

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MIKEISHA BLACKMAN, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 97-1629 (PLF)
)	Consolidated with
DISTRICT OF COLUMBIA, et al.,)	Civil Action No. 97-2402 (PLF)
)	
Defendants.)	
_____)	

**REPORT OF THE MONITOR
FOR THE 2011-2012 SCHOOL YEAR**

Submitted by:

**Clarence J. Sundram
Court Monitor**

Filed

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I. INTRODUCTION

The Blackman/Jones Court Monitor submits this monitoring report to the parties and to the Court pursuant to the provisions of the Consent Decree entered on August 24, 2006 (Docket #1856). This report covers the 2011-12 SY.

It has been six years since the Consent Decree was entered. The Defendants achieved compliance with the *Blackman* portion of this case dealing with the timely issuance of Hearing Officer Decisions, and upon a joint motion of the parties, the Court entered an order of dismissal on July 5, 2011 (Docket #2259). However, compliance with *Jones*—which requires Defendants to timely implement 90% of Hearing Officer Decisions (“HODs”) or Settlement Agreements (“SAs”, collectively “HOD/SAs”)—has proved more elusive to date. Unlike the previous two school years in which Defendants’ year-end report claimed to have achieved compliance with the 90% timely implementation standard (Consent Decree ¶ 42), this year the Defendants concede that they have fallen short. By their own data, they report the year-end compliance rate was 76.3% despite a significantly lower number of due process complaints and HOD/SAs than in previous years. The smaller number of HOD/SAs also magnifies the significance of each case that is not implemented timely in calculating the rate of timely implementation.

Over the past two years, during which the Defendants claimed to be in compliance with the Consent Decree standard, the Monitor and the Evaluation Team focused heavily in the year-end report on reviewing the determination of timely implementation in a significant sample of cases in order to verify the claimed level of compliance. These reviews identified case closure practices and counting rules which combined to improperly classify many cases as timely implemented. The Monitor and Evaluation Team concluded, without dispute, that the Defendants had fallen short of the requisite standard of compliance in both those years.

In 2009, Plaintiffs invoked the ADR provisions of the Consent Decree (¶ 113 of the Consent Decree) and, with the assistance of the ADR specialist Judge Richard Levie (Ret.), and later mediation by the Monitor, the parties eventually reached an agreement (“ADR agreement”) to implement a number of practices aimed at remedying the Defendants’ noncompliance (Docket # 2268, filed August 18, 2011, approved by the Court on November 21, 2011, Docket # 2273).

With the current state of noncompliance not in dispute, the type of intensive case review conducted in previous years is less critical. Instead, in this report, the Monitor will describe the

conditions affecting due process complaints and their timely implementation, and report on the status of implementation of the ADR agreement and its effectiveness in remedying Defendants' noncompliance. The report will also take a more global look at the overall goal of the Consent Decree to timely provide students the special education and related services needed to fulfill the legal obligation to provide a free and appropriate public education.

A. Evidentiary Foundation for the Findings in this Report

The Monitor has relied on a diverse array of information sources and data collection methods in reaching the findings contained in this report. These include:

1. Visits to a sample of schools; interviews with school principals, special education coordinators, special education teachers, and related services providers; and review of student records.
2. Review of samples of student case files selected at random, and examination of the records contained in the Blackman/Jones database used to manage the implementation of HOD/SAs, and the records in the Special Education Data System ("SEDS" also known as EasyIEP).
3. Review of several cases where the private counsel and DCPS agreed to alter or waive specific provisions of an HOD/SA. The procedure agreed upon by class counsel and the District, and approved by the Court, requires the Court Monitor to review and approve such provision waivers.¹
4. Interviews with compliance case managers, resolution specialists, their supervisors, DCPS case reviewers, students' attorneys, and staff of the Parent Center;² and meetings with class counsel, DCPS and OSSE Office of General Counsel and members of the special education roundtable.

¹ ¶ 5, ADR Agreement, Docket # 2268, filed August 18, 2011, approved by the Court on November 21, 2011, Docket # 2273. This paragraph provides:

For HODs/SAs containing IEE or independent compensatory education provisions where a) the parent no longer seeks the relief ordered or agreed to in the provision but seeks a new form of relief in exchange, and where the parent or parent's attorney signs a statement to that effect, and b) the parent no longer seeks the relief ordered or agreed to in the provision and seeks nothing in exchange, and where the parent or parent's attorney signs a statement to that effect, Defendants will submit the case documentation to the Court Monitor and class counsel for a determination of whether the original required action can be considered "timely implemented" even though the independent compensatory education was not received. The Court Monitor will make the decision as to whether the required action can be considered voided, taking into account input from class counsel. If the required action is voided, then the timeliness and implementation status of the remainder of the required actions will determine the case's overall status.

² The Consent Decree provides for the creation and maintenance of a community-based Parent Service Center, where parents can get more information about their child's disability and IDEA, and receive assistance in addressing concerns they have about their child's education before a formal complaint is filed. ¶¶ 67-69.

5. Ongoing review and analysis of the databases developed to track HOD/SA implementation, related services at charter and nonpublic schools, and compensatory education services.
6. Regular ongoing meetings, phone and in-person interviews, and e-mail exchanges with DCPS and the OSSE staff throughout the school year relating to a wide range of issues touching their management of operations and initiatives in the realm of special education and the Consent Decree.
7. Communications with charter and nonpublic schools' representatives.
8. Review of the systems for receiving, reviewing, and paying attorney fee invoices and examination of the processing of a sample of such invoices.
9. Meetings with Defendants' staff and consultants and participation in web-based conferences with respect to the operation and issues presented by data systems and programs.
10. Ongoing review of a host of reports and memoranda generated by Defendants' staff relating to special education, due process cases, related services delivery, data accuracy and data systems.
11. Reviewing the annual enrollment audit report, the Child Count report and supporting data tables.

B. Structure of the Report

In the sections which follow, the Report will provide data about the census of students in special education and where they are being served; an overview of due process complaints filed and HOD/SAs issued during the school year; and analysis of patterns regarding HOD/SAs closed during the school year; a review of the case closure process and timely implementation decisions; a discussion of issues regarding resolution sessions, related services, attorney fee payments, the accuracy audit, and implementation of the ADR agreement.

II. DEMOGRAPHICS

In past years, this section of the report has reported on census data drawn from the annual enrollment audit performed by an independent accounting firm on the census at schools in early October. This year, that task has proved more challenging. A review of the enrollment audit report as well as supporting documents found inexplicable inconsistencies both within the report itself and between the report and the supporting tables.³ As a result of extended communication with the OSSE, a decision was made to use the Child Count data which is believed to be more

³ The OSSE has addressed the concern with enrollment data quality by developing a new scope of work and, through a competitive process, selecting a new vendor for the 2012-13 SY.

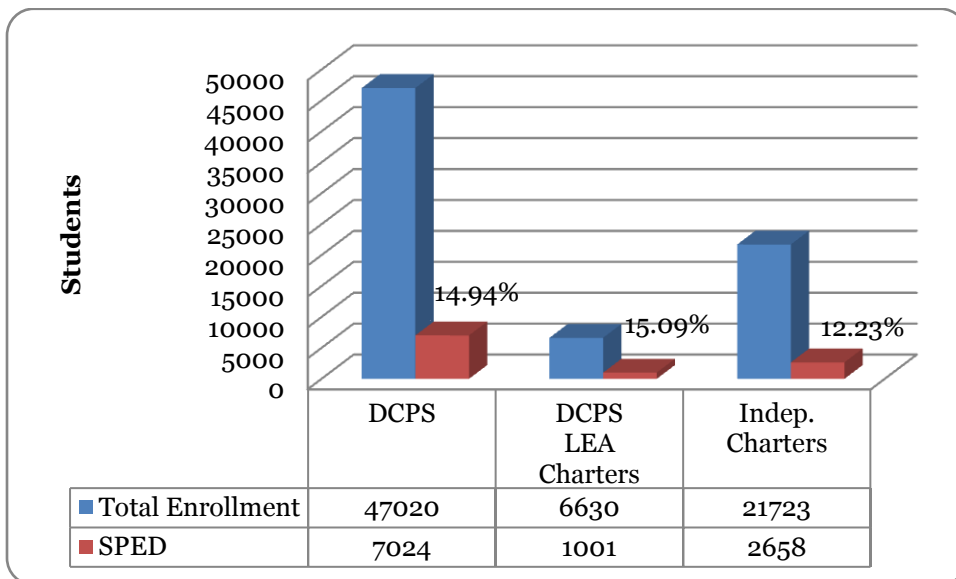
reliable. This count, which is conducted on December 1 each year by the OSSE's Division of Special Education with Local Education Agencies ("LEA"), is intended to create an unduplicated count of District students who qualify for special education services. The data is submitted annually to the United States Department of Education's Office of Special Education Programs ("OSEP") and is also used to support the annual allocation of Individuals with Disabilities Education Act ("IDEA") funds to the District.

While all of the data discrepancies were not entirely resolved, the best available data provided by OSSE indicates that for SY 2011-12 there were a total of 75,373 students enrolled in all LEAs, including 12,536 students with IEPs (16.63%).⁴ Of the total students, 47,020 (62.38%) were enrolled in DCPS schools, including 7,024 students with IEPs. DCPS has 56.03% of all students with disabilities enrolled by LEAs. In addition, DCPS also serves as the LEA for 1001 students in charter schools, and monitors the services to 1,648 students in nonpublic schools. Including these two groups increases the overall percentage of special education students for whom DCPS bears some responsibility to 77%.

Charter schools enrolled 28,353 (37.62%) of the total students, of which 3,659 students (12.9%) had IEPs. Charters have 29.18% of all students with disabilities enrolled by LEAs. Within the group of charter schools, there are a small number that have elected to have DCPS serve as their LEA for special education purposes, while other charters serve as their own LEAs.

⁴ These numbers include students in non public schools and students in surrounding counties who are eligible to be receiving services under the IDEA.

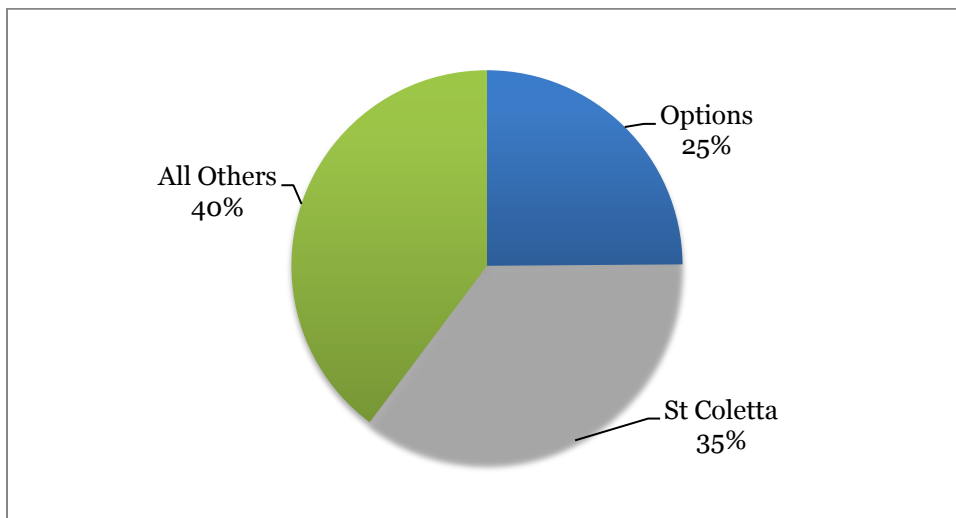
Figure 1
Proportion of Special Education Students by School Type



The data indicate that charter schools electing to have DCPS as their LEA, have the highest proportion of special education students, while independent charter schools had the lowest. (Figure 1) Moreover, while 1,566 (22.29%) of DCPS students with IEPs are categorized at Level 4, requiring the most intensive level of services, the 662 students needing this level of service at charter schools comprise 18.09% of their students with IEPs. The vast majority of these students at charter schools attend two schools. (Figure 2)

Nonpublic schools had a residence verified enrollment of 1,733 students with IEPs, down from 2,149 in 2010, continuing a trend of decreasing use of these schools, according to the data provided by the OSSE. DCPS placed 1,648 of these students and independent charters accounted for the remaining 85 students placed in nonpublic schools.

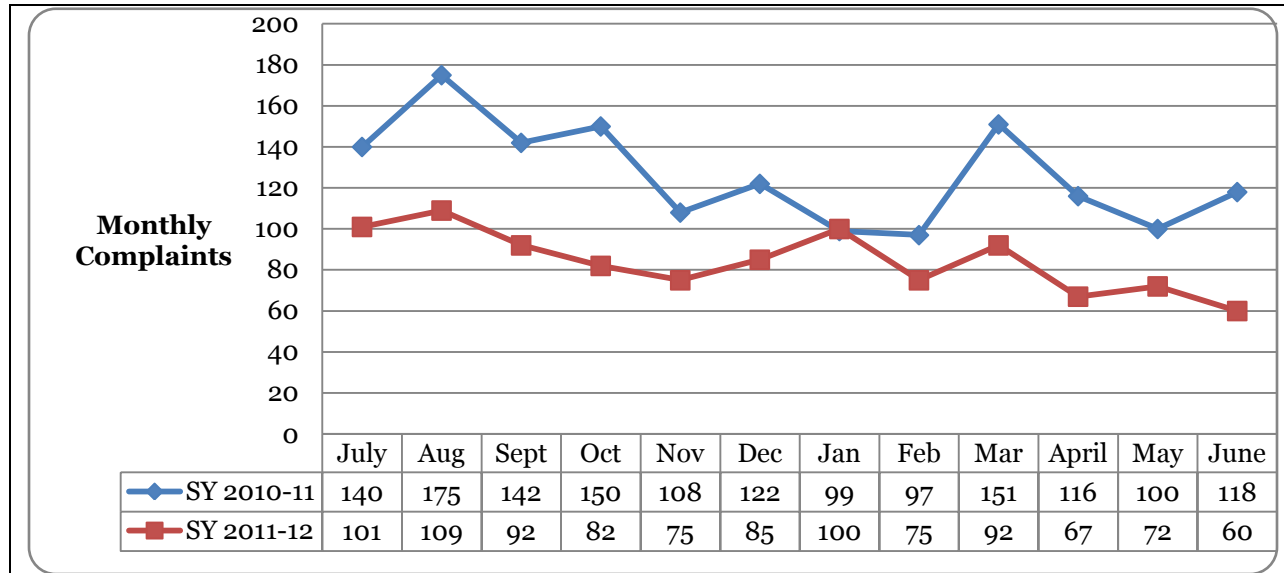
Figure 2
Distribution of Level 4 Students at Charter Schools (n=662)



A. Due Process Complaints and HODs

In the last report, the Monitor reported a discrepancy in the number of complaints reported by the Student Hearing Office and the Blackman Jones Database. Since then, there has been a process for monthly reconciliation of the data in each system, resulting in the elimination of the discrepancy. Moreover, with the transfer of responsibility for data management to the OSSE, the reporting period for complaint data has been adjusted to coincide with the full school year, rather than the 11-month data that previously had been reported to the parties and the Court. As reported by the Student Hearing Office, there were 1,010 due process complaints (“DPC”) filed during the period July 1, 2011 to June 30, 2012, a decline of almost a third from the 1,518 complaints filed during a corresponding period the previous year. (Figure 3)

Figure 3
Monthly Filing of Due Process Complaints SY 2011 & 2012



These DPCs resulted in 630 HOD/SAs, a 30% drop from the previous year and an overall decline of almost 48% since SY 2008-09.

Last year, a member of the private bar filed a class complaint with the OSSE alleging that DCPS was violating provisions of the IDEA by failing to execute legally binding agreements following the resolution of a dispute at a resolution meeting.⁵ The OSSE concluded that DCPS was out of compliance with federal law. "If a resolution to the dispute is reached at this meeting, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the agency who has the authority to bind the agency and is enforceable in any State court of competent jurisdiction or in a District Court of the United States. (34 CFR §300.510 (d))"⁶ OSSE required DCPS to correct the noncompliance, encouraging it to consider the development of written policies and case manager training, and provide proof that a corrective action plan had been implemented by April 2, 2012.

⁵ OSSE Letter of Decision, State Complaint 011-003, issued November 4, 2011, p. 3.

⁶ *Id.* P. 4.

Some members of the private bar have complained that this practice continues, although the extent of it cannot be ascertained definitively. However, as the case example described below illustrates, it is disturbing that there is *any* continuation of these practices. In this case, these practices were called to the attention of senior managers and OGC attorneys but did not result in intervention or correction, leaving it to a Hearing Officer to resolve eventually.

On August 11, 2011, the parent of an 11-year-old boy requested an evaluation to determine his eligibility for special education and related services. She filled out the forms requested by DCPS and was told in September 2011 by an Early Stages representative that the information was sufficient to begin the evaluation process. However, DCPS took no action to evaluate the student until the filing of the due process complaint seven months later on March 8, 2012. It also did not follow up with the parent to obtain any additional information. The resolution session regarding the complaint was held on March 21, 2012. DCPS offered an independent evaluation and the parent accepted, but DCPS balked at entering into a settlement agreement.⁷ The parent's attorney reminded the case manager in an e-mail on March 26, 2012: "As I stated at the RSM, we agree with DCPS' offer to provide the IEE letter. That agreement is the settlement itself. DCPS' failure to reduce this settlement agreement to writing is in violation of federal law, and specifically ignores OSSE's Letter of Decision #011-003 dated November 4, 2011."

In response to this e-mail, the case manager replied on the same day: "DCPS is rescinding its previous offer to authorize independent evaluations." On April 4, 2012—two days after the deadline for implementation of the corrective action plan required by the OSSE—the parent's attorney wrote to the Deputy Chancellor for Special Education to call attention to these practices believed to be inconsistent with OSSE's recent findings in investigating the state complaint. Two days later, an OGC attorney wrote: "DCPS position on this matter is that there was no settlement agreement reached at the RSM. Moreover, even if there was a settlement agreement reached, I'm sure you're aware that either party can rescind that agreement within three business days."

On April 10, 2012, DCPS e-mailed petitioner's counsel a letter of invitation dated April 9, 2012 for a meeting on April 12, 2012 to discuss the student's eligibility for special education services. The meeting was convened without the petitioner's participation and DCPS determined it was unable to proceed with the evaluation because the parent was unavailable to consent to the evaluation. No eligibility determination was made, nor were any assessments ordered.

The case proceeded to a due process hearing and an HOD was issued on May 18, 2012 (#25737) ordering an independent comprehensive psychological evaluation within 60 days, to be followed by an MDT/IEP meeting to determine the student's eligibility for special education and related services. The hearing officer wrote:

⁷ An e-mail from the case manager on March 26, 2012 states: "As agreed upon at the RSM meeting, I have attached the communications checklist, resolution disposition, and meeting notes for your record. Additionally, DCPS' position remains the same and at this time, we are not willing to propose a settlement agreement. The offer of authorization for the requested IEE's still remains."

DCPS waited more than *seven months* to schedule an eligibility meeting on *two days notice* [sic] to petitioner – over a month after the due process complaint was filed, and on the eve of five-day disclosures in the case. Then, at that meeting, DCPS decided that it was unable to proceed with the Student's evaluation "due to the parent not being available to consent to evaluating the student." . . . Moreover, the evidence shows that DCPS took such action despite not having previously informed Petitioner that it needed an additional written consent form beyond the other signed referral documents obtained by the PRO, either on 9/1/2012 [sic] or on any other occasion. DCPS cannot so easily evade its initial evaluation responsibilities."⁸

The IEE was completed and submitted on August 3, 2012, but as of this writing (December 5, 2012) a meeting has not yet been held to determine eligibility. The case manager has made several attempts with the parent's attorney to set a date and to obtain an invoice for payment of the independent evaluation but despite these efforts, and the agreed upon extensions of time, no date has been agreed upon. The most recent dispute is over the location of the meeting, with DCPS proposing the student's "home" school, while the parent's attorney wants it held at the attending school. The invoice was noted to have been received on November 1, 2012. Moreover, there is no evidence that interim services were offered during the year that has elapsed since the parent's first request for an evaluation.

B. Analysis of HOD/SAs closed in SY 2011-12

Since the primary goal of the Consent Decree "is to achieve, as quickly as possible, Defendants' compliance with federal law requirements for timely due process hearings and timely implementation of Hearing Officer Decisions and Settlement Agreements" (Consent Decree, p.8), it is useful to understand the overall picture of the time taken to implement remedial actions that are required as a result of HOD/SAs issued in response to due process complaints. With this in mind, the Monitor analyzed the data from 525⁹ Hearing Officer Determinations (HODs) and Settlement Agreements (SAs) *closed* between July 1, 2011 and June 30, 2012.¹⁰ Data were provided by OSSE.

⁸ HOD #25737, p. 7.

⁹ There were 527 cases in the OSSE database. Two of these had complaints filed in 9/2008 and 10/2009 which were implemented timely but, as a result of subsequent legal proceedings, required additional actions ordered by later HOD/SAs related to the original complaint. These actions were implemented and the cases finally closed during SY 2011-2012. These cases were omitted from the analysis.

¹⁰ The Defendants' calculations regarding rate of timely implementation are performed on all HOD/SAs *issued* during the school year as required by the formula in the Consent Decree. There were a total of 630 such cases during the school year of which 235 remained open on June 30, 2012.

In all there were 323 SAs (61.5%), 201 HODs (38.3%), and one mediation agreement (.2%). (Table1) The earliest HOD/SA signature date was 11/6/2009 and the latest was 6/18/2012.

Table 1
Legal Event Type

	Number	Percent
Settlement Agreement	323	61.5
Hearing Officer Determination	201	38.3
Mediation Agreement	1	.2
Total	525	100%

A disproportionate share of due process complaints leading to HOD/SAs (91.2%) were filed against DCPS schools or dependent charter schools under DCPS authority for special education although special education students at DCPS schools accounted for 56.03% percent of the total number of special education students enrolled and, as noted earlier, DCPS has some responsibility for a total of 77% of the special education students including those in dependent charter schools and nonpublic schools. By contrast, independent charter schools accounted for 29.03% percent of the special education students enrolled but only 5.8% of such complaints filed. Three complaints (.6%) were filed against DCPS for students attending nonpublic schools. Thirteen cases (2.5%) were filed against more than one type of school. (Table 2)

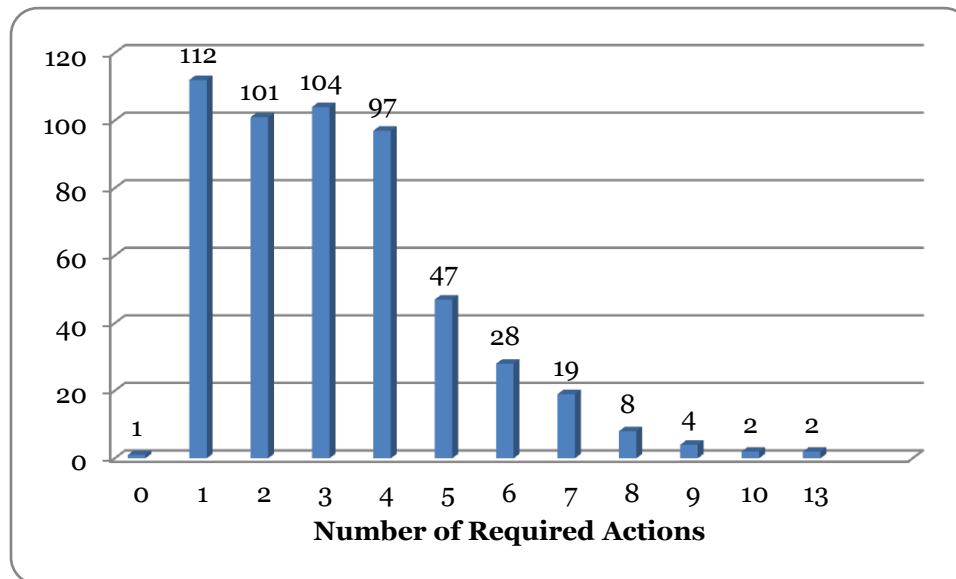
The number of required actions in HODs and SAs ranged from 0 to13. (Figure 4) Almost two-thirds of HOD/SAs (60.7%) had three or fewer required actions. Another 32.6% had four to six required actions, and 6.7% had seven or more.

Table 2
Type of School Complaint Filed Against

	Number	Percent
DCPS school*	474	91.2
Charter school	30	5.8
DCPS and charter school	9	1.7
DCPS and non-public school	1	.2
DCPS and OSSE	3	.6
Non-public school	3	.6
Total	520 ¹¹	100%

*Includes charter schools under DCPS authority for special education.

Figure 4
Number of Required Actions per HOD/SA (n=525)



Analysis was conducted to determine the length of time for the HOD/SA process from complaint transmittal to implementation of all required actions. Overall, the mean number of

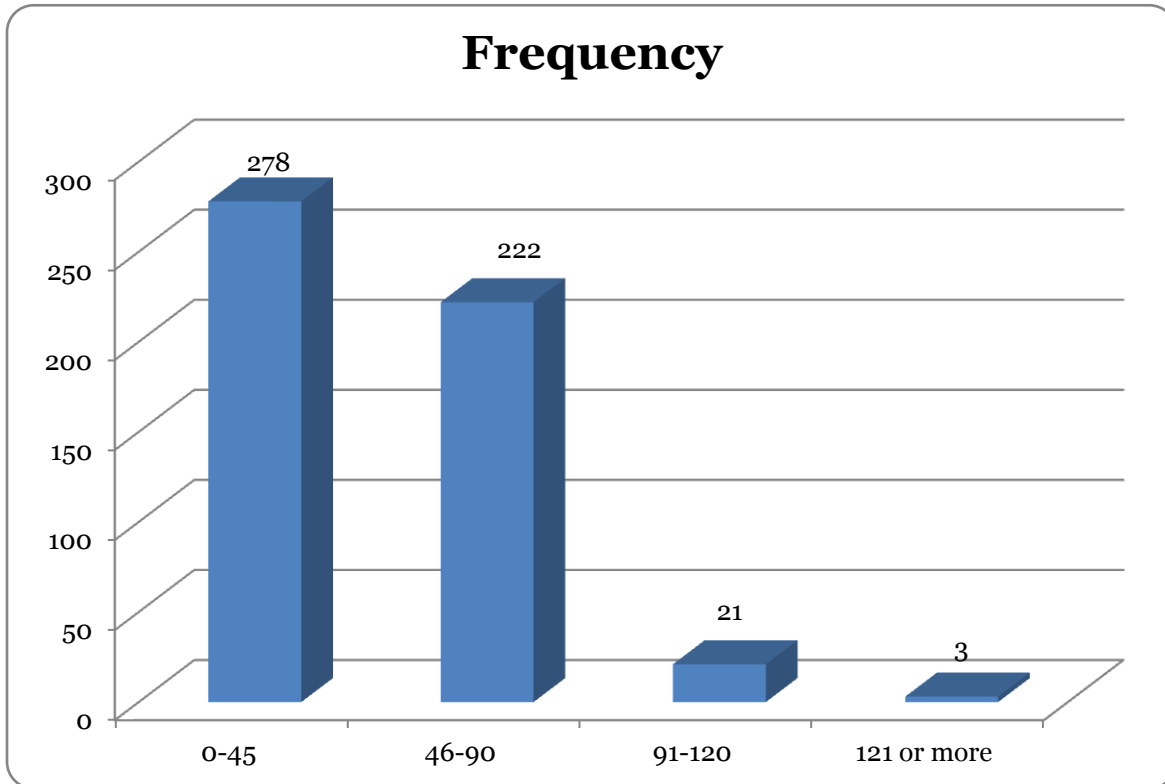
¹¹ The files received from OSSE did not have all fields completed for all complaints, resulting in a smaller number of cases with all available data.

days between complaint transmittal and HOD/SA signature was 45. The number of days ranged from 0 to 128. (Table 3)

Table 3
Days between Events—Range, Mean and Median

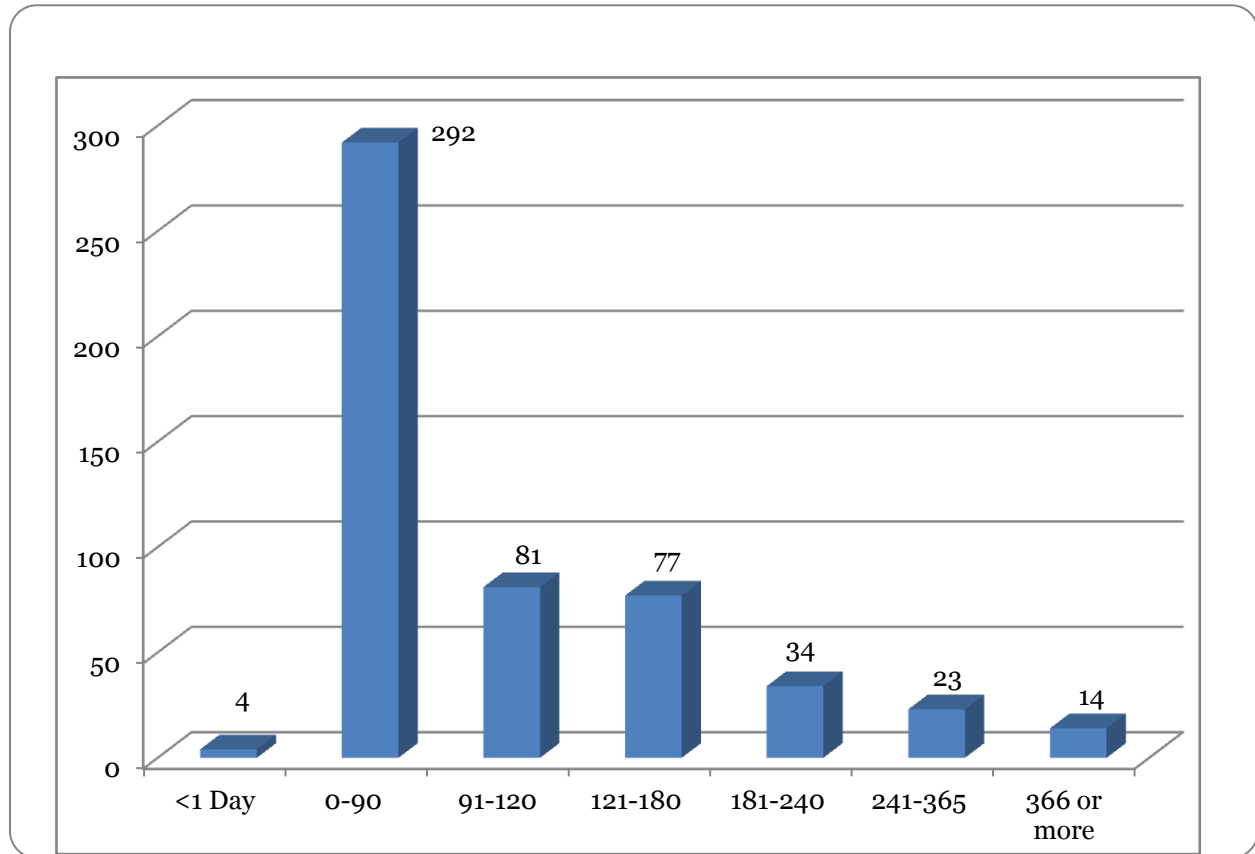
	Minimum	Maximum	Mean	Median
Days between Complaint Transmittal Date and HOD/SA Signature Date	0	128	45	41
Days between HOD/SA Signature Date and Date Implemented (Final Reviewer)	-19	617	99	77
Days between Complaint Transmittal Date and Date Implemented (Final Reviewer)	18	658	144	122

Slightly more than half of the cases (53.1%) moved from complaint transmittal to HOD/SA signature in 45 days or less and 42.4% fell between 46 and 90 days. Five percent took more than 90 days. (Figure 5)

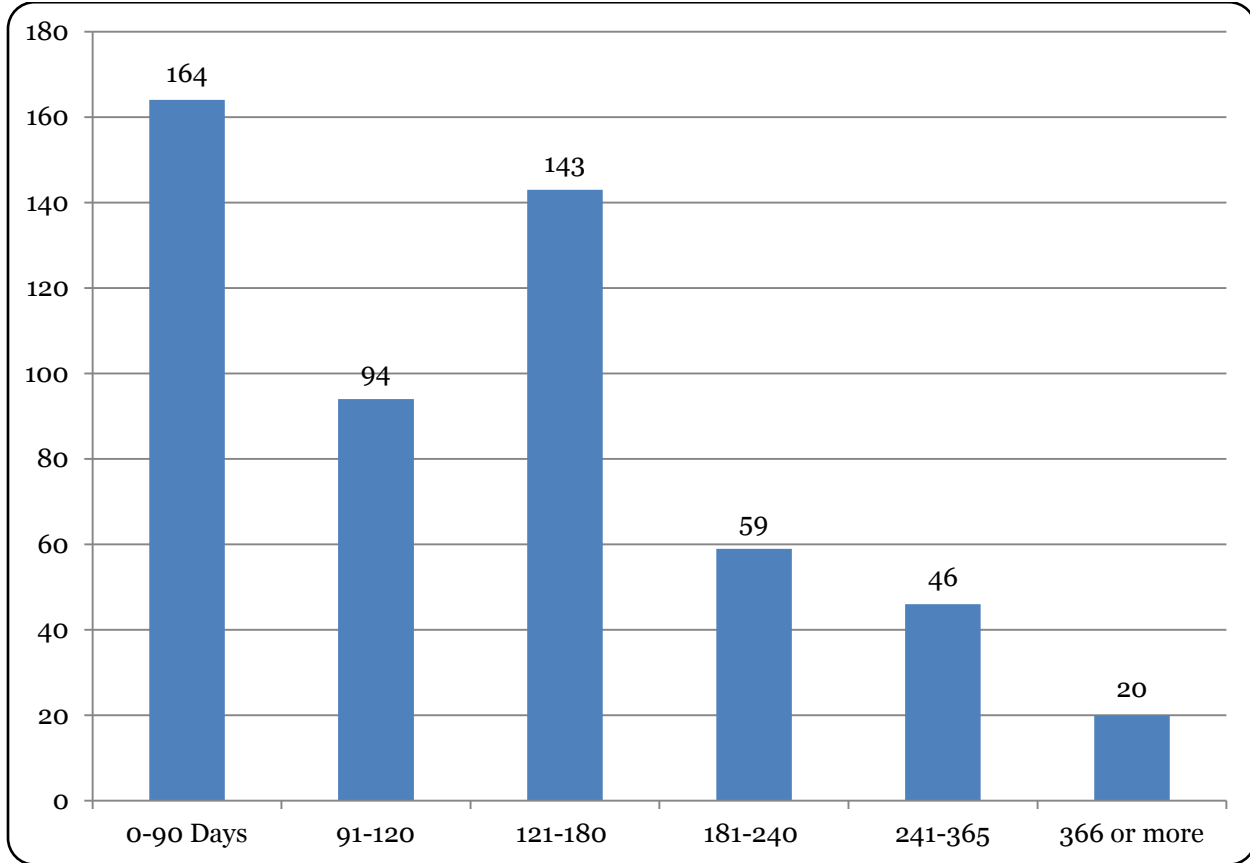
Figure 5**Days between Complaint Transmittal and HOD/SA Signature (n=524)**

The mean number of days between HOD/SA signature and implementation with approval by the final reviewer was 99 days or over three months, with the number of days ranging from -19 to 617.¹² More than half of the cases (56.4%) moved from HOD/SA signature to implementation in 90 days or less; 15.4% took 91 to 120 days; 14.7% took 121-180 days; and 13.6% took more than 181 days, that is, about six months. (Figure 6) Since cases are not finally closed until all required actions are either initiated or completed and, as depicted in Figure 4 above, most cases have multiple required actions, it is likely that some of these actions were initiated or completed before the date closure was finally approved.

¹² In four HOD/SAs, the required actions were implemented prior to the HOD/SA signature. In two cases, IEPs were reviewed after the complaint transmittal but prior to the signature. In another case the HOD ordered DCPS to comply with a PWN that had already been drafted so it was sent to the attorney and uploaded into SEDS. In the last case, DCPS sent an ordered behavioral intervention plan to the attorney before the settlement agreement was signed.

Figure 6**Days between HOD/SA Signature and Date Implemented (Final Reviewer) (n=525 cases)**

The mean number of days for the entire process—from complaint transmittal to final implementation—was 144 days, approximately five months, roughly the equivalent of a half school year. The number of days ranged from 18 to 658. (Table 3) Overall, slightly less than a third (31.3%) of cases (164) were implemented within 90 days of the complaint signature; 17.9% (94) took 91-120 days; 27.3% (143) took 121-180 days; and 23.5% (123) took 181 or more days. (Figure 7)

Figure 7**Days between Complaint Transmittal and Date Implemented (Final Reviewer) (n=524 cases)**

Review of a sample of HOD/SA complaints revealed that during this period, during which attempts were made to get assessments conducted and meetings scheduled, if the students were not already receiving special education services, interim services were generally not provided. As will be discussed later in this report, documentation that interim services were discussed or offered was absent in a significant number of student files. To the extent that the underlying due process complaint was intended to assist a student better access educational services or address behaviors in the classroom, both remained in a state of limbo.

1. Type of School

Although independent charter schools account for a small proportion of the HOD/SAs, on average, they tended to resolve complaints more quickly but took approximately a month longer than DCPS schools and dependent charter schools to implement required actions after HOD/SA signature (120 vs. 95 days, respectively). The mean number of days was only slightly higher

when complaints were filed against more than one system (e.g. DCPS and charter schools, OSSE or non-public schools), non-public schools, or if students were not enrolled. (Table 4)

Table 4
Mean Number of Days between Events by Type of School

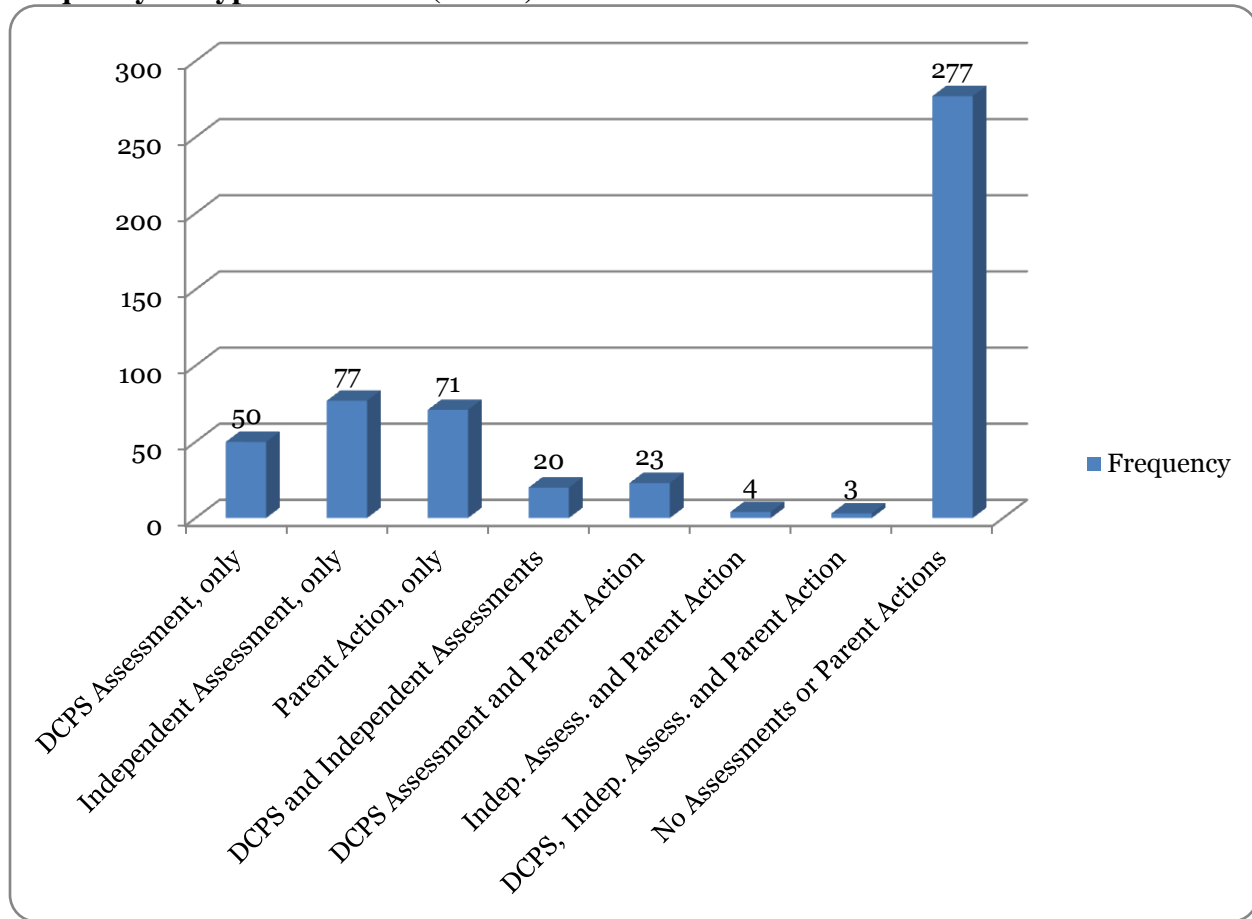
	DCPS School* (n=474)	Charter School (n=30)	Two School Types and Non-public Schools (n=16)
Mean Number of Days between Complaint and HOD/SA	46	33	49
Mean Number of Days between HOD/SA and Date Implemented (Final Reviewer)	95	120	128
Mean Number of Days between Complaint and Date Implemented (Final Reviewer)	141	153	177

*Includes charter schools under DCPS authority for special education.

2. Type of Assessment

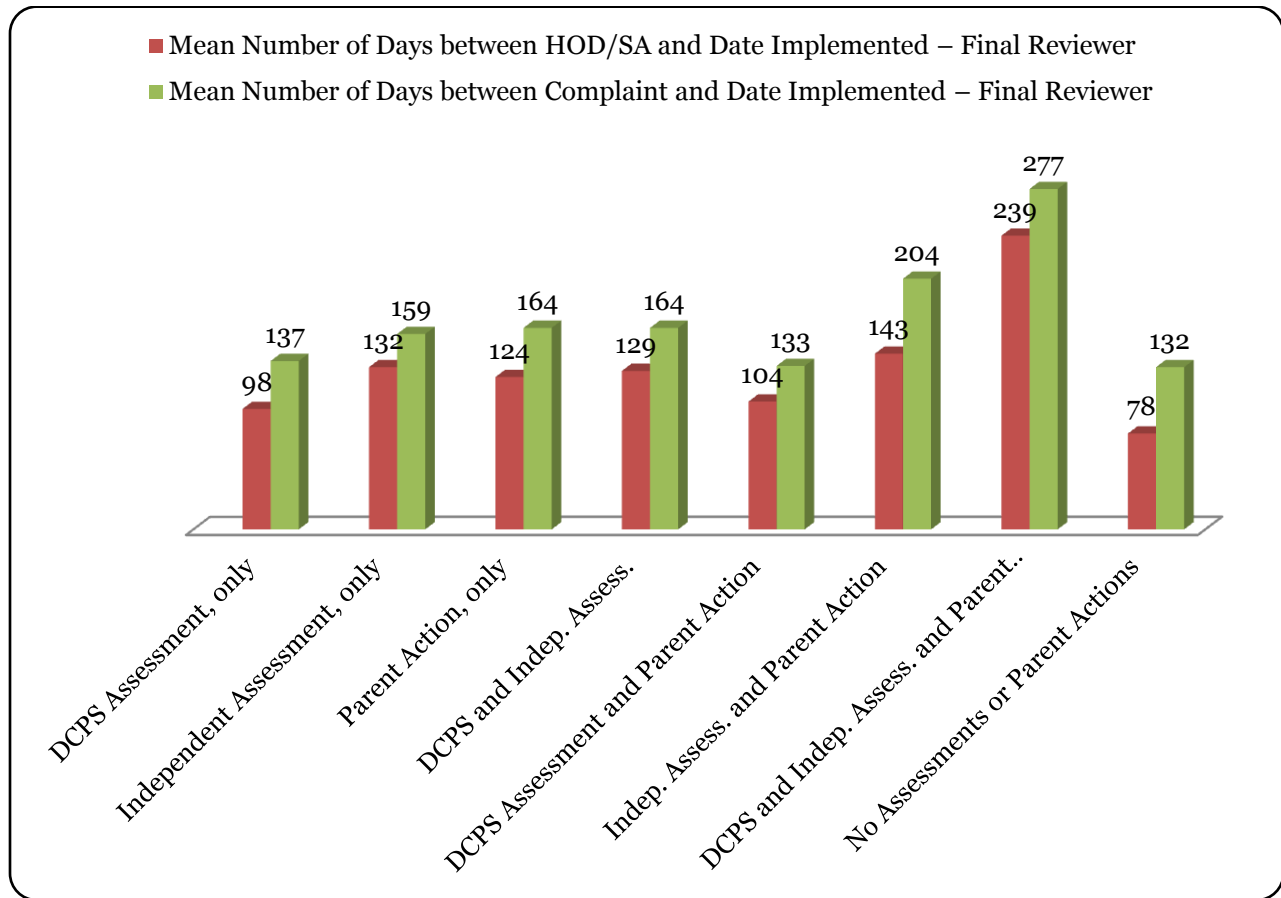
Often, required actions call for student assessments of different types, e.g., speech and language, psychological, behavioral, and physical and occupational therapy. Parents/guardians may opt to have these assessments conducted by DCPS or by an independent provider paid for by DCPS or, in the case of a charter school, the LEA. This analysis sought to determine whether the assessment provider (DCPS or independent) had an impact on the length of time from complaint through implementation. The required actions in the Blackman/Jones database differentiate DCPS assessments from independent assessments. In a small number of cases, DCPS and independent assessment both were identified as required actions. The analysis also included cases where “parent action” was a required action. In all, in 248 HOD/SAs there were required actions that included one or more independent assessments, and/or parent action. No assessments or parent actions were among the required actions in 277 HOD/SAs. The number of cases in each category is displayed in Figure 8.

Figure 8
Frequency of Types of Actions (n=525)



The data suggests that in the early phase of complaint resolution, granting an independent assessment tends to speed up resolution, although in the implementation phase, it tends to slow down actual receipt of the relief granted. With regard to the period between complaint and HOD/SA signature, cases in which the required actions included independent assessment only had the lowest mean number of days (27). Cases with DCPS assessments took, on average, 39 days to move from complaint to HOD/SA and this was similar to cases where there was a parent action (40 days). In the 277 cases where required actions did not include DCPS assessments, independent assessments, or parent actions, the mean number of days was 54. (Figure 9) These data suggest that when independent assessments are ordered, the process from complaint to HOD/SA signature moves more quickly than when the DCPS is given responsibility for assessments.

Figure 9
Comparison of Elapsed Time by Assessment Type



The period between HOD/SA signature and date implemented was lowest (78) days when no assessments or parent actions were among the required actions. On average, cases with independent assessments took a month longer to implement than cases with only DCPS assessments (132 vs. 98 days, respectively). The mean number of days between HOD/SA and date implemented for cases with parent actions was 124. (Figure 9)

It is useful to recall the rationale for increasing reliance on independent assessments over the past several years. When assessments were the primary responsibility of DCPS, the volume of work required, coupled with staffing shortages, combined to create long delays in completing the assessments. In many cases, parents disagreed with the results of the assessments and requested independent assessments at public expense, as authorized by law. Plaintiffs' counsel and DCPS believe that a more liberal granting of independent assessments in the first instance would produce quicker results more acceptable to parents, while also reducing the demands

placed upon DCPS staff. While this strategy may have addressed the problem of reducing disputes over the results of evaluations, it has lengthened the time to perform the initial evaluation. This increased time may be offset if one considers the total time that used to be required to conduct an initial DCPS evaluation, the dispute process over the results of that evaluation, and a subsequent independent evaluation.

Considering the process from complaint transmittal to implementation, the mean number of days was 137 when assessments were done only by DCPS. When the assessment was done only by an independent provider, the mean number of days increased to 159 days. When required actions did not include DCPS or independent assessments or parent action, or any combination, the mean number of days between complaint signature and implementation was 132. (Figure9)

III. VERIFICATION OF TIMELY IMPLEMENTATION OF HOD/SAS AND REPORTING; REVIEW OF ISSUES RAISED BY DEFENDANTS' METHODS OF CLOSURE

A. Overview

The goal of the Blackman/Jones Consent Decree is, in part, for Defendants to achieve and maintain “timely implementation of HODs and SAs in all instances” (Consent Decree, § I. C, Docket #1856). The Consent Decree establishes as a standard of compliance for the *Jones* case that by June 30, 2010 “(i) no case in the subsequent backlog will be more than 90 days overdue and (ii) 90% of the HODs/SAs issued on or after July 1, 2009 will be timely implemented (i.e., not “overdue”).” (*Id.* ¶ 42 (d)).

In a year-end report submitted to the parties as required by ¶ 46 of the Consent Decree, Defendants reported that there were 630 HOD/SAs issued during the school year, of which 380 were reported implemented on time, 56 implemented late, 113 open and not overdue and 62 open and overdue. Of this last group, the Defendants’ year-end report identifies 35 cases as being overdue more than 90 days, more than twice as many as the 17 reported for the previous year. The Defendants report a rate of timely implementation of 76.3%, substantially short of the 90% rate required by the Consent Decree, ¶ 42 as of two years ago.

The Consent Decree requires the Monitor and Evaluation Team¹³ to monitor Defendants' compliance with its provisions and provide an annual report to the Court (Consent Decree, ¶¶ 83, 101). The Consent Decree provides that the Evaluation Team may perform its monitoring function without relying on statistically significant samples (*Id.* ¶ 101(b)).

B. Case Reviews

The Monitor conducted a review of a sample of cases closed by the Defendants as timely implemented during the school year by examining the documentation contained in the Blackman/Jones database used to manage compliance activities to determine if there was evidence to support the Defendants' decision to classify these cases as timely implemented. The information contained in this database is the same information submitted by the DCPS compliance case manager to demonstrate timely implementation of a case, and is the same information relied upon by the DCPS reviewers who make the final determination that a case has been timely implemented. Of the 380 cases reported as implemented on time, the Monitor reviewed 31 (8.15%) cases selected at random.

As a result of this review, and in contrast to the findings in previous years, the Monitor's review confirmed the Defendants' conclusion that the closed cases had been implemented timely much more frequently. A review of the case files provides evidence that there was more careful documentation of the efforts of case managers to implement HOD/SAs, and most had copies of communication checklists and other protocols that were adopted pursuant to the ADR agreement.¹⁴ Unlike the past two years, the Monitor did not find systemic practices, which misclassified cases as timely implemented. Nevertheless, there were a few cases in the sample reviewed, which are discussed below, where the Monitor disagrees with the decision to count a case as timely implemented. Some of these appear to involve vestiges of earlier practices, but

¹³ The Evaluation Team established by the Consent Decree originally consisted of three persons – the Court Monitor, Amy Totenberg, Rebecca Klemm and Clarence J. Sundram. DCPS retained Rebecca Klemm as a consultant and she resigned from the Evaluation Team. Amy Totenberg was appointed a United States District Judge for the Northern District of Georgia and also resigned. Mr. Sundram was appointed as Court Monitor in her place and is the sole remaining member of the Evaluation Team.

¹⁴ ADR Agreement (Docket # 2268, filed August 18, 2011); approved by the Court (Docket # 2273, filed November 21, 2011).

overall the quality of decision-making about appropriate case closures appeared to improve as the school year progressed.¹⁵

SA #24950, signed on 4/20/2011 and finally closed as Timely Implemented on 8/12/11. The settlement agreement authorized the parent to obtain an independent comprehensive psychological evaluation (which includes cognitive, educational, and clinical components as well as a social history), functional behavioral assessment, and vocational assessment to be completed within 45 calendar days. Within 20 business days of the receipt of the final independent evaluation and enrollment at a DCPS school, DCPS will convene an IEP meeting to review the independent evaluation, and discuss eligibility. If found eligible, within 20 business days, DCPS will convene IEP meeting to review IEP, if necessary, discuss location, if necessary, and discuss compensatory education, if warranted.

A resolution session was held on 4/19/11 and attended by the parent, advocate and DCPS compliance case manager ("CCM"). An authorization letter the same day was sent to the parent for an independent comprehensive psychological evaluation, a functional behavior assessment, and a vocational assessment. On 5/20/11 and 7/26/11 the CCM e-mailed the attorney about the status of these evaluations and included the authorization and vendor list. The CCM also reported calling the parent once on these dates, at 3:25 p.m. and 9:02 a.m. respectively, leaving messages asking whether these evaluations had been started and completed. There is no other evidence in the file of efforts to contact the parent or attorney, or offer assistance to get these evaluations done. Two extensions were granted during this period—one was from 6/4/11 – 7/29/11 and a second, approved on 7/26, for the period 7/29/11-9/30/11. However, the case was closed on July 28, 2011 with a note:

Evaluations were never received therefore eligibility meeting was not held. Closure letter was signed on 7/28/11.

This case was classified as implemented and timely, although none of the actions required by the settlement agreement were actually performed.

On July 21, 2011, the case manager sent a case closure letter to the attorney. The letter stated in part:

Pursuant to our records, the April 20, 2011 SA is timely, and all of the SA provisions have been satisfied. If you are in agreement that this matter is closed, please affix your signature and fax this letter . . . Please note that this SA closure is for Blackman/Jones reporting purposes and in no way limits your ability to bring future claims under the Individuals with Disabilities Education Act.

¹⁵ In last year's report to the court, the Monitor recommended that the responsibility for the final review of timely closures be transferred from DCPS to OSSE to provide a greater measure of independence for their review process. That recommendation was implemented effective January 1, 2012. By October 2012, 101 cases had been reviewed and 78 approved as closed timely. One case was found to be untimely and 22 had been returned to DCPS for further actions required to demonstrate timely implementation.

The attorney responded in writing that she no longer represented the client. She stated that she could not assist the client in obtaining the independent evaluations and agreed with the case closure. The attorney altered the proposed acknowledgment statement as follows: "I hereby ~~certify that I am authorized to sign this acknowledgment on behalf of my client, as a parent/Guardian/counsel~~ and acknowledge the above-referenced SA is closed." While she signed the letter, she struck out the language identifying her as "Counsel for parent."

In an attachment she wrote:

I no longer represent the client, so I'm not authorized to sign on her behalf. However, I was not able to assist the client in obtaining the independent evaluations that were authorized in the Settlement Agreement. For that reason, I believe that DCPS can close this case for Blackman-Jones purposes. I understand that if the parent decides to seek independent evaluations on her own, within a reasonable period of time, DCPS will still be obligated to fund the evaluations.

The evidence of "due diligence" required by the Consent Decree is tepid at best. (Consent Decree, Para. 7(a)) There is nothing in the file that indicates that correspondence was sent to the parent to offer assistance or inform her of the proposed case closure. There is no evidence of efforts to verify that the parent was still at the same address or to understand barriers that the parent may have been facing. None of the actions required by the Settlement Agreement had been completed, yet they are classified as implemented and timely.

SA #25115, signed on 6/15/11 and finally closed as Timely Implemented on 9/9/11. This SA provided that DCPS agrees to convene a meeting within 20 business days of executing this agreement to discuss and determine location of services and discuss and determine compensatory education, if warranted.

The MDT meeting was held on 7/12/11. The team suggested that the student enroll in the Mamie Lee School but the parent wanted to visit it before agreeing to the placement. An extension was approved from 7/13 – 8/31 to accommodate the parent.

The team discussed compensatory education and determined that 70 hours of reading services were warranted, and based upon further review of Service Trackers to be forwarded to the attorney, a decision would be made on additional hours being warranted for speech and counseling services. Eventually it was determined that additional compensatory education was not warranted.

An e-mail dated 8/12/11 from the CCM to the parent's attorney indicated that they had heard nothing from the parent who had said she would visit the Mamie Lee School. Neither had they received objections to the proposed placement for the 2011-2012 school year. On the same day, the CCM sent another e-mail to the same parties with a Prior Notice of Placement form.

On 8/26/11, CCM sent an e-mail to the parent's attorney indicating that the student could enroll in her neighborhood if she wanted rather than Mamie Lee. CCM e-mailed the

attorney a compensatory education authorization letter for the reading services that had previously been authorized on July 12, 2011. The e-mail contained a list of authorized vendors for reading services. The same day the case was submitted for closure, and was finally reviewed and closed as timely implemented on that date. There is no evidence in the case file that the compensatory education had begun or had been paid for.¹⁶

SA #25545 dated 2/10/12, authorized the parent to obtain an independent comprehensive psychological assessment within 45 calendar days, and required DCPS to convene an IEP meeting 20 business days after receipt of the assessment findings. The assessment was received timely on March 21, 2012. The initial IEP meeting was convened timely on April 17, 2012. The parent attended part of the meeting and the team agreed to conduct a functional behavior assessment ("FBA") and develop a behavior intervention plan ("BIP"). The team changed the classification from OHI to Emotional Disturbance, and agreed to reconvene on May 8 at 9 a.m. to complete the eligibility process, review the BIP and revise the IEP, increasing the social/emotional hours.

Due to the parent's unavailability, the meeting date was postponed to May 10, 2012. On May 9, 2012, the SEC was advised that the student's case had been closed with the office of the attorney who had been representing her, and a new attorney had been retained. Although one e-mail on May 30, 2012 was sent to the new attorney inquiring whether the parent had been contacted to reconvene the meeting, the next e-mail on June 5, 2012 inquiring about a meeting date was sent to the previous attorney. On the same day this attorney once again advised the DCPS case manager that the firm no longer represented the student. Nevertheless, shortly thereafter the case manager sent the same attorney a letter of invitation to reconvene the IEP meeting, stating, "if you do not respond to any of the dates, we will move forward with the June 14 date to reconvene." The case manager's note states that he left a message with someone at the household on June 4 to call the school or the case manager regarding the meeting. There is no evidence of any other attempts to contact the parent although the communications checklist had a telephone number and mailing address for the parent in the file.

The IEP meeting went forward on June 14, 2012 without the parent, student or attorney present. The brief meeting notes indicate that the BIP and the IEP were finalized by the team. The case was approved for closure as implemented timely with a note "parent/atty were no-shows." There was no evident consideration of the failure of adequate notice of the meeting to the parent or a current attorney, or the lack of due diligence efforts to contact them.

SA #25416, dated 12/12/2011 provided that as compensatory education, DCPS will fund 35 hours of tutoring, by an independent provider of the parent's choice to be completed by June 30, 2012, at a rate not to exceed \$65.00 per hour. It also provided that by the end of the 2011-12 SY, Woodrow Wilson High School will make up any missed related service hours that were not provided to the student in September and October 2011. The same date, a letter of authorization was issued for independent compensatory education.

¹⁶ In response to a draft of this report, DCPS noted that this case was submitted for closure on 8/26/11, before the OSSE issued HOD/Settlement Agreement Implementation Guidelines.

There was no follow-up for the next 2 1/2 months regarding implementation of this settlement agreement. A new case manager received the case on February 23, 2012 and e-mailed the attorney to follow-up on the status of the compensatory education. Further inquiries made on 2/28, 3/12, 3/27, and 4/1/12, received no response. On April 17, 2012, the case manager called the parent to inquire about the status of compensatory education. She informed him that the student was very happy at Coolidge High School and was receiving everything he needs. He made an offer of alternative compensatory education of a laptop and \$50 in software in lieu of the tutoring provided for by the settlement agreement. She accepted, and the same day a notice of award was sent out voiding the initial tutoring award and authorizing the alternative award which was claimed and delivered on April 30, 2012.¹⁷

On May 1, 2012 the case was submitted for closure with the statement: "All RAs [required actions] pursuant to the 12/12/11 SA have been timely implemented." The case was approved for closure the next day as implemented timely. Leaving aside the issue of whether the follow-up efforts regarding compensatory education met the expectation of "diligent efforts," both the case manager and the reviewers appear to have overlooked entirely the requirement in the settlement agreement to make up the missed services at Woodrow Wilson High school in September and October 2011.¹⁸ A review of the Service Trackers for that time indicates shortages in the delivery of occupational therapy, speech and language and behavioral services. Clearly, these provisions of the Settlement Agreement were not implemented.

C. General observations based on case reviews

As a context for the discussion which follows, the reader should understand that much of the responsibility for the implementation of HOD/SAs rests on the shoulders of compliance case managers in the DCPS central office. These are the staff who work with the DCPS Office of General Counsel, parents' attorneys, school staff, service providers and others to implement the requirements of the HOD/SAs within a specified time period. Under the ADR agreement, significant additional responsibilities were placed upon these staff to document their compliance with the various protocols that had been agreed to between the parties. Implementation Guidelines were initially issued by the OSSE in August/September 2011 and revised and reissued in March 2012. In some cases, these staff had to adjust actions already completed to conform to the new requirements, which likely had some effect on the rate of timely implementation.

The demands of the job and the related stress have resulted in a steady turnover of staff in

¹⁷ The provision waiver was neither submitted for review by Plaintiffs' counsel nor approved by the Monitor as required by the protocols in the ADR agreement. ¶ 5. *See* fn. 1.

¹⁸ This may have happened because this required action was included in paragraph 11 in the Settlement Agreement rather than in paragraph 4 where the required actions are usually specified. Paragraph 4 only addressed tutoring as compensatory education.

these positions. In the last school year alone, seven case managers left their jobs. A few more left shortly thereafter during the current school year. While many likely left for better opportunities for career advancement and better salaries, there have been consistent complaints about understaffing in this unit, the lack of pay increases over the past three years, and inexplicable differences in pay scales for case managers sometimes resulting in lower pay for acting supervisors than for the people they supervise.

Five of the positions lost in the current school year have not been filled, presumably due to budget constraints. All of these conditions have an impact on morale. Large caseloads of 30 to 35 cases per person, and job demands combine to pressure resolution specialists and case managers to move through their casework tasks as quickly as possible, leaving little time for the robust discussions about individualized needs for assistance or interim services that were contemplated when the ADR agreement protocols were developed. As a result, the expectations of the ADR agreement generally have been reduced to formulaic checklists which are dutifully ticked off while the substance of the interaction that was intended remains elusive. There are consistent reports that these staff simply do not have the time to provide the type of individualized assistance that was envisioned. The ADR agreement also raised the expectations of the plaintiffs' bar in communicating performance expectations that this unit is not adequately staffed to meet.¹⁹

1. Resolution sessions.

a. Location and attendance

In the 2011-12 SY, resolution sessions were generally held at the OSE office for each student and typically attended by the Resolution Specialist/Case Manager and the parent's attorney/advocate. If the student/parent was not present in person, they were often on the phone. In one case, #25666, the adult student participated and not the parent, despite the student having an IQ of only 71. Given the large caseloads of the resolution specialists, they are generally not sufficiently familiar with the needs or circumstances of the particular student involved in the due process complaint. It is therefore significant that in a large number of cases, there was no one present from the school who was familiar with the student's educational history, specific needs

¹⁹ In July 2012, the work of this unit was reorganized to eliminate the position of investigators, who were responsible for investigating each of the complaints as they came in. Instead, the staff is split into: 1) a resolution team with three resolution specialists who are responsible for investigating the cases and attending all resolution session meetings ("RSM"); and 2) an implementation team that works on implementation of HOD/SAs.

and circumstances to participate in the discussion. In the illustrative example below, the presence of a broader representation of the school staff seemed to have been considered unnecessary and the location of the meeting at the DCPS central office would likely make their attendance time-consuming and inconvenient. According to the RSM Notes in the Blackman Jones database for #25357, at a meeting on 9/16/11 only attended by the parent's attorneys, parent and CCM:

Attorneys asked why other IEP members were not present at the resolution session. The CCM stated that they were invited. The CCM stated that even if they were present, the IEP team members do not have the authority to negotiate settlement agreements or offer resolution. Attorneys went back and forth about why other IEP team members were not present. The CCM stated they are not available and requested to move forward with the discussion because even if they were present, they would not agree to change a student's classification or make revisions to the IEP at a resolution session. The CCM stated that if the attorneys wanted to do a combined Resolution Session and IEP meeting, they could have requested to do so.²⁰

In only seven cases in the sample were additional people present for DCPS or participating by phone: #25643, (School SEC by phone); #25612 (Special Education Teacher); #25579 (DCPS Progress Monitor and Director of Oak Valley Center, by phone); #25545 (SEC of Eastern school, by phone); #25476 (SEC); #25423 (three CCMs and DCPS progress monitor); and #25272 ("Observer" also present).

DCPS has recognized that the practice of holding resolution sessions at the central office has resulted in inadequate participation by school staff in the process and reduces their ownership of and accountability for actions necessary to implement the requirements of the resolution. Beginning in March 2012 and continuing into the current school year, they have placed a greater emphasis on holding resolution sessions at the schools to increase attendance and participation by school staff. Three resolution specialists are assigned to conduct the resolution sessions. They report a sharp increase in the number of resolution sessions conducted at the schools, and increased participation by school staff at these sessions. This change in practice requires the three resolution specialists to travel to schools all over the District, which is very time intensive for them and sometimes impossible when multiple resolution sessions have to be conducted within a short period of time to comply with the timelines. Consequently, some

²⁰ See also, section IV. A below for a discussion of the Defendants' ADR Progress Report which addresses this issue.

resolution sessions continue to be held at the central office or with the resolution specialist by telephone.

b. Authority to negotiate

There was considerable confusion among members of the plaintiffs' bar and DCPS regarding the scope of authority of CCMs and resolution specialists to negotiate the terms of proposed settlement agreements. At meetings arranged by the Court Monitor between representatives of DCPS/OSSE and the special education roundtable, DCPS representatives consistently stated that all terms of settlement agreements were negotiable at resolution sessions and that case managers had the authority to negotiate. Members of the plaintiffs' bar, on the other hand, consistently reported their experience that case managers did not believe they had the authority to alter the provisions of proposed settlement agreements. After conducting interviews with resolution specialists and case managers and their supervisors, as well as members of the plaintiffs' bar, the Court Monitor concludes that both sides are partially correct.

Case managers/resolution specialists have some discretion to negotiate the specific terms of the relief to be granted to the student, typically contained in paragraph 4 of the settlement agreement. Nevertheless, there have been instances in which resolution specialists have informed parent's attorneys that they lack the authority to alter the number of hours in an IEP that is the subject of a complaint. There are other provisions of the settlement agreement, however, such as the amount of attorney's fees, which increasingly are being addressed in the settlement agreement itself, which are determined by the Office of General Counsel and communicated to the resolution specialists who -- despite the contradictory statements from various DCPS personnel -- have limited discretion to alter this element of the agreement without the approval of OGC. Moreover, the form of settlement agreement has been modified to include language containing a waiver of rights which the resolution specialist is also not authorized to alter without the approval of OGC.

All of the SAs reviewed contained the following (or virtually identical) waiver language:

This Settlement Agreement is in full satisfaction and settlement of all the claims contained in the pending Complaint, including those claims under IDEA and §504 the Parent now asserts or could have asserted within the statute of limitations as of the date of the signed Settlement Agreement.

Some of the settlement agreements included both the foregoing paragraph and the following paragraph:

Parent is unaware of any other issues that DCPS could immediately address for the benefit of the child, including but not limited to compensatory education.

This waiver language is of obvious importance to the parent/student. The case of #25288 involved arguments by DCPS of issue preclusion relating to a prior SA and HOD citing the language noted above. The HOD under review stated at fn.10:

By entering into the 11/25/2010 SA, the Parent agreed to exchange the right to have her prior claims litigated in a due process hearing for the right to have a discussion about compensatory education at a team meeting with no certain outcome. In order for the Hearing Officer to judge the appropriateness of DCPS' compensatory education award, Petitioner would essentially need to re-litigate all of the underlying FAPE claims that were previously settled, since a reasonable amount and type of compensatory education cannot be fashioned without assessing the specific harm suffered from a specific denial of FAPE over a specific period of time. Moreover, the SA expressly provides that it is "in full satisfaction and settlement of all claims contained in the pending Complaint, including those claims under IDEA and §504 the Parent now asserts or could have asserted within the statute of limitations as of the date of the signed Settlement Agreement." P-4, p. 2.

Four DPCs were filed on Edward James' behalf between December 2010 and September 2011. The first was settled. The other two were withdrawn or dismissed. The final DPC was filed four days after the HOD under review alleging *inter alia*, failure to comply with the previous HOD. The IHO dismissed that complaint in part on the grounds that the placement decision had been resolved by the prior HOD and could not be re-litigated by the student through a DPC, but left alive the issue of whether the Petitioner was not included in the decision to place the student. After a hearing, the Hearing Officer determined the student was not denied a FAPE despite the parent's absence because the challenged assignment was not a change in placement but a change in location of service made by the CCM without the IEP team, and dismissed the complaint with prejudice.

The case of #25257 also involved arguments by DCPS of issue preclusion relating to prior SA/HODs. DCPS filed a Motion to Dismiss the DPC under review, alleging issue preclusion based on prior DPCs. The Motion was denied by the IHO.

A third area where resolution specialists may lack decision-making ability is in the decision to waive the resolution period and proceed to hearing. In some cases it is evident early on after the filing of a complaint that the prospect of settlement is unlikely. Nevertheless, although parents are willing to waive the resolution period and proceed directly to a hearing, there have been complaints from plaintiffs' attorneys, sometimes supported by documentary evidence, that DCPS refuses to waive the resolution time and insists on allowing it to elapse, thus delaying the due process hearing and resolution of the complaint. (See, also, OSSE Letter of Decision, #011-003)²¹

2. Long delays in providing services to meet students' needs

As noted earlier, the due process procedures and the current implementation process for HOD/SAs often results in an extended period of time elapsing before the student can begin to receive any benefit from the process. The focus on maintaining the "timeliness" of the case in order to comply with the requirements of the Consent Decree has resulted in a number of practices which try to achieve this goal at the price of delaying the delivery of services to students and removing a sense of urgency for doing so. The refusal to waive resolution sessions, discussed above, is one example in the complaint resolution phase. But delays continue in the implementation phase as well.

In last year's report, the Monitor noted a trend towards eliminating deadlines for actions required to be taken by DCPS. The lack of deadlines is fundamentally inconsistent with the obligation for timely delivery of special education services to students as it removes accountability for timely action to meet students' needs, and elevates the obligation for technical compliance over the basic goal of the Consent Decree "to achieve, as quickly as possible, Defendants' compliance with federal law requirements for . . . timely implementation of Hearing

²¹ "OSSE encourages DCPS to ensure that DCPS attorneys and case managers are familiar with the meaning of the options available on the resolution period disposition form. DCPS attorneys and case managers should only indicate that agreement could not be reached by the end of the 30-day resolution period if they have reached the end of the 30 day resolution period. If DCPS intends to agree that resolution is not possible and the 30 day resolution period has not yet concluded, the LEA should use the resolution period disposition form to indicate that no agreement could be reached and the 45-day timeline for a final determination should commence, otherwise DCPS should continue efforts to reach resolution during the 30-day period until it becomes clear that no agreement is possible." (pp. 6-7)

Officer Decisions and Settlement Agreements" (Consent Decree, p. 8). But even where deadlines are not eliminated, delays occur frequently.

a. Extensions

In SY 2011-12, the Monitor has seen a continuation of a tendency to grant multiple extensions, without adequate evidence of due diligence steps that are required. Instead, extensions are granted liberally, to keep cases timely and satisfy adult needs to remain "in compliance" while the student's needs for services languish. In most cases, the extensions granted were significantly shorter than in previous years, but cumulatively in some cases they delay implementation for a significant period of time.

SA #25113, dated 6/23/11, illustrates the length of time it can take before services are delivered to a student seeking special education and related services. The student in this case is a girl in the 6th grade attending the Ludlow-Taylor Elementary School. Her primary disability is "Other Health Impairment" due to her ADHD diagnosis. Issues regarding this student's receipt of a FAPE predate this complaint which was filed on May 17, 2011, by almost 3 years beginning with a request by the parent for an evaluation and development of an IEP in 2008.

The May 2011 complaint reports that there were two psychological evaluations conducted (one by DCPS) in fall of 2008 but they were not reviewed and eligibility for services never determined. Factors that appear to have gotten in the way of the process included communication difficulties with the family, and the student's transfer from Scott Montgomery to Ludlow Taylor.

On October 2009, the parent signed another "initial" consent for psychological evaluation that was completed on March 21, 2010 (more than a month later than the 120 day requirement). The first IEP was developed in June 2010. Because the student was experiencing significant delays similar to those she had experienced two years earlier, the attorney argued that the student was due compensatory education.

Thirty-seven days after the complaint dated 5/17/11, a Settlement Agreement was signed on 6/23/11. Settlement terms were as follows:

Within 20 business days of receipt of the independent Speech and Language Evaluation and the independent Occupational Therapy Evaluation, DCPS will convene a MDT meeting to review both evaluations, review and revise the student's IEP, if necessary and discuss compensatory education, if warranted. As compensatory education, DCPS will fund 50 hours of independent specialized instruction by an independent provider of the parent's choice to be completed by December 31, 2011 and not to exceed the rate of \$65.00 per hour. This authorization resolves all issues pertaining to compensatory education upon execution of this signed agreement.

On June 17, 2011, DCPS authorized 50 hours of compensatory education by an independent provider at DCPS rates and a forwarded a list of providers. The CCM authorized, on 7/27/11, 15 additional hours of compensatory education because of a missed Extended School Year (ESY) experience because the student did not receive transportation services.

The Speech and Language (S/L) evaluation report was dated 6/27 and submitted by the attorney on 8/4. The Occupational Therapy (OT) evaluation proved more difficult to schedule and conduct. The first e-mail inquiry about the status of the evaluations was July 15th. In an e-mail the same day, the OT evaluator selected by the parent said she intended to conduct the evaluation on 7/28 while the student was attending the ESY placement approved as part of an IEP dated 4/8/11. However, as noted previously, the student never attended that placement. A second e-mail inquiry from the CCM about the status of the evaluation, dated 8/4, was answered by the attorney the same day requesting assistance with transportation of the student to the evaluator's office, noting that absent DCPS assistance, the OT evaluation would be delayed until the beginning of the school term. There was no response to the need for transportation assistance.

On 8/29, a third e-mail inquiry about the OT evaluation was sent by the CCM along with a list of providers. An extension (8/8 – 10/28) was approved because all evaluation reports had not been received. The next obstacle was scheduling the appointment for the OT evaluation. It was scheduled for 9/9 after some difficulty setting up the date due to an incorrect e-mail address and problems getting in touch with the SEC to arrange for a room. The OT evaluation was conducted on 9/9 and ten days later (9/19), the attorney forwarded the report to the CCM.

After some back and forth about dates everyone would be available for an MDT meeting following an e-mail by the attorney on 9/21 requesting the meeting, a date of 10/28 was scheduled.

Approval for an extension (10/17-10/31) was obtained by the CCM to accommodate the new meeting date. The parent did not attend the MDT meeting and the student was not in school that day. In attendance were the attorney, LEA/SEC, case manager, special education teacher, general education teacher, social worker, psychologist, two occupational therapists, and two speech and language pathologists.

As an outcome of the meeting, the team agreed to 60 minutes of OT per month and 60 minutes of S/L consultation per month. The team recommended an auditory processing assessment conducted by DCPS and the attorney said she will get the mother's approval. The team also reviewed and revised the IEP on this date. The outcome of this meeting was one hour of behavioral support services per month, 10 hours/week of specialized instruction in the general education setting and 5 hours/week of specialized instruction outside general education setting. The team decided that that on basis of S/L and OT, no additional compensatory education was warranted, however, the parent's attorney disagreed.

The case was considered timely implemented on 11/29, 196 days after the complaint and 156 days (more than five months) after the settlement agreement.

Other cases illustrating very long periods of time between a settlement agreement and implementation include:

#24653. Services due to be completed within 12 weeks, were not completed until two months later. Two extensions were granted from 4/15/11 to 6/24/11 and then from 6/24/11 to 7/29/11 without clear justification offered for either.

#24655. One extension was granted for receipt of IEE for almost two months without adequate basis. Two extensions were granted for holding IEP meeting each for two months' duration without adequate justification.

#25157. There were 147 days from settlement agreement to implementation.

#25070. There were 125 days from settlement agreement to implementation.

b. School days/business days

Another practice that also extends the time to take action in response to the requirements of a HOD/SA is the use of business days or school days rather than calendar days to measure DCPS' time for implementation, while parent actions are usually measured in calendar days. For short 10 day timelines this may well be reasonable as it usually translates into a two week period. However, 30 business days converts a month into six weeks, which seems too long in most instances to convene an IEP meeting. For example, a SA for #25105 provided for 30 *business* days to convene IEP meeting to review an independent psycho-educational assessment that had been completed six month *prior* to the SA. This seems an unreasonably long timeframe given that the evaluation was already in hand (although the meeting actually occurred within 15 days).

#24955 is noteworthy as an example of a SA that provided no timeframe for the IEE to be secured by the parent and provided for triggering 30 business days to convene an MDT only after receipt of the IEE. The lack of a timeframe for the independent assessment also reduces the sense of urgency in monitoring progress, conducting "due diligence" checks and offering to step in when the parent is evidently experiencing difficulty in getting the task done. (*See also*, #25509 [RSM notes provided for 30 school days after receipt of the IEE to convene an MDT meeting. Parent's attorney asked for it to be 30 calendar days instead. CCM countered with 20 business days and the parties agreed. CCM said she needed approval from a supervisor.] *See also*, #25488, and #25329.

3. "Diligent efforts" and offers of assistance that are formulaic rather than responsive to individual needs.

The process of implementing the provisions of an HOD/SA depends heavily on families' ability to follow up as illustrated in the following cases.

#25105. This 17 year old student was found ineligible to receive special education services in an MDT meeting held without the parent or student present, based on a prior psychological evaluation performed by a psychology extern for the purpose of a Juvenile Court PINS proceeding. That evaluation found the student had a borderline IQ and a very significant social history, including drug addicted biological mother, 84 year old adoptive parents unable to provide parenting, lead exposure in childhood, school failure, drug abuse, etc. Eligibility was denied because the student's borderline IQ was complemented by "average" testing results and the fact that he had not been coming to school for the prior two and one half years. One question is whether the District could rely on this report as the basis for denying eligibility for the student under these circumstances.

The student seemed to have very serious problems that would affect his ability to benefit from an education. The independent psycho-ed evaluation ordered by the Juvenile Court and administered by a "psychology extern" with an M.S., consisted of an interview of the student, his adoptive sister, the WAIS-IV, reflecting full scale IQ of 76, Woodcock Johnson Tests of Achievement where he scored a total achievement in 46% percentile and Total Achievement grade equivalent of 10.4. The extern also administered the Million Adolescent Clinical Inventory and Trauma Symptom Checklist and Rorschach Inkblot (invalid due to lack of responses). "Test data and history suggest that Donnell meets the criteria for Adolescent Antisocial Behavior." The evaluation concludes that his parents are "unable to effectively provide Donnell with the supervision and structure he needs" and that his Diagnosis is Adolescent Antisocial Behavior, Cannabis Abuse, Mathematics Disorder, Borderline Intellectual Functioning, Exposure to lead, absence of mother and father, behavioral problems in school leading to expulsions and suspension, failing grades and behavior problems in school with truancy issues.

The adequacy of the meeting and the evaluation relied upon to determine eligibility seem questionable. The parent and student were not present. (The prior no-show referred to in meeting notes occurred prior to the settlement, and was not relevant to this SA.) The review by the DCPS psychologist of the psycho educational evaluation contained no record review, interviews or observations of its own. None of the DCPS personnel present at the MDT meeting to determine eligibility had any personal contact with the student.

In most cases, students and parents rely upon their attorney to organize and implement independent actions that have been authorized by an HOD or a settlement agreement. The attorney's willingness and ability to act in their place is likely affected by the availability of compensation for their time and effort. The lack of clear rules and transparent procedures makes the fee payment process an idiosyncratic, time-consuming and uncertain process in providing assurance that attorneys will be compensated reasonably for the time and effort required to

perform functions that were once expected of DCPS staff. In the sample of cases reviewed, there were several in which the attorney who represented the student during the disposition of the due process complaint, no longer represented the student during the implementation phase, and the relief provided by the HOD/SA which required parent action was not implemented. (e.g., #25520; #24950; & #25545).

The data indicating that cases involving independent assessment and parent actions take significantly longer to implement indicate the difficulties that they experience in getting these tasks done on a timely basis. (Figure 9)

Although the spirit of the Consent Decree and the ADR agreement is for DCPS to step in and provide assistance when families are experiencing difficulty getting the services/assessments done, what has resulted generally is a formulaic compliance with the letter of the agreement. There are rituals that have been incorporated into the compliance process –rote checklists, with tick marks documenting that offers of assistance have been discussed, signature blocks with tag lines in e-mails from case managers containing a standard repetition of the availability of assistance.²² But what is missing is evidence that any actual assistance has been delivered to families who are evidently struggling to access the independent assessments or evaluations they have been authorized to get on their own. When specific requests for help have been made, there is often no record of what response, if any, was made.

Evidence of assistance going beyond *pro forma* offers especially if the parent was experiencing difficulties was infrequent but did occur in some cases. The record however, does not always confirm that the requested assistance was provided or that the offers of assistance were carried out.

²² *Pro forma* offers of assistance in the HOD/SA Model Questions were found in virtually every student's file, and there was a new Initial HOD/SA letter of Assistance. Most of the case managers had the following language appended to their automatic e-mail signature:

DCPS is willing and able to assist the parents of our students and their attorneys for the benefit of the student and for all compliance purposes. Please let us know if you require any assistance, including but not limited to: obtaining evaluations (Independent or otherwise), obtaining compensatory education providers, obtaining or setting up transportation (for students to attend schools, or parents to meetings), obtaining childcare (so that parents can attend meetings) or scheduling MDT meetings.

#25157 is an example of a case where the parent was experiencing difficulty getting an independent vocational assessment completed. It took the parent 97 days after authorization to get other independent assessments completed. At this point, the case manager offered the option for DCPS to conduct the vocational evaluation. The attorney agreed and within 14 days thereafter, DCPS completed the vocational evaluation.

#25643 is an example of a case where school personnel offered to secure a car and personally drive the parent and student to an interview at the Foundation School and tried to address the issues with the schedule for district-wide testing and concerns that the student would walk out of the tests. It is unclear if that occurred. Also, in RSM notes, when asked HOD/SA Model Questions, parent mentioned getting help with transportation for student's compensatory education tutoring session (awarded through prior SA), though tutor is now picking him up. There is no indication of what happened.

#25612. CM offered to arrange informal meeting to discuss location of services, but it is unclear if it occurred.

#25555. Mother asked for help with credit recovery for student at RSM. No indication in the records if there was any follow up on this.

#25520. Here the CM was not particularly consistent and did not meet diligence criteria, but did continue to pursue the matter. The SA ordered IEP to be amended to provide for a full-time aide and provide 40 hours of tutoring as "missed services" by 7/1/12. The IEP was promptly amended and submitted to SEDS within two weeks. The authorization for compensatory education was e-mailed to the parent the same day as the SA was executed (same day as RSM meeting), but there was no proof of service until three months later and no proof of follow up with the parent or attorney to get compensatory education started other than one CM note on 3/22/12 (seven weeks later) that attorney was leaving the firm and CM was unsure who to contact as the child was not in parent's custody but in foster care, and she did not have contact info. 5/9/12 note by CM confirmed student was receiving compensatory education (three months post SA) by communication with advocate.

#25476. The file contained a 1/10/12 Request for Help form where parent asked for assistance with scheduling appointments, help with transportation (need a ride by bus or car), but there was no indication whether help was provided. However, DCPS responded promptly to request for assistance to secure provider for IEE.

#25357. There was some response from DCPS on parent expression of issue with transportation; at one point changed from metro to bus transportation. There was another entry regarding the student preferring to be picked up at 7:55 instead of 7:25 am but it is unclear whether any action was taken on this. Answers to the Model Questions showed the parent saying that the placement at High Roads Academy not working out due to transportation issues (unspecified), and parent wants student to attend Job Corps program instead, but there was no indication of CM response or action. No resolution was documented on speech and language being delivered during school day or for delivery of compensatory education. It was not clear if these services were delivered at HRA at all, and they were not delivered thereafter at Incarcerated Youth Program. Behavioral services only began being delivered reliably once student was at IYP.

#25416. No follow-up regarding independent compensatory education, which was never implemented and converted to an alternative compensatory education award.²³

4. Interim services are rarely provided.

Although the intent of the ADR agreement was to promote increased use of interim services by requiring case managers to specifically address this during resolution sessions, the shortage of staff in that office as discussed above has resulted in less robust discussions than anticipated. Despite the increased expectation for documenting their compliance efforts, at best, the case files may contain a checkmark indicating that interim services were offered, without any further detail. Interim services are rarely provided in fact, and the discussions, if they occur at all, are cursory. Strikingly, even in cases reviewed where the evaluation itself had been completed, and the MDT was waiting on another event or evaluation, interim services were not offered or provided following the Resolution Session while evaluations were pending. These findings are consistent with an analysis performed by DCPS in response to a request from the Monitor. In this review, DCPS found documentation that interim services were offered in 119 of the 173 cases (68.8%) where independent evaluations were initially authorized. In the 49 cases where DCPS assessments were initially offered, there was documentation of an offer of interim services in less than half (49.0%).

There are reports that interim services are not offered due to concerns about lack of capacity to undertake additional service obligations that may prove to be unnecessary when the evaluations are eventually completed. On the other hand, case managers consistently report that even when offers of interim services are made, there are few positive responses from the attorneys/advocates who usually attend the RSMs. They speculate that parents may not understand the availability of interim services sufficiently to take advantage of them when offered and may worry that accepting them would compromise their likelihood of prevailing in the complaint resolution process. Plaintiffs' attorneys state that the offers of interim services, when made, are for such limited amounts of services –and required to be obtained independently by the parent –that they are difficult to arrange and of questionable value to the student.

5. Results are meager in many cases.

Although the time to resolve a due process complaint and implement remedies contained

²³ However, the alternative compensatory education award was not submitted to either class counsel or the Court Monitor as provided for in the ADR agreement. See footnote 1.

in an HOD/SA may be lengthy, as described earlier in this report, the benefit of this process to the student in several cases in the sample was relatively minor.

#24715 is an example of a child whose special education needs had been neglected over a long period of time. The HOD that provided a full time private special education placement was implemented in a tepid manner. Malik, first suspected of having a disability in 2003, was identified as eligible for special education services in 2004, but received no social emotional evaluation until 2010. At the time of the HOD, the 14-year-old child had multiple disabilities, including SLD, OHI, ADHD and ED and had struggled with failing academics and serious behavioral issues over several years, but had continued to be placed in a general education setting. The 2010 comprehensive psychological evaluation revealed that the 8th grader was performing at least 3 to 6 grades below his peers (e.g., kindergarten and 1st grade level in some academic skills, 2nd grade in reading, 3rd grade in math and writing), and a full time therapeutic educational program was recommended.

The HOD found that the 2008, 2009 and 2010 IEPs were rife with procedural and substantive violations, and the IEP placements and goals were not appropriate for the student because the nature of his disabilities were such that the general education setting was inappropriate, his IEPs were not based on current or comprehensive evaluations, included no BIP, etc. The HOD also found that the parent was absent from the two meetings to develop IEPs in 2008 and 2009.

The HOD ordered that the child be transferred to a private therapeutic educational placement at the Foundations School within ten days of the HOD for the remainder of 2010-11 school year and for 2011-12, that effective April 1, 2011, he receive compensatory education in the form of independent after school tutoring (1 hour reading instruction three times per week, and 1 hour of math instruction three times per week). His IEP was amended effective as of the date of the HOD to provide 27.5 hours of specialized instruction per week and 6 hours of individual behavioral support services per week. Placement in academic camp of parent's choosing for 2011(providing tutoring in reading, math and written expression) was ordered as well.

While the 2010 IEP was amended on 2/16/11, it added 27.5 hours specialized instruction per week and 1,440 minutes of behavioral instruction per month (not 1,548 minutes which is 6 hours for 4.3 weeks) but it was not clear if this was implemented. It did not appear to have been implemented prior to the May 19, 2011 MDT meeting. After school tutoring ordered as compensatory education to commence by 4/1/11 did not commence until at least two months later.

Based on the long history of educational neglect of this child, the seriousness of his disabilities, his age, and having a parent not actively engaged, the school district's implementation of the HOD here seems unduly slow and lackadaisical. The parent showed she was having difficulty securing an after school tutor but little was done to move this forward on a timely basis. The IEP meeting that should have occurred within

ten days was delayed over three months, and then showed that the school placement was not working.

Another one of the students reviewed, #25129, was a 17-year-old who had not been identified as needing special education services during most of her schooling. The evidence of DCPS' prolonged failure to meet this student's needs meaningfully was not found with the HOD under review, but with regard to the prior SA. She was rejected as ineligible for special education services in Fall 2010 although she was performing significantly below grade level in all subjects. An August 2010 evaluation identified her as SLD and ED. After the parent filed a DPC resulting in a Settlement Agreement, the student was first determined to be eligible for special education services, but the IEP developed in December 2010 provided her only 10 hours per week of specialized instruction in the general education setting (unspecified) and one hour of behavioral services. A subsequent DPC resulted in the HOD that was the subject of this review. It found that the student was so severely disabled as to require a full time special education placement in a private school at the school system's expense, as well as ordering compensatory education.

#24653. This case reflected a persistent problem of delays in carrying out badly needed education services for this child. The DPC under review was the fifth of five DPCs filed for this child in 2010, alleging a failure to comply with previous HOD/SAs. Despite evaluations in the summer of 2010 indicating serious needs, no meeting was convened to review reports, resulting in a DPC and SA entered 9/24/10 that agreed to convene an meeting by Oct. 15, 2010 to review the June and July 2010 IEEs, review and revise the IEP and discuss comp ed. As of filing the DPC here on 12/8/10, evaluations still had not been reviewed and no IEP meeting held. (Minutes of the MDT meeting held 3/23/11 indicate that prior to the SA entered 9/24/10 there had been "significant delay" in student receiving awarded visual cognitive therapy and that he was only receiving one of the two hours of compensatory education awarded 3/5/10 for visual cognitive therapy. Also, an award of compensatory education in 5/17/10 for 36 hours of OT services had not been completed.)

In carrying out the HOD entered 1/19/11 and under review here, there was again delay. Although the IEP meeting was held promptly (two days after HOD on 1/21/11), the HOD ordered that services be provided for 12 weeks effective 1/31/11. (Lindamood-Bell to be provided for 4 hours per day 5 days per week of language, literacy and math, with a meeting to be held and academic achievement and functional performance reviewed within one week of the final week of these services for determination of future needs.) The services should have been completed by the middle of April 2011, but were not completed until over two months later (June 22, 2011). The meeting to be convened within one week of the completion of the 12 weeks of services was delayed several weeks to July 12, 2011 (with parent consent), but after reviewing progress, no decisions were made; they were postponed to after start of the next school year.

#24655. This 17-year-old student's SA ordered completion of an independent Vocational II Assessment with an IEP meeting to follow to review and revise the IEP and determine compensatory education. When the MDT met over three months after receipt of the evaluation, no changes were made to his transition plan and no compensatory education was determined to be warranted. (The student did not participate.) IEP assessments for transition planning did not mention a 2011 Voc II assessment, citing only 2006 and 2009 evaluations. Nor did the IEP reflect the content of the Voc II assessment. For example, it continued to provide that the student meet to discuss academic requirements for a college degree, and did not reflect the recommendations of the Voc II assessment to expose him every week to different jobs, develop a specific transition plan, reassess educational progress and determine if a vocational path would be better, etc. Nevertheless, the student did complete graduation requirement at High Road DC and receive a DCPS diploma.

6. Compensatory education and alternative compensatory education awards

The trend noted in the previous school year of settlement agreements which provide for discussions of compensatory education at a subsequent meeting rather than making a specific award has continued. In the sample of cases reviewed, in most of the cases where the IEP team was to consider whether compensatory education was warranted, the team concluded that it was not, usually with little documentation of the rationale for the decision, particularly in light of the presumption of harm.²⁴

In some children with significant needs that had gone unmet over a period of time, the review of that issue as reflected in the MDT/IEP notes does not reveal anything other than the statement that compensatory education was discussed and determined not to be needed.

#24955. There seemed to be no meaningful evaluation of compensatory education for this 13-year-old student, though the IEE found that he may have made no progress in two years and his placement was inappropriate.

#24655. This 17-year-old student's SA provided for completion of an independent Vocational II Assessment with an IEP meeting to follow to review and revise IEP and determine compensatory education. When the MDT met, no changes were made to his transition plan and no compensatory education was determined to be warranted. The IEP states that compensatory education was not discussed, though notes of meeting state briefly that it was discussed and determined unnecessary.

#25123. This 4-year-old Pre-K student was identified as eligible for special education services (as OHI based on ADHD) following the filing of a DPC and

²⁴ *Reid v. District of Columbia*, 401 F.3d 516, 522 (D.C. 2005); Consent Decree, ¶74 (rebuttable presumption of harm for "for students who failed to receive timely implementation of HODs and SAs").

convening of a MDT meeting held pursuant to an SA. The DPC alleged that the parent sought evaluation of the child in December 2010 and again in April 2011 without timely response. The SA provided that the MDT would determine if compensatory education was needed, and if so, it would be provided from the date of the written request and consent provided in April 2011²⁵ through the end of the 2010-11 SY. (The school year had already concluded.) At the MDT meeting, it was determined that the child had a mild language delay, impulsive and inattentive behaviors, with significant articulation issues.²⁶ Her behavior was noted to be often impulsive, defiant and physically aggressive, but that academically she was on target. The MDT notes reflected that “The team agreed that compensatory education is not needed at this time as evaluations show that the student is functioning in the average range academically.” The question is whether the team applied the proper standard. No discussion was had as to whether the deficits noted were exacerbated by the delay of over one year (from the initial request for services or five months from the second request on April 4, 2011 until the beginning of SY 2011-2012) in identifying the child and beginning to deliver services.

(See also, #25509, #25431, #25488, and #25329)

This problem is particularly critical for teenage students with serious educational deficiencies where the failure to provide compensatory education for past violations can compound school failure and hasten their exiting the school system entirely. However, the urgency of a “lost opportunity” is equally compelling in reviewing the facts for the Pre-K student not afforded the chance to get off on the proper footing in school.

The ADR agreement created a mechanism for closing compensatory education cases that had not been implemented due to the failure of parents/attorneys to take action that were required. Rather than having these cases remain outstanding indefinitely, the agreement provided an alternative compensatory education award which was available for a limited time, after which the case could be closed.²⁷ This procedure was intended for cases that essentially had been abandoned or where the student was not using compensatory education, as a means of giving the

²⁵ The SA used the April 2011 (the date of the parent’s alleged second request for evaluation), rather than the December 2010 date for compensatory education purposes.

²⁶ It is also noteworthy that despite the mild language delay and significant articulation issues identified, the MDT notes stated that the IEP goals would focus on “attention and adhering to classroom rules.” It was, however, also agreed that an audiological exam would be conducted as well as an FBA and the team would reconvene in October 2011. (Note that the evaluations and the IEP were not in the database, as noted below.)

²⁷ ¶ 5, ADR Agreement (Docket # 2268, filed August 18, 2011); approved by the Court (Docket # 2273, filed November 21, 2011).

student a final opportunity to get something of value. However, cases closed through this process must still be assessed for diligent efforts before they can be considered timely implemented.

A case that illustrates both the lengthy period of time required to address a student's special education needs, as well as the focus on closing the case rather than assisting a student who evidently had a significant special education needs and was awarded compensatory education is #25015.

Although the HOD under review was entered into in May 2011, and the case closed in February 2012, the saga actually began in the 2006-07 school year. A previous HOD found that the parent had requested several times during the 2006-07 school year that DCPS evaluate the student and the DCPS knew or should have known by August 31, 2007 that the student required evaluations. This nine-year-old student was retained once in kindergarten and once in first grade, and was in the second grade. During the 2007-08 SY the student was suspended from school three times, and on numerous occasions DCPS contacted the parent to ask her to take the student out of school due to his uncontrollable behavior.

The earlier HOD ordered DCPS to complete any evaluations by February 29, 2008 to convene a meeting within 10 days thereafter to review the evaluations and develop an IEP if appropriate. The evaluations were done and the meeting held in April 2008 where it was determined that additional information was required before the eligibility determination could be made. On June 5, 2008 the parent informed DCPS that she was rejecting the psychological evaluation and requested funding for an independent comprehensive psychological evaluation of the student.

On October 15, 2008, more than four months after the request was made and only after a due process complaint was filed, DCPS authorized an independent comprehensive psychological evaluation. An IEP meeting was held in December 2008, to comply with the January 23, 2008 HOD. The parent and advocate were present. The team determined the student to have multiple disabilities and prescribed 100% time not in regular education. It provided for 26 hours of special education instruction and 1.5 hours of psychological services. DCPS offered placement at Bruce Monroe at Parkview, however, the parent wanted High Road Academy. The parent requested compensatory education, but the request was deferred. The case was submitted for closure on December 12, 2008 as timely implemented.

The parent filed an appeal from the hearing officer decision of October 31, 2008, which denied compensatory education for failure to provide FAPE. On March 16, 2011, Judge Sullivan remanded the case to the hearing officer. (The appeal was likely filed in January 29, 2009 and remained in federal court until March 2011 until various motions and cross motions were resolved.) Following remand and assignment to a hearing officer on March 22, 2011, the parties entered into a Settlement Agreement incorporated into a consent order issued by the Hearing Officer. It provides for 60 hours of independent specialized instruction to be completed by December 31, 2011.

On May 9, 2011, a compensatory education authorization letter was issued to the parent with a copy to the attorney stating: "If you should need additional assistance with securing an instructor, please contact me and I will certainly aid you in any way I can."

Over the next three months, the case manager made unsuccessful attempts to contact the parent and the attorney. On one occasion, the parent stated that counsel was unresponsive and services had not yet begun. The case manager called the counsel's number, which was not working.

On August 15, 2011, the case manager sent 120 day request for response to the attorney, with a copy to parent. "Please provide confirmation of the student's compensatory education services or a written status of the evaluation. If we do not receive a response from your office within 30 calendar days from the date of this letter, DCPS will move to close the case. (The HOD/SA will not be implemented.)" There was no offer of assistance.

Over the next month, two more attempts to reach the parent were made but the phone was disconnected. On September 21, 2011, a notice of administrative closure was sent based on failure to respond to the letter of 8/15/11.

However, on October 25, 2011 the case manager called the school to retrieve a telephone number for parent and was able to send a follow-up HOD packet to parent and counsel offering an alternate compensatory education award and rescinding the previous authorization letter.

Eventually, on December 20, 2011, a new case manager drafted a notice of award eligibility due to the fact that compensatory education services had not begun and it had been over 90 days. A notice was sent to the parent via first class and certified mail. The parent accepted the alternate compensatory education award and arranged for pickup of a laptop on February 23, 2012.

This case was closed as timely implemented. From June 21, 2011, the case manager was aware that the parent was experiencing difficulty arranging for compensatory education, and had been unable to reach the attorney. The only action taken in response to this information was to send a notice of closure on August 15, 2011 with no offer of assistance. One has to question the diligence of efforts to reach the parent when the only attempt to find an alternate number through the school occurred at the end of October 2011. Although DCPS eventually invoked the alternative compensatory education award provided for under the ADR agreement, by the time it did so, this case was already untimely due to the lack of diligent efforts.²⁸

D. Completeness and reliability of available information in the data systems

For the third year in a row, the Monitor has noted the absence of critical documents in SEDS, the database of record for special education services. These gaps in documents that ought

²⁸ This provision waiver was also not sent to the Plaintiffs counsel nor approved by the Monitor as required by the ADR agreement protocol.

to be in the records are indicative of information that is not accessible to school personnel who are responsible for the delivery of special education and related services to the students, and likely has an adverse impact on their ability to meet the students' needs and to assure compliance with the requirements of IDEA.

Specific Problems with Documents in Databases

#25666. CCM refers to student by a different name in some notes and e-mail. MDT notes merely state that team went through steps of compliance with no explanation. 3/7/12 revised IEP not in Blackman Jones database though it was the most recent IEP at the time of the HOD and served as the basis of the HOD and the 5/22/12 MDT meeting ordered thereby. Signed attendance sheet in Blackman Jones database, but not in EasyIEP.

#25643. EasyIEP has Service Trackers for behavioral counseling but none for compensatory education tutoring.

#25520. No proof of delivery of related services in EasyIEP.

#25488.²⁹ No attendance sheet for RSM. Service trackers for behavioral services for 2/28/12 through 5/18/12 but only one after this date for 9/3/11 through 10/1/11, though service was to continue after May 2011 IEP

#25423. No RSM Notes or Attendance Sheets in BJ database – only RSM Disposition Form. No Communications checklist (though it was sent to parent). No Service Tracker in EasyIEP regarding compensatory education.

#25416. Review of Service Trackers in EasyIEP for 9/11 and 10/11 shows student received 90 minutes each per month, not 60 minutes per week of OT (student available 2x, provider unavailable 2x, with sessions of 30 minutes duration, not 60, except one). For speech/language, he received 180 minutes per month in a group of 2-3 students instead of 30 minutes per week, and student was unavailable 2x per month. He received no behavioral services – no attempt in September and in October school was closed three dates and student unavailable on three dates.

#24329. Attendance sheet for RSM not in database. No attendance sheets in EasyIEP. Review of Service Trackers from 11/11 through 6/12 shows that over eight months when student was to receive 120 minutes per month, he received a total of 405 minutes (average of 50 minutes per month), with no minutes in

²⁹ Attendance sheets were sometimes difficult to interpret. Without a great deal of searching (and sometimes not then) it was not apparent whether a teacher was General Education or Special Education, whether the teacher was familiar with a student or not and how, and whether a person was present who had knowledge of different placements, related services and other resources available for the student.

October 2011, February 2012 or April 2012 – mostly due to student unavailability (truancy or suspension). It is unclear why no Service Trackers prior or after these dates. There is no mention of missed services or make-up services.

#25313. Recommendations of speech and language and psycho educational evaluations required to be incorporated into IEP were not in either Blackman Jones or EasyIEP database so that it could not be determined whether this was done. Service Trackers for speech and language for 2011-12 and summer 2012 in EasyIEP, but no evidence of service delivery for OT.

#25272. Another student's authorization letter was misfiled in Jefferies file. Model Questions not completed until almost four months after SA signed as CM did not think this was required in cases without IEEs. 11/18/11 IEP (in Blackman Jones database) but not in EasyIEP – only 2/22/11 and 2/21/12 IEPs in EasyIEP. Service Trackers for behavioral support services for 2010-2011 reveal only one hour of behavioral related service delivered. No MDT notes or attendance sheets or LOI for 11/18/11 or 11/28/11 or any IEP info until 2/12.

#25257. No IEP in Blackman Jones database. (Note that behavioral support Service Trackers for 2011-12 SY in EasyIEP [10/5/11 through 9/12] are unusual in that they contain meaningful progress notes, reflect consistent delivery of services and make-up of time missed due to provider unavailability.)

The Service Trackers did not seem to be providing a good system for monitoring delivery of services or missed services. The Service Trackers seem intended primarily as a way to document delivery of services for billing purposes. The Trackers do not state the frequency or details of the service required in the IEP (so, in order to check compliance, one has to go back to the IEP and find what is ordered). The entries for the same student (especially for behavioral services) report different durations of service each session, different numbers of students served in the group, and different ways of noting whether the student was absent, missed services, declined service, or the provider was unavailable, etc. (Group size is sometimes not specified in IEPs, and for delivery of services were noted to range from 1on1 sessions, to groups of 2-3, 4-8, or 9 or more for the same student, [e.g., #25357] for behavioral support services.) Locating the Service Trackers on the documents page of EasyIEP, it is impossible to distinguish the type of service being provided as they are labeled only "Service Tracker." Time periods covered for the trackers vary (most are roughly filed each month), and there are many with overlapping dates,

gaps, etc. Most of the Service Trackers in the database were unsigned. There was only one entry of efforts to make up missed services, (*e.g.*, # 25423).³⁰

These observations by the Monitor are consistent with the findings of the OSSE during its routine monitoring of special education compliance at the different LEAs in the District. In its report of a monitoring visit to DCPS schools issued in September 2011, the OSSE noted:

In order to ensure that all data entered into SEDS are valid and reliable, DCPS reported that it uses the SEDS internal "red flag" system to alert the user of an error. However, the "red flag" system is designed to only flag errors with compliance rather than errors in accuracy. Although a number of LEA personnel indicated that spot checks are conducted to ensure that the data is valid and reliable or described a team approach to reviewing data for timeliness and accuracy, staff members interviewed throughout the district did not consistently describe methods to ensure data validity and reliability.³¹

The report went on to cite numerous examples of discrepancies in the data recorded in SEDS resulting in inaccuracies in recording the required participants invited to IEP meetings (77.78% accuracy), the IEP development date (67.78% accuracy), the IEP implementation date (68.9% accuracy), the primary disability (75.56% accuracy) and initial evaluation date (72.4% accuracy) and reevaluation date (70.49% accuracy).

They are reinforced by the findings contained in a Letter of Decision by the OSSE which found inexplicable discrepancies in accounting for occupational therapy services that should have been delivered to an elementary school student with an autism spectrum disorder. (#011-019) OSSE required DCPS to train related service providers to accurately document the delivery of services and the reason for missed services, and to enter this information into SEDS. It also required training of the special education coordinator, related service providers and the principal on the proper scheduling and delivery of missed service sessions to conform to the 2010 Related Services Policy. In another Letter of Decision (#011-033) the OSSE found that the school provided specialized instruction in accordance with the IEP, but did not provide behavioral support services in accordance with the IEP. There were several months with no Service

³⁰ In their comments on a draft of this report, the OSSE describes several initiatives that have been and are being implemented to strengthen practices at LEAs, including issuance of policies, training initiatives, technical assistance and on-going monitoring of compliance. OSSE is also updating features and capabilities of SEDS to allow for better identification of documents that are uploaded into SEDS. The OSSE also notes that there are other tools such as a Services Documentation Report to validate services for a large scale review.

³¹ DCPS Monitoring Report, September 21, 2011, p. 78

Trackers documenting the actual or attempted delivery of services to the student. For the entire 2011-12 school year, the student received only one 30-minute counseling session. The investigation found multiple errors with data entry. "Errors of this nature make it difficult to ensure that students receive the protections and services that they are entitled to in a timely fashion, and lead to confusion about exactly what the LEA has agreed to do for the student, and when." (*Id.* p. 13) Yet another state complaint Letter of Decision found DCPS in violation of the obligation to maintain valid and reliable data. (#011-017)

The Accuracy Audit currently being conducted by the OSSE further confirms problems of inaccurate and missing data, especially with respect to related services.

In the previous report, the Monitor commented upon the significance of these findings as follows:

This gulf in the consistency and completeness of documents in the two data systems is symptomatic of a broader operational gap between the work of compliance case managers in the Office of Special Education central office who work on the implementation of HOD/SAs, and personnel at the school level who are engaged in the delivery of special education and related services to students. The former are narrowly focused on the completion of tasks related to HOD/SAs -- which arise from deficiencies in service delivery at the schools. But personnel at the school level do not appear to consistently have knowledge of, or ownership and engagement with these corrective actions. The converse is also true -- case managers may know the issues involved in the particular HOD/SA but may be unaware of relevant developments occurring at the school level involving the same student. This gulf, which has existed since the Consent Decree was entered, seems to have widened with recent practices which have placed increased responsibility on parents/attorneys to obtain evaluations and compensatory education, further disengaging the school from these special-education activities. It is further widened when case managers conduct meetings to resolve complaints or to implement HOD/SAs without the presence and involvement of school personnel and IEP team members. These issues have been previously raised by the Evaluation Team, but they persist and have implications for the challenges that the District will face in assuring the sustainability of any gains it makes in the process of complying with the *Jones* requirements of the Consent Decree.³²

³² Report of the Monitor for the 2010-2011 School Year, Doc. #2274, p. 16. As noted earlier in this report, in the 2012-13 SY, DCPS is making a concerted effort to engage the schools more fully by placing greater emphasis on holding resolution session meetings at the schools to facilitate the attendance and participation of school personnel in the resolution of due process complaints.

IV. RELATED SERVICES AND ASSOCIATED ISSUES

The Consent Decree contains performance measures regarding underlying IDEA legal requirements for the provision of timely IEPs, evaluations and reevaluations.³³ The genesis of a substantial number of due process complaints lies in the delivery of related services that are needed to enable students in special education to access the educational curriculum, and HOD/SAs often order related services as well. The Consent Decree itself recognized that approximately one third of all hearing requests involve allegations of untimely assessments and IEPs (Consent Decree, p. 9). The timely delivery of adequate and appropriate related services is essential to Consent Decree compliance.

The regular on-site monitoring by the OSSE repeatedly identified significant deficiencies pertaining to related services including continued noncompliance for timely completion of initial evaluations, re-evaluations and secondary transition, lack of transitional assessments, and exclusion of related service providers from participation in manifestation determination meetings at meetings to discuss functional behavioral assessments.

These issues were not limited to DCPS. A monitoring report for Options PCS, a school serving a large number of special education students, regarding an on-site visit in December 2011 found that of the 66 students who were prescribed behavior support services, one student received services in full, 46 students received partial services and 11 students received none of their prescribed services. Of the 24 students who were prescribed speech and language therapy, one student received services in full, 16 received partial services, and six received none of the prescribed services. Similar problems also affected occupational therapy and physical therapy. A consistent area of weakness identified in the OSSE reports among the schools monitored was with secondary transitions.

State complaints investigated by the OSSE also identified deficiencies pertaining to related services in several schools. These deficiencies included related services delivery and documentation (#011-017), implementation of IEPs (*Id.* Also, #'s 011-032, 011-034), and the availability and implementation of positive behavior supports (#s 011-011, 011-017, 011-030).

³³ Consent Decree ¶ 29, 41, 42; IEP, evaluation and reevaluation rate timeliness, as referenced in the Consent Decree (pages 9-10, 24) and Attachment A to the Consent Decree; 20 U.S.C. § 1414-1415.

With the increasing reliance on independent assessments, the rates of payment to the providers of these services surfaced as an issue early in the SY. Plaintiffs' attorneys complained that they were unable to find providers who would accept the rates that had been promulgated for certain types of evaluations. Although the District had committed to supplying a list of providers who were willing and available to perform the evaluations for the posted rates, plaintiffs' attorneys complained that some of these providers would not accept the rates and those that would were often unavailable to do the evaluations within a reasonable time. In response to these complaints, in some cases, the District authorized rates in excess of the guidelines and began exploring other alternatives to expand the pool of available providers. Later in the SY, DCPS reported that they had an agreement with DCASE for nonpublic school providers to perform evaluations at the official rates. However, that agreement was not finalized during the SY.

A. OSEP Determination Regarding IDEA compliance

Once again, the United States Department of Education Office of Special Education Programs ("OSEP") has determined that the District of Columbia remains a high-risk grantee and has imposed special conditions on all grant awards to DCPS.³⁶ In the letter communicating this determination, the OSEP wrote that it had:

determined that DC has continued to demonstrate noncompliance related to: timely initial evaluations and re-evaluations; timely implementation of due process hearing decisions; timely correction of noncompliance; secondary transition requirements; and early childhood transition requirements.³⁷

OSEP determined that the District needs intervention for the fifth consecutive year. It noted that a similar determination in the previous school year resulted in the Department imposing Special Conditions on the FFY 2010 grant award. Because the District did not meet those Special Conditions, the Department once again imposed Special Conditions on the FFY 2011 grant award and directed DC to use \$500,000 of its FFY 2011 state-level funds to address the long-standing noncompliance with the requirements to conduct timely initial evaluations and re-evaluations.

The progress report dated July 15, 2012 submitted by DCPS to the OSSE on the implementation of its Corrective Action Plan describes substantial improvement in performance

³⁶ OSEP 2011 Part B Grant Award, July 14, 2011.

³⁷ *Id.*

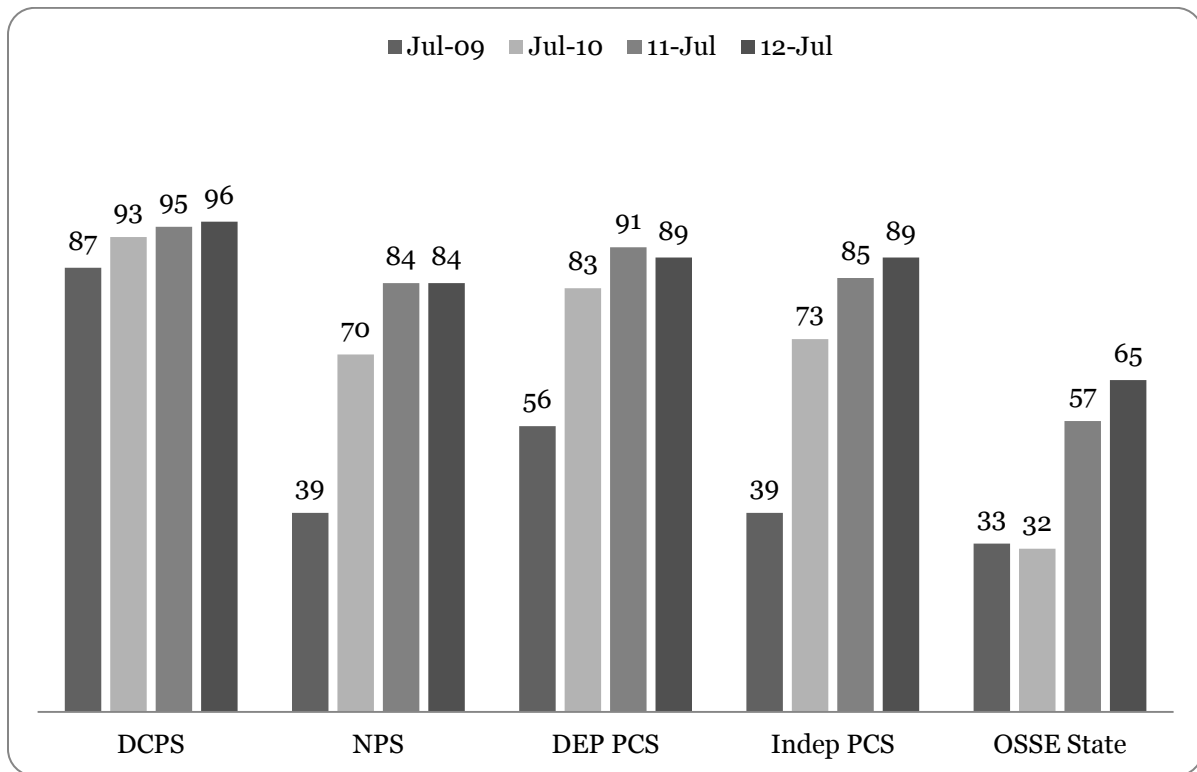
during the 2011-12 SY. The 416 initial evaluations in the backlog as of 5/2/11 had been reduced to 21 by the end of the school year. The 118 re-evaluations that were in the backlog at the start of the period had been reduced to 29 by the end of the school year. This overall notable rate of progress was accompanied by an analysis identifying specific segments of the school population which continued to present difficulties in achieving and maintaining timeliness. In the last quarter of the school year, the number of overdue initial evaluations increased from 13 to 21 with all of the increase coming from Early Stages. For re-evaluations, transient students placed in residential treatment facilities, surrounding counties and the Youth Services Center accounted for over half of the students in the backlog. Compounding the inherent difficulty of their transience is the fact that some of the students are placed or moved by the Department of Youth Rehabilitation Services (“DYRS”) often without notice or communication with school staff. Other students become truant for extended periods of time, are withdrawn from the system and later re-enroll after the deadline for a re-evaluation has passed. The DCPS report identifies strategies to continue the progress in reducing and eliminating the backlog of initial evaluations and re-evaluations.

B. Rate of Timeliness Reports.

The Blackman/Jones Action Plan attached as Exhibit “A” to the Consent Decree identified performance measure goals for timely assessments at 85-95% by June 30, 2008,³⁸ and at a 90-100% standard of current IEP timeliness for students with disabilities. The data reported in this section was provided by the OSSE.

As depicted in Fig. 10, the Rate of Timeliness reports for SY 2011-12 indicates that, with the exception of a slight dip in the rate for dependent charter schools, all other schools maintained or improved their performance in meeting the timeliness goal of 90-100% for IEPs. Charters schools which elected to have DCPS as their LEA fell slightly below the timeliness standard, while independent charters improved but like nonpublic schools fell short of the required standard of performance. The OSSE state school, with a relatively small number of students, continued to lag behind although there was a significant improvement in performance.

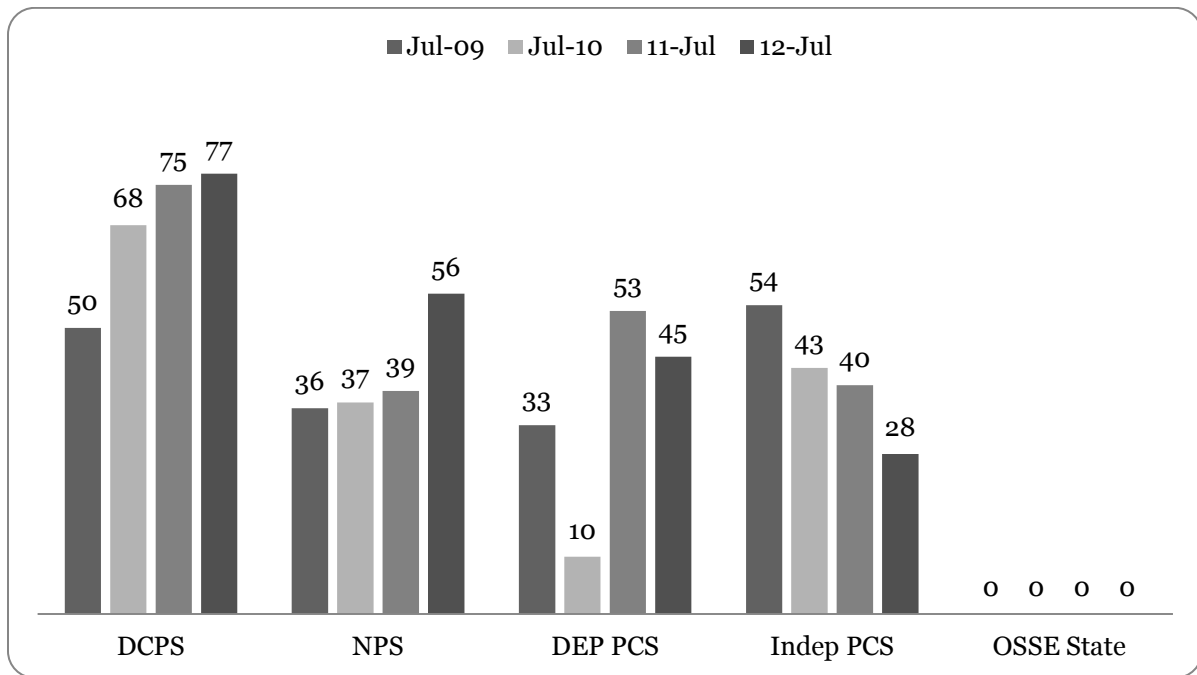
³⁸ The Action Plan assumed achievement of these measures by the 2008 SY and therefore did not contain goals for school years past June 2008.

Fig. 10 IEP Rate of Timeliness

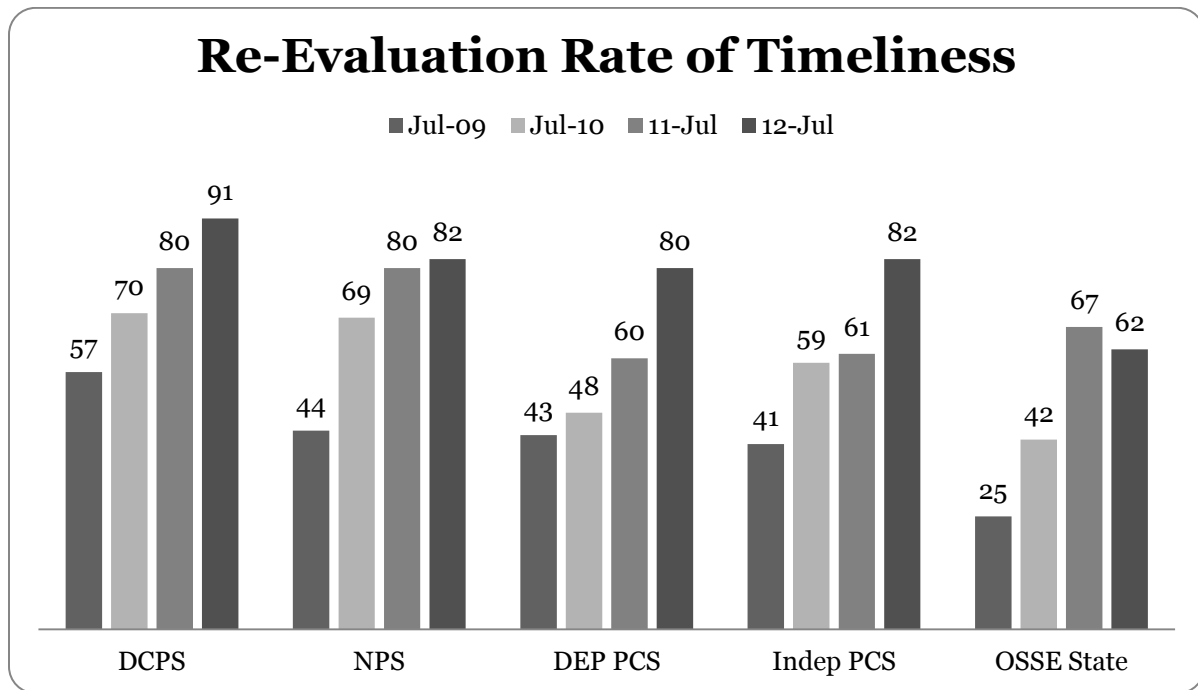
DCPS continued to make slow progress in the rate of timely assessments but has not yet achieved the 2008 Action Plan standard of 85-95% which had been projected to be met by March 1, 2011 (Fig. 11).³⁹ Nonpublic schools showed a significant improvement although they continue to lag behind, and all charter schools showed notable declines in performance.⁴⁰

³⁹ DCPS November 30, 2010 Corrective Action Plan for Evaluation Backlog Reduction.

⁴⁰ The OSSE has previously raised the possibility that the lower rates of performance as to assessments reported by non-DCPS schools may be explained by the fact that the metrics measured by this report are largely internal to DCPS management processes rather than those required by IDEA.

Fig. 11 Assessment Rate of Timeliness

With the exception of the OSSE State School, the general trend of improved timely performance of re-evaluations has continued in the 2011-12 SY (Fig. 12). Notably, DCPS met the 2008 Action Plan standard of 85-95% timely re-evaluations and the other schools and LEAs are within striking distance.

Fig. 12 Re-evaluation Rate of Timeliness

V. MISCELLANEOUS ISSUES

A. ADR implementation

The ADR agreement between the parties required the Defendants to issue quarterly reports to the Monitor and class counsel outlining all steps taken and results achieved. (§ 17) However, the Defendants did not provide the quarterly reports called for in the agreement but did provide a year-end progress report covering the period from January 1 to June 30, 2012.⁴¹ The report notes that the rate of timely implementation of HOD/SAs had increased from 45% in December 2011 to 73% by May 2012. (This increase follows a fairly typical pattern each year where the rates of timely implementation are low early in the SY, but progressively increase as the LEAs have more time to implement the HOD/SAs.) However, slower progress was made on backlog reduction, with 41 cases more than 90 days overdue in December 2011 and 48 cases overdue in May 2012. However, the total number of cases in the backlog decreased from 136 cases in December 2011 to 87 cases in May 2012. Almost 80% of these cases were in DCPS or

⁴¹ Jones Alternative Dispute Resolution (ADR) Agreement, Progress Report to the Court, January 1-June 30, 2012 (“ADR Report”)

dependent charters. Among the significant achievements reported by the Defendants during this period covered by the report:

- OSSE issued revised guidelines regarding proof of payment in March 2012 due to difficulties experienced in obtaining canceled checks in a timely manner, which delayed the closing of implemented cases (and which may have had some effect on the rate of timely closures at year's end). The revised guidelines permitted alternate methods of demonstrating that payment had been made for independent evaluations.
- OSSE assumed responsibility for oversight of the Blackman Jones database.
- Beginning January 1, 2012, OSSE assumed responsibility for final review of implementation of all HOD/SAs, implementing a recommendation made by the Court Monitor in last year's Report to the Court.
- The Accuracy Audit is being implemented, reviewing a sample of 332 student records selected to ensure that each LEA has at least 2% of their active student records.
 - i. Preliminary findings indicate that approximately 48% of all students tested had documented parental consent for initial delivery of services in SEDS.
 - ii. Approximately 72% of services tested in the sample were documented in SEDS as initiated within 14 days of the IEP date.
 - iii. Approximately 59% of the services tested in the sample were documented in SEDS as having the prescribed number of sessions attempted or delivered.
 - iv. Approximately 71% of all services tested in the sample were documented in SEDS as having the beginning and end date of services as prescribed or delivered.
 - v. Approximately 44% of all services tested in the sample were documented in SEDS as being delivered for the total number of minutes prescribed in the IEP.
- DCPS audited a sample of 40 cases of the 106 implemented during the last two quarters. Notable findings:

- i. 91% of the cases used the model questions appropriately and 95% used the communications checklist appropriately
- ii. DCPS notes that the parent guide and list of providers was updated following meetings with the parent bar, and that it has worked with DCASE to expand the pool of providers who accept the OSSE rates. The website was updated on June 28, 2012. (Note, however, that representatives of DCASE informed the Monitor that this agreement was not yet finalized.)
- iii. 94% of the cases reveal that the parent guide was distributed as appropriate and 69% revealed that interim services are being offered appropriately when an independent evaluation is ordered.
- iv. Case managers have been trained on how to ensure that parents are able to access childcare, and transportation services and the initial packet and model questions cover these areas.
- v. Regarding diligent efforts, compliance case managers are required to touch each case every 14 days.
- vi. Extensions are not granted unless the checklist has been completed documenting due diligence. 100% compliance in the use of checklists and granting extensions.
- vii. Eleven cases in the outstanding protocol category⁴² and 11 alternative compensation education awards made under the process created by the ADR agreement. Sixteen “provisions waivers” were applied for, 13 granted.⁴³
- viii. Acknowledged that a significant number of resolution sessions occurred at the central office prior to March 1, 2012 and did not afford a meaningful opportunity for participation from local school staff who are most familiar

⁴² The Consent Decree recognizes that some HOD/SAs cannot be implemented because DCPS is waiting for the parent to provide a necessary precursor to implementation, such as an independent evaluation which must be completed before an IEP meeting can be held (Consent Decree, §III (7) (a)). Such cases are defined as “outstanding” and are removed from the count in calculating the rate of timely implementation (*Id.* ¶ 46), provided Defendants have demonstrated diligent efforts to secure action on the part of the parent/guardian (*Id.* ¶ 52). The Consent Decree also requires the Defendants to adopt a protocol for the closing of such HOD/SAs and to reach an agreement with the Plaintiffs on the content of the protocol (*Id.* ¶ 44).

⁴³ See fn. 1.

with the facts of the case. 75% of the cases analyzed revealed that the relevant parties did not participate during the resolution session.

- ix. Revised attorney fee guidelines were issued June 1, 2012.
- x. Sixty percent of the cases analyzed revealed that case managers are not scheduling meetings using the two business day standard in the ADR agreement. However, meetings are typically held within the required timeframe and the cases closed timely.

The accomplishments recorded in the Defendants' progress report provide a context for the findings contained earlier in this report in the more detailed review of how the provisions of the ADR agreement have affected students in these cases. Despite the substantial work that has been done to implement the provisions of the ADR agreement at the policy and procedure level, there is still room for significant improvement in practice to ensure that students benefit from this agreement. In the Recommendations, the Monitor offers several suggestions to achieve this goal.

B. Attorney's Fees

Despite the language in the ADR Agreement regarding compensating attorneys for the time spent on performing implementation tasks, the Monitor has received numerous complaints from members of the plaintiffs' bar about the idiosyncratic practices within the Office of General Counsel in reviewing and approving their invoices for payment of time spent on these tasks. Some attorneys have claimed that the lack of reliable payment practices for the time spent in assisting parents to implement the requirements of HOD/SAs makes it difficult or impossible for them to continue performing these functions. In the sample of cases reviewed, the Monitor found several in which the attorney, having resolved the complaint, no longer represented the parent during the implementation phase and, in some cases, the relief won was not implemented. Complaints also continue regarding the length of time it takes to review and pay the invoices submitted.

The Monitor determined that it would be of value to the parties and to the Court to conduct an objective review of billing and payment practices. Therefore, the Monitor will review a sample of invoices and their processing and payment and report the findings to the parties and the Court.

OSSE's investigation of a State Complaint and its issuance of a Letter of Decision (#011-031) found that out of 401 settlement agreements in the year covered by the complaint, DCPS waited more than 120 days to effect payment of attorney's fees in at least 18% or 72 cases.

VI. CONCLUSION

The District has spent the past school year implementing new rules and processes to more clearly document actions taken to demonstrate compliance with the Consent Decree as it implements the requirements of HOD/SAs. It has issued new protocols to implement the ADR agreement reached with the Plaintiffs' counsel and approved by the Court. These changes have resulted in the substantial elimination of the types of systemic case closure practices previously identified by the Monitor and Evaluation Team as inconsistent with the requirements of the Consent Decree. This increased effort to follow appropriate case closure protocols is likely responsible in part for the drop in the rate of reported timely closures from 90% in each of the last two school years to 76.3% in the 2011-12 SY. However, it is also the case that with substantially fewer HOD/SAs, a smaller number of untimely implemented cases would have a greater negative impact upon the rate of timeliness. Even with the lower reported timeliness rate, the Monitor's review of a sample of cases closed as timely implemented found several where the evidence did not support the classification. However, in the 2012-13 SY, the final review process will be conducted by the OSSE, providing a greater measure of independent review of the appropriateness of the decision to classify a case as Timely Implemented than in the SY under review.

While several performance targets for related services have not yet been met, DCPS has continued to maintain its timeliness compliance for IEPs and has achieved it for re-evaluations. It has also made substantial progress in reducing the backlog of initial evaluations and re-evaluations. During the 2011-12 SY, DCPS also began the implementation of an expansion of special education programs in its schools with the creation of 80 new seats in 10 classrooms, and plans for further expansion in the 2012-13 SY.

As has been stated before, the emphasis on achieving compliance with the Consent Decree has led to a mindset of technical compliance with the Consent Decree which involves parsing student's lives into measurable tasks and "measuring out their lives in coffee spoons."⁴⁴

⁴⁴ T.S. Eliot, *The Love Song of J. Alfred Prufrock*.

As the District continues to strengthen the fidelity of its processes to the requirements of the Consent Decree, it also needs to instill a greater sense of urgency at schools and with attorneys on *both* sides of these cases to address students' needs for special education and related services. Childhood is brief. The time lost in ineffective or inaccessible education is hard to recapture. Rules and processes that may serve the interests of adults to remain “in compliance” may harm the children whose educational lives remain in limbo while adults battle over due process complaints.

Every one of these cases opens a window into how the school system is functioning. Sometimes that view is uplifting, as parents and educators work to find the best ways of meeting the special needs of a student and a case manager goes the extra mile. At other times, it allows one to see the limitations of what is possible for a particular student or class of students or at particular schools or types of schools. Dealing with each case only as an entity unto itself and moving on to the next case loses the rich opportunity for learning about systemic issues through the lens of the individual case. The conditions that lead to due process complaints are not always or even usually the result of individual mishandling of a student's special educational needs. More often, they are symptomatic of larger issues which affect other students as well—shortage of specific services, lack of particular skills and capabilities in the school, shortages of staff in the classroom, lack of training and resources to deal with particular students' needs, the inability to connect students and schools to other resources, etc. By dealing with each case only on an individual basis, these problems are not only capable of repetition but are in fact repeated with regularity with other students.

It would benefit students, parents, teachers, schools and the system as a whole for the District to develop a quality review process that engages senior leaders and managers in a regular review of exemplar cases of individual students that have challenged the school system to adequately meet their needs, and to identify and correct barriers to more effective educational and related services, and more efficient use of resources in doing so. Such a proactive process would provide greater insight to leaders of the school system about the struggles of teachers, related services providers and principals to meet the diverse needs of students and enable them to identify and address the root causes that lead to many due process complaints. It would enable them to correct conditions that likely affect many more students than the few who file due process complaints. And it would elevate the engagement of senior leadership in dealing with long standing deficiencies that have plagued special education services in the District.

VII. RECOMMENDATIONS

The Monitor offers the following recommendations to the District for improvement of special education services.

1. DCPS needs to address the adequacy of staffing for resolution specialists and compliance case managers to enable them to properly implement agreements that have been reached with Plaintiffs' counsel on how important tasks are performed. As described in this report, the current levels of staffing, the high caseloads and the multiple job demands have led to an unduly technical approach to demonstrating compliance, without adequately attending to the individualized needs of students and families. In doing so, DCPS should also address issues affecting the high turnover and morale of the staff in whom they entrust these important responsibilities, including adequate training, consistent guidance and supervision, and equal pay for staff performing similar duties.
2. The District has done a commendable job in developing a credible and professional state complaint process. However, there is work to be done to develop an equally effective system for implementing the corrective actions that are identified as a result of these complaint investigations. At present, the responsibility for following up on implementation rests with the same compliance case managers who deal with individual due process complaints. However, unlike individual due process complaints, state complaints often identify systemic problems affecting an entire school, LEA or the school system at large. These are issues that are well beyond the ability of case managers to address and are often an exercise in futility for them. I recommend that the District develop a policy and procedure which requires a high-level meeting between the OSSE and the LEA within 30 days of issuance of a Letter of Decision to develop a corrective action plan with deadlines and assignments of responsibility for implementation and for follow-up.
3. The District has made progress over the past five years in managing the transition of students between schools and between LEAs. The exception to this improvement is with the students who exit placements by the DYRS and the Child and Family Services Agency ("CFSA") without adequate notice to DCPS or the OSSE or an opportunity to plan their transition to another school. Such students, who often have intensive needs, sometimes arrive at neighborhood schools long after the budgets for the schools have been set. There is currently no mechanism to supplement the funding for the receiving school to meet the needs of these students. I recommend that the District:
 - a. Establish a clear policy on interagency transition planning for students who are placed in residential schools by DYRS or CFSA and are being exited from such schools and returned to the District.
 - b. Establish a pool of funding to cover the unanticipated needs of students who transfer into schools after the school budgets have been set. Such a funding pool may be established as a set-aside from the savings that are achieved in educational and transportation costs as a result of reduction in the number of placements of students in nonpublic schools. Alternatively, the District should consider

establishing a "money follows the student" policy to facilitate transitional planning for these students.

[The District reports that the OSSE, DCPS and DYRS have already entered into a Memorandum of Understanding effective November 20, 2012 to support Interagency Transition, and that a similar agreement is being explored with CFSA.]

4. DCPS should consider establishing a quality assurance case review process to examine the systemic implications of individual cases. In the current due process complaint system, each complaint is treated as a unique event that is dealt with on an individual basis and rarely has implications beyond the individual resolution. Yet, some of these complaints exemplify systemic problems in the way special education and related services are delivered in specific schools or types of schools (*e.g.* Dara Gamble, Malik Williams; complaints dealing with transitional/vocational services for students in high schools, etc.) Beyond attending to the needs of the individual student, these complaints open up a window into school functioning and offer the opportunity to address underlying systemic conditions that likely affect many other students and are capable of recurring unless corrected.

5. The OSSE should consider creating a process for highlighting changes that are made to the IEP to enable teachers and related services providers to quickly identify new elements. As importantly, the lack of evident changes in students' IEPs from year to year, especially when the student is not progressing adequately in school, should be a red flag for the MDT team and for the OSSE in its monitoring role.

6. In a similar vein, the expectations regarding the organization and labeling of documents in SEDS should be revisited. The current system of record keeping has major gaps and flaws, resulting in critical records often not being included in SEDS and therefore unavailable to educators, related service providers or those responsible for monitoring compliance with IDEA.

7. For a number of students involved in due process complaints, the implementation of HOD/SAs is impeded by a problem of truancy. In many of the records reviewed, the student's truancy appears to absolve the school of responsibility for the student's education. There needs to be a clearer expectation of actions that should be taken by the school to address the truancy problem and to consider the extent to which truancy may be an indication that the education plan is not working and is in need of revision to engage the attention of the student.

8. I recommend that DCPS re-examine its practices with respect to resolution session meetings. In a significant subset of cases, it is evident early on that a resolution is not going to be possible. Nevertheless, DCPS often refuses to waive the remaining resolution period, creating an unnecessary delay in resolving the complaint. This culture of delay, that infects other parts of the due process system, needs to end and truly put Children First.