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United States District Court, C.D. California.

Charles Anthony GUERRA, et al.
v.
WEST LOS ANGELES COLLEGE, et al.

Case No. CV 16-6796-MWF (KSx)
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Proceedings (In Chambers): ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION [11]

The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

***1** Before the Court is Plaintiffs' Motion for Preliminary Injunction, filed on September 15, 2016 (the "Motion"). (Docket No. 11). Defendants filed an Opposition to the Motion on September 27, 2016. (Docket No. 20). Plaintiffs filed a Reply on October 5, 2016. (Docket No. 21). The Court has read and considered the papers filed on the Motion, and held a hearing on **October 24, 2016**.

As set forth below, the Motion is **DENIED**. Plaintiffs have not demonstrated that the law and facts clearly favor the mandatory injunction sought in the Motion.

I. BACKGROUND

Defendant West Los Angeles College ("WLAC") is a community college in Culver City, California, and is part of the Los Angeles Community College District, another Defendant. (Exhibit 2 to Declaration of Srividya Panchalam, Docket No. 12). The WLAC campus is located on a hillside, with elevation changes between parking lots, campus entrances, classrooms, and other facilities. (Declaration of Jeff Mastin at ¶¶ 3, 63, Docket No. 16). Plaintiff assert that certain points on campus are virtually inaccessible due to the elevation changes and distance between classrooms.

Until February 2016, WLAC offered a type of shuttle service that allowed students to request pick up and drop off at specific locations. (Panchalam Decl. Ex. 5). The service used "trams" that fit around five individuals, and provided a "door to door" service from campus parking lots and entrances. (Guerra Decl. at ¶ 23). (The Court is not certain what the "trams" actually were, but is using the terminology employed in the papers, along with "shuttles".) Plaintiffs provide a map of the service showing the routes it served and the phone number students would call to have a tram pick them up. (Panchalam Decl. Ex. 5). In February 2016, this service was ended. (*Id.*). In its place, WLAC offered rides to disabled students on golf carts. Some Plaintiffs found these golf carts inadequate for their needs. (Declaration of Chrystal, Docket No. 14, at ¶ 17). In March 2016, WLAC ended this golf cart service after finding it was not ADA compliant.

Plaintiffs are three students with difficulty accessing certain areas of the campus due to physical ailments. Charles Guerra in an Army veteran with a severe knee injury and a spinal cord injury that limits the use of his left leg. (Declaration of Charles Guerra at ¶ 3, Docket No. 13). He has difficulty walking on slopes, stairs, or uneven terrain. (*Id.*). Plaintiff Guerra has attended WLAC for years using the shuttle service previously offered. (*Id.*).

Plaintiff Chrystal, using one name, has attended WLAC since 2013. She has disabilities which affect her ability to move freely around the campus on foot, as she must keep an oxygen tank with her at all times, attached to a wheeled cart. (Chrystal Decl. at ¶¶ 3–11). She previously used the campus shuttle service. (*Id.*).

Plaintiff Karlton Bontrager has attended WLAC since 2014. He has a traumatic brain injury that limits his balance and mobility. (Declaration of Karlton Bontrager at ¶¶ 6–12). He previously used the campus shuttle

service. (*Id.*).

***2** All three plaintiffs state that the discontinuation of the campus shuttle service has hampered their ability to get to class and receive the education they desire at WLAC. (*Id.*). In the Motion, they seek a preliminary injunction that "ensures Plaintiffs will have meaningful access to programs, services, and activities on WLAC's campus." (Motion at 25). Plaintiffs propose restoring the campus shuttle service that existed prior to February 2016 or instituting some other form of transportation on campus that is accessible to disabled students.

Defendants assert in their Opposition that Plaintiffs request reinstating the golf cart service. (Opposition at 1). But this assertion seems to be a misreading of the Motion. Plaintiffs clearly prefer the older shuttle service to the golf cart service, which Chrystal says was inadequate for her needs. Defendants fail to even acknowledge that a previous service existed or explain why it was discontinued, despite Plaintiffs' numerous declarations to that effect and the inclusion in their filings of an official map of the prior shuttle service.

II. MOTION FOR PRELIMINARY INJUNCTION

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (rejecting "possibility" standard and holding that plaintiffs must "demonstrate that irreparable injury is *likely* in the absence of an injunction."). "A preliminary injunction is an 'extraordinary and drastic remedy' ...; it is never awarded as of right." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2007).

"[T]he burdens at the preliminary injunction stage track the burdens at trial." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006); *see also Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 666 (2004) (reasoning that, where a nonmovant would bear the burden of persuasion at trial, the movant seeking a preliminary injunction "must be deemed likely to prevail" if the nonmovant fails to make an adequate showing).

As to the specific relief sought, "[a] preliminary injunction can take two forms." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). ***First***, "[a] prohibitory injunction prohibits a party from taking action and 'preserve[s] the status quo pending a determination of the action on the merits.' " *Id.* (quoting *Chalk v. U.S. Dist. Court*, 840 F.2d 701, 704 (9th Cir. 1988)). ***Second***, "[a] mandatory injunction 'orders a responsible party to take action.' " *Id.* at 879 (quoting *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996)) (internal quotation marks omitted). "A mandatory injunction 'goes well beyond simply maintaining the status quo [p]endente lite [and] is particularly disfavored.' " *Id.* (alterations in original) (quoting *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979)) (internal quotation marks omitted).

Plaintiffs ask that WLAC institute a shuttle program or other type of transportation system that is accessible to them. It is clear, then, that what the Motion seeks is affirmative implementation of a particular type of program. This relief would go beyond maintaining the status quo, with which Plaintiffs are dissatisfied. In short, Plaintiffs seek a mandatory injunction. Plaintiffs argue in their Reply that they seek to reinstate the last, uncontested status which preceded the pending controversy. (Reply at 6). But as the Court notes below, the parties do seem to contest whether WLAC ever had such a shuttle program in the past.

***3** "In general, mandatory injunctions 'are not granted unless extreme or very serious damage will result and are not issued in doubtful cases or where the injury complained of is capable of compensation in damages.' " *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879 (quoting *Anderson*, 612 F.2d at 1115). Indeed, the Ninth Circuit has many times discussed the nature of mandatory injunctions. *See, e.g., Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc) ("In plain terms, mandatory injunctions should not issue in 'doubtful cases' " (citations omitted)); *Working Washington v. Cent. Puget Sound Reg'l Transit Auth.*, 533 F. App'x 716, 718 (9th Cir. 2013) ("Thus, 'mandatory preliminary relief is subject to heightened scrutiny and should not be issued unless the facts and law clearly favor the moving party' " (citations omitted)); *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994) (discussing the standards articulated in *Anderson*)).

As to the general preliminary injunction standard to be applied, Plaintiffs contend that " 'serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.' " (Mot. at 13-14 (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th

Cir. 2011)). *See also Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073 (9th Cir.), *cert. denied*, 134 S. Ct. 2877 (2014) ("We have held that a 'likelihood' of success per se is not an absolute requirement" (citing *Cottrell*, 632 F.3d at 1131-32)); *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013) ("Under our 'sliding scale' approach to evaluating the first and third *Winter* elements, a preliminary injunction may be granted when there are 'serious questions going to the merits and a hardship balance that tips sharply toward the plaintiff,' so long as 'the other two elements of the *Winter* test are also met' " (quoting *Cottrell*, 632 F.3d at 1131-32)).

Some district courts have observed that *Cottrell* may be in tension with the Supreme Court's ruling in *Winter*, as well as the Ninth Circuit's adoption of *Winter*, as evidenced in *American Trucking Association, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) and *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009). *See, e.g., S.E.C. v. Banc de Binary Ltd.*, 964 F. Supp. 2d 1229, 1233 (D. Nev. 2013) (noting that *Cottrell's* "serious questions" sliding scale test "presents some difficulty in light of *Winter* and *Selecky*," and consequently interpreting "serious questions going to the merits" as meaning "that there is at least a reasonable probability of success on the merits" so as to satisfy *Winter's* requirement that success on the merits is "likely"); *Campbell v. Feld Entm't Inc.*, No. 12-CV-4233-LHK, 2013 WL 4510629, at *4 (N.D. Cal. Aug. 22, 2013) ("The Court finds, however, that this 'serious questions' standard is in tension with *Winter* and prior Ninth Circuit case law rejecting any earlier standards that are lower than the standard in *Winter*"); *Fox Television Stations, Inc. v. BarryDriller Content Sys., PLC*, 915 F. Supp. 2d 1138, 1141 (C.D. Cal. 2012) ("The Court will not apply the standard set forth in *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–35 (9th Cir. 2011), as it views that standard as being in conflict with both the Supreme Court's ruling in *Winter* and the Ninth Circuit's own subsequent adoption of the *Winter* standard.").

The Ninth Circuit has recently reiterated, while evaluating the propriety of a mandatory injunction, that "[b]ecause it is a threshold inquiry, when 'a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [*Winter* elements].' " *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc) (quoting *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013)) (internal quotation marks omitted).

***4** Because Plaintiffs seek a mandatory injunction, the Court declines to interpret the "serious questions" standard for purposes of the Motion as inconsistent with the Ninth Circuit's guidance that a mandatory injunction not issue in "doubtful cases" and not be granted "unless the facts and law clearly favor the moving party."

Mindful of the standards discussed above, the Court evaluates the contentions made in connection with the Motion.

A. Likelihood of Success on the Merits

1. Claims for Violations of Section 504 and Title II of the ADA

Section 504 of the Rehabilitation Act provides, in relevant part: "No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...." 29 U.S.C. § 794(a). Similarly, Title II of the ADA provides that "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." 42 U.S.C. § 12132.

To establish a prima facie Section 504 claim, Plaintiffs must establish that: (1) they are individuals with a disability; (2) they are otherwise qualified to receive the benefit; (3) they were "denied the benefits of the program solely by reason of" their disability; and (4) "the program receives federal financial assistance." *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001), *as amended on denial of reh'g* (Oct. 11, 2001) (citing *Weinreich v. Los Angeles County Metropolitan Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997)). Similarly, to prove a violation of Title II of the ADA, Plaintiffs must show: (1) they are qualified individuals with a disability; (2) they were "either excluded from participation in or denied the benefits of a public entity's services, programs, or activities, or [were] otherwise discriminated against by the public entity"; and (3) "such exclusion, denial of benefits, or discrimination was by reason of" their disability. *Weinreich*, 114 F.3d at 978 (emphasis removed).

For purposes of the ADA, "[t]he term 'qualified individual with a disability' means an individual with a

disability who, ***with or without reasonable modifications*** to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131 (emphasis added). In the "Findings" section of the ADA, Congress observed that "individuals with disabilities continually encounter various forms of discrimination, including ... failure to make modifications to existing facilities and practices." 42 U.S.C. § 12101 (a)(5). The Department of Justice's ADA implementing regulations specify that a public entity must "make ***reasonable modifications*** in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the services, program, or activity." 28 C.F.R. § 35.130(b)(7) (emphasis added); *see also Zukle v. Regents of Univ. of California*, 166 F.3d 1041, 1046 (9th Cir. 1999).

***5** Similarly, in the "public preschool elementary, secondary, or adult educational services" context, the Department of Education's implementing regulations for Section 504 define a "qualified handicapped person" as "a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act." 34 C.F.R. § 104.3(l)(2). "[T]he focus of the prohibition in § 504 is 'whether disabled persons were denied meaningful access to state-provided services.' " *Mark H. v. Lemahieu*, 513 F.3d 922, 937 (9th Cir. 2008) (quoting *Crowder v. Kitagawa*, 81 F.3d 1480, 1484 (9th Cir. 1996)) (internal quotation marks omitted).

In this vein, "although § 504 does not require 'substantial adjustments in existing programs beyond those necessary to eliminate discrimination against otherwise qualified individuals,' it, like the ADA, does require ***reasonable*** modifications necessary to correct for instances in which qualified disabled people are prevented from enjoying 'meaningful access to a benefit because of their disability.' " *Id.* (emphasis in original) (quoting *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 410 (1979); *Alexander v. Choate*, 469 U.S. 287, 301 (1985)) (internal quotation marks omitted). In fact, the Ninth Circuit has noted that "[p]laintiffs may establish that an organization violated § 504 by showing that the public entity discriminated against, excluded, or denied the benefits of a public program to a qualified person with a disability," which "includes showing that the public entity denied the plaintiff a reasonable accommodation." *Mark H. v. Hamamoto*, 620 F.3d 1090, 1096 (9th Cir. 2010) (citing *Lemahieu*, 513 F.3d at 924-25).

The Ninth Circuit has recognized that, "[a]lthough Title II of the ADA uses the term 'reasonable modification' rather than 'reasonable accommodation,' these terms do not differ in the standards they create." *Wong v. Regents of Univ. of California*, 192 F.3d 807, 816 n. 26 (9th Cir. 1999), *as amended* (Nov. 19, 1999).

"T]here is no significant difference in analysis of the rights and obligations created by the ADA and the Rehabilitation Act." *Zukle*, 166 F.3d at 1045 n.11; 42 U.S.C. § 12133 ("The remedies, procedures, and rights set forth in [the Rehabilitation Act] shall be the remedies, procedures, and rights [applicable to ADA claims]."). Consequently, "courts have applied the same analysis to claims brought under both statutes." *Zukle*, 166 F.3d at 1045 n.11; *see also Vinson v. Thomas*, 288 F.3d 1145, 1152 n.7 (9th Cir. 2002).

For purposes of their Opposition, Defendants acknowledge that Plaintiffs are disabled and entitled to ADA accommodations. (Opposition at 10).

2. Plaintiffs' Proposed Accommodation

The Ninth Circuit has previously evaluated the reasonableness of particular proposed modifications. *See, e.g., Crowder*, 81 F.3d at 1485 (holding, in ADA action applying a disparate impact analysis, a quarantine requirement affecting dogs (including guide dogs) was a policy, practice or procedure which discriminated against visually-impaired individuals by denying them meaningful access to state services, programs and activities by reason of their disability in violation of the ADA, and a genuine issue of material fact existed as to whether the plaintiffs' proposed modifications to this quarantine amounted to " 'reasonable modifications' which should be implemented, or 'fundamental[ ] alter[ations],' which the state may reject" (alterations in original)). The Ninth Circuit has also noted in cases involving, for example, claims brought regarding access to public education pursuant to Section 504, that "[r]easonableness 'depends on the individual circumstances of each case, and requires a fact-specific, individualized analysis of the disabled individual's circumstances and the accommodations that might allow him to [enjoy meaningful access to the program.]' "

Hamamoto, 620 F.3d at 1098 (alteration in original) (quoting *Vinson*, 288 F.3d at 1154). " '[M]ere speculation that a suggested accommodation is not feasible falls short of the reasonable accommodation requirement; [the Rehabilitation Act] create[s] a duty to gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary.' " *Id.* (alterations in original) (quoting *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1136 (9th Cir. 2001), *as amended on denial of reh'g* (Oct. 11, 2001)).

***6** Plaintiffs claim that after the discontinuation of the campus shuttle, they have been denied access to the programs, services, and activities offered by WLAC. (Motion at 17).

WLAC must take affirmative steps, Plaintiffs argue, to remedy this situation, unless doing so would be a fundamental alteration or present an undue burden. *See* 28 C.F.R. § 35.150(a)(3). WLAC must consider all available methods to ensure meaningful access for the disabled. *Id.* § 35.150(b)(1).

Plaintiffs argue that a campus shuttle, like the one previously provided, is a reasonable and effective method of ensuring adequate access for disabled Plaintiffs. (Motion at 17). As evidence of this method's feasibility, Plaintiffs point to the operation of such a shuttle until February 2016. The previous shuttle service was open to all students. (Guerra Decl. ¶ 23). Plaintiffs request a shuttle that services only disabled passengers, lessening the burden on Defendants to supply many shuttles or as frequent service. (Motion at 18). In addition, Plaintiffs' declarations show WLAC continues to operate a very limited shuttle service for visitors during some campus events. (Guerra Decl. ¶ 36). Plaintiffs submit a declaration from an expert that states that nothing prevents Defendants from providing such transportation assistance, and that they could do so at a minor cost. (Declaration of Jeff Mastin, Docket No. 16, at ¶¶ 143–146). Defendant LACCD's own policies provide that its colleges may provide services such as those Plaintiffs seek. (Panchalam Decl. Ex 12, at 1–2).

Plaintiffs further argue that none of the alternatives proposed by Defendants are adequate to provide meaningful access. Defendants suggested Guerra and Chrystal park in specific lots nearest their classes. (Guerra Decl. ¶ 60, Chrystal Decl. ¶ 34). But even parking at the closest lot would still require them to walk over stairs and uneven terrain, which they cannot do. (*Id.*). Defendants suggested Bontrager find other means of getting to his classes, such as having friends drop him off. But Bontrager may not have friends willing to drive him each time he has class, so this is not a solution to the meaningful access problem.

Defendants respond that such a shuttle service was "never offered" at WLAC, despite Plaintiffs' numerous declarations to that effect. (Opposition at 10). Instead, Defendants claim that this "shuttle" service was, in fact, just golf carts used to shuttle students. In addition, they state no schedule or route existed for this service. (*Id.*). But Plaintiffs include a map of the shuttle service with a highlighted route, which states that the service runs "every 12-15 minutes." (Panchalam Decl. Ex. 5). Defendants cite no declarations or other evidence for their claim that no shuttle service ever existed other than the golf cart service. The submitted evidence strongly suggests that WLAC did operate a shuttle service before February 2016. The Court has difficulty understanding how the parties could disagree as to such a fundamental element of the action.

Defendants argue creating a tram service would be an undue burden on Defendants. (*Id.*). In addition, Defendants have determined that the use of golf carts is not ADA-compliant. (Opposition at 12). Defendants correctly point out that "use of a accessible rolling stock" is but one of the listed options in the ADA code provisions. 28 C.F.R. § 35.150(b). Defendants claim other alternative offered to Plaintiffs fulfill their obligation to accommodate Plaintiffs' disabilities. For example, the opportunity to take the same classes offered at WLAC either at other locations, which do not have the same terrain issues as WLAC, or online. (Opposition at 11). Every class Plaintiffs have identified as being of interest to them is offered at another location in the system or online. (*Id.*). Provision at a different campus or online would qualify as "delivery of services" at an "alternative accessible site." (*Id.*). Creating a tram service would require Defendants to train employees, purchase compliant vehicles (if they do not have enough already), and create pathways that are shown to meet the ADA's requirements.

***7** Defendants correctly note that many of the cases cited by Plaintiffs did not deal with mandatory injunctions seeking to force the defendants to take a certain action; rather, those plaintiffs sought to enjoin prohibitions. For example, in *Galusha v. NY State Dep't of Envtl. Conservation*, the plaintiffs sought to enjoin the prohibition of wheelchairs in a park. 27 F. Supp. 2d 117, 125 (N.D.N.Y. 1998). In the *Crowder* case previously discussed, the plaintiffs sought to enjoin Hawaii's quarantine law as applied to guide dogs. 81 F.3d at 1484. These cases, therefore, do not support Plaintiffs' arguments that this Court should force Defendants to

devise a new shuttle transportation system that complies with the ADA. Plaintiffs point to the holding in *Rodde v. Bonta*, 357 F.3d 988, 999 (9th Cir. 2004), that prevented the closing of a hospital. But the hospital in that case was "the only hospital in the county that could serve" the plaintiffs' needs. *DMC Closure Aversion Comm. v. Goia*, 2014 U.S. Dist. LEXIS 121644, at *35 (N.D. Cal. Aug 29, 2014) (discussing the holding in *Rodde*). Plaintiffs here have failed to make any showing that WLAC is the only campus that provides the services they seek. Because the other options presented by Defendants, particularly the availability of classes online and at other campuses, would seem to supply Plaintiffs with the education they seek, the Court concludes that the Plaintiffs have not yet shown a likelihood to succeed on the merits of their claims, especially when the requested relief is a mandatory injunction.

The Court stresses that this is a difficult decision and that this ruling does not in any way signal that Plaintiffs' case is a weak one. The Court has every intention of having a tight schedule for discovery and trial, such that Plaintiffs' claims may be heard in a timely fashion. After further discovery, the issues may be clarified such that the Court would be inclined to conclude differently regarding the merits of the action.

3. Claims for Violation of the Unruh Act

Plaintiffs also bring claims under California's Unruh Act and California Government Code § 11135. As Defendants note, the standards for determining reasonable accommodations do not differ between the federal acts previously discussed and the state acts. *Goia*, 2014 WL 4446831, at *11. The Court's conclusions above hold true for the Unruh Act as well.

In light of the strict standards discussed above for issuance of mandatory injunctions, the Court **DENIES** the Motion.

B. Irreparable Harm

A plaintiff seeking a preliminary injunction must establish that "he is likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Indeed, suffering irreparable harm prior to a determination of the merits is "[p]erhaps the single most important prerequisite for the issuance of a preliminary injunction." 11A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2948.1 (3d ed. 2016). Further, the harm identified may not be speculative and Plaintiffs must also show more than the possibility of some remote further injury. *Winter*, 555 U.S. at 21-22 (rejecting "possibility" standard and holding that plaintiffs must "demonstrate that irreparable injury is *likely* in the absence of an injunction") (emphasis in original).

Courts have concluded that lack of access to classes and related programs, services, and activities can constitute irreparable injury for purposes of a preliminary injunction. *See, e.g., D.R.*, 746 F. Supp. 2d at 1145-46 (concluding that plaintiff had suffered and would continue to suffer irreparable harm if preliminary injunction (in the form of provision of an elevator key) was not granted, where the student had been excluded from class time, student club meetings, and school functions due to a genetic progressive neurological disorder that prevented her from reaching the second floor of her school).

Defendants argue that Plaintiffs will not be irreparably harmed because they can, as discussed, take classes at other LACCD campuses or online. In addition, the other proposed alternatives, such as parking closer to class, will alleviate some of the harms faced by some of the Plaintiffs. Even if these solutions are not ideal, or even adequate under the ADA, they will provide some relief during the pendency of the litigation, such that a preliminary injunction should not issue at this time. At the hearing, Plaintiffs' counsel made compelling arguments that the situation at WLAC is harming Plaintiffs' education. The Court concludes, nonetheless, that for the remainder of this semester, while this case proceeds to a timely resolution, the options of taking classes either online or at a more easily-accessible facility provide are adequate such that a preliminary injunction should not issue.

***8** Even if the Court had concluded above that Defendants' proposed accommodations were inadequate as a matter of law, the Court would still **DENY** the Motion because Plaintiffs have failed to show irreparable harm.

C. Balance of the Hardships and Public Interest

The Supreme Court has noted that an analysis on the merits of whether a stay of removal should issue demonstrates "substantial overlap" with "the factors governing preliminary injunctions." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citing *Winter*, 129 S. Ct. at

376-77). In this context, the Supreme Court observed that where a government entity is a party, the balance of hardships and public interest factors merge. *Id.* at 435 (remanding a denial of a stay when lower court had not articulated the proper standard for injunctive relief). The Court bears this in mind while conducting its inquiry here.

Plaintiffs' argument with respect to the balance of hardships centers entirely on the irreparable harm they argue they will suffer should an injunction not issue. Because the Court has already concluded that Plaintiffs have not adequately shown irreparable harm here, the Court concludes that the balance of hardships does not tip in favor of Plaintiffs here.

The Court also notes that it is hesitant to order injunctive relief that may force the Defendants to spend large amounts of taxpayer money during the pendency of this case. While Plaintiffs argued at the hearing that no money need be spent, the Court does not have before it enough evidence to make such a determination at this time. Were the Court to order that WLAC reinstitute the last uncontested state, as Plaintiffs argued for at the hearing, this would likely mean forcing the school to begin using golf carts to transport Plaintiffs. But as all parties seem to agree, that solution is not itself ADA-compliant. The Court concludes that ordering Defendants to reinstitute a non-compliant activity is not in the public's best interest. As to the situation on campus before the use of golf carts, the Court notes the parties' apparent disagreement, and Defendants' counsel's lack of knowledge as stated at the hearing. The Court does not have enough information regarding pre-golf cart shuttles to conclude that such a solution would be in the public interest.

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III. CONCLUSION

For the foregoing reasons, the Motion is **DENIED**.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2016 WL 11619872