

**Office of the Independent Monitor**

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February 2, 2015

Deneen Evans-Cox  
Associate General Counsel 1  
Los Angeles Unified School District  
333 S. Beaudry Avenue, 20<sup>th</sup> Floor  
Los Angeles, CA 90017

**Re: Transition Plan Feedback**

Dear Ms. Evans-Cox,

On Oct. 16, 2014, the District provided the OIM the *Transition Plan Update in Compliance with the Requirements of Title II of the Americans with Disabilities Act, Draft* outlining the District's plan for achieving ADA compliance. A revised draft was submitted on Dec. 5, 2014. Additionally, the Office of General Counsel, upon request of the IM, provided a legal analysis of the District's plan.

A review of these documents has identified several areas that require additional clarification in order to evaluate the adequacy of the plan. This letter will raise such issues as well as provide overall feedback and expectations for the revision of the plan.

- The December revised draft and legal analysis (page 1) omit the words "at a minimum" when stating the requirements of the ADA regulations for complying with transition plans. While the legal analysis includes this language on page 6, the inconsistent use may convey mixed messages.
  - This omission presents a substantive derivative of the intent of the law and implies that the District is only required to fulfill the four obligations stated, while "at a minimum" implies that the stated obligations represent the lower limit permitted by law. Please provide an explanation for this omission.
- The October draft commits to completing 45 transition plans the first year for a total of 90 in 24 months. The December revised draft states 65 transition plans are to be completed in the first year, with a total of 195 done within 36 months.
  - Please provide the rationale and/or method for calculating the estimate of plans to be completed within the first year and 36 months. It is critical that the number of transition plans committed in the plan is achievable within the timeline projected.
  - Please define the timeframes (beginning and end dates) of the first year and 36 months.
  - The final plan must include a timeline and number of sites required to become fully compliant with these ADA requirements. While a shorter timeline may provide an acceptable standard for disengagement of the MCD, a full commitment that is approved by the Board must be submitted to ensure that these efforts will continue until full compliance is achieved.
- The October draft states "Within 12-15 months of a completed survey, the District will have designed and removed the barriers identified in the survey." This language has been removed in the December revised version.
  - Please provide an explanation for the removal of this action.

- Regarding the position of the ADA Compliance Manager, the October draft states, "The new position will be responsible for coordinating at the Division level and report to the Superintendent." The December revised draft states, "The ADA Facilities Manager/ADA Coordinator will report to the District's superintendent or the Superintendent's designee."
  - Please provide a rationale for the change in the reporting structure of this position. Additionally, please indicate the individual or persons who made this determination and the process for changing the reporting structure. It appears that a modification to include a "designee" would require consultation with the Superintendent and/or senior leadership from Human Resources and/or the Office of the General Counsel. Further, the reporting to a "designee" causes concern since it appears it would limit the authority of the ADA Compliance Manager, particularly if the "designee" is in a position with limited authority to delegate resources.
  
- The October draft states that 600 schools will be included in this effort to comply with the ADA Transition plan requirements. The December revised draft left this number blank.
  - As has been discussed and requested in previous meetings, please provide a comprehensive list of schools and buildings that will be included in the efforts to comply with the plan. This must include all charter schools, including independent charters.
  
- When discussing the three methods to process and remove ADA barriers, the October draft states, "Priority lists of schools provided by the Division of Special Education based on the needs of Special Education students. The District will establish an ADA Barrier Removal Program with sufficient funding using Bond Program funds to continue to provide program accessibility throughout all the school campuses." The December revised draft removes the first sentence regarding the "Priority lists of schools..." and replaces the word "sufficient" to "necessary."
  - Please explain the removal of the first sentence which includes the involvement of the Division of Special Education in the process for removing ADA Barriers based on students' needs.
  - Please explain the replacement of the term "sufficient" to "necessary" and any implications associated with the level of commitment being proposed.
  
- Considerable changes are noted on #2. C, School District Responsibilities under Title II of the ADA and the removal of section #2. D, *Educational Equity Compliance Office*.
  - Please explain the removal of language from the October draft and December revised drafts in both sections.
  - Please indicate the relationship the ADA Compliance Manager will have with the Educational Equity and Compliance Office.
  
- The December revised draft removed the section of the history of the District's efforts to comply with the ADA requirements. The inclusion of this in the first draft was a gross misrepresentation of the District's efforts and minimized the credibility of the proposed actions in the plan. Additionally, the use of the term "Update" in the title of the document misrepresents the District's lack of effort and compliance with a law that was enacted in 1992 and was to be complied with in 1995. This includes the failure to have an ADA coordinator or official responsible for implementation of the plan.
  - The failure of the District to comply with the ADA for over 20 years is inexcusable. Through the course of the MCD, the OIM has been unable to obtain evidence of efforts to comply with the ADA and transition plan requirements. For officials to misrepresent such compliance undermines the monitoring efforts of the OIM and Plaintiff's counsel.
  
- Section 4, B. of the 2010 Standards and Regulations section includes discussion regarding the use of the Safe Harbor provision of the ADA regulations.
  - This raises concerns of the potential misuse of this provision since elements that may fall within the Safe Harbor clause will need to be updated to comply with the most current code if "any elements are altered for other reasons." Therefore, this becomes a moot point. However, the use of this

provision may result in a misunderstanding by individuals that this element does not require to be updated. This issue has been discussed with the ACU and they have informed the OIM that staff has been told to ignore findings that have been noted as Safe Harbor and that these items are non-compliant and require to be brought to current code.

- Section 4, F. was modified and the last two sentences were removed from the October draft, which states, "It might also affect some overnight facilities such as those at Clear Creek Outdoor Education Center but it does not impose any obligations until construction work is undertaken for other reasons. Therefore, it is not addressed by this Transition Plan Update."
  - Please explain the removal of this language, and indicate if this is a property/facility owned by the District.
- Section 7, G. excludes independent charter schools from the projects that will be overseen by the ADA Compliance Manager and included in the Planning, Coordination and Input from Interested Parties.
  - Independent charter schools fall under all provisions of the MCD. The District cannot exclude these schools from compliance with the ADA requirements and MCD. The MCD considers these District schools. While this may require alternative methods and processes for providing oversight and ensuring compliance, the District must present a viable plan to include these schools.
- Section 10, notes an ADA task force will be made up of representatives from the following departments including charter schools.
  - Please provide assurance that this representation will also represent independent charter schools.
- Section 11. C. Provide Access to the Transition Plans Database to Other LAUSD Departments for Barrier Removal states that "when other departments within the LAUSD will be responsible for removing barriers... ACU will provide access to the transition planning database to facilitate work."
  - Please provide information how this access will be coordinated and communicated (i.e, bulletins, policy, memorandums, etc).
- The October draft includes sections 12. Develop, Maintain, Use and Share Barrier Removal Interpretations and Solutions Databases and 13. Develop, Conduct, Record, and Maintain Interactive and On-Demand TP Training Programs.
  - Please provide an explanation for the removal of these proposed actions from the December revised draft.

#### Overall Feedback:

The plan provides an adequate framework for bringing the District into compliance with the Title II requirements of the ADA. Considering the long history of non-compliance, the plan must include distinct commitments that the Board of Education will approve to ensure that this effort will be carried out. These include:

- A timeline that includes a sizable number of schools that will have completed transition plans within the 36 months defined.
- A timeline that includes a sizable number of schools that will have barrier removal completed within the 36 months defined.
  - Provide the process, including a timeline, for the validation of compliant work at these schools by the ACU.
- A long-range timeline committing to the completion of transition plans at all District buildings, including independent charter schools.
- A list of all District schools and buildings, including independent charter schools, that will have transition plans in compliance with Title II of the ADA.
- A plan, if needed, for requiring and completing transition plans at all independent charter schools.
- Staffing and professional development commitments through the duration of this effort

- Commitments for the short (36 months) and long-term (to achieve full compliance) funding for completing transition plans and barrier removal. These commitments must be based on reliable and realistic estimates that account for inflation and potential increases in scope of work and costs.
- An organizational structure that authorizes the ADA coordinator to obtain and deploy the necessary resources for ensuring compliance with the plan. This includes the decision-making authority that cannot be undermined by middle and senior management of individual departments such as those from the divisions of facilities and/or special education.
- A list of new policies, or changes to existing policies, to institutionalize this commitment and processes and procedures required for complying with this plan.

The compliance with the Title II requirements of the ADA is a critical element for achieving engagement with the MCD. The District must provide a thorough and comprehensive plan that commits and establishes the necessary organizational structure that will ensure the oversight, commitment of necessary resources and decision-making authority for the duration of this effort. The District should exercise caution in taking a conservative approach for the commitment of resources for this endeavor. After two decades of non-compliance, it is imperative to see a full-commitment by the District to comply with the ADA and remove barriers for all individuals with disabilities at District buildings.

Sincerely,



David Rostetter, Ed.D.  
Independent Monitor

c: Ramon Cortines, Robert M. Myers, Catherine Blakemore, Mark Hovatter, Sharyn Howell