



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

January 19, 2017

Timothy J. Mullins, Esq.
Giarmarco, Mullins & Horton, P.C.
Tenth Floor Columbia Center
101 W. Big Beaver Road
Troy, Michigan 48084-5280

Re: OCR Docket #15-14-1297

Dear Mr. Mullins:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Lamphere Schools (the District) on August 15, 2014. The complaint alleged that the District discriminated against a student (the Student) enrolled at Simonds Elementary School (the School) on the basis of disability and that certain elements of the School's facilities are inaccessible. Specifically, the complaint alleged the following:

1. the District generally excluded the Student from physical education from October 2013 through the end of the 2013-2014 school year;
2. the playground at the School is inaccessible to students with mobility impairments; and
3. the exit leading to the outside from the Student's general education classroom for the 2014-2015 school year¹ was inaccessible.

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

¹ In the notification letters OCR originally issued to the parties at the beginning of this investigation, this allegation was stated with reference to the 2013-2014 school year. However, this allegation was clarified during the investigation as applying to the Student's classroom for the 2014-2015 school year.

assistance from the Department and as a public entity, the District is subject to these laws. Therefore, 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 him the benefits of, or otherwise subjected him to discrimination under its programs and activities on the basis of his 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 the District failed to provide a qualified student with a disability a free appropriate public education (FAPE) in violation of 34 C.F.R. § 104.33; and
- whether qualified persons with disabilities were excluded from participation in, were denied the benefits of, or were otherwise subjected to discrimination in the District's programs and activities because District 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.

During the course of the investigation, OCR reviewed documentation provided by the Complainant and the District, conducted an onsite visit to the School, and interviewed the Complainant, the Student's parent, and another District parent. OCR also provided the Complainant with the opportunity to respond to information submitted by the District. After carefully reviewing the information provided, OCR has determined that the evidence is sufficient to support findings that: 1) the District denied the Student equal access to physical education without a legitimate nondiscriminatory reason, and did not provide the Student with the physical education services required by his Individualized Education Program (IEP), resulting in a denial of FAPE; 2) the District's newly constructed playgrounds at the School do not comply with the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards) as required; and 3) the District failed to provide program accessibility for the Student. The bases for OCR's determinations are discussed below.

Background

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Alleged Exclusion of the Student from Physical Education

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- **Summary of OCR’s Investigation**

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- **Applicable Legal Standards**

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), prohibits a recipient from, on the basis of disability, excluding a qualified person with a disability from participation in, denying the person the benefits of, or otherwise subjecting the person to discrimination under any program or activity.

Pursuant to 34 C.F.R. § 104.4(b)(2), aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for persons with and without disabilities, but must afford persons with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs. The Title II regulation, at 28 C.F.R. § 35.130(d), requires public entities to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

Further, the regulation, at 34 C.F.R. § 104.33, requires a recipient public school district to provide a free appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. For the purpose of FAPE, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of the person with a disability as adequately as the needs of nondisabled persons are met and (ii) are based upon adherence to procedures that satisfy the educational setting, evaluation, placement, and procedural safeguard requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard.

With respect to educational setting, the regulation at 34 C.F.R. § 104.34 requires a recipient school district to educate, or provide for the education of, each qualified person with a disability

in its jurisdiction with persons without disabilities to the maximum extent appropriate to the needs of the person with a disability. A recipient must place a person with a disability in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment, it must take into account the proximity of the alternate setting to the person's home. Further, in providing or arranging for the provision of nonacademic and extracurricular services and activities, including recess periods, a recipient must ensure that persons with disabilities participate with nondisabled persons in such activities and services to the maximum extent appropriate to the needs of the person with a disability in question.

- **Analysis and Conclusion**

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Therefore, there is sufficient evidence for OCR to find that the District denied the Student equal access to physical education without legitimate nondiscriminatory reason, in violation of 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130, and did not provide the Student with the physical education services required by his IEP, resulting in a denial of FAPE in violation of 34 C.F.R. § 104.33.

Alleged Inaccessibility of the School Playgrounds

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- **Applicable Legal Standards**

In addition to the above-referenced regulatory provisions, the Section 504 implementing regulation at 34 C.F.R. § 104.21 and the Title II implementing regulation at 28 C.F.R. § 35.149 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. The regulations reference standards for determining whether an entity's programs, activities, and services are accessible to individuals with disabilities that depend upon whether the facilities are determined to be existing construction, new construction, or alterations. The applicable standard depends upon the date of construction or alteration of the facility.

- Existing Construction

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 the Title II regulation, existing facilities are those for which construction began on or before January 26, 1992.

Carrying an individual with a disability is considered an ineffective and therefore an unacceptable method for achieving program accessibility. 28 C.F.R. Part 35, Appendix B, citing to Department of Health, Education, and Welfare, Office of Civil Rights, Policy Interpretation No. 4, 43 Fed. Reg. 36035 (August 14, 1978). Carrying will be permitted only in manifestly exceptional cases, and only if all personnel who are permitted to participate in carrying an individual with a disability are formally instructed on the safest and least humiliating means of carrying. "Manifestly exceptional" cases in which carrying would be permitted might include, for example, programs conducted in unique facilities, such as an oceanographic vessel, for which structural changes and devices necessary to adapt the facility for use by individuals with mobility impairments are unavailable or prohibitively expensive. Carrying is not permitted as an alternative to structural modifications such as installation of a ramp or a chairlift.

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.

A public entity's self-evaluation should also identify and correct any policies and practices that are inconsistent with Title II's requirements, and, 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.

- New Construction and Alterations

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 is considered new construction if construction began (ground was broken) on or after June 3, 1977. Under the Title II regulation, a facility is considered new construction if the construction was commenced after 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 regulation 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 a 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) (1997) 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.

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.

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

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). Sections 240 and 1008 of the 2010 ADA Standards contain scoping and technical requirements for play areas. Specific requirements from these sections are explained below with OCR’s findings for this allegation.

- Maintenance of Accessible Features

Finally, the Title II regulation, at 28 C.F.R. § 35.133, requires a public entity to maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities pursuant to the regulation.

- **Summary of OCR’s Investigation, Analysis, and Conclusion**

Regarding the playground, the District stated that the School was built in 1957 and that the building and playground were renovated in 1999 as part of a bond issue project. The District provided e-mail correspondence and blueprints regarding redesign of the two playgrounds at the School dated September 2014. According to the discussion in these documents, the District intended at that time to redesign the playgrounds to comply with the 2010 ADA Standards.

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Therefore, the evidence showed that there was no accessible playground equipment for the Student during most of the 2013-2014 school year. In addition, even when there was an adaptive swing, the information indicates that the Student was being carried to the swing from his wheelchair because the ground surface was not firm, stable, and slip resistant. The evidence did not support the existence of any manifestly exceptional circumstances that would permit carrying of the Student to provide access. OCR finds that the District did not provide access to the Student to the programs and activities at the School’s playgrounds and that the District did not give priority to methods of providing access for the Student in the most integrated setting appropriate, in violation of the Section 504 regulation at 34 C.F.R. §§ 104.4 and 104.21 and the Title II regulation at 28 C.F.R. §§ 35.130 and 35.149.

With respect to the playgrounds the District installed at the School in 2014, although the District asserted that the ground surface materials used comply with the 2010 ADA Standards, the Student’s parent told OCR that the Student was unable to maneuver around the surface at the new playgrounds in his wheelchair without assistance. During OCR’s onsite to the School in July 2016, OCR observed that there were areas on the playgrounds that (1) were not completely filled with accessible ground surface material; and (2) were uneven. These observations supported the parent’s assertion.

OCR observed both playgrounds at the School while onsite (the east playground and the west playground). OCR noted that the east playground offered a total of seven separate play components, which included freestanding play components as well as the various play components that comprised a large composite play structure. Out of the ground-level play components there were four different types of play experiences offered. For example, there were several play components that offered the general experience of climbing. There were a total of three ground-level play components and four elevated play components on the composite structure.

OCR noted that the west playground offered a total of seven separate play components, which included freestanding play components as well as the various play components that comprised a large composite play structure. Out of the ground-level play components there were four different types of play experiences offered. There were a total of two ground-level play components and five elevated play components on the composite structure.

Neither the east playground nor the west playground would be accessible to a child with mobility impairments. There is no way for such a child to access the large composite play structures due to the lack of a ramp. While one of the swing sets on the east playground has room for an adaptive swing, no such swing was installed as of OCR's onsite visit on July 8, 2016. Further, the problems with the surface noted above would make it difficult for a student with mobility impairments to reach the swing, even if installed.

In addition to the individual violations against the Student, the District is also in violation of the Section 504 and Title II regulations at 34 C.F.R. § 104.23 and 28 C.F.R. § 35.151, because its newly constructed playgrounds at the School do not comply with the 2010 ADA Standards as required. In addition, the District is in violation of 28 C.F.R. § 35.133 because it has not maintained its accessible ground surface at the playgrounds. OCR's findings of non-compliance with the 2010 ADA Standards are detailed below:

- 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.

The AMTM 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." The parent told OCR that the Student was unable to maneuver around the surface in his wheelchair without assistance. OCR observed that there were areas on the playground that (1) were not completely filled with accessible ground surface material; and (2) were uneven.

Accordingly, based on the above, OCR finds that the School's playground areas do not provide a stable, firm and slip-resistant ground surface as required by the 2010 ADA Standards at 1008.2,

403.2, 302.1, and that the accessibility of the playground is impacted by the District's failure to maintain or sufficiently replace the accessible design material it installed.

- Play Components

According to the 2010 ADA Standards, a “play component” is an element intended to generate specific opportunities for play, socialization, or learning. Play components are manufactured or natural; and are stand-alone or part of a composite play structure. A ground-level play component is approached and exited at the ground level. Examples of ground-level play components may include spring rockers, swings, diggers, and stand-alone slides. At least one of each type of ground-level play component must be on an accessible route and comply with 1008.4. (240.2.1.1) Ground-level play components must be integrated into the play area. (240.2.1)

An “elevated play component” is a play component that is approached above or below grade and that is part of a composite play structure consisting of two or more play components attached or functionally linked to create an integrated unit providing more than one play activity. Play components that are attached to a composite play structure and can be approached or exited at the ground level as well as above grade from a platform or deck, such as a climber, are considered elevated play components, not ground-level play components. (Advisory 240.2.2) Where a play area contains elevated play components, the play area must provide a certain ratio of ground-level play components of differing types on an accessible route. Table 240.2.1.2 sets forth the requisite number of ground-level play components that must be on an accessible route. Furthermore, 50% of the elevated play components must also be on an accessible route. (1008.4, 240.2.2, Chapter 4) Two methods contemplated by the 2010 ADA Standards for the provision of an accessible route to elevated play components are ramps and transfer systems. (1008.2 and 1008.3)

Ground-level and elevated play components on accessible routes must provide clear floor space that is stable, firm and slip resistant, must be at least 30 inches by 48 inches minimum, and have at least one turning space provided on the same level as the play components. Clear floor or ground spaces, turning spaces and accessible routes are permitted to overlap within play areas. (302, 304, 305 and 1008.4) Where swings are provided, the turning space shall be located immediately adjacent to the swing. (1008.4.1) Where play components require transfer to entry points or seats, the entry points or seats must have a height of between 11 inches (minimum) and 24 inches (maximum) from the clear floor or ground space (except for slides) and at least one means of support for transferring shall be provided. Designs that provide for an unobstructed transfer are recommended. (1008.4.2, 1008.4.4 and 1008.4.5) As stated above, with some limited exceptions, at ground level, the clear width of accessible routes must be 60 inches minimum and have a vertical clearance of at least 80 inches. (1008.2)

For elevated play components required to be on an accessible route, transfer platforms are required where transfer is intended from wheelchairs or other mobility aids. (1008.3.1) Transfer platforms must have level surfaces and they must be at least 14 inches deep and 24 inches wide. (1008.3.1.1) The transfer platforms must have a height between 11 inches (minimum) and 18 inches (maximum) measured to the top of the surface from the ground or floor surface. This

permits transfer from a wheelchair on to the transfer platform as the point of entry to the elevated play components. (1008.3.1.2) There must be a transfer space at the ground or surface level and adjacent to the transfer platform so that a wheelchair can maneuver up to the transfer platform. The transfer space should be at least 48 inches wide and centered on the 24-inch width of the transfer platform. The transfer platform serving the transfer space shall be unobstructed. The clear width of accessible routes connecting elevated play components must be at least 36 inches with the exception of transfer systems connecting elevated play components which must be at least 24 inches. (1008.2.4.2) When movement is intended from transfer platforms to levels with elevated play components required to be on an accessible route, transfer steps must also be provided. Transfer steps must be at least 14 inches deep and 24 inches wide and may not be higher than 8 inches measuring from the space below. (1008.3.2) At least one means of transferring (transfer supports) shall be provided for transfer platforms and transfer steps. Transfer supports assist children when transferring and may include things like a rope loop, a loop type handle, a slot in the edge of a flat horizontal or vertical member, poles, bars or D rings on the corner posts. (1008.3.1.4 and 1008.3.2.3)

Where ramps are provided, they must meet requirements provided at 1008.2.5. (This is not applicable in the instant case as this composite structure did not have any ramps.)

Both playgrounds fail to provide appropriate transfer platforms. However, even if they did, the playgrounds would still violate the 2010 ADA Standards due to the playground surface consisting of mulch that is too loose to allow for such transport.

With respect to the accessibility of the actual play components, OCR's onsite observations indicated that both the east and the west playgrounds may have sufficient accessible components if a child with mobility impairments were able to reach the components (ground surface) and to access the large composite play structure (lack of ramps). Once on the large composite play structure, a child could access the various play components as there is sufficient room provided from the transfer system. On the east playground, a child could access the tube slide, the yellow slide, the metal moving bridge, the monkey bars, and the slider. This is in addition to the parallel bars, the tire swing, and one of the swing sets, which are not part of the large play structure. This would provide the child with sufficient components and different types of components. On the west playground, the child could access the steering wheel, the moving metal bridge, the slider, the twisting slide, and the blue and yellow slides. There is also a free-standing tire swing.

In addition, the playgrounds are required to have at least two ground-level play components that are on an accessible route and two different types of ground-level play components that are on an accessible route as there are between five and seven elevated play components. The east playground complies with this requirement. The one swing set in that area has room for an adaptive swing; the tire swing; and the parallel bars. However, the west playground does not appear to comply with this requirement as it only has the tire swing.

Alleged Inaccessible Classroom Exit

The complaint, as clarified, alleged that there was a door in the Student's 2014-2015 school year classroom leading outside, and the students would line up outside in the morning, and then go up

steps and into the classroom. The door was also used during recess. According to the Student's parent, there was no way for the Student to use this door, because there were steps. As a result, the Student would be the only student who used the front entrance.

- **Summary of OCR's Investigation**

The Student's parent stated that the Student went on homebound services, because of medical needs, in October 2014; sometime after that, she learned that the District had installed a ramp for the exit at issue. The Student's parent stated that the ramp appeared to be sufficient; however, she was concerned about any other classrooms the Student would be assigned to, which had doors leading outside.

On July 8, 2016, OCR conducted its onsite at the School. OCR noted that the ramp that the District had installed at the exterior exit of the Student's 2014-2015 classroom was no longer installed at the School. OCR also noted that there are classrooms in the building that have outside exits that are flush with the pavement outside.

The School was constructed in 1957. The evidence obtained by OCR indicates that no alterations have been undertaken at the building except for the playgrounds constructed in 1999 and then replaced in 2014. Therefore, the exit at issue in this allegation is existing construction. The Student's parent e-mailed OCR a photograph of the ramp the District installed at the exterior exit to the Student's 2014-2015 classroom. As OCR was unable to determine if the ramp complied with the 2010 ADA Standards from the photograph alone, OCR requested that the District provide photographs with relevant measurements, in addition to information from the ramp provider. Information provided by the District showed that the ramp complied with applicable requirements, with two exceptions. First, the ramp handrail did not extend 12 inches beyond the ramp at the bottom. The District stated that its contractor had the part on order and would be scheduling an installation date. The District did not provide documentation to OCR indicating that this was completed. Second, some of the pictures showed that the landing outside the classroom door, the ramp surface, and the surrounding sidewalk, were partially covered with snow, so that the surface was not slip-resistant.

OCR confirmed during its July 8, 2016, onsite that the School had since removed the ramp. OCR also confirmed that the Student no longer is enrolled in the District. OCR did not obtain any evidence indicating that the District had ever completed a self-evaluation or transition plan with respect to physical barriers at the School.

- **Applicable Legal Standards**

As explained above, for existing facilities, the Section 504 and Title II 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. Where structural changes in facilities were to be undertaken to comply with the program accessibility obligations under the Title II regulation at 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.

- **Analysis and Conclusion**

OCR finds that the District violated 28 C.F.R. § 35.150, as well as 34 C.F.R. § 104.22, with respect to providing program accessibility for the Student. Using the 2010 ADA Standards as a guide, the existing construction classroom exit was not useable by persons with disabilities. The District installed a temporary ramp for that exit during the 2014-2015 school year, which would have been required to comply with the 2010 ADA Standards due to the date of installation, did not. In addition, the District failed to develop a transition plan to identify physical obstacles at the School that limit the accessibility of programs or activities to individuals with disabilities, describe in detail the methods to be used to make the facilities accessible, and take any steps necessary to achieve compliance, which contributed to its inability to provide appropriate program access to the Student.

Resolution and Conclusion

To resolve the compliance findings identified above, the District signed the enclosed agreement on January 16, 2017. Under terms of the agreement, the District will be required to:

- provide appropriate compensatory education and/or remedial services to the Student to address the District's failure to provide the Student with physical education services pursuant to his IEP during the 2014-2015 school year;
- send a letter to the Student's parents advising that, should the Student reenroll in the District, the District will provide for the Student's equal access to physical education and recess; take all measures necessary to ensure that each part of its program and activity is readily accessible to the Student; and convene the Student's IEP team to, at a minimum, determine the specific physical education placement and services appropriate for the Student, identify and plan for any training needed by the Student's service providers, and determine how the District will provide recess for the Student in a manner and in the most integrated setting appropriate to his needs, and any equipment and/or modifications the District must obtain for this purpose;
- modify the playgrounds at the School to comply with 2010 ADA Standards, including constructing accessible routes to, through, and around the playground sites; installing or correcting and maintaining an accessible ground surface; and construction appropriate ramps and/or transfer systems to play components; and
- develop a transition plan setting forth the steps necessary to meet the program access requirements of 34 C.F.R. § 104.22 and 28 C.F.R. § 35.150 with respect to the programs and services operated at the School (with the exception of the playgrounds addressed as described above in the agreement).

In light of the signed agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, 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 compliance with the Section 504 and Title II regulations.

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 individual may file another complaint alleging such treatment. 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.

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.

A complainant may file a private suit in federal court, whether or not OCR finds a violation.

We appreciate the cooperation of the District during the investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, you may contact Donald S. Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634. We look forward to receiving the District's first monitoring report on March 31, 2017. Please direct the report to the attention of Vince Cheverine, who will be monitoring the District's implementation of the agreement. Mr. Cheverine can be contacted at (216) 522-2676 or by e-mail at Vincent.Cheverine@ed.gov.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure