

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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November 30, 2001

Superintendent Harry Harutunian
Reading Public Schools
82 Oakland Road
Reading, MA 01867

DEC - 4 2001

Dear Superintendent Harutunian:

My office is issuing this Advisory to ensure that school administrators and architects are fully aware of the state and federal laws that govern the disability access requirements for new schools, and to warn that the use of designs that rely upon concrete risers or sunken levels (such as "Kivas"), may violate federal accessibility requirements. Also included within this advisory are the accessible seating requirements for auditoriums, and a reminder that new school construction must meet both state and federal access requirements.

For the past two years, the Massachusetts Attorney General's Disability Rights Project and the Massachusetts Office on Disability have conducted several surveys of newly constructed schools to assess compliance with disability access requirements under both the Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board's (AAB) regulations. Although overall the compliance level is high, we identified several significant barriers to equal access for individuals with disabilities, including inaccessible mini-amphitheaters used for multi-media presentations, segregated wheelchair seating in auditoriums, non-compliant curb cuts and the absence of visual alarms for persons with hearing impairments. Such barriers prevent the creation of an inclusive and welcoming educational environment for students, parents, teachers and community members with disabilities who seek to use public schools for educational, cultural and civic purposes.

Assembly Areas

Under Section 202 of the Americans with Disabilities Act, 42 U.S.C. § 12132, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." Pursuant to the Americans with Disabilities Act Accessibility Guidelines (ADAAG), issued by the Department of Justice, discrimination can include failing to include wheelchair spaces in the assembly areas, and failing to provide wheelchair access to all performing areas. 28 C.F.R. Part 36, Appendix A, §§ 4.1.3 (18) and 4.33.5. In addition, ADAAG requires new construction to be designed so that employees with disabilities can approach and enter work areas. 28 C.F.R. Part 36, Appendix A, § 4.1.1(3). This would include access to audio visual equipment that is placed at various levels within an assembly area. Sunken level assembly areas, including "Kivas," fail to meet these federal standards if they do not provide ramps or some other form of appropriate access for students and teachers.

In light of our surveys and concerns that such designs violate federal accessibility standards, we are advising local school districts and architects to refrain from using "Kivas" or sunken assembly areas, as described above, unless they meet all of ADAAG standards.



Auditorium Seating

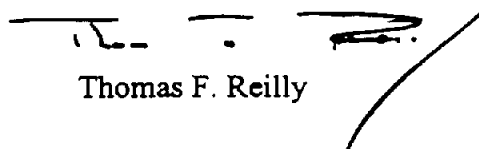
One of the primary goals of state and federal disability access laws is to ensure integration and inclusion of individuals with disabilities. These goals must also be incorporated into the design and placement of accessible seating in auditoriums. ADAAG requires adjacent companion seating and shoulder to shoulder seating in auditoriums and other assembly areas. When the seating capacity in auditoriums exceeds 300, accessible seating must be dispersed, and must be placed in more than one location. 28 C.F.R. § 4.33. Preferred design would include both horizontal and vertical integration of accessible seating in order to provide patrons with disabilities a choice of seating locations, as well as the opportunity to sit with friends and family members. Often, accessible seating is only provided at the top or bottom of an assembly area, or only in one section of the seating area. The unintended effect of such seating arrangements is to segregate students with disabilities and reduce opportunities for them to sit with their classmates or family members.

Under the current regulatory scheme for new construction of schools, established by the Massachusetts Department of Education's School Building Assistance Program, plans for new schools must be submitted to the Massachusetts Architectural Access Board for review of compliance with state disability access requirements. An architect's plans for new school construction must also comply with applicable federal requirements under ADAAG. The Massachusetts Architectural Access Board does not have, however, the authority to review plans to determine compliance with the federal access standards under ADAAG. Although the Massachusetts Architectural Access Board and ADAAG generally apply the same or similar access standards, at times the federal and state standards are significantly different. For example, the current AAB regulations do not cover areas that are reserved for employees, so teachers' bathrooms could comply with AAB standards, yet still fail to comply with ADAAG.

There are a number of resources available to assist local officials and architects in complying with federal law, including the Access for Public Schools at Adaptive Environments, Inc. You may contact this Schools Project and inquire about their publications by calling (800) 893-1225 (V/TTY), or by writing to Adaptive Environments, Inc., 374 Congress Street, Suite 301, Boston, MA 02210, the New England regional disability and business technical assistance center. You may also wish to contact the Department of Justice's ADA Information Line at (800) 514-0301 (V), (800) 514-0383 (TTY), the Massachusetts Office on Disability at (617) 727-2200, or my office's Disability Rights Project at (617) 727-2200, ext. 2939.

As the chief law enforcement officer for the Commonwealth, I am committed to promoting compliance with both state and federal disability access requirements in all government facilities, including schools. I hope that you will join me in my efforts to provide students with disabilities an equal and inclusive educational environment. I am confident that by increasing awareness of, and compliance with, both state and federal requirements for disability access, school administrators and architects of the Commonwealth can maximize their legal compliance and ensure that students with disabilities will enjoy the full and equal benefits that these new facilities provide.

Sincerely,



Thomas F. Reilly

AG's office investigates handicapped-accessibility of new Ipswich school

Salem News 2/11/20

By JESON INGRAHAM
News correspondent

IPSWICH — The state attorney general's office is investigating a claim that Ipswich's new multi-million dollar high school is not in full compliance with the Americans with Disabilities Act.

The ADA, a federal law passed in 1990, requires that construction of all public buildings include provisions for those with disabilities.

According to Selectmen Chairman Edward Rauscher, the attorney general's office sent the school district a letter this week questioning whether the new school — due to open in two months — meets the ADA requirements.

However, Superintendent Rich-

ard Korb and School Committee Chairman Jeffrey Loeb refused to answer questions about the letter yesterday, citing the advice of their legal counsel.

Korb said he would offer an official response at the beginning of next week.

"We received some communication," said Korb, adding the information is "prive to executive session."

One source familiar with the attorney general's investigation, who asked not to be named, said the school officials' silence implies "this isn't a matter of misplaced bolts and nuts."

The new \$31.9 million school is scheduled to open this April. Korb would not say whether the investi-

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School: AG investigates accessibility

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gation would alter the opening date. Timothy Shea, chief of the Public Protection Bureau at the attorney general's office, would not comment on the letter because "the investigation isn't complete."

He would also not say when the Ipswich investigation started.

Shea did say it is the attorney general's obligation to see that disabled individuals are treated fairly.

"School kids should not be segregated because they are disabled," he said yesterday. "We're not going to compromise on the principles (of the ADA)."

The attorney general's office begins investigations like these after receiving a complaint from an in-

dividual or a referral from another governmental agency, Shea said. Rarely, he said, will an investigation lead to a trial in civil court, because two parties can usually reach a compromise on how to follow the principles set forth in the ADA.

Earl Flansburg Associates of Boston is the architectural firm working on Ipswich's new high school. Sid Bowen, the principal architect in charge of the plans, wouldn't comment specifically on the town's project.

Speaking in general, however, he said architects are expected to meet guidelines set by the ADA and the Massachusetts Architectural Access Board (MAAB).

After the design for a project is complete it must be submitted to MAAB, which is often "swamped"

and does not typically comment on plans, according to Bowen.

Bowen said it usually takes an individual complaint about a project to end up on the desk of a place like the attorney general's office. He said MAAB's guidelines are more specific than federal ones and are also subject to slight changes.

Earl Flansburg Associates is in the midst of renovating Weymouth's high school and was recently asked by MAAB to replace an existing elevator because it was an inch too small in one dimension, Bowen said. After discussion, Bowen said MAAB withdrew its requirement because it was too stringent.

Korb said he would hold a "press conference" early next week to discuss the high school situation. He did not set a date and time.

Old-school, yet new



RENDERING BY EARL R. FLANSBURGH & ASSOC.

Rooted in tradition, innovative facility due to open for 7 grades in Ipswich next spring



CLOBE STAFF PHOTO / JANET KNOTT

Middle school principal Cheryl Forster and high school principal Barry Cahill talked in one of the contemporary classrooms under construction in Ipswich. The building will feature clusters of wedge-shaped rooms.

Cur to g on] Suf

Acknowledging Suffolk University's relations with the city, the university has planned to start "The Little P..."
"The school..."
"The children... cause of the... city."

The budding of the theater Services Co. made a surprising number of performers.

Under its leadership, Suffolk is not only using the theater just behind the day of meetings, city officials allow the performers to perform as well.

In his in-depth study of the boiler room, the street was in the school only for Suffolk to be open to the

Suffolk neighbors have several morning, traffic, Menino

African-Americans) (Suffolk)

School construction may stop because of accessibility questions

The Evening News, Salem, Mass., Wednesday, February 16, 2000

Ipswich

By **JESON INGRAHAM**
News correspondent

IPSWICH — The state could halt construction at the new Ipswich High School-Middle School unless the district addresses accessibility issues there immediately.

The attorney general's office says several areas in the school, in particular six "Kivas" (presentation areas) and the auditorium, violate state and federal disability-access requirements.

Despite the state's claim, school officials still hope to resolve the dispute without making last-minute changes to the \$31.9 million project.

Sid Bowen of Earl R. Flansburgh & Associates, Inc., the principal architect in charge of the plans, attributes the office's claim to "incorrect or incomplete information." Two independent code-compliant consultants for the architectural firm maintain that the building complies with regulations set forth in the American with Disabilities Act of 1990 and by the state.

"(The architects) are confident that what they have designed and we have built is compliant with the law," said Superintendent Rick Korb said yesterday. "We are still relatively unsure what the (state's) major concerns are."

Representatives of the attorney general's office were not available yesterday for comment.

The investigation of the school started as early as last month when Anthony Rodriguez, an assistant attorney general, wrote a letter to Bowen dated Jan. 5, 2000, listing specific violations at the site.

Now school officials will schedule a meeting with the attorney general's office as soon as possible to try find a resolution. Most disputes are settled before being brought to court, said a representative of the attorney general's office.

The investigation was prompted in part by a Boston Globe article last year reporting on the school's fresh design, according to Steve Fortado, the Ipswich schools' director of finance

and operations. An accompanying picture shows high-school Principal Barry Cahill and middle-school Principal Cheryl Forster standing in the middle of a presentation area with sunken levels.

Apparently, Rodriguez's interest in the case began after seeing the picture. His office has visited Ipswich twice since then.

"This office is concerned that the violations will adversely affect generations of disabled students, teachers and parents who seek full use of the school," wrote Rodriguez last week in a second letter to Bowen. "Accordingly, the violations that currently exist must be remedied."

Citing inaccessibility to the presentation areas and the auditorium, Rodriguez claims his office is prepared to seek judicial relief, including an injunction to stop construction until the accessibility issues are corrected.

In the auditorium, School Committee Chairman Jeffrey Loeb states, there is wheelchair-accessible seating in the front and back, along with accessibility to the orchestra pit and onto the stage.

"It seems like access is there," said Loeb, adding that the Kivas are accessible because presentations are given at ground level, where people in wheelchairs can observe what's going on.

"Clearly the whole top area is wheelchair-accessible," said Loeb. "The presenter will be on the ground level." There is, however, no such accessibility to the lower levels.

Korb and Loeb still expect the school to open this April. No estimates have been made of how much it would cost to bring the building into compliance with the ADA in the eyes of the attorney general's office.

The school does have contingency funds set aside for unexpected costs; but as the end of a project nears, so do such funds, according to Korb.

Loeb said he expects the point will eventually be moot, because assumptions about unfinished areas "will be shown to be not really concerns."



