

# SCHOOL AND COLLEGE LEGAL SERVICES of California

General Counsel  
Carl D. Corbin

*Attorneys*

Monica D. Batanero  
Nancy L. Klein  
Margaret M. Merchat  
Mia N. Robertshaw  
Loren W. Soukup  
Patrick C. Wilson  
Frank Zotter, Jr.

*Retiree*

Susanne K. Reed  
(1947 – 2010)

*A Joint Powers Authority serving school and  
college districts throughout the state*

*Reply to:*  
Santa Rosa Office  
5350 Skylane Blvd.  
Santa Rosa, CA 95403  
(707) 524-2690  
Fax: (707) 578-0517  
[santarosa@sclscal.org](mailto:santarosa@sclscal.org)

*Of Counsel*  
Robert J. Henry  
Janna L. Lambert  
Virginia A. Riegel

## LEGAL UPDATE

September 16, 2014

**To: Superintendents, Member School Districts (K-12)**

**From: Loren W. Soukup, Associate General Counsel** LS

**Subject: ADA - No Violation for Bleachers Built Pre-ADA  
Memo No. 23-2014**

---

On July 25, 2014, the United States Court of Appeals, Ninth Circuit, issued a unanimous decision in *Daubert v. Lindsay Unified School District*<sup>1</sup> which held that the school district was not required to structurally alter its high school football field bleachers where the seating was built prior to the enactment of the Americans with Disabilities Act (“ADA”)<sup>2</sup> and other accessible seating was available to individuals who used wheelchairs.

To bring a claim under Title II of the ADA<sup>3</sup>, an individual must establish (1) he/she is an individual with a disability; (2) he/she is otherwise qualified to participate in or receive the benefit of a public entity’s services, programs, or activities; (3) he/she was either excluded from participation in or denied the benefits of the public entity’s services, programs or activities or was otherwise discriminated against by the public entity; and (4) such exclusion, denial of benefits or discrimination was by reason of his/her disability.<sup>4</sup> Pursuant to Title II’s implementing regulations, an individual is excluded from participation in or denied the benefits of a public program if the facilities are inaccessible to or unusable by individuals with disabilities.<sup>5</sup>

---

<sup>1</sup> Available at: <http://cdn.ca9.uscourts.gov/datastore/opinions/2014/07/25/12-16252.pdf>

<sup>2</sup> 42 U.S.C. §§ 12131 et seq.

<sup>3</sup> Title II regulates state and local governments operating public services or programs.

<sup>4</sup> *Sheehan v. City & Cnty. of S.F.*, 743 F.3d 1211, 1232 (9th Cir.2014)

<sup>5</sup> 28 C.F.R. §35.149

However, under the ADA, facilities constructed before January 26, 1992 are not required to be accessible to and usable by individuals with disabilities.<sup>6</sup> When such pre-ADA facilities exist, public entities need only provide program access by operating each service, program, or activity so that the service, program, or activity when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

In this particular case, the plaintiff, an individual in a wheelchair, brought an action against the school district alleging that he was not provided equal access to the district's football games since the bleachers were not wheelchair accessible and he was required to sit in other designated areas where he allegedly had an obstructed view of the field and was denied the same "social experience" of sitting in the bleachers since he could not sit with a majority of the spectators.

The Ninth Circuit Court determined that since the bleachers had been constructed in 1971, prior to the enactment of the ADA, the fact that the bleachers were not accessible to individuals with disabilities did not amount to discrimination by the school district since the district still provided access to the football field and the football games, through its alternative seating to individuals in wheelchairs.

In addition, the Ninth Circuit Court found that the school district was not required to provide individuals with disabilities with the same "social experience" that the bleachers provided. The Court concluded that since the school district allowed spectators who used wheelchairs to sit with companions and sit directly in front of the bleachers, to the side of the bleachers, or in other areas where spectators congregate there was no obligation of the school district to alter the structure of the bleachers to allow for wheelchair accessibility. In light of these findings, the Court concluded that the school district provided individuals with disabilities program access to the football field and football games and no structural alterations of the bleachers was required.

Please contact our office with questions regarding this or any other legal matter.

---

<sup>6</sup> 28 C.F.R. §35.150