

**PIEDMONT UNIFIED SCHOOL DISTRICT**  
**Piedmont High School Alan Harvey Theater**  
**Answers to Frequently Asked Questions: Accessibility**  
**April 7, 2014**

In June 2014, the Piedmont Unified School District will present a \$13.5 million bond measure to voters. The measure would provide District students and residents with a safe and accessible school theater facility by bringing the Piedmont High School Theater (Alan Harvey Theater, or AHT) into compliance with the Americans with Disabilities Act and other legal requirements, modernize building systems, and create a new classroom. General information and answers to frequently asked questions about AHT and the June 2014 bond measure can be found at <http://www.acgov.org/rov/elections/20140603/documents/MeasureHv4.pdf> and <http://www.piedmont.k12.ca.us/news/alan-harvey-theater>

What follows are answers to frequently asked questions about accessibility. These answers were reviewed by District legal counsel for accuracy.

***What does “accessibility” mean?***

Under the federal Americans with Disabilities Act (ADA) and its implementing regulations, public school *programs, activities and services* must be accessible to individuals with disabilities, including students, parents, guardians, school staff and other members of the public who may visit the school.<sup>i</sup> This is called “program accessibility.”

The District has drama, musical theater, a cappella and music programs that use AHT on a daily basis as a classroom and on a regular basis for rehearsals and performances. AHT is also used on a regular basis for student assemblies. For these *programs* to be accessible under the ADA, the facilities in which the programs are held must be accessible.

For AHT, this means that there must be: accessible paths of travel throughout the theater including access to the stage, control room, dressing rooms, and orchestra pit; accessible seating at every level along with companion seating; center aisles for safe egress; assistive listening systems; and accessible restrooms. In addition, for groups that rent AHT and for community events, there must be an accessible ticket window. This is called “facility accessibility.”

***Does every school facility have to be accessible?***

No. There is an exception in the ADA that sometimes relieves school districts and other local government entities from the duty to renovate existing facilities to make them accessible. Nonetheless, the exception is limited and does not apply to AHT because it is the only facility we have to house the performing arts classes and programs that include performances.

Under the exception, school districts are not required to renovate existing facilities for ADA compliance *if the district’s programs and services can be made available to individuals with disabilities in another, fully accessible location*. In other words, as long as there is *effective* “program accessibility,” the school district may not necessarily be required to renovate existing facilities for “facility accessibility.”<sup>iii</sup>

For example, if a public school offers an adult education class in an inaccessible facility, the school may comply with the ADA (without renovating the inaccessible facility) by relocating the course to a fully accessible building.<sup>iii</sup>

This exception does not apply to AHT. As noted above, AHT serves as a classroom every school day and hosts student assemblies, vocal and instrumental music concerts, plays, musicals, the annual bird calling contest, and parent education programs. Even the AHT lobby is used on a regular basis for small-group classes and rehearsals. If the District had a second, fully-accessible theater to relocate these programs and classes, the “program accessibility” requirement would be satisfied. However, the District does not have a fully accessible alternate theater that can accommodate all of these programs and uses, so “facility accessibility” of AHT is required.

***Does Every Program Offered to Students Have to Be Accessible?***

Yes. Public schools are required to provide equal access to all programs offered to all students.

***Are there exceptions based on cost?***

No. The cost or burden of construction is not a defense against claims of discrimination based on disability.<sup>iv</sup> (Lawsuits based on disability discrimination are discussed below.)

***Are there exceptions if no students in the district use wheelchairs?***

No. The accessibility requirements are designed to address a range of disabilities, and are not limited to wheelchair access.

Furthermore, school districts must ensure that their programs and activities are accessible regardless of whether there are students with disabilities currently enrolled in the district. There are several reasons for this. At any point in time, already-enrolled students may become disabled. At any point in time, students who are disabled may move into the district. Also, school staff, parents, guardians and other school visitors who may be disabled are entitled under the ADA to participate in school programs, activities and services.

The issue of ensuring accessibility for visitors to AHT is significant, as there are many older, mobility-impaired individuals who attend performances at AHT, or would like to attend performances but cannot because of current accessibility issues with the seating and restrooms.

***May accessibility improvements be done in phases?***

No. As noted above, the ADA requires “program accessibility” and the facility in which programs are provided must be accessible. Because District programs are provided in AHT, and there is no alternative theater in which they could be held, AHT must be fully accessible.

When the District performs work on its facilities, the Division of State Architects (DSA) reviews the District’s plans and may enforce ADA accessibility requirements. The District may not reconfigure the auditorium or paths of travel to make them accessible, install the

required sprinkler system, or even upgrade the theatrical sound and lighting systems, without DSA requiring the District to make the *entire* facility accessible.<sup>v</sup> The DSA will allow the District to make repairs to the roof and HVAC systems, reupholster seats, or generally make repairs costing no more than \$143,000 without requiring the District to bring the entire building up to current standards. This work, however, would not satisfy the obligation of “program accessibility” under the ADA.

### ***What is “barrier removal”? Is it an option for AHT?***

“Barrier removal” is a concept that allows for facility accessibility (*but not program accessibility*) to be done in phases. For example, consider a hypothetical situation in which Piedmont High School has a second, fully accessible theater in addition to AHT, and due to the second theater all of the performing arts programs and activities are “program accessible.” Under the principle of barrier removal, the District *might* be able to renovate the AHT lobby and restrooms to remove barriers in order to use of those parts of AHT in the near term without triggering requirements to renovate the entire facility. However, *this barrier removal principle does not apply when the underlying issue is program accessibility, as is the case with AHT.*

Furthermore, the California Division of State Architect (DSA), the State agency which must review and approve all public school construction projects, is unlikely to approve any school construction projects that do not satisfy all ADA requirements.

### ***What could happen if a district doesn’t meet the “program accessibility” requirement?***

When a school district does not meet the ADA “program accessibility” requirement, an individual with a disability may file a lawsuit based on disability discrimination under the ADA, the Federal Rehabilitation Act, the California Unruh Civil Rights Act, or the California Disabled Persons Act.<sup>vi</sup> Liability may be established without a showing of discriminatory intent.<sup>vii</sup> The District may be liable for compensatory damages, and subject to declaratory and injunctive relief plus legal fees and costs.<sup>viii</sup>

In addition to or instead of filing a lawsuit, an individual with a disability may file a complaint with the United States Department of Education Office for Civil Rights.<sup>ix</sup> Upon an administrative determination that a school program is not accessible, the District would be asked to agree to make the programs fully accessible, including facility accessibility if necessary, and would be subject to compliance reviews until accessibility is achieved. If program accessibility cannot be achieved, the District would be required to discontinue the programs.

### ***Why now? Why wasn’t AHT included in the Seismic Safety Bond Program?***

Between March 2005 and November 2012, the District conducted a comprehensive program to seismically strengthen or replace school facilities that were a collapse hazard by engineering standards. This Seismic Safety Bond Program (SSBP) was completed on schedule and on budget in 2012. (Please refer to the *Seismic Safety Bond Program Summary* for more information about the school facilities and scope of improvements to life safety, and to the *SSBP Financial Summary* for a summary of the financing at <http://www.piedmont.k12.ca.us/district-info/seismic-safety-bond-program.>)

As part of the SSBP, AHT was reviewed for seismic safety, fire/life safety, and accessibility. Engineers and architects determined that AHT is not a collapse hazard in the event of an earthquake and that occupants would be able to safely exit the building after a seismic event. Because AHT met these basic seismic engineering and safety standards, it was not included in the SSBP. At that time, the District noted that AHT presented significant accessibility and other fire/life safety issues. Nonetheless, as AHT met basic seismic safety standards, and as the fire/life safety issues could not be addressed without triggering a DSA requirement of comprehensive renovation for ADA compliance, the SSBP did not include work at AHT. At the time, it was clear that the SSBP funds were not sufficient to address all seismic hazards in the District and all accessibility issues at AHT, and the seismic issues were the priority.

After completion of the SSBP in 2012, the District began to address deferred accessibility and modernization projects throughout the District. One of the first projects to be reviewed was AHT, although the funds remaining from the SSBP were not sufficient to address all of the accessibility and modernization needs in AHT.

As part of this review, architectural designer and community member Mark Becker offered to consider how AHT's program needs and accessibility issues might be solved cost effectively. Becker developed the concept of achieving ADA compliance by adding an elevator housed in a new, adjacent structure. The Board then retained an architecture firm, Quattrocchi Kwok Architects (QKA), to develop plans to resolve the access and fire/life safety code issues and modernize the facility.

### ***Why now? Why not wait until a complaint is received?***

As with the SSBP, the District has a history of being proactive in bringing all school facilities up to current code standards. This proactive approach is consistent with the District's commitment to serve all students. Stated differently, the District's commitment to serve all students is not consistent with an approach of waiting for a complaint about exclusion before addressing these accessibility issues.

Now that the District has completed the seismic safety work and has sufficient bond capacity to undertake a comprehensive renovation of AHT, the District is proposing to address these important deficiencies in AHT.

As indicated above, the District is vulnerable to lawsuits and administrative complaints alleging disability discrimination. If a lawsuit or complaint is filed, the District could be compelled to close AHT and discontinue the performing arts programs until they could be housed in a fully accessible facility. Even if a settlement might allow some time to achieve compliance, such compliance could only be achieved through a bond measure and construction work that very likely will cost more in the future. The District determined that it is more prudent to spend resources on addressing an issue before it becomes a lawsuit.

### ***Who determines what upgrades are needed? How can we be sure this design is acceptable?***

QKA has extensive experience in school projects and the related accessibility requirements, and QKA's design team did a comprehensive study of AHT's accessibility issues. As

mentioned above, as part of the design review process, the California Division of State Architect (DSA), the State agency that oversees public school construction projects, must review and approve the plans and specifically certify that the plans meet all current codes.

***Does the proposed renovation include more than what is minimally required to make AHT accessible?***

Yes. In addition to accessible seating, center aisles, assistive listening systems, accessible restrooms and ticket window, and level paths of travel throughout the theater facility, the proposed renovation would include:

- Replacement of the AHT roof and rooftop heating, ventilation, and air conditioning systems (HVAC). The roof outriggers are rotten. The HVAC components and related ductwork are in poor condition and not functioning properly. The District needs to address the roof and HVAC issues, so systems work properly and AHT interior finishes are protected from damage.
- Upgrades to the ventilation and sprinkler systems. New ventilation and sprinkler systems are required to bring the facility into compliance with current fire and life/safety codes.
- New theatrical lighting and sound systems. The existing systems have reached the end of their useful life, do not function well, and are expensive to maintain.
- A new classroom. ADA accessibility would be achieved in part with the addition of an elevator housed in a new structure adjacent to the existing building. This new structure is required to make AHT accessible. In addition to the elevator, the new structure would house a new classroom. The classroom itself is not required to achieve accessibility, although it would serve the needs of the District's performing arts programs, which currently use the AHT auditorium as a classroom.

***What happens if accessibility issues are not addressed?***

The accessibility and fire/life safety issues would remain unresolved, and the District would need to address these issues at some point in the near future. In the meantime, the Board would use \$500,000 in private donations to make some needed repairs to the AHT roof and HVAC systems, and reupholster the existing seating, so AHT can remain useable for some additional time.

The District seeks to be proactive in the maintenance and preservation of facilities, and will work to bring all school facilities up to current code standards. According to Vila Construction, cost escalation patterns project a 5%-7% per year increase in construction costs, which will make a renovation project more expensive in the future.

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<sup>i</sup> 42 U.S.C.A. § 12132; 28 C.F.R. § 35.130(b)(1)(i). The federal Rehabilitation Act of 1973, and California's Unruh Civil Rights Act and Disabled Persons Act also prohibit discrimination. 29 U.S.C. §794; California Civil Code §§51 & 54.

<sup>ii</sup> 28 C.F.R. §35.150(a)(1); ADA Title II Technical Assistance Manual, II-5.1000.

<sup>iii</sup> ADA Title II Technical Assistance Manual, II-5.1000.

<sup>iv</sup> 29 U.S.C. §§ 794(a), (b)(1)(B), and (b)(2)(B); *Willitts v. City of Los Angeles* (C.D. Cal. 2013) 925 F.Supp. 1089, 1094.

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<sup>v</sup> See, e.g., 28 C.F.R § 35.151. Alterations and additions to an existing facility must meet the standards for new construction.

<sup>vi</sup> 42 U.S.C.A. § 12132; 28 C.F.R. § 35.130(b)(1)(i); 29 U.S.C. § 794; California Civil Code §§ 51 & 54; *McGary v. City of Portland* (9th Cir. 204) 386 F.3d 1259, 1265; *Huezo v. Los Angeles* (2008) 672 F.Supp.2d 1045, 1049.

<sup>vii</sup> *Huezo, supra*, 672 F.Supp.2d at 1047, fn. 1 [citing *Crowder v. Kitagawa* (9th Cir. 1996) 81 F.3d 1480, 1483-84.]

<sup>viii</sup> 42 U.S.C. §§12131-12134; *Barnes v. Gorman* (2002) 536 U.S. 181. In order to recover compensatory damages, a plaintiff must establish intentional discrimination. *Ferguson v. City of Phoenix* (9th Cir. 1998) 157 F.3d 668, 674; *Memmer v. Marin Cnty. Cts.* (1999) 169 F.3d 630, 633.)

<sup>ix</sup> U.S. Department of Education Office of Civil Rights Case Processing Manual, Article I.