, the World Wide Web consortium (W3C), or other standards recognized by experts in the field may be used to demonstrate Section 504 compliance. As most of the Section 508 standards relate to those individuals who have visual impairments, effective testing with a screen reader, coupled with the code examination or site examination for the non-screen reader-related standards, can help to ensure that any website complies with Section 508. The Section 508 regulation, which applies to web-based intranet and Internet information and applications, is set forth at 36 C.F.R. § 1194.22. Additional requirements that may apply if there are software applications associated with the website are set forth at 36 C.F.R. § 1194.21.

- **Summary of OCR's Investigation**

During its investigation of this allegation, OCR interviewed the Complainant and reviewed documents provided by the Complainant and the District. In addition, OCR provided the Complainant with the opportunity to respond to the information provided by the District.

According to the Complainant, a report from a company named Truwex, which monitors web accessibility, stated that the District's website was not compatible with current assistive technology. The District asserted to OCR that a Truwex report in April 2008 had found no errors in the District's website and that the website was Section 508 compliant. The District provided a chart comparing the Truwex analysis of its website with that of other public websites, but did not provide a copy of the actual report. The chart indicated that the District's website had zero Section 508 issues, one "WCAG1 priority 1" issue, and four "WCAG1 priority 2 issues", but provided no details. The District provided a second data response about its website, which included the same information as the first report and also showed that another Truwex analysis of the District's website was performed in February 2009. The District's summary chart of the second analysis indicated it had found zero Section 508 issues, one WCAG1 priority 1 issue, and five WCAG1 priority 2 issues. For the February 2009 analysis, the District provided a three-page "Compliance summary" that showed that the District's website "Failed" in the category of "Accessibility." The summary stated that the District's website rated "Ok" in Section 508, with 4 warnings, and "Failed" for WCAG1 priorities 1 and 2, with a total of 6 issues and 19 warnings. The summary showed that these warnings and issues appeared in a total of 354 instances on the website. Although OCR gave the Complainant multiple opportunities to respond to the information provided by the District, the Complainant did not provide additional information to support her position.

On February 8, 2012, the U.S. Department of Education's assistive technology testing engineer (engineer) performed an assessment of a representative sampling from the District's website, which OCR staff observed. At OCR's request, the sampling included website pages addressing the areas of special education, discipline, curriculum, student academic progress, the school calendar, teacher contact information, enrollment, and the

student handbook. Based on this sampling of the site, the engineer found the site to be noncompliant with Section 508. The engineer also explained that products such as Truwex or A-Checker are best used as guides, but are not sufficient to test for accessibility without verification by an individual knowledgeable about Section 508 compliance. As testing tools, the engineer used Web Accessibility Toolbar, Internet Explorer 7, JAWS 11.0.1476, and ZoomText 9.1. The testing was conducted as a cursory review of the District's website to ascertain major accessibility issues with a concentration on the aforementioned areas. The engineer's findings were that the District's website was generally unusable by people who use assistive technology. The application was also not usable by people who rely on a keyboard to navigate applications. There were many controls that were not operable unless the user could use a mouse. This results in the inability of the keyboard-only user to successfully navigate the website. Additionally, the .pdf-format documents that were linked from the website, many of which contain vital information such as the District's handbook and information about curriculum and discipline, had not been made accessible and were therefore not available to assistive technology users. Some parts of the site, particularly those dealing with student academic progress and contacting teachers, required unique user logins and could not be reviewed during this test.

As an example of a component of the District's website that was inaccessible, the school calendar was missing alternate text. The table of the calendar was not correctly structured and used incorrect syntax. According to the engineer, the purpose of data tables is to present information in a grid, or matrix, and to have column or rows that show the relationship of the information in the grid. When screen readers read straight through data tables—especially large ones—it is easy for users to get lost. In order for a data table to be accessible, it must have the proper markup in the HTML. When the proper HTML markup is in place, users of screen readers can navigate through data tables one cell at a time, and they will hear the column and row headers spoken to them. In addition to missing alternate text, the school calendar used blank images as spacers so that nothing would tell a screen reader to overlook the images.

On the home page, there were 24 images without alternate text. Additionally, in some instances, the alternate text provided could not be properly read by a screen reader. Also, the spacers lacked alternate text for a screen reader to read the image. Additionally, the ads on the home page were not accessible. The frames and tables on the page were also poorly designed. Under the "Transport/Bus" tab, there were images that said "no alt", which would cause the screen reader to read the filename, rather than provide meaningful information for the user. In some instances, the alternate text on the image was not descriptive as, for example, "bsktbl" instead of "basketball", again causing the screen reader to provide meaningless information to the user.

The special education webpage also failed because 16 images were without alternate text. Also, there were many inaccessible .pdf files, including the special education newsletters. The discipline, handbook, and curriculum sections similarly consisted of or included .pdf files that were not accessible.

The form fields on the District's website were another example. According to the engineer, the accessibility focus with forms is on whether or not users with disabilities can determine the purpose of a specific form control and interact with it. When forms are not coded correctly, a person with a disability will not have access to the information and instructions, form elements, and cues that are necessary to fill out and submit the form. For example, screen readers try to guess which text corresponds to the on-screen prompt for a given control when HTML code is missing that programmatically associates the label with the form control. Sometimes assistive technology guesses incorrectly, so programmatically associating the label and form controls through HTML code eliminates the guesswork and ensures the proper label is identified with the form field so a person with a disability is able to fill out the form. The engineer noted that no label, fieldset, and legend elements were found on the District's website forms.

- **Analysis and Conclusion**

Although the District asserted that its website is accessible to persons with disabilities, its own data response showed that its scan of its website had concluded that it failed in the area of accessibility. In addition, OCR's February 2012 assessment of the website established that it was not usable to persons with disabilities who rely on assistive technology, such as screen readers, or who can only use a keyboard and not a mouse, as detailed above. Based on this information, OCR found that the District has failed to afford qualified persons with disabilities an equal opportunity to participate in and benefit from the District's website, in violation of 34 C.F.R. § 104.4(b) and 28 C.F.R. § 35.130(b), and failed to communicate with persons with disabilities in as effective a manner as it communicates with other persons, in violation of 28 C.F.R. § 35.160.

### **Emergency-related Services Allegation**

- **Applicable Regulatory Standards**

As explained above, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(iii), requires a recipient to provide students with disabilities with aids, benefits and services that are as effective as those provided to students without disabilities. The Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(iv) provides that recipients may not on the basis of disability provide different aids, benefits or services to students with disabilities except when necessary to provide such students with aids, benefits or services that are as effective as those provided to others. The Title II regulation includes similar provisions at 28 C.F.R. § 35.130(b)(1)(iii) and (iv).

Under Section 504 and Title II, a school district must ensure that students with disabilities have an equal opportunity to benefit from services provided to others, such as emergency evacuation procedures, and cannot provide different services unless necessary to provide students with disabilities with services that are as effective as those provided to others. Public school districts must also make reasonable modifications in policies, practices or procedures when such modifications are necessary to avoid discrimination on

the basis of disability, unless they can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7). OCR has held that an emergency evacuation is an aid, benefit, or service provided by a recipient, and, as such, pursuant to Section 504, students with disabilities must be provided with an evacuation plan that is as effective as the plan provided to students without disabilities.

During the investigation, the District indicated that it uses the ADA accessibility design standards in providing accessibility at its facilities. The 1991 ADA Standards for Accessible Design (1991 ADA Standards), which were in effect at the outset of this investigation, at Sections 4.1.3(9) and 4.3.11.1 to 4.3.11.5, provided direction on areas of refuge or rescue assistance, including location and construction, compliance with local requirements for smoke-proofing and fire resistance, size, stairway width, two-way communication, and signage. Under the 1991 ADA Standards, areas of rescue assistance (safe areas in which to await help in an emergency) were generally required on each level of a multi-story building for new construction, and not required in buildings or facilities having a supervised automatic sprinkler system. Areas of rescue assistance were also required to include a method of two-way communication, with both visible and audible signals, with the primary entry or other area approved by a local authority, and to be identified by a sign. Inaccessible exits and other locations as necessary were required to include signage clearly indicating the direction to areas of rescue assistance. An accessible egress route or an area of rescue assistance was required for each exit required by the local fire code.

The 2010 ADA Standards, which took effect March 15, 2012, also include provisions on accessible means of egress for new construction, incorporating the scoping and technical requirements of the International Building Code (IBC). These requirements allow exit stairways and evacuation elevators to be used as an accessible means of egress in conjunction with areas of refuge or horizontal exits. The 2010 ADA Standards are similar in many respects to the 1991 ADA Standards in this area; for example, the 2010 ADA Standards continue to exempt buildings with supervised automatic sprinkler systems and alterations to existing facilities from providing an accessible means of egress. They also address signage regarding means of egress. See Appendix B to Part 36: Analysis and Commentary on the 2010 ADA Standards for Accessible Design.

- **Summary of OCR's Investigation**

During its investigation of this allegation, OCR interviewed the Complainant and reviewed documents provided by the Complainant and the District. OCR also conducted an onsite visit to Pleasant Valley Elementary School (Pleasant Valley) and interviewed District staff.

The Complainant alleged that students with disabilities at Pleasant Valley are provided with emergency-related services that are different from, and not as effective as, those provided to students without disabilities. She asserted that most of the District's students with disabilities in the elementary grade levels attend Pleasant Valley. In particular, the



Complainant alleged that there are no identifiable postings indicating how fire drills will be conducted for students with mobility impairments, including students who use wheelchairs. The Complainant stated that the students using wheelchairs who are on the second story of the building during drills are not evacuated. She said she had spoken with the local fire inspector, who she said advised her that the District's emergency evacuation plans, which were written by the District without the fire department's involvement, called for children with disabilities to be left in the building stairwells, but that the firemen would know where they were located. However, the Complainant said that the District's handbook states that the children are to be evacuated and that there is a classroom sign about evacuation. She said that the fire department did not have fire drills during which they practiced evacuating students with disabilities. She said that the fire inspector did not have a list of names of students who would need to be evacuated from the stairwells and said that the school staff made that decision.

During interviews in July 2010, the District's staff informed OCR that, as of the 2009-2010 school year, Pleasant Valley had a total enrollment of between 580 and 600 students, over 100 of whom were students with disabilities. Approximately 50-60 students had disabilities that would necessitate assistance in the case of an emergency evacuation. Of these students, approximately 20-30 students had mobility impairments; all of these students used wheelchairs, except for one who used a walker. An additional 25-30 students had developmental disabilities that would cause them to require assistance in an emergency evacuation. The District staff also stated that there is no sprinkler system in the building.

OCR was informed that there are evacuation procedures in place for Pleasant Valley that included the handbook with the procedures being reviewed with staff at the beginning of each school year. In addition, the school has all the evacuation procedures posted and each teacher is expected to walk (practice) the exit plan with the students.

District and school staff told OCR that there are a total of eight exits on the first floor, seven of which are accessible exits and one in the third-grade wing that is not accessible; however, students with mobility impairments exit from the second-grade wing. There is a wing of the building that they call the "new wing" but that actually was reopened after a period of non-use. The "new wing" only has a first floor and is used for the first grade, a day care, and four special education classes. There is an accessible exit at the end of the hall where the four special education classes are clustered.

During an onsite visit, OCR staff observed that Pleasant Valley is a two-story building. District staff stated that most students with mobility impairments enrolled at the school are assigned to classrooms on the first floor. In an emergency, these students would exit from the south entrance. Students on the first floor all exit doors to the parking lot. The students in the physical therapy and occupational therapy rooms on the first floor exit from the north doors by the cafeteria, which has a ramped exit. The east end exit by Room 7 is also ramped, as is the door by Rooms 109 and 110.

There is one area of refuge (called a “rescue room”) on the second floor. It is a room blocked off near to the library with an adjacent staircase leading down to an outside door. The local fire department is to get students from this area of refuge in the event of an emergency. The District staff did not know the capacity of the room. Illuminated exit signs are posted by doors designating which doors can be used to escape the building. However, there is no signage indicating the area of refuge for students with mobility impairments on the second floor.

The school does not have a designated communication device in the area of refuge but the staff person accompanying the child can use his/her cell phone (some of the special education teachers who are assigned to work with the higher needs students have cell phones provided by the District) and there are walkie-talkies upstairs in the classroom closest to the library and in the office to receive communications. There are a total of approximately six walkie-talkies. The policy is that whoever is with students needing assistance because of a disability is in charge of taking them to the area of refuge and securing a communication device. One of the schools administrators noted that most of the special education classrooms in the building have wall phones that can call the office but are unable to call outside lines. She stated that a minimum of two classrooms on the second floor have the wall phones that can call the office.

The District provided the following additional information about each type of emergency procedure at the school:

- Fire Drills

The District provided a copy of a Fire Safety Inspection Report prepared by inspectors from the Parma Fire Department, dated September 17, 2007. It concluded that the staff of Pleasant Valley were conducting fire drills per the Ohio Revised Code and were instructing students in the proper evacuation procedures and areas to go to wait for assistance.

OCR also reviewed the District’s Fire Drill/Disaster Evacuation Plan, which provides that students using wheelchairs should report to the building’s Media Center stairwell (the area of refuge) accompanied by a designated adult, where firemen will report first to lift them to safety. The plan does not provide for actual live drills in which students with mobility impairments on the second floor are evacuated from the building by the fire department. In addition, the plan does not address who is responsible for obtaining a two-way communication device, maintaining contact from the area of refuge, and reporting attendance from that site.

- Tornado Drills

The Tornado Drill Procedures for the school direct students to designated areas based on the locations of their classrooms and advise staff to “Make special provisions for assisting any handicapped students. Elevators may be used.” There is no information about what those special provisions should entail or what action to take if the elevators

are not working. There are also provisions for students to crouch with their heads to their knees or to lie down on the floor under a desk or heavy furniture, but no instructions are provided for the safety of students who are unable to perform those movements. School administrators said that on the second floor students with mobility impairments and two other classes report to the area of refuge. They are instructed to sit on the ground and on the stairs. All students are instructed not to go to the hallway that is going west to east in the building during a tornado drill.

- Lockdown Procedures

The Pleasant Valley Emergency Procedure Alert provides for a Medical Emergency Search (Level One Lockdown) and an Intruder in the Building (Level Two Lockdown & Take Cover). The instructions for both lockdown provisions include placing persons using a wheelchair in his/her wheelchair, but do not address what happens next. In a level two lockdown, during which students are supposed to take cover, there is no provision for a person using a wheelchair to take cover.

- **Analysis and Conclusion**

The evidence obtained by OCR shows that the school does not have equivalent emergency procedures for students with disabilities as those provided for other students. The school's written procedures and its actual practices do not address the assignment of staff to stay with students with disabilities in an actual emergency, do not provide for simulated fire drills in which students with disabilities are actually evacuated, do not specifically require the taking of attendance in an emergency for students with disabilities needing rescue assistance, do not provide for specific lockdown procedures for students who use wheelchairs, do not include specifically assigned locations for students with disabilities in the event of a tornado, and do not provide instructions for students' safety in the event they are unable to get into the crouching or prone positions set forth in the plan for other students. The school also does not provide signage designating the area of refuge, or adequately provide for two-way communication between the area of refuge and responders. Based on the above, OCR finds that the District does not provide students with disabilities emergency-related services as effective as those provided to students without disabilities, in violation of 34 C.F.R. § 104.4(b) and 28 C.F.R. § 35.130(b).

### **Accessibility Allegations**

- **Background**

The Complainant alleged that the following specific aspects of 13 of the District's schools and facilities were inaccessible to persons with mobility impairments:

- **Byer's Field:** there is no designated disability parking or signage; the surface of the parking lot consists of stone and gravel and is not firm, stable, and slip-resistant; the routes from parking to the stadium, to visitor seating, to locker rooms, and to the field are not accessible due to uneven

concrete surfaces; there is no wheelchair accessible seating in the bleachers on either the home or visitor side; the counters in the ticket booth and concession areas are too high; and in the renovated restrooms, doors exceed the permissible force to open.

- **Administration Building:** the exterior automatic doors are not accessible to and usable by persons with disabilities; the interior doors to the right of the main entrance exceed the maximum weight to open; and a door to a restroom reached through doors to the right of the main entrance is too narrow to allow wheelchair access.
- **Parma Park Elementary:** there are no designated disability parking or signage; there is no signage identifying the accessible route to an accessible entrance; and the playground and equipment are not accessible due to a barrier surrounding the playground, the height of the equipment, and the mulch surface.
- **Dag Hammarskjöld Elementary:** the designated disability parking is inaccessible due to the slope of the surface; an accessible door is not identified by signage; and the playgrounds and equipment are not accessible due to inappropriately steep access routes, the height of the equipment, and the mulch surfaces.
- **Thoreau Park Elementary:** there are too few disability parking spaces in two parking lots; the disability parking space is not located on the shortest possible route to an accessible entrance; and the playground and equipment are not accessible due to an inappropriately steep access route, a barrier surrounding the playground, and the height of the equipment.
- **Pleasant Valley Elementary:** the accessible entrance is not identified by signage.
- **Dentzler Elementary:** there are too few disability parking spaces and the spaces lack necessary signage; no signage identifies the accessible route to an accessible entrance; the outside picnic tables do not provide accessible seating for persons using wheelchairs and are not located on an accessible route; the playground and equipment are not accessible due to a barrier surrounding the playground, the height of the equipment, and the mulch surface; the portable toilet facilities have doors too narrow to permit wheelchair access; and the route to the baseball field is inaccessible due to its grassy surface.

- **Green Valley Elementary:** the playground and equipment are not accessible due to a barrier surrounding the playground, the height of the equipment, the mulch surface, and the inaccessible route to the playground; no signage identifies an accessible entrance; and the “Project Peace” garden is not accessible due to pathways that are composed of dirt and too narrow for persons in wheelchairs.
- **State Road Elementary:** there is inadequate disability parking due to improper disability signage on spaces and an inaccessible curb in front of the building’s entrance; no signage identifies the accessible route to an accessible entrance; there is no accessible entrance to the building; and the playground and equipment are not accessible due to the inaccessible route to the playground (grassy surface) and a barrier surrounding the playground.
- **John Muir Elementary:** there are too few disability parking spaces and the spaces lack necessary signage; no signage identifies the accessible route to an accessible entrance; and the playground and equipment are not accessible due to a barrier surrounding the playground, the height of the equipment, and the mulch surface.
- **Parma Senior High School:** the disability parking by the West 54<sup>th</sup> Street entrance is not located on the shortest possible route to an accessible entrance, nor is there signage identifying the accessible route to an accessible entrance; the route to the athletic field is not accessible due to width of the entrance and route and the route’s turnings; and there is no wheelchair accessible seating in the auditorium.
- **Normandy High School:** the athletic fields are inaccessible due to the lack of accessible route (grassy surface and slope); there is no wheelchair accessible seating at the athletic fields; no signage identifies an accessible entrance; the disability parking is not adequate due to too few disability parking spaces and curb cuts not flush with sidewalks; the route from parking to the accessible entrance is not accessible due to uneven surfaces; and the daycare center playground is inaccessible due to inappropriately steep access routes and the narrowness of the fenced entrance.
- **Valley Forge High School:** no signage identifies the accessible route to an accessible entrance; the routes to the athletic fields are not accessible due to inappropriate surfaces; and the athletic fields are inaccessible due to the narrowness of the fenced entrance.

After OCR opened this complaint for investigation, the District informed OCR that it had closed two of the schools that the Complainant alleged as being inaccessible -- Dag Hammarskjöld Elementary and State Road Elementary. In addition, the District informed OCR that it closed the daycare center at Normandy High School. OCR's Case Processing Manual provides that OCR may close complaint allegations that are moot when there are no current allegations appropriate for further investigation and resolution; there are no class-wide allegations; and there is no need for the recipient to change its policies or procedures in order to protect against a future violation. OCR has determined that the specific allegations regarding these facilities that have been closed have been rendered moot since the facilities are no longer being used. Therefore, OCR is closing these allegations effective the date of this letter.

During its investigation of the remaining accessibility allegations, OCR reviewed data and information submitted by the Complainant and the District. In addition, OCR conducted onsite inspections at the facilities on August 5 and October 24, 2008, July 7, 2010, and August 1, 2012.

- **Applicable Regulatory Standards**

The Section 504 regulation at 34 C.F.R. § 104.21 provides that no qualified 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 applies. The Title II regulation contains a similar provision for public entities at 28 C.F.R. § 35.149.

The Section 504 and Title II regulations reference standards for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities, depending upon whether the facilities are determined to be existing, new construction, or 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). Section 504 also requires a recipient to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities in existing construction that are accessible to and usable by persons with disabilities. 34 C.F.R. § 104.22(f).

For support facilities for a program in an existing facility being viewed in its entirety, such as restrooms and parking spaces, it should be determined whether sufficient numbers exist that are reasonably convenient, usable in inclement weather, and appropriate to the use of the facility, with the focus being on whether access to the program is unreasonably limited by the lack of accessible support facilities.

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, the Physically Handicapped (ANSI). New construction and alterations between January 18, 1991, and January 26, 1992, must conform to the Uniform Federal Accessibility Standards (UFAS). New construction and alterations after January 26, 1992, but prior to March 15, 2012, must conform to UFAS or the 1991 Americans with Disabilities Act Standards for Accessible Design (the 1991 ADA Standards) or equivalent standards. The Department of Justice published revised regulations for Titles II of the ADA on September 15, 2010. These regulations adopted revised, enforceable accessibility standards called the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards). The 2010 ADA Standards went into effect on March 15, 2012, although entities had the option of using them prior to their effective date.

In reviewing program access for an existing facility, the ADA Standards or UFAS may also be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service. The District indicated to OCR that it uses the ADA Standards. The specific applicable 1991 ADA Standards requirements are interspersed with OCR's onsite data in the investigation summary below.

The Title II regulation at 28 C.F.R. § 35.133 further provides that a public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible and usable by persons with disabilities. This section of the regulation does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs, however, allowing equipment to remain out of service beyond a reasonable period of time is not permissible.

- Program Accessibility at Existing Assembly Areas

Program access requires wheelchair seating locations to be dispersed throughout all seating areas and to provide a choice of admission prices and views comparable to those for the general public. The term “integration” is used to describe the relationship of wheelchair spaces with other seats on the same row as well as with seats in the row in front or behind. Dispersal should be vertical and horizontal, as well as among the various kinds of seating accommodations available to patrons attending events at the facility. Where a recipient has only one, existing construction facility large enough to hold athletic events or performances, and therefore the recipient cannot relocate such programs for persons with disabilities, the facility must be rendered, when viewed in its entirety, accessible. Further, in addressing whether programs at an existing stadium are, in their entirety, readily accessible to and usable by persons with disabilities in an integrated manner, OCR will look at access to both home and visitor seating.

- Playground Accessibility

A playground meets the definition of a “facility” under the Section 504 and Title II regulations. A playground facility is comprised of the structure or equipment installed to provide play activities and the route into and around the playground area, as well as the surface surrounding the structure or equipment. Playgrounds that are subject to the new construction provisions of the Section 504 and Title II regulations must be designed and constructed to be readily accessible and usable by individuals with disabilities.

Until recently, there were no Federally-adopted accessibility design standards that carried the authority of a regulation and specified their application to the unique features of play areas. The U.S. Architectural and Transportation Barriers Compliance Board (Access Board) issued its Final Accessibility Guidelines for Play Areas (Guidelines) in 2000. In 2004, the Access Board issued a revised version of the ADA Standards for Accessible Design that included Guidelines (known as the 2004 ADAAG; see 75 F.R. 56177, September 15, 2010). In September 2010, the U.S. Department of Justice released the 2010 ADA Standards, which as explained above took effect March 15, 2012. The 2010 ADA Standards include specific requirements for play areas.



Prior to the adoption of the 2010 ADA Standards, OCR's practice had been to consider the 2004 ADAAG (including the guidelines for play areas) as guidance in assessing the accessibility and usability of playground facilities. If a school district chose to use ADAAG in designing a playground facility, OCR evaluated compliance with Section 504 and Title II by assessing whether the district adhered to those standards. However, if a school district did not use ADAAG, OCR had been evaluating compliance by considering whether the range of activities in the playground facility that was accessible to students with disabilities was equivalent to the range offered to students without disabilities. Not every component or element of a playground structure needed to be accessible. However, where components provided different types of play experiences, such as rocking, swinging, climbing, spinning, or sliding, at least one of each type of activity had to be accessible to children with disabilities.

Therefore, in reaching its determination regarding the accessibility of playground facilities with respect to this case, using the standards that were in effect at the time of the complaint and investigation, OCR analyzed whether there was an accessible route leading to and through the playground which was firm, stable, and slip-resistant; whether there was a sufficient range of play structure activities within the playground that is accessible to and usable by individuals with disabilities; and whether there was accessible surfacing beneath accessible play equipment that was firm, stable, slip-resistant, and resilient.

- **Summary of OCR's Investigation, Analysis and Conclusions**

- Byer's Field

The District stated that Byer's Field is the second largest stadium in the county and is the District's athletic stadium used for all varsity field sports, such as varsity and junior varsity (JV) football, track and field, and soccer. Byer's Field is also used by St. Ignatius High School (a private boys' school) for five home football games each year, and it is one of the major fields for area high school play-off games and divisional tournaments because of its capacity. The District stated that there is one admission fee for all events and all seating in the stadium is general seating. Byer's Field was originally constructed in 1935 with portions of it having undergone renovations over the years. The Day Drive ticket booth, which is the main gate ticket booth, was constructed in 1993, and the Ridge Road ticket booth was constructed in 2001. The District stated that the concession stands under the home-side bleachers were constructed in 1935 and have had no major renovations. There are two additional concession stands by the Day Drive gate; one was constructed in 1962 and had no major renovations, and the other was constructed in 1993. The District said it renovated the home-side bleachers in 2005 by removing the wooden board seating and replacing them with aluminum seating, however, it has not renovated the visitor bleachers. The District said the restrooms under the grandstand were renovated in 2007.

During OCR's onsite inspections OCR staff observed that the stadium has two parking lots, one on the south side of the stadium accessed off Day Drive, and one on the east side accessed off of Ridge Road. The Day Drive parking lot is the larger of the two lots and is considered the main parking lot. Its surface is primarily very old asphalt that is uneven and pitted with some areas that are covered with loose small-stone gravel. The parking lot is not lined and District staff could not recall or find any records of when it was last paved. District staff was also unable to provide any information on the number of parking spaces in the Day Drive lot. The District stated that the Ridge Road parking lot was last repaved on or around 1998; thus, it would be considered an alteration that must comply with the 1991 ADA Standards. It also is not lined and District staff was unable to provide any information on the number of parking spaces available in the lot. The District informed OCR that, after being notified of the subject complaint in April 2008, it installed four designated disability parking spaces with signage in the Ridge Road parking lot; however, none of these spaces were lined to designate the parking space with required access aisles. In addition, because OCR could not determine the total number of parking spaces available for the stadium, we could not determine the total number of accessible parking spaces required by the 1991 ADA Standards; thus, neither parking lot can be found to comply with the 1991 ADA Standards.

The District stated that the Day Drive gate and ticket booth were constructed in 1993, and the Ridge Road gate and ticket booth were constructed in 2001; thus, they are considered new construction and must comply with the 1991 ADA Standards. The route from the Ridge Road parking lot to the ticket booth and entrance gate is stable, firm, and slip-resistant. There was a sign at this entrance designating it as the accessible entrance; however, there were no signs at the Day Drive lot identifying the Ridge Road lot as the designated disability parking area and entrance. In addition, while onsite with District representatives on August 1, 2012, they stated they are considering using the Day Drive lot for public parking. The 1991 ADA Standards at 7.2 require that ticket windows at which goods and services are sold or distributed be no more than 36" high. The ticket booth at the Ridge Road lot entrance meets the 1991 ADA Standards; however, the ticket counters at the Day Drive gate were 40" high, and thus not compliant with the maximum height of 36".

Once inside the Ridge Road gate, the route to the grandstand consists of asphalt and concrete that is stable, firm, and slip-resistant, and provides the minimum clear width of 36" required by the 1991 ADA Standards at 4.3.3. However, at the home-side bleachers, there are no wheelchair locations as required by the 1991 ADA Standards at 4.1.19 and 4.33. The District representatives at OCR's onsite visits to Byer's Field stated that persons in wheelchairs can sit in the front row along the accessible route that runs in front of the bleacher seating; however, there are no cutout wheelchair locations, and the remaining rows are accessible only by stairs; thus, the home-side bleachers are not compliant with 4.1.19 and 4.33. The home-side bleachers seat 7,000 people. The 2010 ADA Standards, with which the District will need to comply with respect to any modifications to be made, require 46 wheelchair and companion seat pairs for an assembly area of this size.

The route to the visitor-side bleachers consists of asphalt and concrete that is stable, firm, and slip-resistant and provides the minimum clear width of 36"; however, the route leads to steps that must be traversed in order to access the visitor bleachers, thus the visitor-side bleachers are not on an accessible route. The District is failing to provide program accessibility to the competitions and other events being held at the stadium because of the lack of any accessible seating on the visitor side. The visitor bleachers seat 4,000 people. The 2010 ADA Standards require 30 wheelchair and companion seat pairs for an assembly area of this size.

The District said the concession stand under the home-side bleachers was part of the original construction in 1935 and has had no major renovations; thus, it is considered existing construction. OCR measured the counter height to be 37 ½". The Day Drive gate also has two concession stands: one constructed in 1962, which is existing construction, and the second constructed in 1993, which is new construction. Both of these concession stand counters are 40" high. Thus, none of the concession stand counters, including the new construction concession stand, comply with the maximum of 36" high required by the 1991 ADA Standards at 7.2.

During the investigation, District representatives told OCR that they are unsure if any major renovations have been done to the locker rooms; thus, it is unclear at this time whether they are an existing facility that would require program access, or new construction that must comply with the ADA Standards. During OCR's onsite we observed that, while there is an accessible route to the main locker room doors under the home-side bleachers, once at the locker room doors there are five steps down into the locker room; thus, the locker rooms are not on an accessible route, and do not provide either program access or comply with the 1991 ADA Standards at 4.3. While in the locker rooms, OCR and District staff observed a second door at the back of the locker rooms that leads out underneath the bleacher seating and to a gate that is on the tunnel leading from the back of the grandstand and concession stands under the grandstand to the bleacher seating. This door meets the required minimum width of 32" for an accessible doorway; however, the District would need to construct an accessible route from the walkway into the locker rooms through this alternate door.

The District told OCR that the restrooms under the grandstand were renovated in 2007; thus, they are new construction that must comply with the 1991 ADA Standards. During OCR's onsite we observed that the doors to the restrooms are exterior doors. The 1991 ADA Standards do not provide for a maximum force to open an exterior door, and therefore there is no compliance issue with regard to the Complainant's specific allegation about the restroom doors.

- Administration Building

The Complainant told OCR that the automatic door openers for the exterior doors to the Administration building were not functioning. She said that she was advised by the District that this measure was taken for security reasons, and the only way for a person to enter is to push a call button, have someone buzz him/her in, and then pull the door open.

The Complainant also stated that, once through the main entrance doors and in the lobby area, there was a set of doors to the right that were too heavy for an individual using a wheelchair to open. The Complainant also asserted that the door to the public restroom, which was accessed by passing through the interior set of doors to the right of the lobby mentioned above, was too narrow for a wheelchair.

The District stated that the administration offices are located in the old Parma High School media center, which was originally constructed in 1953. In 2003, the District renovated the space to create the current administration offices, including installing the exterior automatic doors. The District added that the automatic door opener has been disabled for security reasons. On the exterior of the entrance and to the left of the doors there is a buzzer system and a large sign that reads "PRESS FOR ATTENDANT". The District advised OCR that this buzzer calls the receptionist who sits just inside the lobby and who will come out to open the door if assistance is needed. The 1991 ADA Standards at 4.13.12 state that, if an automatic door is used, then it shall comply with ANSI/BHMA A156.10-1985. Slowly opening, low-powered, automatic doors shall comply with ANSI A156.19-1984. If a power-assisted door is used, its door-opening force shall comply with 1991 ADA Standard 4.13.11 and its closing shall conform to the requirements in ANSI A156.19-1984. In addition, as explained above, the Title II regulation at 28 C.F.R § 35.133 requires that accessible features and equipment be maintained in working condition. The automatic opener at the main entrance does not comply with these requirements, since it is not functioning. The main entrance to the administration offices consists of two double doors in a series. The width of the doorways provided a clear opening of 32". In addition, the clear space between the two hinged doors provided more than the 48" required.

Regarding the interior set of doors on the right side of the lobby, during our onsite inspection, OCR staff measured that these interior doors required 15 pounds of force to open. The 1991 ADA Standards at 4.13.11 require that the maximum force for pushing or pulling open an interior hinged door is 5 pounds of force; therefore, the amount of force to open these interior doors does not comply with the 1991 ADA Standards at 4.13.11.

Regarding the entrance to the public restroom in the Administration Building, one of the District's representatives told OCR that the public restroom was moved to the opposite side of the lobby area described by the Complainant and showed us the new location during our onsite inspection. OCR staff inspected the new location and measured the public restroom door width to be 33", which complies with the 1991 ADA Standards at 4.13.5.

- Parma Park Elementary

The District informed OCR that the parking lot at Parma Park Elementary has 67 parking spaces and it was last sealed and striped in August 2005; the 1991 ADA Standards would therefore apply to this parking lot. In addition, the District stated that the playground was constructed in 2002. The District noted that at all District playgrounds it uses a certified

engineered wood fiber called Fibar® Engineered Wood Fiber (Fibar EWF), which is engineered to provide a firm and stable surface and allows for water drainage. The District stated that the manufacturer states that Fibar EWF meets all the requirements of ASTM F1292 for safety and F1951 for wheelchair access. This type of product has been under review by various federal agencies for its ability to provide a firm, stable, slip-resistant and resilient surface, but it was considered acceptable for playgrounds.

During OCR's onsite inspections, we observed a total of 67 parking spaces at the school. The 1991 ADA Standards require a minimum of three accessible parking spaces when total parking is between 51 to 75 spaces, and one in every eight accessible spaces in a lot, but not less than one, must be served by an access aisle at least 96" wide and designated "van accessible." In addition, the 1991 ADA Standards state that accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. During OCR's initial onsite in August 2008, we observed three designated disability parking spaces; however, only one parking space had the proper signage and none were designated as van accessible nor did any have an access aisle wide enough to be van accessible. In addition, we did not observe any signage identifying the accessible route or entrance to the building as required by the 1991 ADA Standards. When OCR conducted a follow-up onsite in July 2010, three disability parking signs were erected; however, none of the spaces were designated as van accessible spaces. Signs had been added to identify the accessible route and entrance. When OCR conducted an additional onsite on August 1, 2012, we observed that all three parking spaces and access aisles had been modified so that they met the required widths, and proper signage had been erected.

As stated previously, in determining the program accessibility of the playground prior to the 2010 ADA Standards taking effect, OCR analyzed whether there was an accessible route leading to and through the playground that was firm, stable, and slip-resistant and had a clear width. OCR also examined whether there were a range of play activities within the playground that were accessible to individuals with disabilities through the use of ramps or transfer systems. Finally, OCR observed whether there was an accessible surface beneath accessible equipment that was firm, stable and slip-resistant.

During OCR's onsite we observed a black rubber barrier around the perimeter of the playground. At two locations 36"-wide paved walkways provided an accessible route to the edge of the playground. The walkways were flush with the rubber barrier along the perimeter of the playground, and there was an accessible ramp leading from the concrete sidewalk to the playground surface, providing an accessible route onto the playground surface. The surface of the playground was covered in Fibar EWF that appeared to be well-maintained and was level, firm, stable, and slip-resistant. The play equipment provided activities for climbing, swinging, sliding, and games with at least one activity for each that was accessible; thus, the playground met applicable accessibility requirements.

- Thoreau Park Elementary

One of the District's representatives informed OCR that the playground was constructed in 2002. The District's representative also informed OCR that there are two parking lots with 57 parking spaces in the West 54<sup>th</sup> Street parking lot, and 48 parking spaces in the West 51<sup>st</sup> Street parking lot.

OCR observed during our initial onsite in August 2008 that at the entrance to the West 54<sup>th</sup> Street parking lot there is a sign that states, "Handicap parking located in East lot off W. 51<sup>st</sup> St." In addition, there was signage posted around the building providing the location of the accessible entrance, as required by the 1991 ADA Standards. We also observed that the route from the West 54<sup>th</sup> Street parking lot to the school requires traversing stairs; thus, there is no accessible route to the school entrance from this parking lot. In the West 51<sup>st</sup> Street parking lot there were four parking spaces with the accessible parking signage; however, these spaces did not comply with the 1991 ADA Standards at 4.6, as they did not have the required access aisles. Pursuant to the 1991 ADA Standards at 4.1.2(5)(a), a lot the size of the West 54<sup>th</sup> Street lot must have a minimum of three accessible parking spaces and a lot the size of the West 51<sup>st</sup> Street lot must have a minimum of two accessible parking spaces. In addition, 1991 ADA Standard 4.1.2(5)(b) requires that at least one space shall be designated van accessible per lot; thus, two of the five accessible parking spaces must be van accessible. Accessible parking spaces do not have to be provided in the particular lot, and may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance and convenience is assured.

During the investigation, the District attempted to resolve the accessible parking issue, and during OCR's August 1, 2012, onsite, OCR staff verified that there are now four accessible parking spaces with two designated as van accessible and they all meet the requirements of the 1991 ADA Standards. However, the District is required to provide five accessible parking spaces, and therefore must provide one additional space with proper access aisle and signage. In addition, though the accessible parking spaces are located on the shortest route to the accessible entrance, the asphalt parking lot is cracked, uneven and rutted and does not provide an accessible route. Thus the accessible parking and route at Thoreau Park are not compliant with the 1991 ADA Standards.

The playground had a black hard rubber edging around the perimeter, and there was an accessible ramp from the asphalt parking lot onto the playground surface. The playground surface is covered with Fibar EWF to provide a firm, stable and slip-resistant surface. The play equipment provided activities for swinging, climbing, and sliding, and at least one activity for each that was accessible, thus the playground met applicable accessibility requirements.

- Pleasant Valley Elementary

The District's representative informed OCR that, prior to OCR's onsite inspection in August 2008, the District had installed signage to identify the accessible entrance. Since the signage was installed in 2008, the 1991 ADA Standards would apply and they state that accessible entrances, when not all entrances are accessible, shall be identified by the International Symbol of Accessibility, and inaccessible entrances shall have directional signage to indicate the route to the nearest accessible entrance. During OCR's onsite inspection in August 2008 we observed a large accessible entrance sign in bold contrasting color posted next to the school's main entrance designating this entrance as the accessible entrance. In addition, another large sign in bold contrasting color was posted near an inaccessible entrance with a directional marker indicating the location of the accessible entrance. Since the District has posted the required signage identifying the accessible entrance, OCR considers this allegation to be resolved.

- Dentzler Elementary

The District stated that there are 48 parking spaces in the parking lot at Dentzler. The District representative said that the two red and black picnic tables around the playground area were added in 2002, and the playground equipment was added in 2008; thus, they are new construction. During an onsite interview in July 2010, the District's operations director informed OCR that the fields are primarily used by community organizations, such as the CYO, for baseball leagues and were installed when the school was built in 1957. The fields may be used by the school on occasion, but only for student field day or maybe a gym class. The operations director also informed OCR that portable toilets are brought in by outside organizations using the fields by permit obtained through the business office. The District indicated that the clerk in the business office now informs requesters that the portable toilets brought in must be accessible. The District added that, if the fields are used during the school day by students, the students would have access to the restrooms inside the school.

During our initial onsite visit, OCR observed proper signage identifying the accessible entrance of the school, as required by the 1991 ADA Standards. In addition, there was signage next to the side entrance indicating that the accessible entrance was to the left. The entrance is a double door and provided 32" width. The threshold was 1/4" high. In addition, the door hardware was an easily graspable pull handle that can be operated with one hand and does not require tight grasping or twisting to open the door; thus, the entrance complies with the 1991 ADA Standards.

The 1991 ADA Standards require that a parking lot with 26 to 50 parking spaces must have at least two designated accessible parking spaces. During our initial onsite, OCR noted that the accessible parking spaces were adjacent to the inaccessible side entrance and they were not on the shortest accessible route of travel to an accessible entrance, as required by the 1991 ADA Standards. One of the District's representatives informed OCR that the accessible parking spaces were moved closer to the accessible entrance in 2009. During a follow-up onsite in July 2010, OCR observed that the accessible parking

spaces have been moved so that they are directly adjacent to the accessible entrance, placing them on the shortest possible accessible route of travel to the accessible entrance. Both spaces provided the required 96" width and the access aisle was also 96" wide. Both parking spaces have signage identifying them as the designated accessible parking spaces and one as van accessible as required by the 1991 ADA Standards.

The 1991 ADA Standards at 4.1.3(18) require that, if fixed or built-in seating or tables are provided in accessible public or common use areas, at least five percent (5%), but not less than one, of the fixed or built-in seating areas or tables shall comply with the 1991 ADA Standards at 4.32. In addition, an accessible route shall lead to and through such fixed or built-in seating areas, or tables. The 1991 ADA Standards at 4.32 require that at the accessible fixed tables or counters there be knee space at least 27" high, 30" wide, and 19" deep, and that the tops of accessible tables and counters shall be from 28" to 34" above the finish floor or ground. OCR observed during the onsite inspection that there were four wooden picnic tables not fixed to the ground in a grassy area between the school building and the playground, and two newer red and black metal picnic tables fixed to the ground, also in a grassy area, between the parking lot and the playground. The area where the wooden tables are located is grassy, uneven and rutted, and, thus, inaccessible. The red and black fixed metal tables are located also on uneven grass and dirt, and thus not on an accessible route. The fixed tables at the school provided knee space that is 27" high, 52" wide, and 6 ¼" deep under the table, and the tops of the tables were 28" above the ground; thus, neither fixed table provides the required 19" deep knee space. Neither of these tables is on an accessible route, nor do they provide 19" depth under the table for knee clearance, and pursuant to the 1991 ADA Standards at 4.1.3(18) at least one must meet this standard.

OCR observed during the onsite that the playground had a black hard rubber edging around the perimeter. There were two concrete paved walkways leading to the edge of the playground that were both 36" wide as required by the 1991 ADA Standards at 4.3 for an accessible route. The two paved walkways were level with the black rubber edging, and there was an accessible ramp from the concrete sidewalk onto the playground surface for one of the concrete walkways. The surface of the playground was covered in Fibar EWF that appeared to be well-maintained and provided a level, firm, stable and slip-resistant surface. The playground equipment provided activities for climbing, sliding, and swinging, and at least one activity for each that was accessible; thus, the playground met applicable accessibility requirements.

During OCR's onsite inspections, we observed three baseball fields at Dentzler. Two of the fields are adjacent to the paved parking lot, and a third field is beyond the other two fields. The area around the fields is rutted and uneven grass and dirt and therefore there are no accessible routes leading to the fields as required by the 1991 ADA Standards.



The 1991 ADA Standards at 4.1.2(6) require that, if toilet facilities are provided on a site, then each such public or common use toilet facility shall comply with 1991 ADA Standard 4.22. For single user portable toilets clustered at a single location, at least 5% but not less than one toilet unit complying with 4.22 shall be installed at each cluster whenever typical inaccessible units are provided. Accessible units are to be identified by the International Symbol of Accessibility. During OCR's initial onsite inspection in August 2008, OCR observed one portable toilet adjacent to the parking lot and the baseball fields. This portable toilet was not marked as accessible and the door was not wide enough for an accessible entrance. However, during OCR's follow-up onsites in July 2010 and August 2012, there was not a portable toilet at the fields and, as explained above, the clerk in the business office now informs outside users of the fields that any portable toilets brought in must be accessible. Therefore, OCR determined this allegation to be resolved.

- o Green Valley Elementary

The District informed OCR that the playground was constructed in 2002, and the path to the "Project Peace" garden and the garden were installed by volunteers in 2008. According to the District's operations director, the District did not fund the garden; however, he acknowledged that the garden is located on school property and is used by the school for programs such as science projects.

During one of OCR's onsite inspections we observed that the District had recently installed appropriate accessible entrance signs, as required by the 1991 ADA Standards. Thus, the District is in compliance with the 1991 ADA Standards' requirement for signage identifying the accessible entrance.

OCR found that the pathway leading into the garden is composed of dirt and small gravel, which is not stable, firm, and slip-resistant. In addition, the pathway had a slope of more than 1:12, and there was a step up to the gazebo structure. The 1991 ADA Standards state at 4.3 that at least one accessible route will connect facilities and elements, and that an accessible route with a running slope greater than 1:20 is a ramp and shall comply with 4.8, which states the maximum slope of a ramp in new construction shall be 1:12. In addition, if there are changes in level greater than 1/2", then a ramp must be provided. Therefore, the pathway leading into and through the garden does not meet the requirements for an accessible route as required in the 1991 ADA Standards.

The playground had a black rubber edging around the perimeter between the asphalt parking lot and the playground surface. In some locations, the edging was level with the asphalt parking lot and the Fibar EWF surface of the playground area, allowing an accessible route onto and out of the playground area. The playground surface was covered with Fibar EWF that appeared to be well maintained, providing a firm, stable and slip-resistant surface. The playground equipment provided activities for rocking, swinging, climbing, sliding, and games, and at least one of every activity was provided that was accessible, thus the playground met the applicable accessibility requirements.

o John Muir Elementary

One of the District's representatives informed OCR that the parking lot was last paved and restriped in 2001, and the playground was added in 2002. The District's representative stated that there are 79 parking spaces at the school.

During the initial onsite inspection, OCR observed signage identifying the accessible entrance of the school, as required by the 1991 ADA Standards. The entrance is a double door providing 33" width, and the threshold was ¼" high. In addition, the door hardware was an easily graspable pull handle that can be operated with one hand and does not require tight grasping or twisting to open the door; thus, the entrance complies with the 1991 ADA Standards.

The 1991 ADA Standards require a minimum of four accessible parking spaces with at least one space designated van accessible for a lot the size of the John Muir Elementary parking lot. In addition, the 1991 ADA Standards state that accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility and such signs shall be located so they cannot be obscured by a vehicle parked in the space. During our initial onsite inspection in August 2008, OCR observed three parking spaces with the accessibility symbol painted on the space that were immediately adjacent to the accessible route and entrance to the school. These three parking spaces did not have the required signage and did not meet the minimum width requirements. In addition, none of them were designated as van accessible. During a follow-up onsite inspection in July 2010, OCR observed that the District had moved the three accessible parking spaces farther from the accessible entrance, so that they were no longer on the shortest accessible route of travel to the accessible entrance. The District also added signage for two of the spaces to identify them as accessible parking; however, there was no signage for the third space. Subsequently, the District informed OCR that it had corrected the parking space issue and on August 1, 2012, OCR verified that the District had provided four accessible parking spaces in this lot with one designated as van accessible. All of the designated accessible spaces and access aisles provided the proper width and signage. Two of the spaces were moved back so that they were located immediately adjacent to the accessible entrance and the others were on the shortest accessible route to the entrance. Based on this information, OCR found that the District had resolved the compliance issues with this parking lot.

There were two play areas at this school, each with large play components. The first play area was older and had a perimeter of wood that created a 5 ¾" high barrier around it, preventing access onto the play area. The ground was covered with Fibar EWF that was not well maintained to provide a firm, stable and slip-resistant surface. The playground equipment provided activities for swinging, climbing, and sliding. There was at least one accessible activity for climbing; however, it did not provide an accessible activity for swinging and sliding, and as already stated it was not on an accessible route.

The second play area was newer and had a concrete paved walkway leading to the edge of the play area, and there was an accessible ramp from the concrete sidewalk onto the playground surface. The playground surface was covered with Fibar EWF that appeared to be well maintained and provided a firm, stable and slip-resistant surface. The playground equipment provided activities for climbing, sliding, and swinging, and at least one of every activity was accessible. Therefore, the second play area met the applicable accessibility requirements and OCR found that the school was providing access to a playground for students with disabilities at the school.

- Parma Senior High School

The Complainant explained that the designated accessible parking spaces at the West 54<sup>th</sup> Street entrance for Parma Senior High School (the auditorium parking lot) were not located on the shortest possible route to an accessible entrance, nor was there signage identifying the accessible route to an accessible entrance. The Complainant also asserted that there was no wheelchair accessible seating in the high school auditorium. Finally, the Complainant stated that the gated entrance to the athletic field at the high school was not accessible due to the narrow width and zigzag configuration of the entrance. The Complainant explained that the entrance to the field was a zigzag fence that one would have to walk through that is not wide enough for a wheelchair, and that does not provide the proper width for turns on a route for a wheelchair.

The District stated that Parma Senior High School was constructed in 1953. During OCR's onsite inspection, we observed that the four designated accessible parking spaces for the auditorium lot are located in the first row of the lot and that they are the closest parking spaces to the auditorium entrance; thus, they are on the shortest accessible route to the auditorium. The District stated that the ramp to the auditorium entrance was constructed in 1975 and has had no renovations; thus, it is considered existing construction. However, OCR used the 1991 ADA Standards as guidance in determining whether the ramp provides program access. The ramp is 38" wide, complying with the 36" width requirement for an accessible route. In addition, the 1991 ADA Standards state that, when not all entrances are accessible, accessible entrances shall be identified by the International Symbol of Accessibility. The auditorium only has one, accessible entrance and therefore there is no requirement for signage.

During OCR's onsite inspection, we counted 1,619 seats in the auditorium. In 2002, the District installed new seating in the auditorium, and therefore the 1991 ADA Standards would apply. The 1991 ADA Standards require a minimum of 17 wheelchair locations for a place of assembly with fixed seating of this capacity. OCR's inspection of the auditorium found 18 wheelchair locations, 4 located in the front row with companion seating, and 14 located in the back row with companion seating. All of the wheelchair locations are double wheelchair locations accessed from the front or rear and they all meet the 48" deep by 66" wide dimensions required in the 1991 ADA Standards at 4.33 for double wheelchair locations.

The District stated that the athletic fields were last renovated in 1977, which included adding the zigzag gate. The athletic field is only used for soccer and football practice and is not used for other activities. The District noted that the zigzag gate is not used, as there is a swing gate entrance available to access the field. The swing gate is approximately ten feet from the zigzag gate and also provides access to the athletic field. OCR measured the swing gate entrance to be 32" wide. OCR used as guidance the 1991 ADA Standards, which state that gates shall meet applicable specifications of doors and that doorways shall have a minimum clear opening of 32". There is a concrete sidewalk and asphalt paved route that leads to the athletic field that is stable, firm, and slip-resistant, thus providing an accessible route to the athletic field.

- o Normandy High School

The District informed OCR that Normandy was constructed in 1968. The parking lots were last sealed and striped in August 2005; thus, the 1991 ADA Standards apply to the parking.

One of the District's representatives informed OCR that there are a total of 247 parking spaces in the front parking lot adjacent to the accessible entrance, and 282 parking spaces in the back lot. The 1991 ADA Standards require 7 accessible spaces in a lot the size of the front or the back lot, at least one of which must be a van space, meaning that a total of 14 accessible spaces, including at least 2 van spaces, are required for this school. During OCR's onsite inspection, OCR observed only two designated accessible parking spaces at the school and neither was designated as van accessible; thus, the District does not provide the minimum number of disability parking spaces required to be in compliance with the 1991 ADA Standards. In addition, only one of the two accessible parking spaces met the required width of 60" wide. Furthermore, the access aisle shared by both spaces was only 48" wide, not meeting the required 60" width for a non-van space.

OCR observed during the onsite that the asphalt parking lot and concrete walkway provided a stable, firm and slip-resistant accessible route to the entrance with one exception, a seam between the concrete curb ramp and the walkway leading up to the entrance. OCR noted a 1 1/4" drop on the route because of settling concrete. The 1991 ADA Standards require that an accessible route not have more than 1/2" change in level surface; thus, the route to the entrance does not comply with the 1991 ADA Standards. OCR noted during our onsite inspection that the District had recently installed proper signage, as required by the 1991 ADA Standards, identifying the main entrance of the school as the accessible entrance.

The District informed OCR that the athletic fields were installed at Normandy in 1968 when the school was constructed; thus, the fields are considered existing facilities. The District added that the athletic fields are used for practice only for the school's soccer, football, and track teams, and not for any competition or other school activities, so there are no events with spectators at the fields. During OCR's onsite inspection, we observed that, in order to access the athletic fields from the parking lot, a person would have to traverse a change in level of more than 4" with no curb ramp. In addition, there is a 2"

drop from the concrete walkway at the edge of the parking lot down to the path at the entrance gate to the fields. The path leading into the fields is small compacted gravel, which also connects to a concrete walkway that runs the length of the first field and is directly behind the old bleachers that are not used. The compacted gravel path entrance to the first field also leads to a set of 16 stairs that lead down to a running track and football field, which are sunken down below the entrance gate. There is no accessible route to the edge of the fields. Although the fields are existing construction, the District is required to provide program access. The District currently has no policy or plan in place to move programs from the Normandy fields to an accessible location when necessary to provide program access to a participant.

- Valley Forge High School

The District informed OCR that Valley Forge was constructed in 1961 and there have been no major renovations to the building. The District stated that in 1977 it added the zigzag gate to the athletic field that the Complainant had asserted made the route inaccessible; however, the District indicated that this gate is no longer used. The District representative stated that there is another entrance to the athletic field that is currently being used and this entrance is wide enough for a wheelchair. The District said that this athletic field is used for soccer, football, and track practices.

During OCR's onsite inspection, the District identified the school entrance accessed from the school's York Road and Independence Boulevard parking lot as the building's accessible entrance. OCR did not observe any signage identifying this entrance as the accessible entrance during our first onsite; however, while onsite on August 1, 2012, we verified that proper signage was posted at the entrance.

During OCR's onsite inspection, we observed that the route to the athletic field is accessed from the school's parking lot off of Independence Road. The 1991 ADA Standards state that ground surfaces along accessible routes shall be stable, firm, and slip-resistant. OCR observed that, after leaving the parking lot, a large portion of the route to the athletic field is across a grass field that is uneven rutted dirt and grass, and thus does not comply with the requirements for an accessible route. During OCR's onsite inspection, we observed that the zigzag fence entrance to the athletic field was overgrown with grass and weeds and does not appear to be used at all, as asserted by the District. In addition, we observed a double swing gate entrance that was being used as the entrance to the athletic field and measured it to be 48" wide, thus compliant with the minimum clear opening for an entrance. However, there is no accessible route to the athletic field.

### **Resolution and Conclusion**

As noted above, OCR found the following violations that have to date not been resolved by the District:

- The District's website is inaccessible to persons with disabilities because it is generally unusable by people who use assistive technology, such as screen readers.
- The District treats persons with disabilities differently with regard to emergency procedures at Pleasant Valley Elementary School by (1) failing to include them in fire and other emergency evacuation drills; (2) not providing appropriate signage and two-way communication devices in the area of refuge; and (3) not providing equivalent procedures for assisting them to safety in emergencies as those provided to other students.
- At Byer's Field, the parking lots do not have accessible and safe surfaces for people with disabilities, are not properly lined to designate accessible spaces and access aisles, and do not have sufficient numbers of designated accessible spaces. The lots lack signage identifying the designated disability parking area and entrance, with an accessible route and ticket window. The ticket counters and concession stands at the Day Drive gate are too high, as are all of the other concession stands. The grandstand and the visitors seating sections have no wheelchair locations. There is no accessible route to the visitor-side bleachers. The locker rooms are not on an accessible route and, if the locker rooms are existing construction, the District is not providing any means of program access.
- The interior lobby doors in the Administration Building require too much force to open, and the exterior automatic door opener is not in working condition.
- Thoreau Park Elementary requires one additional designated accessible parking space for a total of five spaces. The asphalt parking lot was cracked, uneven and rutted.
- At Dentzler Elementary School, neither of the fixed picnic tables is on an accessible route, nor provides sufficient depth under the table for knee clearance. There are no accessible routes leading to the baseball fields.
- Green Valley Elementary does not have an accessible route to its Project Peace garden due to the surface, the slope, and a step leading up to the gazebo.
- Normandy High School does not provide the minimum number of designated accessible parking spaces. One of the two accessible parking spaces provided at the school does not meet the required width of 60" and the access aisle shared by

both spaces does not meet the required 60" width. Due to changes in level, including stairs, there are no accessible routes from the parking lot to the school's accessible entrance, nor to the athletic fields and track.

- At Valley Forge High School, a large portion of the route to the athletic field is not accessible because it is uneven rutted grass.

To resolve the noncompliance findings set forth above, the District, submitted the enclosed Commitment to Resolve, which, when fully implemented, will resolve the complaint. The Commitment requires the District to provide a website that is accessible to persons with disabilities and usable by people who use assistive technology, such as screen readers; develop an emergency procedures plan for Pleasant Valley that includes students with disabilities in fire and other emergency evacuation drills and the plan, provide proper signage and two-way communication devices in the area of refuge, and equivalent procedures for assisting them to safety in emergencies as those provided to other students; and bring into compliance the facility elements that are not compliant with applicable accessibility requirements.

In light of this Commitment, OCR finds that this complaint is resolved, and we are closing our investigation as of the date of this letter. OCR will, however, monitor the District's implementation of the Commitment. Should the District fail to fully implement the Commitment, OCR will reopen the case and take all necessary steps to ensure the District's compliance with Section 504 and Title II.

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.

Thank you for the District's cooperation during the investigation of this complaint. Mr. Ted Wammes will be coordinating OCR's monitoring of the Commitment. Mr. Wammes can be contacted at XXXX or XXXX. Should you have any questions about this letter, please contact Meena Morey Chandra, Team Leader, at XXXX or by e-mail at XXXX.

Sincerely,

Catherine D. Criswell  
Director

Enclosure