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Deneen Evans Cox
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Re: Site Visits - Preschool for All Learners (PALs) feedback

Dear Ms. Evans-Cox:

On April 7, 2016, I provided the District a letter raising serious concerns about the health and safety conditions of the Preschool for All Learners (PALs) programs at 153rd Street and Broadus Elementary schools. As noted in the letter, these schools lacked the appropriate changing tables, privacy screens, ventilation, and running water. These failures have been raised in the past, and I have repeatedly pointed out the questionable leadership and judgment of senior officials who oversee the selection and implementation of new programs.

In the letter, I directed the senior District officials responsible for program placement, as well as the ADA Compliance Manager, to meet with the Office of the Independent Monitor (OIM) at these sites on Monday, April 11, 2016. The intent of these site visits was to better understand the process for the planning and placement of these programs and to begin working on a solution to this persistent problem.

On April 8, 2016, the District responded and indicated that staff members were currently investigating the conditions highlighted in the report (which included photographs) and that an additional response would be forthcoming pending the investigation's completion. The letter noted that staff could not be made available due to the short notice provided, with a reference to the explanation made by the previous superintendent. The letter also indicated that Superintendent Michelle King would discuss these concerns with me during our meeting scheduled for April 11, which did occur.

To date, I have not received any additional information regarding the District's purported investigation or follow-up, or when I can anticipate such information. While I am cognizant of senior officials' busy schedules, I also believe some things require immediate action and should be prioritized. Furthermore, it is unclear and contradictory how staff was not able to meet with my office on Monday, April 11, yet the letter indicates they were immediately deployed to investigate this situation the day after receiving

my letter. In the past, my office has been denied access to senior staff by the Office of the General Counsel (OGC), and this lack of making personnel available again suggests a reticence by the District to comply with federal court monitor directives.

The OIM has since visited an additional 11 schools to observe recently opened or relocated PALs programs. This letter summarizes findings from these visits and includes photographs of the conditions observed (Attachment A).

To date, we have visited 13 sites across all local districts; all share common problems indicative of systemic failures to ensure program accessibility and the health and safety of students with disabilities (SWDs). The OIM site visits focused primarily on changing areas used by the PALs programs and should not be considered comprehensive or inclusive of all noncompliant items or program accessibility concerns at these schools. In some cases, information and photographs of noncompliant areas on these campuses are included to illustrate the poor planning and lack of readiness of these schools.

The findings of the 13 schools are evidence of a lack of planning when selecting schools to place programs for preschool SWDs. In all schools visited, we observed conditions that were noncompliant with ADA and the District's own procedures as well as existing manuals, guidance, and health and safety standards in California code and county requirements. Classrooms lacked the necessary equipment, including appropriate changing tables, privacy screens, ventilation, and running water.

Several schools used desks as changing tables, one changed students on a mat on the bathroom floor, while one program with two classrooms had no changing tables. Some schools had changing areas in private bathrooms or toilet compartments but lacked the necessary clear floor space or adequate stepping stools. In all cases, these bathrooms lacked basic compliant features or acceptable heights or application of grab bars, toilets, dispensers, or lavatories. Many of these sites also lacked privacy screens, with staff changing students in open classrooms behind pocket charts or nothing at all. At one school, the OIM entered to find students being toileted in the bathroom with the door open, visible to adults and students. A staff member explained that District policy requires two adults to be present, and therefore the door remains open during toileting or changing.

These conditions also result in loss of instructional time. At one school, 18 students use one bathroom with a changing table fixed to a wall, and we observed students waiting on the ground while some students used the bathroom independently and others required changing and/or assistance. This bathroom is used by three classrooms: two from the PALs program, and one from a classroom of students with autism in lower elementary grades. Meanwhile, a large staff restroom is adjacent to this bathroom and could accommodate a compliant bathroom and changing station, alleviating students' loss of instructional time. Concerns over staff safety were also raised: staff members noted the available stepping stool is too low and requires them to lift many students multiple times a day. Staff reported that in one PALs classroom, a total of 12 students are changed, up to three times a day.

The OIM also observed a lack of program access at these sites. The majority lacked essential program accessibility features in bathrooms, common areas such as auditorium and lunch areas, drinking fountains, and vertical access to programs in bungalows or two-story buildings. One school had four two-story buildings with no vertical access (elevator), while another had an inaccessible (stair access)

main entrance. This raises questions regarding the planning and decision making processes for creating educational opportunities that provide continuity in the instructional and special education service delivery programs.

The lack of readiness at these sites also demonstrates the Division of Special Education (DSE) and Facilities Services Division (FSD) officials' limited capacity to ensure program accessibility. It is unclear who was involved in the opening of PALs classes, or the adequacy of their training. This further raises concerns over the process used, which requires site administrators to have a good understanding of program accessibility. The process is described in the Districtwide Transition Plan and in the RAP flowchart. Past OIM reports have questioned the soundness of this process, and as seen, the execution of this approach falls short of the intended result. More telling is the continued failure by school officials whose responsibility is to understand the law, and the importance of program accessibility for ensuring equitable instructional opportunities for SWDs. This is particularly troubling as the objective of placing preschool programs for SWDs in general education settings is to build programs in the least restrictive environment, which establishes an early integrative educational experience with nondisabled peers.

Site administrators shared concerns regarding the lack of planning and program accessibility. Although some site administrators acknowledged having limited knowledge of code or program accessibility, most understood that program accessibility is not limited to only those areas or classrooms that SWD utilize most. Some administrators provided examples of general education students, staff, or members of the public requiring access to programs that are inaccessible on their sites. Although their knowledge of code is introductory, this awareness of program accessibility appears to be higher than those professionals responsible for relocating and creating PALs programs.

Although school administrators were somewhat involved in the planning prior to opening the PALs programs, they do not know what constitutes program accessibility or the RAP program. Only one administrator had knowledge of the RAP program through previous experience but noted that the response was not timely and lacked faith in the process. The OIM informed all administrators of the RAP program and provided a copy of the request form. The OIM will monitor these requests and the District's response.

At three schools, personnel informed the OIM of cases in which they notified the District of concerns and requested assistance with securing play areas, procuring changing tables, and providing changing areas and bathrooms. Two of the three schools received no response, despite assurances, and one school had to complain several times before their needs were addressed.

Conclusions

These findings indicate that there are no uniform procedures for establishing changing stations or the site-selection process for PALs programs.

The variability and inadequacy of changing stations is evidence of a lack of systemic processes that ensure program accessibility, and health and safety conditions. It is also indicative of a lack of support to schools and poor leadership by DSE and FSD professionals. My April 7, 2016, letter noted these individuals' deliberate indifference and negligence for ensuring the health and safety needs and

program accessibility. It is incomprehensible how any educator or FSD professional would find these conditions acceptable.

There are no justifiable reasons these programs do not have the necessary industry-standard equipment in their changing stations. Several sources, including Chapter 9 of the ADA and CBC Title-24, reference requirements for changing and work stations that are used for personal grooming. In addition, there are safety standards in accordance with American National Standards Institute (ANSI A117) and consumer safety performance standards in accordance with American Society for Testing and Materials (ASTM), for changing stations. Excerpts from these sources are included in Attachment B.

The use of nonstandard changing tables, such as old desks and tables, present safety hazards and violate the practices and procedures outlined in the District's *Special Education Paraprofessional Handbook* (2103). The handbook requires that:

When diapering a student, always remember to use universal precautions and personal protective equipment.

This includes a “changing table with a safety belt” (p. 15). The manual also contains guidelines for diapering which include the following:

Place the student on a table with their bottom on a large disposable towel

- A safety belt must be around the student and above the umbilicus (belly button) (p. 16)

The practice of changing students on a (dirty and contaminated) bathroom floor is also inexplicable. Although District standards could not be found on the appropriateness of changing stations, the *Special Education Paraprofessional Handbook* provides information on procedures when toileting and includes guidance for sanitary practices to avoid contamination of clean supplies. It states:

Again, there should always be adult supervision whenever toileting is involved. As with diapering, place all materials in a close, convenient place before starting. Never place clean supplies on the floor (p. 16).

The lack of privacy screens and the practice of changing students in open classrooms or bathrooms show a disregard of students' dignity. Although District policy might require two adults to be present when students are being changed, this does not supersede the basic personal rights of students when toileting or being changed. This practice and disregard violates Title II of the California Code of Regulations and District Policy (BUL- 3302.1), which ensures personal rights of children in early education programs. These violations are subject to citation and should initiate progressive discipline procedures for noncompliance with District policy. An excerpt from Bulletin-3302.1 (June 8, 2007), Department of Social Services Licensing Regulations for Early Education Centers, State Preschools and Los Angeles Universal Preschool Programs, is included below.

Every employee, parent and/or volunteer in the Early Education Centers program must adhere to the following Department of Social Services regulations from Title 22, Sections 101223 and 101323.1 of the California Code of Regulations:

101223 PERSONAL RIGHTS

- (a) Each child shall have personal rights which include, but are not limited to, the following:
- (1) To be accorded dignity in his/her personal relationships with staff and other persons.
 - (2) To be accorded safe, healthful and comfortable accommodations furnishings and equipment to meet his/her needs.
 - (3) To be free from corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule, coercion, threat, mental abuse, or other actions of a punitive nature, including but not limited to: interference with the daily living functions including eating, sleeping, or toileting; or withholding of shelter, clothing, medication or aids to physical functioning.

The lack of program accessibility at sites and available instructional programs into which students can matriculate after completion of preschool shows poor leadership in the District's planning of its instructional and special education service delivery model. This is exacerbated by the historic noncompliance with the ADA and lack of transition plans that could be used to identify schools with better accessible features that are more suitable for the development of special education programs on general education campuses. It is inconceivable how programs could be placed on campuses with inaccessible main entrances, multiple two-story buildings with stair access only, and noncompliant (basic) programs and activities such as bathrooms, common areas, and drinking fountains.

Next Steps

The IM's 2014-2015 Annual Report, issued November 10, 2015, noted (p. 5):

The District does not have a lengthy track record in demonstrating initiative or capacity for making schools accessible. This is a serious concern. The OIM will continue to engage the District and Plaintiffs and monitor accessibility at schools where these new alternate curriculum programs are located under MCD Sections 10 and 17. The IM expects the District to dedicate the necessary resources to aggressively address these students' accessibility, health, and safety needs.

The findings of the 13 schools are consistent with past performance by the District for making programs accessible. This situation highlights the continued shortcomings of the process and management of school officials who oversee the location, implementation, and accessibility of these programs. It also shows that the process described in the Districtwide Transition Plan for identifying program access is not being implemented. Given the large effort to create preschool programs and school experiences for SWD on general education campuses, the conditions of these programs must be improved.

Therefore, I am directing the District to develop short- and long-term plans to evaluate and address these concerns. In the 2014-2105 Annual Report, I noted that the District had shown good capacity to

address program accessibility concerns at six sites “when it engages in a committed and concerted effort to improve accessibility” (p. 5). While I noted that the process implemented contained some shortcomings, it “should serve as a baseline standard for future projects.”

The plan must provide a review of all PALs programs and campuses and include timelines for addressing features including (not limited to) the following:

1. Changing areas and restrooms: This must include a short-term timeline for ensuring all classrooms have the necessary changing tables, privacy screens, and step ladders. It must also include a long-term plan for ensuring adequate space, as well as bathrooms with compliant features such as clear floor space, grab bars, ventilation, privacy, dispensers, and lavatories.
2. Play and physical education areas.
3. Lunchrooms and other common areas including, but not limited to, auditoriums, entrances, and drinking fountains.

The plan must also review any policies or procedures related to the toileting or changing of students and a timeline for establishing a standard that describes the District’s expectation for uniform changing stations. This should also include procedures for the disposal of diapers and waste.

The review must include, for each site, the currently available general and special education programs as well as those to be opened in the near future, that will support students once they leave preschool or the PALs program. It must identify the process for matriculating students at the same school as well as students requiring external placements.

Include all training materials utilized in the professional development of the FSD and DSE staff responsible for program placement, determining program accessibility, and RAP. Provide a plan for the outreach and training of the RAP program and distribution of request forms.

Finally, provide information on the process for selecting sites where classrooms for students with moderate and severe disabilities, including PALs, have been opened or relocated, including the materials used to collect information from site administrators and evaluate the readiness of the sites for ensuring program accessibility.

Although timelines have not been specified, it is my expectation that an acceptable plan contains areas that will be rapidly addressed. The safety, health, and dignity of students cannot wait any longer.

Sincerely,



David Rostetter, Ed.D.
Independent Monitor

C: Sharyn Howell, Michelle King, David Holmquist, Mark Hovatter, Beth Kauffman, Robert Myers, Catherine Blakemore, Veronica Smith