UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115-1812

REGION XV

MICHIGAN
OHIO

April 19, 2022

Via E-mail Only to XXXXX

XXXXX XXXXX XXXXX
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Re: OCR Docket No. 15-16-1524

Dear XXXXX XXXXX:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXX XXXXX XXXXX, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Black River Public School (the School) alleging that the School discriminated against a student (the Student) based on disability. Specifically, the Complainant alleged that:

1. The School's facilities and programs are not accessible to individuals with mobility impairments, XXXXX XXXXX XXXXX, because the following areas are not accessible:

    a. The front entrance of the main school building (Main Building) is not accessible.
    b. The lower entrance of a second school building known as the Lyceum is not accessible.
    c. The upper entrance of the Lyceum is not accessible from the Main Building because students with mobility impairments have to use a path 300 feet long (the long path) while a path 30 feet long (the short path) is accessible to students without mobility impairments.
    d. The long path is not accessible because of the grade at certain points along the path.
    e. The side entrance of the third school building, the Science Building, is not accessible from the Main Building.

2. From XXXXX XXXXX XXXXX XXXXX XXXXX, the inaccessibility of the School's programs and facilities for individuals with mobility impairments prevented the School from providing the Student with a free appropriate public education (FAPE) because XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of

disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II of the ADA), 42 U.S.C. § 12131 *et seq*., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of federal financial assistance from the Department and as a public entity the School is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation of the following legal issues:

1. Whether the School's programs and facilities are readily accessible to and usable by persons with disabilities as required by the Section 504 implementing regulation at 34 C.F.R. §§ 104.21-23 and the Title II implementing regulation at 28 C.F.R. §§ 35.149-151.

2. Whether the School, on the basis of disability, excluded a qualified person with a disability from participation in, denied her the benefits of, or otherwise subjected her to discrimination under any of its programs or activities in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130.

3. Whether the School failed to provide a qualified student with a disability with a free appropriate public education (FAPE), in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.

During its investigation to date, OCR reviewed documents provided by the School and the Complainant and information available on public websites, and interviewed the Complainant and the XXXXX XXXXX, the Student, and School staff and contractors. OCR also obtained information from Michigan's State Historic Preservation Office. OCR went onsite to the School on XXXXX XXXXX XXXXX. Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. In this case, the School expressed an interest in resolving the allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate.

Allegation 1

- **Applicable Regulatory Standards**
    - **General Standards**

The Section 504 regulation states that no qualified individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any of the recipient's programs or activities. 34 C.F.R. §§ 104.21. Similarly, the regulation implementing Title II states that no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded

from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. 28 C.F.R. § 35.149.

A threshold question in any accessibility analysis is whether the facility or an element of a facility at issue is an existing facility, an alteration, or new construction. 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.

For existing facilities, "program access" is required. An educational institution is to operate each service, program, or activity so that, when viewed in its entirety it is readily accessible to and usable by individuals with disabilities. This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program, or activity. 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a).

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.

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. 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. 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b).

In addition, regarding existing facilities, the Section 504 regulation at 34 C.F.R. § 104.22(f) requires recipients to adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities.

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. The Section 504 and Title II regulations also address alterations to existing facilities. 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 made after January 26, 1992, but prior to March 15, 2012, must conform to the Uniform Federal Accessibility Standards (UFAS) or the 1991 Americans with Disabilities Act Standards for Accessible Design (1991 ADA Standards) or equivalent standards. The U.S. Department of Justice published revised Title II regulations on September 15, 2010, 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 2010 ADA Standards may be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service.

In addition, the 1991 ADA Standards address entrances in new construction. For entrances in new construction, 1991 ADA Standard 4.1.3(8), in pertinent part, sets forth the minimum requirements as follows:

> (a)(i) At least 50% of all public entrances . . . must be accessible. At least one must be a ground floor entrance. Public entrances are any entrances that are not loading or service entrances.

1991 ADA Standard 4.1.3(8)(a) also provides discretionary guidance that, "[w]here feasible, accessible entrances shall be the entrances used by the majority of people visiting or working in the building[,]" and "[b]ecause entrances also serve as emergency exits whose proximity to all parts of buildings and facilities is essential, it is preferable that all entrances be accessible."

In addition, the 1991 ADA Standards, at 4.1.2, require at least one accessible route to be provided within the boundary of the site from public transportation stops, accessible parking spaces, passenger loading zones if provided, and public streets or sidewalks, to an accessible building entrance; and at least one accessible route connecting accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site. Section 4.3.2(1) states that the accessible route shall, to the maximum extent feasible, coincide with the route for the general public. The 2010 ADA Standards address accessible routes at § 206. Section 206.2.2 states that "[a]t least one accessible route shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site." Section 206.3 of the 2010 ADA Standards is slightly more definite than its predecessor in the 1991 Standards. Section 206.3 states that "[a]ccessible routes shall coincide with or be located in the same area as general circulation paths." The advisory note to this section further states that the "accessible route must be in the same area as the general circulation path. This means that circulation paths, such as vehicular ways designed for pedestrian traffic, walks, and unpaved paths that are designed to be routinely used by pedestrians must be accessible or have an accessible route nearby." 2010 ADA Standards Advisory 206.3.

Ground surfaces along the accessible route must be stable, firm, and slip resistant. 1991 ADA Standards 4.3.6, 4.5; 2010 ADA Standards 302.1. In general, an accessible route must be at least 3 feet wide. 1991 ADA Standard 4.3.3; 2010 ADA Standard 403.5.1. The standards also prescribe limitations on slope and changes in levels along the accessible route. The slope along

an accessible route must be less than 1:20 or comply with the standards for ramps. 1991 ADA Standard 4.3.7; 2010 ADA Standard 402.2.

The running slope on a ramp may not exceed 1:12. 1991 ADA Standard 4.8.2; 2010 ADA Standard 405.2. A change in level along an accessible route greater than ½ inch requires a ramp (or, under the 1991 ADA Standards, a curb ramp, elevator, or platform lift); changes between ¼ inch and ½ inch must be beveled; and changes up to ¼ inch may be vertical without edge treatment. 1991 ADA Standard 4.3.8; 2010 ADA Standard 403.4 and 303. Ramps must be at least 3 feet wide. 1991 ADA Standard 4.8.3; 2010 ADA Standard 405.5. Doors along an accessible route must be accessible. 1991 ADA Standard 4.3.9; 2010 ADA Standard 404.1. Double-leaf doorways, like those at Door E of the Main Building and the Lyceum (at either end of the School's designated accessible route), must have a least one active leaf that meets the specifications in 2010 ADA Standard 404, including clear width, maneuvering clearance, thresholds, hardware, closers, and closing and opening force. See also 1991 ADA Standard 4.13.

In addition, sections of the 2010 ADA Standards address the accessible route from the Main Building to the entrances at the School's Science Building, which as explained below was substantially renovated in 2015.

With respect to accessible routes, § 206.2.1 states that "[a]t least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve." Similarly, there must be at least one accessible route between buildings on campus (2010 ADA Standards 206.2.2); ground surfaces must be stable, firm, and slip resistant (2010 ADA Standards 302); and walking surfaces must not have a running slope steeper than 1:20 and be equipped with ramps as necessary (2010 ADA Standards 402). Furthermore, accessible routes shall coincide with or be located in the same area as general circulation paths. (2010 ADA Standards 206.3.)

The 2010 ADA Standards require at least 60 percent of public entrances to be accessible. (2010 ADA Standards 206.4.1.) Entrance doors and doorways shall comply with ADA Standard 404 and shall be on an accessible route complying with 402. Door openings shall provide a clear width of 32 inches minimum. Openings more than 24 inches deep shall provide a clear opening of 36 inches minimum. (2010 ADA Standards 404.2.3.) Maneuvering clearances at doors shall comply with § 404.2.4. (See Table 404.2.4.1.) Handles, pulls, latches, locks, and other operable parts on doors and gates shall comply with 309.4. Operable parts of such hardware shall be 34 inches minimum and 48 inches maximum above the finish floor or ground. (2010 ADA Standards 404.2.7.) Under 2010 ADA Standard 404.2.7, door handles and hardware should be operable with one hand and not require tight grasping, pinching, or twisting of the wrist.

Where not all entrances are accessible, those that are shall be identified by the International Symbol of Accessibility complying with 2010 ADA Standard703.7.2.1. (2010 ADA Standards 216.6.) Directional signs complying with 2010 ADA Standard 703.5 that indicate the location of the nearest entrance complying with § 404 shall be provided at entrances that do not comply with § 404. The Advisory to 2010 ADA Standard 216.6 regarding entrances states that where a directional sign is required, it should be located to minimize backtracking. In some cases, this

could mean locating a sign at the beginning of a route, not just at the inaccessible entrances to a building.

Additional relevant provisions of the applicable design standards are threaded into the analysis below.

- **Historic Properties**

The accessibility of historic properties is addressed in Title II's implementing regulations. The regulations define historic properties as "those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law." 28 C.F.R § 35.104.

Title II modifies the general prohibition against discrimination with respect to historic properties. Specifically, while public entities are, as explained above, generally prohibited from discriminating against a "qualified individual with a disability" because its facilities "are inaccessible to or unusable by individuals with disabilities" a "public entity does not have to take any action that would threaten or destroy the historic significance of an historic property." 28 C.F.R. § 35.104(a)(2). Program access must otherwise be provided, however. 28 C.F.R. § 35.151(b)(3)(ii).

The School's XXXXX and XXXXX XXXXX told OCR that they believed the 1991 ADA Standards applied to the alterations to the Main Building described below. The 1991 ADA Standards provide the following with respect to historic property:

> Where alterations are undertaken to a qualified historic building or facility [. . .] if the entity undertaking the alterations believes that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility and that the alternative requirements in 4.1.7(3) should be used for the feature, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with the accessibility requirements for accessible routes (exterior and interior), ramps, entrances or toilets would threaten or destroy the historical significance of the building or facility, the alternative requirements in 4.1.7(3) may be used.
>
> **Consultation With Interested Persons.** Interested persons should be invited to participate in the consultation process, including State or local accessibility officials, individuals with disabilities, and organizations representing individuals with disabilities.

4.1.7(2)(b)-(c).

- **Summary of OCR's Investigation to Date**

The School is a public charter school serving students in grades K-12 located in Holland, Michigan. The School's campus consists of four buildings – the Main Building, the Science Building, the Lyceum, and the elementary building.[1] There is an alley, called "The Gulch" by members of the school community, that runs to the east of the Main Building, between it and the Lyceum and Science Building. During the school day, students in middle school and high school may need to traverse between the first three buildings, depending on the classes in which they are enrolled, lunch, and other activities.

The Complainant alleged that the School discriminated against the Student on the basis of disability. XXXXX - SENTENCE REMOVD – XXXXX. XXXXX - SENTENCE REMOVD – XXXXX. XXXXX - SENTENCE REMOVD – XXXXX.

- **Allegation 1.a: The front entrance of the Main Building is inaccessible.**

The Main Building is at 491 Columbia Avenue. It was built in the 1930s as the headquarters of a furnace factory. The school acquired the Main Building around 1999 and did comprehensive renovations to convert it for use as a school. According to School staff, the renovations were extensive, except that very little was done to the front entrance and marble entryway, and the elevator is in its original location. The Main Building is three stories, plus a basement, and the elevator stops on all four levels. The Main Building houses the School's administrative offices, which are just inside the front entrance, as well as numerous classrooms, staff offices, a teacher's lounge, an art space, and a computer lab.

The front entrance is the only entrance on the front (west side) of the Main Building and is in the center of the building. The front entrance is directly across Columbia Avenue from a parking lot and is the natural entry point for a visitor to the School. While onsite, OCR observed students and other individuals using the front entrance routinely for ingress and egress. The School's administrative offices, including the principal's office, are immediately inside the front entrance to the right/south of the entrance foyer. The exterior of the front entrance has several stairs and two sets of large metal and glass double-leaf doorways. Inside the first set of double-leaf doors is a small rectangular entryway measuring 11 feet by 5 feet and enclosed by a second set of double-leaf doors. Inside the building is an ornate entryway with another set of 10 stairs leading to the main lobby, the elevator, a stairwell leading to the upper floors, and the administrative offices.

The School acknowledged that the front entrance to the Main Building is not accessible. However, the School asserted that the Main Building is a historic property.

OCR spoke with a XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. After reviewing photographs of the exterior and interior to the front entrance, the XXXXX XXXXX expressed his belief that there was "no question" the front entrance is historic and "very clearly" one of the most significant historic aspects of the building. XXXXX further stated that the way the exterior step, interior airlock (the space between the two sets of doors),

[1] Only the first three buildings are at issue in this complaint.

and interior staircase are oriented, it would be very difficult to make the front entrance accessible.

The XXXXX XXXXX recommended that the School nominate the Main Building for registry on the National Register of Historic Places through the Michigan State Historic Preservation Office. As part of the nomination process, XXXXX suggested that the School engage the services of a licensed architect familiar with both the ADA and rehabilitating historic buildings. XXXXX said that the School should have the architect develop a plan to make the front entrance accessible, and the plan should outline how it would impact (threaten or destroy) the historic significance of the front entrance. XXXXX said the School should also propose a second plan for providing alternate access to the Main Building that does not impact the front entrance and document why that alternate access is sufficient as an accessible entrance. The XXXXX XXXXX said that the School needed to provide a plan for providing alternate access to the Main Building because the School must show that, even if it cannot make the front entrance accessible, it has done everything it can do to make the facility accessible.

The School notified OCR that it retained an XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX to assist it with its application. OCR interviewed the XXXXX in XXXXX XXXXX, and XXXXX said that XXXXX had recommended to the School that at Entrance D to the Main Building, the School replace the current interior stairs with a ramp. XXXXX explained that Entrance D is near the elevator, and so having an accessible route through Entrance D would decrease the length of the accessible route to the administrative offices. The current accessible route is through Entrance E and requires traversing a much longer distance to reach the elevator.

OCR spoke with the XXXXX XXXXX XXXXX XXXXX XXXXX, and they confirmed that having an accessible route through Entrance D would decrease the length of the accessible route to the administrative offices, and they agreed that this would be a good solution.

On XXXXX XXXXX XXXXX, the District provided OCR with a letter from the Michigan State Historic Preservation Office which states:

> Based upon the information provided in the revised preliminary questionnaire, it appears that the Holland Furnace Company General Office Building is eligible for individual listing in the National Register of Historic Places under National Register Criterion A in the area of Industry at the local level of significance for its role in the industrial history and development of the city of Holland.
>
> . . . We encourage you to prepare a National Register of Historic Places nomination (registration form, photos, maps, etc.) for this property.

The XXXXX confirmed that this letter means that the Main Building is eligible for listing on the National Register of Historic Places.

- **Allegation 1.b: The lower entrance of the Lyceum is not accessible.**

The second building at issue in this complaint is known as the Lyceum, which houses the School's largest spaces. Construction began in 2006 and was completed in 2007. The School added a large addition on the north side in 2015. The XXXXX OCR interviewed while onsite designed the 2015 addition but not the 2006-2007 construction. The cafeteria and main gymnasium on the south portion of the building were part of the initial construction in 2006-2007, and the 2015 addition included a second gymnasium with a mezzanine above it. The music department's space is also in the Lyceum, including band, orchestra, and choral classrooms and rehearsal spaces.

The lower Lyceum entryway and doors were designed and built in 2007 as a set of two concrete ramps leading to a metal and glass double-leaf doorway. The concrete ramp is 5 feet wide, and 36 feet long along the outer wall from the end of the brick path in the Gulch to the brick wall of the Lyceum. There is a railing on both sides of the first span of the ramp, and along the interior of the second span of the ramp. Between the ramp and the doors is a 10 x 15 foot concrete landing. OCR did not measure the slope of this ramp or its landings during the onsite. Each of the double-leaf doors is 3 feet wide. At the time of OCR's onsite visit on XXXXX XXXXX XXXXX, there was a piece of paper taped on the glass of each door stating, "Emergency Exit Only." According to the Complainant, the same signage was being used as of XXXXX XXXXX.

Inside, the door leads directly to a staircase, and thus the lower entrance of the Lyceum is inaccessible. During OCR's onsite, the only things in this area were a payphone and a trash can. The east wall of the entryway, where the payphone was located, is 20 feet long and 12 feet high. According to the Complainant, there was a vending machine located next to the pay phone until several days prior to OCR's onsite visit. From OCR's onsite observations, a lift or elevator in this entryway would likely have to be installed along this 20 x 12 foot wall. The stairway is 7 feet wide and consists of 10 risers, followed by a landing, then 10 more risers.

OCR asked the XXXXX and XXXXX why the School had not installed a lift or elevator in this entryway, as the exterior ramp and entryway were clearly designed and constructed for the purpose of providing access to the building. The XXXXX said they were planning to build an elevator within the entrance so that it would be accessible, but the ultimate decision was to not include the elevator for budgetary reasons. In addition, the XXXXX said that the XXXXX told the School an elevator or lift was not required under applicable law.

The XXXXX said XXXXX analyzed ADA and state requirements based on building dates and codes and concluded that the path from Entrance E of the Main Building to the upper entrances of the Lyceum was an accessible route from the Main Building to the Lyceum and the Science Building and that a lift was not required in the lower Lyceum entrance.

At the top of the lower Lyceum stairway is the main lobby of the Lyceum, which also serves as the cafeteria. The Lyceum has eight entrances, only two of which it has designated as public entrances. These two entrances are the two sets of double-leaf doorways on the south side of the Lyceum, which lead directly into the lobby/cafeteria. The School said that all of the other

entrances, including the lower Lyceum doorway in the Gulch—the one about which the instant complaint was filed—are used for emergency exit only.

- **Allegation 1.c: The upper entrance of the Lyceum is not accessible from the Main Building because students with mobility impairments have to use a path 300 feet long (the long path) while a path 30 feet long (the short path) is accessible to students without mobility impairments.**

One area of concern noted by the Complainant is the route between the Main Building's designated accessible entrance, Entrance E, which is in the Gulch, and the Lyceum. This route—i.e., the long path—begins at Entrance E of the Main Building, requires travel around the Science Building, and ends at the upper public entrances to the Lyceum. XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX and the length of the long path, especially in inclement weather. As OCR observed while onsite, students travel between the Main Building, Lyceum, and Science Building routinely as they change classes throughout the day. This creates pedestrian traffic, particularly in the Gulch, emanating from Entrance E of the Main Building to the Science Building and to the upper public entrances to the Lyceum.

The Complainant noted that there is an alternative, much shorter, path (the short path) from Entrance E of the Main Building to the Lyceum. The short path is a diagonal path approximately thirty-seven feet long from Entrance E of the Main Building directly across the Gulch to the lower Lyceum doorway. The short path is paved with special bricks and clearly designed as a walkway between the two buildings.

The XXXXX explained that, until the XXXXX XXXXX XXXXX, the short path was used routinely by everyone on campus to travel from the Main Building to the Lyceum. In the XXXXX XXXXX XXXXX, the School closed the lower Lyceum entrance, forcing everyone to use the long path as the route between the Main Building and the Lyceum. The XXXXX said that XXXXX closed the lower Lyceum entrance for campus safety reasons after a walk-through of campus with the local police.

The long path from Entrance E of the Main Building ends at the upper Lyceum doorways. The School has designated the long path as the accessible route from the Main Building to the Lyceum. The long path proceeds southeast from Entrance E, around the Science Building and north to the upper level of the Lyceum. The route includes a concrete ramp in the Gulch. A portion of the long path consists of concrete sidewalks added as part of the 2015 renovations to the Science Building. There is accessibility signage above the ramp, at the southwest corner of the Science Building, and on a post next to the sidewalk southeast of the Science Building.

OCR measured along the long path from the threshold of Entrance E of the Main Building to the threshold of the western upper Lyceum doorway. This distance is 450 feet.[2] OCR's

[2] In taking this measurement, OCR stayed on the marked route, which is identified by blue hash marks for part of the route. This is not a precise measurement, as the route to the Lyceum turns before the blue markings end, the path is wide at certain points, and OCR chose to use the western door when the eastern door is 92 feet east of the western door and both are designated as accessible. OCR estimates that the route is between 435 and 465 feet.

measurements showed that the long path is about twelve times longer than the short path (450 ft./37 ft.).

OCR confirmed while onsite that the path of general circulation from Entrance E of the Main Building to the Lyceum is via the long path, not the short path, as OCR did not observe anyone using the short path or using the lower Lyceum doorway to enter or exit the Lyceum. XXXXX – SENTENCE REMOVED – XXXXX. Although the XXXXX acquiesced to the students' use of the entrance in that instance, the XXXXX told OCR that any student who uses the lower Lyceum entrance now gets an automatic detention. The Complainant further stated that, prior to OCR's onsite visit, students congregated in the lower Lyceum foyer because a vending machine was located there, and those students would occasionally use the lower Lyceum doorway as an exit or open the door from the inside to let a student in that entrance.

- **Allegation 1.d: The long path is not accessible because of the grade at certain points along it.**

OCR took slope measurements at several points along the long path. The concrete walkways around the south side of the Science Building, which constitute part of the long path, were installed as part of 2015 renovations to the Science Building. While onsite, OCR took measurements at several points along the path, as follows:

- The slope on the top of the ramp in the Gulch, at the southernmost point of the ramp, where the concrete meets the asphalt, was 5.0 degrees or a ration of 1:11.4.
- The slope on the asphalt, before the concrete portion of the route, southwest of the Science Building, was 4.3 degrees or a ratio of 1:13.3.
- The slope on the sidewalk southeast of the Science Building, just before the junction of the paths, was 3.8 degrees or a ratio of 1:15.1.
- The slope on the sidewalk at the southeast junction of the long path was 3.8 degrees or a ratio of 1:15.1.

- **Allegation 1.e: The side entrance of the Science Building is not accessible from the Main Building.**

The third building mentioned in the complaint is the Science Building. The Complainant alleged that the Science Building is inaccessible because the general public routinely uses the inaccessible door on the west side of the building and because the entrance on the north side of the building that the School designated as accessible is not accessible for multiple reasons.

The Science Building was built, prior to the School's purchase of the property, as a warehouse and loading dock, but was renovated around 1999-2000 as a kindergarten classroom. The School said it underwent another round of substantial renovations in 2015 to convert it from a kindergarten classroom to a science lab and classrooms. The School reported that the alterations in 2015 included reconfiguring the entrances and the accessible route. The XXXXX XXXXX XXXXX XXXXX used the 2003 ANSI standards for the 2015 renovation because that was the standard required by the Michigan building code, although the 2010 ADA Standards apply to alterations done in 2015.

OCR did not enter the Science Building during the onsite investigation, but the XXXXX said the 2015 renovations included two science classrooms, a preparation area, and an accessible restroom.

At the time of OCR's onsite, a set of stairs led to the Science Building's entrance on the west side of the building; this door was added in 2015, as part of the Science Building renovation. During the onsite visit, OCR observed students routinely using this entrance for ingress and egress to the Science Building, including students moving from Entrance E of the Main Building to the west door of the Science Building. OCR measured the route from Entrance E of the Main Building to the west door of the Science Building (when there were stairs) at about 90 feet.

However, in February 2021, the School replaced the stairs with what it calls a walking path to the west door. The School provided OCR with architectural plans for the construction of the walking path at the west entrance of the Science Building. As the walking path was constructed in 2021, the relevant accessibility standards are the 2010 ADA Standards for Accessible Design (2010 ADA Standards). The 2010 ADA Standards state, in part, that the surface of a walking path must be stable, firm, and slip resistant, and must not exceed a slope of 1:20. The School has represented to OCR that the walking path was designed to not exceed a slope of 1:20. The School has not provided photographs showing its measurements of the slope of the walking path.

XXXXX – SENTENCE REMOVED - XXXXX The first place XXXXX XXXXX XXXXX, near the bottom of the walking path, showed a 5.2% slope.

Prior to the installation of the walking path in February 2021, the School's designated accessible route from Entrance E of the Main Building to the Science Building extended almost 360 degrees around the Science Building to a door on its north end. This route overlapped part of the long path to the Lyceum.

The north portion of the path, from the sidewalk to the north door, involves a sidewalk with a switchback. At the junction of the switchback, the concrete is shaped like a trapezoid. The dimensions of the concrete trapezoidal block at the turn of the path are 90 inches x 64 inches x 60 inches x 76 inches. OCR also took three slope measurements along this portion of the sidewalk. The first measured 3.8 degrees (1:15.1); the second 3.2 degrees (1:17.9); and the third 3.6 degrees (1:15.9).

The north door is a single metal door that is kept locked. The door leads directly into one of the Science Building's two classrooms. There is a sign labeled "Accessible Entrance," next to a doorbell. The sign does not include Braille. To enter the building, one must ring the doorbell and wait for someone inside to open the door.

The Complainant reported to OCR that the north door was closed with the construction of the walking path to the west door.

There are other entrances on the south and east side of the Science Building. An entrance on the south side is inaccessible because it has two concrete steps leading up to it. However, an entrance on the east side appears to be accessible. Although there are steps leading to the east door from the sidewalk to the east of the door, there is an alternate sidewalk that leads to it from

the south that is not obstructed by any stairs. The School said that the east door is kept locked and it is not being used as an accessible entrance. The XXXXX told OCR the city building inspector said it would be hazardous to use the east door as an accessible entrance because there is a preparation room for the science lab directly inside the door. The School did not indicate that it could not ensure that any chemicals or other hazardous substances are kept secured, should this entrance be made public.

- **Other identified accessibility concerns**

During the onsite, OCR identified other accessibility concerns. Specifically:

1. The Main Building's parking lot, located to the west of the building, did not have compliant accessible parking spaces.

2. The path that the School designated as its accessible route from the parking lot to the Main Building's administrative offices does not meet the relevant design standards in that:

    a. it is not the shortest accessible route;
    b. it is not stable, firm, and slip-resistant;
    c. there is not a clear width of 32 inches;
    d. in areas, the slope exceeds the maximum allowable slope; and
    e. the signage is inadequate.

3. The college counselor's office in the Main Building is inaccessible because it is only accessible by the use of stairs.

4. The parking spaces located in the Gulch are noncompliant.

- **Parking lot for the main building**

The parking lot for the Main Building is on the west side of Columbia Avenue (west parking lot). If the lot was constructed in 1999 at the time of the alterations to the Main Building, the 1991 ADA Standards would apply. However, OCR observed during its onsite that the parking lot appeared to have been repaved far more recently, as the asphalt was notably newer than other paved areas at the facility. Aerial photographs and campus maps and drawings show that the west parking lot has 112 parking spaces. Only one of those parking spaces was designated as accessible during OCR's May 2017 onsite. The parking space was directly adjacent to the sidewalk to the south. The parking space was not designated as van accessible, and it did not have an access aisle. The measurements of the parking space were 9 feet wide by 18 feet long. A sign with the international symbol for accessibility was on a post in front of the parking space. The bottom of the sign was 5 feet from the ground.

- **Route to the Main Building's administrative offices**

The School has designated an accessible route from the west parking lot to an entrance in the back of the Main Building, at the basement level, as its front entrance is inaccessible.

There is one crosswalk from the west parking lot across Columbia Avenue to the School's campus, and it is located at the southeast corner of the lot, next to the parking space designated as accessible. A sidewalk adjacent to the crosswalk across Columbia Avenue is part of the accessible route, which proceeds to the south of the Main Building, heading east. The sidewalk does not continue east, however. Instead, the eastern span of the route is an uneven dirt walking path or an asphalt area, which was formerly used as a parking lot between the Main Building and the elementary school. There is a sign near the southwest corner of the building to indicate that this span along the south side of the building is designated as the accessible route into the Main Building, although the route is unmarked. The paved area includes benches, metal tables, and a bike rack. A car could not use this route because of the obstacles, which also impede a direct pedestrian route through the area. In addition, the asphalt is not always level for pedestrians or persons using wheelchairs, and the route does not have an unobstructed width of 36 inches.

At the southeast corner of the Main Building, the route continues around the building, downhill to the north. Instead of directly turning left at the terminus of the Main Building, the route continues over the Gulch to the Science Building, proceeds north, and then crosses back west to the Main Building. The part of the route in the Gulch and runs north/south behind the Main Building and between the Main Building on the west and the Lyceum and Science Building on the east. The Gulch is approximately 37 feet wide.

There is a significant slope from both ends of the Gulch toward the middle. In September 2016, the School installed a ramp in the Gulch to address the issue of slope over a portion of the east side of the Gulch just west of the Science Building, which is a section of the designated accessible route, and part of the long path. The XXXXX explained to OCR that this was the most feasible place to put a ramp. Thus, the School added approximately 60 feet to the accessible route by having it cross over the Gulch to the east, travel north, and then cross back over the Gulch to the Main Building. The ramp is 60 feet long, 3 feet wide (between handrails), and the slope is 5 degrees or 1:11.4.

The doorway to the Main Building that the School designated as accessible is in the middle of the Gulch, near its lowest point. This double-leaf doorway is labeled "E" (Entrance E). Entrance E is one level lower than the front entrance to the Main Building. The doors at Entrance E are the same size and OCR verified onsite that, when one leaf is open, the opening is more than 32 inches wide. The exterior and interior hardware on Entrance E is less than 48 inches from the ground/floor and consists of a lever-operated handle on the exterior and a crash bar push-type mechanism on the inside. Entrance E is equipped with closers, and the force necessary to open one of the leaves of Entrance E was 5 pounds.

Once inside the doors of Entrance E, the route to the elevator to the administrative offices and lobby at the front of the building—i.e., where a person without a mobility impairment would have entered the building from the front—is not on the shortest accessible route, as the elevator is located directly inside Entrance D, and not Entrance E. Instead, the route from Entrance E proceeds through hallways in the basement of the building before arriving at the elevator. Inside Entrance E's double-leaf doorway is a level lobby with a bare concrete floor and, at the time of OCR's onsite, a few rugs. A hallway ramp leads down from the lobby toward another set of double-leaf doors, beyond which is a large, level, tiled area. The hallway ramp is 7 feet wide and has a metal railing 3 feet high on both sides.

When OCR visited, one of the double-leaf doors at the end of the ramp was propped open with a log. On the other side of the door is a room with a tile floor at the junction of a hallway. At the time of OCR's visit, this room was somewhat cluttered with items, including a folding table and large metal machine, potentially obstructing the path along the route. Another set of double doors leads down another hallway to the north.

On the wall next to this set of double-leaf doors was an accessibility sign with an arrow pointing north toward "ELEVATOR ACCESS." At the end of the hallway was another large open area somewhat cluttered with items such as a table, chairs, and a trash barrel. This is where the elevator is located.

The route from the inside of Entrance E to the elevator is 140 feet. The elevator provides access from the basement to all three floors above it. On the first floor, the elevator opens to the front lobby/foyer, which is where a person without a mobility impairment would arrive by entering the Main Building through the inaccessible front entrance. On the second and third floors, the elevator opens onto a landing where there is a stairwell and hallways to rooms on the north and south sides of the building.

The designated accessible route is 400 feet long in total, measured from a point on the sidewalk in front of the front entrance to the Main Building to a point just outside the elevator. In other words, this is the distance from the front entrance around to Entrance E at the back of the Main Building, through the lower floor to the elevator. The route from the same point on the sidewalk directly into the Main Building foyer through the front entrance would be less than 60 feet. The School's administrative offices are located just off of this foyer.

- **Signage on the route to an accessible entrance to the Main Building**

When OCR was onsite, one of the front doors to the Main Building (at the top of the stairs) had the symbol of accessibility in white on the glass, with an arrow pointing south. The symbol of accessibility was not, however, accompanied by any words or Braille, and the glass background was not a non-glare finish. This was the only signage regarding accessibility near the front entrance of the building.

The next signage for the accessible route was at the southwest corner of the Main Building. The sign at the southwest corner was a blue sign on a metal post with the international symbol of accessibility in white, and white lettering stating, "ACCESS AT BACK OF BUILDING." It was located next to a tree, between the wide asphalt driveway and the rough dirt path, both of which run east/west at the south end of the Main Building.

The next signage was a white sign with a small, black universal symbol for accessibility and black lettering on the wall of the Main Building at its southeast corner, stating "Entrance for Main Building. Please Do Not Block Drive." The sign did not include Braille.

There was also signage on Entrance E itself. The sign was located on the brick wall to the south of the entrance, 6 inches x 9 inches and 4 feet from the ground. It was a blue sign with the

international symbol for accessibility in white and "ACCESSIBLE ENTRANCE" in white lettering. It did not include Braille.

- **Route to the college counselor's office**

The second and third floors of the Main Building are accessible via the elevator. However, there are also several rooms off a landing in between these floors. The college counselor's office is located in one of these rooms, which are inaccessible because the elevator does not stop at the landings between floors, and there are stairs up to the landings. In addition, the college counselor's office has a step at the door.

- **Parking spaces in the Gulch**

At the time of OCR's onsite, there was one designated accessible parking space in the Gulch. The space was marked with blue lines, and there was a blue symbol of accessibility painted inside the space and a blue accessibility parking sign on the wall of the Main Building above the space. The School reported that the space measures slightly less than 10 feet wide and 20 feet long. There was no access aisle and the signage did not indicate that the space was van accessible. The XXXXX stated that the parking space should have an access aisle painted on its east side. On XXXXX XXXXX XXXXX, OCR learned that the School had painted a second designated-accessible space in the Gulch. OCR reviewed photographs of the spaces which showed that the School has still not painted an access aisle next to either parking space.

The Complainant expressed concerns that these parking spaces do not comply with the accessibility standards and that parking in this area raises a concern for student and staff safety as they traverse between buildings. The Complainant explained, and OCR verified during its onsite, that the Gulch is full of pedestrian traffic during passing times. While one can enter this parking area by proceeding south from the adjacent road, East 20th Street, a driver has to back up to exit this area, as continuing to proceed south would result in a driver being amidst pedestrian traffic, especially during passing times or during the start or end of the school day.

- **Analysis**

The School's Main Building was built in the 1930s as the headquarters of a furnace business, and the School made comprehensive renovations in 1999 to convert it for use as a school building. According to the School, the only original features that did not undergo extensive renovation were the main entrance and the location of the elevator. Therefore, it is an existing facility that has been altered. As the XXXXX XXXXX and legal counsel told OCR that they believed the 1991 ADA Standards applied to the alterations to the Main Building, these are the standards OCR applied.

OCR has found several causes for concern regarding the accessibility of the Main Building, even though it is eligible for listing on the National Register of Historic Places and the School has provided a preponderance of the evidence that altering the main entrance on Columbia Avenue would threaten or destroy the historic significance of the main entrance.

The School's designated accessible entrance is through Entrance E. OCR's analysis indicates that Entrance E itself complies with the 1991 ADA Standards for entrances (e.g., width, door handles, pressure, threshold, etc.). In addition, it appears that Entrance E is open when the front entrance is open; during the onsite visit OCR observed that Entrance E is on the path of general circulation for students moving between classes.

OCR found that the parking areas for the Main Building do not comply with the ADA Standards, regardless of whether the 1991 ADA Standards or the 2010 ADA Standards apply. The lot closest to the front entrance is directly west of the front entrance and across Columbia Avenue. It has 112 parking spaces, but only one is designated as accessible, and it is not van accessible nor does it include an access aisle as required at 1991 ADA Standard 4.1.2(5) and 2010 ADA Standard 502. The 1991 ADA Standards at 4.1.2 would require a minimum of 5 accessible spaces for a lot of this size, with at least one van accessible. The Standards allow required spaces to be provided in a different location but only if equivalent or greater accessibility (in terms of distance from an accessible entrance, cost, and convenience) is ensured. The scoping requirements for parking spaces for a lot of this size are the same under the 2010 ADA Standards at 208. The 2010 ADA Standards also permit required spaces to be located in different parking facilities if substantially equivalent or greater accessibility is provided.

The School has created two parking spaces in the Gulch, just north of Entrance E. This alternate parking location is closer to the Main Building's designated accessible entrance. However, the spaces do not meet minimum requirements. For example, neither has signage indicating that it is a van accessible space, and neither has a marked access aisle. In addition, while the Standards do not prohibit parallel accessible spaces, they are not favored. In addition, parking in this area is dangerous, as explained above, as the Gulch is a high-traffic pedestrian walkway, which raises safety concerns.

Another cause for concern is the lack of an accessible route to the Main Building's administrative offices. The route is from the parking lot to the west of the Main Building through Entrance E to the elevator. Several inaccessible features combine to make the route inaccessible, and the lack of an accessible route to the Main Building's administrative offices prevents the School from meeting the standard for program accessibility.

From the Columbia parking lot, the route to the Main Building's Entrance E is circuitous, proceeding around the south end of the building, which requires crossing either a dirt path or a wide asphalt span. Then the route proceeds across the Gulch, to the north down a concrete ramp, then back across the Gulch, to Entrance E. Inside Entrance E, the route proceeds through the basement down another ramp, through two sets of doors, and to the elevator, which is 140 feet from Entrance E. Finally, an individual with a mobility impairment would have to take the elevator up one floor to the foyer just inside the front entrance, where the administrative offices are located.

However, a dirt path and uneven sidewalk do not meet the requirement for the surface of the route to be stable, firm, and slip resistant. OCR also observed while onsite that the route was not free of obstructions, such as bicycles, benches, and tables. In addition, the route crosses back and forth across the Gulch, so that the route is not the shortest route possible, and the ramp in the Gulch exceeds the maximum allowable slope. The signage for the route was also inadequate at

the time of the onsite visit. The signage at the front entrance for the designated accessible route to Entrance E was limited to a single white outline of the international symbol of accessibility with an arrow pointing south in the bottom left-hand corner of the glass of the first of the four metal doors at the front entrance. The location, size, and composition of the signage (including the lack of tactile features for persons with visual impairments) does not comply with the requirements and guidance at, e.g., 2010 ADA Standards 216.6 and 703.5.

Similarly, inside the basement of the Main Building, OCR observed a metal door propped open by a log, and the hallway beyond the log was cluttered with items. These observations raise compliance concerns under 1991 ADA Standard 4.3. The same concerns would apply under Chapter 4 of the 2010 ADA Standards (Accessible Routes).

In addition, inside the Main Building, the college counselor's office is not accessible because it requires the use of stairs.

Therefore, the evidence gathered to date shows significant differences between the experience of persons with and without disabilities in accessing the School's facilities and programs, leading to OCR's cause for concern regarding the Main Building under either the 1991 ADA Standards or the 2010 ADA Standards.

The second building at issue, the Lyceum, was built in 2006-2007 and is therefore new construction. The School did not identify a federal design standard it used and therefore OCR applied the 1991 ADA Standards. The Lyceum's lower entrance is inaccessible as it requires the use of stairs. While Section 504 and Title II do not specifically require the School to make the lower Lyceum entrance accessible, OCR has cause for concern regarding access to the Lyceum, as the route between the Main Building and the Lyceum, and between the Science Building and the Lyceum, does not comply with the Standards, as the long path exceeds the maximum allowable slope.

Regarding the lower entrance to the Lyceum, the evidence showed that the lower Lyceum entrance is marked as an emergency exit only, but that it may have been used on several, discrete occasions for other, non-emergency purposes. The School's method of closing the lower Lyceum entrance is limited to paper signs on the doors, and the Complainant provided evidence that this method is not effective in preventing occasional use. Thus, the School will need to take additional action to ensure that the lower Lyceum entrance is not routinely used.

Although OCR has determined that the applicable standards and regulations do not require the School to make the lower Lyceum entrance accessible, there must be an accessible route to the accessible entrances. The School has identified the long path as this accessible route; however, as indicated by the measurements above, the long path exceeds the maximum allowable slope at the top of the ramp in the Gulch, on the asphalt southwest of the Science Building, on the sidewalk southeast of the Science Building, and on the sidewalk at the southeast junction of the long path. Even if the long path did not exceed the maximum allowable slope, it is an exterior route in an area that experiences a good deal of snow; the School is required to keep the surface of its accessible route stable, firm, and slip-resistant.

The third building at issue is the Science Building. At the time the complaint was filed, the parent alleged that the Science Building was inaccessible because the general public routinely used the inaccessible west door and because the north door, which the School had designated as the accessible entrance, was not accessible for multiple reasons.

In 2015, the School redesigned and renovated the facility that is now the Science Building to convert it from a kindergarten classroom to a science lab/classrooms. The School reported that the alterations in 2015 were substantial and included reconfiguring the entrances and the accessible route. In addition, in February 2021, the School built what it calls a walking path to the west door, which formerly had stairs. The 2010 ADA Standards apply to these alterations.

The School asserted that the walking path to the west door is accessible as it does not exceed a slope of 1:20. However, XXXXX XXXXX provided measurements of the walking path that show, in at least one location along the path, the slope exceeded the maximum allowable slope, as it had a slope of 5 degrees. To date in the investigation, the School has not provided OCR with any photographs of measurements of the path's slope. Therefore, OCR has a cause for concern that the walking path to the west door does not meet the accessibility requirements, based on the parent's measurement of the slope.

At the time of OCR's onsite, the School used the north door as an accessible entrance. The evidence indicates that, since the onsite, the School stopped using the north door as a public entrance. OCR found that the route to the north door is inaccessible, as the sidewalk leading to the north door exceeds the maximum allowable slope. OCR took three slope measurements along a portion of the sidewalk; the measurements were 3.8 degrees (1:15.1), 3.2 degrees (1:17.9), and 3.6 degrees (1:15.9). All three measurements exceed the maximum allowable slope of 2.86 degrees (1:20). In addition, the north door is kept locked at all times, thus requiring those seeking access to knock or ring the doorbell; this violates the general requirement in both Section 504 and Title II of ready access for individuals with disabilities.

Accordingly, OCR finds a cause for concern that the routes to the Science Building's public entrances are not accessible. In lieu of altering the route to the north door, the School could choose to unlock its accessible east door.

Allegation 2

- **Summary of OCR's Investigation to Date**

The Complainant alleged that, XXXXX, the School failed to provide the Student with FAPE because the inaccessibility of the School's programs and facilities XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. Although the complaint stated this allegation broadly to encompass the collective impact of multiple incidents, the Complainant reported the following specific instances when the Student's Individualized Education Program (IEP) was allegedly not implemented: XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX

XXXXX XXXXX XXXXX

XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. XXXXX – SENTENCE REMOVED – XXXXX. The Complainant and the School agreed that the elevator was fixed a short time later.

- **Applicable Regulatory Standards**

Section 504 of the Rehabilitation Act of 1973, as amended, states:

> No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
>
> 29 U.S.C. § 794.

Section 504's implementing regulation at 34 C.F.R. § 104.33 requires recipient school districts to provide a free appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction.

The Section 504 regulation defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met and based upon adherence to procedures that satisfy the educational setting, evaluation, placement, and procedural safeguards requirements of the Section 504 regulation at 34 C.F.R. §§ 104.34-104.36. 34 C.F.R. § 104.33(b). Furthermore, in academic settings, each qualified student with a disability is to be educated with students without disabilities to the maximum extent appropriate to the needs of the student with a disability. 34 C.F.R. § 104.34(a). Likewise, nonacademic services and extracurricular services and activities must be provided 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. § 104.37(a)(1).

- **Analysis**

The evidence establishes that the School acknowledged XXXXX. More specifically, XXXXX. Furthermore, the evidence also indicates that the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. In addition, OCR is concerned that, while the Student's IEPs and Section 504 plans XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX

XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.

The evidence also indicates that the School may not have made arrangements to assist XXXXX. XXXXX – SENTENCE REMOVED - XXXXX

Therefore, OCR finds cause for concern with respect to the Student’s receipt of a FAPE in light of the School’s alleged failure to fully implement the Student’s IEPs and Section 504 plans, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.

Conclusion and Voluntary Resolution

As noted above, under Section 302 of OCR’s *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR’s investigation has identified concerns that can be addressed through a resolution agreement. In this case, the School expressed an interest in resolving the allegations prior to the conclusion of OCR’s investigation and OCR determined resolution was appropriate.

On April 14, 2022, the School signed the enclosed Resolution Agreement, which, when fully implemented, will address the compliance concerns in accordance with Section 504 and Title II. OCR will monitor the implementation of the Resolution Agreement.

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

Please be advised that the School 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.

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 reasonably be expected to constitute an unwarranted invasion of personal privacy.

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

OCR looks forward to receiving the School's first monitoring report by May 23, 2022. For questions about implementation of the Agreement, please contact OCR Senior Attorney Kimberly Kilby. Ms. Kilby will be overseeing the monitoring and can be reached by e-mail at Kimberly.Kilby@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2672 or by e-mail at Nathaniel.McDonald@ed.gov.

Sincerely,

/s/

Nathaniel J. McDonald
Supervisory Attorney/Team Leader

Enclosure