



Board Agenda Item #:	II A- Consent Item
Date:	October 11, 2018
To:	Magnolia Educational & Research Foundation dba Magnolia Public Schools (“MPS”) Board of Directors
From:	Alfredo Rubalcava, CEO & Superintendent
Staff Lead:	Patrick Ontiveros, General Counsel & Director of Facilities
RE:	Adoption of ADA 504 Transition Plans for MSA-6 and MSA-7

## I. Proposed Committee Recommendation

Staff recommends that the Board of Directors of MPS (the “**MPS Board**”) approve and adopt the ADA 504 Transition Plans for MSA-6 and MSA-7.

## II. Background

### A. Project Background

The Los Angeles Unified School District contacted MPS in late 2017/early 2018 regarding MSA-6 and MSA-7 to indicate that “*charter schools operating on private sites shall develop Transition and Self-Evaluation plans noting barriers to accessibility and the plan to remove and/or eliminate said barriers within a reasonable timeframe in the Transition Plan and noting intentional or unintentional policies or practices which discriminate against people with disabilities...*”

MPS Staff issued an RFP for the services of a Certified Access Specialist on or about February 9, 2018. The RFP was both forwarded to specific CASps and was published on the websites of MPS, MSA-6 and MSA-7. Three (3) proposals were received. After evaluating the three (3) proposals received, MPS Staff elected to hire CaliCASp. MPS signed a Professional Services Agreement as of February 22, 2018 by and between Magnolia Educational & Research Foundation dba Magnolia Public Schools Mark Anderson Architects, Inc. dba CALI CASp for professional services in connection with developing a “transition plan” for each of MSA-6 and MSA-7.



CALI CASp completed an investigation of each location and identified the accessibility issues with each site. It produced a draft 504 Transition Plan (the “**Plan**”). In order to finalize the Plan MPS Staff sought feedback from various parties—immediate stakeholders such as parents, teachers and staff and two (2) external parties, the Braille Institute Los Angeles and The Center of Achievement for the Physically Disabled, CSU Northridge. In addition notices regarding the preparation of the Plan for each school were posted on and around each school.

## **B. The Final Transition Plan**

After carefully evaluating responses from stakeholders, CALI CASp prepared a final draft of the Plan. The final Plan, proposed to be approved by the Facilities Committee and recommended for approval by the full MPS Board is attached as Exhibit A. The full investigation report prepared by CALI CASp, because of its size, is not included with this report but is available upon request from Patrick Ontiveros.

## **III. Budget Impacts**

In the short term, there is no budget impact to adoption of the final Plan. The law does not require a school to immediately implement mitigation measures. In the interim, as detailed in the final Plan “no cost” measures can be taken to increase accessibility at each site. Eventually (that is, in five years), however, each school may either have to relocate or implement mitigation measures. At MSA-7, using Charter School Facility Incentive Grant (“**CSFIG**”) money, MPS has implemented some measures to address some of the accessibility issues.

### Exhibits (attachments):

*504 Transition Plan*



Exhibit A

504 Transition Plan for MSA-6 and MSA-7



## **1.0 Introduction**

This is the Magnolia Public Schools 504 Transition Plan as relates to Magnolia Science Academy 6 and Magnolia Science Academy 7. This document was prepared as a part of the District's ongoing commitment to the full inclusion of individuals with qualified disabilities, to fulfill obligations under Section 504 of the Rehabilitation Act of 1973, as well as obligations to perform Readily Achievable Barrier Removal under Title III of the Americans with Disabilities Act of 1990.

### **1.1 Rehabilitation Act of 1973**

The Rehabilitation Act prohibits discrimination on the basis of disability in programs conducted by Federal agencies, in programs receiving Federal financial assistance, in Federal employment, and in the employment practices of Federal contractors.

There was some dispute initially as to the reach of this law. In the ruling on *Grove City College v. Bell*, the Supreme Court issued a narrow interpretation. The U.S. Congress responded to by passing the Civil Rights Restoration Act of 1987 (CRRRA) over the veto of President Ronald Reagan. The CRRRA specified that recipients of federal funds must comply with civil rights laws in all areas and not just in the particular program or area that received federal funding. The Department of Education had held a similar administrative interpretation but formally adopted regulatory language that went into effect December 13, 2000 that reinforced the broad interpretation. [Federal Register Vol 65, No 219, November 13, 2000] In the adopted regulations, the Department crafted a statutory definition that regulated four broad categories of recipients:

- (1) State or local governmental entities.
- (2) Colleges, universities, other postsecondary educational institutions, public systems of higher education, local educational agencies (LEAs), systems of vocational education, and other school systems.
- (3) Private entities, such as corporations, partnerships, and sole proprietorships, including those whose principal business is providing education.
- (4) Entities that are established by a combination of two or more of the first three types of entities.

Under the third part of the definition, in the case of private entities not already listed under the second part of the definition, if the federally assisted entity or organization is principally engaged in the business of education (or health care, housing, social services, or parks and recreation), then the entire corporation, partnership, or other private organization or sole proprietorship is the covered "program or activity" or "program." For example, if an individual elementary or secondary school that is neither part of an LEA nor part of an assisted private "school system" receives financial assistance from the Department, the school will be covered on an institution-wide basis under this portion of the definition of "program or activity" or "program" because it is an entity principally engaged in the business of



providing education. For example, if a proprietary trade school receives student financial assistance from the Department, all of its operations are covered by the nondiscrimination requirements of the regulations.

Also under the third part of the definition, if a private entity is not principally engaged in the business of education (or health care, housing, social services, or parks and recreation) and the Department extends financial assistance to the private entity "as a whole," all of the private entity's operations at all of its locations would be covered. If the Department were to extend general assistance, that is, assistance that is not designated for a particular purpose, to this type of corporation or other private entity, that would be considered financial assistance to the private entity "as a whole." In other instances in which the geographically separate facility receives assistance under the third part of this definition, the coverage would be limited to the geographically separate facility that receives the assistance.

### **1.1.1 Section 504**

Section 504 of the Rehabilitation Act states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service. Magnolia Public Schools receives funding that originates from the Department of Education.

Department of Health, Education and Welfare (HEW) was selected as the lead federal agency to develop regulations to implement Section 504 and all other federal agencies adopted regulations from that prototype which HEW Secretary Joseph Califano signed into law on April 28, 1977.

The regulations require funding recipients to operate programs or activities so that, when each part of the program is viewed in its entirety, it is readily accessible to persons with disabilities. If it is necessary to make structural changes to facilities, the recipient must develop a Transition Plan setting forth the steps necessary to complete such changes and then execute the plan. HEW gave recipients three years to make facilities accessible. However, within six months of the regulations, these recipients needed to develop a Transition Plan which analyzes their current facilities and sets forth necessary steps to make the facilities accessible within three years.

The plan must be developed with the assistance of interested persons, including people with disabilities or organizations representing people with disabilities. A copy of the transition plan must be made available for public inspection and contain – at a minimum – the following elements [34 CFR 104.22(e)]:

1. Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to people with disabilities;



2. Describe in detail the methods that will be used to make the facilities accessible;
3. Schedule for taking the steps necessary to achieve full accessibility. If the period of the Transition Plan is longer than one year, one must identify the steps that will be taken during each year of the transition plan; and
4. Indicate the person responsible for implementation of the plan.

An important consideration is that the accessibility requirement applies to each program or activity “when viewed in its entirety”. One does not need to have every building accessible as long as each program as a whole is accessible and accessible features are adequately integrated into the programs to avoid segregating students with disabilities.

### **1.2 Americans with Disabilities Act (ADA)**

The ADA prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. It also applies to the United States Congress.

Title III of the ADA Standards rule-made by the U.S. Department of Justice cover businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities. Public accommodations are private entities who own, lease, lease to, or operate facilities –such as restaurants, retail stores, private schools, convention centers, doctors' offices, homeless shelters, and recreation facilities such as sports stadiums and fitness clubs.

In addition to complying with architectural standards for new and altered buildings, Public Accommodations must remove barriers where such removal is readily achievable [28 CFR Part 36, Sec. 36.304]. “Readily Achievable” means something that is easily accomplishable and able to be carried out without much difficulty or expense. What is difficult or expensive is differs from organization to organization and is determined on a case-by-case basis in light of the nature and cost of the barrier removal and the resources available. In determining whether a proposed barrier removal is readily achievable, one must consider various factors including:

- (1) The nature and cost of the action needed;
- (2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
- (3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
- (4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and



(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

[28 CFR Part 36, Sec. 36.304]

If removal of barriers is not readily achievable, alternative methods must be used to accommodate persons with disabilities if those methods are readily achievable. [28 CFR Part 36, Sec. 36.305] This document does not include consideration of whether given barriers are readily achievable.

On Friday, July 23<sup>rd</sup>, 2010, United States Attorney General Eric Holder signed final regulations revising the Department's ADA regulations, including its ADA Standards for Accessible Design. The 1991 ADA Standards and Uniform Federal Accessibility Standards (UFAS) were replaced by the 2010 ADA Standards. Published on September 15, 2010 with minor corrections made on March 11, 2011, the 2010 ADA Standards became mandatory on March 15, 2012. Projects regulated under the ADA as Public Accommodations or as Commercial Facilities that didn't have a completed building application accepted by applicable jurisdictions prior to March 15, 2012 had to comply with these new rules.

Facilities that complied with either the 1991 ADA Standards or UFAS were not required upgrade due to incremental changes in the Standards unless renovations occur. That was the "Safe Harbor" Provision but there was an exception for facilities that the Department saw as newly regulated and were thus being regulated retroactively to comply with the 2010 ADA Standards:

- Residential facilities and dwelling units, [ADA 233 and 809]
- Amusement Rides [ADA 234 and 1002; 206.2.9; 216.12]
- Recreational boating facilities [ADA 235 and 1003; 206.2.10]
- Exercise machines and equipment [ADA 236 and 1004; 206.2.13]
- Fishing piers and platforms [ADA 237 and 1005; 206.2.14]
- Golf facilities [ADA 238 and 1006; 206.2.15]
- Miniature golf facilities [ADA 239 and 1007; 206.2.16]
- Play areas [ADA 240 and 1008; 206.2.17]
- Saunas and steam rooms [ADA 241 and 612]
- Swimming pools, wading pools, and spas [ADA 242 and 1009]
- Shooting facilities with firing positions [ADA 243 and 1010]
- Miscellaneous
  - Team or player seating [ADA 221.2.1.4]
  - Accessible route to bowling lanes [ADA 206.2.11]
  - Accessible route in court sports facilities [ADA 206.2.12]

## 2.0 Priorities

The Department of Education requires that recipients shall give priority to those methods that serve individuals with disabilities in the most integrated setting appropriate. [36 CFR 104.22(b)] The ADA regulations are similar [28 CFR 36.203]. With integration and equal opportunity foremost in mind, the



District shall give priority to facilities that have the highest occurrence. Facilities with a focus on serving qualified individuals with disabilities will also be a priority. The order of priority shall be as follows:

- 1) Facilities Common to all Students, Caregivers and Visitors
  - a. Public Parking, Loading Zone(s) and Paths to the Primary Entrance(s)
  - b. Reunion Gates, School Lobby and Similar Spaces
- 2) Academic Setting [34 CFR 104.34(a)]
  - a. Classrooms and Disability Support Service Spaces
  - b. Assembly Spaces, Libraries
- 3) Non-Academic Settings [34 CFR 104.34(b)]
  - a. Meals
  - b. Recess Areas
  - c. Restrooms, Drinking Fountains and Changing Rooms
  - d. Counseling Services
  - e. Physical Recreational Athletics
  - f. Transportation
  - g. Health services
  - h. Recreational Activities
  - i. Special interest groups or clubs sponsored by the recipients
  - j. Referrals to agencies which provide assistance to handicapped persons
  - k. Employment of Students, including both employment by the recipient and assistance in making available outside employment

Many buildings have spaces of differing types. For example, instructional buildings are apt to also have instructor prep spaces, break rooms and restrooms. In such facilities, different parts of the building will be of different priority than other parts.

Each of the facility groups described above shall be further prioritized in the order established by the Department of Justice in ADA regulations [28 CFR 36.304(c)]

- a) Building Access - Provide access to a place of public accommodation from public sidewalks, parking, or public transportation. These measures include, for example, installing an entrance ramp, widening entrances, and providing accessible parking spaces.
- b) Interior Program Access - Provide access to the areas where goods and services are furnished. These measures include, for example, providing signage with Braille and raised text, widening doors, providing visual alarms, and installing ramps.
- c) Restrooms - Provide access to at least one restroom for each sex or a single unisex restroom where there aren't separate restrooms for each sex. These measures include, for example, widening of doors, installation of ramps, providing accessible signage, widening of toilet stalls, and installation of grab bars.
- d) Take any other measures necessary to provide access to the goods, services, facilities, privileges, advantages, or accommodations. These may include telephones, drinking fountains, and other amenities.



### **3.0 Methods of Creating Program Accessibility and Removing Barriers**

The District shall ensure that no qualified person shall be denied benefits of, be excluded from participation in, or otherwise be subjected to discrimination due to facilities that are inaccessible to or unusable by people with disabilities. Further, the District shall operate its programs and activities so that when each part is viewed in its entirety, it is readily accessible to people with disabilities. This view of the totality of activities, as regulated by Department of Education [34 CFR 104.22(a)], does not give rise to a need to make every part of a facility accessible. Accordingly, the District's resources shall be applied to improvement of facilities as follows:

- Places where programs and activities are delivered
  - Student Environments
  - Public Spaces
- Accessible circulation connecting all accessible elements and spaces
- Circulation-Related signage
  - Identifying where accessible circulation and general circulation diverge
  - Communicating room names in Braille and tactile text
- Outlets, Switches and Controls to the extent provided as part of programs and activities
  - Elements of an accessible student workstation
  - Light switches in single-occupant rooms (ie, single toilet restrooms)

### **3.1 Schedule**

In consideration of the fact that each of these properties are not owned but leased by the District, the District adopts that it shall, within three years of the adoption of this plan, enter into lease negotiations and execute a new lease for a facility that shall meet all construction-related accessibility standards within ten years of the adoption of this plan.

Certain work at MSA-7 shall occur earlier than that:

- Some restroom upgrades which would provide ADA accessible restrooms for both students and adults. (36 months)
- Removing sand area and substitute a proper play surface. (30 months)
- Replacing most classroom door handles with compliant lever locksets. Deadbolts used by staff in the case of a lockdown shall remain. (30 months)

### **3.2 Interim Measures**

Physical barriers to program access can often be temporarily mitigated using programmatic solutions. These interim solutions include but are not limited to the following types of policies and programs:

- Leasing compliant portable classrooms and portable restrooms to create accessible options.



- Reassign, at the request of a student with a disability or faculty member, a class originally scheduled in a classroom with barriers to that individual or temporarily staffing that facility with individuals to assist disabled students.
- Developing a School Orientation Program for Students with Visual Impairment. The purpose of the Orientation Program would be to assist students in understanding where important facilities are, including but not limited to, Dining Buildings, Academic Buildings, and Individual Classrooms when tactile room identification isn't provided for the student's class.
- Making accommodations, as appropriate to individual needs.

#### **4.0 Responsible Party**

Magnolia Public Schools employs several individuals whose roles include issues related to accessibility for the disabled community. The University Administrator ultimately responsible for the implementation of the Transition Plan is Patrick Anton C. Ontiveros, Esq.

#### **5.0 Public Input**

Magnolia Public Schools is required to provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the Transition Plan by submitting comments and that a copy of the Transition Plan shall be made available for public inspection. The University shall maintain a copy of the Transition Plan at 250 E. 1<sup>st</sup> Street, Suite 1500 Los Angeles, CA 90012. Additionally, the district has solicited commentary through direct outreach in four ways:

- Posting public notices.
- Sending letters to public agencies, organizations, and individuals with disabilities requesting input on prioritizing current and future needs.
- Circulating a survey of facility users.