



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

May 18, 2016

XXXXXX XXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXX XXXXXXXX XXXXXXXXXXXXX
Columbus, Ohio 43215

Re: OCR Docket #15-15-1099

Dear xx xxxxxxxxxxxx:

This letter is to notify you of the disposition of a complaint filed on xxxxxxxx xx xxxxx, with the U.S. Department of Justice, Disability Rights Section (DOJ), against the Northwest Local School District (the District). DOJ referred the complaint to the U.S. Department of Education (the Department), Office for Civil Rights (OCR), and the Cleveland office received it on xxxxxxxx xx xxxxxxxx. The complaint alleged that the District's Northwest Elementary School (the School) is inaccessible to individuals with mobility impairments. Specifically, the complaint alleged that: (1) there are no curb ramps leading to the sidewalk in front of the School's main entrance; (2) the School's main entrance door is not accessible to individuals with mobility impairments because it is too narrow; and (3) the equipment on the School playground that is used by younger students is inaccessible 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 at 34 C.F.R. Part 104. Section 504 prohibits discrimination based on 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 at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities and their instrumentalities. As a recipient of Federal financial assistance from the Department and a public school system, the District is subject to these laws; therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the legal issue of whether qualified individuals with disabilities are being excluded from participation in, denied the benefits

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

www.ed.gov

of, or otherwise subjected to discrimination under any District program or activity because the School is inaccessible to or unusable by persons with disabilities, in violation of the regulation implementing Section 504 at 34 C.F.R. §§ 104.21-23 and the regulation implementing Title II at 28 C.F.R. §§ 35.149-151.

OCR's investigation of the complaint included interviews with the Complainant and District witnesses, a review of documents obtained from the District, and an onsite visit to the School in April 2015. After a careful review of the information obtained during the investigation, OCR has determined that (1) the School's main entrance is devoid of curb ramps, which does not comport with the appropriate accessibility design standards; (2) the School's main entrance doors are in compliance with the appropriate accessibility design standards; and (3) the equipment on the School's playgrounds are not accessible to students with mobility impairments and the accessible routes to and from the playgrounds did not comply with the appropriate accessibility design standards. In addition, during the course of the investigation, OCR found that the parking lots at the School were not in compliance with the appropriate accessibility design standards.

The District signed the enclosed resolution agreement, which, once implemented, will fully address OCR's finding in accordance with Section 504 and Title II. A summary of the applicable legal standards, OCR's investigation, and the bases for OCR's determinations are discussed below.

Applicable Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.21 and 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 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.

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.

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. 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.

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, 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 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 of 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 District did not indicate that it had specifically chosen to use UFAS or the 1991 ADA Standards in providing accessibility at its facilities, during the time period when public entities had a choice between the two, during which the new construction facilities at issue in this complaint were constructed and altered. However, in its data response, the District submitted a report from an architect (the District's Architect Report), which referenced ADA Standards. Therefore, OCR applied the 1991 ADA Standards in analyzing the District's compliance.

OCR's Investigation

The School, which houses approximately 800 students from preschool to the fifth grade, was constructed in April 1992. The playground at issue was built in 1994 and is used by students in preschool through first grade. Four kindergarten classes were added to the back of the School's building in 1997. There have been no further renovations or additions since that time, other than updating the HVAC system. There have been no renovations to the playground since it was built, other than adding wood and rubber mulch to the play surface. The School hosts events such as dinners and performances, which are open to students, their families, and the public.

The School has three entrances located at the front of the building. A long sidewalk runs in front of the school and leads to each of the three entrances. The first entrance (Entrance 1) is off the kindergarten area and is the entrance closest to the accessible parking (Lot 1). The main entrance (Entrance 2) is located at the center of the building and is located in front of a large parking lot which is designated for buses and staff only (Lot 2). The third entrance (Entrance 3) is located off the 3rd – 5th grade area.

All of the entrances are generally locked at all times. However, the main entrance, which is unlocked from 8:30 a.m. to 9:10 a.m. when students are being dropped off for school, has a call button through which visitors can request to be buzzed in when the entrance is locked. Thus students, members of the public, etc., must use the main entrance to enter the building.

The School's playground has two separate areas. The first is a set of playground equipment that appears to be meant for very young children (the Small Play Area). It is surrounded by a high wooden curb and OCR observed that the surface was covered in wooden mulch. Two large pieces were cut out of the curb on either side of this play area. The second play area is larger and has no curb ramp (the Large Play Area). It has equipment that appears to be for slightly older children. OCR observed that the surface consisted of rubber mulch. According to an architect report the District submitted to OCR during the investigation, the surface of both playgrounds is covered with a rubber-based material of undetermined specification.

The Complainant alleged that the School is inaccessible to individuals with mobility impairments as follows: (1) there are no curb ramps leading to the sidewalk in front of the School's main entrance; (2) the School's main entrance door is not accessible to

individuals with mobility impairments because it is too narrow; and (3) the equipment on the School's playground used by younger students is inaccessible to students with mobility impairments.

- **Allegation #1: There are no curb ramps leading to the sidewalk in front of the School's main entrance.**

As indicated above, the School was constructed in April 1992 and is therefore new construction under both the Section 504 and Title II regulations.

During the course of the investigation, OCR learned that as of April 2015 the School had several students with mobility impairments. Some of the students with mobility impairments ride a bus which has a lift that goes right onto the sidewalk leading from Lot 2. One or more students are dropped off at the front of the school, at Lot 2, and require assistance to traverse over the curb ramp and into the school.

Lot 2 is designated for bus and staff parking. It consists of 15 staff spaces and approximately 20 bus spaces. There is an access road that runs along the front of the building. According to the District, parents are not permitted to park in Lot 2 or pull up on the access road in front of the school during pick-up and drop-off times. However, during OCR's onsite, it appeared as though cars routinely park on the access road in front of the school. The access road contained in Lot 2 is close in proximity to Entrance 1, Entrance 2, and Entrance 3.

The 1991 ADA Standards at Standard 4.7.1 require curb ramps to be provided wherever an accessible route crosses a curb. OCR confirmed during its onsite visit that there are no curb ramps leading up from Lot 2 to the sidewalk in front of the main entrance, Entrance 1, or Entrance 3. Thus, OCR found the District does not comply with this standard as it relates to Lot 2.¹

The parking lot in which the District has designated assessable parking spaces, Lot 1, is located on the side of the building closest to Entrance 1 and is separated from the school by an access road (which the District designated as the appropriate pick-up and drop-off area), which had some broken pavement. Because Entrance 1 is kept locked, an individual with a mobility impairment would have to travel to the main entrance from Lot 1 (which is significantly farther away in comparison to Lot 2).

Lot 1 does comport with the 1991 ADA Standards at Standard 4.7.1, which require curb ramps to be provided wherever an accessible route crosses a curb. The accessible spaces in Lot 1 are connected to a sidewalk that leads across an access road to a sidewalk that

¹ Where OCR found that the District did not meet the requirements of the 1991 ADA Standards in this investigation, OCR analyzed whether the District met the requirements of the 2010 ADA Standards. Since the 2010 ADA Standards would apply to any modifications undertaken now, if the District's facilities meet the 2010 ADA Standards no change would be required. The 2010 ADA Standards at Standard 303.4 require curb ramps to be provided where an accessible route crosses a curb; thus, the District is also not in compliance with this Standard, as it relates to Lot 2.

leads to the main entrance. The 1991 ADA Standards at Standard 4.7.4 require that the ground and floor surfaces along accessible routes and in accessible rooms and spaces including floors, walks, ramps, stairs, and curb ramps shall be stable, firm, and slip resistant. In addition, the 1991 ADA Standards at Standard 4.7.2 require that the maximum slopes of adjoining gutters, road surfaces immediately adjacent to the curb ramp, or accessible routes shall not exceed 1:20 (2.86 degrees). Standard 4.3.7 of the 1991 ADA Standards states that the cross slope of an accessible route shall not exceed 1:50 (1.15 degrees). OCR noted broken pavement at the top of the access aisles where they meet with the sidewalk. OCR measured the slope in this section of the route as 1.5 degrees, 2.7 degrees, and 0.1 degrees (measured in various places). The cross slope in the same area was 1.3 degrees, 0 degrees, and 2.3 degrees (measured in various places). Thus, the District is not in compliance with Standard 4.3.7 of the 1991 ADA Standards as it relates to Lot 1.² Once on the sidewalk, OCR measured the slope on the sidewalk as 0.7 degrees, 0.1 degrees, and 0.8 degrees (measured in various places). The cross slope in the same area was 0.8 degrees, 0.4 degrees, and 0.9 degrees (measured in various places). Thus, the District is in compliance with Standards 4.7.4, and 4.7.2, as they relate to Lot 1.

Once on the sidewalk, individuals must cross the access road at the side of the building near Entrance 1 and continue on the sidewalk to the main entrance. Standard 4.5.2 of the 1991 ADA Standards states that changes in level up to ¼ of an inch may be vertical and without edge treatment. OCR noted a slight lip (less than ¼ of an inch) from the sidewalk to the access road and up to the school sidewalk in front of the school from the access road; however, OCR found, overall, this area was largely flat, and in compliance with Standard 4.5.2 of the 1991 ADA Standards. OCR noted that the District's architect report stated that there was a curb ramp on this route leading up to the sidewalk. OCR did not observe any curb ramps on this route during the site visit.

- **Allegation #2: The main entrance door is not accessible to individuals with mobility impairments because it is too narrow.**

Students and the public may access the main entrance one of two ways, as there are two different sets of exterior doors, one on either side of the main lobby. Both sets have double doors which lead to a vestibule, which contains another set of double doors which swing into the vestibule and lead to the lobby of the School.

The 1991 ADA Standards at Standard 4.13.7 require a minimum space of 48" between two hinged or pivoted doors in series, plus the width of any door swinging into the space. The space between the end of the interior doors to the exterior doors at the first set of doors at the main entrance is 65.75". The space between the end of the interior doors to the exterior doors at the second set of doors at the main entrance is 68". The District complies with this Standard. The clear width opening for the first set of doors (exterior

² The 2010 ADA Standards at Standard 403.3 states that the cross slope of walking surfaces shall not be steeper than 1:48 (1.19 degrees); thus, the District is not in compliance with this Standard, as it relates to Lot 1.

and interior doors) and the second set of doors (exterior and interior doors) all meet the minimum requirement of 32” as enumerated in the 1991 ADA Standards at Standard 4.13.5.

- **Allegation #3: The equipment on the School’s playground that is used by younger students is inaccessible to students with mobility impairments.**

OCR examined the equipment on the playground used by students in preschool through first grade. OCR noted that the playground is divided into two distinct sections. The Small Play Area contains equipment meant for very young children and the Large Play Area contains equipment meant for slightly older children.

The Small Play Area is surrounded by a wood border which is over six inches high. The District’s architect report, at page 7, states that the surface of the playground is covered with a rubber-based material of undetermined specification. However, upon review during an onsite visit, OCR determined the Small Play Area is filled with a material consistent with wood mulch. The 1991 ADA Standards at Standard 4.3.3 require a minimum clear width of 36” for an accessible route. After a complaint with OCR was filed, the District cut away two sections of the wood border, one on either side of the Small Play Area, which were 47” wide and 49” wide, thereby coming into compliance with Standard 4.3.3. However, at least one of the cut-outs is not closest to a building entrance/exit.

The Small Play Area contains the following equipment: blue and red wobbly ride; blue ball hoop game #1; blue ball hoop game #2; two sets of teeter totters; and a castle.

The Large Play Area has a large blacktopped section. It also has a section with various pieces of play equipment covered in rubber mulch. The School put additional mulch in the area in the summer of 2014. There is no border between the blacktop area and the mulched area. The Large Play Area contains the following equipment: red spiral climber; two swing sets; two sets of teeter totters; blue and yellow slide; and a large play structure. The large play structure contains the following play elements: small red slides; rounded climber; large red slide; rubber bridge on upper platform; mirror on upper platform; red numbers game on upper platform; blue sliding pole; numbers and shapes element; yellow counter; and oval tube.

At the time the playground was built in 1994, the ADA Standards did not contain provisions specifically applicable to play areas. As stated in Section IV above, the safe harbor provision as found in the revised Title II regulation does not apply to elements in existing facilities for which there were neither technical nor scoping specifications in the 1991 ADA Standards, including play areas. Thus, OCR used the 2010 ADA Standards as a guide in examining the School’s playgrounds and the 1991 ADA Standards were used in examining the routes to and from the playgrounds.

OCR did not find any evidence indicating that the District completed a self-evaluation plan or transition plan either after the regulation originally took effect or after the

regulation was revised, as required under Title II regulation where structural changes in facilities were to be undertaken to comply with the program accessibility obligations under 28 C.F.R. § 35.150.

- **Neither the Small Play Area nor the Large Play Area had accessible routes leading to, into, and through the playgrounds.**

Standard 4.5.1 of the 1991 ADA Standards states that floor and ground surfaces shall be stable, firm, and slip-resistant. OCR found that neither the Small Play Area nor the Large Play Area had a firm, stable, and slip-resistant accessible route leading to and through the playground. The accessible route surrounding the Small Play Area was scattered with wood mulch. Further, the area within the Small Play Area contains wood mulch, approximately six inches deep. Similarly, the accessible route surrounding the Large Play Area was scattered with rubber mulch. The area within the Large Play Area contains rubber mulch. There was no evidence suggesting the mulch used in either playground was engineered accessible surface material.

The 1991 ADA Standards at Standard 4.5.2 states that changes in level between $\frac{1}{4}$ and $\frac{1}{2}$ inches shall be beveled with a slope no greater than 1:20 (2.86 degrees). It further states that changes in level greater than $\frac{1}{2}$ inch shall be accomplished by means of a ramp. The accessible route leading to the School's Small Play Area contains two entrances, created by cutting out portions of the six-inch wood border. These entrances, which have a change in level above $\frac{1}{2}$ inch, do not contain ramps, in violation of Standard 4.5.2 of the 1991 ADA Standards.³ The accessible route surrounding the Large Play Area was not beveled, nor did it contain a ramp leading from the accessible route onto the playground area, in violation of Standard 4.5.2 of the 1991 ADA Standards.⁴

- **Neither the Small Play Area nor the Large Play Area contained a sufficient range of play structure activities within the playgrounds that were accessible to and usable by individuals with disabilities.**

Standard 240.2.1.1 of the 2010 ADA Standards requires that where ground-level play components are provided at least one of each type (*i.e.*, rockers, swings, slides, climbers, manipulables, traversables, obstacle courses, interactives) shall be on an accessible route. Standard 240.2.2 requires that, where elevated play components exist, 50% shall be on an accessible route. Elevated play components may be reached by transfer platforms and ramps. Standards 1008.4.1 and 304.3.1 requires maneuvering space around points where play components are used. Standards 1008.4.2 and 305.3 require "parking spaces" for assistive devices so a child can leave a wheelchair or walker to use or mount a play component. Play components with manipulative or interactive features should have age appropriate reach ranges for children seated in wheelchairs, as articulated in Advisory

³ Standard 303.4 of the 2010 ADA Standards states that changes in level greater than $\frac{1}{2}$ inch high shall be ramped.

⁴ Standard 303.3 of the 2010 ADA Standards states that changes in level between $\frac{1}{4}$ inch high minimum and $\frac{1}{2}$ inch high maximum shall be beveled with a slope not steeper than 1:2 (2.86 degrees); and Standard 303.4 states that changes in level greater than $\frac{1}{2}$ inch high shall be ramped.

1008.4.2 of the 2010 ADA Standards. Where play components require transfer to entry points or seats, the entry points or seats shall be 11 inches minimum and 24 inches maximum from the clear floor or ground space. Standard 1008.4.4. Where play components require transfer to entry points or seats, at least one means of support for transferring shall be provided. Standard 1008.4.5.

Both the Small Play Area and the Large Play Area contain ground-level and elevated play components. The Small Play Area, consisting of wood mulch, has play components scattered throughout the surface area. However, there are no pathways leading to the play components. Rather, students must travel on the wooden mulch, which is approximately six inches deep. The Large Play Area, consisting of rubber mulch, has play components scattered throughout the surface area. There are no pathways leading up to the play components. Rather, students must travel on the rubber mulch. Therefore, the playgrounds in their entirety are not accessible.

- **Neither the Small Play Area nor the Large Play Area had accessible surfaces beneath accessible play equipment that were firm, stable, and slip-resistant.**

Standard 1008.4.2 of the 2010 ADA Standards requires clear floor or ground space at play components that comply with Standard 305.2. Standard 305.2 of the 2010 ADA Standards require floor and ground surfaces of a clear floor or ground space to comply with Standard 302. Standard 302.1 of the 2010 ADA Standards require stable, firm, and slip-resistant floor and ground surfaces. None of the play components contained in the Small Play Area or the Large Play Area contained an accessible surface beneath the play equipment that was firm, stable, and slip-resistant. Rather, the surface beneath some of the play components appeared to contain small rubber mats which were partially covered with wood mulch, while the surface beneath the remaining play components consisted of wood mulch. Similarly, the surface beneath some of the play components in the Large Play Area appeared to contain small rubber mats which were partially covered with rubber mulch, while the surface beneath the remaining equipment consisted of rubber mulch.

- **Additional Issue Raised During OCR's Investigation**

Although not an allegation in the complaint, OCR observed several compliance issues pertaining to the School's parking lots.

OCR measured the accessible spaces in Lot 1, which contained 149 total spaces. Of the total number of spaces, six are marked as accessible. There are no spaces marked as van accessible.

While Lot 2 is located in front of the building, according to the District, only buses and staff are permitted to park in this lot. OCR noted that Lot 2 has 20 very large marked spaces, but they are only for buses (and have the bus numbers marked on them). There are also 15 regular-sized spaces, none of which are marked as accessible, have access

aisles, etc. The rest of Lot 2 does not have any marked spaces. The District acknowledged it offers no accessible parking in Lot 2. There is an access road between the front of the building and Lot 2 where buses pick up and drop off students. While there is no curb ramp in the front of the school, the school has a bus with a special lift that goes over the curb to load and unload students with mobility impairments in front of the Main Entrance. According to the District, parents are not permitted to pick up or drop off their children using the access road in front of the building and instead are required to pull along the side of the building (near Entrance 1) using the access road between the building and Lot 1. However, as noted above, it appears as though cars routinely park on the access road in front of the school.

The 1991 ADA Standards at Standard 4.1.2(5)(a) & (b) require that, where parking spaces are provided for self-parking by employees or visitors, or both, then the minimum number of accessible spaces shall be provided in each parking area in conformity with the 1991 ADA Standards. The minimum number of accessible spaces required by the Standards 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. Because the accessible spaces in Lot 1 are farther from the main entrance when compared to the parking spaces in Lot 2, OCR found the accessible spaces in Lot 1 do not ensure equivalent or greater accessibility, in terms of distance from an accessible entrance and convenience. Thus, OCR evaluated Lot 1 and Lot 2 separately.

There are 149 parking spaces in Lot 1. Six of the spaces are designated as accessible, with no spaces marked as van accessible. The 1991 ADA Standards at Standard 4.1.2(5)(a) requires a minimum of five accessible parking spaces for a parking area with 101 to 150 total spaces. In addition, the 1991 ADA Standards at Standard 4.1.2(5)(b) requires that one in every eight accessible spaces, but not less than one, shall be a van space. Although the District does comply with the number of accessible parking spaces in Lot 1, it does not comply with the number of van parking space requirement.⁵

Lot 2 contains over 20 very large marked spaces for buses and 15 regular-sized spaces for staff, none of which are marked as accessible (van accessible or otherwise). The 1991 ADA Standards at Standard 4.1.2(5)(a) requires a minimum of two accessible parking spaces for a parking area with 26 to 50 total spaces. Standard 4.1.2(5)(b) requires that one in every eight accessible spaces, but not less than one, shall be a van space. The District is not in compliance with Standards 4.1.2.5(a) or 4.1.2.5(b).⁶

⁵ Standard 208.2.4 of the 2010 ADA Standards states that for every six or fraction of six accessible spaces, at least one shall be a van parking space. Thus, Lot 1 is not in compliance with this Standard.

⁶ Standard 208.2 in the 2010 ADA Standards requires a minimum of two accessible parking spaces for a parking area with 26 to 50 total spaces. Standard 208.2.4 further states that for every six or fraction of six accessible spaces, at least one shall be a van parking space. Thus, Lot 2 is not in compliance with these Standards.

Conclusion and Resolution

Based on the information above, OCR concluded that the District has failed to provide access to persons with mobility impairments to the School and the School playground, in violation of the Section 504 and Title II regulations.

On May 3, 2016, the District provided OCR with the enclosed signed resolution agreement, which, once implemented, will fully address OCR's findings in accordance with Section 504 and Title II. In summary, the resolution agreement requires the District to: make necessary modifications to ensure an accessible route from Lots 1 and 2 to the main entrance, including constructing curb ramps from Lot 2; designate accessible parking spaces, including van accessible spaces in Lots 1 and 2, with an accessible aisle and appropriate signage provided for accessible spaces; resurface the playgrounds with accessible material; modify both playgrounds to ensure accessible routes to and throughout all play areas; complete a self-evaluation of program accessibility of both playgrounds to determine what physical barriers to access exist and identify structural changes and other steps that need to be taken to ensure the playgrounds are accessible when viewed in their entirety; develop a transition plan with steps for implementing the necessary changes identified in the self-assessment to ensure the playgrounds are accessible; and develop and implement an interim plan to ensure the playgrounds are accessible to and useable by persons with disabilities while developing and implementing the transition plan.

In light of the signed agreement, OCR finds that this complaint is resolved and is closing this 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 reopen the complaint and take further appropriate action to ensure compliance with Section 504 and Title II.

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.

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

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, OCR will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonable by expected to constitute an unwarranted invasion of personal privacy.

If you have questions regarding this letter, please contact Supervisory Attorney/Team Leader xxxxxxxx xxxxxxxxxxxx at (216) xxx-xxxxx or xxxxxxx.xxxxxxxx@ed.gov. If you have any questions or concerns about OCR's monitoring of the District's implementation of the resolution agreement, please contact xxxx xxxxx, the Supervisory Attorney/Team Leader who will be overseeing the monitoring. Xx xxxxx may be reached at (216) xxx-xxxxx or by e-mail at xxxx.xxxxx@ed.gov.

Sincerely,

/s/

Xxxxx xxxx
Acting Director

Enclosure