

7. Revise principal and teacher evaluations and the parent evaluation form; and
8. Provide compensatory education to class members.

Because the purpose of the ADR Agreement was to enhance both the District's compliance with these provisions and the overall quality of special education in the District, we have integrated discussion of the requirements of the Consent Decree and the provisions of the ADR Agreement. The Appendix to this report contains an item-by-item summary of the status of each of the ADR provisions.

This report describes both the progress that has been made to date and the challenges that have been encountered in complying with the Consent Decree and the ADR Agreement.

1. Issue Timely HODs and SAs

Currently, defendants are unable to accurately compute timely issuance of HODs. Pending the implementation of the web-based Docketing Case Management System ("docketing system"), compliance with the timeliness requirements in the Consent Decree will likely remain unknown. Defendants believe they have made progress toward issuing HODs and SAs within the 75-day timeline. This progress includes the use of a standardized continuance form that was jointly reviewed by the parties. This form takes into account all of the compliance/timeliness rules enumerated in Consent Decree paragraphs 31 and 32.

Defendants believe that the inability to verify the timely issuance of HODs in all cases is symptomatic of greater problems with the current functionality and processes of the Student Hearing Office. As the office continues to become more functional, we expect that a chief benefit of the reform will be timely issued HODs, as well as a docketing system that can accurately track progress in this area. Key reforms at the Student Hearing Office are described

in greater depth in Section 4 of this report and in the Appendix.

While the Consent Decree speaks to the timely issuance of both HODs and settlement agreements (SAs), the impact of SAs on the SHO's operations and compliance rates remains an issue that the current reforms have not yet addressed. Until the SHO is routinely and timely notified of the execution of SAs by DCPS or other local education agencies ("LEAs"), it will remain unlikely that the defendants will be able to fully measure Blackman compliance. OSSE and DCPS will develop a process for informing OSSE of settlement agreements.

2. Hold Resolution Sessions

During the ADR process, the defendants agreed to a blanket waiver of resolution sessions in all cases in which parents waived until such time as the District can implement a system to hold resolution sessions consistent with paragraph 33 of the Decree. Paragraph 33 asserts that "Defendants shall conduct the [resolution session] in a way that is consistent with the objectives of IDEA '04. The Defendants shall use good faith efforts to reach a mutually acceptable settlement, consistent with the IDEA and its implementing regulations. The [resolution session] is not to be used simply as a means to delay a due process hearing."

Pursuant to a plan described in Attachment D of the ADR Agreement, defendants agreed that by "April 4, 2008 DCPS would recruit, select, and train approximately 10 resolution specialists to conduct resolution sessions." Defendants began working on this program in earnest on February 18, 2008. To date, defendants have developed a position description, advertised to fill the positions in various media, and have contracted with SchoolTalk¹ to provide training to

¹ SchoolTalk is a nonprofit spin-off of DC Appleseed. DC Appleseed's mission is to address major policy issues (like special education) in the District of Columbia. In connection with DC Appleseed and DLA Piper's report, "A Time for Action: The Need for Resolving Special Education Disputes in the District of Columbia," DC Appleseed

resolution specialists. DCPS expects to begin holding a limited number of resolution sessions beginning in July and ramping up considerably by the beginning of the 2008-09 school year in late August.

DCPS will miss the April 4 deadline of hiring and training the resolution specialists but intends to complete hiring no later than April 14, 2008 and training no later than June 1, 2008. In accordance with paragraph 2 of Attachment D, DCPS submitted to class Counsel Ira Burnim a draft of the proposed operating procedures, policies, and protocols for resolution sessions. Additionally, plaintiffs have suggested, and defendants agree, that the resolution specialists should be an integral part of the outreach now underway to special education lawyers to resolve cases prior to hearing as was contemplated in the Backlog Reduction Plan and is described in the following section.

3. Implement timely HODs and SAs

The parties agreed during the ADR process to implement a Backlog Reduction Plan (BRP), which was filed with the Court on January 18, 2008. The goal of the plan is to address the implementation of HODs and SAs and “create what parties hope will be a robust capacity to secure early resolution of due process complaints before they become HODs or SAs.” The defendants contracted with Klemm Analysis Group (“KAG”) to assist with the initial stages of this effort. This section focuses on the following topics: early implementation challenges, dashboard implementation, attention to leading indicators (timely IEPs and evaluations), related service capacity, and DCPS and OSSE Special Education Departments.

A. Early Implementation Challenges

The first two months of the BRP were unsteady. The challenges were threefold. First, the

developed this organization to serve as a resource to DCPS and charter schools in training personnel on how to conduct effective early dispute resolutions between parents and school officials.

plan was not adequately staffed. At inception, a total of 6 individuals were specifically dedicated. Currently, 34 individuals are dedicated to the BRP. These staff include a mixture of DCPS (15), KAG (10), and OSSE (9) employees. The District reached this level of staffing on March 11, 2008. The defendants realize that it is questionable whether the plan is adequately staffed currently. Recently, plaintiffs asserted that additional (and highly talented) people are needed to staff and support the plan and related ADR activities. The parties have met to discuss this need and have ranked it as a top priority.

Second, DCPS pursued a strategy of emphasizing timeliness. This strategy was a departure from previous strategies and the staff members who had previously been assigned to case “closure” and satisfaction were unaccustomed to the new approach. Although the Decree contemplates that defendants will pursue the oldest cases first, KAG documented a pervasive trend in which many new complaints were “attached” to previous HODs and SAs. In many cases, the newer complaints and HODs /SAs were enforcements of previous orders and/or parts of a piecemeal strategy (whether intentional or not) in which issues were parsed out over several complaints which could be addressed in whole.

Third, DCPS failed to immediately address incoming complaints in a meaningful way. The plaintiffs claim that DCPS’ preoccupation with paper closure versus reaching out directly to parents and/or parent’s counsel was a considerable flaw in overall implementation. Beginning March 11, 2008, the defendants began an aggressive strategy of proactively reaching out to parent representatives, public defenders, and advocates to address issues prior to the filing of complaints and to settle incoming complaints immediately. DCPS received 100 complaints between February 2, 2008 and March 26, 2008. Of these, DCPS has issued 55 settlement offers (usually within 48 hours of receipt of the complaint), selected four to move to dismiss for

insufficiency or lack of jurisdiction, chose five to litigate, received fifteen acceptances of settlement offers, and continue to review the remainder for possible settlement. Many of the proposed settlements have been rejected by a single law firm based on allegedly insufficient offers of attorney's fees.

B. Dashboard Implementation

A key aspect of the BRP is to issue task "dashboards" to schools to help focus them on implementing HODs and SAs. DCPS expects to begin issuing these dashboards internally to the Backlog Reduction Plan staff on or around April 1, 2008. The defendants will likely not be able to issue these dashboards to schools until at least May. Part of the delay has been determining the right level of source data to be collected as well as KAG's analysis of how to maintain data integrity. The District's Office of the Chief Technology Officer (OCTO) has been working with KAG and DCPS since mid-February to develop the dashboards for electronic delivery to schools. The defendants believe that the late implementation of the dashboards so close to the end of the school year is problematic, but that pursuing the dashboards is still important and valuable to the overall success of the BRP as a management tool. The dashboards should help the District to deploy resources more efficiently and to locate "hotspots" to deploy the yet-to-be-constituted response team discussed in part C of the BRP. At this stage, the dashboards will start out as simple weekly reports generated by a database and sent to the schools via email or fax, as initially envisioned by the BRP. The database will first be accessed by central office employees working on the backlog reduction plan. The hope is to expand the capacity to schools via a more dynamic, web-based system over the course of the month.

C. Attention to Leading Indicators (Timely IEPs and Evaluations)

The District admits to not adequately putting into place a robust system to ensure that

IEPs and evaluations are developed timely and implemented well. Many have noted that if the District could issue IEPs on time, conduct assessments on time, and implement the provisions of the IEP with fidelity, the generation of due process complaints would diminish significantly.

The DCPS Office of Special Education is chiefly responsible for monitoring timeliness of IEPs and assessments and assisting schools with completing them. The chief strategy for compliance is currently quite limited and involves providing schools with reports of timeliness derived from ENCORE. Given the multiple problems with ENCORE data, defendants cannot be sure they know how many evaluations or IEPs are due. Although the defendants intend to link these tasks to the dashboard, simply providing schools with data and tasks is insufficient for actually getting the work done. Staffs (both central and school-based) continue to be stymied by a heavy workload and volume of both backlog tasks for HOD and SA implementation and current responsibilities. The struggle to address this issue adequately is at the heart of the Consent Decree and was noted in the Monitor's Interim Report issued December 19, 2006.

Notwithstanding the problems with IEP and evaluation timeliness, plaintiffs have asserted, and DCPS agrees, that the IEP process is itself flawed. The results of the current process may create programs for children that are unsound and may serve to exacerbate the child's disability. The parties are working on an expectations document (ADR paragraph 61)² to reform this process. To date, the parties have met and have agreed on a draft set of guiding principles, but have not yet addressed reforming the IEP process.

Likewise, the parties believe that there may be an over-reliance on the use of evaluations to obtain additional services for students whose eligibility has already been determined. For

² Paragraph 61 requires: "By January 15, 2008, the parties will agree on a schedule and process for identifying defendants' expectations for the delivery of special education and related services at the school level, as well as how those expectations might require changes in infrastructure at the school, regional, DCPS and "state" level. In this process, defendants will consider: means by which IEP process can be made more meaningful, the extent to which authority and resources should reside at the school level, and crafting appropriate financial incentives."

example, schools believe that if a student needs mental health services, an evaluation must be completed before the service can be provided to the student despite agreement by both the school and parent. As required by the Backlog Reduction Plan filed with the court, the defendants have crafted an “Immediate Services Policy” to eliminate this misconception and reduce the number of unnecessary evaluations. Though the parties have not been able to substantiate that this phenomenon contributes directly to the backlog of evaluations and the subsequent generation of complaints and HODs/SAs, the parties agree that such a policy may reduce potential litigation.

D. Related Service Capacity

The parties agree that failure to provide related services is a key trigger for due process complaints and worse: limited progress of children toward goals. The parties believe that creating “stand alone” services available to all students and a “ready force” of high quality related service providers for students with IEPs will be essential to improving the overall quality of special education services as well as reducing the backlog. The parties are unclear whether the District’s available public and private service providers, such as social workers and psychologists, can meet the demands for evaluation and direct service presented by both disabled and non-disabled students.

Since the implementation of the ADR and subsequent BRP, the parties have discussed extensively the capacity of related service provision. In partial fulfillment of ADR paragraph 50, DCPS submitted to Mr. Burnim and Clarence Sundram, Evaluation Team member, a plan for investigating related service capacity. The plan was returned as “off target” with the suggestion that DCPS focus on the following issues:

- Accountability for DCPS related services providers.
- Ensuring that adequate related service capacity is available to ADR Agreement projects, including SAM schools, mental health pilot schools, case managers, incentive seat

students, and the Backlog Reduction team (including their efforts to resolve compensatory education claims).

- Create “risk pool” (i.e., flexible funds) for purchase of services for DCPS neighborhood schools related to ensuring adequate capacity.
- Defining “quality” and measuring it.
- Providing ready access to a few related service sessions -- both to be responsive to parents/teachers and to assess the need for intensive or extensive services.
- An effective system for addressing related services lapses.
- Assessing a role for the Columbus evaluators.

Defendants will re-submit the plan to address the issues above.

The parties believe that the ADR projects related to mental health have been fruitful. On March 7, Knute Rotto, a contractor charged with investigating the mental health landscape for DCPS students, submitted to defendants an initial draft report for comment. The parties will use the suggestions in the report to fashion a significant reform targeted at struggling DCPS middle schools. In 2008-09 school year, Mr. Rotto, DCPS, and OSSE will begin a comprehensive school reform in which wraparound services, mental health services, and other related services will be coupled with a strong academic program—a model that has proved successful for a group of schools Mr. Rotto has worked with in Indianapolis.

E. DCPS and OSSE Special Education Departments

The plaintiffs have asserted that the ADR reforms do not seem to have affected the overall operation of the respective agencies’ offices of special education. The parties generally agree that until the core operations of these offices are in line with the reform teams that Tamera Lewis and Dr. Richard Nyankori manage, the benefits of the ADR reforms may be diminished and their reach to children in schools limited. The parties recognize that human capital issues have become more paramount and addressing them is a chief priority in the next month. All

recognize the direction that Ms. Lewis and Dr. Nyankori have provided to the effort, but the next step will be to ensure that rank-and-file staff are as invested in the reforms.

In the coming weeks, the Chancellor and Superintendent will engage class counsel in discussing how best to communicate to all staff about the reforms and the expectations required to address the backlog and to ensure that students' needs are consistently met with quality responses. The parties recognize that a blend of forceful management, incentives, and clear expectations are necessary to begin this process. Sustaining this process over time for new and existing employees will be a primary focus of this endeavor.

4. Reform the Student Hearing Office

Pursuant to the ADR Agreement, defendants retained Gail ImObersteg, an independent hearing office consultant, to guide the reforms in the Student Hearing Office (SHO). Her work has supported the SHO as OSSE works towards fully meeting the requirements and adhering to the operating principles enumerated in the Consent Decree. More detail regarding many of the reforms underway at the SHO is contained in the Appendix. Briefly, some of these actions include the following:

- a) **SHO Standard Operating Procedures Manual.** Revisions to portions of the current SOP Manual have been proposed and discussed with plaintiffs. The parties did not reach agreement regarding implementing these changes and the SOP remains unchanged at present. As required by the Consent Decree, the current SOP is posted on OSSE's website.
- b) **SHO Operating Principles.** While progress has been made, there are still improvements necessary regarding the manner in which hearings are held and

customers are served at the SHO. Many of the following items are discussed in the ADR Agreement status update in more detail.

1. **Training of Hearing Officers.** Within the current group of Hearing Officers there were a number who were not trained within 45 days of their appointment. The Hearing Officers were subsequently sent to a national training in Seattle and two additional trainings were held in DC, including sessions with national trainer. Hearing Officers have been provided electronic access to the Individuals with Disabilities Education Law Reporter.
2. **Scheduling of Hearings.** While this provision has been emphasized in meetings with Hearing Officers and in a training regarding use of the new continuance form, total compliance with this provision cannot yet be confirmed with certainty.
3. **Communication.** The SHO has identified a need to increase the number and capability of its staff to provide high-quality service to parties in the due process hearing system. The SHO will hire additional staff and the current SHO staff will begin attending the DC Department of Human Resources Workforce Development trainings and courses, including customer service training in April.
4. **Office Administration.** The SHO has instituted a number of reforms regarding office administration and will continue to do so. Please see the attached ADR Agreement status report for more detail. One area where the SHO has made little progress is in the maintaining of historical statistical data. OSSE will evaluate what steps are necessary to remedy this situation.

5. **Neutrality.** Particularly since the transfer of the SHO to OSSE, OSSE and SHO administrators have stressed both the neutrality of Hearing Officers and SHO staff and the independence of the SHO from DCPS and all other LEAs. Neutrality in both fact and appearance will remain a point of emphasis and a central theme in the continuing SHO reforms.

5. Maintain an accurate data system

The Decree requires that the Defendants achieve and maintain an accurate and reliable data system that will allow defendants to track implementation of HODs/SAs and to identify impediments to timely implementation of HODs/SAs. OSSE executed a contract with Public Consulting Group, Inc. on February 26, 2008 to design and implement a multi-functional Special Education Data System (“SEDS”). The SEDS is a comprehensive web-based application for the tracking and management of Special Education Data in the District. The SEDS has been developed through the identification of a collective set of system requirements collaboratively defined by the OSSE, DCPS, and the District of Columbia’s public charter schools. The SEDS will help educators leverage data to track the special education process, enable effective and efficient state reporting, and track student performance closely to allow more targeted interventions to improve student outcomes.

The SEDS will house and manage all data associated with the special education process, and will serve the needs of the OSSE and each of the LEAs (DCPS and charter schools) in the District of Columbia. Initial implementation of the SEDS is expected to be completed prior to the beginning of the 2008-2009 school year and, when fully functional, will manage every stage of the special education process including referral and eligibility, IEPs, transition, discipline,

transportation, Medicaid recovery and due process data such as HODs and related timelines. The SEDS is being implemented in conjunction with the District's larger effort to create a State Longitudinal Education Database, which is a warehouse of data related to youth, their families, and service providers.

The implementation will be guided by the OCTO under the direction of consultants Roger Richmond and Sherry Chen. OSSE will maintain the system and require its use by DCPS and by charter schools that use DCPS as their LEA for special education. Independent LEA charter schools have been invited to utilize the SEDS, but will not be mandated to do so, at least initially. Both OSSE and DCPS have full time staff dedicated to customization and implementation of the system. End user focus groups are being conducted weekly.

The system will be rolled out in two phases. Phase I entails the implementation of basic special education operations functions and reporting. Phase I will be available for teacher use beginning with SY 2008 – 2009. Initial training for system users will begin in May 2008. Phase II involves a launch of the HOD/SA tracking system, advanced educational progress tracking, and State/Federal reporting. Phase II will go live in January 2009 and be fully implemented by the 2009-10 school year.

6. Maintain a parent service center

Both the Consent Decree and ADR require the creation and maintenance of a community-based parent service center for the parents of special education students. Under paragraphs 67 – 69 of the Decree, the purpose of the parent service center is to “improve the effectiveness in responding to concerns raised by parents of students with disabilities and to assist in prompt resolution of disputes before a formal complaint is filed.” The plaintiffs and

defendants have continued to work with a national parent center expert, Paula Goldberg of the PACER Center, since November 2007 to select an appropriate vendor and design a scope of work for this project.

After extensive program review, including auditing financial records and corresponding with organizational leadership, Ms. Goldberg recommended to the parties in mid- January 2008 that Advocates for Justice in Education (AJE) be selected to create and manage a District-wide parent center. As the federally designated Parent Training and Information Center and Community Parent Resource Center in the District, AJE is best equipped with experience and resources to effectively run a successful DC Special Education Parent Service Center.

The ADR agreement required that defendants contract with an independent, non-profit provider for the parent resource center and that the Center be operational April 1, 2008. On March 17, 2008, defendants received a project proposal prepared jointly by AJE and Ms. Goldberg. The proposal has since been edited by the parties and a draft contract has been circulated for comment. Defendants expect to be under contract with AJE by mid-April. Once the contract is signed, the Parent Center will accelerate its outreach and advertising efforts to promote programs and services for parents. Immediately upon execution of the contract, AJE will begin hiring additional staff to expand their capacity to serve parents of children with special needs..

The defendants will contract with AJE for a period of one-year with two option-years, giving AJE the opportunity to build capacity over time and to increasingly engage the parent community. The decision to extend the contract beyond year one will be determined by an evaluation committee comprised of Ms. Goldberg; Ms. Lewis, representing defendants; and Mr. Burnim, representing plaintiffs.

7. Revise principal and teacher evaluations and the parent evaluation form

Under the Janey administration, work had been done to modify teacher and principal evaluations and the parent evaluation form. The Chancellor plans to significantly change the principal and teacher evaluation process. Members of Dr. Nyankori's special education reform team and Dr. Phyllis Harris' staff are working with the Deputy Chancellor for Human Capital to ensure the new process comports with the requirements in paragraphs 70 – 71 of the Decree.

Additionally, the Chancellor is proposing a new parent evaluation form that will be connected with larger system reforms. In accordance with paragraph 73 of the Decree, defendants will work with plaintiffs to make changes to the parent evaluation forms and process.

8. Provide compensatory education to class members

Pursuant to Attachment A to the ADR Agreement, the parties have equalized the Blackman/Jones compensatory education award for all current class members, as defined by the by the agreement. All current class members will be offered the choice of a laptop or desktop computer or the opportunity to discuss with an OSSE representative the selection of various services. As explained in the attached status report on the ADR Agreement, defendants have conducted a test mailing to a subsection of current class members, and the parties have agreed to pursue an alternative, multi-pronged outreach strategy through a community contractor to provide notice of award eligibility to the remaining current class members.

A. Challenges Under Original Approach and Alternative Strategy

This effort has been challenging. Two factors complicate distribution of awards. First, locating class members has been difficult. Addresses in District databases have a relatively high

degree of error. Defendants noticed that many addresses contained errors or listed places such as the central detention facility or government addresses for wards of the state. To get a sense of the accuracy of the mailing list, defendants decided to send out a test notice mailing to 380 current class members. From that mailing, approximately 67 orders have been received at the Best Buy processing facility and approximately 175 notices have been returned to OSSE by the U.S. Postal Service as undeliverable.

Second, the Decree requires defendants to send the mailings by return receipt. Given the reluctance of some class members to provide signatures for receipt, defendants sought to use a delivery method that confirmed delivery to a live address but required no signature. Recent changes in postal regulations made this option unavailable.

As detailed in the ADR Agreement status report, the parties have agreed to shift strategies to make meaningful contact with class members. The parties have elected to pursue an alternative strategy regarding mailing notices and follow-up with a community contractor. Based on discussions with the community contractor regarding effective communication strategies, the contractor will complete and time the mailing of notices with a near-simultaneous commencement of their community outreach effort on or about May 1, 2008. This multi-pronged approach will include, among other things, direct outreach through mail and phone and targeted community outreach through existing agency relationships (public schools, charter schools, non-public schools, and other child-serving District agencies).

B. Future Class Members

The parties anticipate they will reach agreement regarding handling the compensatory education awards of future class members in the near future.

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