



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

September 29, 2016

Dr. Connie Dennis  
Superintendent  
Clarendon County School District III  
P.O. Drawer 270  
Turbeville, South Carolina 29162

Re: OCR Complaint No. 11-15-1116  
Letter of Findings

Dear Dr. Dennis:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on January 23, 2015, against Clarendon County School District III (the District). The complaint alleges that the District discriminates against students with disabilities because XXXX School (the School) is not accessible to students with mobility impairments. Specifically, the complaint alleges the following:

1. The playgrounds do not have accessible paths of travel, equipment and ground surface materials;
2. The portable classrooms are not accessible, including, but not limited to, accessible routes and ramps;
3. The internal and external doors are too heavy to be accessible for persons with disabilities and the doorway width is inaccessible for persons with disabilities;
4. The accessible parking spaces are not appropriate (e.g., no access isles); and
5. There are no accessible routes to facilities at the School.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) 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 from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

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

In reaching a determination, OCR reviewed documents provided by the Complainant and the District, interviewed the Complainant and District faculty/staff and conducted a site visit at the School.

After carefully considering all of the information obtained during the investigation, OCR identified violations of Section 504 and Title II. The District agreed to resolve the concerns through the enclosed resolution agreement. OCR's findings and conclusions are discussed below.

### **Background**

The Complainant is an attorney for the Student and her parents (the Parents). The Student uses a wheelchair, but does not have the ability to maneuver herself or avail herself independently to any of the playground equipment. However the Student is able to use a specialized swing the District has purchased and the District staff enables the Student to use the swing.

The School was constructed in 1954 and was opened during the 1954-55 school year serving grades 1 – 12. A shop building was constructed at some time during the 1960s. Portable classrooms were installed between 1970 and 1975. In 1995, the school building underwent major renovations, including removing and replacing rows of large windows and installing a heating and air conditioning unit in each classroom. A new classroom wing was constructed in 2001. Currently, the School serves pre-kindergarten through fifth grade students.

The original playground at the schools was constructed along with the school building in 1954. In 2011, playground equipment was upgraded as old equipment was replaced with new swings, climbers, and other items. There is a separate playground, referred to as the K4/K5 playground, for older children in the School and new equipment was purchased for the separate playground in 2011. The "Jenn Swing" referenced above for special needs students was purchased in 2012.

### **Legal Standards**

The accessibility requirements of the Section 504 implementing regulations are found at 34 C.F.R. §§104.21-104.23. Comparable sections of the Title II implementing regulations are found at 28 C.F.R. §§ 35.149-35.151. Both 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149 provide generally that no qualified individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by disabled individuals, be excluded from participation in, or denied the benefits of services, programs or activities; or otherwise be subject to discrimination by the recipient. The regulations implementing Section 504 and Title II each contain two standards for determining whether a recipient's/public entity's facilities are accessible to or usable by persons with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility.

For purposes of determining accessibility, a "facility" is defined at 34 C.F.R. § 104.3(i) to include "all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property." Under 28 C.F.R. § 35.104, a "facility" means "all or

any portion of buildings, structures, sites, complexes, equipment, ... walks, ...or other real or personal property, including the site where the building, property, structure or equipment is located." Interpretive guidance to the Title II regulation issued by the U.S. Department of Justice states that the term "facility" includes both indoor and outdoor areas where human-constructed improvements, structures, equipment or property have been added to the natural environment.

The Section 504 regulations define an existing facility as any facility that was already constructed, or for which groundbreaking had begun, prior to June 3, 1977 (the effective date of the Section 504 regulation). Recipients of Federal financial assistance must operate each program or activity of an existing facility so that the program or activity, when viewed in its entirety, is readily accessible to and usable by persons with disabilities. This standard does not require a recipient/public entity to make each existing facility, or every part of an existing facility, physically accessible if alternative methods (*e.g.*, relocating activities or using alternative sites) are effective in providing access to the service, program, or activity in question. In choosing among methods for meeting program accessibility requirements, a recipient is to give priority to those methods that serve persons with disabilities in the most "integrated setting appropriate." 34 C.F.R. § 104.22(b). The Section 504 standard is typically referred to as "program access." Title II has similar requirements as Section 504 with regard to existing facilities constructed before January 26, 1992.

The new construction provisions of the Section 504 and Title II regulations set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulation, districts had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or altered after January 26, 1992 and prior to September 15, 2010. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that districts had a choice of complying with one of the following: UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards).<sup>1</sup> The Title II regulation provides that districts are required to comply with the 2010 ADA Standards for Accessible Design for construction or alterations commencing on or after March 15, 2012.<sup>2</sup> If an element does not meet the requirements of the applicable standard at the time of construction the standard applied to fix the problem is the current standard, in this case the 2010 Standards. Additionally, if the facility meets the 2010 Standards there is no further determination required as to whether it met the standard at the time of construction. Therefore OCR will consider if each facility meets the 2010 Standards; if it does not OCR will look to the applicable standard or program access.

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<sup>1</sup> The 2010 ADA Standards for Accessible Design consist of 28 C.F.R. § 35.151 and the 2004 ADAAG at 36 C.F.R. Part 1191, appendices B and D.

<sup>2</sup> The U.S. Department of Education revised its Section 504 regulations to formally adopt the 2010 Standards in lieu of UFAS. The Section 504 regulation now requires the use of the 2010 Standards in new construction and renovations.

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 playgrounds. 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 playgrounds.

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 ADAAG or UFAS, are not required to be modified in order to comply with the requirements set forth in the 2010 Standards; this is called a safe harbor. However, 28 C.F.R. §35.150(b)(2)(ii) provides the safe harbor provision does not apply to those elements in existing facilities that were not subject to supplemental requirements, which includes playgrounds or play grounds. Thus, playgrounds built before March 15, 2012, must comply with the 2010 Standards. However, although preferable for an entity to meet the 2010 Standards, if it is not possible to achieve compliance with the 2010 Standards in an existing setting, the requirements for program accessibility provide enough flexibility to permit the covered entity to pursue alternative approaches to provide accessibility. The overall programmatic compliance requirement is undefined. 75 Fed. Reg. 56207; 28 CFR Part 35 Appendix A, Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services (the Appendix). Factors to consider when determining if a playground needs to meet the 2010 Standards were suggested in the Appendix to include but are not limited to: the number of existing playgrounds in the District, travel times or geographic distances between playgrounds, the size of the District, availability of accessible pedestrian routes to the playgrounds, ready availability of accessible transportation, comparable amenities and services in and surrounding the playgrounds, size of the playgrounds, and sufficient variety in accessible play components within the playgrounds. 75 Fed. Reg. 56208-09.

The 2010 Standards have multiple requirements and definitions for playgrounds. A ground level play component is defined as a *play component* that is approached and exited at the ground level. An elevated play component is a *play component* that is approached above or below grade and that is part of a composite play structure consisting of two or more *play components* attached or functionally linked to create an integrated unit providing more than one play activity.

The 2010 Standards at § 240.2.1.2 requires ground level play components to be provided in the following numbers:

Number of elevated play components provided	Minimum number of ground-level play components required to be on accessible route	Minimum number of different types of ground-level play components required to be on accessible route
1	Not applicable	Not applicable

Number of elevated play components provided	Minimum number of ground-level play components required to be on accessible route	Minimum number of different types of ground-level play components required to be on accessible route
2 to 4	1	1
5 to 7	2	2
8 to 10	3	3
11 to 13	4	3
14 to 16	5	3
17 to 19	6	3
20 to 22	7	4
23 to 25	8	4
More than 25	8, plus 1 for each additional 3, over 25, or fraction thereof	5

The 2010 Standards at § 240.2.1.1 require at least one of each type of ground level play components to be on an accessible route. Additionally, Section 1008 of the 2010 Standards sets forth requirements for accessible routes connecting ground level play components and elevated play components.

Also of note, the 2010 ADA Standards incorporate sections of the American Society for Testing and Materials (ASTM). Specifically ASTM F 1292-04 covers playground use zone and impact attenuation of surfaces. Additionally, ASTM F 1951-99 establishes a uniform means to measure the characteristics of surface systems in order to provide performance specifications to select materials for use as an accessible surface under and around playground equipment. The ASTM F standards provide specific testing standards to determine if the surface is firm, stable, and resilient to ensure the surface is safe and accessible to children who are playing. The Access Board has provided guidance on what surfaces meet the ASTM standards. They are: poured in place rubber, tiles, engineered wood fiber, hybrid surface systems.<sup>3</sup>

Additionally, the ADAAG defines accessible routes/paths of travel as a continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts. ADAAG §4.1.2(2)(a) requires at least one accessible route complying with 4.3 shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site. ADAAG §4.3.6 states the surface textures should meet §4.5. §4.5.1 states accessible routes need to be stable, firm, and slip-resistant.

**Analysis**

*Issue 1: The playgrounds do not have accessible paths of travel, equipment, or ground surface materials.*

*Main Playground*

There is no accessible path of travel to and around the main playground. Instead, there is grass, which does not meet the 2010 Standards 302.1 and ADAAG requirements §4.3.6 because it is

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<sup>3</sup> The guidance is located at <https://www.access-board.gov/guidelines-and-standards/recreation-facilities/guides/surfacing-the-accessible-playground>. (September 29, 2016)

not stable, firm and slip-resistant. The ground surface of the playground is sand. This not one of the surfaces the Access Board recognizes as accessible consistent with the ASTM requirements.

The playground, which includes sixteen swings, has a sand surface and is surrounded by grass with no accessible path of travel. The water fountains (on concrete pads), and play talking phones, respectively, are all located in the middle of grass areas with no accessible paths of travel.

As explained above, the 2010 Standards have specific requirements about the amount of equipment provided. Each playground is required to have a specified number of ground-level play components and different types of ground-level play components based on the number of elevated components. The first play structure includes six elevated components (turning monkey bars, a single slide - low, a loop ladder, a peddle climber, a slide pole, and a high slide). The second play structure also includes six elevated components (a double slide, a tube slide, a tic-tac-toe board (high), a monkey bar, a slide pole, and a U climber). Where there are twelve total elevated components, the 2010 Standards require at least four ground-level play components on an accessible route and at least three play types. A ground-level play component is approached and exited at the ground level. There are three ground-level play components comprised of three play types on the playground: a pull-up bar (first play structure), the swings (12), and the telephone. However, as discussed above, none of these ground-level components are on an accessible route. The elements in the main playground meet the 2010 Standards regarding the number and type of elements.

Additionally, the first play structure has a sloped transfer seat with a height of about 9.5 inches, while the 2010 Standards §1008.3.1.1 requires the transform platform to be between 11 and 18 inches off the ground. It should be noted there are no other applicable standards to consider. Based on this information, the way the equipment is installed does not meet the 2010 Standards. Additionally, there is no accessible route to the play area consistent with the ADAAG or the 2010 Standards. Finally, the ground surfaces do not meet ASTM standards, which are integrated into the 2010 Standards.

#### *K4/K5 Playground*

Similar to the other playground, there is no accessible path of travel to and around the K4/K5 playground. The path of travel to each play structure is grass and the surface of the playground is sand.

In the K4/K5 Playground, the only elevated play components are two mirror play structures containing two slides and bubble look-outs each, for a total of six elevated play components. Where there are six elevated components, the 2010 Standards require at least two ground-level play components on an accessible route and at least two play types. On the K4/K5 playground, there are multiple ground-level play components and types, including swings (a total of eleven), a dome climber, a small car, a dragon play element, and another climber. The ratio of elevated to ground-level elements does meet the 2010 Standards regarding elements; however, as stated above, the ground-level play components are not on an accessible route, as required.

Based on OCR’s review, there is no accessible route to the play area consistent with the ADAAG or the 2010 Standards. Additionally, the ground surface of sand does not meet the ASTM standards integrated into the 2010 Standards.

### Overall Accessibility

OCR next considered whether the playgrounds achieve program accessibility, despite the playgrounds’ failure to conform to the 2010 Standards regarding accessibility. There is a preference for all playgrounds to conform to the 2010 Standards; however, not all playgrounds at an individual school or site must meet the 2010 Standards to enable all programs operated at each school to be accessible. Since there are currently no students with disabilities, including the Student, who require a fully compliant play area to access the playground, the District has agreed to determine what modifications to the playground are required to address the unique needs of a student or students who may in the future enroll at the School.<sup>4</sup> This may include but is not limited to: (1) sending a student to a proximate district where there are accessible play areas meeting the 2010 Standards, including ground surface and the transfer seat requirements; (2) purchasing equipment and/or retrofitting current equipment to provide students with disabilities with integrated program access to the play area, including making specific changes needed to ensure access for the particular student or students with disabilities attending the school. This may include but, is not limited to acquiring a slide, water table, sand table, ball pit, standalone swing, outdoor music equipment such as an outdoor drum, or activity station; or (3) provide other methods for the student to have an experience similar to other students who are able to access the play area, including methods that enhance peer interaction and integration as appropriate.

### Jenn Swing

To address the Student’s unique needs, the District purchased a swing in March of 2012 to be used for students with mobility impairments, including the Student. However, this swing is also located in the grass without an accessible path of travel to it or accessible surface material under it. The 2010 Standards at § 240.2.1.1 require at least one of each type of ground level play components to be on an accessible route, again this is located in the grass not on an accessible route (ADAAG §4.1.2(2)(a) (2) (a)). Additionally, the ground surface is not an ASTM surface and thus does not meet the 2010 Standards. Since the Student is able to use the Jenn Swing it is required to be located on in an area consistent with the 2010 Standards.

### Issue 2: Portable Classrooms/School Facilities - The portable classrooms are not accessible, including, but not limited to, accessible routes and ramps.

The ramp to the portable, which contains the Student’s classroom, is a wooden ramp that is 94.4 inches long and 48 inches wide with about 4 inches of railings overlapping. The slope of the ramp ranges from 12% to 18.5%. The 2010 Standards and the ADAAG require a running slope no greater than 8.33% (§ 405.2 and §4.8.2 respectively). Based on this, the ramp does not meet the 2010 Standards or the ADAAG. Additionally, the wood is not slip resistant, as required by

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<sup>4</sup> They playground is not open to the public after school hours, so the District does not need to consider public access for this playground.

ADAAG §4.3.6. The District could not provide OCR a date of construction, although they assert the ramp was constructed in 1975. OCR finds it unlikely that a wooden ramp from 1975 would still be in use in 2015. Further, when OCR observed the ramp, it did not appear to be forty years old. The greater concern, however, is that the wood is not slip resistant and poses a danger when wet. This was confirmed by the Student's Parents, who have raised concerns about their ability to get the Student up the ramp in inclement weather.

#### Accessibility of the Bathroom in the Portable Classroom

The bathroom in the portable classroom appears to be constructed after 1975; however, the District could not provide OCR a specific date of renovation. In the bathroom within the portable classroom, the grab bars are 36 inches high and 37 inches long. The 2010 Standards §609.4 requires grab bars to be installed in the horizontal position from 33 to 36 inches above the finished floor. Based on this, the grab bars are at an acceptable height. The toilet seat, however, is 16.75 inches from the floor. This is not within the required height, which states that toilets are to be between 17 and 19 inches off the finished floor (2010 Standards §604.4), and ADAAG §4.16.3 have the same requirements as the 2010 Standards. The door to the bathroom is 34 inches wide, which is consistent with 2010 Standards § 404.2.3, which states that the doorway must have a clear opening of 32 inches. There is no knee protection on the exposed pipes under the sink, as required by 2010 Standards § 606.5 and ADAAG § 4.19.4. Additionally, the water controls on the facet do not meet the 2010 Standards § 309.4, which require operable parts that can be operable with one hand and must not require tight grasping, pinching, or twisting of the wrist (the ADAAG § 4.27.4 has similar requirements). ADAAG requires that faucets consist of levers or have a large area to control the flow of water. In this instance, the water controls are small knobs. Therefore, they are inaccessible, in violation of Section 504 and Title II.

#### Conclusion Portable

The portable is an existing facility because it was constructed in 1975; therefore, the District is required to meet accessibility standards for programs and activities held in the portable facilities. OCR notes that, if the portables are not in use, this would resolve OCR's concerns and OCR would reach no further conclusions with regard to compliance for the restroom or the ramp leading to the portable. During the course of the investigation, the District made OCR aware that they were willing to move the special education classroom out of the portable and there are no other programs or activities being run in any of the portables. If there are no programs or activities occurring in the portables, there is no requirement they be made fully accessible because of the date of construction (they were constructed prior to Section 504 or Title II being enacted, which only requires program access<sup>5</sup>). The District's decision to move the special education classroom, which is committed to in the agreement, resolves this concern prior to OCR reaching a determination on whether the programs and activities are accessible. The enclosed agreement will require the District to develop a policy for the portables if they are to be occupied at a later date. The District provided information to OCR regarding the proposed new location for the special education classroom within the building. However, OCR notes that there is no

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<sup>5</sup> Program access means recipient/public entity makes each existing facility, or every part of an existing facility, physically accessible if alternative methods (*e.g.*, relocating activities or using alternative sites) are effective in providing access to the service, program, or activity in question.



accessible restroom near the new classroom. Based on this, the enclosed agreement requires the District to renovate the existing restroom to make it compliant.

*Issue 3: The internal and external doors are too heavy and the doorway width is inaccessible for persons with disabilities*

Much of the School is considered an existing facility because it was constructed prior to the enactment of Section 504 and Title II. Therefore OCR reviewed the building using the “program access” standard and uses as a guide ANSI, §5.3.1, which requires doors be no less than 32 inches wide and operable by single effort. OCR notes that several of the doors were clearly from the original construction. Additionally, the 2010 Standard § 404.2.9 and ADAAG both require the maximum force for pushing or pulling open an interior door to be five pounds of force. (§ 4.13.11(2)(b)). ADAAG does not specify a weight for exterior hinged doors. OCR took measurements of a few doors at the School and found that they did meet the five pounds or less requirement. An example is the cafeteria, which required twelve pounds of force. Prior to OCR looking at all of the doors in the building, the District asked to resolve this concern by developing a policy to monitor door weight to resolve any concern OCR may have had.

According to the 2010 Standards § 404.2.3, doorways must have a clear opening of 32 inches (ADAAG § 4.13.5 has the same requirement). The door to the portable is 36 inches wide and the doors to the main office, media center, and other internal doors are all 35 inches wide. All meet the requirements of the 2010 Standards. OCR notes that there are some doors that are not 32 inches, including the single restroom across from the main office that has a door with a width of 28 inches. The entire bathroom appeared to be original construction. Since the District agreed to renovate a restroom to make it accessible (as discussed above). Therefore, this restroom, including its door does not need to be accessible under the program access requirements of Section 504 and Title II. However, if the District was to update the bathroom in anyway, such as a new fixtures this may change these requirements.

*Issue 4: Parking Lots - The accessible parking spaces are not appropriate (e.g., no access aisles) and no accessible routes to all facilities at the School.*

The paved parking lot in the rear of the school has sixty-four parking spaces, four of which are accessible spaces and van accessible. The District staff told OCR said this side walk and parking lot were constructed in 2001. The 2010 Standards §208.2 require that a parking lot with fifty-one to seventy-five parking spaces have three accessible spots. Therefore, the rear parking lot meets this requirement. However, there is no painting or signage to denote the accessible spaces, which is required by the 2010 Standard § 502 and ADAAG §4.6. There is a route that connects to the accessible parking spaces, consistent with 2010 Standards § 502.3. However, the connection is made using an entire sidewalk that is slanted, which creates a cross slope of zero to 12.4% for the accessible route. This is not compliant with 2010 Standards §405.4 and ADAAG §4.8.6. To resolve this concern the District will have to create an accessible route without using the sloped side walk as part of the access route.

The front lot, which was also constructed in 2001, has sixteen spaces. The 2010 Standards §208.2 requires that a parking lot with one to twenty-five spots has one accessible parking space.

The front parking lot does have one accessible parking space, although it is not van accessible and does not connect to the accessible route to the building. The accessible space does not have any painted lines denoting the space. From the front parking lot, there is an accessible route to the School's main entrance. To enable accessibility, the School would need to put in an accessible parking space with an access aisle on either side of the main entrance with vertical signage. All of this is required by 2010 Standard § 502 and ADAAG §4.6.

There is an additional parking lot, with no known date of construction. This lot is the location where buses are kept at night and where bus drivers and teachers park during the day. It should be noted this is the lot closest to the portable where the Student's classroom was for the 2014-2015 school year. This lot is an open area with no marked spaces and the cars park around the outside loop of the lot. There are no accessible spaces in this lot. The District could not tell OCR exactly how many spaces were available in this lot – there were no striped spaces in the lot nor were the buses there the day OCR visited. Based on the size of the lot, OCR would estimate that there were approximately 50 spaces in the lot. There is no accessible route from this lot to the building. There is a small ramp that is not compliant for a number of reasons, including the bottom of the ramp goes into the grass, the slope of the ramp is between 10.9% and 16.1%, and it is 32 inches wide. The District reports this was construction from the 1950's. This is not readily accessible because the ramp runs into the grass. Thus, for program access purposes, the designated parking for this lot should be relocated to the two other lots where there are accessible routes. To resolve OCR's concerns, OCR will ask the District to install two accessible spaces with a van access aisle at the accessible entrance to the School and then install five accessible spaces in the back lot with at least one with a van accessible space. This will create enough overall accessible parking.

*Issue 5: There are no accessible routes to facilities at the School.*

The Complaint raised issues regarding accessible routes, which have been discussed previously. Additionally, OCR could not identify any additional routes which were in accessible when it went on-site on June 15, 2015. Therefore, OCR will take no further action with respect to Issue 5.

**Conclusion**

On September 21, 2016, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into the by the District on September 21, 2016, if the District fails to implement the Agreement, OCR may initiate

administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter 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 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, or participates in an OCR proceeding. 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, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Judith Risch, the OCR attorney assigned to this complaint, at 202-453-5925 or [judith.risch@ed.gov](mailto:judith.risch@ed.gov).

Sincerely,

/S/

David Hensel  
Supervisory Attorney, Team III  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: XXXX