

Office of the Independent Monitor

Modified Consent Decree
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Deneen Evans-Cox
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Los Angeles Unified School District
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Re: District-wide Transition Plan Update - OIM Response

Dear Ms. Evans-Cox:

On February 9, the District provided the Office of the Independent Monitor (OIM) a revised draft of the District-wide Transition Plan Update. On February 12, the OIM met with you and Mr. Torres, the Americans with Disabilities Act (ADA) Compliance Manager to discuss the revised plan. On February 16, the OIM provided the District a set of clarifying questions and a request for additional information needed to provide feedback and a response to the revised plan. The District responded to this request on February 19. On February 26, the District provided Barrier Removal Reports (BRRs) for 13 schools slated for modernization projects.

This letter provides overall feedback to the content of the District-wide Transition Plan Update as well as to the District's February 19 response. The Plan lacks credibility as the District was not able to fulfill its first obligation for completing the 33 BRRs by December 31, 2015, as noted in the document LAUSD Transition Plan (10 years). Furthermore, this version contains considerable changes from previous Plans and, in many instances, will require additional information and discussion. Feedback on the BRRs will be provided upon submission of all completed surveys.

The following are some primary concerns noted from the most recent Plan and is intended to provide a sufficient basis for the District to continue with the Plan's revision.

1. The Plan's executive summary (p. 3) notes that the District has engaged in ADA improvements and betterments since the year 2000, expending \$678 million dollars. This assertion was also made at the Parents' Council Meeting held on January 11, 2016.

The District provided a handout showing how the \$678M had been determined, using a percentage factor of the cost of building new schools or implementing modernization projects. The majority (70.5%) of these funds are attributed to new construction and derived from a 5% factor of the overall construction costs.

The OIM requested additional information on how this work had been determined to be compliant and how money spent on surveying and repeated repairs to new schools had been factor in the \$678M.

The District responded by noting that the “Facilities Services Division [FSD] is confident that the work is compliant with state and federal requirements. Also, these projects are designed by a licensed architect, reviewed and stamped by DSA [Division of the State Architect], inspected by DSA and certified by DSA.” This is the same process the District used in past noncompliant construction. In addition, many sites were not “certified by DSA” and were not officially closed out for occupancy as required.

This explanation is simply an assurance or statement of the FSD’s “confidence” in the processes described. This explanation is troublesome, particularly for construction dating from the year 2000, considering the well-documented history of the District’s failure to complete compliant work through the course of the Modified Consent Decree. In particular, it took the District many years and repeated attempts to complete compliant work and for the Independent Monitor (IM) to approve compliant work at projects for the \$67.5M existing renovation, \$20M on-demand projects, and the 81 new schools identified in the parties’ 2007 stipulation. These longstanding problems were sufficiently highlighted in the IM’s November 10, 2015, Annual Report. This explanation fails to provide evidence that the District has reviewed, inspected, or determined work to be compliant. Furthermore, new construction must meet ADA and California Building Code (CBC) compliance and cannot be considered betterments under the ADA. Betterments resulting from surveys and transition plans have yet to occur.

This assertion suggests a considerable effort undertaken by the District. The OIM must validate this claim to ensure it is credible for the public and Plaintiffs’ Counsel. Therefore, the District must provide evidence of compliant betterments, including surveys and the approval process. The District cannot claim new construction as ADA betterments, as compliant construction is what is required and expected by law. If such evidence cannot be provided, the District must remove this assertion from the Plan.

2. The executive summary (p. 3) states that the estimated cost of the Architectural Barrier Removal Project established by the District-wide Transition Plan is \$1.295B. This estimate was based on surveys of 10 “representative” sites. This effort is described as requiring 10 to 13 years to complete and funded by \$600M of bond funds approved by the Board of Education in November 2015. The plan also notes that:

The District will primarily utilize bond program funds to execute Modernization and New Construction projects with ADA scope ensuring ADA barriers are corrected as part of the project. Also, the District will allocate additional funding for stand-alone ADA barrier removal projects as they are prioritized. [p. 3]

Because the Plan does not mention funds to make up the difference between the estimated cost and the monies approved to date, the OIM requested additional information on a plan to secure the additional funds. The District’s response noted that as

the “\$600M barrier removal program moves forward, data point metrics will establish the need for additional funding if any.”

It remains unclear how the District can fulfill this obligation when the estimated cost of the barrier removal program is more than twice the amount of the funds the District has committed for its 10- to 13-year timeline. The explanation provided does not sufficiently address the question of how this program will be funded. Furthermore, the estimated cost was based on the costs derived from surveys of 10 elementary schools and should not be considered representative of all schools. The District has now completed surveys at more than 10 middle and high schools, and this data should be incorporated in a reevaluation of the cost of the barrier removal program.

The District must define the data point metrics that will be utilized to determine whether more funds will be required and provide information on methods of determining the estimated costs. To ensure a credible plan, the District must provide a reliable estimate with sufficient funds to fulfill its ADA obligations. The District must provide a summary of the 2015 survey findings of the 14 middle and high schools as well as analysis of the impact on the estimated program cost.

The \$600M bond funds approved by the Board of Education in November 2015 will cover less than half of the estimated monies required to implement the District-wide plan and comply with the ADA. The Plan also notes that bond funds will primarily be used to execute modernization and new construction. As mentioned earlier, it is unclear whether the District has a plan to secure additional funds to complete the barrier removal program or to cover the costs of all stand-alone projects. The 10- to 13-year construction plan includes 52 modernization projects and 713 stand-alone projects. Because the stand-alone projects considerably outnumber the modernization program projects, the District must provide additional information on how bond funds will be allocated. The explanation must include how these funds are primarily for the barrier removal program as opposed to larger construction projects (modernization and new construction) that will address program access as required by DSA and ADA. Because modernization and new construction must comply with ADA, the entire scope of work cannot be considered part of the barrier removal effort. The District must provide information on how monies will be credited for the ADA components of the modernization projects. New construction will not be considered as part of the barrier removal project, and the \$600M in bond funds may not be allocated for new construction until the District is in full compliance with the ADA. Furthermore, given the shortfall in funding, the District must indicate if bond funds will be utilized to cover overhead and administrative costs associated with the barrier removal program or if these monies will be used for the direct cost of barrier removal.

3. The Plan notes that priorities will be reassessed quarterly with LAUSD stakeholders to ensure that the largest number of special education programs and immediate needs are assigned a higher priority (p. 3).

In its response to the OIM request for additional information, the District noted that the process for selecting the 20 and 42 schools slated for construction during the 2016 and 2017 years, respectively, was determined as a result of these quarterly meetings. It

remains unclear how this process results in the selection of schools given that the District provided a barrier removal plan for a school (Sherman Oaks CES) surveyed in 2015 that will not have barriers removed until 2020.

The method for selecting schools to be surveyed is also unclear. The District's 10- to 13-year timeline shows that during 2015, four middle and 10 high schools were surveyed, and an additional three middle and four high schools will be surveyed in 2016.

The construction plan calls for three middle schools to begin barrier removal during 2016, and three middle schools and one high school will be addressed in 2018. An additional high school and six middle schools will begin construction in 2019.

The schools selected for surveys do not coincide with those slated to have barriers removed or deemed to be priority. For example, the District has completed surveys at 10 high schools and will survey four additional sites by July 2016. However, it will begin to remove barriers at the first high school in 2018 and one additional site in 2019. There appears to be no correlation between the resources expended to survey schools and the prioritization of sites having immediate barrier removal needs. In addition, it is unknown how the quarterly meetings will result in the reprioritization of surveys or barrier removal, particularly when resources have been expended in surveying or removing barriers. The District must provide additional information on past quarterly meetings, the participating stakeholders, and actions that resulted from these meetings.

During the February 12 meeting, Mr. Torres explained a process for determining priorities that includes sending completed surveys to Asset Management for its review and selection of barriers to be removed. It was noted that these schools had been surveyed yet slated for barrier removal several years later. This process is vaguely explained in the Plan's Comprehensive Modernization Projects section (p. 5); however, this appears to be limited to the 52 sites identified in the LAUSD Transition Plan's 10- to 13-year plan. Although the Master Plan Assessment for Facilities Prioritization Planning (p. 10) includes additional information, this process seems to describe a construction program and not a District-wide transition plan program. It remains unclear how Asset Management determines which barriers to remove, or why it is necessary to have this group making decisions that potentially override priorities identified by the Access Compliance Unit (ACU).

Of most concern is that the appropriation of District resources for surveying schools when plans for the removal of any and all barriers are set for years after the identification of problems. It is highly probable that all these sites will have some barriers that require immediate attention, which can be removed at no or minimal cost. On February 20, the District provided Architectural Barrier Reports (site transition plans) for 13 modernization program schools. The majority (10) of these sites will not have any barrier removed until 2020, while one will be addressed in 2017, and two do not have a schedule determined. Furthermore, these plans use one primary date (applied across the majority of the site, with many items left TBD) for barrier removal, regardless of the priority assigned or whether it is a minor barrier that can be easily remediated.

The approach and process described in the Plan and accompanying documents are indicative of a construction plan and not a transition plan. The development of a transition plan, by definition, is the *transition* into compliance. The transition plan is intended to provide for the removal of barriers for older schools built prior to requirements for schools being built fully accessible (1983 under the California Building Code and 1992 under the ADA). The transition plan is to include designated barrier removal dates individually applied to each barrier, not one date randomly applied across the school for all barriers. Dates for priorities should be determined on the basis of many factors including, but not limited to, priorities for access by students and other individuals with disabilities and the degree of deviation from the code.

Easy-to-remove barriers should have earlier dates for barrier removal. For example, adding a grab bar where none exists, removing a door stop, trimming bushes that encroach on the path of travel, adding signage, and moving furniture or trash cans that block a door's latch-side clearance should be done without waiting for the entire construction project, which might be designated for 2020. A school site should not have a random or arbitrary date of removal applied across all identified barriers, as many of the barriers do not need to wait for a larger, major modernization project.

The District must review the model and approach for its District-wide transition plan. The approach for prioritizing sites and the barriers identified at each site contradicts the assertion that this program intends to "remove a large number of barriers to program accessibility in the most efficient and logical sequences practical" (p. 7).

4. The previous District-wide Transition Plan Update (August 14, 2015) stated the following (p. 3):

The Facilities Access Compliance Manager [FACM] will provide a site transition plan for each school facility surveyed. The site transition plans will identify all non-compliant conditions and assign a priority for removal and/or modification of barriers to provide program access.

The site transition plan will provide an estimate of cost for removal of barriers and establish a date to have architectural barriers to program accessibility removed and/or modified.

The most recent Plan presents a dramatic departure from the commitment to identify all barriers or noncompliant conditions as seen in all other previously submitted versions. The new approach is described as follows:

Project Assessment: ACU will assess all of the programs, services, activities, areas of public access, as well as students and staff with qualifying disabilities by interviewing school administrators. ACU under the direction of FACM will develop an ADA survey questionnaire to assist in identifying Architectural Barriers. The interviews/questionnaire will focus on the needs of students with disabilities. Surveys will ensure that the health, safety and welfare of students with disabilities is included in ADA surveys with an emphasis on sanitary facilities (i.e., changing rooms, lavatories, ventilation, etc.). [p. 4]

Transition Plan Site Survey: The ACU will conduct survey of programs that require access for students, staff or members of the public with disabilities. Elements that would require survey may include, but are not limited to, administrative offices, passenger loading, auditoriums, gymnasiums, multi-purpose rooms, athletic facilities, public parking, accessible routes, and restrooms which serve the public, staff and students with disabilities. Each barrier will be assigned a DOJ code, a severity code, and use code which will guide the priorities for barrier removal. Applicable accessibility standards are determined by the date the facility was constructed or last renovated by the District. [p. 4]

Title II of the ADA describes access to programs, services, and activities. To access programs, services, and activities, the majority of items at a school that are open to the public need to be accessible. Examples include, but are not limited to, passenger loading zones, parking, paths of travel to and within the school site, classrooms, restrooms, auditorium, playgrounds, nurse's stations, and other buildings hosting student programs and activities.

The District's departure from conducting comprehensive surveys to identify all noncompliant features or barriers is cause for concern. First, the District must provide the surveys and tools used as described in the project assessment section. It must also provide the results of all completed surveys, including all documents, reports, and forms utilized during the process.

The Plan states that surveys will cover only programs that require access to students, staff, and members of the public. To better evaluate this approach, additional information is needed, such as the process for determining which programs or features of a site do not require access. The District must also define how barriers are identified, including those barriers that do not impact program access, and surveys that list "global conditions." This District must also provide information on how barriers are prioritized and scheduled for removal, how operational conditions are addressed in the BRRs (p. 5), and how the quality assurance procedures outlined in the Plan (p. 5) will be validated, as Supervising Specialists might have incomplete information due to noncomprehensive surveys.

This new approach for identifying only barriers that impact program access, as determined by the ACU and school administrators, is of serious concern. The District does not have a lengthy track record of conducting quality comprehensive surveys and is now increasing the subjectivity of the process, which might include individuals who lack the training or insight to adequately identify areas of program access. If this approach is maintained, it will require a higher level of OIM oversight of all phases of this process until it can be determined that the approach is valid and reliable.

It is unclear whether the change to an abbreviated approach was determined as a way to shorten the time required to complete surveys. Previous versions of the plan and data provided showed a timeline of two to four months for completing surveys, whereas this new approach would shorten the time to four to six weeks. Although it is understandable for the District to maximize resources, industry standards for completing comprehensive surveys are considerably shorter than those projected by the District. Rather than

abbreviating surveys, the District should examine the efficiency of its system and capacity of the ACU as well as explore more effective means for completing timely, comprehensive surveys.

5. The Plan does not provide a specific process and timeline for the compliance of charter schools.

The District provided a seven-point response that included requiring all charter school operators on private sites to submit a survey and transition plan on or before June 30, 2017. The response also states that the Charter Schools Division will be responsible for prioritizing compliance by special education population, that workshops will be made available to inform operators about compliance and the timelines, and that an online certification tool to monitor charter school compliance will be developed.

Although some of this information begins to describe the process utilized to hold charter schools accountable for compliance, it lacks sufficient information to provide adequate feedback. In addition, this process must be included and described in detail in the Plan itself. The District must also provide more specifics on how all charter schools will acquire the professional capacity to survey and develop transition plans within the next 15 months. It does not provide any information on the timeline for removing barriers or the roles of the ACU and ADA Compliance Manager. The District is to be commended for having an ambitious and timely expectation of transition plans at a considerable number of charter schools. However, it is unclear why this standard is lower for District-operated schools.

6. Additional items of concern.

The District must include compliance with the CBC as appropriate. In some instances, only compliance with the ADA is included. California construction in schools to comply with both the ADA standards and the CBC standards as outlined in the DSA checklist.

The District must include the 10- to 13-year construction schedule in the Plan. It should also clearly define the Plan's timeline to accurately reflect the District's commitment and terms for compliance. The District notes that the 10-year period is required to remove barriers at "existing sites" and contends that only new schools will require maintenance work due to minor wear and tear. The schedule is designated as a 10-year plan, yet has completion of surveys and betterments through 2027, or 13 years.

New schools (125) are scheduled to be surveyed beginning in 2015 and conclude in 2016. As noted above, the District contends that these schools are compliant and will only need minor work. However, the effort to improve compliance at the 81 new schools under the 2007 stipulation found many areas of noncompliance. Major areas of noncompliance were not remediated, as this effort focused on minor elements and those items that could be done without DSA approval. Therefore, most if not all of these schools have remaining barriers that impact program access. The District should provide any evidence of compliant schools that were opened after the 81 sites identified in the stipulation.

The District must incorporate administrative sites in the transition plan schedule. The current schedule has these sites being surveyed beginning in 2025. This is unacceptable.

The self-evaluation process must occur prior to the finalization of the Plan. It is uncertain how the solicitation of external expertise for the self-evaluation process will delay the completion of the District-wide Transition Plan. It is also unclear why after so many months, this was not initiated sooner and why this cannot be completed with the District's internal capacity. The self-evaluation requirement is neither new nor complicated and has been carried out by many public entities without external expertise.

The process for completing a compliant transition plan is approaching more than two and a half years. We are no closer to accomplishing this than we were then. To facilitate and expedite this process, I propose assembling a panel of experts to discuss and guide the District in developing a compliant District-wide Transition Plan. Panel members must be approved by the OIM and will be secured solely for the development of the Plan. This effort and compliance cannot be delayed any further, particularly given the resources being expended to survey and begin construction of ADA betterments.

Given the above, the District must cease all current and future construction efforts until completed surveys and BRRs are reviewed by the OIM and determined to be valid. It must also provide documentation of public input for current transition plans or BRRs for ADA projects, and documentation of DSA project close out with or without certification for school projects associated with the \$678M expended since 2000.

Please be prepared to provide explanations for the items noted in this letter and documentation as requested by no later than March 10. Please be prepared to discuss this with us during the week of March 14. The OIM is available to discuss or answer any questions regarding this feedback.

Sincerely,



David Rostetter, Ed.D.
Independent Monitor

C: Sharyn Howell, Michelle King, David Holmquist, Beth Kaufmann, Veronica Smith, Mike Torres