UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVE. S.W.,
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

XXXX

Dr. Frank Till, Jr.
Superintendent
Cumberland County Schools
2465 Gillespie Street
Fayetteville, North Carolina 28306

Re: OCR Complaint No. 11-12-1519
Resolution Letter

Dear Dr. Till:

This letter is to notify you of the outcome of a complaint that was filed with the District of Columbia Office for Civil Rights (OCR), within the U.S. Department of Education (the Department) on XXXX against the Cumberland County Schools (the District), in particular XXXX (the School). The Complainant alleged that the School discriminated against her daughter (the Student) and other students with mobility impairments on the basis of disability. Specifically, she alleged that the School's playground equipment, "XXXX," the "XXXX," and the stage in the cafeteria are inaccessible for students with mobility impairments.

OCR initiated an investigation under the authority of 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 in programs and activities that receive federal financial assistance (FFA) from the Department. 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 against qualified individuals with disabilities by public entities, including public educational systems. Because the District is a recipient of FFA from the Department and a public entity, it is therefore subject to the provisions of Section 504 and Title II.

The accessibility requirements of the Section 504 regulation are found at 34 C.F.R. § 104.21-104.23. Comparable sections of the Title II regulation are found at 28 C.F.R § 35.149-35.151. Both regulations provide generally that no qualified individual with a disability shall, because facilities are inaccessible to or unusable by disabled individuals, be excluded from participation in, or denied the benefits of services, programs, or activities, or be subjected to discrimination.

The requirements for accessibility are different for existing buildings and for new construction. Facilities constructed prior to the effective dates of the regulations (June 3, 1977 for Section 504 and January 26, 1992 for Title II), are regarded as "existing facilities" and must comply with 34 C.F.R. §104.22 and 28 C.F.R. §35.150. A recipient is not required to make each existing facility

or every part of an existing facility physically accessible to and usable by individuals with disabilities. Rather, the regulations require that programs or activities, viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This is referred to as "program access." The regulations do not require structural changes where other methods are effective in providing access to the programs. Such measures might include redesigning equipment and relocating classes to accessible rooms or buildings. In choosing among available methods for providing program access, institutions must give priority to methods that offer services, programs, and activities in the most integrated setting appropriate. In addition, recipients must 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.

The XXXX was constructed in 1975, the XXXX in 1970, and the stage in 1967. As such, all are existing facilities under Section 504 and Title II.

A playground meets the definition of a "facility" under the Section 504 and Title II regulations. A playground facility is comprised of the structure or equipment installed to provide play activities, the route into and around the playground area, as well as the surface surrounding the structure or equipment.

Until recently, there were no Federally-adopted accessibility design standards that carried the authority of a regulation and specified their application to the unique features of play areas. In September 2010, the U.S. Department of Justice (DOJ) released its final rule updating the Title II regulations. Among other significant changes, DOJ adopted the entirety of the 2004 ADA Accessibility Guidelines (ADAAG) as the revised standards for physical accessibility under Title II. The 2010 ADA Standards for Accessible Design ("2010 Standards"), which took effect on March 15, 2012, consist of the 2004 ADAAG and the requirements under 28 C.F.R. §35.151. These include (at sections 240 and 1008) scoping and technical requirements for play areas.

According to 28 C.F.R. § 35.150(b)(2)(i), 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 Standards or in the Uniform Federal Accessibility Standards (UFAS), are not required to be modified in order to comply with the requirements set forth in the 2010 Standards. However, 28 C.F.R. §35.150(b)(2)(ii) provides that this safe harbor provision does not apply to those elements in existing facilities that are subject to supplemental requirements, which includes play areas. Thus, play areas must comply with 2010 Standards sections 240 and 1008, as of March 15, 2012.

During the course of OCR's investigation, the District expressed a willingness to resolve the complaint. Pursuant to Section 302 of OCR's Case Processing Manual, OCR discussed resolution options with the University. On January 10, 2013, the District signed the enclosed agreement. The provisions of the agreement are aligned with the issues raised in the complaint and information obtained during the course of OCR's investigation and are consistent with the applicable regulations. OCR will monitor implementation of the 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

We have advised the Complainant that the District may not harass, coerce, intimidate, or discriminate against her because she filed a complaint or participated in the complaint resolution process. If this happens, she may file another complaint alleging such treatment. Also, 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, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

We appreciate the District's cooperation during the resolution of this complaint and particularly the assistance of Board Attorney David Phillips. If you have any questions, feel free to contact Kay Bhagat at (202) 453-6598 or Kay.Bhagat@ed.gov, Sara Clash-Drexler at 202-453-5906 or at Sara.Clash-Drexler@ed.gov, or Martha Russo at 214-661-9622 or at Martha.Russo@ed.gov.

Sincerely,

/s/

Dale Rhines
District of Columbia Office
Office for Civil Rights

cc: David Phillips, Esq. (via e-mail)

Enclosure