

Office of the Independent Monitor

Modified Consent Decree
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Honorable Board of Education
Los Angeles Unified School District
333 S. Beaudry Avenue
Los Angeles, CA 90017

David Brewer III
Superintendent of Schools
Los Angeles Unified School District
333 S. Beaudry Avenue, 24th Floor
Los Angeles, CA 90017

**Re: Determination of the District's progress toward meeting its obligations under
Section 10. Facilities, of the Modified Consent Decree, 2006-2007 School Year**

Dear Mr. Brewer and Board of Education:

Section 10. Facilities, of the Modified Consent Decree (MCD) confirms the commitment of the Board of Education and requires the District to engage in specific activities for improving the accessibility of its school sites for individuals with disabilities, by June 30, 2008. These requirements are as follows:

76. All new construction and renovation or repairs by the District shall comply with Section 504 and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.
77. The District shall within 5 years enter into binding commitments to expend at least \$67.5 million dollars on accessibility renovations or repairs to existing school sites consistent with Section 504 and the Americans with Disabilities Act.
78. Within 30 days of the approval of this Modified Consent Decree, the District shall establish a unit within the Division of Special Education to address "on-demand" requests related to accessibility. The unit shall be staffed by a special education professional and a facilities professional and will have at its disposal "task order" procedures to rapidly provide minor renovations where necessary to provide access for individual students seeking placement in currently inaccessible programs. The District shall appropriate, make available, and expend up to \$20 million dollars from the Measure K Board's leveling fund for task orders related to requests for program accessibility under IDEA and Section 504. This confirms the commitment made by the Board of Education on January 28, 2003.

In order to provide evidence of these activities, the District created the MCD Access Compliance Tracking Log as its formal record for reporting work associated with Section 10. As required by the MCD, “the Independent Monitor (IM) shall verify the accuracy of the District’s data required to measure the District’s performance and shall make determinations only on data that the Independent Monitor finds to be accurate”¹. This report is the first audit of the District’s progress for meeting its obligations under Section 10.

Background

As noted above, the District must meet three primary responsibilities in order to comply with the requirements associated with Section 10 of the MCD. The first requires the District to ensure that all new construction is compliant with accessibility standards required by law. The second responsibility requires the District to expend or enter into binding commitments for least \$67.5 million dollars for accessibility renovations and/or repairs to existing sites. The third requires the District to appropriate, make available and/or expend up to \$20 million dollars for rapid “on-demand” task orders related to accessibility. In addition, the District must create a unit within the Division of Special Education that is staffed by special education and facilities personnel that respond to these requests. On July 7, 2006 the IM determined that the unit had been established. Finally, the MCD requires that all work comply with the accessibility standards consistent with Section 504 and the American with Disabilities Act (ADA).

The MCD tracking log is the formal record maintained by the District of its access compliance projects either completed or planned for, of both the \$67.5M and \$20M projects. The initial MCD tracking log was submitted by the District on October 8, 2004. Since then the District has provided quarterly updates of the log with several modifications.

Prior to the initiation of the verification audit, the Office of the Independent Monitor (OIM) had concerns about the accuracy of the data reported by the MCD tracking log. These concerns were neither new to the OIM or the District. On July 22, 2005, the IM’s report on the District’s Progress on the MCD for 2004-2005 school year, expressed serious concerns with the accuracy of the data including expenditures reported by the MCD tracking log².

Verification of the accuracy of the MCD Tracking Log

Between May 2006 and May 2007, the OIM engaged in various efforts to verify the accuracy of the District’s May 2006 MCD tracking log. For purposes of verifying the accuracy of the MCD tracking log and measuring the District’s progress toward meeting its obligations under Section 10, the OIM utilized the log provided on May 8, 2006. To fulfill the obligations of the IM required by the MCD in determining the accuracy of the MCD tracking log, the OIM attempted to:

1. Verify that projects and work reported as planned or completed were associated with access compliance
2. Verify the estimated costs or actual expenditures of access compliance work
3. Determine that the work completed met compliance with accessibility standards mandated by Section 504 and ADA.

¹Modified Consent Decree, Section 3.18

² See C. Cohn, Report on the Progress and Effectiveness of the District’s Implementation of the Modified Consent Decree during the 2004-05 School Year, July 22, 2005, p.8.

To measure the accuracy of the District's performance, the OIM contracted with Disability Access Consultants (DAC) to conduct a verification audit (see Attachment A) of the District's obligations as specified by Section 10 of the MCD. The verification audit consisted of the following:

1. A desk audit, reviewing records of a sample of projects to determine the accuracy of data reported by the MCD tracking log for both projects from the \$67.5M and \$20M programs. A total of 68 projects from the May 2006 MCD tracking log were finally selected and reviewed for verification
2. A field audit, consisting of site inspections of a sample of projects from the \$67.5M and \$20M programs, and new facilities to determine if work completed met compliance with accessibility standards. A total of 21 sites from the May 2006 MCD Tracking log were selected for inspection to determine compliance. The sample includes seventeen existing sites and four new schools.

A fundamental component of the audit is the availability of records to verify the scope of work, estimated and expended program costs, and completion of work. On June 7, 2006, the OIM met with representatives from DAC and the District's facilities unit and Office of the General Council (OGC) to discuss the expectations and process of the audit. During this meeting, an initial request for records for 86 projects was made. District personnel assured the OIM that documents were readily available and would primarily be provided in electronic format. This assurance was not fulfilled and resulted in the acquisition of few documents.

As a result of minimal records obtained, the OIM and DAC made a second attempt to obtain the necessary records to conduct the audit. During the week of September 19, 2006, DAC spent four days visiting central and local district offices to collect relevant documentation. This effort resulted in the acquisition of some records; however, the majority of records did not provide the necessary information such as detailed scope of work and evidence of expenditures.

As a result of the numerous meetings and discussions with District staff regarding the process for data collection, on December 15, 2006, the IM presented the associate general counsel a memorandum clearly specifying expectations for the document review process. The memorandum also included a checklist developed in collaboration with District staff, for both the \$67.5M and \$20M projects. To summarize, the memorandum directed the District to:

1. Gather and make all documents requested available in one location, accessible to the OIM and its consultants.
2. Report only projects completed or with a notice to proceed that have accompanying required documentation

It also described a waiver process allowing the District to report projects with missing documents with the condition that an explanation as to why the documentation was not provided be included.

During January 26, 2007 the OIM and DAC met with the District in an attempt to further clarify the process for data collection and the District's definition for determining projects eligible for access compliance. In addition, due to the difficulty in obtaining documentation, the decision was made to reduce the sample of projects for review to 68. During this meeting, a third attempt was extended to request the necessary documentation required. During this time, District personnel once again reassured the OIM that documents would be made available on a secured website. Despite this reassurance, very few of the documents requested were provided for projects reported from the \$67.5M funds. The majority of documents for \$20M projects were made available.

Despite numerous efforts and opportunities to provide the necessary documentation to conduct the verification audit, the District failed to meet its responsibility. Since the OIM and DAC were unable to obtain the necessary documentation to verify work reported as completed and expenditures, the lack of required documentation is evidence of the inability to rely on the MCD tracking log for making determinations. Throughout the data collection process, the OIM and DAC extended much latitude in the format (paper, electronic files) and timelines for documents requested.

The results of the verification audit conducted by DAC highlights two clear and compelling findings. The first is that the District's MCD tracking log is considerably inaccurate in many areas and a misrepresentation of funds expended. These inaccuracies extend beyond what may be characterized as reporting errors. The following findings support this conclusion:

1. Acknowledgement by District personnel from the OGC and/or facilities that three projects with reported expenditures and date of completion had in fact never proceeded with construction
2. Discrepancies with reported expended costs by the MCD tracking log and the documents reviewed by DAC for both the \$67.5M and \$20M projects:
 - The total project expenditures as reported by the May 2006 \$67.5M MCD Tracking Log for projects sampled was \$7,850,993.36. DAC was only able to obtain documentation for some projects or potential evidence of expenditures for \$1,946,658.33
 - The total project expenditures as reported by the \$20M May 2006 Rapid Renovation Tracking Log was \$705,887.26. DAC was able to verify total expenditures of \$524,132.65 for "on-demand" projects. Four out of seventeen projects reviewed could be verified accurately
3. High incidence of documents either not provided or missing for projects selected for review from the May 2006 \$67.5M MCD Tracking Log
 - Twelve out of the fifty-one projects requested had no documentation provided
 - An additional sixteen projects requested either had no documentation provided of the scope of work and/or expenditures
4. Eight out of seventeen existing sites selected for inspection reported as completed by the MCD tracking log with either work partially completed or with construction not proceeded
5. One project with evidence of work certified as compliant and completed as of January 18, 2005, that was found under considerable construction and non-compliant at the time of the site inspection in March 2007
6. The disproportionate estimated costs associated with the fire alarm strobe light upgrade program for the overall access compliance program
 - \$66M of a total \$125M of estimated costs reported by the May 2006 MCD Tracking Log were allocated for fire alarm upgrades

The second finding points out the District's apparent disregard of Federal and State policies that require construction of both new schools and renovations and/or repairs of existing sites to be compliant with accessibility standards. The results of the site inspections consistently found areas of non-compliance in all areas reviewed such as parking, restrooms, ramps and drinking fountains across both new construction and existing sites. These findings raise concerns over the quality mechanisms in place.

Finally, DAC notes that based on the findings of the audit, the accuracy of the May 2006 MCD tracking log could not be verified and therefore can not be endorsed for making determinations on the District's progress.

Determination

Overall, the verification audit clearly found that the documentation required to support the data reported on the May 2006 MCD tracking log for both the \$67.5M and \$20M projects is so incomplete or inaccurate that it cannot be relied upon for making determinations on the progress of the District in meeting fiscal obligations under Section 10 of the MCD. Furthermore, the high frequency of non-compliant work found on both new construction and renovations and/or repairs of existing sites, supports the conclusion that the District is not on course to meet this obligation.

The District and the OIM agreed on a checklist of the supporting documentation that was to be maintained and made available to the OIM for each project the District wanted to be credited toward meeting its obligations under the MCD. The OIM even agreed that there may be limited instances where some documentation might not be available and that in such cases the District would request a waiver from the IM. Despite assurances from the District that the documentation required was reasonable and available, the audit found that in almost every instance the District did not provide the required documentation. **From this point on the District may not place any project that it deems completed on the tracking log without the required documentation. The OIM will only review projects for consideration that have the required accompanying documents that include a detailed scope of work related to access compliance and documents with detailed reports of the associated expenditures. Furthermore, the IM will only accept projects for review that the District can verify that the construction completed meets accessibility standards. Therefore, it is the IM's expectation that all projects reported on the tracking log are vetted for accuracy and evidenced in documents, and reviewed by District inspectors or agents of the District for compliance with code. Since the MCD also allows for the District to receive credit for projects that have entered into a binding commitment, the OIM will only accept and review projects that the District can verify the availability of all relevant documents including the notice to proceed, and can demonstrate evidence of the encumbrance of necessary funds.**

Although, the District is not required to expend the \$20M appropriated for "on-demand" program accessibility projects, the expenditures reported by the MCD tracking log do not appear to be an accurate representation of expenditures. Although the documentation provided for the \$20M "on-demand" projects was better than those received for the \$67.5M projects, there appears to be too many discrepancies between estimated and expended program costs as reported by the May 2006 MCD tracking log. It is important to note that **all work completed for \$20M projects should meet compliance with accessibility standards. Projects completed in non-compliance should be the exception only when it is determined that compliant construction would result in substantial impediment to the program accessibility for a student with disabilities. In the instance of such exceptions, the District is required, as previously agreed to, to provide a rationale on a case-by case basis explaining why it cannot meet compliance standards.**

The role of the Independent Monitor is quite clear in respect to making determinations of District progress toward fulfilling the obligations of the MCD. It clearly states that the IM can only make determinations with data deemed and certified as accurate. In regard to the District's data reported by the May 2006 MCD tracking log for projects for the \$67.5M and \$20M program, the many inaccuracies prevents the IM from making any determinations regarding the completion of work reported, expenditures reported, and compliance of work with accessibility standards. Therefore, the IM can not with any confidence determine the District's performance in this area.

During the course of this process it was evident that many factors within the process and mechanism for maintaining and providing documentation are contributing to these inaccuracies. This has consistently been problematic and has demonstrated no substantial improvement. Despite ample opportunities and

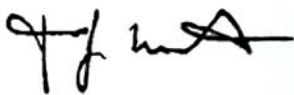
extensions on behalf of the OIM, establishing a process in collaboration with the District for the collection of documentation, as well as receiving reassurances by District personnel of their cooperation and availability of such documents, the District has failed to meet this responsibility. This behavior on behalf of the District is an act of bad faith toward the IM, plaintiffs and the commitment made by the Board of Education.

The purpose of Section 10 of the MCD is to move the District toward making its facilities accessible to its students with disabilities and individuals with disabilities. This is not only a worthy goal it is a requirement of Federal and State law. It should not have taken a consent decree to make the District aggressively move to meeting this obligation. The fact that the District has not taken due diligence toward this end is disappointing, but the finding that a significant number of projects undertaken as well as new schools do not meet accessibility standards appears indicative of a systemic problem in the management and oversight of the District's facilities program. This is particularly concerning considering the scale of the District's building program. **In the future, no project deemed as completed may be entered on the tracking log without a certification that it is compliant with accessibility standards, by an individual with the appropriate qualifications and training to do so.**

Overall, these findings create a sense of distrust in the data reported by the District and personnel involved, as well as the quality of work actually done. This distrust is unfortunate as it obscures some of the overall progress achieved in this consent decree. As the monitoring of the District's obligations associated with Section 10 of the MCD continues, this lack of trust must be addressed and remedied through credible action. **In this regard the District is directed to employ or contract an individual to oversee the District's obligations under Section 10 of the MCD. This person must be expert in the area of accessibility and have the authority to ensure that the District meets the requirements of the MCD as well as Federal and State policy. It is expected that the individual will approve all information provided to the OIM. The job description and selection process must be approved by the IM.**

Finally, the OIM plans to begin the next audit this October, all requirements cited above must be in place by that time.

Respectfully Submitted,



Frederick Weintraub

c: Hon. Judge Ronald Lew, Robert Myers, Catherine Blakemore, Kevin Reed, Donnalyn Jaque-Antón, Diane Pappas, Peter Keup, Brigitte Ammons, Roger O'Leary-Archer, Thomas Hehir