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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

November 20, 2013

Megan P. Norris, Esq.
Miller Canfield
150 West Jefferson, Suite 2500
Detroit, Michigan 48226

Re: OCR Docket #15-10-2039

Dear Ms. Norris:

This letter is to notify you of the disposition of the complaint filed against Northern Michigan University (the University) with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), on January 28, 2010, alleging discrimination on the basis of disability. Specifically, the complaint alleged that the University failed to provide a student with a disability (the Student) with a residential room that was accessible for persons with mobility impairments, resulting in her being denied on-campus housing at the University. The complaint also alleged that the University discriminated against the Student by charging her the additional cost of a suite that was provided to her as a modification for her disability. The complaint further alleged that one of the Student's classrooms in Greis Hall and the elevator in the University Center are inaccessible to persons with mobility impairments who use wheelchairs. The complaint also alleged that the entrances to the West Science Building, the Thomas Fine Arts Building, and the food court in the Marketplace Building are inaccessible and that the "enclosed tunnels" that connect several buildings around the campus do not have accessible doorways.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination based on disability by recipients of federal financial assistance from the U.S. Department of Education. OCR is also responsible for enforcing Title II of

the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities and their instrumentalities.

The University is a public institution which receives Federal financial assistance from the U.S. Department of Education. It is, therefore, subject to the requirements of Section 504 and Title II, and OCR had jurisdiction to investigate this complaint.

Allegations Resolved Through Early Complaint Resolution

On September 2, 2010, the University and the Student participated in OCR's Early Complaint Resolution (ECR) Process. As a result of that process, the University and the Student signed an ECR agreement, a copy of which is enclosed, that fully resolved the individual allegations made on behalf of the Student. Accordingly, OCR closed those allegations.

OCR is not a party to the ECR agreement and will not enforce the agreement. If a breach of the agreement occurs, the complainant may file a new complaint with OCR. Should the complainant re-file, OCR would not investigate the breach of the agreement but instead would decide whether to investigate the original complaint allegations based on the nature of the alleged breach, its relation to any alleged discrimination, and other factors as appropriate. Generally, a new complaint must be filed within 180 days of the date of the original discrimination or within 60 days of the date a complainant learns an ECR agreement has been breached.

Allegations Investigated by OCR

OCR investigated the following remaining allegations after the resolution of the individual allegations through ECR:

1. Room 166 in Greis Hall is inaccessible to persons with mobility impairments who use wheelchairs because the desks are bolted down.

2. The elevator in the University Center is inaccessible to persons with mobility impairments who use wheelchairs.

3. The entrances to the West Science Building, the Thomas Fine Arts Building, and the food court in the Marketplace building are inaccessible.

4. The "enclosed tunnels" that connect several buildings around the University's campus do not have accessible doorways.

Based on the allegations, OCR investigated the legal issue of whether the University has denied qualified individuals with disabilities the benefits of, excluded them from participation in, or otherwise subjected them to discrimination on the basis of disability because its 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, and the Title II implementing regulation at 28 C.F.R. § 35.149.

To investigate this complaint, OCR interviewed the Student and her father, reviewed documents submitted by the University, and conducted onsite inspections of the facilities at issue in October 2010 and October 2012.

Based on a careful consideration of the information obtained, OCR has determined that the several facilities at the University do not meet the accessibility requirements of Section 504 and Title II. However, the University signed the enclosed agreement that, once implemented, will fully address these allegations in accordance with Section 504 and Title II. A summary of the applicable legal standards, OCR's investigation, the bases for OCR's determinations, and the terms of the agreement are presented below.

- **Applicable Legal Standards**

The Section 504 implementing regulation states that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which Section 504 applies. 34 C.F.R. § 104.21. The Title II regulation contains a similar provision for public entities at 28 C.F.R. § 35.149.

The Section 504 and Title II regulations contain standards for determining whether a school's programs, activities, and services are readily accessible to and usable by individuals with disabilities, depending on whether the facilities are determined to be existing construction, new construction, or altered construction. The applicable standard depends on the date of construction or alteration of the facility and the nature of any alternation.

For existing facilities, the regulations require an educational institution to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. This compliance standard is referred to as "program access." This standard does not 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. A recipient may comply with this standard through physical alteration of existing facilities, but a recipient is not required to make structural changes to the facility itself when other methods are effective in achieving compliance. 34 C.F.R. §104.22(a); 28 C.F.R. § 35.150(a). Under the Section 504 regulation, existing facilities are those for which construction began (ground was broken) before June 3, 1977. The applicable date for existing construction under the Title II implementing regulation is January 26, 1992. In choosing among available methods for meeting the program access requirement for existing facilities, an 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.

34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b). The Section 504 regulation also requires a recipient institution to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities in existing construction that are accessible to and usable by persons with disabilities. 34 C.F.R. § 104.22(f).

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. Under the Title II regulation, the applicable date for new construction is January 26, 1992.

With regard to alterations, each facility or part of a facility that is altered by, on behalf of, or for the use of an institution after the effective dates of the Section 504 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 and Title II, new construction and alterations begun after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI). New construction and alterations begun between January 18, 1991, and January 26, 1992, must conform to the Uniform Federal Accessibility Standards (UFAS). Compare 45 C.F.R. § 84.23(c) (1977) and 34 C.F.R. § 104.23(c) (1981), with 34 C.F.R. § 104.23(c) (2012). New construction and alterations after January 26, 1992, but prior to March 15, 2012, must conform to either UFAS or the 1991 Americans with Disabilities Act Standards for Accessible Design (the 1991 ADA Standards). The U.S. Department of Justice published revised regulations for Titles II and III of the Americans with Disabilities Act (ADA) on September 15, 2010. These regulations adopted revised, enforceable accessibility standards called the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards). The 2010 ADA Standards went into effect on March 15, 2012, although entities had the option of using them for construction or alterations commencing September 15, 2010, until their effective date. For new construction and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards.

A recipient subject to both UFAS and an ADA standard could choose to apply UFAS or the appropriate ADA standard consistently for each facility. As noted above however, public entities, regardless of recipient status, must use the 2010 ADA Standards for new construction and alterations as of March 15, 2012.

In reviewing program access for an existing facility, the ADA Standards or UFAS may also be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service.

In addition, accessible features and equipment must be maintained in working condition. See 28 C.F.R. § 35.133. Temporary obstructions or isolated instances of mechanical failure or isolated

or temporary interruptions in service or access are not prohibited, but should not persist beyond a reasonable period of time.

The University told OCR that it used the ADA Standards with respect to the facilities at issue in this complaint, with the exception of the Superior Dome (an indoor stadium used for football, soccer, and track). The Superior Dome was not at issue in this complaint except for a tunnel that links the Superior Dome with the University's Physical Education and Instructional Facility (PEIF), which tunnel the University stated was constructed in 1990. The other facilities at issue in this complaint were constructed or altered when the 1991 ADA Standards were in effect. OCR therefore used the 1991 ADA Standards in assessing compliance for each allegation except for the tunnel to the Superior Dome, for which, based on the date of its construction, OCR utilized ANSI. For any element that did not meet the required design standard, OCR also assessed whether the element would meet the requirements of the 2010 ADA Standards, which would apply to any modifications the University makes to the facilities at this time.

- **Summary of OCR's Investigation and Analysis**
    - **Gries Hall – Room 166**

The complaint alleged that Room 166 in Gries Hall is inaccessible to persons with mobility impairments who use wheelchairs, because the desks are bolted to the ground. XXX XXXXXXX XXXXX XXXX XXXX XXXXXX X XXXXX XX XXXX XXXX XXX XXXX XXXXXX XX XXX XXX XXXXXXX XXX XX XXXXX XXX XX XXXXXX XXX XXXXXXXXXXX.

According to the University, Gries Hall was completely renovated in 1994. It thus qualifies as altered construction and must conform to the 1991 ADA Standards to the maximum extent feasible. OCR staff visited Gries Hall during the October 13, 2010, site visit and noted that the desks were neither stationary nor bolted to the ground, as the complaint alleged. Faculty could easily reconfigure the desks in the room. However, all of the desks were chair desks and the room did not include any desk or table at which a person using a wheelchair could sit.

- **University Center Elevator**

The Student's father told OCR that the University Center, which includes the University's bookstore, has an elevator that was too small to accommodate the Student's wheelchair. Thus, she was unable to access the second floor of that building.

The University informed OCR that it installed the elevator in the University Center in 1993; the elevator is therefore new construction and the 1991 ADA Standards apply. OCR staff verified during its site visit that the elevator in University Center is on an accessible route and that the elevator is automatic, as required by 1991 ADA Standard 4.10.2.

The elevator is a single elevator. It therefore has no hall lantern indicator to show which car is answering a call, as would be required by 1991 ADA Standard 4.10.4. When called, the elevator door stays open for 11.36 seconds, which is within the three seconds required by 1991 ADA Standard 4.10.8. The elevator door has a sensor device to open without actual contact when it detects a person or object between five and 29 inches above the ground. However, when the elevator door hits an obstruction, it stays open only about three seconds instead of the twenty seconds required by 1991 ADA Standard 4.10.6 to allow people to move out of the door's path.

The elevator car self-leveled to within ½ inch of the floor based on OCR staff observation. On October 26, 2012, an elevator examiner for Otis Elevator Co. (the elevator's manufacturer), verified to OCR staff that the elevator is equipped with a self-leveling feature that will bring the car to floor landings within a tolerance of ½ inch, compliant with 1991 ADA Standard 4.10.2. In addition, there was a 3/8 inch lip from the car to the floor. The 1991 ADA Standards at 4.13.8 permit thresholds at doorways that do not exceed ½ inch.

The hall call buttons in the elevator lobby were centered at 43 inches from the floor, which is one inch above the requirements in the 1991 ADA Standards at 4.10.3 but is compliant with the 2010 ADA Standards and therefore does not require retrofitting. Otherwise, the hall call buttons and hall lanterns meet all of the 1991 ADA Standards set forth in 4.10.3 and 4.10.4.

The hoistway entrance of the elevator has raised characters but no Braille characters indicating the floor level as required by 1991 ADA Standard 4.10.5 and 2010 ADA Standard 407.2.3.1; the entrance sign otherwise meets all the requirements of that standard.

With regard to the floor plan of the elevator, the elevator has a side-door entrance. Thus, the elevator must have a width of 68 inches, as well as a depth of 54 inches from the back of the wall to the door and 51 inches from the back of the wall to the control panel to comply with 1991 ADA Standard 4.10.9 and Figure 22. The elevator car measured 69 inches wide from wall to wall. The elevator measured 55 ¼ inches from the wall to the door and 51 inches from the wall to the control panel. The elevator therefore meets the requirements of the 1991 ADA Standards as to width and depth. The floor of the elevator is carpeted with level loop texture and a low pile height (less than a half inch, with no cushioning). The carpet is securely attached, and is wall to wall, with no exposed edges. The floor surface of the elevator is stable, firm, and slip-resistant and thus conforms to 1991 ADA Standard 4.10.10.

With regard to car control standards, the control panel is at the side of the door of the elevator and meets all of requirements of 1991 ADA Standard 4.10.12 except the requirement that the buttons be identified in Braille. 2010 ADA Standard 407.4.7.1.2 requires raised character and Braille designations be located immediately to the left of car control buttons. The car position indicator meets all the requirements of 1991 ADA Standard 4.10.13. Emergency communications in the elevator car meet all requirements of 1991 ADA Standard 4.10.14.

- **Entrances to West Science Building, Thomas Fine Arts Building, Food Court**

The complaint alleged that the entrances to the West Science Building, the Thomas Fine Arts Building, and the food court in the Marketplace building are inaccessible.

- **West Science Building**

The University constructed the West Science Building in 1965 and completely renovated it in 2000, including the entrance doors. Thus, this is an alteration to which OCR applied the 1991 ADA Standards when analyzing whether the entrance doors complied with the standards to the maximum extent feasible for altered facilities. There is a double set of doors at the entrance at issue, and there is a space measuring 98 inches between the two sets of doors. This complies with the 1991 ADA Standard at 4.13.7, which requires a minimum of 48 inches plus the width of the open door between two doors in a series.

The exterior set of doors is a double-leaf doorway with a T-bar. It has a push bar on the push side of the doors and a U-shaped handle on the pull side of the doors; the hardware does not require tight grasping, tight pinching, or twisting of the wrist and so meets requirements of 1991 ADA Standard 4.27.4. Each door has a 33 1/4-inch width, with a front approach on both sides of the doors and adequate maneuverability on both sides of the doors. This complies with 1991 ADA Standard 4.13.5, which requires a minimum clear opening of 32 inches with the door open 90 degrees, measured between the face of the door and the opposite stop, and the entrance complies with 1991 ADA Standard 4.13.6 and Figure 25(a) concerning maneuverability on approach to the doors.

There is a ¾-inch high threshold from the exterior to the interior of the doors, although the threshold from the interior is flush; therefore, the exterior threshold does not meet the requirements of 1991 ADA Standard 4.13.8, which sets a maximum of 1/2 inch for doors other than exterior sliding doors. However, the 2010 ADA Standards, at 404.2.5, permit an exception for existing or altered thresholds that are ¾ inch maximum with a beveled edge on each side and a slope not steeper than 1:2. Therefore, as the 2010 ADA Standards would apply to any modifications made at this date, no change is required. The surface of the route is smooth concrete on the outside and carpeted between the two sets of doors with low-pile carpet that is easy to traverse; thus, the surface is stable, flat, and slip resistant in compliance with 1991 ADA Standard 4.10.10. The automatic door closer has a sweep period of 3.1 seconds to close, which is more than the three-second minimum permissible time under 1991 ADA Standard 4.13.10. The exterior doors required 15 pounds of force to open, but, because this is an exterior door, there is no ADA Standard to address acceptable pounds of force. Information provided by the Complainant indicated that the Student did not have program access due to this door, but as explained above her individual allegations were resolved through ECR. OCR did not obtain any information during this investigation indicating whether program access is an issue for other students with disabilities.

The interior set of doors consists of a double-leaf doorway with a T-bar. It has a push-bar on the push side of the doors and a U-shaped handle on the pull side of the doors. Both allow for

operation without tight grasping, tight pinching, or twisting of the wrist and so meet requirements of 1991 ADA Standard 4.27.4. Each door has a 33 1/4-inch width, with a front approach on both sides of the doors and adequate maneuverability on both sides of the doors under 1991 ADA Standard 4.13.6 and Figure 25(a). The width meets the 32-inch minimum set forth in the 1991 ADA Standards at 4.13.5.

The threshold at this set of doors is flush. This is consistent with 1991 ADA Standard 4.13.8, which sets a maximum of ½ inch for thresholds for interior doors. The surface of the route is covered by smooth, low-pile carpet in the space between the doors and smooth tile on the interior, all of which is easy to traverse. Thus, the floor surfaces are stable, firm, and slip-resistant in conformity with 1991 ADA Standards 4.5.1 and 4.5.3. The automatic door closer has a sweep period of 5.2 seconds to close, which is within the time period set by 1991 ADA Standard 4.13.10. The interior doors required 13 pounds of force to open, which does not comply with the 5 lbf maximum set forth as acceptable for interior doors in 1991 ADA Standard 4.13.12 and 2010 ADA Standard 404.2.9. The information provided to OCR, however, was insufficient to determine whether this automatic door has standby power or stays open in the power off condition, in which case the opening force would not be of concern.

Both sets of doors have an automatic opener as well, where pushing one opener opens both sets of doors in sequence. There is an exterior and interior push button, both of which are located 48 inches from the ground to the midpoint, consistent with the 48-inch reach maximum required at 1991 ADA Standard 4.13.9. The Student's father asserted that the push buttons were too high for the Student. However, both buttons meet the reach ranges set forth in 1991 ADA Standards 4.2.5 and 4.2.6 and Figures 5 and 6 for side reach (exterior) and for front reach. While this would constitute a program access issue for the Student, the individual allegations pertaining to the Student were resolved through ECR. The exterior doors open to back check in 9.1 seconds and take 3.1 seconds to close. The interior doors open to back check in 6.0 seconds and take 5.2 seconds to close. The full sequence from the exterior door opening to the interior door closing takes 27.1 seconds. This is consistent with the requirement set forth in 1991 ADA Standard 4.13.12, which states that such doors should not open to back check faster than three seconds.

The exterior door requires 16 pounds of force to stop the door movement, which is one pound in excess of the requirements set out in 1991 ADA Standard 4.13.12. The interior door requires 15 pounds of force to stop the door movement, which is within the standard.

- **Thomas Fine Arts Building**

The Thomas Fine Arts Building was constructed in 1964 and underwent a major renovation in 2004. Thus, OCR applied the 1991 ADA Standards to this alteration. The entrance in question has two sets of double leaf doors with a T-bar, side by side. It has a push bar on the push side of the doors and a U-shaped handle on the pull side of the doors. Both allow for operation without tight grasping, tight pinching, or twisting of the wrist and so meet requirements of 1991 ADA Standard 4.27.4. Each door has a 34-inch width. This is consistent with the 1991 ADA Standards at 4.13.5, which require a clear opening of 32 inches minimum. There is room for a front approach to the entrance on both sides of the doors and adequate maneuverability on both sides of the doors under 1991 ADA Standard 4.13.6, given the existence of the automatic door opener.

The threshold at this set of doors is less than half an inch high. This is consistent with the 1991 ADA Standards at 4.13.8, which state that the threshold may not exceed half an inch. The surface of the route is smooth concrete at the exterior of the entrance and smooth tile on the inside of the entrance; thus, the surface is stable, flat, and slip resistant in compliance with 1991 ADA Standard 4.10.10. There is nominal sloping along this route (0.2º exterior; 0.6º interior), which is consistent with the 1991 ADA Standard at 4.5.2 that states changes in level up to 1/4 inch (6 mm) may be vertical and without edge treatment. Additionally, 13 pounds of force are required to open the door, but, because this is an exterior door, there is no ADA Standard to address acceptable pounds of force. To the degree that this raised individual program access issues for the Student, her individual allegations were resolved through ECR. The sweep period to close the door with the automatic closer is twenty seconds, which is within the timeframe set by 1991 ADA Standard 4.13.10.

The doors have an automatic opener as well. There is an exterior and interior push button; the exterior button is 36 inches from the ground, and the interior button is 46 inches from the ground to the midpoint; therefore, both are mounted within acceptable reach ranges for side or forward reach set forth in 1991 ADA Standards 4.2.5 and 4.2.6 and Figures 5 and 6. When pushing the exterior button to open the doors, the doors open to back check in seven seconds and take 11 seconds to close. When pushing the interior button to open the doors, the doors open to back check in 6.9 seconds and take 5.9 seconds to close. This is consistent with 1991 ADA Standard 4.13.12, which requires that automatic doors not open to back check faster than three seconds. The doors require 13 pounds of force to stop the door movement, which is less than the 15-pound maximum under the 1991 ADA Standard at 4.13.12.

- **Marketplace Food Court**

The Student's father said that, in the Marketplace building, which houses a food court, there is a ramp that goes up to the second floor, which the Student could use; however, he said the door at the top of the ramp is always locked. The Marketplace building was constructed in 1964, and, in 2001, the University completely renovated the building, including the entrance doors. Thus, OCR applied the 1991 ADA Standards, analyzing if the entrance was accessible to the maximum extent feasible for an alteration. There is a double set of doors at this entrance, and there is a distance of 61 inches between the two sets of doors; this does not meet the standard set under 1991 ADA Standard 4.13.7, which requires 48" plus the width of any door swinging into the space (which in this case is 37" wide). The 2010 ADA Standards set the same requirement at 404.2.6.

The exterior set of doors consists of a double leaf doorway with a T-bar. It has a push bar on the push side of the doors and a U-shaped handle on the pull side of the door. Both allow for operation without tight grasping, tight pinching, or twisting of the wrist and so meet requirements of 1991 ADA Standard 4.27.4. Each door has a 37-inch width, with a front approach on both sides of the doors and adequate maneuverability under 1991 ADA Standard 4.13.6. This is compliant with the 32-inch minimum for clear width required by 1991 ADA Standard 4.13.5.

There is a ¾-inch high threshold from the exterior, although the threshold from the interior is flush. Therefore, the exterior threshold does not meet the requirements of 1991 ADA Standard 4.13.8, which sets a maximum of 1/2 inch for thresholds for doors other than exterior sliding doors. However, the threshold is beveled and falls within the exception allowed for existing or altered thresholds at 2010 ADA Standard 404.2.5; therefore, no change is required. The surface of the route is smooth concrete on the outside and tiled between the two sets of doors, and the route is easy to traverse; thus, the surface is stable, flat, and slip resistant in compliance with 1991 ADA Standard 4.10.10. There is nominal sloping along this route.

The automatic door closer has a sweep period of 3.2 seconds to close, which is within the time range set by 1991 ADA Standard 4.13.10. The exterior doors required nine pounds of force to open, but, because this is an exterior door, there is no ADA Standard to address acceptable pounds of force. Any individual program access issues for the Student were resolved through ECR. The interior set of doors consists of a double leaf doorway with a T-bar. It has a push bar on the push side of the doors and a U-shaped handle on the pull side of the doors. Both allow for operation without tight grasping, tight pinching, or twisting of the wrist and so meet the requirements of 1991 ADA Standard 4.27.4.

Each door has a 37-inch width, with a front approach on both sides of the doors and adequate maneuverability on both sides of the double doors. This is compliant with the 32-inch minimum for clear width required by 1991 ADA Standard 4.13.5 and the maneuverability standards under 1991 ADA Standard 4.13.6.

The threshold at this set of doors is flush, and the surface of the route is smooth, low-pile carpet in the space between the doors and smooth tile on the interior, all of which is easy to traverse;

thus, the surface is stable, flat, and slip resistant in compliance with 1991 ADA Standard 4.10.10. There is nominal sloping along this route -- 1.3º at the exterior, 0.5º between the doors, and 0.1º on the interior of the doors. This is less than the minimum 2.86º (or 1:20) slope required to consider a change in level to be a ramp under the ADA standard at 4.8.1.

The automatic door closer has a sweep period of 8.0 seconds to close, which is within the time range set by the 1991 ADA Standards at 4.13.10 of 3 seconds minimum. The interior doors required 11 pounds of force to open, in excess of the acceptable five pounds of force requirement set forth by 1991 ADA Standard 4.13.11. Both sets of doors have automatic openers, which operate independently of each other. There is an exterior and interior push button, both of which are located 35 inches from the ground to the midpoint. Both buttons meet the reach ranges set forth in 1991 ADA Standards 4.2.5 and 4.2.6 and Figures 5 and 6 for side reach and for front reach. The exterior doors open to back check in 10.2 seconds and take 3.2 seconds to close. The interior doors open to back check in 8.3 seconds and take 8.0 seconds to close. This is consistent with 1991 ADA Standard 4.13.12, which requires a minimum of three seconds. The exterior door requires 15 pounds of force to stop the door movement, and the interior door requires 12 pounds of force to stop the door movement, both of which are within the 15-pound limit set by the 1991 ADA Standards at 4.13.12.

- **Enclosed Tunnel Entrances**

The University built a series of wind tunnels connecting various buildings on campus, some above ground and some below ground, all enclosed. The tunnels are essentially wide, covered hallways linking the buildings, with a series of doors at each building entrance. The Student's father stated that the tunnels allow students to stay inside during the harsh winter weather and that, although the tunnels were wide enough to accommodate the Student's wheelchair, they had doors she could not open; he stated the doors are heavy, and none of them have automatic push buttons that would open them for her. As noted above, the Student's individual allegations were resolved through OCR; therefore, OCR inspected the tunnels with regard to the class-wide accessibility allegation.

The University built most of the tunnels from 1994 to 2001; however, as noted above, the tunnel connecting the Superior Dome to the PEIF was built in 1990. Thus, all of the tunnels except the latter are new construction subject to the 1991 ADA Standards; the PEIF tunnel is subject to the ANSI standards.

Because the allegation in the complaint was directed specifically at the entrances of the tunnels from building to building, OCR staff did not inspect any of the entrances at the midpoint of the link or tunnel (to the extent that there were midpoint entrances, which was true for only a couple of tunnels). In addition, OCR staff did not take specific

measurements to determine the accessibility of the tunnels themselves, which was not at issue in this complaint. The following sections discuss inspections of individual tunnel entrances.

- **Entrances from the Learning Resource Center (LRC) to the West Science Building**

The University constructed this tunnel in June 1995. It therefore qualifies as new construction, and the tunnel entrance must conform to the 1991 ADA Standards.

West Science Building entrance to the tunnel – OCR observed that this entrance has a double leaf door with a T-bar dividing the doors. The door is sufficiently wide per 1991 ADA Standard 4.13.5 and has a flush threshold and hardware mounted within acceptable reach ranges under 1991 ADA Standard 4.13.9 that allow for operation without tight grasping, tight pinching, or twisting of the wrist (a lever handle on the building side, and a lever handle and a push bar on the tunnel side) and so meet the requirements of 1991 ADA Standard 4.27.4. The door closers operate within the timeframes set forth in 1991 ADA Standard 4.13.10. When crossing from the building into the tunnel, there is adequate room under 1991 ADA Standard 4.2.4.1 and Figure 4(b) to make a frontal approach to the doors, and there is adequate maneuverability as set forth in 1991 ADA Standard 4.13.6 and Figure 25(a), but, when traversing from the tunnel to the building, one must take a side approach as shown in Figure 4(c), as the route from the building to the tunnel turns sharply to the left immediately past the threshold. The door does not have adequate maneuvering clearance on the tunnel side of the door, as this push side (tunnel side) uses a hinge-side approach with a closer and with a narrow turn to the door from the tunnel route. Under 1991 ADA Standard 4.13.6 and Figure 25(c), there must be a space at least 48 inches deep/long available in front of the door and at least 24 inches on the handle side for maneuverability. The same requirement is set forth in the 2010 ADA Standards at Table 404.2.4.1(g). In this case, the space available in front of the door is far less than 48 inches, even as measured from the bar of the door to the furthest point of the arc of the turn into the door.

Additionally, on the tunnel side of the entrance, there is an 8.2° slope on the route down from the door into the tunnel (approximate 1:7). According to 1991 ADA Standard 4.3.7, any route with a slope in excess of 1:20 is a ramp and must conform to 4.8.2, which requires that slopes not exceed 1:12 (or a maximum of one inch rise (increase in height) over 12 inches of run, or 4.76º); thus, the slope of this tunnel makes the route inaccessible and dangerous. Pursuant to 1991 ADA Standard 4.1.1(5)(a), full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features. If full compliance with the requirements of the guidelines is structurally impracticable, a person or entity shall comply with the requirements to the extent it is not structurally impracticable. Any portion of the building or facility which can be made accessible shall comply to the extent that it is not structurally impracticable. In the 2010 ADA Standards, under an exception to Figure 405.2, in existing sites, buildings, and facilities, ramps shall be permitted to have running slopes steeper than 1:12 complying with Table 405.2 where such slopes are necessary due to space limitations. In that table, ramps steeper than 1:12 but no higher than 1:8 can have a different rise, but slopes of greater than 1:8 are prohibited, and the route in question has a slope of greater than 1:8. The University did not present any information to

support that modifying the ramp to comply with the slope requirement would be structurally impracticable.

In addition, the door opening force is 13 pounds, well over the five-pound limit set out in 1991 ADA Standard 4.13.11 and 2010 ADA Standard 404.2.9. As the space is not open to the elements, it would appear to be an interior door and thus subject to the 4.13.11 requirement.

LRC entrance to the tunnel – This entrance includes three doors: a double-leaf doorway with a center bar, and, adjacent to this, a single door. On the day of OCR staff's onsite visit, a paper sign taped to the door instructed people to use the single door. None of these doors are automatic or power-assisted.

One of the doors had a clear opening of 32 ¾ inches, in excess of the minimum 32-inch standard. In determining whether this door met requirements set out in the 1991 ADA Standards with regards to maneuvering clearances, OCR staff applied 4.13.6 and Figure 25(a), due to the front approach to this door. The clearances meet all of the requirements in this respect. The threshold is relatively flat, with a slope of 0.7 degrees, permissible under 1991 ADA Standard 4.13.8. The door operates with a handle with a lever-operated mechanism that pushes up or down and does not require tight grasping, tight pinching, or twisting of the wrist to operate and so meets requirements of 1991 ADA Standard 4.27.4. The door has a closer, and, from an open position of 70 degrees, it takes approximately 10 seconds to close, which is compliant with 1991 ADA Standard 4.13.10. The force to open the door is nine pounds, which is four pounds in excess of the acceptable maximum force of five pounds for opening an interior hinged door pursuant to 1991 ADA Standard 4.13.11(b) and 2010 ADA Standard 404.2.9.

- **West Science Building to Jamrich Hall**

The University constructed this tunnel in 2000. OCR therefore analyzed it as new construction, using the 1991 ADA Standards.

Jamrich/West Science entrances to tunnel – The University represented that these doors remain propped wide open at all times except in event of a fire, per campus security. The entrance is wide, the entrance floor is flush with the surrounding route, there is no T-bar, and the entrance therefore is wholly accessible and meets all of the requirements set forth for doors at 1991 ADA Standard 4.13. OCR staff did not measure the pounds of force to open the doors or determine the time it takes for the doors to close and did not inspect any other features of the doors, because University staff advised that they are always open.

- **Thomas Fine Arts Building (TFA) to Hedgcock Building**

The University constructed this tunnel in 2002. OCR therefore analyzed it as new construction, using the 1991 ADA Standards.

TFA entrance to tunnel – The entrance has a double-leaf doorway with a T-bar between the doors. The TFA side is carpeted. The floor surface is flat, stable, and slip-resistant and appears to be in conformity with 1991 ADA Standards 4.5.1 and 4.5.3. The doors open using a U-shaped handle on the pull side (building side) and a push bar on the push side (tunnel side). Both allow for operation without tight grasping, tight pinching, or twisting of the wrist and so meet the requirements of 1991 ADA Standard 4.27.4.

This door has an automatic opener (located 46 inches from the floor to the center and thus in conformity with the maximum height of 48 inches for forward reach under 1991 ADA Standard 4.2.5), is capable of a front approach open on both sides with adequate maneuverability under 1991 ADA Standard 4.13.6 and Figure 25(a), as well as a width of 34 inches, which meets the requirements of the 1991 ADA Standard at 4.13.5. The sweep period of the door closer is 7.8 seconds, which is well within the timeframe set out under 1991 ADA Standard 4.13.10. The door took 5.7 seconds to open, and 12 pounds of force were necessary to stop the door movement, which meet the requirements of 1991 ADA Standard 4.13.12. Of the two doors, the left door required five pounds of force to open, and the right door required six pounds. The six-pound door was in excess of the five-pound limit for interior doors required by 1991 ADA Standard 4.13.11. The automatic door opener is 19 inches from the outside of the nearest door; 55 inches to the center between the two doors; and 76 inches to the center of the furthest door, which is the one that the automatic door opener opens. The threshold of this door measured 1¼ inches and thus does not meet the requirements of 1991 ADA Standard 4.13.8, which requires thresholds no greater than ½ inch in height. The 2010 ADA Standards at 404.2.5 set the same requirement and this threshold does not fall within the listed exception.

Hedgcock entrance to tunnel – The entrance to the tunnel from Hedgcock has three single doors pulling from the tunnel into Hedgcock. The building side is carpeted, and the tunnel side, as noted, is tiled. The floor surface is flat, stable, and slip-resistant and therefore in conformity with 1991 ADA Standards 4.5.1 and 4.5.3. The doors open using a large, U-shaped handle on the pull side and a push bar on the push side. Both allow for operation without tight grasping, tight pinching, or twisting of the wrist and so meet requirements of 1991 ADA Standard 4.27.4. The width, maneuverability, threshold, and hardware met all the requirements of 1991 ADA Standard 4.13. One of the three doors has an automatic door opener, which is mounted 43 inches from the floor and thus within the acceptable reach range for a forward approach set out in 1991 ADA Standard 4.2.5. The door opens to back check in 5.3 seconds and requires 13 pounds of force to stop, both of which are within the acceptable timeframes in the 1991 ADA Standards at 4.13.12. However, the door requires 13 pounds of force to open manually, which is in excess of the five-pound limit in 1991 ADA Standard 4.13.11 and 2010 ADA Standard 404.2.9. The information obtained by OCR did not indicate whether or not this door has standby power or remains open in the power off condition.

- **Gries Hall to University Center**

The University constructed this tunnel in 1994. OCR therefore analyzed it as new construction, using the 1991 ADA Standards.

Gries entrance to tunnel – The entrance to the tunnel from Gries is a double-leaf doorway with no T-bar. It has a push bar on the push side of the doors and a U-shaped handle on the pull side of the doors. Both allow for operation without tight grasping, tight pinching, or twisting of the wrist and so meet the requirements of 1991 ADA Standard 4.27.4. The door hardware is 37 inches from the floor, which is within the acceptable reach range under 1991 ADA Standard 4.2.5 for a forward approach. Each door has a 39-inch width, with a front approach on both sides of the doors and adequate maneuverability on both sides of the doors under 1991 ADA Standard 4.13.6. The threshold is flush, with tile on both sides of the doors, and very nominal sloping. The route is, therefore, firm, stable, and slip-resistant in compliance with 1991 ADA Standard 4.5.1. The automatic door closer has a sweep period of 5.7 seconds to close, which is within the acceptable range in the 1991 ADA Standards at 4.13.10. However, the door required nine pounds of force to open, in excess of the acceptable five-pound force set forth in 1991 ADA Standard 4.13.11 and 2010 ADA Standard 404.2.9. The information obtained by OCR did not indicate whether this door has standby power or remains open in the power off condition.

University Center entrance to tunnel – The entrance to the link from University Center is a double-leaf doorway with no T-bar. It has a push bar on the push side of the doors and a U-shaped handle on the pull side of the doors. Both allow for operation without tight grasping, tight pinching, or twisting of the wrist and so meet the requirements of 1991 ADA Standard 4.27.4. The door hardware is 36 inches from the floor, which is within acceptable reach range under 1991 ADA Standards 4.2.5 and 4.2.6. Each door has a 33 ½-inch width, with a front approach on both sides of the doors and adequate maneuverability on both sides of the door in compliance with 1991 ADA Standard 4.13.6. The threshold is flush, with tile on both sides of the doors, and very nominal sloping. The floor surface is stable, firm, and slip-resistant and therefore compliant with 1991 ADA Standard 4.5.1. The doors have automatic closers with a sweep period of 4.45 seconds, which is adequate under 1991 ADA Standard 4.13.12. However, the door opening force is 10 pounds, which is not in compliance with the 1991 ADA Standards at 4.13.11 and the 2010 ADA Standards at 404.2.9. The information obtained by OCR did not indicate whether this door has standby power or remains open in the power off condition.

- **Physical Education Instructional Facility (PEIF) to Events Center**

The University constructed this tunnel in 1999. OCR therefore analyzed it as new construction, using the 1991 ADA Standards.

PEIF Entrance – The entrance to the link from PEIF has two doors in a series, with adequate distance between the two sets of doors; the distance between the two sets of doors is 22 feet 6 inches, far greater than the 48 inches plus the door width required at 1991 ADA Standard 4.13.7, Figure 26.

The first set of doors from PEIF to the tunnel is a double-leaf doorway. It has a push-bar on the push side of the doors, and it has a lever-type of handle on the pull side of the doors. Both allow for operation without tight grasping, tight pinching, or twisting of the wrist and so meet requirements of 1991 ADA Standard 4.27.4. The door hardware is 37 inches from the floor, which is within acceptable reach range for a forward approach under 1991 ADA Standard 4.2.5. Each door has a 41-inch width, adequate under 1991 ADA Standard 4.13.5 and adequate maneuverability on both sides of the doors with a front approach under 1991 ADA Standard 4.13.6 and Figure 25(a). The threshold is flush and thus in conformity with 1991 ADA Standard 4.13.8, with tile on both sides of the doors and an area carpet in the hallway between the two sets of double doors, which is low pile, securely attached, and easy to traverse. Thus, the floor surfaces are stable, firm, and slip-resistant in conformity with 1991 ADA Standards 4.5.1 and 4.5.3. The route between the two sets of doors has nominal sloping and thus conforms to 1991 ADA Standard 4.5.2. The automatic door closer has a sweep period of 4.9 seconds to close, which is within the time range set forth at 1991 ADA Standard 4.13.10. However, the door required nine pounds of force to open, in excess of the acceptable five-pound force set forth at 1991 ADA Standard 4.13.11 and 2010 ADA Standard 404.2.9. The information obtained by OCR did not indicate whether the door has standby power or remains open in the power off condition.

Adequate space for maneuverability under 1991 ADA Standard 4.13.7 is provided. The second set of doors from PEIF to the tunnel consists of a double-leaf doorway with a T-bar. It has push-bars on the push side of the doors (which are glass), and U-shaped handles on the pull side of the doors. Both allow for operation without tight grasping, tight pinching, or twisting of the wrist and so meet the requirements of 1991 ADA Standard 4.27.4. The door hardware is 38 4/5 inches from the floor, which is within the acceptable reach range under 1991 ADA Standard 4.27.3. Each door has a 33 ¾-inch width, adequate under 1991 ADA Standard 4.2.13.5, with a front approach on both sides of the doors and adequate maneuverability on both sides of the doors under 1991 ADA Standard 4.13.6 and Figure 25(a). The threshold is flush and so in conformity with 1991 ADA Standard 4.13.8, with tile on both sides of the doors and a securely attached area carpet in the hallway of the tunnel route, which is low pile and easy to traverse. Thus, the floor surfaces are stable, firm, and slip-resistant in conformity with 1991 ADA Standards 4.5.1 and 4.5.3. The route between the two sets of doors has nominal sloping. The automatic door closer has a sweep period of 5.2 seconds to close, which is within acceptable timeframes under 1991 ADA Standard 4.13.10. However, the door required 12 pounds of force to open, in excess of the acceptable five-pound maximum force set forth in 1991 ADA Standard 4.13.11 and 2010 ADA Standard 404.2.9. There is an automatic door opener, but the information obtained by OCR did not indicate whether the door has standby power or remains open in the power off condition. The sweep period of the door closer is 7.5 seconds, which is well within the timeframe set by 1991 ADA Standard 4.13.10. The door took 5.0 seconds to open and required 12 pounds of force to stop the door movement, both of which comport with the requirements of 1991 ADA Standard 4.13.12.

However, just beyond this entrance, in the tunnel route, there is a steep slope and the area does not meet the 1991 ADA Standards for a ramp. The slope along this route is 6.9° (approximately 1:8 ratio of rise to run), in excess of the maximum permissible slope of 1:12 set forth at 1991 ADA Standard 4.8.2. As stated above, the University must address this, unless it was structurally impracticable to do so, which the University has not shown. 1991 ADA Standard 4.1.1(5)(a). In the 2010 ADA Standards, under an exception to Figure 405.2, in existing sites, buildings, and facilities, ramps shall be permitted to have running slopes steeper than 1:12 complying with Table 405.2 where such slopes are necessary due to space limitations. In that table, ramps can have a maximum rise of 3 inches over 12 inches with a slope of more than 1:18 but not steeper than 1:8, which is the case here.

In addition, there is only one handrail on one side of the slope, not two as required under 1991 ADA Standard 4.8.5(2), and the handrail is not positioned at the correct distance from the floor for the entire distance of the sloped area. 2010 ADA Standard 405.8 requires ramp runs with rise greater than 6 inches to have handrails complying with 2010 ADA Standard 505, including requirements that the handrails be provided on both sides of the ramp, be continuous within the full length of the ramp run, and be at a consistent height above the ramp surface. The length of the sloped area is 24 feet 2 inches.

Events Center entrance to tunnel – OCR did not observe any doors at the entrance from the tunnel to the Events Center. The entrance from the tunnel to the Events Center is a wide, open hallway leading into the Events Center.

- **Superior Dome to PEIF**

The University constructed this tunnel in May 1990. OCR therefore evaluated this tunnel as new construction using ANSI standards.

Superior Dome entrance – The Superior Dome entrance to the tunnel is a double-leaf doorway with a T-bar. It has push bars on the push side of the doors and U-shaped handles on the pull side of the doors. While ANSI does not have standards specific to hardware, both types of hardware provided at this entrance allow for operation without tight grasping, tight pinching, or twisting of the wrist. These doors meet ANSI standards, because they are 32 ¼ inches in width (which satisfies the 32-inch minimum under the ANSI standards at 5.3.1), with a front approach on both sides of the doors and adequate maneuverability on both sides of the doors. The threshold is flush and thus in conformity with ANSI 5.3.3. There is smooth cement on both sides of the doors of the tunnel route; the route along this threshold and along the tunnel is smooth, with nominal sloping, and thus in conformity with ANSI 4.2.2 and 5.5. In the middle of this tunnel is what appears to be a fire door, which is a double-leaf doorway with a T-bar. One of these doors is always propped open and is 33 inches in width, which satisfies the 32-inch minimum under the ANSI standards at 5.3.1.

PEIF entrance to tunnel – The PEIF entrance to the tunnel consists of two sets of double-leaf doorways with T-bars. The doors on the PEIF side are 37 inches wide and have push bars on the push side of the doors and U-shaped handles on the pull side of the doors. While ANSI does not have standards specific to hardware, both allow for operation without tight grasping, tight pinching, or twisting of the wrist. There is adequate maneuverability on the outside sides of both

sets of doors. The distance between the two sets of doorways is 78 ½ inches. The threshold is flush, but the floor between the two sets of doors has a very fine horizontal grating moving in the opposite direction of the route of travel. There is also an area rug along some part of this route, which is low pile and appears to encroach into the doorway but is easily moved. There is no indication that the surface is slippery; thus, the floor conforms to ANSI 5.5.1. The route has nominal sloping (2º between the door sets; 0.2º building side). Because these are not "sharp inclines" or "abrupt changes in level," they are compliant with the ANSI standards at 5.3.3.

Each of the second set of doors to the tunnel side is 36 inches wide and thus within ANSI requirements at 5.3.1. The pull side has a U-shaped handle that must be pushed down, and the push side is a bar. The route is tiled, smooth, level, and has nominal sloping (0.1º tunnel side). Because there is no "sharp incline" or "abrupt change in level," the slope is compliant with the ANSI standard at 5.3.3, and the surface appears non-slip in conformity with ANSI 5.5.1.

- **Resolution**

Based on the information above, OCR concluded that the University was not meeting the requirements of the Section 504 and Title II regulations in several respects. The University's classrooms that are furnished with chair desks, such as Gries Hall Room 166, do not include any accessible tables or desks for students with mobility impairments. Many interior doors required more pounds of force to open than the maximum allowed under the applicable accessibility standards. The University Center elevator did not have Braille characters indicating floor level at the hoistway entrance and to the left of the car control buttons. The distance between the two sets of doors at the Marketplace building entrance was insufficient. There was also insufficient maneuvering clearance on the tunnel side of the West Science Building entrance to the tunnel to the Learning Resource Center, and the ramp at this entrance had too high of a slope and lacked compliant handrails. There was a too-high threshold at the Thomas Fine Arts Building entrance to the tunnel to the Hedgcock Building. Finally, the ramp for the route from the PEIF entrance to the tunnel to the Events Center was not compliant with the slope and handrail requirements of the ADA standards.

However, the University has signed the enclosed resolution agreement, which, once implemented, will fully address OCR's findings in accordance with Section 504 and Title II. The resolution agreement requires the University to: procure adequate numbers of accessible tables or desks for its classrooms that are furnished with chair desks and develop a procedure to ensure that the accessible tables or desks are provided in the classrooms as needed for students with mobility impairments; adjust the door opening force for the specified interior doors or, alternatively for automatic doors, verify that the door has standby power or remains open in the power off condition; and modify the University Center elevator, Marketplace building entrance, and the specified tunnel entrances and routes to comply with the 2010 ADA Standards.

Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those address in this letter. OCR will monitor the University's implementation of the agreement.

Should the University fail to fully implement the agreement, OCR will take appropriate action to ensure the University's full compliance with Section 504 and Title II.

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 University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file a 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, we 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.

We appreciate your efforts and those of University staff as we investigated and resolved this complaint. The OCR contact person for the monitoring of the agreement is Brian Larson. We look forward to receiving the University's first monitoring report by December 15, 2013. The report should be directed to Mr. Larson, who can be reached at (216) 522-7626 or Brian.Larson@ed.gov. If you have any questions about this letter or OCR's resolution of this case, please contact Karla Ussery, Team Leader, by e-mail at Karla.Ussery@ed.gov.

Sincerely,

/s/

Catherine D. Criswell
Director

Enclosures