



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION XV  
MICHIGAN  
OHIO

May 8, 2023

**Via e-mail only to:** [redacted content]

[redacted content]

Re: OCR Docket No. 15-23-1121

Dear [redacted content]:

This letter is to notify you of the disposition of the above-referenced complaint filed on [redacted content], with the U.S. Department of Education, Office for Civil Rights (OCR), against Big Walnut Local School District (the District) alleging that the District is discriminating against persons with mobility impairments on the basis of disability. Specifically, the Complainant alleged that, during the [redacted content] school year, at the District's [redacted content] [redacted content] (the School):

1. the [redacted content] does not have any accessible seating;
2. the route from the parking lot to the door servicing [redacted content] [redacted content] is inaccessible, [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]; and
3. the route from the parking lot to the [redacted content] [redacted content] is inaccessible because the route is [redacted content] [redacted content] [redacted content] that the route is unsafe.

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), 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 of Education and as a public entity, the District is subject to Section 504 and Title II.

Based on the complaint allegations, OCR opened an investigation of the following legal issues: whether qualified individuals with a disability were excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any of the District's services, programs or activities because the District's facilities are inaccessible to or unusable by individuals with disabilities, in violation of the Section 504 implementing regulation at 34 C.F.R. §§ 104.21-23 and the Title II implementing regulation at 28 C.F.R. §§ 35.149-51.

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

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During its investigation to date, OCR reviewed information provided by the Complainant and the District, interviewed the Complainant [redacted content] [redacted content] [redacted content], and conducted an onsite visit to the District on [redacted content].

## Summary of Investigation to Date

The Complainant told OCR that [redacted content] [redacted content] [redacted content]  
[redacted content] [redacted content] [redacted content] [redacted content] [redacted content]  
[redacted content] [redacted content] [redacted content] [redacted content] [redacted content],  
[redacted content] [redacted content] [redacted content] [redacted content] [redacted content],  
went to the School and had difficulty accessing the District’s public events because of the  
inaccessibility of the School’s [redacted content], the route from the parking lot to the door  
servicing [redacted content] [redacted content], and the route from the parking lot to the School’s  
[redacted content] [redacted content]. Regarding the [redacted content], the [redacted content]  
[redacted content] told OCR that the problem is [redacted content] [redacted content] [redacted  
content] [redacted content], and there is no designated accessible seating. Regarding the route  
from the parking lot to the door servicing the [redacted content], the Complainant told OCR that  
this route is inaccessible, [redacted content] [redacted content] [redacted content] [redacted  
content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted  
content] [redacted content] [redacted content] [redacted content] [redacted content]. Regarding  
the route from the parking lot to [redacted content] [redacted content] [redacted content], the  
[redacted content] [redacted content] told OCR that this route is inaccessible because [redacted  
content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted  
content] [redacted content] [redacted content] the route is unsafe.

The School [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content], [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content], [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. [redacted sentence]. [redacted sentence]. [redacted sentence]. The District, through counsel, asserted that building a school facility of this size typically takes two years to complete; this is why the District believes it broke ground in [redacted content]. The District asserted that [redacted content] [redacted content] [redacted content] has not been renovated since its initial construction. The District did not provide any information indicating that the route to [redacted content] [redacted content], [redacted content] [redacted content] [redacted content] [redacted content] [redacted content], or the route [redacted content] [redacted content] [redacted content] [redacted content] have been altered since the School was constructed.

During OCR's [redacted content], onsite, OCR viewed [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. [redacted sentence]. [redacted sentence]. [redacted sentence]. [redacted sentence]. [redacted sentence]. [redacted sentence].

[redacted paragraph]

Regarding the route from the parking lot to [redacted content] [redacted content] [redacted content] [redacted content], [redacted content] [redacted content] [redacted content] [redacted content] [redacted content], the Complainant told OCR that this route is inaccessible [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. There are two parking areas that serve [redacted content] [redacted content]. The primary parking lot requires the use of [redacted content] to traverse from the parking lot to the roadway adjacent to the School; the route then leads to the sidewalk [redacted content] [redacted content] [redacted content]. The District has painted a crosswalk from [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] to the sidewalk, and a curb ramp is located inside the crosswalk. [redacted sentence]. There is a second parking area that consists solely of [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence], all of which have been designated as accessible. [redacted sentence]. [redacted sentence]. [redacted sentence]. [redacted sentence].

Regarding the route from the parking lot to [redacted content] [redacted content] [redacted content] [redacted content], [redacted content] [redacted content] [redacted content] [redacted content] told OCR that this route is inaccessible because [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] the route is unsafe. During OCR's [redacted content], onsite, OCR viewed this route and saw [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content], as the Complainant alleged. OCR did not measure [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] during its onsite; in some places, [redacted content] [redacted content] [redacted content] the route would have made a measurement impossible. [redacted sentence].

### **Legal Standards and Analysis**

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. The District believes that construction on the School began in [redacted content]. The District asserted that seating in [redacted content] [redacted content] has not been altered since the School was constructed. The District did not provide any information indicating that the route to [redacted content] [redacted content], and specifically, [redacted content] [redacted content] [redacted content], has been altered since the School was constructed, nor that the route to [redacted content] [redacted content] [redacted content] had been altered. Therefore, the School,

the relevant [redacted content] [redacted content], and the route to [redacted content] [redacted content] [redacted content] is new construction under Section 504 and existing construction under Title II. In such a situation, the new construction standard is used. For new construction, the applicable standard depends upon the date of construction of the facility. For new construction between June 4, 1977, to January 17, 1991, the relevant standards are the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI). Thus, ANSI is the standard that OCR will use when analyzing the facility.

appropriate number means the number of a specific item that would be necessary, in accord with the purpose and function of a building or facility, to accommodate individuals with specific disabilities in proportion to the anticipated number of individuals with disabilities who would use a particular building or facility.

The School's [redacted content] does not have any accessible [redacted content]. While ANSI does not set forth a specific requirement for the number of [redacted content] [redacted content] an "appropriate number" in a school [redacted content] where public events are held [redacted content] [redacted content] [redacted content] in a facility with [redacted content] [redacted content]. When determining the appropriate number required by ANSI, recipients and public schools should take into consideration the current accessibility standards. The 2010 ADA Standards [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. Per this table, the School's [redacted content], with [redacted content] [redacted content], would require [redacted content] [redacted content] [redacted content], along with [redacted content] [redacted content].

[illegible]



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does not comply with ANSI's requirement of [redacted content] [redacted content] [redacted content] [redacted content].

## **Conclusion**

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, 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 District expressed an interest in resolving the allegations prior to the conclusion of OCR's investigation and OCR has determined that it is appropriate to resolve the compliance concerns identified above pursuant to a resolution agreement.

On May 5, 2023, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

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. Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR acknowledges receipt of the District's first monitoring report, received on May 5, 2023. For questions about implementation of the Agreement, please contact Ms. Kimberly Kilby or Ms. Allison Hite, who will be monitoring the District's implementation of the agreement. Ms. Kilby can be reached by telephone at [redacted content] or by e-mail at [redacted content], and Ms. Hite can be reached by telephone at [redacted content] or by e-mail at [redacted content]. If

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you have any questions about this letter, you may contact me by phone at [redacted content] or by e-mail at [redacted content].

Sincerely,

Nathaniel J. McDonald  
Supervisory Attorney/Team Leader

Enclosure