



## *Los Angeles Unified School District*

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September 8, 2017

Dr. David Rostetter  
Office of the Independent Monitor  
Modified Consent Decree  
333 South Beaudry Avenue, 18<sup>th</sup> Floor  
Los Angeles, California 90017

**Re: District's Preliminary Response to *Feedback on the District's Draft ADA Transition Plan* dated August 31, 2017**

Dear Dr. Rostetter:

We are still reviewing your report of August 31, 2017, *Feedback on the District's Draft ADA Transition Plan* (Feedback or Report), submitted to Beth Kauffman, Associate Superintendent, Division of Special Education. This letter transmits our preliminary thoughts.

Generally, your document combines two things: (1) feedback on the LAUSD ADA transition plan sent to you on May 17, 2017, and posted for public comment on June 1, 2017 and (2) your views on what is required for disengagement from the *Chanda Smith* Modified Consent Decree (MCD).

In July 2016 you reiterated three expectations for meeting the obligations of Sections 10 and 17 of the MCD, restated on p. 1 of Feedback:

1. 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;
2. Designation of an ADA compliance manager; and
3. The capacity to conduct consistent and comprehensive surveys.

The Draft Self-Evaluation and Transition Plan (Plan) document submitted to you in May is the plan referenced in item 1. More than half of your Feedback addresses one element of the plan which is the way the high-level surveys (done for the purpose of developing that plan) were conducted. The other half addresses the details of the Plan. Yet without even acknowledging that an ADA Compliance Manager has been appointed and is overseeing the District's efforts (item 2), or addressing item 3, you have included eleven new requirements for disengagement.

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You set these out purportedly based on the "findings" in your letter; but in fact the reasons for the requirements are unclear, and the requirements are unfounded.

As further explained below, you have made several incorrect assumptions and based several conclusions on an inaccurate understanding of (1) the different laws involved here and (2) the transition plan (not only its purpose and relationship to the MCD but also its approach). In doing so, this serves to over-reach the authority of the Monitor under the MCD and substitutes your judgment for that of the District.

There are three critical components to the Plan:

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 as needed for individuals; and
3. Policies and training: Implementing supportive policies, procedures, and training.

The following addresses the District's preliminary responses to the Feedback:

**A. Transition Plan Feedback Issues: Incorrect assumptions, inaccurate understanding, and oversights**

**1. Misstates the approach of the Plan; the purposes of accessible clusters; and the number of clusters to be made accessible**

Practically ignoring components 2 and 3, the Feedback focuses on the first component, but seriously misrepresents the approach of the Plan. It mistakenly asserts that the Plan is "based on the premise of creating feeder patterns of schools that provide program accessibility," which is only one component of the approach (page iii, iv). Then it repeatedly understates (by including only one tenth of the number of accessible clusters planned) the number of accessible clusters planned. It states that LAUSD will develop "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." Pages iii, 2, 4, and 35. Omitted each time are the introductory words: "each local district will have" [approximately three feeder patterns of Category One and Category Two schools]. With approximately three feeder patterns per geographic district, there will be more than 30 patterns. The District notes that the Feedback pointed out on pages 4 and 5 that there are some inconsistencies and

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duplications in the schools named in some clusters. Staff will review Appendix F to ensure any inconsistencies and/or duplications are addressed and corrected.

Furthermore, the clusters are not "the premise" that forms the basis of the Plan's approach to provide access to programs. The other two components of the Plan, as set out above, are to ensure operational means of reassigning programs to accessible locations or modifying facilities, and to support these efforts through policies and training. The Report gives these short shrift (pages 1 and 2) and instead focuses almost exclusively on the facility improvements.

## **2. Lack of comprehension of the difference between alterations requirements and program access**

As has frequently been the case, the Report shows a basic lack of comprehension about the difference between requirements in new construction and alterations on the one hand, and "program accessibility" as to existing facilities on the other. The ADA requires that new construction and alterations be accessible; this means that altered spaces must be accessible, and in some instances additional access must be provided. As to existing facilities, access to programs cannot be denied because of inaccessible facilities; the facilities can be modified, or the programs can be moved, for example. The District has repeatedly explained, with extensive analysis and citations, that these are two different requirements. Yet the report once again says (page vi) that "The emphasis on 'program accessibility' is substandard to requirements for 'full structural accessibility' for sites constructed after 1992 federally and 1983 for state standards" and "the District has failed to meet the 'program accessibility' standard despite ... renovations and modernization..." The ADA requires that new construction and alterations carried out after 1992 be accessible, not that buildings subject to them be brought up to a mythical building-specific program accessibility standard.<sup>1</sup>

Perhaps because of this inability or refusal to accept that the ADA requires (1) access to programs and (2) compliance with accessibility standards that apply to new construction and alterations, which are two different requirements, the Feedback provided appears to have overlooked the Summary Assessment of School Locations and Programs document provided to you, which includes a chart that sets out the programs at each school, summarizes the barriers, and states what nearby schools offer the same programs. The Feedback also almost completely ignored the policies that will be developed, as set out in the plan, to ensure operational changes and other responses to program access needs.

## **3. Misplaced extensive analysis of high-level surveys, their purpose, and their outcome**

Instead, you have inexplicably examined the high-level surveys (devoting half the pages of the Report to them) in a way that concludes that they were not appropriately conducted and

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<sup>1</sup> See also p. 1 of Feedback, claiming that schools built or with major remodeling or renovation since 1983 should already be accessible. This 1983 date relates to state requirements, not relevant here, and renovation standards do not equate to new construction standards.



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that their "findings" reveal "widespread noncompliance." The District has made clear that these surveys – conducted quickly, that is, over a period of four weeks at more than 700 campuses -- were not intended to establish "findings" of compliance or noncompliance but to assign schools to tentative designations of the category of accessibility that they would eventually achieve. The anecdotal evidence of inconsistencies of language among the reports is inconsequential, and the focus on alleged noncompliance could serve as a disincentive to thoroughly evaluate and reveal current issues. These buildings will be brought up to accessibility criteria after comprehensive surveys are completed.

**4. Erroneous statements about the MCD requirements as to the Rapid Access Program (RAP) and the District's Plan**

The Feedback claims (pages v, 30 and 33) that the District has provided no details about changes to improve RAP, "which is an MCD requirement." But the MCD's provisions are limited to a requirement to establish and fund an On-Demand Unit and a process for task order procedures to "rapidly provide minor renovations where necessary for individual students seeking placement in currently inaccessible programs." The MCD does not address specific improvements. As of the November 10, 2015, Annual Report (the last Annual Report wherein a determination regarding this requirement was documented), it was determined that the District had met the requirement to establish the Unit and had approved \$13,683,525 of the up to \$20 million requirement. No additional credit has been approved since that time though the District has expended in excess of the up to \$20 million requirement. Nonetheless, the Plan says that the RAP will be improved to certain performance measures. There is no basis for requiring further details if these measures are met.

**5. Lack of comprehension of the Plan's time frames**

The Feedback refers several times (see pages iii and 2) to the Plan's three phases over a 10-year timeframe, yet it also says that the Plan lacks timeframes for Phases 2 and 3. However, in reality the first Phase covers 8 to 10 years, and the current Board cannot bind future Boards that will surely be in place during the subsequent phases.

**B. Over-Reaching Authority**

The Feedback correctly states on page vi that "[t]he MCD does not give the IM purview to approve the Plan or its specific approach." The IM's authority is, of course, limited to determining whether the District has met the requirements of the MCD. Specifically, MCD Section 10, Facilities, requires compliance with standards under section 504 and the ADA, entering into binding commitments to expend at least \$67.5 million dollars on accessibility renovations or repairs to existing school sites consistent with those statutes, and attention to and funding for "on-demand" accessibility requests. Section 17, paragraph 89 provides that the MCD shall terminate upon the occurrence of the following events:

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- a. The Independent Monitor has made the certification provided for in Paragraph 88 of this Modified Consent Decree.
- b. The Independent Monitor has certified that the District has entered into binding commitments to expend the \$67.5 million dollars required by Section 10 of this Modified Consent Decree and, in the Independent Monitor's judgment, the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations.

As set out above on page 1, as the Monitor, you have made compliance with the ADA's provisions about transition plans a condition of disengagement. In the past, you have clarified what you expect from a transition plan; and the District has taken a measured, reasonable, and detailed approach to developing this 2017 Plan, with much of that approach developed in response to your prior statements. However, now, after the District has established the RAP, funded it and the necessary accessibility improvements, as well as developed a transition plan that comports with ADA requirements, the Feedback you provided seeks to substitute your judgment about what the Plan should provide, rather than allowing the District to address the issues in this reasoned manner. In doing so, this exceeds the authority set forth under the MCD.

Underlying this is the fundamental misconstruction of the provisions of and the relationship between federal special education laws (i.e., the Individuals with Disabilities Education Act or IDEA) and the ADA and Section 504. Under the language of the section quoted above and the context of and language of the entire MCD, the IM's authority to assess program accessibility matters is limited to matters relating to federal special education laws, which protect just a subset of those who will benefit from the steps taken pursuant to the transition plan under the ADA. The ADA applies to, and the transition plan is geared to, a much broader range of individuals, not just those who have a disability and as a result need "special education" services in order to make progress in school. For example, the ADA protects and the transition plan benefits all students with disabilities, not just those who have disabilities that affect their ability to learn (for example, those who use wheelchairs or have hearing disabilities or vision disabilities but do not have other disabilities that affect learning and do not have IEPs). It also protects (but IDEA does not) parents and other family members who have disabilities but do not have a child in a special education program, students over the age of 21, and members of the public who have disabilities and participate in activities at school facilities (community meetings, voting, sheltering, sports activities, and classes). Giving the MCD its most generous reading (i.e., reading a nonexistent program accessibility requirement into the IDEA), the MCD gives you authority to determine if students protected by the IDEA are denied program accessibility, not to determine whether the District is complying with the ADA through this transition plan.

Based on this flawed understanding of what the ADA requires (and, therefore, what the transition plan addresses) as well as other misconceptions, you have undertaken an in-depth yet largely irrelevant review of "Special Programs for Students with Mobility and Visual



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Impairments" (pages 11-13), as a means of measuring whether the plan addresses direct student program accessibility needs. While this review may relate to the subject matter of the consent decree, it is not indicative of whether the Plan meets the requirements of the ADA.

Straying farther from the authority allowed by the MCD, you have found (pages iv and 9) inequities in the general availability of programs (magnet school, charter schools) across the District for all students, including students with disabilities. That assessment is beyond the scope of the ADA, Section 504, the IDEA, this effort, and the permissible level of authority, because the goal of this effort is to ensure a range of choices for people with disabilities, similar to the choices of others. This effort is not intended to determine what programs should be created or offered in different locations for all the school's populations.

The Feedback states (at pages v and 32-33) that there is not enough information to determine if the plan for compliance at independent charter schools will meet the general intent of the Plan, and says that the plan includes nothing about the expectations for the level of access for each site, timelines, and survey requirements. However, the independent charter schools are just that: independent. Each of the charters is going to address transition planning in its own way; the District will not have a hand in funding, controlling, or assisting in how independent charter schools meet this obligation, apart from offering an opportunity to participate in District training.

### **C. New requirements for disengagement**

Although the District has developed a transition plan consistent with the ADA's requirements, the Feedback you provided now sets out 11 new requirements for disengagement from the MCD (p. 41). Some of the new requirements are purportedly being imposed in the name of accountability, and most involve reporting on and providing further detail about items to which the District has already committed, including those that are addressed in the Plan. For example, the Feedback you provided demands a short- and long-term plan to remediate passenger loading zone problems, periodic reports about plans for implementing operational solutions for all schools, the policies and training materials that the Plan mentions will be developed, and numerous other reports. These are unnecessary reports, some are not even related to the transition plan, and complying with these requests would detract from the District's ability to move forward.

At this time, the District is continuing its review and may provide additional responses to the preliminary thoughts and observations contained in this response.

Sincerely,



Deneen Evans Cox  
Associate General Counsel I

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