

December 22, 2014

Mr. Domenic Paolo
Superintendent
Fairport Harbor Schools
329 Vine Street
Fairport Harbor, Ohio 44077

Re: OCR Docket #15-14-1122

Dear Mr. Paolo:

This letter is to notify you of the disposition of the complaint, filed March 3, 2014, against the Fairport Harbor Exempted Village School District (the District) alleging discrimination on the basis of disability. Specifically, the complaint alleges that the District's McKinley Elementary School (Elementary School) building is inaccessible to individuals with mobility impairments, and that it lacks parking to serve individuals with mobility impairments and that the District's Harding Junior & Senior High School (High School) building is inaccessible to individuals 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 at 34 C.F.R. Part 104. Section 504 prohibits discrimination based on disability by recipients of federal financial assistance from the U.S. Department of Education. 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 at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities and their instrumentalities.

The District is a public institution which receives Federal financial assistance from the U.S. Department of Education. It is, therefore, subject to the requirements of Section 504 and Title II, and OCR had jurisdiction to investigate this complaint.

Based on the allegations, OCR investigated the legal issue of whether qualified persons with disabilities are being denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the District's programs and activities because the District's facilities are inaccessible to and unusable by persons with disabilities in violation of 34 C.F.R. § 104.21, and the Title II implementing regulation at 28 C.F.R. § 35.149.

To investigate this complaint, OCR interviewed the Complainants, reviewed documents submitted by the District, and conducted an onsite inspection of the facilities at issue in June 2014.

Based on a careful consideration of the information obtained, OCR has determined that the Elementary School and the High School (collectively, the “Schools”) do not meet the accessibility requirements of Section 504 and Title II. However, the District signed the enclosed agreement that, once implemented, will fully address these allegations 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.

I. Applicable Legal 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). Pursuant to Section 504, recipient school districts must also provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities. 34 C.F.R. § 104.4(b)(2).

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 compliance standard is referred to as “program access.” 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 it 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 Standards for Accessible Design (the 1991 ADA Standards) or equivalent standards. However, the 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, this safe harbor does not apply to those elements in existing facilities for which there were neither technical nor scoping specifications in the 1991 ADA Standards. These include, among other elements, play areas. 28 C.F.R. § 35.150(b)(2).

The Title II regulation, at 28 C.F.R. § 35.150(a)(2) and (3), provides that, with respect to existing facilities, a public entity is not required to take any action that would threaten or destroy the historic significance of an historic property. Nor is it required to take action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or would result in undue financial and administration burdens. In such cases, however, alternative measures to achieve program accessibility must be undertaken. *See* Title II Technical Assistance Manual (DOJ); 2010 ADA Standards at Section 106 (definitions).

With regard to parking, the U.S. Department of Justice has stated that, when an ADA-covered entity restripes a parking lot, it must provide accessible parking spaces as required by the ADA Standards, and that failure to do so would violate the ADA.

II. Background

OCR initially received two separate complaints against the District regarding accessibility issues at its two school buildings. The first complaint was received on February 13, 2014, (OCR Docket # 15-14-1108), and the second complaint – the instant complaint – was received on March 3, 2014. Both complaints contained an allegation that the Elementary School is inaccessible to individuals with mobility impairments and the instant complaint contained an additional allegation that the High School is inaccessible to individuals with mobility impairments. Accordingly, OCR merged the two complaints into one complaint (OCR Docket # 15-14-1122), to investigate whether the District’s school buildings are accessible to individuals with mobility impairments.

In the complaints, both complainants described the Elementary School and the High School as being very old and inaccessible beyond the ground floor levels. In one complaint (OCR Docket # 15-14-1108), the complainant reported that xxx xxx xxx xxxxxx xxxxxxxx xxxxxx
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xx xxxxxxxx xxx xxx xx xxxxxxxxxxxx xx x xxxxxxxx xx xxxxxxxx xxxxxxxx xx xxx xxxxxx In the other complaint (OCR Docket # 15-14-1122), the complainant reported that the inaccessibility at the schools impedes their picking up and dropping off xxxxxxxxxxxxxxxxxx and attending conferences and other events. The second complainant also reported that there is no handicap parking whatsoever at the Elementary School.

The District reported that the High School was constructed in 1922. In 1953, a gymnasium was added, and in 1966, an addition was added connecting the High School to the adjacent Fairport Public Library (Library). The District reported that the Elementary School was built in 1922. In 1953, a gymnasium was added.

III. Summary of OCR’s Investigation and Analysis

A. Site Assessment: High School

1. Site Layout

The High School is situated on property in a residential neighborhood. The site is contained within a city block, and consists of the High School building and the Fairport Public Library (Library), which are connected to each other. The Library is on the south side of the High School, and in addition to serving as the community public library, it serves as the school’s library.

The site is level with the exception of the northern side of the property, which is lower. The football field located on that side of the High School sits in a bowl-like space. All other land on the site is level with either streets or homes bordering the site. The High School has two building entrances on Vine Street, which it faces to the east. One entrance is handicap accessible. There is parallel street parking along Vine Street in the front of the building, with a space at the entrance-marked by a sign on a utility pole, designated as handicap accessible. New Fourth Street runs along the south side of the site. A parking lot in the rear of the building is entered off New Fourth Street. Two rear entrances to the High School, and an entrance to the

Library, are served by the rear parking lot. One of the rear entrances into the High School serves as an entrance to the school's office area, and the other rear entrance is into the part of the High School housing the gymnasium. There are also separate entrances, one in front and one in the rear, for the Library. These separate entrances require climbing steps to gain access to the building. There is a sign posted on the outside of the building at the Vine Street entrance that serves the Library that it is an accessible entrance.

2. Parking Access

The High School's parking lot off New Fourth Street consists of 52 regular parking spaces and two designated handicap-accessible spaces. The designated handicap-accessible parking spaces are situated nearest the building's rear entrance to the school's offices. The spaces measure 126 inches and 106 inches wide, respectively. The 126-inch-wide space has an adjacent access space of 62 inches and the 106-inch-wide space has an adjacent access space of 110 inches wide. The 126-inch-wide space is marked by a sign, mounted 52 inches from center to the ground. The 106-inch-wide space does not have a sign. Both spaces have painted handicap accessible designations on the pavement.

3. Building Layout

The High School is a multi-story building that was constructed in 1922, with an addition in 1953 of a gymnasium with locker rooms and restrooms. In 1966, a further addition to the building served to connect it to the Library, which is situated adjacent to the High School. For ease of reference, though all portions of the building are connected and comprise the High School, these are separated and designated hereinafter in this assessment as the 1922 Building, the 1953 Building, and the 1966 Building. Each building comprising the High School is distinct with regard to its contribution, or lack of contribution, to overall accessibility of the High School.

While the High School sits on level property, the 1922 Building design and layout are typical of public buildings constructed in early 1900s. This includes having a first floor that is elevated above ground level, which must be reached by climbing short or half flights of stairs once inside the building from its various entry doors. In addition, the first floor within the High School changes heights between the original 1922 Building, the 1953 Building gymnasium addition, and the 1966 Building addition. The High School is largely inaccessible to individuals with mobility impairments since upper floors of the 1922 Building, containing the bulk of classrooms in the building, are inaccessible. However, from a potential program access standpoint, the High School can be accessed by mobility impaired individuals through the 1966 Building and the 1953 Building. In addition, the 1922 Building can be accessed by means of passage through the High School's auditorium.

4. Access into 1922 Building

The first floor of the original 1922 Building houses a number of classrooms, restrooms, and the District's school board offices. Upper levels of the building are wholly inaccessible since the building lacks an elevator or chair lifts in stairwells. The first floor of the 1922 Building is

inaccessible from the outside, since any entry requires negotiating stairs to reach the first floor. Both the 1953 Building gymnasium addition and the 1966 Building addition are several steps down from the 1922 Building.

An exception to the overall inaccessibility of the first floor of the 1922 Building does exist, however. The High School auditorium is situated so that an individual with a mobility impairment could gain access to the first floor of the 1922 Building by entering the auditorium off the main hallway of the 1966 Building (which does have an accessible entrance – see below), and use the ramped floor of the auditorium to reach the 1922 Building hallway, to which it connects.

5. Access within 1922 Building

There are several classrooms located on the first floor of the 1922 Building. OCR measured doorways into two of the classrooms, Room 106 and Room 109. The doorways into the rooms measure 32 $\frac{3}{4}$ inches and 32 $\frac{1}{2}$ inches, respectively. Whiteboards in the rooms were mounted with tray heights at 37 $\frac{3}{4}$ inches and 35 $\frac{1}{2}$ inches, respectively. There were no other features in the rooms.

There are men's and women's restroom located on the first floor of the 1922 Building. Doorway widths are acceptable in that these each measure 33 $\frac{1}{4}$ inches, but of particular problem is that access to toilets is restricted by stall/partition arrangement. As a result, neither restroom is accessible to mobility impaired individuals since toilets in the restrooms are inaccessible to wheelchair users. This is somewhat dictated by dimension of the rooms, and a reconfiguration of stalls and toilets, if possible, is necessary. Presently, both restrooms lack accessible toilet stalls and space for maneuverability. There are no designated accessible stalls in the restrooms. Stalls are short and narrow, and the passage to the numerous stalls in each restroom is too narrow for wheelchairs. A lack of accessible toilets renders the restrooms inaccessible in their present arrangement.

The District's school board offices are located on the 1922 Building's first floor. These offices are accessible through a doorway measuring over 32 inches in width. Space within the offices is accessible.

The High School auditorium is accessible through 1922 Building off the main hallway. The door width measures 32 inches for access into the auditorium.

6. Access into 1953 Building

The 1953 Building has an accessible entrance at the rear of the building, served by the New Fourth Street parking lot. There is no automated door, but the door is wide and no barriers to access exist at this entrance. Doorway width at the entrance measures 36 $\frac{3}{4}$ inches. Once inside the building, there is no access to the 1922 building, to the right, since negotiating a short flight of stairs is required. The 1953 Building is not connected in any way to the 1966 Building.

7. Access within 1953 Building

The only spaces contained in the 1953 Building are men's and women's restrooms, a gymnasium, and men's and women's locker located off the gymnasium. These spaces are all on the same level.

The doorways into the men's and women's restrooms both contain outer and inner doors. For the men's restroom, the door widths measure 33 ¼ inches for both doors. The door widths for the women's restroom also measure 33 ¼ inches. In the women's restroom, an immediate turn to the left is required to enter the second door. Once inside the restroom, the toilet stalls are short and narrow, and partition arrangement impedes access, rendering the restroom inaccessible. There are no designated accessible stalls. In the men's restroom, there is a toilet stall that has been installed which is larger and could be accessible, but there are no grab bars around the toilet. Modifications to this restroom could result in making the space accessible.

The gymnasium entrance off the hallway measures 35 inches wide. Hardware height for the handle on outside of the door is 35 ¾ inches high, and inside of the door handle is 34 inches high.

For the men's locker room, the door widths for both outer and inner doors are 33 inches. The handles to open the door is mounted 38 inches from the floor. The locker room has accessibility issues. There is one toilet stall that is potentially accessible. However, there are no grab handles inside the stall. The showers are not accessible since there is a step-over into the shower area. The step-over is over six inches high.

For the women's locker room, the door widths for both outer and inner doors are 33 inches. The door handle to open the door is mounted 38 inches from the floor. The locker room has accessibility issues. There is one stall that is potentially accessible, but it lacks grab handles in the stall. The showers are not accessible since there is also a step-over into the shower area. The step-over is over six inches high.

8. Access into 1966 Building

The High School's 1966 Building is accessible at its Vine Street entrance. Entry through this door grants individuals access to the elevator serving the Public Library, the High School offices, including principal and counselor offices, a lunch room, and the auditorium. The accessible entrance and elevator were installed in 2004 by the Library. The doorway measures 33 inches wide, with door opening hardware mounted at forty inches from the floor/paved surface. The door can be opened automatically, but this requires action by someone within the library. A user/requestor has to press a button outside the doorway, mounted at 36 inches from the paved surface, to summon someone inside that access is being requested. When opened with power assist, the door remains open for 18 seconds before closing. The door can also be opened manually by a user. The area outside the door is level with a longitudinal slope of only 1.1 degrees. The cross slope is 0.2 degrees.

Once inside the building, there is an elevator immediately to the left, which individuals who are mobility impaired must use to access the Library, since the Library is also elevated above ground level. The elevator also serves the lower (basement) level of the Library building, which contains a community meeting room, and the art classroom for the High School. Once inside the Vine Street entrance, the High School offices are straight ahead. A hallway off to the right connects the 1966 Building to the 1922 Building (but access to the 1922 Building requires negotiating steps up to the first floor level). Along the accessible 1966 Building hallway are the high school counseling office, school aide/teacher office, lunchrooms, an inaccessible single-user restroom, and the High School auditorium.

The 1966 Building addition can also be accessed through a rear entrance to the building, which serves the High School offices, from the New Fourth Street parking lot. This entrance may serve as an accessible entrance to the building from the rear parking lot.

With regard to parking that serves the 1966 Building, there is one street parking space designated to serve as handicap accessible parking along Vine Street for individuals using the functional accessible entrance.

9. Access within the 1966 Building

The Library installed the elevator in 2004. The elevator travels five feet from the lower level to the ground floor, then another five feet from the ground floor to the first floor. The elevator call buttons in the hallway are positioned 36 inches from the floor. The elevator car has doors on two sides – one that opens into the hall of the 1966 Building – and a door on the opposite side of the car that opens up into the Library on the upper level, and into the community meeting room on the lower level. The width of the elevator car doors is 42 inches. The car dimensions measure 81 inches by 51 inches. The door remains open for 10.7 seconds when it is opens, and there is sensor that reopens the door if activated by motion. The door stays open for 18.75 seconds on the Public Library side of elevator. The call buttons on the library wall are positioned 42 ½ inches from the floor. Inside the elevator, the elevator controls are 27 ½ inches from the floor of the elevator. There are braille elevator/floor indicators on the outside of the elevator door frames that are mounted 58 ¾ inches high.

The lower level (basement) under the Library houses a community meeting room, and the High School art room. The doorway connecting the elevator corridor and the community meeting room has a width of 38 ½ inches. The art room is located off the community meeting room, and has a doorway width of 34 ¼ inches through the first doorway (where one enters an art supply room), and 34 ¼ inches into the art classroom. From the art supply room space into the art classroom, there is an incline/ramp that has a slope of 4.1 degrees. The cross slope is 1.2 degrees. The art room has a sink which is 37 inches high. The water spigot is twelve inches from the edge of the sink. The water faucet handles are a 20 ½-inch reach from the edge of the sink. There is no under-clearance for the sink. Work tables in the room measure 29 ½ inches high, with no obstruction under the space. A paper towel holder is mounted 42 inches from the floor, and a pencil sharpener is mounted 52 inches from the floor.

At the Vine Street accessible entrance, the High School offices are directly ahead of the entrance. There are no barriers to access to the office area, and the doorway into the office area measures 32 ¾ inches. There is a rear entrance to the office area of the 1966 Building from the New Fourth Street parking lot.

Located in a separate space from the High School offices, off the main hallway of the 1966 Building, are the office of the school counselor and a testing room used by school aides and teachers. Both of these have door widths of 32 ¾ inches. These spaces are barrier free.

The District reported to OCR that it has never had a school lunch/food service for students in its history. However, it added food service in fall 2014. There are two rooms (Room 104 and Room 105) off the hallway of the 1966 Building that now serve as lunch rooms. The door widths of these spaces are 32 ¾ inches. There is a single-user lavatory located within Room 104 that is not accessible since the room is too small for anyone with a mobility impairment requiring use of an assistive walking device or wheelchair to access.

Also located in the 1966 Building is the High School auditorium. The auditorium is accessed from the hallway that connects the 1966 Building to the 1922 Building. The doorway is double door width, with over 60 inches of access width into the auditorium. The aisle way in the auditorium is wide, and a mobility impaired individual could access the auditorium in the 1966 Building, travel the sloped ramp/aisle up to the rear of the auditorium, and exit into the 1922 Building. The longitudinal slope of the ramp/aisle is 4.7 degrees.

B. High School Program Access Feasibility

OCR's on-site assessment demonstrates that the High School can be accessed by mobility impaired individuals through the 1953 Building rear entrance and the 1966 Building rear and front entrances. The 1922 Building can also be accessed from the 1966 Building via use of the High School auditorium aisle/ramp. However, the 1953 Building housing the gymnasium cannot be accessed from other parts of the High School building, and must be accessed from a separate outside entrance, off the New Fourth Street parking lot.

The High School offices, lunch room, art room, gymnasium, library, auditorium and several classrooms can all be accessed by mobility impaired individuals. However, there are presently no handicap accessible restrooms in any portion of the High School. Access to handicapped accessible restrooms must be addressed before a determination can be made that the High School can be made program accessible for individuals with mobility impairments.

C. Applicable Accessibility Standard – High School

The High School is comprised of three distinct but connected buildings. In addition, the Library serves as yet another part of the building that serves students and staff of the District. In 2004, the construction of a new handicap accessible entry and elevator at the Vine Street entrance of the 1966 Building dramatically changed the accessibility of the building by allowing individuals

with mobility impairments, for the first time, unimpeded access to the Library as well as the spaces on the lower level beneath it. This alteration to the building in 2004 constitutes a change to program access.

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).

Accessibility standards under Section 504 and/or Title II mandate that new construction and alterations after January 26, 1992, but prior to March 15, 2012, must conform to UFAS or the 1991 ADA Standards, or equivalent standards. Since the alteration to the High School was performed in 2004, this is the applicable accessibility standard for the District's High School.

D. Site Assessment: Elementary School

1. *Site Layout*

The Elementary School is sited on property in a residential neighborhood with a rectilinear street arrangement. The site is level, as is all surrounding property. The building faces South Street to the south and Plum Street to the west. There is no parking lot on the site. All parking is street parking, and there are no designated handicap accessible street parking spaces. On the South Street side of the building, there is a large asphalt playground, with a concrete apron from the street into the playground. However, the District reported that this is not a parking lot. The District's maintenance supervisor reported to OCR that there used to be a handicap accessible parking space in this area, but the building principal did not want any parking near or on the playground for safety reasons.

2. *Building Layout*

The Elementary School is a multi-story building that was constructed in 1922 (1922 Building), and in 1953 (1953 Building), a gymnasium was added to the school. The part of the school that was added in 1953 includes restroom/locker rooms, gymnasium and offices, including the building principal's office. The original 1922 Building has a first floor that is elevated above ground level, and it is reached by climbing stairs from either the outside, or from inside the 1953 Building. There are no elevators or chairlifts in the building.

3. *Access into 1953 Building*

The 1953 Building is accessible from an entrance on South Street. There is a wide concrete incline ramp up into the building from the paved playground/entrance surface with a slope of 4.7 degrees. The bank of entrance doors has a vestibule with both outer and inner doors. The outer door opening measures 42 ½ inches wide, and the inner door opening measures 34 ¾ inches wide. The outside door handle is 33 inches from the pavement to the bottom of the handle. The

door opening bar on the inside of the outer door is 40 inches from the floor to the bar. The door opening bar on the inside of the inner door is 38 inches from the floor. The outside of the inner door handle is 33 inches from the pavement to the bottom of the handle. The door does not have an automated opening mechanism. There is an intercom button on the outside at the entrance that is mounted 55 inches from the pavement.

4. Access within 1953 Building

The 1953 Building has the Elementary School office area immediately in the area of the accessible entrance, and it is accessible to mobility impaired individuals. The doorway into the office measures 32 $\frac{3}{4}$ inches wide. The principal's office is located within the office area, with a doorway that measures 32 $\frac{3}{4}$ inches wide.

The boys' restroom/locker room is located next to the office. The room is entered by passing through an outer and inner pair of doors. The door opening width measures 33 $\frac{1}{4}$ inches wide for the outer door, and 33 inches wide for the inner door. There is a toilet in the corner of the restroom/locker room, but it sits in the open with no privacy screens or partitions. There are no grab bars mounted around the toilet, and it is therefore, inaccessible. There are no longer showers for boys to use, and the lockers are bolted shut.

The girls' restroom/locker room is located next to the boy's restroom/locker room. The room is entered through an outer and inner door. The door opening width measures 33 inches for the outer door, and 33 $\frac{1}{4}$ inches wide for the inner door. The toilets in the room are not accessible due to original stall dimensions and partitions. There are no longer showers for girls to use, and the lockers are bolted shut.

Access into the gymnasium from the hallway is barrier free, as the opening is double door width, with no barrier between doors. There is no lunchroom or cafeteria in the Elementary School. However, the Elementary School began a lunch program with food service in fall 2014. The food service is located in the gymnasium.

5. Access into 1922 Building

The 1922 Building is connected to and entered through the 1953 Building, near the accessible entrance to the 1953 Building. However, the 1922 Building is not accessible to mobility-impaired individuals. To enter the 1922 Building from within the 1953 Building, the only option is to negotiate either a flight up stairs up, to the first floor, or a flight of stairs down, to the lower level. There are no elevators or chair lifts in the stairwells. Entrances from the outside of the 1922 Building require climbing stairs to reach either the first floor or lower level.

6. Access within 1922 Building

There is no access for mobility impaired individuals within the 1922 Building.

E. Elementary School Program Access Feasibility

OCR's on-site assessment demonstrates that the Elementary School can be accessed by mobility impaired individuals through the 1953 Building. Only the Elementary School's offices, gymnasium and restrooms across from the gymnasium can be accessed by mobility impaired individuals, and the restrooms are inaccessible in present form. There are presently no accessible classrooms, restrooms, etc., in any portion of the Elementary School. In addition, there is no accessible parking at the site for mobility impaired individuals. These deficits must be addressed before a determination that District is able to provide program accessibility for mobility impaired individuals at the Elementary School.

F. Applicable Accessibility Standard – Elementary School

The District reported that the Elementary School was last altered in 1953, when the gymnasium was added to the original 1922 Building. A minor alteration occurred when a bank of entrance doors into the 1953 Building was replaced in 2012. This alteration did not serve to provide a means of access in any way to the 1922 Building. The regulation implementing Section 504, at 34 C.F.R. § 104.22, categorizes facilities constructed on or before June 3, 1977, as "existing facilities." Accordingly, OCR determined that the Elementary School is an "existing facility" under Section 504. The regulation implementing Section 504 requires a recipient to operate each program or activity conducted in existing facilities so that the program or activity, when viewed in its entirety, is readily accessible to individuals with disabilities. The regulations do not require a recipient to make structural changes to existing facilities. A recipient may comply through means such as redesign of equipment, or reassignment of classes or other services to accessible buildings or locations. 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.

IV. Resolution

Based on the information above, OCR concluded that the District was not meeting the requirements of the Section 504 and Title II regulations in that neither the Elementary School building nor the High School building provide program access for individuals with mobility impairments.

However, the District has signed the enclosed resolution agreement, which, once implemented, will fully address OCR's findings in accordance with Section 504 and Title II. The resolution agreement requires the District to: complete a self-evaluation of Section 504 and Title II program accessibility at the Schools. The District will then use the results of its self-evaluation to develop and submit to OCR for review and approval a transition plan setting forth the steps necessary to complete the changes identified. The District will further develop a detailed plan (the interim plan) for how it will make its programs and activities at the Schools, when viewed in their entirety, accessible to and useable by persons with disabilities within thirty calendar days after being notified of such a need while the District is developing and implementing the approved OCR transition plan. Finally, the District will adopt and implement procedures to ensure that interested persons, including persons with mobility impairments, can obtain information as to the

existence and location of services and activities that are accessible to and usable by persons with disabilities at the Schools and how to request relocation of programs, services and activities that are not accessible, including an appropriate District contact person.

V. 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 address in this letter. OCR will monitor the District’s implementation of the agreement. Should the District fail to fully implement the agreement, OCR will take appropriate action to ensure the District’s full 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.

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 a 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.

We appreciate your efforts and those of District staff as we investigated and resolved this complaint. The OCR contact person for the monitoring of the agreement is XXXXXXXX XXXXXXXX. We look forward to receiving the District’s first monitoring report by February 27, 2015, sent to OCRCleMonitoringReports@ed.gov. The report should be directed to xxx xxxxxxxx who can be reached at xxxxx xxxxxxxx or xxxxxxxxxxxxxxxxxxxxxxxxxxxx If you have any questions about this letter or OCR’s resolution of this case, please contact xxxxxx xxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxx xx xxxxxxx xx xxxxxxxxxxxxxxxxxxxxxxxx

Sincerely,

/s/

Meena Morey Chandra
Director

Enclosures