



THE UNIVERSITY OF MICHIGAN
OFFICE OF THE VICE PRESIDENT
AND GENERAL COUNSEL

November 5, 2007

Mr. Harry A. Orris, Director
Cleveland Office
Midwestern Division Office for Civil Rights VIA Electronic and U.S. Mail
United States Department of Education
600 Superior Avenue East, Suite 750
Cleveland, Ohio 44114-2611

Re: Michigan Stadium - OCR Docket #15-05-2023

Dear Mr. Orris:

This letter is submitted in response to the October 26, 2007, Letter of Findings (LOF) that you emailed to me on the evening of Friday the 26th at approximately 7:30 p.m. That letter recites your office's (OCR) conclusions that the University of Michigan has violated Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, and provides the University of Michigan (the University) with 10 calendar days to respond to that letter. Given the short time provided to respond to the 37 pages of findings and conclusions, which as you know arise out of dealings between the University and OCR spanning over eight (8) years, we will not in this correspondence endeavor to respond point by point, but rather will: (1) respond to your major points to correct the more significant errors and omissions; (2) ensure that there is no misunderstanding regarding the University's position; and (3) reaffirm, as we have throughout the pendency of this matter, including within the 24 hours preceding the issuance of the LOF, the University's strong commitment to the accessibility of Michigan Stadium and our corresponding desire to continue discussions in an attempt to resolve this matter. In sum, as explained more fully below:

- The University has a longstanding commitment to its patrons who are disabled and, independent of any litigation or complaint, has developed plans to more than triple the number of accessible seats and to provide a range of seating options, including in the most desirable locations in the Stadium, with construction starting later this month. The University has also made improvements to ensure accessibility to services for patrons who use wheelchairs, including toilet facilities, concessions, and access routes. OCR's letter ignores these major improvements;

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- The University has consistently adhered to relevant federal standards regarding stadium access for individuals with disabilities through past action and plans for the future - which meet current and projected demand for wheelchair access. No ticket holder has ever been denied an accessible seat at Michigan Stadium; and we are committed to ensure that this will never happen; and
- The Letter of Findings contains an irrefutably skewed and flawed depiction of the access that OCR has been granted to University documents, witnesses and facilities, as well as misrepresents the University's position over the course of the past eight years as we have worked to resolve this matter. OCR has had no fewer than five unrestricted site visits to the Stadium, conducted approximately twenty interviews of personnel made available by the University, and received hundreds - if not thousands - of responsive documents to its information requests over the years, included 28 sets of drawings for projects at the Stadium.

Before addressing the substance of the LOF, I must express, on behalf of the University, our great surprise and disappointment with the decision of OCR to release this letter in the midst of the intense settlement discussions that were occurring right up to the time that OCR released the LOF.¹ As you know, the University has committed tremendous resources toward attempts to resolve all concerns expressed by OCR (whether viewed as legally justified or not), and to address any and all concerns regarding access for our patrons with mobility impairments. The University's priority from the outset has been enhanced access for the disabled at Michigan Stadium as part of our policy to provide high quality access for all of our patrons. Protracted disputes do not further this purpose. Thus, the University has sought to set aside differences regarding the interpretation of the law and instead focus on how to continue to improve access to Michigan Stadium. The University remains committed to the resolution process.

I would also be remiss if I did not comment on the overall tenor of the LOF and the repeated assertions that the University "refused" to provide information/documentation, such as the blanket statement on page 4 of the LOF relating to information on re-1999 projects that "During the investigation, the University refused to provide any of the requested information with one exception..." This is a serious misstatement of fact by the OCR and is flatly inconsistent with a May 25, 2007 letter from OCR expressing appreciation for the University's offer to provide additional information on these projects, but indicating that OCR had sufficient information to complete its investigation.

The University fully and completely cooperated with the OCR during the entire eight (8) years that the prior and pending complaints have been at issue, granting OCR unfettered access in the form of at least five site visits, both during game day events and otherwise, making numerous University personnel available for unrestricted interviews, and providing OCR with hundreds of

¹ We note also that the LOF is vague as to what OCR would expect of the University. Although the LOF requires a remedial plan from the University, it is unclear what remedial plan OCR would find satisfactory. This is another reason why continuing settlement discussions are appropriate.

documents, drawings and photographs. Indeed your October 26 letter cites to numerous examples of the very information and documentation provided by the University that was supposedly refused. See, for example, your citations to University supplied information on page 4 (interviews of University staff and administrators), page 10 (University supplied project plans), page 10 (University supplied seating manifest), page 22-23 (precise count of all restrooms, and number of stalls in the entire stadium; detailed dimensions of many of the restrooms) page 33, fn 7 (University supplied wheelchair usage, 2003-2006). To place into the public arena repeated false assertions such as the blanket statement on page 4 of the LOF relating to information on pre-1999 projects that the University "refused to provide any information" does a great disservice to those who have worked so hard with OCR staff to fulfill OCR requests for information and access, and again presents the University in a false light. For more detailed information on the information and documentation that was in fact provided to OCR, please refer to Appendix 1 and Appendix 2 to this letter.

I. The University's Commitment to Accessibility for All Patrons

The University of Michigan is deeply committed to ensuring the accessibility of Michigan Stadium. Relevant evidence and commitments provided to OCR affirm, in fact, our strong belief that we have met obligations that we have to our ticket holders, just as we have met our obligations under relevant federal laws. Most notably, *every* ticket holder who has required an accessible seat historically has been accommodated. We are publicly committed to ensuring that no patron who requires accessible seating is denied access - a stance we have taken in every conversation of substance with OCR.

Indeed, despite the age and structure of the Stadium—built 80 years ago—and its surrounding topography, both of which present distinct challenges, we have also advised OCR that providing the best quality access for patrons is a central goal. Our commitment in this regard long predates the filing of the OCR complaint and will continue well past its conclusion. Thus, independent of the pending OCR complaint and long before the filing of the current lawsuit by the Michigan Paralyzed Veterans Association (MPVA), and (in part) based on our outreach to the disability community, the University had initiated affirmative steps to further enhance the quality of access by wheelchair users at the Stadium. Among other steps that have been taken, the planned Expansion Project at the Stadium includes significant additions to the number of accessible seats at a range of excellent locations in the Stadium, as well as improvements in the accessibility of parking, restrooms, and concessions. Additional accessible seating specified under the Expansion Project will not only meet any reasonably projected demand for accessible seating, but likely exceed this demand for the indefinite future. OCR was, during the course of our discussions, made fully aware of the scope of this Project and the enhancements it will bring to our patrons.

The following sections of this letter highlight the most significant erroneous conclusions of the OCR set forth in the LOF. The fact that the University strongly disputes a large number of assertions and conclusions in the LOF should not be misunderstood as signifying any retreat

from the University's long-standing and continuing commitment to access to all University programs, including the Stadium, by our patrons with mobility impairments.

II. Michigan Stadium Satisfies Program Accessibility Standards

As the LOF acknowledges, the standard applicable to facilities constructed prior to June of 1977 (in the case of Section 504), or prior to January of 1992 (in the case of Title II of the ADA), is "program accessibility." (LOF, p. 7). Unlike facilities constructed after these applicable dates, the regulations regarding number, location and dispersal of seating areas are inapplicable to these older facilities. The sole test, as acknowledged on page 7 of the LOF, is whether the program or activity is readily accessible to and usable by individuals with disabilities. Michigan Stadium plainly meets this standard with the currently available seating and access.

Current spaces for individuals with disabilities who use wheelchairs meet program accessibility requirements. No such individuals with tickets have been denied access to seating in the Stadium, and there is no credible allegation to the contrary. Moreover, the seats are provided in an integrated setting. They are located in the Stadium end-zones which, combined with the corners, comprise two-thirds of seats in the entire Stadium. The accessible seating in the end zone in fact provides preferable viewing locations to many seats in the corners of the Stadium or in the highest or lowest rows of the end-zones. As we have repeatedly indicated to OCR, with supporting evidence, vertical integration of wheelchair places is not structurally feasible in the Stadium bowl. OCR has presented no claim and provided no evidence to the University to the contrary.

Contrary to allegations in the LOF, crowding of ticket holders on wheelchair platforms is rarely an issue. It has happened for very few games, and is no different from every other row in the Stadium for the most heavily attended games when all patrons may from time to time "get squeezed." The assertions about "crowded walkways" (LOF p. 14), apparently based on one, unidentified person's statement, is also untrue. The accessible seating areas are very wide, to accommodate the wheelchair seating, but they are not "walkways." Stadium ushers are instructed to prevent, and do in fact prevent, "ambulatory patrons" from using these seating areas as "walkways."

Furthermore, the LOF has misconstrued statistics provided for game by game usage for the 2003-2006 seasons. (LOF p. 33, fn. 7). OCR has been informed throughout this matter that the figures provided to it reflect usage in the aggregate by both wheelchair users *and companions*, not by wheelchair users alone. The figures thus reflect *under-utilization* of the wheelchair platform spaces. That misrepresentation of these statistics has apparently led OCR to further erroneously conclude and assert that the press box is used to accommodate wheelchair users on an overflow basis "for every home football game." (LOF, p. 15). This is completely untrue. The press box has not been routinely used for wheelchair ticket holders for the last several years and will soon be demolished and replaced. Moreover, as OCR knows, the University has adopted plans to provide greatly expanded options for wheelchair users, including wheelchair platforms in student and other sections along the sidelines in the bowl, a new concourse along the east

sideline of the bowl, and places in new club seating and suite sections, with construction scheduled to start late this fall.

Perhaps most significantly, OCR omitted from its LOF any mention of its observations during a September 23, 2006 site visit to Michigan Stadium to observe a Big Ten game. The University invited OCR to observe Michigan Stadium on game day when the Stadium was filled with more than 100,000 fans. OCR was provided with all access passes for the entire stadium, was invited to speak with any of our fans and ushers, and indeed did speak with many of them. OCR observed the accessible seating areas, including the fact that there was sufficient capacity for our patrons and also the fact that the ushers in that section diligently kept the area clear of patrons who attempted to use the area as a walkway. Most importantly, OCR interviewed patrons in the accessible seating area who reported overwhelmingly positive experiences with their game day experience at Michigan Stadium and provided details that supported the volumes of information previously provided to OCR by the University demonstrating that there was sufficient capacity in the accessible seating areas, patrons were able to get from the parking areas to their seats with little difficulty, and that the ushers in the accessible seating areas were trained to understand their needs. Finally, OCR representatives viewed the press box and learned that it was not being used for overflow seating. No one requiring an accessible seat was in the press box.

While the University acknowledges that since 1999, OCR has received the three (3) complaints regarding access to football games discussed at pages 2 and 4 of the LOF, and without understating the importance of even a single complaint, this level of "complaint" is not indicative of any denial of program access to University of Michigan Stadium, particularly in light of overwhelming facts to the contrary.

III. The Construction Repair Project Was Not an Alteration

The central issue that has divided OCR and the University in this case is whether an extensive concrete repair project to the base of the Stadium bowl implemented in stages beginning in 1991 and ending in 2007 constituted an "alteration" to the Stadium that implicated specific building specifications for the number and location of places for wheelchairs.² This project was first disclosed to OCR on May 20, 1999. As you know, in connection with our settlement proposals, we have provided extensive legal analysis for our position that the concrete repair project was not an alteration under Uniform Federal Accessibility Standards (UFAS) applicable to the University. Rather than re-stating a legal analysis that the University provided in May of 2007, we have attached that document as Appendix Three. The points made below merely illustrate the May, 2007 position of the University in response to OCR's LOF.

² OCR's letter also refers to 6,829 seats added to the Stadium; 1,829 in 1991 and 1992 as new rows at the bottom of the Stadium, and 5,000 seats in 1998, as new rows around the top of the Stadium. The letter concludes that these were additions subject to UFAS standards. We do not contest the applicability of UFAS standards to these projects, but the addition of accessible seating in these projects was not structurally feasible, as we have previously explained to OCR with supporting evidence and about which OCR has not taken issue.

Neither the ADA nor Section 504 statutes or regulations define an alteration. UFAS is the only regulatory body that contains a definition. As the LOF acknowledges (p. 8), UFAS governs this central area of dispute between the parties. UFAS 3.5 defines an alteration as a change or rearrangement in structural parts or elements. Under 28 C.F.R. 35.151(b), only "alterations" that affect or could affect the "usability" of the facility trigger the application of other UFAS requirements. The concrete repair project at issue here did not result in any "change or rearrangement in structural elements", and further did not affect in any fashion the usability of the repaired areas.

The UFAS definition of alteration expressly excludes repairs -- period. The LOF assertion that this was not a "simple" repair (LOF p. 36) is of no legal moment. The drafters of UFAS excluded *all* repairs from the definition of alterations.

The LOF refers to the concrete repair project as "a series of extensive renovations that the University refers to as Concrete Repair Projects." However, the University, consistent with its intent *and* with state building codes, has always regarded this as a repair project and has always referred to it as such. The issue is not one of semantics, but rather the purpose and effect of the project in reality. The reality is that the project was undertaken to repair severe crumbling of the concrete base of the bowl, not to change or alter the Stadium or its seating. We do not believe that Congress in enacting the ADA meant to create a Hobson's choice for public institutions between incurring extensive, expanded legal obligations for accessibility and foregoing necessary repairs that improve the safety of an aging facility for all patrons.³

Moreover, in response to FOIA requests directed to the U.S. Department of Education, the Department of Justice, and the Federal Access Board, **the only administrative cases on point that we received support the University's position.** Each involves a decision by the Federal Access Board that the full replacement of concrete steps or walkways that were not moved or changed by the Postal Service was not an alteration.⁴

³ This is consistent with the ordinary, commonly understood meaning of the word "alterations." As defined in The American Heritage College Dictionary, 4th Edition (2002), "alteration" is defined as "the act or procedure of altering" or the "condition resulting from altering." It is also consistent with the International Building Code (IBC) to which the University is subject under state law - which defines "alteration" as "[a]ny construction or renovation to an existing structure *other than repair or addition.*" (emphasis supplied) And "repair" is defined in the IBC as "[t]he reconstruction or renewal of any part of an existing building for the purposes of its maintenance." As the LOF concedes, the concrete repair project entailed the repair of underlying concrete and the "replacement of the seating benches." (LOF p. 36). The "condition" of the seating was thus the same as before the repair and "replacement" of the seating benches.

⁴ Letter of November 2, 2004, from Peg Blechman, Compliance Specialist, Office of the General Counsel, re Complaint #04-0049, U.S. Post Office in Independence, Iowa; Letter of November 18, 2004 from Peg Blechman to David Christensen, Architectural Barriers Compliance Program, U.S. Postal Service Facilities Headquarters, Arlington, Virginia, re complaint #04-0049, U.S. Post Office in Independence, Iowa; Letter of January 25, 2005 from Peg Blechman to David Chrisensen regarding complaint #04-0051, U.S. Post Office in Crooksville, Ohio; Letter of January 11, 2004, from Peg Blechman to complainant in complaint # 04-0051, U.S. Post Office in Crooksville, Ohio.

The LOF (p.34) asserts that the University “could have added accessible seats” when it performed the concrete repairs. With all due respect, this is legally irrelevant. The regulations on “alterations” do not address what might have been done; only that which was done. The OCR’s pronouncement that the concrete repair project constituted an “alteration” is not supported by the facts or citation to any applicable legal standard. Indeed, the LOF concedes on page 32 that it is basing this conclusion on its “own reasonable judgment.”

Issuing a LOF of the nature issued in this case, disparaging the University at every turn, based not on fact or law (and despite its own informal acknowledgement of a lack of clear legal standards), but OCR’s “own reasonable judgment,” is fundamentally unfair and wrong.

IV. The University Fully Adhered to the 2000 OCR Commitment.

A foundation for the conclusions reached by OCR in the LOF is the suggestion that the failure by the University to meet its legal obligations was driven by its failure to meet its obligations under a 2000 OCR Commitment to Resolve regarding a previous complaint. The 2000 Commitment to Resolve provided that the University would report on “renovations or alterations” to any project not then (May 23, 2000) pending approval that related to or could relate to seating. The Commitment further provided that future discussions regarding renovations or alterations to the Stadium “will specifically include *consideration* of adding accessible sideline seating.” The University fully complied with these obligations.

As OCR notes, the University submitted annual reports regarding whether consideration was being given to renovations or alterations that would provide an opportunity for consideration of additional accessible seating. There were no such alterations or renovations, *until the current planned expansion project began to develop*. At that point, not only did the University *consider* adding accessible seating, as the Commitment obligates it to, it has *plans* to add significant accessible seating, along the sidelines, at what will be some of the best viewing locations in the Stadium, and in numbers that significantly exceed its regulatory obligation of 1% of the new seating.

The 2000 Commitment to Resolve was entered into by OCR with full knowledge of the concrete repair project that it now cites as the primary basis for an alleged violation. The project was disclosed to the OCR on May 20, 1999 in precisely the form it was requested. OCR accepted the information provided and requested no follow up. If there was any question that the concrete repair project might be an alteration, in OCR’s view, OCR would have at least sought additional information and surely not have entered into an agreement that ignored projects relevant to the complaint being resolved. OCR’s action certainly gave the University no reason to question its own view that these projects were not alterations. To the contrary, it affirmed the University’s conclusion.⁵

⁵ The LOF is internally inconsistent on this issue in particular. The LOF acknowledges on page 4 that the concrete repair project was disclosed, but that OCR did not investigate further due to the Commitment to Resolve. Five pages later, the LOF asserts on page 9 that the concrete repair project was not pursued in the earlier complaint because “the University refused to provide any details about [the concrete repairs] during the investigation.” It is

Clearly, at the time the Commitment to Resolve was entered into, OCR's conduct indicates that it recognized that the concrete project was not an alteration, that the structural limitations of the bowl were many, and, accordingly, a renovation project would provide the best opportunity for the addition of dispersed, accessible seating. The University will take full advantage of this opportunity in its upcoming expansion project to triple the number of accessible seats in the Stadium and place them in some of the best viewing locations. The University did exactly what it promised to do under the 2000 Commitment to Resolve.

V. The University Has Provided Full Access and All Requested Relevant Information Despite Having Been Denied Relevant Investigatory Information by OCR

Many of our officials and employees have invested enormous time and effort over the course of the past eight years in meeting OCR's many information requests and in facilitating and hosting OCR visits to the Stadium. Thus, I must say, we take special umbrage at repeated allusions in the LOF to refusals by the University to provide requested information, which are simply untrue. The record of this matter details volumes of information provided by the University to OCR, multiple witness interviews, and at least five unrestricted on-site visits to the Stadium by OCR. All available information related to the issues in this case has been provided to OCR. The LOF's repeated characterization and implication of the *absence* of documentation as an indication of a lack of cooperation or veracity on the part of the University is unfair and incorrect. The University has provided OCR with all requested information on projects that *did* take place at the Stadium; no information exists regarding projects that *did not* take place. At every turn, however, OCR characterizes the simple absence of information as a failure or refusal to provide information, which, as previously explained, is simply not the case. Appendix One and Two detail the volumes of documentary information evidence provided to OCR in response to OCR's claim that information was either withheld or incomplete. (They do not, however, purport to summarize all documentation sent to OCR.)

In this context, it is worth noting as a matter of basic due process and fundamental fairness—that OCR has generally declined the University's formal request of June 25, 2007, for all information that OCR believes is a basis for finding a violation other than information provided by to OCR through its document requests to the University.⁶ Indeed, that June request was followed by a conference call in which the purpose was to have OCR outline the *specific* grounds of any remaining concerns (other than with regard to seating) and the *specific* steps it wanted the University to take in response. Despite the fact that such a process of communication is a necessary predicate to OCR meeting its regulatory obligation to achieve resolutions of complaint investigations, where possible, OCR staff simply refused to provide any detailed information that

frankly not possible to square these two assertions, and the inconsistency only serves to underscore the truth: OCR was made aware of the concrete repairs in 1999, did NOT consider them to be "alterations", and closed its file.

⁶ That written request followed up in a May meeting request for all information regarding its investigation, with particular focus on any witness who complained of being denied access to University seating. No names were ever provided to the University despite, at that meeting, a commitment to provide such information.

could have - and likely would have - advanced resolution discussions.⁷ Thus, once again, suggests an OCR determination to proceed based not on evidence but a predetermined conclusion.

VI. The Issuance of the LOF Violates OCR Policy Regarding OCR Action Where Separate Pending Litigation Exists

Further illustrating the strident, one-sided nature of the LOF, OCR's issuance of the LOF violates OCR's own published policy. OCR's policy, appropriately designed so that parties to enforcement actions by OCR are not subjected to the obligation to address the claims in separate forums, provides for the dismissal of a complaint investigation when the same issues are the subject of pending litigation. OCR states in unambiguous terms to complainants: "if you proceed with your claim in a court, OCR *will not* continue to pursue your OCR complaint. <http://www.ed.gov/about/offices/list/ocr/qa-complaints.html> (emphasis added). As you know, the issues in this complaint are the identical issues that are the subject of pending litigation filed in federal district court in Michigan against the University by the Michigan Paralyzed Veterans of America. *Michigan Paralyzed Veterans of America v. The University of Michigan*, (No. 07-11702. E.D. Mich. (2007)). Indeed, the complainants in that case are the same as the complainants in the OCR matter. While the University informed OCR that we would agree to engaging in a process to try to settle the complaint – and welcomed that process – we have continued to assert our objection to the issuance of a letter of findings by OCR in direct contravention of its published policy and practice. The issuance of the LOF while the federal district court action is proceeding is simply baffling.

VII. Non – Seating Issues

OCR provided a list of ancillary issues (routes, ramps, concessions, restrooms) that it submits require adjustment for the University to be in compliance with the ADA. The list assumes that these areas are either new construction (which they are not) or have at some point been altered from their original construction. Most of them, concession stands for example, have not been altered since their original construction in 1927. Regardless, however, because the University's foremost concern is access for the disabled, the University chose not to engage in protracted discourse about its legal obligation to make these dimensional adjustments, some minor and some more significant. Rather, the University simply went ahead and made many of the changes.

⁷ To that end, the University renews its request for all documentation and information that supports OCR's position outlined in the LOF, including but not limited to:

- The names, addresses, phone numbers of all parties and witnesses identified in the LOF; and
- All interview notes regarding any interview conducted with any of those parties or witnesses.

OCR and the University have agreed that most of the issues other than places for wheelchairs (referred to by both parties as "ancillary issues") can be or have been readily resolved. OCR acknowledged in a letter dated September 4, that many of the ancillary issues were resolved subject to documentary evidence, which was provided by the University on September 11, 2007. On that date, 72 photographs were sent to OCR of the accessible ramps, handrails, signage, concessions, and restrooms. They provide conclusive documentation that the various measurements are UFAS compliant with respect to most of the ancillary items cited in the LOF. No response from OCR to this documentation was received until the day the LOF was issued. In addition, in a communication dated October 26, 2007, OCR acknowledged that there were very few remaining ancillary issues. OCR nonetheless chose to send out an LOF that incorrectly made it appear as though there were multiple outstanding issues.

Accessible routes

The ramps, handrails, and signage leading into accessible seating areas meet UFAS dimensional and other requirements. Documentation, including multiple photographs showing detailed measurements, was sent to OCR on September 11, 2007. Similarly, as required by the ADA, all gates into the Stadium and the routes leading to and from them are usable by individuals with disabilities. Every turnstile has a connected gate that opens for wheelchairs to access. And, as required by UFAS, the Stadium has at least one route into the Stadium that meets UFAS dimensions. UFAS recognizes that not every route into a stadium will meet its stated dimensions and does not require such a standard.

Toilets and Toilet Rooms

The LOF includes pages of findings and proposed remedies related to toilet facilities, obstructions, grab bars, height of toilet seats, width of stalls, routes within the facilities, and portable toilets. However, it acknowledges that the University sent information in September 2007 on changes that had been made to the facilities and that OCR will consider these matters resolved if an inspection confirms that the work meets UFAS requirements. The University has also indicated its commitment to install at least one portable toilet complying with UFAS, with appropriate signage, at every location where regular portable toilets are provided. The LOF also proposes that the University must construct accessible toilet facilities for the press box and Regents area. As the University previously advised OCR, accessible toilet facilities are available to the press box and Regents area by elevator, but in any event, this area is being torn down as part of the expansion project and will be replaced by a new press box and Regents area with new accessible toilet and other facilities. With respect to OCR's suggestion that particular toilet rooms lack access routes of adequate width within the facility (as previously explained), this is a problem of structural feasibility limited only to one of two entrances/exits in particular facilities. As the University advised OCR, the University has achieved compliance by directing wheelchair users to a fully accessible route for both entrance and exiting purposes, with appropriate signage. Finally, OCR's indication that it was unable to determine if there are adequate accessible toilets

at the Stadium because the University would not provide information is unfathomable. OCR, through its multiple site visits to the Stadium, had unrestricted access to all toilet facilities.

Concession Stands

The LOF indicates that auxiliary service counters must be lowered to meet UFAS requirements at each of the three types of permanent concessions stands that were altered after 1977 and that are closest to the accessible seating. The University sent a letter and several pictures to OCR on September 11, 2007, to document that this has been accomplished.

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The LOF notes several accessibility concerns related to handrails and doorway thresholds, but acknowledges that photographic evidence to document compliance was recently submitted by the University and that OCR is prepared to meet with the University to verify that the modifications were completed in accordance with UFAS. OCR previously made the same acknowledgement in a separate email message sent the morning of October 26, 2007.

Parking

The LOF indicates a lack of access aisles in the Blue and Buffalo Parking lots. The University's desire is to maximize the number of parking spaces for the disabled in close proximity to the Stadium and has expressed its willingness to work with OCR to meet our mutual goal in this regard. OCR acknowledges that the University has proposed to solve this issue for the 2008 season and an interim plan for the 2007 season (which now has only one remaining game) and that OCR is willing to continue to work with the University to address the issue.

VIII. Proposed Remedies

Although the University has adequately addressed the central issues above, some comment about the "Proposed Remedy" portions of the LOF is warranted.

Even though the OCR has known about the concrete repair project, which commenced in the 1990-91 time-frame, since at least May 20, 1999, the OCR now proposes to the University a new-found position that the entire stadium bowl must be reconstructed at the portal entrances of every single portal into the stadium. OCR proposes this remedy with no evidence, empirical or otherwise, that there are patrons with mobility impairments who will purchase even a small fraction of what might be constructed, let alone any substantial portion of those newly created seating locations. OCR surely knows by now, with all of the data provided and its knowledge of the University ticketing process that applies equally to all patrons, that seeking to impose a "remedy" of that nature could not truly serve any legitimate regulatory purpose. This surely could not have been what the framers of any of the applicable legislation or regulations at issue had in mind in enacting these most important protections for persons with disabilities.

Mr. Harry A. Orris

November 5, 2007

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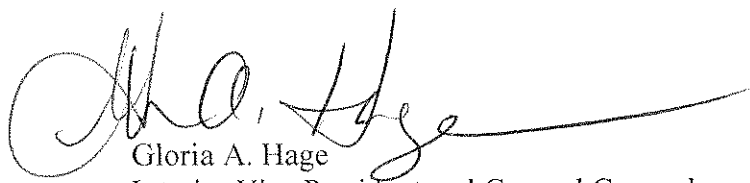
To preserve confidentiality, the University will not set forth in this letter the content of any of our settlement discussions over the past several months. You know from our discussions, however, that the University has committed to provide dispersed seating, at varying price points, to ensure that we continue to meet and exceed demand. We have also expressed the very real and serious detrimental impact a remedy that includes construction of seats that we know based on our data will sit empty will have on the University. As a final note, the University is and will continue to be unwavering in our commitment – regardless of impact we will have enough accessible seating in Michigan Stadium to accommodate every ticket holder who needs an accessible seat. Our desire is not and never has been to limit opportunities for the disabled. Rather, it is to continue to work with OCR to achieve readily available strategies that can be employed to meet everyone's interests and options that ensure enhanced access and game day experience.

Conclusion

The LOF invites me to contact you if the University is interested in resolving this matter informally. I have made that contact, and will here reiterate that the University is very interested in resolving this matter informally, has devoted great efforts toward that end, and will continue to do so going forward.

Thank you for your careful consideration of these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Gloria A. Hage", with a long horizontal flourish extending to the right.

Gloria A. Hage
Interim Vice President and General Counsel

GH/er
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**Appendix One to
 November 5, 2007 University of Michigan Correspondence**

Information That OCR Alleges It Was Denied	LOF Page	The Facts	Source Documents Confirming OCR Access to Information
1. Plans & drawings for projects on 1999 list, including concrete repairs & toilet upgrading	4	<p>Request specifically narrowed by OCR in July 2006</p> <p>Drawings and Regents Action Requests then provided for all projects requested from the 1999 list, including structural engineering appraisal</p> <p>Engineering condition appraisal study relating to concrete repair project</p>	<p>Request for information narrowed in correspondence, dated 7-7-06</p> <p>Spreadsheet of drawings (attached as Appendix Two) and dates provided, as well as Regents Action Requests, correspondence dated 2-26-07, 7-26-07, 8-2-07 and 9-4-07</p> <p>Correspondence of 1-26-06</p> <p>OCR letter of May 25, 2007 acknowledging it has sufficient information</p>
2. Plans & drawings for projects not on 1999 list, including M-Den construction, field lowering, seating row additions	4	<p>All requested information in University's possession on 1991-1998 projects provided, including 28 sets of drawings covering the period 1991 to 1998</p> <p>Condition appraisal engineering study relating to the concrete repair project</p> <p>Information on placement of M-Den buildings</p>	<p>Letters of 2-26-07, 7-26-07, 8-2-07 and 9-4-07</p> <p>See also Appendix Two</p> <p>Letter dated 1-26-06</p> <p>Letter dated 9-4-07</p> <p>OCR letter of May 25, 2007 acknowledging it has sufficient information</p> <p>Letters dated 1-26-06, 2/26/07, 7/26/07, 8/2/07, and 9/4/07</p>
3. Details of concrete repair projects	9,10	<p>Although requested information was outside scope of Resolution Commitment, information was offered at 11/05 site visit and provided in January 2006. Drawings of the project for all years were sent in 2007 (as well as</p>	

Information That OCR Alleges It Was Denied	LOF Page	The Facts	Source Documents Confirming OCR Access to Information
4. Information from ADA coordinator on Title II transition plan	11	<p>Regents Action Requests) Engineering condition appraisal (see #1) Transition plan provided in December, 2004</p> <p>Further information related to transition plan provided in April 2005</p> <p>Coordinator advised OCR that additional information discussed with OCR was not immediately available because of location in other departments and OCR has never requested that she obtain it</p> <p>Drawings for all plaza projects sent to OCR</p>	<p>Letter of 12/6/04</p> <p>Correspondence dated 4/5/05</p>
5. Information on plaza projects outside Stadium (with exception of information provided regarding Wolverine Plaza)	18		<p>See spreadsheet of drawings and dates (Appendix Two); drawings sent by letter dated 2/26/07 regarding Wolverine Plaza; and letter dated 7/26/07 regarding the Champions Plaza, Main Street, and Varsity Plaza projects</p>
6. Information confirming work done on plaza projects	19	<p>All available information provided</p>	<p>Documents referenced in Number 5 represent all documents</p>
7. Information on age of ramps into portals	19	<p>University staff recall no OCR request for information on the age of the ramps or whether they were altered, and can locate no records of such requests. Nevertheless, OCR did have full access to and inspected ramps in site visits</p>	<p>OCR representatives were on site and able to inspect the ramps on six separate occasions: 1999, 5/24/04, 4/11-12/05, 11/3/05, 9/23/06 and 6/26/07</p>
8. Scope of completed projects and actual work	22	<p>All information requested within the University's possession provided, and OCR inspected facilities on multiple visits. (Details in LOF confirm information in</p>	<p>Email from OCR dated 8/7/06; letters from OCR dated 8/2/07, 8/21/07, and 9/11/07. Toilets were available for inspection at five of the six site visits</p>

Information That OCR Alleges It Was Denied	LOF Page	The Facts	Source Documents Confirming OCR Access to Information
done in toilet rooms.		OCR's possession, as well as measurement details in Points for Discussion document sent to UM by OCR in 2006 as well as details in letters from OCR in 2007.)	noted above. The University allowed access on a single day's notice of the sixth visit; toilet rooms were locked
9. Complete information on existing (non-altered) toilet facilities	24	As previously explained to OCR, plans don't exist for facilities because they were never altered. OCR had complete, unrestricted access to toilet facilities (on August 7, 2006 provided the University with a list of 273 measurements it took while on site)	OCR was on site six times and allowed complete access to all toilet facilities during five of those visits: 1999, 5/24/04, 4/11-12/05, 11/3/05, 9/23/06
10. Information on other non-altered concession stands in rest of Stadium	26&27	As previously explained to OCR, plans don't exist for non-altered facilities; no available information denied to OCR. Multiple pictures provided of accessible concession stands	OCR representatives were on site and able to measure the concession stands on six separate occasions: 1999, 5/24/04, 4/11-12/05, 11/3/05, 9/23/06, 6/26/07, 9/4/07, and 9/11/07 letters.
11. Information regarding Stadium tunnel	34	The University provided detailed drawing of the tunnel that showed every dimension of the tunnel, before and after the reconstruction The University also provided a detailed summary from the University architect explaining why tunnel could not be made accessible and, more importantly, safety concerns with placing accessible seating on the field	Letter of 6/25/07 to OCR The offer to speak with Doug Hanna, University Architect, about the tunnel structure was made in 9/4/07 letter. OCR did not pursue
12. All Access Site Visits Granted		OCR or its complainants were granted all access site visits on 1999, May 24, 2004, April 11, 12, 2005, November 2, 3, 2005, September 23, 2006, and June 26, 2007 (no restrooms available)	

Appendix Two to November 5, 2007 University of Michigan Correspondence

Drawing #	Title	Drawing Date	Sent to OCR	OGC Copy	Extra
G-06533	Additional Toilet Facilities	4/9/98	7/26/07	X	
G-05425	Toilet Rooms Upgrading	6/16/93	7/26/07	X	
G-05404	Renovation for Women's Toilet Facility	5/18/93	7/26/07	X	
O-02233	1998 Concrete Repairs	1/19/98	7/26/07	X	
O-01782	1995 Concrete Repairs	1/25/95	7/26/07	X	
O-01746	1994 Concrete Repairs	2/28/94	7/26/07	X	X
O-01616	1992 Concrete Repairs		7/16/07	X	
O-01615	1991 Concrete Repairs	3/7/91	7/26/07	X	
G-06577	1997 Concrete Repairs and Additional Barrier Free Seating	5/27/94	7/26/07	X	
G-05920	Barrier Free Seating	6/14/95	7/26/07	X	
G-05608	Add'l Barrier Free Seating	5/27/94	7/26/07	X	
G-05663	Toilet Room Renovation	6/1/94	7/26/07		
G-05911	Modify Toilet Entrances	5/18/95	7/26/07	X	
O-02115	Champions Plaza	4/1/96	7/26/07	X	
O-02239	Champions Plaza-Main Street	4/17/96	7/26/07	X	
O-02158	Varsity Plaza Project	3/3/97	7/26/07	X	
G-06512	Expansion	3/26/98	7/26/07	X	
SK-04085	Stadium	7/15/93	9/4/07	X	
G-06345	Concession Stand	4/1/97	2/26/07	X	
O-02237	Wolverine Plaza	3/3/98	2/26/07	X	
SK-04720	Additional Toilet Facilities	5/7/98	9/4/07	X	
SK-04719	Additional Toilet Facilities	6/7/98	9/4/07	X	
O-02978	2005 Concrete Repairs		8/2/07	X	X
O-02946	2004 Concrete Repairs		8/2/07	X	X
O-12140EOO	2006 Concrete Repairs		8/2/07	X	X
O-1488-EOO	2007 Concrete Repairs		8/2/07	X	X
G-06810	Drains & Curb for Concession Stands	6/16/99		X	
O-01623	Football Stadium Drainage System	2/26/91	9/4/07	X	X
none	M-Den Locations	none	9/4/07	X	X



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VICE PRESIDENT AND GENERAL COUNSEL

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May 2, 2007

Mr. David Black
Deputy Assistant Secretary for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Re: OCR Complaint No. 15-05-2023

Dear Mr. Black:

We appreciate having the opportunity to meet with you and other appropriate U.S. Department of Education [USED] officials on May 8, 2007, to continue a series of discussions the University of Michigan [the University] has begun regarding the prospective resolution of the referenced complaint. As our counsel have discussed with OCR staff, the University is confident that our proposal—conveyed in concept in a March 6, 2007, meeting with Tom Hibino and Catherine Anderle—meets both the letter and the spirit of relevant disability laws.

The University is committed to enhancing accessibility for individuals with disabilities, including wheelchair users, in Michigan Stadium. The University's commitment in this regard long predates the passage of the Americans with Disabilities Act (ADA) and OCR involvement, and will continue long after this matter is closed. We take our responsibilities under federal and state disability laws very seriously, as our history demonstrates:

- University records indicate that every patron who needs an accessible seat in Michigan Stadium is and has historically been accommodated; no wheelchair user has ever been denied accessible seating in Michigan Stadium.
- The University's commitment goes beyond ensuring the availability of accessible seating. Parking for the disabled in close proximity to the Stadium is reserved; shuttles are available for patrons with mobility impairments; accessible routes, restrooms, and concessions are available; and well-trained stadium ushers closely guard the accessible seating areas to assist our patrons who have special needs.
- The University's proposed Expansion Project for the Stadium, which is subject to final approval of the Board of Regents, includes significant additional accessible seats, at some of the very best viewing locations in the Stadium, with elevator access, covered seating, and radiant heat, and will fully comply with the ADA with respect to the number and dispersion of accessible seats, companion seats, etc. These plans were prepared independent of an OCR complaint or settlement of this or any other dispute.

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The referenced complaint before OCR is unrelated to our Expansion Project.¹ Rather, it is limited to a phased concrete repair project in the existing bowl that began in 1991, prior to the effective date of regulations under the ADA. As you are no doubt aware, the investigation in this matter has a long history. The original complaint regarding accessibility at Michigan Stadium was filed in 1999, and a settlement of that complaint was promptly reached—with no OCR determination of non-compliance by the University with relevant federal law. In 2004, however, OCR re-opened its investigation on these issues upon receipt of another complaint, in effect combining both complaints into one investigation. The principal stated trigger for re-opening the original complaint was OCR's concern that the Stadium concrete repair project (about which OCR was advised in a letter of May 20, 1999) constituted an "alteration" (and not maintenance/repair) that would trigger specific regulatory standards not otherwise applicable (discussed below). Whether the concrete repair project involved an alteration within the meaning of the regulations is highly contested by the University. The project has resulted in no changes to the structure, design or usability of the Stadium. While other accessibility issues have been raised, we believe, and your staff have confirmed, that this issue remains the only major impediment to our resolution of this matter.

The University seeks resolution of this matter not because it believes it is in violation of the ADA or any other law or building code. Rather, the University has a demonstrated commitment to ensure that all of our patrons with mobility impairments are accommodated in Michigan Stadium. That deep commitment, we believe, is beyond dispute and is reflected in our plans for the proposed Expansion Project. Our proposal to resolve the pending complaint goes even further, and beyond legal requirements, to assure accessibility.

Our purpose in providing this correspondence in advance of our meeting is to set forth the conceptual framework for resolution that we discussed in our counsels' March 6 meeting with Mr. Hibino and Ms. Anderle, so that you will have ample time to reflect on the merits of the proposal and better understand our position before we meet. As explained in more detail below, despite the University's position that the repair project did not constitute an "alteration," we have proposed to resolve this matter in a way that will preserve our record of never having denied a physically disabled ticketholder wheelchair access and also satisfy relevant federal legal standards. In short, we have proposed a resolution pursuant to which the University would agree to provide full and complete access to such ticketholders in the future by providing **seating opportunities for up to 592 wheelchair ticketholders—a point that exceeds the current federal Access Board standard of 0.5% applicable to new construction and alterations.** We would provide this access through a combination of new construction of permanent seating (as part of the Expansion Project) and an annual, needs-driven and dispersed placement of portable

¹ For background, there are two separate Michigan Stadium projects discussed in this letter: (1) the phased concrete repair project, which began in 1991 in the existing bowl, and is the subject of the OCR complaint; and (2) the proposed Expansion Project, subject to final approval of the Board of Regents, which includes a new sideline concourse that will include an additional 70+ sideline wheelchair positions at the top of the west side seating bowl and new Club seat and Suites, which will include 135 wheelchair places.

platforms on which wheelchairs would be placed. (The annual adjustment of seating availability would be based on a combination of historical trends and annual surveys to season ticketholders, who comprise 85% of our total seating. That calculation would also reflect a margin of error to ensure that we do not underestimate the likely wheelchair demand—a significant point given that allowance for a single wheelchair and companion seat results in a net average loss of 12.5 other seats.)

Wheelchair Access at Michigan Stadium

Michigan Stadium, as a facility built in 1927, is not generally subject to federal facilities specifications for prescribed numbers of wheelchair places and for the dispersion of those places issued to implement those laws. Standards under the ADA and the Rehabilitation Act of 1973 apply to new construction or to "alterations" of preexisting facilities that occur after these laws took effect. As a public institution, the University is required only to provide accessibility for wheelchair users to the Stadium "when viewed in its entirety"—which we have consistently done. Indeed, based on information we have maintained over the course of approximately the past decade, we are unaware of any wheelchair user ever having been denied access to University football games. For example, during the 2006 football season, the University provided 90 wheelchair accessible seats. During 2006, only 52 season ticketholders (0.07% of our total of 70,000 season tickets) requested accessible seating, and the use of accessible seating ranged from a game day low of 78 to a high of 87. (see enclosed table for additional detail about wheelchair and companion seat usage for last four years) During the last several years, virtually every game at Michigan Stadium has been a "sellout" with respect to bench seats, which comprise virtually all available Stadium seats for spectators other than wheelchair users and their companions.

The principal issue in this case presented by OCR is whether a phased concrete repair project on the Stadium constitutes an "alteration" of the Stadium, which would trigger federal facilities specifications that require the establishment of a percentage of wheelchair places (of all seats) in the alteration, as well as a requirement for dispersion of these places.

The concrete project began with a condition assessment done over 15 years ago when the University recognized that the deterioration of certain sections of Michigan Stadium was extensive and needed serious long- term attention. Starting in 1991, the University repaired sections that had deteriorated the most. The early phases of the project were disclosed to OCR before the 1999 resolution of the complaint. Later phases were suspended for several years because of lack of funds. As the University achieved greater financial flexibility, and established deferred maintenance funding, it turned its attention back to the critical area of maintenance of its facilities, and resumed the program in 2004. The project will be completed this summer.

Consistent with our reporting on that work to OCR in response to the 1999 complaint, our view is that this work constituted a maintenance or repair project (albeit a substantial repair project)

undertaken in order to maintain the Stadium in its existing configuration. That work neither altered nor changed seating in the bowl. Our conclusion is based on:

- The definition of "alteration" in the Uniform Federal Accessibility Standards (UFAS) that we follow, consistent with ADA regulations;²
- Congressional intent. Nothing in the relevant legislative history reflects that Congress intended to require public institutions when repairing the substantial deterioration of preexisting facilities to retrofit those facilities to meet prescriptive accessibility standards that apply to new construction, thereby significantly displacing existing users of those facilities.³ Nor is there any evidence of congressional intent to constrain a public institution's judgment of how best to repair a facility;⁴
- The advice of our building and ADA administrators, reflecting their extensive experience and expert knowledge of multiple building code issues, that this project fell squarely within the traditional definition of repair, not alteration. They proceeded consistent with how they have conducted many large building projects in the past, and how professionals at other organizations have interpreted their obligations under the Americans with Disabilities Act.

Although we believe that the UFAS standard is not triggered by the repair project at issue, we understand that OCR expressed the view that the work constituted an "alteration" that triggers compliance with UFAS. Thus, without conceding the point, we have proposed a resolution of this issue that would exceed that standard. This commitment, in light of what even OCR has conceded is an absence of clear, on-point authority, is significant and meets the standard of federal law in its common-sense application.

² That definition describes "alteration" as a change or rearrangement in the structural parts or elements, or in the means of egress or in moving from one location or position to another, in a building or structure. The definition expressly excludes normal maintenance and repair.

³ Indeed, our belief that there was no disagreement with OCR regarding the fact that the concrete repair project did *not* constitute an alteration was reinforced through our OCR reporting. Our report on the concrete repair project to OCR *in advance of* the 1999 resolution, was not questioned by OCR. (The report was provided in response to OCR's April 21, 1999, request for a chronology of all construction work in the Stadium, in order to investigate the complaint.) The report expressly identified "1991 Concrete Repairs" (with comparable references to 1992, 1994, 1995, and 1998 repairs), and cross-referenced multiple architectural drawings to which OCR could have had access. OCR staff have indicated that these reports did not generate further inquiry or concern because "it was not possible from those brief descriptions on the list to determine the nature and extent of these projects or which of them constituted alterations" That response does not provide a satisfactory explanation of why further questions at the time were not posed. In short, OCR was notified of the repair project in response to its own request in order to investigate the complaint and is hard pressed at a later date to claim it lacked information about that work.

⁴ The University considered various repair alternatives to extend the life of the Stadium, from resurfacing the existing deteriorating concrete to replacement of the concrete slab. The latter approach was selected based on annualized cost and life expectancy considerations. OCR's expressed view would appear to make the applicability of specific and extensive accessibility obligations turn on that choice of repair method. We do not believe that Congress intended to implicate those choices for repairing existing facilities in enacting heightened obligations for new construction or alterations.

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The Proposed Resolution

To recap, and as reflected in the enclosed table (a version of which was shared in your March 6 meeting with our counsel), our proposal is—

By 2008/09, assuming any demand for sideline places from wheelchair users who currently have season tickets – based on a survey administered in the winter or early spring of 2008/09 – to add 14 places for wheelchairs (and 14 companion seats) at a sideline location (an additional or alternative, interim option, if there is a higher demand, will be provided, such as through use of the press box); by 2010, to add 72 places for wheelchairs (and 72 companion seats) along a new west sideline concourse and 135 places for wheelchairs (and 135 companion seats) in our Club seats and Suites (our "Expansion Project"); beginning with the 2011 season, to continue to measure demand in the winter or early spring for the fall season, and construct and install additional platform seating in order to meet the demand. These platforms would wrap around the Stadium at the portal level and be available for all ticketholders requesting wheelchair seating, up to an aggregate of 385 wheelchair places at this level (and/or provide additional accessible seating in future stadium expansion projects that would satisfy the threshold).⁵

In our discussions, OCR has not contested our point that 0.5% would be the operative legal threshold (assuming that an alteration occurred).⁶ Rather, the issue on which we've not reached agreement is, simply, one of whether the seating that meets this threshold must actually be installed even in circumstances where the University has concluded that demand will in no event fill the supply of wheelchair spaces. This conclusion regarding projected seating demand for individuals in wheelchairs (and their companions) would be based on recent usage and annual surveys of projected demand, which the University would exceed in wheelchair spaces provided.

⁵ Platforms would be installed based on prior usage/ current requests for season tickets from wheelchair users. The University is prepared to discuss specific agreements on the process and criteria for installing such platforms. As an initial matter, the 52 current wheelchair users who hold season tickets would be given an opportunity to upgrade their locations to sideline platforms. A previously installed platform may be removed/stored/reinstalled annually based on usage and demand.

⁶ Access Board facilities specifications adopted in 2004 reduce the obligation for wheelchair places in large assembly areas for both public agencies and public accommodations from about 1% to about 0.5%. Those specifications are final, not proposed, minimum standards, and the ADA requires that the Justice Department regulations be consistent with the minimum facilities specifications of the Access Board. Section 204(c) of the ADA; 69 *Fed Reg.* 44083, July 23, 2004. The reduction was adopted by the Board in response to considerable public comment that the 1% standard was excessive and resulted in unused wheelchair places. The Access Board's specifications for wheelchair places represents current government policy for both new construction and alterations of assembly areas. The Department of Justice has published an advance notice of proposed rule making indicating its intent to adopt the Access Board's specifications. <http://www.ada.gov/anprm04ext.htm>. Under this standard, the University's obligation would be to provide wheelchair places for 0.5% of seating capacity in the area altered, not the entire Stadium. (About 1/4 of the seats in the Stadium are constructed on steel flooring, not concrete, and were not affected in any way by the concrete project.) Thus, the University would be responsible for providing a maximum of about 400 places for wheelchair users if it were established that the concrete project was indeed an alteration that invoked this obligation.

In summary, in addition to adding substantial wheelchair places in our Expansion Project, we are willing to: [1] solicit information regarding anticipated demand for wheelchair seats from season ticketholders consistent with general University ticketing procedures,⁷ and [2] based on that demand, construct and install portable platforms on an annual basis that will be designed to fit over several rows of regular seats. Even without counting wheelchair places in the additional wrap-around, installed places for wheelchair users would constitute almost 0.4% of Stadium seats that were within the area of the concrete repair project and the Expansion Project, and construction of portable platforms for the full wrap-around would raise this to 0.73%.⁸ (Structural limitations preclude the University from installing platforms for wheelchairs in Stadium locations other than at the portal level, a point that we are prepared to document.)

This proposed resolution significantly exceeds the program accessibility standard, just as it will result in the University providing on an annual basis wheelchair access that almost certainly will exceed demand. An OCR position consistent with that expressed in prior conversations—that these platforms must be permanently installed in the Stadium regardless of projected or actual demand—would impose a requirement that defies the common sense interpretations of federal nondiscrimination laws that are designed to provide equal opportunity/access to individuals with disabilities—rather than to hold out illusory opportunities unmet by actual need or demand. Nothing in the ADA or the Rehabilitation Act calls these policies and procedures into question or requires the University to make tickets available to wheelchair users on a preferred basis outside of the ticket policies and procedures that apply to all users.

Finally, we note also that our informal review suggests that the University's approach to the accessibility issue is consistent with, and generally goes beyond, that of other universities with football stadiums constructed prior to the ADA and the Rehabilitation Act of 1973, including some that have undergone renovations. We are not an outlier on these issues.

If, in order to provide accessibility, additional seating is needed beyond the current seating, or the seating planned as part of the Expansion Project or a settlement of this dispute, the University is committed to providing it and will provide it. The University has repeated this commitment many times in the more than eight years that the complaint has been pending. OCR does not currently and has never disputed the fact that the University provides game day access to all of its patrons with mobility impairments. The University respectfully submits that we need to resolve this matter, so that we can focus our limited resources on continuing our work of enhancing the game day experience for all patrons.

⁷ The platforms will be measured and designed for installation at portals located outside the end-zones and would provide the opportunity for dispersed seating opportunities for wheelchair users throughout the Stadium at the portal level, in addition to the opportunity for dispersed wheelchair seating opportunities in the Expansion Project.

⁸ These percentages are of total seats removed and reinstalled or replaced as part of the concrete project and the total seats to be added in the Expansion Project.

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We look forward to meeting with you. Again, we shall be prepared at that meeting to elaborate on our proposal and to respond to your questions. We also shall be prepared to discuss other issues raised by the complaint, which, as noted above, should not be a significant impediment to resolution.

Sincerely,

A handwritten signature in cursive script that reads "Marvin Krislov".

Marvin Krislov

cc: Stephanie Monroe, Assistant Secretary for Civil Rights
Kent Talbert, General Counsel
Tom Hibino, Office for Civil Rights
Bill Martin
Gloria Hage
Arthur Coleman
Steve Winnick

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**University of Michigan
Plan for Enhancing Access for Wheelchair Users at
Michigan Stadium¹**

These charts summarize (1) historical usage of the currently available 180 places for wheelchair users and companion seats in Michigan Stadium and (2) the University of Michigan's plan to enhance access for wheelchair users at the Stadium. This plan reflects the University's continuing commitment to ensuring access for individuals with disabilities—in this context, for wheelchair users at Michigan Stadium. In the context of plans to significantly expand both the numbers and variety of locations for wheelchair-accessible seating, Michigan's history is notable: Every patron who needs accessible seating has been accommodated; and Michigan has never denied a wheelchair user accessible seating.

Historical Demand for Wheelchair Access – Game by game usage of 180 total spaces (90 wheelchair and 90 companion seats)	2003	2004	2005	2006
Game 1	164	164	162	157
Game 2	153	158	163	163
Game 3	162	160	147	162
Game 4	160	164	151	141
Game 5	164	162	147	155
Game 6	163	150	138	145
Game 7	160		158	145

¹ Subject to University approval, including final approval of Expansion Project by Board of Regents.

	Plan Description	Wheelchair Places to be Added ²	Resulting Total	Percentage of Seats ³	Timetable	Explanation
Current	90 wheelchair places (and 90 companion seats)	--	90	.1%	Existing	
Proposed Initial Additions	Additional Places Sideline Portals	14	104	.013%	2008/2009	Wheelchair platforms will be "portable" and will be installed/removed/reinstalled annually based on anticipated demand, with projection allowing for margin of error. Relevant data will include prior usage and current requests for season tickets from wheelchair users. (Additional or alternative, interim option, if demand exceeds wheelchair places, will be provided, such as use of press box)
	New West Concourse Along Sidelines	72	176	.2%	2010	
	Club & Suites	135	311	.384%	2010	
Expansion Project						

² "Wheelchair Places to be Added" and "Resulting Total" columns refer solely to wheelchair places. In each case, there is or will be an equivalent number of companion seats.

³ Percentages for current wheelchair places are of total seats removed and reinstalled or replaced as part of concrete project. Percentages for all wheelchair places to be added are of those total seats *and* of the total number of seats to be added in the Expansion Project.

Plan Description	Wheelchair Places to be Added	Resulting Total	Percentage of Seats	Timetable	Explanation
Further Additions Continuing "Wrap-Around" Portal Level (and/or additional accessible seating in future stadium expansion projects)	281	592	.73%	Beginning 2011	Wheelchair platforms will be "portable" and will be installed/ removed/ reinstalled annually based on anticipated demand, with projection allowing for margin of error. (Relevant data will include prior usage and current requests for season tickets from wheelchair users.)

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