



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

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REGION XV
MICHIGAN
OHIO

January 9, 2015

Andrew Rudloff, Esq.
Subashi & Wildermuth
The Greene Town Center
50 Chestnut Street, Suite 230
Dayton, Ohio 45440

Re: OCR Docket #15-13-1002

Dear Mr. Rudloff:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) against the East Clinton Local Schools (the District) on October 1, 2013, alleging the District discriminated against a student with a disability (the Student). Specifically, the complaint alleged that:

1. the playground at the District's Sabina Elementary School (the school) is inaccessible to individuals with mobility impairments;
2. there are no accessible routes from the school's parking areas to the front entrance;
3. the only school parking spaces designated as accessible are not usable during student drop-off and pick-up times;
4. the school's front entrance is not accessible to individuals with mobility impairments;
5. the drinking fountain that is closest to the xxxxxxxxxxx xxxxxxxxxxx is inaccessible to the Student;
6. the District has not developed an xxxxxxxxxxx xxxxxxxxxxx xxxx for the Student; and

7. the District holds an annual fun day and the event is not located on an accessible route and does not provide activities that are accessible to students with mobility impairments.

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 entity, the District is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

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

- Whether the District excluded a qualified student with a disability from participation in, denied her the benefits of, or otherwise subjected her to discrimination under its programs and activities on the basis of her disability in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.4 and the regulation implementing Title II at 28 C.F.R. § 35.130.
- Whether a qualified student with a disability was excluded from participation in, was denied the benefits of, or was otherwise subjected to discrimination in the District's programs and activities because the District's facilities are inaccessible to or unusable by individuals with disabilities in violation of 34 C.F.R. §§ 104.21-23 and 28 C.F.R. §§ 35.149-151.
- Whether the District failed to provide nonacademic and extracurricular services and activities in such a manner as was necessary to afford a student with a disability an equal opportunity to participate in such services and activities, in violation of 34 C.F.R. § 104.37.
- Whether the District failed to make reasonable modifications to its policies, practices, or procedures when the modifications were necessary to avoid discrimination on the basis of disability, in violation of 28 C.F.R. § 35.130(b)(7).

Background

At the time the complaint was filed, the Student was xxxxx xxxxx xxx and in the xxxxxx grade at the District's Sabina Elementary School (the school). She is identified by the District under the Individuals with Disabilities Education Improvement Act (IDEA) as a student who has xxxxxxxx xxxxxxxxxxxx, xxxxxxxx xxxx xxxxxx, and receives services under an Individualized Education Program (IEP). The Student requires the use of xxxxxxxxxxxx

for mobility. The Student also requires the assistance of a xxxxxxxxxxx xxxxx. The school is a one-story building that serves students from preschool through fifth grade. The Student has attended the school since kindergarten.

In investigating this complaint, OCR interviewed the Student's parent, reviewed documentation submitted by the District, and conducted an onsite visit to the school in March 2013. During the onsite, OCR interviewed District personnel and examined the school's parking lots, entrances, water fountains, and playground. OCR also met with the xxxxxxxxxxx xxxxxx xxx xxx xxxxxxxx at the school building at issue and OCR observed the xxxxxxxx xx xxx xxxxxxxxxxxxxx. OCR also provided the Student's parent with an opportunity to respond to the information OCR obtained during its investigation.

Prior to the conclusion of OCR's investigation, the District voluntarily requested to resolve the complaint allegations and any existing compliance concerns identified to date pursuant to Section 302 of OCR's Case Processing Manual (Manual). However, based on the information already obtained to date, OCR has already concluded that: the District has not provided program access to the Student to its activities held at the school playground; portions of the school's playground do not comply with applicable accessible design standards (allegation #1); the school has failed to provide the appropriate number of designated accessible parking spaces with accessible routes (allegation #2); and the school's entrances are not accessible to individuals with mobility impairments (allegation #4), in violation of Section 504 and Title II.

OCR also has concluded that there is insufficient evidence to support a finding that: the school's water fountains are inaccessible per the applicable regulatory standards or that the xxxxxxxx xx xxxxxxx xx xxx xxx xxxxxx xxxxxxxxxxxxxx (allegation #5); that the designated accessible parking spaces located in the parking lots for the School are not usable during drop off and pick-up times (allegation #3); and that the District holds an annual fun day event that is not accessible to students with mobility impairments (allegation #7).

To date, OCR has not completed its investigation of part of allegation #1, that the playground at the District's Sabina Elementary School (the school) is inaccessible to individuals with mobility impairments and allegation #6, that the District has not developed an xxxxxxxxxxx xxxxxxxxxxxxxx xxxxx for the Student.

On January 6, 2015, the District signed the enclosed agreement that, once implemented, will fully address the compliance violations, as well as the allegations that have not been fully investigated, in accordance with Section 504 and Title II. A summary of the applicable legal standards, OCR's investigation, the bases for OCR's determinations, and the terms of the agreement are presented below.

Applicable Regulatory Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination

under any program or activity that benefits from or receives federal financial assistance. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a). Prohibited discrimination by a recipient or public entity includes denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits, or services offered by that recipient or public entity; affording a qualified person with a disability an opportunity to participate in or benefit from aids, benefits, or services that is not equal to that afforded others; and providing a qualified person with a disability with aids, benefits, or services that are not as effective as those provided to others. 34 C.F.R. § 104.4(b)(1)(i)-(iv); 28 C.F.R. § 35.130(b)(1)(i)-(iv).

The Section 504 and Title II regulations also state that no qualified person with a disability shall, because a covered entity'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 of the entity's programs or activities. 34 C.F.R. § 104.21; 28 C.F.R. § 35.149. The regulations reference standards for determining whether an entity'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. Under Title II, existing facilities are those for which construction began on or before January 26, 1992.

To provide program access in existing facilities, an institution may use such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternative accessible sites, alteration of existing facilities, construction of new facilities, or any other methods that result in making its program or activity accessible to persons with disabilities. A recipient is not required to make structural changes in existing facilities where other methods are effective in providing program access. However, in choosing among available methods for providing program access, 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). Where programs or activities cannot or will not be made accessible using alternative methods, structural changes may be required in order for recipients to comply.

For support facilities for a program in an existing facility being viewed in its entirety, such as restrooms, telephones, water fountains, 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. See Memorandum to OCR Senior Staff from Assistant Secretary for Civil Rights Michael L. Williams, "Program Accessibility Provisions of the Section 504 Regulation and Implementation of the Uniform Federal Accessibility Standards" (March 8, 1991).

The Section 504 regulation 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 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). Under the Section 504 regulation, a facility will be considered new construction if construction began (ground was broken) on or after June 3, 1977. Under the Title II regulation, the applicable date for new construction is January 26, 1992. 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). Compare 45 C.F.R. § 84.23(c) (1977) and 34 C.F.R. § 104.23(c) (1981), with 34 C.F.R. § 104.23(c) (2012). 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 (ADA) Standards for Accessible Design (the 1991 ADA Standards) or equivalent standards. However, the Section 504 regulation provides, at 34 C.F.R. § 104.23(c), that departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

The U.S. Department of Justice published revised regulations for Titles II and III 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 for construction or alterations commencing September 15, 2010, until their effective date. For new construction and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards.

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.

A playground “meets the definition of “facility” under the Section 504 and Title II regulations, 34 C.F.R. § 104.3(i) and 28 C.F.R. § 35.104. A playground facility is comprised of both the structure or equipment installed to provide play activities and the surface surrounding such structure or equipment.

The Title II regulation states that, where structural changes in facilities were to be undertaken to comply with the program accessibility obligations under 28 C.F.R. § 35.150, the changes were to be made within three years of January 26, 1992, but as expeditiously as possible. 28 C.F.R. § 35.150(c). Public entities employing 50 or more persons were required to develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. Public entities were required to provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan was required to be made available for public inspection. Transition plans are required to, at a minimum:

- (i) identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
- (ii) describe in detail the methods that will be used to make the facilities accessible;
- (iii) specify the schedule for taking the steps necessary to achieve compliance with 28 C.F.R. § 35.150 and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (iv) indicate the official responsible for implementation of the plan.

The U.S. Department of Justice (DOJ)’s “Title II Technical Assistance Manual” provides further guidance on the self-evaluation and transition plan requirements. The manual states that DOJ expected that many public entities would reexamine all their policies and practices even if they had already completed a self-evaluation under Section 504, as programs and functions may have changed significantly since the Section 504 self-evaluation was completed; actions that were taken to comply with Section 504 may not have been implemented fully or may no longer be effective; and Section 504's coverage has been changed by statutory amendment.

DOJ's manual further instructed that a public entity's self-evaluation identifies and corrects those policies and practices that are inconsistent with Title II's requirements, and that, as part of the self-evaluation, a public entity should:

- 1) identify all of the public entity's programs, activities, and services; and
- 2) review all the policies and practices that govern the administration of the public entity's programs, activities, and services.

This includes, among other things, examining each program to determine whether any physical barriers to access exist and identifying steps that need to be taken to enable these programs to be made accessible when viewed in their entirety.

The Title II regulation, as amended, states that elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 ADA Standards or UFAS are not required to be modified in order to comply with the requirements set forth in the 2010 ADA Standards. However, as stated above the regulations require recipients 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 includes services, programs and activities (such as recess) that are provided on playgrounds. The methods used to provide program access must be effective in providing overall access to the service, program, or activity. Furthermore, any alterations made by a recipient to the playground in order to remedy a denial of program access would need to comply with the 2010 ADA Standards. Information regarding the 2010 ADA Standards with respect to playgrounds is included as an enclosure with this letter.

With regard to parking, DOJ has stated that, when an ADA-covered entity restripes a parking lot, it must provide accessible parking spaces as required by the 2010 ADA Standards, and that failure to do so would violate the ADA. The 2010 ADA Standard at 208 requires that, where parking spaces are provided, parking spaces shall be provided in each parking area in conformity with the 2010 ADA Standard Table 208.2. The required accessible spaces need not be provided in the particular lot; rather they may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost, and convenience is ensured. The 2010 ADA Standard at 502.2 requires accessible car parking spaces be at least 96" wide. The 2010 ADA Standard at 502.3 requires accessible parking spaces to include a 60"-wide access aisle, and that parking spaces be along accessible routes. The 2010 ADA Standard Advisory to Standard 502.3 requires accessible routes to connect parking spaces to accessible entrances. The 2010 ADA Standard at 502.4 allows for a maximum slope in any direction of 1:48.

The Section 504 regulation, at 34 C.F.R. § 104.37, also requires that a recipient provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford persons with disabilities an equal opportunity for participation in such services and activities. Nonacademic and extracurricular services and activities may include

According to the District, the playground was constructed with the school in 1996, and has not been renovated since that time. District staff confirmed that the surface of the playground was once pea gravel and since 2009 the District had been incrementally replacing that surface with mulch. At the time of the onsite, most of the playground surface had been replaced with mulch. OCR observed that there was pea gravel on the back portion of the playground and that the surface of the playground in certain areas was uneven. OCR reviewed the District's documentation showing that the technical name of the "mulch" used by the District is "wood fiber playground mulch." OCR requested but did not receive copies of the District's logs showing all of the repairs made to the playground, including the addition of the mulch.

During the onsite, OCR also examined additional games and toys the school purchased xxx xxx xxxxxxxxx including a soft Frisbee, a cup with a ball on a string attached, a mat with bubble wrap inside which sounds like popcorn popping, a cornhole game, and other similar items.

OCR also observed that there was one large playground that served the entire school for ages 5 through 12. A door from the cafeteria (a back entrance) opened up to the school's play area. Just outside the cafeteria door was a blacktop area with a fixed funnel-ball game and two basketball hoops. Beyond the blacktop area was a large playground surface separated from the blacktop area by a cement curb that was several inches high. In the center of the playground was a large wooden and metal composite play structure that contained numerous play components including slides, a wooden bridge, tunnels, metal poles, a chain net for climbing, plastic steering wheels, a plastic tic-tac-toe board, tires to climb, and other items. All of these play components were connected by a series of wooden platforms, tunnels, and stairs. There were no ramps on this composite structure.

Around the edges of the playground, but within the sectioned-off area, were a number of freestanding play components not attached to the composite play structure referenced above. These included swings, see-saws, a couple of metal climbing items, a horizontal slide (the trough), parallel bars, a wooden climbing structure, and a tetherball stand.

X---paragraph redacted---X

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OCR examined the playground to determine its overall accessibility to students with disabilities. As the playground was constructed in 1996, it is an existing facility; thus, the District is required to provide program access with respect to the playground. Accordingly, pursuant to the Title II implementing regulation, at 34 C.F.R. § 35.150(d), and the 2010 ADA Standards, the District was to conduct a self-evaluation and develop a transition plan to address all barriers to providing program access. However, as noted above, since 2009, the school's playground has undergone some alterations, such as replacement of the ground surface with mulch. As the replacement of the playground's ground surface is continuing to the present, this alteration is subject to the 2010 ADA

Standards. Accordingly, OCR examined the ground surface of the playground as well as the accessible route to and within the playground using the 2010 ADA Standards and, as summarized below, identified compliance concerns.

- **Ground Surface**

The 2010 ADA Standards require that floor and ground surfaces for play areas be stable, firm and slip resistant (2010 ADA Standards at 1008.2, 403.2, 302.1); and that changes in levels should be ramped (2010 ADA Standard at 303.4) and should provide turning spaces that comply with Standard 304. OCR observed that the blacktop area just outside the doors to the school, xxxxx xx xxx xxxxxxxxxxx xxxxx xxxxx xxxxxx had some debris including sticks and woodchips in a number of spots. The Student's parent told OCR it is a constant problem having the debris on the blacktop because it can xxxxx xxx xxxxxxxxxxx xxxxxxxxxxx xxx xxx xxxxx. There is also a grate in the middle of the surface and the surface surrounding the grate is uneven. Accordingly, OCR finds that the blacktop area does not provide a stable, firm and slip resistant ground surface as required by the 2010 ADA Standard at 302.1.

With respect to the part of the playground that is covered in mulch, OCR reviewed District documentation, including testing reports, demonstrating that the wood chip fiber (the "mulch") used on the playground is considered accessible material in accordance with the American Society for Testing and Materials (ASTM) F-1951 standard. OCR notes that the ASTM F-1951 standard is the standard used for play area surfaces in the 2010 ADA Standards. Specifically, the 2010 ADA Standards, at 1008.2.6.1, state that ground surfaces for play areas shall comply with the ASTM F-1951 standard and that "ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F-1951." Although the materials used comply with the 2010 ADA Standards, OCR directly observed that the Student was unable to maneuver around the surface in her wheelchair without assistance. Given the observations OCR made xxxxxxxxxxx xxx xxxxxxxxxxx xxxxx xxxxxxxxxxx xxx xxxxxxxxxxx xxxxxxxxxxx xxx xxxxxxxxxxx xxxxxxxxxxx xxx xxxxxxxxxxx xxxxxxxxxxx on the ground surface comprised of ASTM F-1951 tested material, constitutes, at a minimum, a failure by the District to provide the Student with program access with respect to recess and any other programs offered by the District at the playground facility.

Additionally, OCR observed that there were areas on the playground that (1) were not completely filled with the accessible ground surface material; (2) were uneven; and (3) still consisted of pea gravel on some outer parts of the playground surface. Additionally, the District's witnesses informed OCR that although the custodial staff regularly spread and redistribute the existing mulch, the mulch is not replaced periodically.

Accordingly, based on all of the above, OCR finds that the school's playground area does not provide a stable, firm and slip-resistant ground surface as required by the 2010 ADA Standards at 1008.2, 403.2, and 302.1, and that the accessibility of the playground is impacted by the District's failure to maintain or sufficiently replace the mulch. In

addition, OCR finds that the District has not provided access to the Student to the programs and activities at the school's playground and that the District has not given priority to methods of providing access for the Student in the most integrated setting appropriate.

- **Accessible Routes**

The 2010 ADA Standards at 206.2.17.1 require play areas to provide at least one accessible route within the play area and that route must connect to entry and exit points for play components. Accessible routes serving play areas must comply with the technical requirements of Chapter 4 of the 2010 Standards addressing accessible routes and the technical requirements of Chapter 10 addressing recreational facilities (1008.2). Pursuant to the 2010 ADA Standard at 1008.2, accessible routes in play areas must be at least 60 inches wide (with some limited exceptions) and have a vertical clearance of 80 inches. The clear width of accessible routes connecting elevated play components must be at least 36 inches wide.

During its onsite, OCR observed that the cement curb enclosing the playground is several inches high. There is an opening to the right of the playground, but it requires one to go through grass to get to the mulch, so it does not provide an accessible route to the playground. There is also a small opening on the left side of the playground; however, it provides less than 36 inches of clear width and therefore does not provide an accessible route to the playground. OCR also observed that the ground play components in the playground are not located on an accessible route, as required by the 2010 ADA Standards at 240.2.1.1 because, as stated above, the mulch ground surface that covers the playground is not properly maintained by the District and portions of the playground surface still consist of pea gravel.

Accordingly, based on the information obtained, OCR finds that the School's playground does not have accessible routes to, or within, the play area, as required by the 2010 ADA Standards.

- **Play Components**

As stated above, prior to OCR fully completing the investigation of this part of allegation #1, the District voluntarily agreed to resolve any compliance concerns regarding its playground. Specifically, the District agreed to develop a detailed plan for how it will make its programs and activities at the School (including programs held at the playground) when viewed in their entirety, accessible to and useable by the Student and other persons with disabilities. As noted in the Agreement, the District may comply with this provision by such means as reassignment of activities or other services to accessible locations, alteration of existing facilities, construction of new facilities, or other means that result in making the District's programs and activities accessible to students with disabilities. In choosing among the methods available to meet program access requirements, Section 504 requires that recipients give priority to those methods that serve persons with disabilities in the most integrated setting appropriate.

Allegation #2 – Alleged Failure to Provide Accessible Routes from the School’s Parking Areas

The Student’s parent also alleged that there is no accessible route from the School’s parking areas to the front entrance. The Student’s parent stated that it is difficult for her to drop off and pick up the Student from school because of the distance between the designated accessible space and the entrance. She also stated that people inappropriately park in one of the school’s designated accessible spaces because it is not properly marked.

The school has two connected parking lots. One is directly in front of the main entrance to the building, Lot A, and one is on the side of the building, Lot B. Both lots were resealed and restriped in the summer of 2012; thus, OCR examined the school’s parking lots as new construction using the 2010 ADA Standards. Lot A, which has 21 parking spaces, has two designated accessible spaces (spaces 1 and 2), which are the closest to the front entrance. Lot B, which has a total of 59 spaces, has one designated accessible space (space 3). OCR observed that Space 3 is also on an accessible route to the front entrance. OCR found that the parking lots failed to meet the 2010 ADA Standards as follows:

1. Lot B has an insufficient number of designated accessible parking spaces. Specifically, Lot B has 59 parking spaces and only one designated accessible space. The 2010 ADA Standards at 208.2 require it to have at least three accessible spaces. OCR notes that even if Lot A and Lot B were considered together the District provides an insufficient number of designated accessible spaces, as the 2010 ADA Standards require a parking lot with 80 spaces (Lot A and Lot B combined) to have at least four designated accessible spaces, and the District currently only has three designated accessible spaces.
2. Spaces 1 and 2 were marked as accessible in Lot A, but did not have appropriate signage as required by Standard 502.6.
3. Spaces 1, 2 and 3 had broken pavement. Thus, the surface was not stable, firm, and slip resistant as required by Standard 302 regarding ground surfaces for parking spaces.
4. Space 2 had a drainage grate at the top right corner; thus, its surface was not stable, firm, and slip resistant as required by Standard 302.
5. The slope and cross slope of spaces 1, 2, and 3 exceeded the 1:48 ratio permitted by Standard 502.4.
6. The slope and cross slope of the access aisles for spaces 1 and 2 exceeded the 1:48 ratio permitted by Standard 502.4.
7. Space 3 did not have an access aisle as required by Standard 502.2.

8. Space 3 had a light pole (which was surrounded by a square cement block) protruding into the space.
9. Space 3 had signage, but it was not at least 60” from the ground to the bottom of the sign as required by Standard 502.6.
10. There were four curb ramps from the parking lot to the various entrances. Curb ramp one served space 1, curb ramp two served space 2 and curb ramps three and four served space 3. All three curb ramps lacked defined landings as required by Standard 406.4, and curb ramps one, two, and four had slopes either on the ramp itself or on the flared sides that were higher than the 1:10 ratio permitted by Standards 405.2 and 406.3.

The parking lots otherwise complied with the 2010 ADA Standards. OCR notes that the side entrance that the school arranged for the Student’s parent to use to pick up and drop off the Student during the winter months, which is adjacent to Lot B, is not close to the parking space marked as accessible in that lot (space 3). Based on the information obtained and summarized above, OCR finds that the District has failed to provide accessible parking with accessible routes, as required by Section 504 and Title II.

Allegation #3 – Alleged Barriers to Use of the School’s Designated Accessible Parking Spaces

The Student’s parent stated that the only school parking spaces designated as accessible are not usable during student drop-off and pick-up times because the spaces are blocked by the parked school buses and parent traffic. xxx xxxxxx xxxx xxx xxxxxx xxxxxxxx
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During OCR’s onsite visit to the school, OCR observed that the buses pull up on either side of the main entrance to load and unload children. According to the District, the buses park in this area so that they do not block the accessible route to the main entrance, including the curb ramps. OCR also observed that the buses parked along the sides of the parking lot and did not block any part of the accessible route from spaces 1 and 2 to the main entrance. Furthermore, OCR observed that vehicle access to the accessible parking spaces was not blocked by the parked buses. OCR observed that although there was some general congestion or slow-down of all traffic during this time, buses or other vehicles did not obstruct the accessible parking spaces. Based on the information obtained during its investigation, OCR concludes that there is insufficient evidence to support a finding that the designated accessible spaces are unusable, and therefore not accessible, as required by Section 504 and Title II, during student drop-off and pick up times at the school, as alleged.

Allegation #4 – Alleged Inaccessibility of the School’s Main Entrances

The Student’s parent also alleged that the school’s main entrance is not accessible to individuals with mobility impairments because the doors are heavy and there are no automatic openers. While the Student’s parent only alleged that the front entrance was inaccessible, OCR also assessed the side entrance for compliance because the parties agreed that the door the Student used during inclement weather. OCR also assessed the back entrance because it leads to the playground (playground entrance), which the Student uses when going to recess.

As previously noted, the school was constructed in 1996, and there have been no renovations since that time; thus, OCR examined the entrances using the 1991 ADA Standards. OCR identified the following compliance issues using the 1991 ADA Standards.

- **Main Entrance**

The main entrance consists of two sets of double doors. During the onsite, OCR obtained information showing that the School’s exterior doors were not sufficiently wide. The narrowest set of doors (with the door open to 90 degrees) was 30.5” wide and the widest was 31” wide. The 1991 ADA Standards at 4.13.5 require exterior doors to be at least 32” from the door to the door stop with the door open 90 degrees. Furthermore, there was a call button outside the exterior doors, which was at the appropriate height and reach ranges, but there was a movable bench placed in front of the call button, blocking the clear space both in the front and to the side of the call button. The slope at the exterior main entrance doors was steeper than the 2.86 degrees allowed by the 1991 ADA Standards at 4.13.8. Finally, as noted above in item #10 under the compliance concerns identified with respect to parking, the curb ramps had slopes that exceeded the allowable ratio. The curb ramps are necessary in order to provide an accessible route to the main entrances.

- **Side Entrance**

During the onsite, OCR also observed that the side entrance doors were too narrow, with the widest of the doors being 31” wide when open to 90 degrees, and not the 32” wide required by The 1991 ADA Standards at 4.13.5.

- **Playground Entrance**

During the onsite, OCR also determined that the entrance door to the playground was too narrow, as it was only 31.5” wide, and not 32” wide as required by 1991 ADA Standard 4.13.5. The slope at this door was also greater than the 2.86 degrees allowed by the 1991 ADA Standards at 4.13.8.

The School’s main entrances otherwise met the requirements of the 1991 ADA Standards. Based on the information obtained, OCR finds that the School’s main, side,

teachers, the principal, the secretary and the individual responsible for the Student's
xxxxxxx xxxxxxxxx However, as stated above, the enclosed Agreement, signed by the
District, resolves any compliance concerns regarding this allegation by requiring that the
District develop and implement a written xxxxxxxxxx xxxxxxxx xxxx for the Student that
complies with all relevant aspects of Section 504 and Title II, including 34 C.F.R. § 104.4
and 28 C.F.R. § 35.130.

Allegation #7 – Alleged Inaccessibility of the School's Annual Fun Day

The Student's parent also stated that the school sponsors a "fun day" for students at the
end of each school year. The Student's parent alleged that fun day activities in the spring
of 2012 were not provided in a location with an accessible route and did not include
activities that the Student could participate in because the activities xxxx xxx
X---paragraph redacted---X

The District's position statement stated that fun day is sponsored and run by the school's
parent teacher organization (PTO), not the school, but acknowledged that the event is
held during school hours, on school grounds, and that school staff and students
participate. One District witness said that the fun day for 2012 was held during a regular
school day and that each grade attended the event in 45 minute shifts. The fun day
activities included whiffle ball, inflatables for climbing and sliding, and a snow cone
station. Parents, including the Student's parent, were invited but not required to attend.
The activities were set up on a grassy area in front of the school. Evidence obtained
during the investigation shows that xxx xxxxxxxxxx xxxxxxx xxx xxx xxxxxxxxxx xx xxxxxxx
xx xx xxxxxxx xxx xxxxxxx xx xxxxxx xxx xxx xx xxxxxxxxxxxxxxxx xxx xxxxxxx xxx
xxxxx xxx xxx xxxxxxx xxxxxxxxxxxxxxxx xx xxx xxxxx xxxxxxx xxx xxx xxx xxx
xxxx xxxxxxx xxx xxxxx xxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxx xxx xxx xxxxxxx xxx xxxxxxx
xxx xxxxx xx xxx xxxxxx xx xxxxxxx

The evidence supports that there were three inflatable activities and that the Student
played in all three inflatables xxxx xxx xxx xx xxx xxxxxxxxxxx xxxxxxx The Student
needed xxxxxxxxxxx xxxxxxx xxx xxx xxxxx xxxxx of the activities because the entry
points were not at ground level and required children to crawl into the space. District
staff also confirmed that xxx xxxxxxx xxx xxx xxx xx xxx xxxxx xxx xxxxxxxxxxx xx
xxxxx xx xxxxxxxxxxx xx xxxxxxx playing in a smaller inflatable that was set up at the
playground area for the preschool students. xxx xxxxxxx xxx xxxxxxx xx xxxxxxx xx
xxx xxxxxxxxxxx xxx xxx xxxxxxx xx xxxxxxx xxxxx xxxxx xxxxxxxxxxx xxx xxx xxxxx
xxxx xxxxx xxxxxxx xx xxx xxxxxxx xxxxx xxx xxx xxxxxxxxxxx xxx xxxxx xx xxx
xxxxxx xxx xxx xxxxxxx xxx xxx xxxxxxx xxx xxx xx xxx xxx xx xx xxxxxxx

Here, the information obtained demonstrates that the Student participated in the annual
fun day activities both xxxx xxx xxxxxxx xxx xxxxxxxxxxx xx xxx xxxxxxxxxxx xxxxxxx
xxx xxx xxx provided by the District. The evidence also shows that the District
modified its policies to allow the Student and her classmates xxxxxxxxxxx xxx xx xxx
xx xxx xxxxxxx xxxxx xxx xxxxxxx xxxxxxx xxxxxxxxxxxxxxxx xxxxxxx The
evidence also demonstrates that the Student was given xxxx xxx xxx xxx xxxxxxx

to participate in the spring 2012 fun day at issue. Accordingly, OCR finds that the evidence is insufficient to conclude that the 2012 annual fun day was inaccessible to individuals with xxxxxxxx xxxxxxxxxxxxxx as alleged.

Resolution

The District has signed the enclosed resolution agreement, which, when fully implemented, will resolve any compliance concerns raised by the allegations and the information obtained by OCR to date. The signed agreement also resolves any violations of Section 504 of Title II found by OCR and outlined herein. In summary, the resolution agreement requires the District to modify the school's facilities, including its parking lots, conduct a self-evaluation, develop a transition plan, draft and implement a written emergency evacuation procedure for the Student and provide for program accessibility for its existing facilities in compliance with the 2010 ADA Standards.

Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy. The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

We appreciate the assistance provided to OCR by you and the District during the course of this investigation. OCR is committed to a high-quality resolution of every case.

The OCR contact person for the monitoring of the agreement is Ms. xxxxx xxxxxx, who may be reached (216) 522-xxxx or by e-mail at xxxxxx.xxxxxx@ed.gov. We look forward to receiving the District's first monitoring report by **January 31, 2015**, which should be directed to Ms. xxxxxx. If you have questions regarding this letter, please contact Ms. xxxx xxxx at (216) 522-xxxx or by e-mail at xxxx.x.xxxx@ed.gov.

Sincerely,

/s/

Meena Morey Chandra
Director

Enclosures