

Feedback on the District's Draft ADA Transition Plan

Modified Consent Decree

OFFICE OF THE INDEPENDENT MONITOR

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EXECUTIVE SUMMARY

On May 17, 2017, the District submitted to the Office of the Independent Monitor (OIM) and the Plaintiffs' Counsel (Parties) a sixth version of its *Draft ADA Transition Plan* (Plan) to comply with the Americans with Disabilities Act (ADA) and Section 504. These laws prohibit the discrimination against individuals with disabilities because the entity's facilities are inaccessible and unusable, denying program access. Public entities are required to ensure that programs, benefits, services, and activities offered, when viewed in their entirety, are accessible for individuals with disabilities. The ADA requires that new facilities, those constructed after January 26, 1992 to be fully compliant and meet all federal and state accessibility codes.

To comply, the District is required to create an ADA transition plan that addresses the needed structural changes to achieve compliance with the ADA's program accessibility requirements. These physical changes were to be completed by January 26, 1995.

The District must also comply with Section 10 and Section 17 of the Modified Consent Decree (MCD). Section 10 requires that any new construction, repairs, and renovations comply with federal and state requirements. Section 17 requires the Independent Monitor (IM) to determine that the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations.

The Plan outlines three primary components to achieve compliance: the implementation of facility improvements, operational solutions, and policies and training. The Plan places a large emphasis on improving program accessibility across the District, with priorities for addressing sites that contain populations of students with mobility, vision, and hearing impairment disabilities, and ensuring equitable access to unique programs across the District.

The Plan is designed to achieve this goal over three phases in a 10-year timeframe. By the end of Phase 1 (2025), the District intends to establish program accessibility with the development of "each local district with approximately three feeder patterns of Category One and Category Two schools, with each pattern consisting of approximately one high school, one to two middle schools, and three to four elementary schools." Phase 1 will address facility improvements at about one-third of all schools over the next eight years. Phase 2 will begin no later than 2025 and address approximately one-third of the schools, with the remaining sites to be addressed in Phase 3.

The proposal defines the three levels of access, with Category 1 schools meeting new construction or renovation standards, Category 2 sites meeting accessible core spaces and features while offering program accessibility for activities, and Category 3 offering a basic level of access to the building.

The District is to be commended for the extraordinary amount of work in collecting high-level survey data at all sites and for its greatly improved approach to addressing its longstanding noncompliance with the ADA and Section 504. Despite concerns with aspects of the approach and adherence to the priorities and intent of the Plan, this effort has resulted in a viable pathway to attain acceptable levels of program access and, most importantly, increased transparency for the Parties and the public about the magnitude of noncompliance across the District.

To determine whether the Plan complies with the ADA and Section 504 requirements and to ensure the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations, the OIM conducted a review and analysis of the Plan and its appendices.

The review raised concerns regarding the Plan's capacity to guide and yield improved program accessibility that ensures equitable access across the District, in both the short (two years) and long term (10 years), as well as the Plan's consistency and adherence to the components of the proposed approach.

The Plan is based on the premise of creating feeder patterns of schools that provide program accessibility. To achieve this, these feeder patterns would contain similar programs for students with disabilities (SWDs) to matriculate to the next level. Based on the limited information provided, it is difficult to conclude whether the Plan achieves this goal.

Several areas of concerns with the selection of sites scheduled for Phases 1 and 2 betterments include the high number of general education sites with programs for students with mobility or vision impairment disabilities, as well as special education centers, that are scheduled for Phase 2. In addition, Phase 2 includes a high number of sites with vertical access problems at multistoried buildings, nonaccessible restrooms, and nonexistent or noncompliant passenger loading zones (PLZs). The extended timelines for these sites only increase the effort and reliance on operational solutions and the Rapid Access Program (RAP) to provide program accessibility.

An examination of the Plan's effectiveness in providing equal opportunities to select schools of choice programs, as well as a review of the scheduling of stand-alone magnet schools, magnet centers, and District-operated and -affiliated charter schools, found inequities in the general availability of these programs across the District for all students, including SWDs. The lack of access is compounded by the lack of priority given to making these schools and programs accessible, particularly for geographic areas with betterments scheduled in Phase 2.

The review also found the following:

- One in five schools lacks an accessible main entrance, with approximately two-thirds of these sites scheduled for betterments during Phase 2.
- One in four sites has vertical access problems, with more than half scheduled for betterments during Phase 2.
- Almost nine out of 10 schools have pervasive problems or noncompliant PLZ conditions.
- Fewer than one-third of schools have accessible restrooms on campus.

These findings are indicative of systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. In addition, many of the District's high-level survey entries lacked information and/or used varying descriptions to report noncompliant conditions, raising concerns regarding the accurate representation and magnitude of problems.

Inconsistencies with the assumptions and approach to improve sites to the highest level of access, or Category 1, also undermine the Plan's viability. The Plan assumes that 128 (Category 1a) of the 163 Category 1 sites, already meet the accessibility standard for new construction and

renovations. The Plan's approach to ensuring that Category 1a schools are accessible must be clarified given that the District's surveys identified the following compliance problems:

- almost all Category 1a schools do not have compliant PLZs,
- more than half do not have compliant restrooms, and
- a large number of accessibility features had no information reported in the summary of high-level surveys.

The Plan acknowledges the magnitude of effort to improve Districtwide compliance with the ADA over the next 10 years, and notes that the implementation of operational solutions, such as the relocation of programs and minor betterments through RAP, are critical components of the Plan. However, the Plan does not provide details or an overview of the changes to improve the RAP program, which is an MCD requirement and a critical component for meeting the IM's substantial compliance framework.

The findings of the high-level surveys brought to light Districtwide systemic noncompliance. These findings make the District's commitment to, and application of, operational solutions a critical aspect in ensuring a system that responds to barriers in a timely manner and that ensures the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations.

The District's proposed Plan requires 10 years to achieve these goals, with the majority of the corrective work to be carried out in the first two phases. Phase 1 will address facility improvements at about one-third of all schools over the next eight years. Phase 2 will begin no later than 2025 and address approximately one-third of the schools, with the remaining sites to be addressed in Phase 3. However, given the magnitude of noncompliant conditions identified by the high-level surveys, as well as the selection of schools of choice (magnets and District-operated or affiliated charters) and schools with programs serving students with mobility or visual impairments that are scheduled in Phase 2 and 3, it is unclear how the District will complete the necessary betterments within two years. The Plan lacks timeframes for the completion of work for Phases 2 and 3, and given the size and scope of the District and barriers to be remediated, it is reasonable to conclude that this effort will require more than two years to address the remaining two-thirds of District sites.

The OIM review also included an analysis of sample surveys at three sites designated for Categories 2 and 3 levels of access to determine if the areas assessed adhered to the corresponding criteria outlined. Overall, the surveys indicate that the areas to be assessed were included. However, the real test for determining the capacity to adhere with the categorization criteria is whether betterments result in sites that ensure program accessibility as defined.

The Plan does not include sufficient information to determine if the eight-point plan to ensure compliance at independent charter schools will meet the general intent of the Plan, which is to ensure equitable access to SWDs across the District, particularly for students and families with mobility, vision, and hearing impairment disabilities. There is no information regarding the expectations for the level of access (Categories 1-3) that each site must meet, timelines for improvements, and/or survey requirements to ensure consistent assessments of as-is conditions.

The District has made several assurances to improve program accessibility that lead to disengagement by the end of 2019. Therefore, efforts that guide disengagement must reflect the Plan's approach over the next two years and represent a viable pathway to an improved capacity that ensures the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations.

Over the next two years, approximately half of the sites scheduled for betterments belong to a cluster feeder pattern. Although these schools are aligned with the goals of the Plan, more than half of the clusters will not have betterments completed until 2022 and beyond. As the Plan is based on the premise that high school complex clusters will serve as the foundation for providing program access, it is unclear why so many of these sites are scheduled for betterments five or more years from now.

Disparities in schools selected for betterments over the next two years—both geographically and for schools of choice—are not indicative of a viable Plan to ensure equitable access, and an approach that looks at programs across the District in its entirety. Considering the District's desire to disengage from the MCD over the next two years, the effectiveness of the procedures for responding to and completing minor renovations (RAP), as well as the short- and long-term financial commitments, will be critical factors in achieving disengagement.

Although the Plan's emphasis on "program accessibility" is substandard to the requirements of full structural accessibility for sites constructed after 1992 federally and 1983 for state standards; nonetheless, the District has failed to meet the "program accessibility" standard despite many opportunities to do so during the renovations and modernization of its older buildings, and even during the new construction program that occurred over 10 years during the MCD. Although the practical realities that come with the size and scope of this District render the "program accessibility" goal adequate, this effort must entail a high level of accountability, which has been absent or limited and led to repeated past failures in improving Districtwide compliance with the ADA and Section 504.

The MCD does not give the IM purview to approve the Plan or its specific approach. However, the MCD does charge the IM with the authority to make determinations that the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations, and that new construction and alterations meet applicable accessibility codes. Therefore, a sound approach and successful implementation of the Plan are critical for disengagement.

Given the concerns over some aspects of the approach, the current scope of noncompliance Districtwide, and the proposed 10-year timeline for achieving compliance with the ADA, the District must address and reprioritize the remediation of certain barriers to ensure the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. It must also include information regarding accountability measures to enforce the Plan's implementation. The report includes a series of next steps that must occur prior to disengagement. The next steps are designed to address and improve systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education

laws and regulations both in the short- and long- term, in order for the IM to recommend disengagement.

INTRODUCTION

On May 17, 2017, the District submitted to the Office of the Independent Monitor (OIM) and Plaintiffs' Counsel (Parties) a sixth version of its *Draft ADA Transition Plan* (Plan) to comply with the Americans with Disabilities Act (ADA) and Section 504. These laws require new construction and sites with major remodeling or renovation to meet the construction standards that are in place at the time and, as such, require them to meet the accessibility standards. New construction is defined by the ADA to include construction and major remodeling after January 26, 1992. Furthermore, California accessibility standards known as the California Building Code (CBC) have been a requirement for school districts since 1983 and require districts to build or modernize sites so that they will be accessible. Therefore, schools that have been built or have had major remodeling or renovation since 1983 should already be accessible as required by the Division of the State Architect (DSA). The District is not required to make all of its existing sites (defined as those built before 1983) that have not been modernized (major remodeling and renovation) accessible, as long as programs and services at these schools are accessible at the school sites meeting the definition of accessible. To comply, the District is required to create an ADA transition plan that addresses the needed structural changes to achieve compliance with the ADA's program accessibility requirements. These physical changes were to be completed by January 26, 1995. The District is also required to develop an ADA Self-Evaluation to review its programs, services, and activities and to describe which ones are discriminatory, as well as to develop the plan to remove the barriers. This section of Title II of the ADA also includes the required public input process.

In addition to the ADA and Section 504 requirements, the District must comply with Section 10 and Section 17 of the Modified Consent Decree (MCD). Section 10 of the MCD requires that any new construction, renovations, or repairs comply with the federal requirements of Section 504 and the ADA. Section 17 requires the Independent Monitor (IM) to determine that the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. In the 2016 IM Annual Report, the expectations for meeting these obligations were described and include:

- Compliance with ADA requirements for transition and self-evaluation plans that identify barriers and a schedule for their removal at all District schools and buildings,
- Designation of an ADA compliance manager, and
- The capacity to conduct consistent and comprehensive surveys.

The District's Plan is guided by several principles and an approach for ensuring compliance. The Plan outlines three primary components as stated below (p. 5):

- (1) *Facility improvements: Assigning each school to a category reflecting one of three levels of access, conducting detailed facility and program surveys, identifying betterments to be made at each facility, and making those improvements;*
- (2) *Operational solutions: Effectively reassigning programs and activities to accessible locations when necessary, or quickly making necessary changes to inaccessible facilities needed for individuals; and*
- (3) *Policies and training: implementing supportive policies, procedures and training.*

The District also asserts a decision-making process for ensuring program access at the end of Phase 1 (p. 6).

The District plans to ensure program access at the end of Phase One, with schools in each category distributed geographically throughout the District and with the ability to implement operational solutions to access when necessary, based on policies and procedures in place. Because not all facilities and spaces are required to be accessible, in some instances the District will ensure that individual programs and activities are made accessible by reassigning them to accessible locations, so that all students can access programs for which they are eligible – whether those programs are in their geographic area of part of the school choice program. Several policies and procedures to support those operational methods will be put in place as a critical piece of this commitment; and teachers, administrators, facilities staff, and others will undergo training about the policies.

The District’s proposed approach to program access sets specific goals to be achieved within the first eight years, or by 2025. It intends to identify 163 Category 1 schools and make physical changes to 235 of the 742 District campuses that will “provide an adequate number of schools in each Board District to ensure program accessibility through facility access and/or operational means” (p. 32). The Plan asserts that by the end of Phase 1 (2025), each local District will have “approximately three feeder patterns of Category One and Category Two schools, with each pattern consisting of approximately one high school, one to two middle schools, and three to four elementary schools” (p. 32).

The proposal defines the three levels of access as (p. 5):

Category One: These are “key” schools and will have the highest level of access, generally in accordance with physical accessibility standards.¹

Category Two: These will be “program-accessible” schools. The core spaces and features at these schools would be made accessible; in addition, program accessibility would be provided for activities at the school.

Category Three: These schools will have “core access,” which means that core spaces (certain common spaces) would be made accessible, to ensure a basic level of access to building. These include, for example, parking, the main entrance, assembly areas, and some restrooms.

The District’s proposed Plan requires 10 years to achieve these goals, with the majority of the corrective work to be carried out in the first two phases. The goals for each phase are as follows:

Phase One (2018 to 2025) – Modifications at about one third of the facilities (235) will be carried out.

Phase Two (beginning no later than 2025) – Modifications at the remaining schools will be planned and completed. The District’s goal is that after Phase Two, 22% of all of its

¹ Category One schools consist of two subcategories. Category 1a comprises schools that are fully accessible and meet new construction standards or are altered to achieve full compliance with the new construction standards. Category 1b comprises schools that will have “high accessibility” and have been altered to meet alteration standards, with some limited exceptions.

schools will meet the criteria of Category One, 50% will meet the criteria for Category Two, and 10.2% will meet the criteria of Category Three.

Phase Three – Improvements will continue until approximately 90-95% of all schools are brought up to the criteria of Category One or Two.

The Plan places a large emphasis on improving program accessibility across the District. Title II of the ADA defines program accessibility as (28 CFR 35.149-35.150):

*A public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to **all existing facilities** of a public entity. Public entities, however, are not necessarily required to make each of their existing facilities accessible.*

This feedback is intended to express concerns in the Plan's capacity to comply with applicable laws and to address systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. In addition, it raises concerns regarding the Plan's capacity to guide and yield improved program accessibility that ensures equitable access across the District, in both the short (two years) and long term (10 years).

It also raises concerns and inquiries on the Plan's consistency and adherence to the components of the proposed approach. The MCD does not give the IM purview to approve the Plan or its specific approach. However, the MCD does charge the IM with the authority to make determinations related to the District's capacity to ensure no systemic program accessibility problems prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations, and that new construction and alterations meet applicable accessibility codes. Therefore, a sound approach and successful implementation of the Plan is critical for disengagement.

METHODS AND FINDINGS

To determine whether the Plan complies with the ADA and Section 504 requirements and addresses systemic problems that would prevent substantial noncompliance, the OIM conducted a review and analysis of the Plan and its appendices. Specific feedback is provided on the following appendices: Appendix F: Summary Assessment of School Locations and Programs (Feeder Schools and Clusters), Appendix G²: Summary Assessment of High Level Surveys, and Appendix I: Schedule for Phases One and Two of Facility Accessibility Improvements.

The review also included three sample sites of schools identified as Categories 2 and 3 to determine if they adhered to the corresponding category criteria.

Appendix F: Summary Assessment of School Locations and Programs

The Plan's approach to achieve program accessibility requires that each local district have approximately three feeder patterns or clusters of approximately one high school, one to two middle schools, and three to four elementary schools, each meeting the Category 1 or 2 level of access criteria by the end of Phase 1, or 2025.

A review of Appendix F was conducted to determine if the Plan could achieve this goal within the specified timeframe. This appendix lists schools by local district feeder high school complexes. It does not contain information regarding the corresponding dates for accessibility improvements or the assigned designated level of access category. To conduct this analysis, the OIM requested clarification on the list of schools included to ensure accurate feedback, particularly because the appendix lacked information on the schedule of betterments and corresponding categories. The Facilities Division Access Compliance Manager directed the OIM to cross-reference Appendix G, which includes schedule and category information. Additional information was provided in an email³ from the District regarding the composition of the schools identified as part of the clusters or feeder patterns for each local district, noting:

Appendix F does not include any schools that are in Phase 2 and/or Phase 3....

...but all schools listed on Appendix F are either Category 1a, 1b, or Category 2.

The OIM database collected information on the schedule for improvements and corresponding level of access category for all schools. Schools belonging to clusters in accordance to Appendix F were notated. To gauge whether this list adhered to the defined criteria for inclusion of these schools, a master list was created.

A total of 190 schools are part of the clusters across six local districts (Northwest, Northeast, West, Central, East, and South) and across 29 high school complexes⁴. Table 1 shows that feeder clusters are disproportionate for two of the six complexes, with higher feeder patterns noted in NW, NE, East, and South. Local districts Central and West are assigned feeder patterns for two high school complexes. Four clusters do not appear to meet the criteria because the middle or high school assigned is a Category 3 school or schools are scheduled for betterments in Phase 2.

² The Plan's Table of Contents incorrectly identifies Appendix G - Members of Public Consulted.

³ Email communication from Facilities Access Compliance Manager to OIM dated July 13, 2017.

⁴ Canoga Park and Chatsworth High School complexes in the NW contain six identical schools.

For example, the Lincoln High School complex in the East is made up of five schools with three schools slated for a Category 3 level of access, with one of those schools scheduled for Phase 2.

The inclusion of schools that do not meet the criteria for Categories 1a, 1b, or 2 sites and/or are not listed on the schedule or slated for betterments in Phase 2 raises concerns regarding the Plan’s oversight and quality controls.

Table 1. Cluster/Feeder Patterns to Achieve Program Accessibility for Phase 1

Local District	# of High School Complex Clusters	# of Schools	# of Schools Not Meeting Criteria	# of Clusters Not Meeting Criteria
Northwest	7	43	2 – Not in Phase 1 or 2 6 – Repeated in Two Clusters	None
Northeast	6	34	1 – Phase 2 1 – Not in Phase 1 or 2	1
Central	2	19	1 – Category 3	None
West	2	17	None	None
East	6	40	7 – Category 3 1 – Phase 2	3
South	6	40	None	None
TOTAL	29	193	13	4

The timelines for the clusters’ readiness is of concern. To determine when potential clusters would be available for students with disabilities (SWDs) to matriculate between school levels, such as from elementary to middle school, and then to high school, the OIM analyzed dates for the scheduled completion of betterments. This analysis included the four clusters that do not appear to meet the criteria due to schools being selected for Category 3 level of access, scheduled for Phase 2 completion, or not appearing on the schedule with a category designation or completion date. Dates for the readiness of clusters were based on the schedules for the middle or high school, particularly because many of the feeder patterns contained only one option. This analysis does not include program information at individual sites; it assumes that the selection of these sites was purposeful and based on matriculation patterns of specific programs.

Two clusters composed of newer constructed schools (Category 1a) potentially⁵ provide program accessibility for students to matriculate across the elementary through high school levels at this current time. Two clusters are anticipated to be ready by 2019, and two additional clusters in 2020 (Table 2). The remaining clusters will not be available until 2021, with more than half (61%) coming online after 2022.

⁵ Based on the District’s assurances that Category 1a schools currently meet such criteria. This assertion has not been verified by the OIM, and/or evidence has not been provided by the District.

Table 2. Timeline for the Readiness of Clusters by Local District and Year

Local District	2017	2018	2019	2020	2021	2022	2023	2024	TOTAL
Northwest	0	0	0	2	0	3	0	2	7
Northeast	1	0	0	0	0	3	2	0	6
Central	1	0	0	0	0	1	0	0	2
West	0	0	0	0	1	1	0	0	2
East	0	0	1	0	0	3	0	2	6
South	0	0	1	0	1	2	2	0	6
TOTAL	2	0	2	2	2	13	4	4	29

Summary

The Plan is based on the premise that creating feeder patterns of schools will provide program accessibility. To achieve this, these feeder patterns would contain similar programs for SWDs to matriculate to the next level. Based on the limited information provided in Appendix F, it is difficult to conclude whether the Plan achieves this goal. Furthermore, it is difficult to determine if the decision-making processes and factors or priorities considered for the selection of schools for the cluster feeder patterns were adhered to in accordance with the Plan. Lastly, the limited information on the factors considered for the selection of these schools limits the ability for meaningful public input.

Appendix I: Schedule for Phases One and Two of Facility Accessibility Improvements

The *Draft ADA Transition Plan* proposes a 10-year, three-phase plan to bring all District schools up to at least the minimum level of core access compliance (Category 3). The Plan aims to address about one-third (235 of 742) of the District’s schools by 2025. This includes 180 Category 2 sites, 30 Category 3 sites, and 35 Category 1b sites⁶. It also contends that 128 newly constructed schools or sites that have had significant alterations or additions already meet the requirements of a Category 1 school.

Phase 2 is expected to begin no later than 2025, with 190 schools to be brought to a Category 2 standard, and 46 schools brought to a Category 3 standard⁷. Phase 3 will address the remaining 134 campuses, with 64 being brought to a Category 2 standard, and 35 of the remaining 70 sites will be improved to a Category 3 to the maximum extent feasible. It is unclear how the remaining 35 schools will be brought to compliance.

Neither Appendix I: Schedule for Phases One and Two of Facility Accessibility Improvements nor the Plan includes the names of campuses that are slated for Phase 3. This limits the ability to analyze whether the Plan will ensure that the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of

⁶ The Plan includes several references noting 235 sites will have betterments in Phase 1; however, the total number appears to be 245 schools.

⁷ Source, *Phases by Category, Including Comparison to Goal of September 2016*, May 17, 2017

federal special education laws and regulations. For example, the 134 sites slated for Category 3 could be disproportionately distributed geographically, or by school levels and/or programs.

The Plan also requires other activities to be accomplished within a two-year timeframe, to coincide with the potential goal for disengagement and expectations set forth by the IM, which require betterments at 75 schools and comprehensive surveys at 150 schools. In September 2016, the District committed to meeting this expectation by August 2018. This Plan revised the District's commitment for betterments from 75 to 35 schools by August 31, 2018 (p. 47). The Plan is based on a schedule for improved accessibility based on two overarching goals guiding the effort. The first is to ensure equal access to all students, and the second ensures equal access for parents, visitors, and community members (p. 25). It cites best practice specifically to transition planning, which states (p. 12):

The best practice is to carefully define the terms, principles, and approach that will be used to create a transition plan, including how sites or groups of sites will be ranked in priority for remediation after surveys are completed (if they have not been completed as part of a self-evaluation). The Schedule for making physical changes is then to be based on those priorities and set out in the plan. Courts and agencies will often defer to public entities if they follow such an organized approach, with accountability built in.

As part of the District's self-evaluation, initial assessments of physical accessibility were conducted at all schools. These assessments are considered "high level" or "broad-brush" surveys intended to examine essential features of sites, such as main entrances, restrooms, vertical access at multistoried buildings, and passenger loading zones. The resulting information served as the baseline used to select schools for "tentative assignments to the three categories of accessibility" (p. 26). The information gathered from these "high level" surveys are included in Appendix B: Initial Facility Assessment Survey Form and reviewed in detail in the next section.

The Plan describes 18 factors for determining category designations, with the primary three as follows (pp. 30-31):

1. *Known (or anticipated/matriculating) population of students who have disabilities or parents or guardians with disabilities (including those related to mobility, hearing or vision)*
2. *Matriculation options for students to attend pre-kindergarten through elementary, middle, and high school at nearby locations, starting with pre-kindergarten as the highest priority*
3. *Equal opportunity to choose from a wide range of options*
 - a. *Magnet schools and centers*
 - b. *Zone of Choice*
 - c. *District Charter schools*
 - d. *Offering-specific schools*
 - e. *Same-sex schools*
 - f. *Course offerings (language, specialized programs, etc.)*
 - g. *Type of instructional approach*

The Plan notes that the selection for campuses planned for betterments in Phases 1 and 2 is determined by a priority that is given “to school sites first in order to address direct student program accessibility needs” (p. 47).

A review of Appendix I, which addresses the schedule for accessibility improvements for schools selected for Phases 1 and 2, was conducted to determine whether this effort will yield program accessibility that ensures equitable access for SWDs and other individuals with disabilities across the District. As noted previously, the Plan aims to establish two to three cluster feeder patterns per local district, which include at least one high and middle school, and at least two to three elementary schools.

The Plan asserts that the findings from the “high level” surveys would guide the effort to categorize and schedule schools; however, no information was provided regarding the reasons for such selections.

Similarities were noted in the schools selected for betterments through August 31, 2018, and previous lists provided to the OIM. These similarities raised concern over the adherence to the intent of the high-level surveys and premise that information gathered from this effort would guide the designation of categories and schedule based on the cluster feeder patterns and ensure equitable access across the District.

A comparison of the 75 schools scheduled for improvements through August 2019, and lists provided in December 2014 (Transition Plan Priority List) and August and October 2015 (Facilities Master list), found that 39 (52.0%) of the schools scheduled appeared on all three lists. An additional three sites or 42 (56.0%) of those scheduled appeared on the list provided in December 2014. This means that a total of 42 of the 75 schools identified for program accessibility improvements in this Plan date back to 2014.

It is also unclear why many of the schools that the District has been working on for several years continue to be on the list. Some of these sites have received multiple renovations, which should have resulted in improved accessibility, and should have elevated these schools’ level of access to Category 1. This includes the nine sites that had several renovations during the integration efforts associated with Outcome 7 and the 20 sites that were reviewed and submitted for barrier removal efforts in 2015.

Other areas of concern are the exclusion and removal of the special education centers that were previously included in the three previous lists provided. The majority of these sites have now been scheduled for Phase 2. Furthermore, all 16 Division of Adult and Career Education (DACE) sites are scheduled for betterments in Phase 2 (these schools are occupational skills centers and adult schools).

Summary

The analysis of Appendix I: Schedule for Phases One and Two of Facility Accessibility Improvements found several areas of concerns regarding the decision-making processes used in the selection of sites. The lack of names of campuses slated for Phase 3 limits the ability to examine the Plan’s capacity to prevent systemic substantial noncompliance, based on the inability to review the geographic distribution or programs at these sites.

The schedule, particularly over the next two years, contained more than half of the same sites that had been identified for program accessibility improvements dating back to 2014. It also contained sites that have been already undergoing barrier removal projects. It is also unclear why specific schools, particularly the majority of special education centers and DACE sites, have been scheduled for improvements in Phase 2 or after 2025.

Although the Plan outlines a decision-making process that uses findings from the “high level” surveys to categorize and schedule schools, no information was provided that would indicate these considerations were used for scheduling. Additional analysis and concerns regarding the schedule for betterments is included throughout this report.

Equal Access to Schools of Choice - Magnet Schools, Magnet Centers, and District-Operated and -Affiliated Charter Schools

To examine the Plan’s effectiveness in providing equal opportunities to select schools of choice programs⁸, the OIM conducted a review of the scheduling of stand-alone magnet schools, magnet centers, and district-operated and -affiliated charter schools.

Local districts West (n=15, 35.7%) and Central (n=11, 26.2%) have considerably more opportunities⁹ for SWDs to attend stand-alone magnet schools, compared to students in other local districts (Table 3). Local districts have program access improvements at the majority of these schools of choice addressed in Phase 1. The one exception is schools in the local district West, with the majority of stand-alone magnets (13 of the 15, 86.7%) scheduled for betterments in Phase 2 or after 2025, limiting the availability for accessible sites at these schools of choice for SWDs. Similarly, the majority of magnet centers in local districts Northeast (n=11, 91.7%) and Northwest (n=10, 71.4%) will disproportionately be unavailable until Phase 2.

District-operated and -affiliated charter schools are not available in local districts South and East, while local district Central has one school. This is not limited to SWDs and shows a general lack of inequity Districtwide for students and families to attend this type of school. Of the 55 District-operated and -affiliated sites, all but one are located in Districts within communities with higher socioeconomic status. Eight out of 10 (n=44, 80%) District-operated or -affiliated charters are in the local districts NW (n=35, 63.6%), NE (n=9, 16.4), and West (n=10, 18.1%).

⁸ Some magnet schools and centers are located on magnet stand-alone campuses, and/or District-operated or -affiliated charter schools. For the purpose of this analysis, each is counted in each group that qualifies.

⁹ Magnet school enrollment is based on a lottery point system selection process and is not limited by proximity to a student’s residence. However, some SWDs require transportation services and/or have disabilities that would prevent them from attending schools far away.

Table 3. Magnet Schools, Magnet Centers, and Charter Schools by Local Districts and Phases

	Magnet Stand Alone		Magnet Centers		Charter District-Operated and -Affiliated	
	n	%	n	%	n	%
East						
Phase 1	2	66.7	5	27.8	0	0.0
1a ¹⁰	0	0.0	4	22.2	0	0.0
Phase 2	1	33.3	9	50.0	0	0.0
Total	3	100.0	18	100.0	0	0.0
West						
Phase 1	2	13.3	9	37.5	4	40.0
1a	0	0.0	1	4.2	0	0.0
Phase 2	12	80.0	14	58.3	6	60.0
Not Phase 1 or 2	1	6.7	0	0.0	0	0.0
Total	15	100.0	24	100.0	10	100.0
Central						
Phase 1	3	27.3	10	37.0	0	0.0
1a	2	18.2	4	14.8	1	100.0
Phase 2	6	54.5	13	48.1	0	0.0
Total	11	100.0	27	100.0	1	100.0
South						
Phase 1	3	75.0	20	54.1	0	0.0
1a	0	0.0	4	10.8	0	0.0
Phase 2	1	25.0	13	35.1	0	0.0
Total	4	100.0	37	100.0	0	0.0
Northeast						
Phase 1	2	66.7	0	0.0	3	33.3
1a	1	33.3	1	8.3	5	55.6
Phase 2	0	0.0	11	91.7	0	0.0
Not phase 1 or 2	0	0.0	0	0.0	1	11.1
Total	3	100.0	12	100.0	9	100.0
Northwest						
Phase 1	4	66.7	1	7.1	16	45.7
1a	0	0.0	3	21.4	1	2.9
Phase 2	2	33.3	10	71.4	18	51.4
Total	6	100.0	14	100.0	35	100.0
TOTAL	42	100.0	132	100.0	55	100

¹⁰ Category 1a sites are scheduled within Phase 1 with no specific dates included for the completion of betterments.

Summary

Inequities exist between local districts in the availability of District-operated and -affiliated charter schools, with almost all schools located in the San Fernando Valley (Northwest and Northeast) and Westside (West). Although this problem extends beyond SWDs, it is indicative of inequitable policies and decision making by school officials that results in the deprivation of opportunities for select communities regarding schools of choice.

The availability of magnet schools and magnet centers also shows inequitable geographic distributions. The lack of access is compounded by the lack of priorities given to making these schools and programs accessible, particularly for those areas where a higher percentage of betterments are slated for Phase 2.

These findings are indicative of a Plan that will not ensure equitable access for SWDs at schools of choice, and that prevents substantial noncompliance with program accessibility.

Special Programs for Students with Mobility and Visual Impairments

As mentioned earlier, the selection for campuses in Phases 1 and 2 is determined by a priority that is given “to school sites first in order to address direct student program accessibility needs” (p. 47). To examine the Plan’s adherence to this principle, select special education programs were identified at cluster feeder pattern schools and compared to those not in clusters. These programs were also selected to coincide with the Plan’s intent to “ensure access for students with mobility, hearing, speech, and vision impairment disabilities, as well as for parents and members of the public” (p. 1). The review examined programs that are designed for students with mobility and vision impairment disabilities. This included: MD – Multiple Disabilities, MDO – Multiple Disabilities Orthopedic, VI – Visual Impairments, and PALS – Preschool for All Learners.

Table 4 shows the program type at each school¹¹ and the corresponding schedule for betterments and level of access (category type) for cluster schools. Eighty-six programs were identified at 76 cluster feeder pattern schools. Of these, the majority (n=82, 95.3%) will be addressed in Phase 1, with four sites scheduled for improvements in Phase 2. The majority (72.1%) of these programs will be on sites with Category 2 and 3 level access.

Table 4. Select Special Education Programs in Clusters, by Categories and Phases

	Programs Cluster		Phase 1		Phase 2		Cat 1a	Cat 1b	Cat 2	Cat 3
	N	%	n	%	n	%	n	n	n	n
MD	27	31.4	25	30.5	2	50.0	3	3	20	1
MDO	6	6.9	5	6.1	1	25.0	1	1	4	0
VI	4	4.7	4	4.9	0	0.0	0	1	3	0
PALS	49	57.0	48	58.5	1	25.0	15	0	30	4
TOTAL	86	100.0	82	95.3	4	4.7	19	5	57	5

¹¹ Some schools host more than one program. In addition, multiple classes of the same program might be available at each site. The data reflects at least one classroom for each program.

To better understand the prioritization of schools selected for clusters, the same select special education programs were identified at schools not in a cluster feeder pattern. A total of 194 programs were found at 180 sites (Table 5). Of these, approximately two-thirds (n=121, 62.4%) will be addressed in Phase 2, with the majority (n=145, 88.1%) of these programs located in Category 2 and 3 sites.

Table 5. Select Special Education Programs Not in Clusters, by Categories and Phases

	Programs Not in Clusters		Phase 1		Phase 2		Cat 1a	Cat 1b	Cat 2	Cat 3
	N	%	n	%	n	%	n	n	n	n
MD	23	11.9	17	23.3	6	5.0	7	1	13	2
MDO	5	2.6	0	0.0	5	4.1	0	0	4	1
VI	6	3.0	4	5.5	2	1.7	0	0	5	1
PALS	160	82.5	52	71.2	108	89.2	14	1	99	46
TOTAL	194	100.0	73	37.6	121	62.4	21	2	121	50

Table 6 further breaks down the number of programs and sites in cluster feeder patterns, and schools not in clusters, by phases. Of the 256 sites with 280 select programs, approximately one-half (n=138, 53.9%) will be addressed in Phase 1. As noted above, select programs at 63.3% (n=114) of the sites not in cluster feeder programs will be addressed in Phase 2, or after 2025.

Table 6. Programs and Schools In and Out of Clusters, by Phases

	Phase 1		Phase 2		TOTAL	
	N	%	n	%	n	%
Clusters						
Programs	82	95.2	4	4.8	86	100.0
Schools	72	94.7	4	5.3	76	100.0
Not in Clusters	N	%	n	%	n	%
Programs	73	37.6	121	62.4	194	100.0
Schools	66	36.7	114	63.3	180	100.0

Summary

The review aimed to gauge whether the Plan addresses programs in their entirety, to ensure equitable access for students with mobility and vision impairment disabilities. As noted earlier, the Plan describes 18 factors for determining category designations, with the first specifically addressing the following (p. 30):

1. *Known (or anticipated/matriculating) population of students who have disabilities or parents or guardians with disabilities (including those related to mobility, hearing or vision)*

Although the majority of sites with the select programs at cluster feeder pattern sites will be addressed in Phase 1, the high number of programs at sites not to be addressed until 2025 and beyond is of serious concern. It is unknown how these sites did not garner a higher priority during the development of the Plan, given the known needs of these particular disability types. The lack of clarity in this decision making is exacerbated given that a majority of the programs (n=233, 83.2%) at these sites are slated for improvements to an access level of Category 2 or 3. This does not appear to be in accordance with the primary factor for determining category designations and will increase reliance on operational solutions and Rapid Access Program (RAP) to provide program access.

These findings are indicative of a Plan that does not ensure equitable access to these populations of students and will not satisfactorily yield systemic improvements that will ensure the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations.

Examination of Efforts to Guide Disengagement over the Next Two Years

Given the District’s goal for disengagement within the next two years, a review of sites selected over this timeframe was conducted to see how the selection of these sites would contribute to achieving the goals of the Plan. This includes establishing matriculation clusters, addressing schools with higher priorities and unique programs, and ensuring geographic equity.

Over the next two years, the District must show efforts that establish a pattern that will improve program access Districtwide and that will improve equitable access for SWDs and other individuals with disabilities. Schools selected for improvements over the next two years are disproportionately selected when compared by local district, particularly in the South (34.7%) and Central (25.3%) (Table 7). Of these, 43 (22%) of the 193 of schools selected for cluster feeder programs are slated for improvements within this timeframe.

Table 7. Selection of Schools Scheduled for Betterments during 2018 and 2019

Local District	2018	2019	TOTAL	
			n	%
Northwest	1	3	4	5.3
Northeast	5	0	5	6.7
Central	6	13	19	25.3
West	8	4	12	16.0
East	4	6	10	13.3
South	18	8	26	34.7
TOTAL	37	38	75	100.0

Table 8 shows the number of sites selected for betterments during the 2018 and 2019 school year, for schools of choice. This analysis represents only stand-alone magnets and centers, and District-operated and -affiliated charter schools, as well as the sites included in the cluster feeder patterns during this timeframe. One charter and seven magnets sites are scheduled for betterments during 2018, with an additional nine magnets slated for 2019. The majority of betterments of cluster sites during this timeframe will occur in local districts South (32.5%), East (22.5%), and Northwest (20.0%). Local districts East and West have the lowest commitments for betterments within their respective clusters.

Table 8. Selection of Schools of Choice and Clusters Scheduled for Betterments during 2018 and 2019

Local District	2018			2019			Total Cluster	
	Magnet	Charters	Cluster	Magnet	Charter	Cluster	n	%
Northwest	0	1	4	2	0	4	8	20.0
Northeast	1	0	5	0	0	0	5	12.5
Central	0	0	0	0	0	1	1	2.5
West	0	0	0	2	0	3	3	7.5
East	4	0	4	1	0	5	9	22.5
South	2	0	5	4	0	8	13	32.5
TOTAL	7	1	18	9	0	21	40	100.0

Summary

The District has made several assurances to improve program accessibility that would lead to disengagement by the end of 2019. To determine if the Plan presents a viable framework that will guide the District toward compliance as intended within 10 years, the efforts that guide disengagement must reflect this approach over the next two years. The IM determines disengagement based on credible action during this timeframe and a viable plan that will lead to an improved capacity that prevents substantial noncompliance with program accessibility.

The disparities for schools selected for betterments over the next two years—both geographically and for schools of choice—are not indicative of a viable plan that will ensure the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. In addition, half of the schools selected for improvements in this timeframe were previously selected for betterments dating back to 2014. This raises questions regarding the validity of the Plan’s intent to ensure equitable access, and an approach that looks at programs across the District in its entirety.

Appendix G: Summary Assessment of High Level Surveys

The review aimed to elucidate the decision-making processes in accordance with the Plan regarding factors to be considered for category and schedule selection. The “high level” or broad

brush surveys aimed to identify a general level of access for common features as described below (p. 26):

From November 2016 through January 2017, the District conducted initial assessments of each of its schools. There were ‘high level’ or broad-brush surveys intended to provide an overview of features of each campus, such as –

- 1. Whether there is at least one route from site arrival points (parking, passenger loading zones, public sidewalks and public transportation stops) that does not require the use of stairs*
- 2. Whether, if parking is provided for the public, an adequate number of accessible spaces are provided.*
- 3. Whether the main entrance is accessible.*
- 4. Whether there are elevators or platform lifts to all multi-storied buildings where either public access is needed, or where there are programs, services, and activities offered by the school.*
- 5. Whether there is an accessible route to each type of sport activity, each swimming pool, and each play area; and an accessible route to at least one of each type of ground play component.*

This information was to serve as a baseline during the selection of schools for “tentative assignments” to the three proposed categories of accessibility. A primary basis of the Plan is that it will result in a core level of access for all District schools within 10 years.

During its review of *Summary Assessment of High Level Surveys*, the OIM created a database to identify compliance problems at schools in the following areas: main entrance, passenger loading zones (PLZs), restrooms, and vertical access at multistoried buildings. These features are consistent with those required to be surveyed as outlined in Appendix B: Initial Facility Assessment Survey Form.

Category type, cluster and feeder program inclusion, and select program information was also included. Information was collected on four different assessor groups (AGs), which was determined by schools grouped in alphabetical and reporting order¹², geographic location of sites, and inconsistencies in the surveys and reporting of data.

The OIM review was based on the assumption that a viable plan that aims to improve program accessibility requires the District to consider programs in their entirety and prioritize efforts for schools that contain unique programs and the highest need to remediate noncompliance. In addition, the identification of nonaccessible or noncompliant features would trigger operational solutions or remediation through the RAP program immediately or in the near future. The review also aimed to identify whether systemic problems that prevent substantial noncompliance exist.

¹² AG 1 – 10th St. ES through Yorkdale ES (Local Districts East and Central); AG 2 – 107th St. ES through Youth Opportunities Alternative HS (Local District South); AG 3 – Aggeler HS through Zoo Magnet HS (Local Districts Northeast and Northwest); AG 4 – Animo Wheatley Charter MS through Orville Wright MS (Local Districts East, Central, and West)

Accessible Main Entrance

An accessible main entrance from the public right of way is required to ensure that SWDs and other individuals with disabilities can enter the site. As noted earlier, the District's Plan aims to have all schools offer a core level of access, with the main entrance being a critical component. Category 3 sets the baseline for accessibility for the District, and requires an accessible main entrance. The Plan also requires features to be provided when an accessible entrance is secured and states (pp. 57-58):

If an accessible entrance is a secured entry and is therefore not open for pedestrians to freely enter the campus, provide a Two-way communication and Camera system at that entrance, with active monitoring at all times when an entrance to the building is open.

During the review, the OIM sought clarification regarding accessible main entrances and the availability of alternate entrances for instances when factors, such as stair access only, prevent access. The Access Compliance Manager stated that although information on the availability of an alternate entrance is included, one is not required¹³. Although an alternate accessible entrance is not required, DSA and Title 24 of the CBC (11B-206.2.1) do require that:

At least one accessible route shall be provided within the site from accessible parking and accessible passenger loading zones; public street and sidewalks, and public transportation stops to the accessible building or facility entrance they serve. Where more than one route is provided, all routes must be accessible.

For the purpose of the review, a main entrance was considered accessible if there was any reference related to the availability of a ramp as a method for obtaining access to the school via the main entrance¹⁴. For many entries, information regarding other accessible features of the main entrance was not mentioned. Entries with any reference to noncompliant conditions were coded as nonaccessible. Some entries lacked any information and were coded as Not Mentioned (NM); therefore, it cannot be concluded that these sites have fully accessible entrances.

Main entrances were reviewed to determine if noncompliance was a systemic problem that prevents substantial compliance with the program accessibility requirements of federal special education laws and regulations. Of the 731 schools reviewed, three-quarters have an accessible entrance not impeded by stair access only barriers. Again, due to the vagueness of many of the descriptions, it is unknown if other features or elements of the main entrances were noncompliant. Thirty-five schools had no mention of the main entrance's condition, while one in five (n=150, 20.5%) schools had a nonaccessible entrance (Table 9).

Table 9. Accessible Main Entrance

Accessible Main Entrance	Yes	No	Not Mentioned	TOTAL
n	546	150	35	731
%	74.7	20.5	4.8	100.0

¹³ Email communication from Facilities Access Compliance Manager to OIM dated July 13, 2017.

¹⁴ The conditions of the ramp are not known, and might have noncompliant conditions such as slopes.

Of those with nonaccessible main entrances, 129 (86%) were identified as having stair access only barriers. Approximately half (n=60, 46.5%) had an alternate route provided, with another 20 (15.5%) sites having an alternate route available but limited due to a locked gate (Table 10). Eighteen (13.9%) sites were noted to not have an alternate entrance provided or available, 17 (13.2%) did not include a mention of an alternate entrance, and 14 (10.8%) could not be determined based on the description provided.

The majority of the alternate entrances available did not have a two-way communication system (n=74, 57.4%), with only eight (6.2%) sites having such system. No information was provided for about one-third of sites with stair access only barriers (n=45, 34.9%).

Table 10. Accessibility Features at Nonaccessible Main Entrances

Stair Access Only	Yes	No	Not Mentioned				TOTAL
n	129	0	21				150
%	86		14				100.0
Alternate Route	Yes	No	Not Mentioned	Yes - Locked	Not Provided	Not Sure	
n	60	7	17	20	11	14	129
%	46.5	5.4	13.2	15.5	8.5	10.8	100.0
Two-Way Communication	Yes	No	Not Mentioned	Not Provided			
n	8	3	45	74			130
%	6.2	2.3	34.9	57.4			100.0

Differences in how AGs identified and reported accessible entrances were noted. AGs 1 and 2 found the majority of sites with nonaccessible main entrances (79.9% combined) and those impacted by stair access only barriers, compared to Groups 2 and 3 (20.1%) (Table 11). Differences were also noted in the language used to report conditions of the main entrance. Some descriptors reported by Group 4 did not include specific information on stair access only barriers, and were coded as nonaccessible entrances. The following excerpts demonstrate the inconsistent descriptions used by each group.

Assessor Group 1

Main Entrance to the campus is provided via stair access only entrance. Alternative entrance although no two way communication, with an Aiphone [sic] entry system provided.

Assessor Group 2

Main entrance from the PROW (public right of way) is accessible at ground level from sidewalk via ramp and stair at...

Assessor Group 3

There are no major barriers which prevent access, such as stair access only, to the main entrance of the facility from the public right of way...

Assessor Group 4

The main entrance is not located on an accessible route.

Table 11. Identification of Nonaccessible Main Entrance Features by Assessor Group

	AG 1	AG 2	AG 3	AG 4	TOTAL
Nonaccessible Main Entrance					
n	60	14	16	59	149
%	40.3	9.4	10.7	39.6	100.0
Stair Access Only					
n	60	12	15	42	129
%	46.5	9.3	11.6	32.6	100.0
Alternate Route					
n	60	12	15	42	129
%	46.5	9.3	11.6	32.6	100.0
Two-Way Communication					
n	60	12	15	42	129
%	46.5	9.3	11.6	32.6	100.0

For schools with a nonaccessible entrance, AG 4 had the highest rates of missing information for the features of an accessible main entrance (Table 12).

Table 12. Main Entrance Data Not Mentioned (NM) by Assessor Group

	AG 1	AG 2	AG 3	AG 4	TOTAL
Nonaccessible Main Entrance					
n	1	3	6	22	32
%	3.1	9.4	18.8	68.8	100.0
Stair Access Only					
n	0	2	1	18	21
%	0.0	9.5	4.8	85.7	100.0
Alternate Route					
n	0	1	4	12	17
%	0.0	5.9	23.5	70.6	100.0
Two-Way Communication					
n	8	2	13	22	45
%	17.8	4.4	28.9	48.9	100.0

Of the 150 sites with a nonaccessible entrance, 30 schools belonged to the cluster feeder patterns identified in Appendix I (Table 13). The majority (n=28, 93.3%) of these sites will be addressed during Phase 1, with the remaining two sites being scheduled for Phase 2. Almost two-thirds (n=90, 60%) of the schools with a nonaccessible entrance will not be addressed until Phase 2. Three sites identified as Category 1a, or those that were newly constructed, have nonaccessible entrances.

Table 13. Nonaccessible Entrance by Cluster, Categories, and Phases

	Cluster	Cat 1a	Cat 1b	Cat 2	Cat 3	TOTAL
Phase 1						
n	28	3	6	39	12	60
%	93.3	100.0	75.0	46.4	21.8	40.0
Phase 2						
n	2	0	2	45	43	90
%	6.7	0.0	25.0	53.6	78.2	60.0
TOTAL						
n	30	3	8	84	55	150
%	100.0	100.0	100.0	100.0	100.0	100.0

Summary

With one in five schools lacking an accessible main entrance, and approximately two-thirds of these sites with betterments proposed after 2025 (Phase 2), these findings are indicative of systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. The lack of information and varying descriptions used to report accessible entrances raise concerns regarding the accurate representation of the problem, and can lead to an underestimation of the severity of noncompliant conditions. The inconsistencies and differences noted between groups call into question whether there is the necessary oversight to ensure consistent surveys and data reported in Appendix I: Schedule for Phases One and Two of Facility Accessibility Improvements.

Vertical Access at Multistoried Buildings

The surveys identified schools with multistoried buildings, and whether these buildings have stair access only to the higher floors. About one in four (n=192, 26.2%) schools had problems with vertical access at multistoried buildings (Table 14). About one in 10 did not contain any information about problems with vertical access.

Table 14. Vertical Access Problems

	Yes	No	Not Mentioned	TOTAL
Vertical Access				
n	192	473	66	732
%	26.2	64.6	9.0	100.0

The four groups had similar rates of schools identified with vertical access problems. However, considerable differences were noted in information not mentioned in the summaries, with the majority of sites assessed by AG 4 (86.4%) missing this information (Table 15).

Table 15. Identification of Vertical Access Problems and Problems Not Mentioned, by Assessor Group

	AG 1	AG 2	AG 3	AG 4	TOTAL
Stair Access Only					
n	48	56	39	49	192
%	25.0	29.2	20.3	25.5	100.0
Stair Access – Not Mentioned					
n	1	8	0	57	66
%	1.5	12.1	0.0	86.4	100

About two-thirds (n=122, 63.5%) of the sites with vertical access problems will have betterments in Phase 2 (Table 16). Of those to be addressed in Phase 1, 33 belong to the cluster feeder patterns. One site identified as Category 1a was noted to have vertical access problems.

Table 16. Vertical Access Problems by Cluster, Categories, and Phases

	Cluster	Cat 1a	Cat 1b	Cat 2	Cat 3	TOTAL
Phase 1						
n	33	1	7	48	14	70
%	91.7	100.0	100.0	44.0	18.7	36.5
Phase 2						
n	3	0	0	61	61	122
%	8.3	0.0	0.0	60.0	81.3	63.5
TOTAL						
n	36	1	7	109	75	192
%	100.0	100.0	100.0	100.0	100.0	100.0

Summary

About one in four sites have vertical access problems, with more than half scheduled for betterments during Phase 2. These findings are indicative of systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. Although program access can be achieved through operational solutions, no information is provided regarding the evaluation of the programs located on the upper floors, or plans and timeframes for providing those programs in accessible classrooms, if required. This is particularly important because many schools will not be addressed for the next seven to eight years, or beyond.

Passenger Loading Zones and Curb Cuts

The majority (87.1%) of sites did not contain an accessible PLZ (Table 17). Approximately one in five (n=156, 21.3%) were reported to not have a PLZ provided (at all), while 371 (50.7%) had a nonaccessible passenger loading zone. No information was provided for 15% of the sites (n=110).

Approximately one-quarter (n=194, 26.6%) of the schools contained information regarding curb cuts, with 45 (6.2%) of the sites containing compliant curb cuts, and 20.4% (n=149) with none.

Considerable differences were noted in the language used to describe the conditions of PLZs. AG 1 used the term “not provided” consistently, implying that a PLZ does not exist. AG 3 consistently used the terms “corrective action needed” with mention of noncompliant conditions for the accessible route to the main entrance. AGs 2 and 4 used general terms that imply a PLZ is available, but with noncompliant conditions. The following excerpts demonstrate the descriptions used by each group.

Assessor Group 1

Passenger loading zones are not provided and not marked, and no curb ramp provided.

Assessor Group 2

Student drop off occurs at [street name] without an accessible PLZ.

Assessor Group 3

Public passenger loading zone is provided at (street name) with corrective action needed for an accessible space and route to the main entrance.

Assessor Group 4

There is no accessible passenger loading zone. There are no curb ramps at this site.

Table 17. Noncompliant PLZs and Curb Cuts

	Yes	Not Compliant	Corrective Action Needed	Not Provided	Not Mentioned	TOTAL
PLZ						
n	94	184	187	156	110	731
%	12.9	25.2	25.6	21.3	15.0	100.0
	Yes	Not Provided	Not Mentioned			TOTAL
Curb Cuts						
n	45	149	536			730
%	6.2	20.4	73.4			100.0

Because the majority of sites do not have a PLZ provided or have noncompliant PLZs, schools are closely distributed across both phases (Table 18). Almost all (188 out of 193, 97.4%) of the schools in the cluster feeder patterns do not have an accessible PLZ. In addition, almost all of the sites (124 out of 128, 96.9%) identified as Category 1a do not have an accessible PLZ.

Table 18. Noncompliant/Not Provided PLZ by Cluster, Categories, and Phases

	Cluster	Cat 1a	Cat 1b	Cat 2	Cat 3	TOTAL
Phase 1						
n	181	122	25	180	30	357
%	96.3	98.4	69.4	42.8	19.9	48.8
Phase 2						
n	7	2	11	241	121	375
%	93.4	1.6	30.6	57.2	80.1	51.2
TOTAL						
n	188	124	36	421	151	732
%	100.0	100.0	100.0	100.0	100.0	100.0

Differences were noted by assessor group, with AG 1 having the highest rate (n= 147, 43.2%) of identification of noncompliant PLZs, and AG 3 with the lowest (n=9, 2.7%) (Table 19). AG 4 had the highest rate (n=96, 87.3%) of surveys with no mention of a PLZ.

Table 19. Identification of Noncompliant/Not Provided PLZs and Not Mentioned, by Assessor Group

	AG 1	AG 2	AG 3	AG 4	TOTAL
PLZ					
n	147	84	9	95	340
%	43.2	26.2	2.7	27.9	100.0
PLZ – Not Mentioned					
n	1	7	6	96	110
%	0.9	6.3	5.5	87.3	100.0

AG 1 made up the majority (n=182, 92.9%) of cases that included information on the presence or compliant conditions of curb cuts, and included information on all except six cases (1.1%) (Table 20). Differences were also noted in how PLZ information was reported by group.

Table 20. Identification of Noncompliant/Not Provided Curb Cuts and Not Mentioned, by Assessor Group

	AG 1	AG 2	AG 3	AG 4	TOTAL
Curb Cuts					
n	182	6	1	7	196
%	92.9	3.0	0.5	3.6	100.0
Curb Cuts – Not Mentioned					
n	6	112	216	202	536
%	1.1	20.9	40.3	37.7	100.0

Summary

The review identified pervasive problems with the absence or noncompliant conditions of PLZs. The lack of information regarding curb cuts makes it difficult to know the extent of the problem. However, there is ample evidence that shows noncompliant PLZs are a systemic problem that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. It also demonstrates the systemic failure to ensure compliant PLZs for new constructions as evidenced by the high percentage of Category 1a sites identified.

The inconsistencies with terminology used to describe PLZs, as well as high rates of no information collected and reported on curb cuts for AGs 2, 3, and 4, raise concern over the consistency and quality of the surveys and oversight for compiling this data.

Accessible Restrooms

Accessible restrooms were identified at 211 (28.9%) sites (Table 21). Sites were determined to have an accessible restroom if there was mention of at least one accessible restroom available on the campus. Less than half were noted to have noncompliant restrooms (n=236, 44.6%), while 26.5% (n=194) did not contain any information on the availability of accessible restrooms.

Table 21. Accessible Restrooms

	Yes	No	Not Mentioned	TOTAL
Accessible Restrooms				
n	211	326	194	731
%	28.9	44.6	26.5	100.0

Table 22 shows the differences in the terminology used and sites identified with noncompliant conditions by each assessor group. AG 1 consistently used the term “usable” to describe nonaccessible restrooms. The OIM inquired about the use of this term, and the Access Compliance Manager noted that:

Many restrooms have been renovated throughout the years, and have accessible features such as accessible toilet compartments, urinals, lavatories, and other accessories. This notation indicates the restroom has corrective measure that would be necessary, however, it is not a full complex redesign of the entire restroom¹⁵.

AG 3 described noncompliant restrooms with the phrase “do not meet accessibility standards.” At 19 sites, the survey summary noted that “none” or no accessible restrooms were available on the campus. Compared to AGs 1 and 3 (n=290, 89.0%), AGs 2 and 4 (n=36, 11.0%) had very few instances of restrooms identified as noncompliant.

Examples of the descriptors used by each group are provided below.

Assessor Group 1

Student restroom facilities are provided and are usable but not accessible.

Assessor Group 2

There are no accessible public restrooms in the main building or the multipurpose building. The kindergarten buildings #1 and #2, and classroom building #8 do not have accessible restrooms for the students.

Assessor Group 3

A vast majority of multi-use and single use toilet rooms available within the campus for students and or public do not meet accessibility standards.

Assessor Group 4

There are no accessible toilet rooms on site.

¹⁵ Email communication from Facilities Access Compliance Manager to OIM dated July 13, 2017.

Table 22. Identification of Nonaccessible Restrooms by Code Type and Assessor Group

	AG 1	AG 2	AG 3	AG 4	TOTAL
Usable					
N	118	9	1	1	129
%	91.5	7.0	0.7	0.7	100.0
Does Not Meet Standards					
N	0	0	170	0	170
%	0.0	0.0	100.0	0.0	100.0
Noncompliant					
N	1	0	0	7	8
%	12.5	0.0	0.0	87.5	100.0
None					
N	0	7	0	12	19
%	0	36.8	0.0	63.2	100.0

Approximately one-fourth of all schools did not contain information on accessible restrooms. AGs 3 (23.2%) and 4 (74.2%) had the highest rate of summaries with no information regarding restrooms (Table 23). AGs 1 and 2 included information on restrooms for almost all of the schools surveyed.

Table 23. Identification of Restroom Information Not Mentioned, by Assessor Group

	AG 1	AG 2	AG 3	AG 4	Total
Restrooms					
n	2	3	45	144	194
%	1.0	1.5	23.2	74.2	100.0

About two-thirds (n=126, 64.3%) of schools in the cluster feeder patterns have nonaccessible restrooms, with the majority to be addressed in Phase 1 (n=121, 96.0%) (Table 24). Newly constructed sites, designated as Category 1a (n=69, 13.2%), demonstrated noncompliant restrooms. About half (n= 281, 53.9%) of all schools with noncompliant restrooms will not be addressed until Phase 2 or beyond.

Table 24. Noncompliant RR by Cluster, Categories, and Phases

	Cluster	Cat 1a	Cat 1b	Cat 2	Cat 3	Total
Phase 1						
n	121	68	18	131	23	240
%	96.0	98.6	78.3	42.7	18.9	46.1
Phase 2						
n	5	1	5	176	99	281
%	4.0	1.4	21.7	57.3	81.1	53.9
TOTAL						
n	126	69	23	307	122	521
%	100.0	100.0	100.0	100.0	100.0	100.0

Summary

Less than one-third of schools have accessible restrooms on campus. The lack of information for a quarter of the sites, and inconsistencies of identification rates of nonaccessible restrooms by AGs 2 and 4, raise concerns about the accuracy of the survey summary findings. In addition, the inconsistencies and vagueness of terms to describe nonaccessible restrooms call into question the extent of the problem districtwide. These inconsistencies and lack of information also raise concerns with the oversight of this effort.

There are a sufficient number of sites without compliant restrooms to indicate systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. The high number of sites with “usable but non accessible” and the nonaccessible restrooms in newer constructions (Category 1a) are indicative of systemic problems and weaknesses with completing compliant renovations.

Other Findings

Inaccuracies in Reporting of High-Level Surveys

As noted earlier, there were inconsistencies in how assessor groups described compliant and noncompliant conditions. In some cases, the descriptions’ vagueness limits the ability to assess the severity of noncompliance. In addition, the high number of sites with no information reported in all categories also limits the capacity to determine areas of noncompliance across the District. The inconsistencies among surveys completed by the four assessor groups raise concerns over the validity of the surveys and oversight of the effort.

The review also found schools with the same exact entries and information, indicating cut and paste. Several entries are duplicates and/or do not represent findings of the respective schools. Although the review did not aim to identify such errors, the following entries stood out for their duplicate entries, and may not be inclusive of all errors (see Appendix I for more information):

- Vista MS and Van Nuys HS

- Tulsa ES and Tarzana ES
- Roberti EEC and Rockdale ES
- North Hollywood HS and Nobel MS
- Lamotte Elementary School, Lanterman Special Education Center, and Lake St. Primary Center
- Harbor City ES and Halldale ES
- Graham ES and Grape St. ES
- Two entries of Portola MS

Category 1 Schools

The highest level of access will be available at schools designated as Category 1. The Plan differentiates two subsets of Category 1 schools. Category 1a contains 128 schools that meet new construction or alteration accessibility standards. Category 1b includes 35 sites that also meet the accessibility standards, with some limited exceptions. For instance, in areas where a part of the campus does not meet the accessibility standards, they will be required to meet “program accessibility” requirements.

The Plan contends that the 128 sites designated as Category 1a already meet the following criteria (p. 32):

Of the 163 Category One campuses included in Phase One, there are 128 newly constructed schools or schools that have had significant additions or alterations, and the meet the requirements for a Category One school. Thus 35 schools will be modified (approximately 9.3% of Phase One). Of those, 22 have already been approved by the Board of Education for Comprehensive Modernization projects. This leaves 13 existing sites that need physical remediation to achieve Category One criteria in Phase One.

The Plan outlines the District’s approach for “developing detailed accessibility surveys and facility-specific access plans for all schools in the District” and notes that (p. 26):

...schools assigned to category One will require a complete and comprehensive survey of all spaces such as a necessary step to developing a plan for accessibility improvements.

Category 1a sites are included in Phase 1 but do not contain dates for completion of betterments. Due to the Plan’s contradictions that assert these sites already meet criteria while describing a process for the complete and comprehensive survey of these sites, the OIM requested additional clarification.

The ADA Compliance Manager confirmed that new schools, or those built after 1992, already meet the requirements of Category 1 schools¹⁶. In addition, the “absence of dates for new schools in Appendix G indicates their compliance with new construction standards, however, as noted in the description for Category One (pp. 37 and 38, footnote 22), ‘To the extent prior new construction does not meet the standards that were applicable at the time of construction, modifications will be made in later phases.’”

¹⁶ Email communication from ADA Compliance Manager to OIM, dated August 9, 2017.

The ADA Compliance Manager added that if immediate needs come up at a Category 1a site, these schools “may be eligible for a Rapid Access Program (RAP) or Critical Barrier Removal solution, as well as a possible re-schedule for earlier completion during the quarterly review process.”

The District’s high-level surveys identified barriers and access problems at the following Category 1a sites:

- 124 (96.9%) with noncompliant PLZs
- 69 (53.9%) with noncompliant restrooms
- 3 (2.3%) with nonaccessible main entrances
- 1 (0.07%) with vertical access problems at multistoried buildings

The assumption or contention that schools built after 1992 meet the new construction standards at the time of construction is cause for concern. During the 2006-2007 school year, the OIM found many instances of noncompliant features at newly constructed schools. As a result, on May 29, 2007, the parties entered into a stipulation agreement requiring the District to address noncompliant findings and work at 83 schools opened after June 30, 2006. In addition, the District committed to surveying new schools not included in the previous surveys to ensure that noncompliant work was addressed prior to these schools’ openings. During the 2012-2013 school year, after a couple of failed attempts to identify and remediate areas of noncompliance at these new schools, the District completed repairs at 81 new schools. However, these efforts did not address all areas of noncompliance; in particular, problems such as features at playing fields or auditoriums that required significant redesign and/or Division of the State Architect (DSA) approval remained.

The extent of noncompliance at schools not included in the 2007 stipulation is unknown, particularly, for schools constructed after 1992 and prior to 1997-1998¹⁷. The findings of the District’s high-level surveys and past failures with building compliant new construction and renovations are evidence that the District’s assumption that these sites already meet the accessibility standard is invalid. This includes findings such as the following:

- almost all Category 1a schools do not have compliant PLZs,
- more than half do not have accessible restrooms, and
- there was a large number of accessibility features with no information reported in the summary of high-level surveys.

The process described for the “complete and comprehensive” surveys and lack of scheduling for surveys and betterments at these sites also contradict this assumption, and raises questions regarding the District’s commitment to ensuring that schools meet the new construction and/or renovations standard of accessibility.

Operational Solutions and RAP

The Plan recognizes the magnitude of effort required to bring the District into compliance with the ADA and ensure program accessibility. It also acknowledges that because the first eight years of Phase 1 will only address one-third of District schools, operational solutions such as the

¹⁷ The stipulation included sites designed and constructed between 1997-2006.

relocation of programs and minor betterments through the Rapid Access Program are critical components. The Plan specifically states (p. 2 and p. 40):

B. Reassign programs and activities from inaccessible to accessible locations and/or ensure that accessibility features are provided on request

The success of this three-part plan depends on the success of each part and coordination among those responsible for each part. Most importantly, because not all campuses will be accessible at the end of Phase 1, the District's will take steps to preserve students' wide range of school choice through reassigning programs and activities to accessible locations when modifications cannot be made (or cannot be made quickly enough) or are not planned for the program or location to which a student seeks access.

It will be necessary to ensure, until enhanced accessibility is achieved during Phase 2, that (1) reassignment of programs and/or individual students to accessible locations works in an effective manner, and (2) the Rapid Access Program results in truly rapid and meaningful response and action.

The findings of the District's high-level surveys brought to light the magnitude of noncompliance at District schools. The OIM's analysis of the schedule for improvements also highlighted the large number of schools with programs for students with mobility or vision impairment disabilities that will not be addressed until several years into Phase 1, or even Phase 2. These two findings make the District's commitment to, and application of, operational solutions a critical aspect in ensuring a system that responds in timely manner to ensure the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations.

The review found that 64.6% (n= 473) of the sites surveyed had multistoried buildings with stair access only to the higher-level floors. This will require the District to evaluate program access at least yearly at these sites to ensure that SWDs are not being denied program access. For example, the high-level survey summary for Taft Charter High School found that the campus has seven two-story buildings, all of which are stair access only. This site has been selected for improvements that will reflect a Category 1b designation by 2024. Although this site is scheduled within Phase 1, the District must evaluate program access at a minimum annually and ensure operational solutions are implemented as needed. Furthermore, given the extended period (eight years) for completing Phase 1 and constantly changing student population, operational solutions will require significant resources and commitment to ensure program accessibility.

The Plan does not provide details or an overview of the changes to improve the RAP program, which is a requirement of the MCD and a critical component for meeting the IM's substantial compliance framework. The RAP program is intended to provide minor rapid renovations that improve program access when a barrier(s) is identified as impacting a particular student(s). The Plan does provide some general commitments for improving the RAP program, mainly to decrease the time for responding to and completing required renovations, within 21 to 30 days. The Plan references a memorandum that is to be developed by the Facilities Services Division, which sets the District's commitment and emphasizes the consistent and timely response to RAP projects.

Similarly, given the high number of sites with nonaccessible features such as restrooms and main entrances, and those scheduled for improvements several years into Phase 1, or in Phase 2 or 3, it is not possible to gauge the Plan's effectiveness for ensuring program accessibility to meet the clear and present needs as evidenced by the findings of the high-level surveys. The longstanding problems with the RAP program have been well documented and acknowledged in the Plan. Considering the District's desire to disengage from the MCD over the next two years, the effectiveness of the procedures for responding to and completing minor renovations, as well as the short- and long-term financial commitments, will be critical factors in achieving disengagement.

The Plan places considerable emphasis on improving communication to "parents, students, and others in the community about the accessible features of its schools, plans and schedules for facility improvements, and policies about reassignment" (p. 40).

The Plan commits to providing accessibility-related information through the District website, "as barriers are removed and program access is known to be available at specific District facilities" (p. 40). This will be compiled into the *LAUSD Access Guide*, with the first edition anticipated by the end of 2018. The purpose of the Access Guide is described as follows:

The Access Guide will allow potential students and their parents to understand the current level of accessibility at the schools they attend or wish to attend. To allow new students to plan their routes around campus before their first arrival and to allow non-students to plan their visits to sporting events, parent conferences, concerts, career days, and all other event where non-students will be visiting, information about accessible features will be made available in visual and written formats.

The Access Guide will provide the students, families, and public with the necessary information to ensure program accessibility by enabling better planning at IEP meetings when discussing placement decisions, and to promote inclusive school and community events. The Plan does not indicate what, if any, assistance will be provided in the interim or if all sites will be included in the first edition of the Access Guide. The Access Guide's quality will depend on the integrity of the data compiled, derived from consistent and comprehensive surveys, with quality oversight.

It also notes that the District still needs to develop "notification policies and instructions for requesting alternative solutions when the provisions in place at a particular location are insufficient for the needs of particular individuals with disabilities" (p. 41).

Review of Sample Surveys at Three Sites

Upon the OIM's request, the District provided sample surveys of three sites designated for Categories 2 and 3 levels of access. The OIM's consultants reviewed these surveys to determine if the areas assessed adhered to the corresponding criteria outlined.

Overall, the surveys indicate that the areas to be assessed were included. However, direct alignment with the respective criteria cannot be fully determined without additional information. This includes findings of as-is conditions for elements surveyed that were deemed compliant. In addition, the survey reports do not clearly identify locations of core areas; site maps or plans would enable a better understanding of elements included or excluded. Although consistent

surveys are critical given the magnitude of this effort, the real test for determining capacity to adhere to the categorization criteria is whether betterments result in sites that ensure program accessibility as defined.

One major concern with the survey reports is the continued use of one overall date applied for barrier removal, rather than the use of individual dates for the removal of barriers that are considered easy to remove or readily achievable. This concern has been repeatedly expressed to the District. Given the District's lack of noncompliance for over 20 years as required by law, and the extended duration proposed to achieve compliance (by 2027, or 32 years since required by law), barrier removal should be prioritized to address easy-to-remove barriers, particularly those that do not require design or DSA approval. SWDs should not have to wait years for easily implemented improvements such as grab bars in restrooms, signage, or adjusted door pressures.

Another longstanding concern is the consistent and comprehensive collection of as-is conditions during the survey effort. The Plan describes the effort for completing physical accessibility surveys of individual facilities.

The Plan commits to conducting "a complete and comprehensive survey of all spaces as a necessary step to developing a plan for accessibility improvements," at Category 1 schools. However, as noted in the section on Category 1 schools, it is unclear how many schools will be surveyed given that the District asserts that 128 of the 163 schools in this category already meet this criteria. Categories 2 and 3 schools will receive "detailed surveys of those spaces and elements that are likely candidates for modifications in order to meet the criteria of their categories" (p. 26).

The consistent collection of as-is conditions during the surveying of schools is a critical part of ensuring equitable access and improving program accessibility. The variability seen with the high-level surveys, particularly how noncompliance is determined and reported, as well as the high number of missing data of common areas, demonstrates the importance of a standardized collection and reporting structure of as-is conditions. This is particularly important to maximize the District's limited resources, as many sites will not have barriers addressed for eight to 10 years and will rely on knowledge of barriers to implement operational solutions.

Independent Charter Schools

Approximately 200 Independent Charter Schools educate approximately 12,000 (10-11%) of the District's SWDs¹⁸. The Plan delegates the oversight for the development and completion of transition plans and compliance with the ADA to the Charter School Division (CSD). To achieve this, the Plan proposes an eight-point plan to be carried out by August 3, 2018. It states (pp. 47-48):

1. Confirm Charter School Division ability to enforce CASp request of Charter School Operators on private sites.
2. Confirm executive endorsement to extend District Oversight authority to compel charter school operators to complete transition plans.
3. CSD Special Education staff prioritize compliance by Special Education population.

¹⁸ IM's 2015-2016 Annual Report, December 13, 2016.

4. Create and launch online certification submission tool to monitor charter school operator compliance.
5. Create and send blast email communications introducing the program and making charter school operators aware of District workshops.
6. Provide workshop opportunities for charter school operators to better understand how to fulfill the requirement in a timely manner.
7. Identify charter schools having completed transition plans on the District's Charter Schools Division website.
8. Initiate revocation process for those charter school operators.

The Plan does not include sufficient information to determine if this eight-point plan will meet the general intent of the Plan, which is to ensure equitable access to SWDs across the District, particularly for those students and families with mobility, vision, and hearing impairment disabilities. There is no information regarding the expectations for the level of access (Categories 1-3) that each site must meet, timelines for improvements, and/or survey requirements to ensure consistent assessments of as-is conditions. It is unknown how independent charter schools will have access to the RAP process and funding, and the types of operational solutions that will be implemented to ensure equitable access and guarantee that these solutions do not result in the disenrollment of SWDs for reasons directly attributed to their disabilities. Furthermore, it is unknown what authority or role the ADA Compliance Manager or Facilities Access Compliance Unit (FACU) will have in assisting independent charters schools in developing transition plans, implementing betterments, and achieving compliance with the ADA.

Summary

Inconsistencies in how compliant and noncompliant conditions were reported and, in some cases, the descriptions' vagueness limit the ability to assess the severity of noncompliance. The high number of sites with no information reported in all categories also limits the capacity to gauge the severity of noncompliance across the District. The inconsistencies among surveys completed by the four assessor groups raise concerns over the validity of the surveys and oversight of the effort.

Inconsistencies with the assumptions and approach to improve sites to the highest level of access, or Category 1, also undermine the Plan's viability. The Plan assumes that 128 (Category 1a) of the 163 Category 1 sites, already meet the accessibility standard for new construction and renovations. However, the high-level surveys found many instances of noncompliance particularly with PLZs and restrooms. These findings as well as past failures with building compliant new construction and renovations, including the District's repeated efforts to improve compliance at 81 new schools opened after June 30, 2006, are evidence that the District's assumption that all these sites already meet the accessibility standard is invalid.

The Plan acknowledges the magnitude of effort to improve Districtwide compliance with the ADA over the next 10 years, and notes that the implementation of operational solutions, such as the relocation of programs and minor betterments through RAP, are critical components of the Plan. However, the Plan does not provide details or an overview of the changes to improve the RAP program, which is an MCD requirement and a critical component for meeting the IM's substantial compliance framework.

The findings of the high-level surveys brought to light Districtwide systemic noncompliance. The schedule for improvements also highlighted the high number of schools with programs for students with mobility or vision impairment disabilities that will not be addressed until several years into Phase 1, or until Phase 2. These two findings make the District's commitment to, and application of, operational solutions a critical aspect in ensuring a system that responds in a timely manner to ensure the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations.

The Plan requires the development of an Access Guide to provide the students, families, and public with the necessary information to ensure program accessibility. The Plan does not indicate what, if any, assistance will be provided in the interim or if all sites will be included in the first edition of the Access Guide anticipated in August 2018. The Access Guide's quality depends on the integrity of the data compiled, which must be derived from consistent and comprehensive surveys, with quality oversight.

The OIM review also included an analysis of sample surveys at three sites designated for Categories 2 and 3 levels of access to determine if the areas assessed adhered to the corresponding criteria outlined. Overall, the surveys indicate that the areas to be assessed were included. However, direct alignment with the respective criteria cannot be fully determined without additional information.

Although consistent surveys are critical given the magnitude of this effort, the real test for determining capacity to adhere to the categorization criteria is whether betterments result in sites that ensure program accessibility as defined.

The Plan does not include sufficient information to determine if the eight-point plan to ensure compliance at independent charter schools will meet the general intent of the Plan, which is to ensure equitable access to SWDs across the District, particularly for students and families with mobility, vision, and hearing impairment disabilities. There is no information regarding the expectations for the level of access (Categories 1-3) that each site must meet, timelines for improvements, and/or survey requirements to ensure consistent assessments of as-is conditions.

SUMMARY AND NEXT STEPS

On May 17, 2017, the District submitted to the Office of the Independent Monitor (OIM) and the Plaintiffs' Counsel (Parties) a sixth version of its *Draft ADA Transition Plan* (Plan) to comply with the Americans with Disabilities Act (ADA) and Section 504. These laws prohibit the discrimination against individuals with disabilities because the entity's facilities are inaccessible and unusable, and require program accessibility to ensure that programs, benefits, services, and activities offered by public entities, when viewed in their entirety, are accessible for individuals with disabilities. The ADA requires that new construction after January 26, 1992 be fully accessible and meet all accessibility codes and sites with major remodeling to the current accessibility code.

The District is required to make all of its new sites and those with major remodeling accessible. The District is not required to make all of its existing sites (defined as those built before 1983) that have not been renovated or modernized accessible, as long as programs and services at these schools are accessible. To comply, the District is required to create an ADA transition plan that addresses the needed structural changes to achieve compliance with the ADA's program accessibility requirements. These physical changes were to be completed by January 26, 1995. The District is also required to develop an ADA Self-Evaluation to review its programs, services, and activities and to describe which are discriminatory, as well as to develop the plan to remove barriers. This section of Title II of the ADA also includes the required public input process.

In addition to the ADA and Section 504 requirements, the District must comply with Section 10 and Section 17 of the Modified Consent Decree (MCD). Section 10 of the MCD requires that any new construction, repairs, and renovations comply with federal and state requirements. Section 17 requires the Independent Monitor (IM) to determine that the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations.

The Plan is guided by several principles and an approach for ensuring compliance. The Plan outlines three primary components to achieve compliance: the implementation of facility improvements, operational solutions, and policies and training.

The Plan places a large emphasis on improving program accessibility across the District, with priorities for addressing sites that contain populations of students with mobility, vision, and hearing impairment disabilities, and ensuring equitable access to unique programs across the District. The Plan is designed to achieve this goal, by the end of Phase 1 (2025), with the development of "each local district with approximately three feeder patterns of Category One and Category Two schools, with each pattern consisting of approximately one high school, one to two middle schools, and three to four elementary schools."

The proposal defines the three levels of access, with Category 1 schools meeting new construction or renovation standards, Category 2 sites meeting accessible core spaces and features while offering program accessibility for activities, and Category 3 offering a basic level of access to the building.

The District's proposed Plan requires 10 years to achieve these goals, with the majority of the corrective work to be carried out in the first two phases. Phase 1 will address facility

improvements at about one-third of all schools over the next eight years. Phase 2 will begin no later than 2025 and address approximately one-third of the schools, with the remaining sites to be addressed in Phase 3. However, given the magnitude of noncompliant conditions identified by the high-level surveys, as well as the selection of schools of choice (magnets and District-operated or affiliated charters) and schools with programs serving students with mobility or visual impairments that are scheduled in Phase 2 and 3, it is unclear how the District will complete the necessary betterments within two years. The Plan lacks timeframes for the completion of work for Phases 2 and 3, and given the size and scope of the District and barriers to be remediated, it is reasonable to conclude that this effort will require more than two years to address the remaining two-thirds of District sites.

The District is to be commended for the extraordinary amount of work in collecting high-level survey data at all sites and for its greatly improved approach to addressing its longstanding noncompliance with the ADA and Section 504. Despite concerns with aspects of the approach and adherence to the priorities and intent of the Plan, this effort has resulted in a viable pathway to attain acceptable levels of program access and, most importantly, increased transparency for the Parties and the public about the magnitude of noncompliance across the District.

To determine whether the Plan complies with ADA and Section 504 requirements and ensure the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations, the OIM conducted a review and analysis of the Plan and its appendices. Specific feedback is provided on the following appendices: Appendix F: Summary Assessment of School Locations and Programs, Appendix G: Summary Assessment of High Level Surveys, and Appendix I: Schedule for Phases One and Two of Facility Accessibility Improvements. The review also included three sample sites of schools identified as Categories 2 and 3 to determine if they adhered to the corresponding category criteria.

The OIM's review provided feedback on the Plan's capacity to comply with applicable laws to ensure the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. In addition, the review raised concerns regarding the Plan's capacity to guide and yield improved program accessibility that ensures equitable access across the District, in both the short (two years) and long term (10 years), as well as the Plan's consistency and adherence to the components of the proposed approach.

The Plan is based on the premise of creating feeder patterns of schools that provide program accessibility. To achieve this, these feeder patterns would contain similar programs for students with disabilities (SWDs) to matriculate to the next level. Based on the limited information provided in Appendix F: Summary Assessment of School Locations and Programs, it is difficult to conclude whether the Plan achieves this goal. Furthermore, it is difficult to determine if the decision-making processes and factors or priorities considered for the selection of schools for the cluster feeder patterns were adhered to in accordance with the Plan. Lastly, the incomplete information on the factors considered for the selection of these schools limits the ability for meaningful public input.

Several areas of concerns with the selection of sites scheduled for Phases 1 and 2 betterments include the high number of general education sites with programs for students with mobility or vision impairment disabilities, as well as special education centers, that are scheduled for Phase 2. In addition, Phase 2 includes a high number of sites with vertical access problems at multistoried buildings, nonaccessible restrooms, and nonexistent or noncompliant passenger loading zones (PLZs). The extended timelines for these sites only increase the effort and reliance on operational solutions and RAP to provide program accessibility. Although the Plan outlines a decision-making process that uses findings from the high-level surveys to categorize and schedule schools, it provides no information that would indicate these considerations were used for scheduling.

An examination of the Plan's effectiveness in providing equal opportunities to select schools of choice programs, as well as a review of the scheduling of stand-alone magnet schools, magnet centers, and District-operated and -affiliated charter schools, found inequities in the general availability of these programs across the District for all students, including SWDs. The lack of access is compounded by the lack of priorities given to making these schools and programs accessible, particularly for geographic areas with betterments scheduled in Phase 2.

The OIM review aimed to elucidate the decision-making processes in accordance with the Plan regarding factors to be considered for category and schedule selection through an examination of information collected by the high-level surveys. This meant identifying systemic compliance problems in the following areas: main entrances, PLZs, restrooms, and vertical access in multistoried buildings.

The review found the following:

- One in five schools lacks an accessible main entrance, with approximately two-thirds of these sites scheduled for betterments during Phase 2.
- One in four sites has vertical access problems, with more than half scheduled for betterments during Phase 2.
- Almost nine out of 10 schools have pervasive problems or noncompliant PLZ conditions.
- Fewer than one-third of schools have accessible restrooms on campus.

These findings are indicative of systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. In addition, many of the entries lacked information and/or used varying descriptions to report noncompliant conditions, raising concerns regarding the accurate representation and magnitude of problems. Inconsistencies and differences were also noted among four assessor groups, which calls into question this effort's oversight and quality control.

Inconsistencies with the assumptions and approach to improve sites to the highest level of access, or Category 1, also undermine the Plan's viability. The Plan assumes that 128 (Category 1a) of the 163 Category 1 sites, already meet the accessibility standards for new construction and renovations. However, the Plan calls for the comprehensive surveying of Category 1 sites and fails to include the Category 1a sites in the schedule. The Plan notes that any noncompliant areas at these sites can be remediated using the RAP program; however, this is incongruent with the ADA Compliance Manager's statement that noncompliant features would be addressed in later

phases (Phases 2 or 3), and/or “may be eligible for the RAP or Critical Barrier Removal solution.”

The Plan’s approach to ensuring that Category 1a schools are accessible must be clarified given that the District’s high-level surveys identified the following compliance problems:

- almost all Category 1a schools do not have compliant PLZs,
- more than half do not have compliant restrooms, and
- a large number of accessibility features had no information reported in the summary of high-level surveys.

These findings as well as past failures with building compliant new construction and renovations, including the District’s repeated efforts to improve compliance at 81 new schools opened after June 30, 2006, are evidence that the District’s assumption that all these sites already meet the accessibility standards is invalid. Furthermore, many of the District’s schools do not meet the definition of “existing” sites, which were built prior to 1983 and have not been modernized or received major renovations. Therefore, the emphasis on “program accessibility” across the District does not align with the intent of the ADA, as these sites should meet the higher standard of accessibility and comply with code requirements at time of construction.

The Plan acknowledges the magnitude of effort to improve Districtwide compliance with the ADA over the next 10 years, and notes that the implementation of operational solutions, such as the relocation of programs and minor betterments through RAP, are critical components of the Plan. However, the Plan does not provide details or an overview of the changes to improve the RAP program, which is an MCD requirement and a critical component for meeting the IM’s substantial compliance framework.

The findings of the high-level surveys brought to light Districtwide systemic noncompliance. The OIM’s analysis of the schedule for improvements also highlighted the high number of schools with programs for students with mobility or vision impairment disabilities that will not be addressed until several years into Phase 1, or until Phase 2. These two findings make the District’s commitment to, and application of, operational solutions a critical aspect in ensuring a system that responds to barriers in a timely manner and that ensures the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations.

The Plan requires the development of an Access Guide to provide the students, families, and public with the necessary information to ensure program accessibility by enabling better planning at IEP meetings when discussing placement decisions, and to promote inclusive school and community events. The Plan does not indicate what, if any, assistance will be provided in the interim or if all sites will be included in the first edition of the Access Guide, anticipated in August 2018. The Access Guide’s quality depends on the integrity of the data compiled, which must be derived from consistent and comprehensive surveys, with quality oversight.

The OIM review also included an analysis of sample surveys at three sites designated for Categories 2 and 3 levels of access to determine if the areas assessed adhered to the corresponding criteria outlined. Overall, the surveys indicate that the areas to be assessed were

included. However, direct alignment with the respective criteria cannot be fully determined without additional information.

The consistent collection of as-is conditions during the surveys of schools is a critical part of ensuring equitable access and improving program accessibility. The variability seen with the high-level surveys, particularly how noncompliance is determined and reported, as well as the large amount of missing data on common areas, demonstrates the importance of a standardized collection and reporting structure of as-is conditions. This is particularly important to maximize the District's limited resources, as many sites will not have barriers addressed for eight to 10 years and will rely on identification of barriers to implement operational solutions.

Although consistent surveys are critical given the magnitude of this effort, the real test for determining capacity to adhere with the categorization criteria is whether betterments result in sites that ensure program accessibility as defined.

The Plan does not include sufficient information to determine if the eight-point plan to ensure compliance at independent charter schools will meet the general intent of the Plan, which is to ensure equitable access to SWDs across the District, particularly for students and families with mobility, vision, and hearing impairment disabilities. There is no information regarding the expectations for the level of access (Categories 1-3) that each site must meet, timelines for improvements, and/or survey requirements to ensure consistent assessments of as-is conditions.

It is unknown how independent charter schools will access the RAP process and funding, and the types of operational solutions that will be implemented to ensure equitable access and guarantee that these solutions do not result in the disenrollment of SWDs for reasons directly attributed to their disabilities. Furthermore, it is unknown what authority or role the ADA Compliance Manager or FACU will have in assisting independent charter schools in developing transition plans, implementing betterments, and achieving compliance with the ADA.

The District has made several assurances to improve program accessibility that lead to disengagement by the end of 2019. To determine if the Plan presents a viable framework that will move the District toward compliance as intended within 10 years, the efforts that guide disengagement must reflect this approach over the next two years and represent a viable approach that will lead to an improved capacity that ensures the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. Over the next two years, approximately half of the sites scheduled for betterments belong to a cluster feeder pattern. Although these schools are aligned with the goals of the Plan, more than half of the clusters will not have betterments completed until 2022 and beyond. As the Plan is based on the premise that high school complex clusters will serve as the foundation for providing program access, it is unclear why so many of these sites are scheduled for betterments five or more years from now.

The disparities in schools selected for betterments over the next two years—both geographically and for schools of choice—are not indicative of a viable Plan that will ensure systemic substantial compliance. In addition, half of the schools selected for improvements in this timeframe were previously selected for betterments dating back to 2014. This raises questions regarding the validity of the Plan's intent to ensure equitable access, and an approach that looks

at programs across the District in its entirety. These findings are indicative of a Plan consistent with a construction program, and not focused on student-centered priorities as described.

Considering the District's desire to disengage from the MCD over the next two years, the effectiveness of the procedures for responding to and completing minor renovations, as well as the short- and long-term financial commitments, will be critical factors in achieving disengagement.

The MCD does not give the IM purview to approve the Plan or its specific approach. However, the MCD does charge the IM with the authority to make determinations that the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws, and that new construction and alterations meet applicable accessibility codes. Therefore, a sound approach and successful implementation of the Plan are critical for disengagement.

Given the concerns over some aspects of the approach, the current scope of noncompliance Districtwide, and the proposed 10-year timeline for achieving compliance with the ADA, the District must address and reprioritize the remediation of certain barriers to ensure the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. It must also include information regarding accountability measures to enforce the Plan's implementation.

The Plan's emphasis on "program accessibility" is substandard to the current requirements of accessible facilities; nonetheless, the District has failed to meet the "program accessibility" standard despite many opportunities to do so during the renovations and modernization of its older buildings, and even during the new construction program that occurred over 10 years during the MCD. Although the practical realities that come with the size and scope of this District render the "program accessibility" goal adequate, this effort must entail a high level of accountability, which has been absent and led to repeated past failures in improving Districtwide compliance with the ADA and Section 504.

The following next steps are intended to provide guidance and alternate requirements that must occur over the next two years in order for the IM to recommend disengagement.

Next Steps

Prior to disengagement, the District must:

- As previously agreed to, complete barrier removal at 75 sites.
- Complete 150 comprehensive surveys.
- Develop a plan to address and remediate all barriers at sites with nonaccessible main entrances.
- Develop a short- and long-term plan to address and remediate passenger loading zone problems.
- Provide periodic (at least twice a year to coincide with school semesters) reports to the Parties with updates of plans for implementing operational solutions for all schools pending accessibility improvements. The updates should include operational solutions for dealing with issues such as vertical access problems and identify student populations at each site. The reports must emphasize operational solutions at sites with programs for students with mobility, hearing, or vision impairment disabilities, and schools scheduled in Phases 2 and 3. Reports of operational solutions will be provided for each school until betterments are completed at the site.
- Provide quarterly reports of RAP requests and completion.
- Provide a revised schedule for ensuring equitable access at schools of choice.
- Include documentation, including schedules for Categories 2-3 clusters, identifying when each will be available per local district, and programs at each site.
- Provide a schedule and sample surveys for Category 1 schools.
- Provide detailed information, including dates, for the completion and distribution of policies and training for the implementation of operational solutions.
 - Provide policies and training materials.
- Provide detailed information on the changes to improve RAP, as well as short- and long-term funding commitments.
- Provide detailed information on the expectations for ensuring independent charter schools develop transition plans and comply with the ADA, individuals responsible for supporting and overseeing this effort and compliance, and access to District supports that will ensure operational solutions and RAP, when needed.
- Provide biannual reports to the Parties of current expenditures and projected costs yearly, and by phases.