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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.	)	
	)	

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## **EXHIBITS**

- Exhibit 1: Defendants’ Original Annual *Jones* Implementation Data Report**
- Exhibit 1-A: Defendants’ August 27, 2008 Revision of *Jones* Annual Implementation Data Report**
- Exhibit 2: Audit Reports (2) of Professor Deborah Carran (July 31, 2008 & August 20, 2008)**
- Exhibit 3: July 21, 2008 Annual Assessment Data Report distributed by the OSSE Office of the Chief Information Officer**

# **I. INTRODUCTION**

## ***A. Overview***

Pursuant to the monitoring and evaluation provisions of the Consent Decree of August 24, 2006 (Docket # 1856), the Monitor files this monitoring report covering the District of Columbia's implementation of the Consent Decree in the 2007/08 school year.<sup>1</sup> The report contains the findings, conclusions, and recommendations of the Monitor and Evaluation Team member Clarence Sundram.<sup>2</sup>

The District of Columbia public schools have experienced a whirlwind of educational and organizational initiatives since the new Public Education Reform Amendment Act of 2007 ("The Education Reform Act") became effective on June 12, 2007)<sup>3</sup>. The Chancellor launched systemic reform initiatives on a dizzying number of fronts, ranging from a major wave of school consolidations and associated school closures and development of restructuring plans for 27 schools to attempted negotiation of a radically altered collective bargaining agreement with

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<sup>1</sup> In the context of this case, the District of Columbia ("DC") is referred to relative to its overall capacity as a State to deliver required educational and related services and meet its legal obligations to students with disabilities in the District of Columbia Public Schools ("DCPS"), charter schools, and nonpublic schools where DC public school students with disabilities have been placed for services, or through the new Office of the State Superintendent of Education ("OSSE").

<sup>2</sup> The parties agreed that evaluation team member Rebecca Klemm, PhD., would play an instrumental leadership in the Backlog Reduction Plan developed pursuant to the parties' ADR agreement of December 10, 2007 and filed with the Court on January 8, 2008. In connection with this role change, Dr. Klemm took a formal leave of absence from the court appointed evaluation team.

<sup>3</sup> See, District of Columbia Laws, Act 17-38 (2007); Pub. L. No 110-33. The law transferred from the Board of Education to the Mayor authority for the operation of the public schools within the District of Columbia. The Reform Act created a D.C. Department of Education headed by the Deputy Mayor for Education, created the position of Chancellor of the District of Columbia Public Schools and moved the state functions previously performed by DCPS into a new state superintendent of education's office. Although Ms. Gist was appointed on June 12, 2007, the full transfer of state-education authority, functions, staffing, and budget to the new Office of the State Superintendent did not occur until October 1, 2007, the beginning of the DC fiscal year. Ms. Gist had been serving as director of DC's State Education Office, which performed a variety of education support functions, including the student demographic count, but did not operate as the State Education Agency with funding, oversight, and legal responsibilities under federal education law.

teachers and recruitment of a large pool of new principals. The OSSE similarly was engaged in change initiatives on all fronts, from organization and staffing of a new state education department to development of major new student data systems to service all schools within the District. (*See, generally*, Mayor's Office 6/12/08 Press Release, "Fenty Administration Reflects on a Year of Public Education Reform.")

While special education was one major focal point of concerns for the new Chancellor and State Superintendent of Education from the point of commencement of their new leadership roles in June 2007, the parties' entry into the ADR Agreement in December 10, 2007 (Court Doc. # 2032) helped to galvanize a commitment of city resources and key leadership within both DCPS and the OSSE toward special education reform efforts. The ADR reform plans were designed to address the conditions underlying the crisis of the special education system, extending from limited mental health services and related service capacity within the schools for service of students with special needs to inadequate educational programming that has, in part, driven the placement of students into restrictive, segregated placements where services could be secured. The ADR Agreement also called for case management to support approximately 450-500 special education students and a new Backlog Reduction Plan work effort lead by Dr. Rebecca Klemm to tackle the persistent volume of unimplemented hearing officer decisions ("HODs") and settlement agreements ("SAs") which lie at the heart of this Consent Decree. Both DCPS and the OSSE retained a multitude of contractors to assist in developing and implementing these extensive new efforts based on concerns as to the limitations in current staff capacity. Dedicated staff work was devoted to a broad range of the ADR and *Blackman/Jones* initiatives during the school year, with some substantive accomplishments and progress achieved. Defendants have also, however, encountered serious roadblocks to progress, some of which fell within their control.

Defendants' development and engagement with such a broad array of initiatives, in tandem with new staff members' steep organizational learning curve, have at least in the short run rendered more difficult their implementation of the original specific tasks and mandatory goals required under the Consent Decree. Despite the best of intentions and enormous hard work on the part of a core group of DCPS and the OSSE staff, the Defendants have not come close to meeting the Consent Decree's objective performance benchmarks for this school year. In our first report filed February 8, 2007, the Evaluation Team found that it was essential for the Defendants to develop a cohesive plan as a roadmap to achieving compliance with the Consent Decree. We also found that implementation of this plan would require consistent, focused leadership from top school system leadership as well as local school administrators. The additional obligations the Defendants have undertaken under the first ADR agreement and the disparate range of new contractors that have been recruited to assist them, make an implementation plan and coordinated top school system leadership of that plan even more necessary and urgent. As indicated in Defendants' August 27, 2008 Status Report (Court Doc #2116), DC has acknowledged the critical need for an Implementation Plan and has in its Report filing made a commitment to developing a comprehensive Implementation Plan for circulation and comment by November 26, 2008.

This Report focuses on critical elements of the Consent Decree reviewed during the current school year as well as in the Evaluation Team's prior Interim Report of February 8, 2007 (Docket # 1934). It also reports on implementation of those provisions of the parties' ADR agreement of December 10, 2007 that bear immediate and direct relevance to compliance with the Consent Decree. Specifically:

1. The Report provides an assessment of objective data relating to the critical performance measures by which the Consent Decree measures compliance -- timely

implementation of Hearing Officer Decisions (“HODs”) and Settlement Agreements (“SAs”) and timely issuance of hearing officer decisions and settlements. Beyond the HOD and SA data itself, the Report will also discuss objective data and information regarding timely assessments, evaluations, IEPs, and implementation of the Backlog Reduction Plan.

2. The Report analyzes the over-arching management and organizational impediments that impair the Defendants’ capacity to significantly reduce the number of due process complaints, implement HOD/SAs on a timely basis, and achieve the fundamental objectives of the Consent Decree.

3. The Report addresses the status of the availability of related services and its impact on the Defendants’ capacity to carry out their obligations under the Consent Decree, as well as the status of implementation of the parties’ ADR agreement to increase related services capacity for students within the District of Columbia Public Schools.

4. The Report addresses the status of Defendants’ oversight and implementation of its obligations under the Consent Decree in public charter schools.

5. The Report addresses the major initiatives underway to transform the functionality of student data systems and the student hearing office docketing system and thereby meet the Defendants’ Consent Decree obligations to maintain an accurate, functional data system with a reliable reporting capacity. (Consent Decree ¶60)

6. The Report assesses the progress of the major reform efforts underway in the State Student Hearing Office responsible for issuing due process complaint hearing decisions and the Defendants’ management of the hearing office consistent with professional norms, as mandated by paragraphs 53 – 55 of the Consent Decree.

7. The Report addresses the Defendant's implementation of a case management program for students with HOD/SAs, as recommended by the Evaluation Team and agreed upon by the parties in their ADR agreement.

8. The Report provides brief updates on the Defendants' progress in implementing other obligations in the Consent Decree, including the delivery of compensatory education services and operation of a parent center designed to support the families of students with disabilities. (See, Consent Decree ¶¶ 67-69, 74-81).

9. The Report makes remedial recommendations based upon the totality of evidence relating to the impediments to progress in Defendants' implementation of the Consent Decree and with due consideration of the findings and recommendations made in the Evaluation Team's 2007 Interim Report and implementation to-date of the parties' ADR agreement.

### ***B. Evidentiary Foundation for Findings***

The Evaluation Team ("ET") reached the findings contained in this report based on the following information sources:

- Regular ongoing meetings, phone and in-person interviews, and email exchanges with a broad range of DCPS and the OSSE staff<sup>4</sup> throughout the school year regarding issues extending from operational and policy issues and data results to staff experience with daily HOD/SA implementation challenges, data management systems, management problems, related services capacity, and nonpublic and charter schools.
- Ongoing review and analysis of a large scope of education reform and related

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<sup>4</sup> Meetings included, among others, DCPS and the OSSE special education staff as well as the Chancellor and various members of her cabinet, the State Superintendent, members of the Defendants' Special Education Reform Teams, the Student Hearing Office staff, OSSE information technology retained staff and consultants.



services planning documentation; HOD/SA, IEP, and related services data; consultants' evaluations and reports; data systems reporting; contracts; and other educational and related services documentation supplied by the Defendants.

- Ongoing meetings and interviews with the lead consultants for the Student Hearing Office reform measures and the lead consultant for the Backlog Reduction Plan (Dr. Rebecca Klemm) and her staff.
- A lengthy meeting as well as other communications with Columbus management staff and DCPS and the OSSE staff responsible for oversight of the Columbus contract, regarding the delivery of assessments and related services.
- An audit of hearing decision case closures performed on behalf of the Evaluation Team by Dr. Deborah Carran, Associate Professor, Johns Hopkins University.
- Interviews with lead staff representatives of the Public Charter School Board, the Special Education Cooperative, and the Student Support Centers.
- School visits at seven Charter Schools where interviews were conducted of multiple staff members, and samples of complaints, HOD/SAs, student files, and school monitoring reports were reviewed.
- Communications with nonpublic schools representatives.
- Meetings and web-based conferences with Defendants and selected and potential data systems vendors.
- Ongoing meetings, interviews, and communications with Plaintiffs' class counsel as well as miscellaneous individual attorneys and attorneys within the DCPS Office of General Counsel ("OGC").
- Meetings and interviews with Defendants' consultants as well as relevant school-

based staff for all ADR and Consent Decree initiatives. The relevant ADR projects referenced include:

- case management for 450-500 students with disabilities in 6 schools<sup>5</sup> and one special education Center;
- the expansion of the availability of mental health services to students for the upcoming school years;
- establishment of a parent center to provide support for special education parents, as required by ¶¶67-68 of the Consent Decree;
- initial ground work for implementation of the Full Service integrated support and educational service model for eight targeted middle schools selected as pilots (for initiation in the 2008/09 SY);
- initial implementation ground work for the Schoolwide Applications Model for delivery of integrated special and regular education in eight targeted “pilot” elementary schools (for initiation in the 2008/09 SY);
- conduct of the intensive Quality Service Review (“QSR”) assessment for 24 students with disabilities in the spring of 2008.

Additionally, the Evaluation Team has considered the comments of the parties’ lead representatives to a draft version of this report prior to finalizing and filing the report. The Evaluation Team expressly wishes to acknowledge the parties’ cooperation in this comment process.

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<sup>5</sup> Work on development of the case management initiative started in Spring 2007 in response to the recommendation in the Evaluation Team’s Interim Report, earlier than for any of the other ADR initiatives for which work began in January 2008.

## II. SUMMARY OF PERFORMANCE MEASURE RESULTS FOR THE 2007-08 SCHOOL YEAR (“SY”)

### *A. Blackman/Jones Performance Benchmarks*

While the Consent Decree is extensive in its provisions, it contains several key bottom line performance measurement provisions. The issuance of timely due process hearing decisions and timely implementation of HODs/SAs constitute the critical measures for determining ultimate compliance with the Consent Decree. For the 2007/08 SY, Defendants, via Dr. Rebecca Klemm, provided summary annual data for these mandatory performance measures and on August 27, 2008 issued a revised version of this data in response to the Evaluation Team’s Draft Report findings that 106 cases has been incorrectly administratively closed in June 2006.<sup>6</sup>

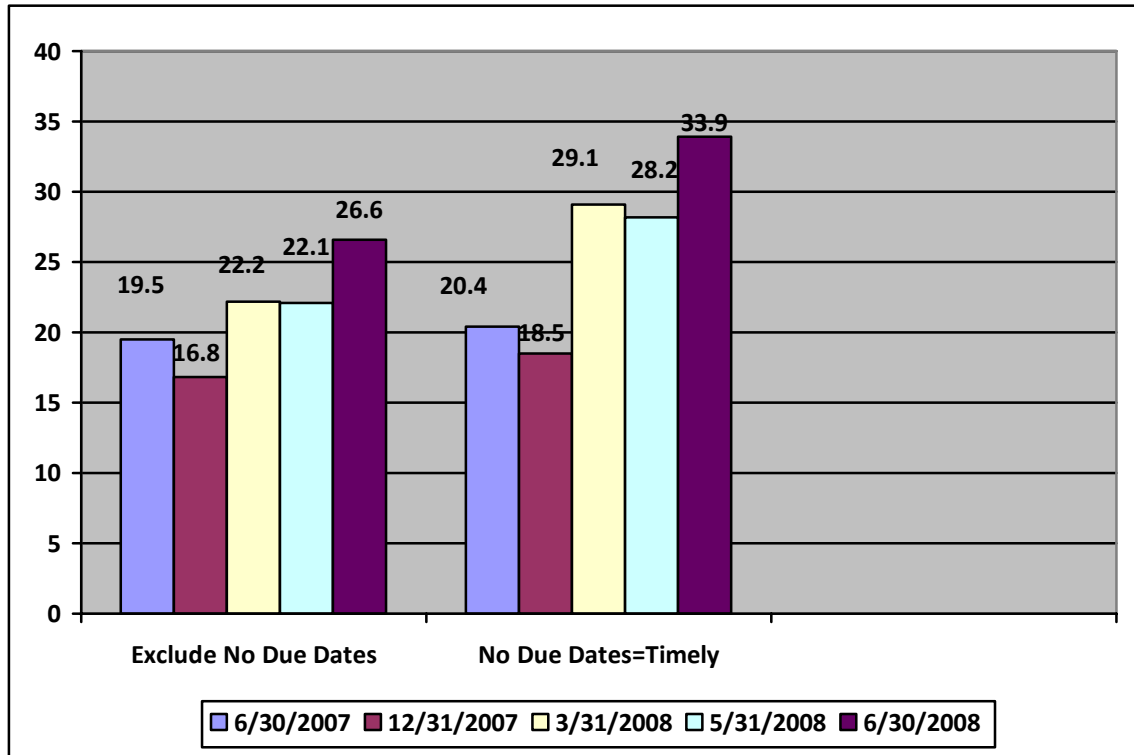
**1) *By June 30, 2008, (i) no case in the subsequent backlog will be more than 150 days overdue and (ii) 65% of the HODs/SAs issued on or after July 1, 2007 will be timely implemented (i.e., not “overdue”). (Consent Decree ¶42b.)***

- Number of cases more than 150 days overdue: 411
- Rate of timely closure if HOD/SAs with no due dates and timeliness are eliminated from the calculation: 26.6%
- Rate of Timely Closure for 07/08 SY if HOD/SAs without due dates and timeliness unknown are included and considered timely closed: 33.9%

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<sup>6</sup> The parties have agreed that at least through the 07/08 SY, Dr. Klemm’s data would be treated as the data of record. This data is reported in greater detail in Exhibits 1 and 1-A attached to this Report. Exhibit 1 is the original report circulated by Defendants in connection with an all-parties meeting on August 4, 2008; exhibit 1-A is a revised version of this data report filed by Defendants as Exhibit 1 to the Defendants’ August 27, 2008 Status Report. Given the lateness of the Defendants’ filing of this revised data, the Evaluation Team has not had an adequate opportunity to examine the data reported or to test its accuracy. See pp. 31-35 *infra*, for further discussion of the independent audit conducted on behalf of the Evaluation Team of the accuracy of the DC case closure process and related data issues.

**Figure 1 –Timeliness Measures of HOD/SA Closures**



2) *Initial Backlog Requirement Carried Over from 06/07 SY: By June 30, 2007, the Defendants shall eliminate the Jones initial backlog by implementing and/or closing all of the initial backlog cases. (Consent Decree ¶41)*

- At the conclusion of the 2006/07 SY, 82 cases remained outstanding in the initial backlog. By June 30, 2008, 1 case remained open in the initial backlog. Dr. Klemm has reported that this remaining case was closed on August 1, 2008.

**3) *The Defendants shall ensure that (a) Ninety percent (90%) of the requests for hearings are timely adjudicated (by the issuance of a final HOD) or settled; (b) No due process hearing requests are more than 90 days overdue. (Consent Decree ¶29)***

- Rate of timely issuance of final HODs or settlements: *Data incomplete, but 77.7% rate* per Dr. Klemm’s data for the six month period January – June 2008, without consideration of whether extensions were granted in conformity with Consent Decree requirements (¶31-32)
- Number of due process hearing requests more than 90 days overdue: *Data not available.*

This data will be discussed in further detail in Section VIII, A below.

### ***B. Assessment and IEP Timeliness Measures***

Other objective standards for measuring progress provided in the Consent Decree include progress on the timeliness measures for assessments and Individual Education Programs (“IEPs”) outlined in the Superintendent’s Action Plan attached as Exhibit A to the Consent Decree. While these goals do not constitute mandatory requirements for assessing compliance with the Consent Decree, they do represent recognized legal compliance standards under the Individuals with Disabilities Education Act of 2004 (“IDEA”), 20 USC §1400 et seq. and building blocks for delivery of special education services, or alternatively, critical points of legal vulnerability. See, 20 USC §1414.

To date, Defendants have not been able to maintain complete or current assessment and IEP data for all students within the District, in large part because of the failure to maintain adequate mechanisms to obtain complete data on all special education students attending charter and nonpublic schools through DC funding. Additionally, it is not clear that Encore’s formulas for

assessing timeliness were actually in full alignment with timelines under IDEA. That said, assessment and IEP timeliness data as of June 30, 2008 as reported by Defendants<sup>7</sup> fell below the performance measures identified in the Exhibit A to the Consent Decree:

**1. *Timely Assessments: The Action Plan calls for an increase in overall assessment timeliness to 85-95% by June 30, 2008.***

Assessment Rate for DCPS Schools: 72.81%

Assessment Rate for Charter Schools<sup>8</sup>: 28.79 %

Assessment Rate for Nonpublic Region: 50.98%

**2. *Timely IEPs: The Action Plan calls for 90-100% of students with disabilities to have a current IEP by June 30, 2008.***

IEP rate for DCPS Schools: 88.42%

IEP rate for Charter Schools<sup>9</sup>: 10.45%

IEP rate for Nonpublic Region: 43.67%

**C. *Other Consent Decree Measures***

Additional staffing constituted another central, measurable feature of the Consent Decree. The Decree provided for an infusion of funding to the school district to provide adequate related services and compliance support staff to assist in improving the school district's completion of

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<sup>7</sup> Data Source: July 21, 2008 Report distributed by Gerold Milledge on behalf of Defendants' OSSE's Office of the Chief Information Officer. (Exhibit 3 attached)

<sup>8</sup> Data was reported for 16 Charter School campuses. There are 81 charter school campuses listed in the OSSE's official student enrollment count. CharterEnrollmentIEPvsGeneral.xls. Some charter schools, such as Cesar Chavez or High Roads Academy, include multiple separate campuses that to some extent function independently.

<sup>9</sup> Data reported on 42 Charter school campuses.

timely assessments, IEPs and students' related service needs on a proactive basis as well as to properly implement hearing decisions. (See, e.g., Consent Decree ¶¶40, 50-51, 65) To that end, the Consent Decree required that Defendants comply with the requirements in the Consent Decree Exhibit A (Superintendent's Action Plan) for funding of seventy (70) additional full time equivalent positions. (Consent Decree ¶51) While the District of Columbia is clearly poised to invest millions of additional funds in the school district as a result of the parties' ADR agreement – or indeed, may already have done so - Defendants have not to date been able to demonstrate that the District has created and funded 70 positions in conformity with the plan established by Exhibit A to the Consent Decree or any other comparable plan agreed upon by the parties or Monitor.<sup>10</sup>

### **III. ORGANIZATIONAL ISSUES**

The Evaluation Team's February 8, 2007 Report found that, "... organizational hierarchy, fragmentation, and crossed lines of authority within DCPS in tandem with a wholly deficient data system to date have tended to nullify or diminish organizational accountability and efforts to deploy the expanded intervention staffing resources provided via the Consent Order." (Interim Report, p. 33; see in general, Interim Report, pp. 33-40.) Although the Education Reform Act has brought a new level of unification in overall purpose and plans for education reform in the District of Columbia, the organizational fragmentation noted in the Evaluation Team's initial report continues to undermine the effective implementation of expanded remedial resources intended to support changes in special education. DCPS still faced its own unique internal organizational

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<sup>10</sup> Paragraph 51 of the Consent Decree provides for modification of the 70 position provision, stating that "if changed circumstances warrant, DCPS may reallocate the funds from FTEs to other uses, provided that (1) the reallocation is consistent with the provisions and intent of this Decree, and (2) before reallocating, DCPS consults with the Monitor and the Monitor does not object to the reallocation within (15) days of such consultation. If the Monitor objects, DCPS may ask the Court to approve the reallocation. DCPS will notify plaintiffs' counsel at the time it consults with the Monitor about moving and switching positions or reallocating the funds from FTEs to other uses."

issues in this first year post enactment of the Education Reform Act. In addition, with the OSSE now functioning as a fully independent state education agency, a new set of management coordination issues would be thrown into the mix of challenges for the District.

***A. DCPS: Transition in Special Education Leadership and the Special Education Reform Team (“SERT”)***

For DCPS, the 2007/08 school year was marked by ongoing changes in the leadership of special education services. Marla Oakes, the executive director of special education appointed by Superintendent Clifford Janey in 2006 and initially designated as the lead person for the *Blackman/Jones* implementation effort, was soon replaced in the fall of 2007/08 SY by Phyllis Harris, the new “czar” or deputy chancellor of special education appointed by Chancellor Rhee.<sup>11</sup> Despite Ms. Harris’ title, ultimate responsibility for leadership and management (though not day-to-day administration) of work relating to the *Blackman/Jones* case and the ADR initiatives fell within the charge and chain of authority of Richard Nyankori, Special Assistant to the Chancellor. With the parties’ negotiation of the ADR agreement in the November/December period of 2007, Mr. Nyankori hired a new team of staff to perform critical roles in execution of the ADR agreement and *Blackman/Jones* HOD/SA reduction work. This team became the Special Education Reform Team (“SERT”) and reported to Mr. Nyankori rather than to Ms. Harris through the end of the 2007/08 SY. While the issues and initiatives tackled by the SERT were in reality vitally interconnected with the work of the special education organization headed by Ms. Harris, the SERT and Special Education Department staff worked as separate organizational entities (and on different floors) until the end of the 07/08 SY when DCPS began to integrate at least some of

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<sup>11</sup> By December 2007, Ms. Oakes was assigned responsibility for student support teams, outside of the special education organization within DCPS. Ms. Harris, who headed special education in Oakland, California was offered her position in mid-September 2007 and began work by the beginning of October 2007.



their work and organizational functioning.

The separate operation of the SERT on new reform initiatives provided certain advantages, such as freeing the team from the organizational morass associated with normal district operations so that they could focus on reform initiatives. On the other hand, the separation also meant that the work of the SERT often did not benefit from or become integrated into the broader school-based work of experienced special education and related services staff within DCPS. Projects such as the SERT's evaluation of related services capacity and planning for an expanded model of related services delivery were hampered in their effective implementation by insufficient communication with the Special Education Chief of Staff who exercised responsibility for related services within the District as well as Columbus' contractual related services. As indicated in this Report's subsequent sections, the District staff's work on other essential special education and *Blackman/Jones* related projects similarly suffered from organizational fragmentation in assigned responsibilities and communication silos as well as the school system's existing internal bureaucratic divisions. In addition, DCPS' (and the OSSE's) broad reliance on contractors to assist in performing crucial work meant that responsibility for the work was further dispersed organizationally. Under these circumstances, the Chancellor's consistent broad oversight of the progress and integration of Consent Decree and ADR-related work into the work of the system at large could have played an important function. However, the Chancellor appears to have been engaged with so many other reform initiatives and "irons in the fire" that she was not able to provide this unifying leadership and management.

### ***B. Responsibility at the DCPS School Level***

The Evaluation Team's February 8, 2007 Interim Report and Recommendations found that the dispersal of authority and responsibility at the local school level for the delivery of special

education and related services as well as for the implementation of HOD/SAs impeded compliance with the Defendants' legal and service obligations.<sup>12</sup> However, in the midst of DCPS's top leadership transformation, no significant changes or improvements relative to the allocation and streamlining of authority for special education services and HOD/SA implementation occurred at the school level this year. Special education coordinators, some of whom are neither special educators nor trained to handle the duties of an all purpose special educator and administrator, continued to handle front line responsibility for special education and HOD/SA implementation. Central office compliance specialists, detailed to work with the backlog reduction team in January 2008 after execution of the ADR agreement, supported the work of coordinators with respect to outstanding due process complaints and HOD/SAs, but still exercised no direct authority over the coordinators or with respect to school operations. Finally, despite the increased rhetoric of accountability within the school system, principals remained effectively free this year from front-line responsibility for implementation of HODs/SAs.<sup>13</sup> As discussed more fully in the backlog

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<sup>12</sup> The Report Recommendations at ¶2, p. R-3, included:

- a. Senior management should intensify its guidance to principals regarding their necessary direct leadership role with respect to special education programming, IEP meetings, HOD/SA and IEP implementation, tracking of referrals for assessments, and similar functions. Principals' disengagement from special education, particularly at larger secondary schools, effectively leaves some school special education coordinators with a huge volume of cases but no authority to direct critical school personnel, such as clericals or teachers, in the performance of tasks critical to maintaining special education compliance.
- b. DCPS should re-examine the allocation of responsibility and authority to school principals for special education and related services. The current fragmentation of responsibility for the management and supervision of related service providers, who are a critical component of the special education process, promotes a lack of accountability for the delivery of special education services and contributes to the problems which lead to disputes and due process hearings. The same fragmentation also impedes timely compliance with hearing officer decisions and settlement agreements (HOD/SAs). One model for correcting this problem is to give principals administrative supervision over related service providers, while leaving professional supervision within the professional discipline.

<sup>13</sup> The Chancellor has made a general commitment for next year to hold principals to a higher level of responsibility for special education performance and compliance with *Blackman/Jones* obligations. She states that a revised principal evaluation will be instrumental in this process. The Evaluation Team cannot comment on this assessment until next year or later.

reduction section *infra*, principals were not called upon by central office leadership or their immediate cluster supervisors to assume a proactive, regular role in overseeing reduction of the HOD/SA backlog in their respective schools.

### ***C. Organizational Challenges Posed for the OSSE***

The OSSE this year faced the challenge of inheriting staff from DCPS, integrating this staff into a new state organizational entity and structure, and then expanding its staff to meet the requirements and goals of operating a genuinely independent State Education Agency (“SEA”). DCPS and its Board had previously performed the central special education funding, planning, standards setting, and oversight role required of the SEA under IDEA<sup>14</sup> essentially as an extension of its functioning as a Local Education Agency (“LEA”), rather than in a full independent capacity. However, the oversight role of the SEA for special education within the District of Columbia has grown far more complex with the enormous expansion of charter schools serving both special and regular education students over the past decade as well as an ongoing flood of placements of students with disabilities into nonpublic placements. In short, the OSSE had a substantial amount of work cut out for it if it was to properly perform its SEA special education oversight role.

The OSSE suffered from serious lags in the staffing process and a host of other organizational growing pains that might be expected in its first year of full operation. A small, separate SERT team was established by December within the OSSE under the leadership of Tameria Lewis to guide and manage all work relating to the ADR agreement and various *Blackman/Jones* initiatives. This team was overwhelmed with work and functioned at times as an

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<sup>14</sup> See, e.g., 20 U.S.C. §§1407, 1411-1413, 1415, 1416, 1418, 1419, 1435-1438, 1440-1441, 1451-1454.

orphan, isolated unit, despite Ms. Lewis' strong leadership within the Department. In May, 2008, when Ms. Lewis was appointed Acting Assistant Superintendent over the Office of Special Education, the SERT was usefully integrated into the OSSE's main special education operations.

The new OSSE SERT/Special Education team played an important role on a number of fronts directly relevant to the Consent Decree, including: a major initiative to replace the flawed existing special education data system with a new data system through a contract with the Public Consulting Group ("PCG");<sup>15</sup> reform of the student hearing office; planning and delivery of *Blackman/Jones* compensatory education services; support and planning for a number of major ADR programmatic initiatives, including case management, and contracts for a Parent Center and Full Service Schools. Given their significant staffing limitations as well as the specific nature of the reform initiatives, the OSSE team also relied extensively on contractors in the performance of this work. The OSSE's small SERT/special education leadership team were torn in multiple directions as they managed this wide range of new initiatives and virtually started from ground zero on basic SEA responsibilities such as special education monitoring and establishing reporting relationships with charter schools. Important work and progress proceeded on a number of special education and *Blackman/Jones* fronts, as noted in subsequent sections of the Report. However, under these circumstances, significant limitations existed in the OSSE's capacity to provide coordinated, supervising management in tandem with DCPS for an array of ADR initiatives and the work of multiple contractors or to provide coordinated oversight of basic special education compliance and service delivery throughout the District of Columbia.<sup>16</sup>

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<sup>15</sup> The OSSE has also lead with the DC Office of Chief Technology Officer ("OCTO") a five-year plan to create a comprehensive Statewide Longitudinal Education Data system ("SLED") and warehouse.

<sup>16</sup> Cf., 6/17/08 Letter of William W. Knudsen, Acting Director, Office of Special Education Programs, United States

#### ***D. Oversight of Contractors***

As noted above, both DCPS and the OSSE determined that they had insufficient staff capacity to address the broad range of reform and service needs that they have undertaken. For this reason, they have entered into contracts with a range of vendors for consulting services as well as direct service delivery. Table 1 below identifies the principal consultants and service providers DC contracted with in connection with special education and related services, excluding data information systems providers. Successful implementation and incorporation of the work of these projects into the programmatic operations of schools and other school reform initiatives within the District of Columbia will require in the year ahead a far higher level of coordination and communication within DCPS and the OSSE and between these organizations than has been evident to date.

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Department of Education, to Deborah Gist, finding District of Columbia as “in need of intervention,” based on the State’s failure to address on a timely basis serious outstanding special education compliance deficiencies as well as its ongoing inability to provide reliable reporting data.  
<http://www.ed.gov/fund/data/report/idea/partbspap/2008/dc-aprltr-2008b.doc>

**Table 1**

<b>ADR or B/J Initiative</b>	<b>Contractor</b>
Case Management	1) First Home Care 2) Michael Terkletaub; Narell Joyner
Parent Center	1) Advocates for Justice & Education, Inc. 2) Paula Goldberg, Executive Director, PACER Center parent education expert, PACER Center (Parent Training & Information Center for families of children and youth disabilities, Minneapolis, Minnesota)
Evaluation report regarding students' access to mental health services within District of Columbia; barriers to mental health service delivery; coordination of service delivery with classroom; financial management of services.	Knute Rotto, national expert in mental health systems reform and chief executive officer of Choices, Inc.
Full Service Schools (8 middle schools)	1) Knute Rotto & Choices, Inc., with contractual staff to be retained for 2008/09 SY <i>Contract with OSSE</i> 2) Insight Education Group, Inc. (educational component of FSS model) <i>Contract with DCPS</i>
Related Services	1) Columbus Educational Services, LLC 2) Purchase agreement with 7 Related Service Firms for 08/09 SY – with target of contracting with 25 in total 3) Intended RFP for major provider of services for 08/09 SY
Quality Services Review (24 student for OSSE monitoring and assessment of child/family/education status and service delivery to student)	The Child Welfare Policy and Practice Group
B/J Compensatory Services	1) Best Buy 2) Turning the Page (Community based outreach firm)
School Wide Application Model (8 elementary schools)	Dr. Wayne Sailor and Blair Roger (Sam Schools, LLC)
SHO Reform Consultant / Technical Assistance & Training for Hearing Officers	Gail ImObersteg, with Lyn Beekman
Backlog Reduction Plan	Klemm Analysis Group, Inc. (ending 10/1/08 at latest)
Management Consulting & Policy Development	1) Ostroff & Associates (management related work) (for OSSE) 2) Patrick Cook & Camille Young (for OSSE) 3) Urban Policy Development / Sherry Chen (for DCPS)

### ***E. Management of ADR Initiatives***

Finally, in the ADR Agreement, the parties agreed on the formation of a group of four persons, including Plaintiffs' Counsel, Ira Burnim, Richard Nyankori (DCPS), Tameria Lewis (OSSE) and Heather McCabe (CFO), to work together on the planning and implementation of the numerous ADR initiatives. This group brought passion, intellect, and commitment to their work

and explored numerous innovative approaches to addressing the underlying conditions that manifested themselves in due process complaints. However, the effectiveness of their efforts was limited by the circumstances discussed in this report as well as their absence of any direct connection to the schools where reforms must occur, and lack of clear, regular and consistent communication within the school system about plans and priorities for a reformed special education system that these many initiatives were intended to bring about.

#### **IV. TIMELY IMPLEMENTATION OF HEARING OFFICER DECISIONS AND SETTLEMENT AGREEMENTS**

##### ***A. Status of Work through December 2007***

Timely implementation of hearing officer decisions and settlement agreements constitutes a core requirement of the Consent Decree for Defendants. The Defendants significantly ramped up their compliance efforts in the last months of the 2006/07 SY so as to demonstrate a modest measure of improved performance and accountability, even if the HOD/SA implementation rates for the 06/07 SY fell far beneath the standards set by the Consent Decree for June 30, 2007 performance.<sup>17</sup> As of June 30, 2007, the rate of timely implementation was 19.5% (excluding HODS where no due dates were specified and timeliness unknown) or 20.4% (if HODS with no due dates and unknown timeliness are included in the calculation). According to Dr. Klemm's reporting, 302 cases were also overdue more than 180 days and 82 cases remained open in the initial backlog of HODs/SAs issued before March 1, 2007.

Upon completion of the 2006/07 SY in June 2007, the Defendants reduced their support for compliance work on implementation of HOD/SAs for the following six months. In essence,

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<sup>17</sup> The Consent Decree required that as of June 30, 2007, 50% timely HOD/SA implementation, that no HODs be open more than 180 days overdue and that the initial backlog be totally eliminated. See, Consent Decree ¶41-42.

between the system's organizational focus on other issues and continuing organizational and personnel changes in special education, focused work on the challenges of addressing HOD/SA implementation dissipated. The group of nine disposition specialists who had worked with compliance specialists on closing cases was re-assigned to a different dispute resolution function in the SEA Office of State Enforcement and Investigation. A team of approximately seven special education compliance specialists, under the supervision of the DCPS Special Education Director of Compliance for DCPS was left to oversee and support the HOD/SA closure process in all schools, along with a small number of over-extended specialists assigned to work with nonpublic and charter schools. The Compliance Director for the DCPS Division of Special Education, provided immediate supervision to this group, and Dr. Klemm continued to review case closures with her and provide data support, to the extent feasible. However, the District made no special preparations for HOD/SA implementation work in the beginning of the 2007/08 SY: No efforts were made to provide principals and school special education coordinators ("SECs") lists of students with HODs at each school and to vet the lists in advance to ensure that they accurately listed students actually enrolled at the school. Nor was a clear and forceful directive provided to principals from the start of the year or later regarding the imperative to exercise an oversight role in ensuring the timely implementation of HOD/SAs, IEPs, or assessments at their schools.

For the first six months of the 07/08 SY, no progress was therefore made in improving the timely HOD/SA implementation rates. By December 31, 2007, the timely closure rate for HOD/SAs had declined from June 2007 levels to 16.8% - 18.5% (depending on whether HOD/SAs without due dates and with timeliness unknown were included in the calculation.), according to Dr. Klemm's data. (See Figure 1, *supra*, p. 12) Similarly, while 302 cases were open and overdue more than 180 days at the close of the 2006/07 SY, by December 31, 2008, when the



150 day Consent Decree standard applied, this number had mushroomed to 547 cases overdue and open more than 150 days. Fifty-nine (59) of the 82 cases in the initial pre-March 2006 backlog (“IBL”) remained open.

## **B. Backlog Reduction Work January through June 2008**

### **1. Moving Forward with Hands Tied Behind the Back**

With the completion of negotiations of the ADR agreement in December 2007 and its provisions requiring development of a Backlog Reduction Plan (§9-14), the parties turned to development of a Backlog Reduction Plan that was filed with the Court on January 18, 2008. (Court Doc. # 2047) The Plan called for Dr. Klemm to assume a central management role in oversight and implementation of the work.<sup>18</sup> It assigned her an extraordinary range of responsibilities, including: data and development of multiple tracking reports; arranging for IEP meetings and student assessments; contracting with related service providers, as needed; negotiation of settlements with parents and counsel on behalf of DCPS with respect to due process complaints and outstanding HODs; negotiation of compensatory services; analysis and documentation of barriers to timely resolution of due process complaints and HOD implementation; and, the evaluation of the impediments to closure of the outstanding IBL.

As Dr. Klemm began this work, she had to mount a mammoth effort simply to retrieve and organize all of the outstanding HOD/SAs in one office location, as these records were not maintained in a consistent or easily retrievable basis in either student files throughout the system or in the student hearing office. And this did not even begin to speak to making a systematic evaluation of what items in outstanding HOD/SAs needed action or creating a process and team

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<sup>18</sup> Dr. Klemm in turn took a leave of absence from the Evaluation Team.

for effective communication with parents' representatives regarding cases.

The Plan was beyond ambitious under the District's circumstances. It essentially called for Dr. Klemm, with DCPS as her key partner, to surmount all the organizational limitations within the District of Columbia's educational system and build a coherent, well organized, data driven, parent centered implementation campaign that would navigate and float above the serious limitations in schools, related service capacity, data systems, and available personnel. As neither Dr. Klemm nor Defendants sufficiently staffed their respective teams to meet the tasks set forth in the Backlog Reduction Plan from the start, the work got off to a slow start. Dr. Klemm was initially hesitant to hire more than a few contractual employees without knowing how Defendants would structure their internal staffing for the effort. Defendants assigned the same seven compliance specialists to the backlog reduction team, although this staff continued to report separately to their regular supervisor in special education (the Director of Special Education Compliance) for administrative purposes such as attendance and evaluation. Two months later, on March 10, 2008, the OSSE finally detailed the nine disposition specialists who had been taken off HOD/SA related work in July, back to work with Dr. Klemm and DCPS on the backlog reduction work. This team would also interface with eight DCPS placement specialists responsible for working with nonpublic and charter schools who were *not* part of the Backlog Reduction Team.<sup>19</sup>

By early February 2008, DCPS added several new members of its SERT team to the backlog team work – assigning them key responsibility for development of data reports and resolution of complaints and HOD/SAs, and miscellaneous other tasks. Over time as the spring semester wore on, these SERT staff members assumed critical leadership and management roles in

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<sup>19</sup> The nonpublic placement specialists are chronically overextended due to caseloads of upwards of 200. The two charter school placement specialists and their supervisor similarly deal with a rapidly expanding population of students.

the backlog reduction work, and Dr. Klemm operated within an increasingly narrower set of management and authority parameters. The DCPS Manager of the SERT lead the project along side Dr. Klemm, but as she had only joined the staff of the Chancellor's Special Assistant in October 2007, understandably was not well positioned to organizationally meld this disparate group of staff along with the various special education, school, and related service staff they depended upon for information and actual implementation measures. Compliance and disposition specialists consistently reported to the Evaluation Team that the constant shifting of managers in charge of their work and changing work directives adversely affected their capacity to function effectively. We also observed the palpable separations between the SERT, the backlog reduction staff, and the daily functioning of the special education department and their respective staff.

The backlog work was under the ultimate supervision of the Special Assistant to the Chancellor, who also juggled a host of other major duties beyond those related to *Blackman/Jones*. The work of the backlog team staff did not begin to be integrated in any significant manner with the Office of Special Education within DCPS, headed by Deputy Chancellor Harris, until June 2008.

While a wide range of impediments impaired the effective rollout of the Backlog Reduction Plan, the most simple and frustrating one for staff was the continued inaccuracy in data reflecting the school enrollment of students with outstanding HOD/SAs. Despite the Evaluation Team's findings and recommendation both in its Interim Report<sup>20</sup> and in communications thereafter, the District did not proceed to take necessary measures to provide for *current* student enrollment data bases (STARS/OLAMS) to be accessed by Dr. Klemm or thereafter, the DCPS complaint and HOD/SA web based data base program ("Quickbase") that replaced the Klemm spreadsheets by

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<sup>20</sup> Court Doc. # 1934, Interim Report at 19-20; Docket Doc. # 1934-2, Recommendation (6).

the spring of 2008. As a result, Dr. Klemm's data spreadsheets and the system's own Quickbase data reported large numbers of students with HOD/SAs at schools where they were not enrolled. Neither compliance specialists nor school staff could efficiently work to track or resolve the open status of cases when they repeatedly had to investigate, sort, and identify the actual students with HODs attending the school and find their files. Other impediments to effective implementation of the Backlog Reduction Plan included:

1. The continuing limitations in timely availability of related services for assessments and the evident difficulties and/or overload which resulted in non-implementation of Plan's provision authorizing Dr. Klemm's and DCPS's payment for independent assessments at higher rates. (See discussion of related service capacity issues in Section V, *infra*.)

2. Central Office's having not engaged principals directly in the goals of the Backlog Reduction Plan with associated accountability: As noted in the Defendants' March 28, 2008 status report, the compliance team "has no direct supervision over school-based personnel or central office personnel responsible for taking action on HODs and complaints." (Docket Doc. #2061-4, p.6) The "major push" to create new lines of accountability and hold schools accountable in connection with actions required for HOD/SAs that Defendants' March 2008 Status Report stated was essential, did not occur this year. *Id.* And in contrast to the 2006/07 SY, there was no concerted effort on the part of the Chancellor's office directly or by delegated authority<sup>21</sup> in the last months of the school to call principals or their immediate supervisors to review the status of cases.

3. There were apparently no funds or staff to reassign to create

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<sup>21</sup> The Backlog Reduction Plan work did not fall under the jurisdiction of the Deputy Chancellor for Special Education.

and sustain a special team of staff that would meet the Backlog Reduction Plan's provision for a "Response Team to work intensely with schools that are not meeting performance expectations" and providing such schools with "additional personnel to help in implementing HODs" on an intensive basis in secondary schools with large volumes of HOD/SAs. (Backlog Reduction Plan, Court Doc. #2047, I.C.)

4. The length of time required for development of an adequate, user friendly data "dashboard" (Quickbase) which could provide a simple foundation for managing compliance and reporting: As discussed in Section B.2. below, by the end of the 2007/08 SY, DCPS had developed a dashboard for use by central office, but this data base is still not accessible for case management purposes to local school staff. Defendants have reported plans to train school special education coordinators (but not principals) in September 2008 as a prelude to providing them access to the Quickbase system.

5. Although the OSSE and DCPS representatives conducted various general meetings with Charter School and nonpublic school representatives, they did not develop "in collaboration with the charter and nonpublic schools themselves, as well as the District of Columbia Association for Special Education (DCASE)" a specially tailored plan for addressing HOD/SA implementation, as called for by the ADR Agreement (§IV). The limited number of charter and nonpublic school specialists therefore simply continued their normal work, which includes HOD/SA closure, placement, participating in IEP meetings, securing assessments for students, and other similar responsibilities.

Despite this array of impediments, by the end of March 2008, the DCPS backlog reduction team had by dint of focused hard work at least turned the ship around and once again begun to increase timely implementation of HOD/SAs from the December 2007 point of decline. By the

end of March 2008, timely HOD/SA implementation was occurring (for the 07/08 SY) at the rate of 22.2% (if HODS with no due dates were eliminated from the calculation) or 29.1% (if HODs without due dates were considered timely closed). The number of cases open and overdue for 150 days or more still remained roughly in the same ballpark at 498 cases and the number of open cases in the IBL had declined to 22.

## **2. Moving Forward**

Various SERT backlog reduction initiatives, in addition to the daily operations managed by the Klemm/DCPS team, genuinely began to become operational in the April – June 2008. A small SERT complaint and resolution team reviewed and attempted to evaluate Complaints immediately and settle cases where at all feasible. For the period January – July 2008, settlement efforts were undertaken in 196 Complaint cases, with settlement offers accepted in 121 cases and made and rejected in 58 cases.<sup>22</sup> A substantial number of these settlements were handled by the Backlog SERT team.<sup>23</sup> Complainants were not forced to wait until the point of hearing for cases to be reviewed by DCPS for settlement purposes—a long standing complaint within the special education parent community. Whether this review and settlement process can be effectively scaled upward remains an open question in the coming year. DCPS is in the process of recruiting ten compliance case managers who will be charged with the responsibility of overseeing the execution of the nitty-gritty details of all HOD/SAs. This new staff group's effective deployment and capacity to work with special education, related service, and school based staff will prove clearly critical to the work planned for the year ahead.

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<sup>22</sup> These numbers represent a snapshot in time and are continually changing as progress is made, settlements are proffered, accepted or withdrawn.

<sup>23</sup> As of August 1, 2008, this SERT settlement team apparently will function as the legal unit of the DCPS Office of Special education. DCPS has notified all counsel to direct communications to the unit.

The SERT data team worked with OCTO to create a user-friendly web accessible data base program which potentially would make available to users all Complaint and HOD/SA related documents as attachments within the data base as well as provide a range of useful data on a student and school basis. The new system will also run a host of reports that will be useful for management and analysis purposes. Quickbase drew its information and data from the data and documents assembled by the DCPS/Klemm group over the past year. Until Phase II of the new District of Columbia Special Education Data System is fully operative in the 2009/10 SY, Quickbase is poised to offer a functional information data base for a range of management and reporting purposes.

As noted earlier, the most significant information limitation in the Quickbase this year was its failure to interface with current student enrollment data. However, following the Evaluation Team's August 4, 2008 meeting with the parties, the Defendants have made a commitment to implement a specific data plan to address this limitation by October 2008.

Dr. Klemm elected not to continue with her contract with DCPS post-July 2008, although her firm is currently continuing to perform some data and case work. Defendants plan by October to have assumed exclusive responsibility and management for the backlog reduction work. As already expressed to the parties, the Evaluation Team notes our concerns that Defendants have yet to produce a solid plan for (1) how they will execute and verify case closures on a credible, reliable basis to ensure their consistency with legal standards and the provisions of the Decree; and (2) how (and who) will produce *Blackman/Jones* implementation data reports for the Court. These were all functions previously performed by Dr. Klemm, as agreed upon by the parties.

### ***C. June 30, 2008 Results and Verification of Closure Data***

The June 30, 2008 final reported results represent a continued incremental improvement in

timely HOD/SA implementation, although the rates still fall far below the Consent Decree standards. (See Section II, *supra*, at pp. 11-14). Dr. Klemm originally reported for Defendants that the implementation rates had increased to 27.5% (if HOD/SAs with no due dates eliminated) or 38% (if HOD/SAs without due dates and timeliness are included) – 27 percentage points below the Consent Decree HOD/SA implementations standard at very best (Exhibit 1).<sup>24</sup> The number of cases remaining open and overdue for 150 days or more had further declined, according to this report, to 357 cases, though the Decree standard called for no cases of such length to be outstanding. One case remained open in the IBL. (See Exhibit #1, Status of IBL and Jones Timeliness Calculations.)

Based on the original annual data report provided, the Defendants initially pointed out that the timeliness statistic, if viewed for the period of January 1 – June 30, 2008, when the Backlog Reduction Plan has been in effect, is even higher – 41% (if HOD/SAs without due dates and timeliness are included). 453 cases were reported as being closed (timely and untimely) in June 2008 as opposed to the case closures which ran in the 100-200 range in the preceding three months. At least 106 cases in June were administrative closures. Seventy-eight (78) of these administrative closures were associated with letters to counsel asking counsel to respond regarding the status of independent assessments (or comparable HOD/SA ordered measures) that had been outstanding for 120 days or more for each student on an attached list of students that counsel had at some time represented. This notice letter also notified counsel that the HOD/SA would be closed in 30 days absent action and response on the part of counsel. These group 120-day notice letters were generated at the direction of and under the signature of the Chancellor's Office and

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<sup>24</sup> Dr. Klemm's data report as of May 31st had reported a timely implementation range of 26.7% to 30.9%, depending on the computation inclusion of HOD/SAs without due dates and where untimeliness was unknown.



sent out by the Backlog Reduction Team. While the protocols agreed upon by the parties in August 2006, pursuant to the paragraph 44 of the Consent Decree<sup>25</sup> provide for such a 120-notice letter, they require attempted communication with the parent as well as counsel. Unfortunately, while the group list notice letters represented an efficient effort to move older cases forward one way or another, they failed to comport with two essential requirements of the due diligence protocols: (1) They failed in fact to give thirty days to counsel to respond, with case closures being noted in Quickbase before the 30-day period had elapsed; and, (2) they were generally sent out without corresponding written and attempted phone communications with the student's parent/guardian, as required by the case closure protocols.

The Evaluation Team therefore asked Professor Carran<sup>26</sup> of Johns Hopkins University to conduct a review of a statistically representative random sample of the administrative case closures completed in June 2008. Professor Carran's review found that in 87% of the cases reviewed, there was no evidence of due diligence efforts, as defined by the protocols, to provide thirty days prior notice for the response of the parent representative (prior to case closure) or to communicate directly with the parent regarding the case. (See Exhibit 2 – Part 2, August 20, 2008 Memorandum Report of Professor Carran, finding 4 case closures consistent with the protocols and 26 closures not in conformity with the protocols.) Applying this 87% percentage to the 106 timely administrative case closures reported in June 2008, the Evaluation Team projects that 92 of the administrative case were closed without adhering to the due diligence administrative protocols. Five additional cases in the sample (or 17%) were closed based on counsel's confirmation that the

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<sup>25</sup> This requirement of attempted communication with the parent/guardian regarding outstanding obligations on the part of the parent/guardian or issues in connection with an HOD/SA is based in part on the reality that attorneys often may cease to represent a family after an HOD/SA is issued or lose contact with the family.

<sup>26</sup> Professor Carran's vita can be found at <http://education.jhu.edu/faculty/index.cfm?i=12132>.

cases were satisfied — though the case notice documentation (e.g., notice to parents) was not implemented in conformity with the administrative closure protocols. If we accept the five additional case closures agreed upon by counsel in combination with the four cases properly closed per the protocols, a maximum of approximately 30% of the administrative case closures (roughly 32 cases) were arguably reasonably closed.<sup>27</sup> Whether we use a figure of 13% or 30% for a projection of administrative closures authorized by the due diligence protocols, a significant part of the originally reported jump in timeliness implementation rates as well as the number of outstanding open cases reported by Defendants for June 2008 would need to be discounted as based on improper administrative case closures. In light of these findings, Defendants have now re-opened all 106 cases closed via administrative closure<sup>28</sup> and issued a revised annual data report on *Jones* HOD/SA implementation data for the 2007/08 SY. (See, Exhibit 1-A.)

In contrast to the audit findings regarding the administrative closures, Professor Carran’s audit on behalf of the Evaluation Team of a statistically random sample of closures of HOD/SAs issued from July – May 2008 confirmed extremely high rates of agreement between the independent auditor and the case implementation / closure data determinations made and entered by Dr. Klemm on behalf of DCPS. For the July 2007 – May 2008 period, the audit results found a 97.56% rate of agreement that the case closures and implementation determinations were properly supported by record evidence as determined by the independent auditor’s review of student case files. Dr. Carran also found that case data was entered into the *Blackman/Jones* Quickbase at a 96.3% rate of reliability, based on her audit’s comparison of case file data with data entered into

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<sup>27</sup> We say “reasonably closed” here because a majority of the cases would not have been closed in strict compliance with the due diligence protocols, but instead, there was an arguably adequate basis for the closures under the circumstances.

<sup>28</sup> Defendants have currently begun the process of review of these files and efforts to initiate anew appropriate contact with parents and counsel. They now report 108, instead of 106, cases that have been administratively closed.

Quickbase in its initial implementation. (See generally, Exhibit 2 – Part 2, August 1, 2008 Memo Report of Professor Carran.)

Based on the Evaluation Team’s review of the reporting evidence available (but without having performed an actual field audit of implementation) and Defendants’ *revised* annual *Jones* implementation data report, the Evaluation Team concludes that incremental progress continued to be made in the latter months of the 2007/08 school year. We are hopeful that the Backlog Reduction Plan work and staffing will reach a level of sufficiency, stability, and data functionality in the coming months to permit the school system to actually build on the foundation created thus far. The first semester has been an occasion for lost ground in both of the preceding two years under the Consent Decree as focus was lost amidst staffing transitions and other work. An initial foundation now exists for supporting improvements in management of Complaints and HOD/SA implementation. However, there are significant transition challenges and distractions ahead once again, as DCPS expands its staff to move to full internal control of the backlog work and experiences the unexpected wrinkles likely associated with a system-wide introduction of a new special education data system and hearing docketing system, among many others. These staffing transitions and other challenges may once again erode the incremental progress made in the last months of the 2007/08 SY.

## **V. RELATED SERVICES**

In the previous report of the Evaluation Team, we noted that DCPS had identified untimely evaluations, assessments, and IEPs as a principle trigger of HOD requests and non-timely implementation of HOD/SAs during the course of Consent Decree negotiations and in the Consent Decree itself. According to the Consent Decree, “[a]pproximately one-third of all hearing requests involve allegations of untimely assessments and IEPs.” (Consent Decree, §C., p. 9)

For this reason, the *Blackman/Jones* Action Plan attached as Exhibit “A” to the Consent Decree identified performance measure goals for timely assessments and IEPs, including:

- The Action Plan calls for an increase in overall assessment timeliness to 85-95% by June 30, 2008
- The Action Plan calls for 90-100% of students with disabilities to have a current IEP by June 30, 2008.

**Table 2: Timeliness Data Reported for June & July 2008**

	March Reported	June Reported	July Reported
DCPS-IEP	84.48%	88.42%	84.55%
DCPS-Assess	66.75%	72.81%	72.53%
DCPS-ReEval		48.15%	48.15%
Charter IEP		10.45%	10.45%
Charter Assess		28.79%	30.16%
Charter ReEval		5.81%	5.81%
Nonpublic schools IEP	34.33%	43.67%	45.30%
Nonpublic schools Assess		50.98%	50.98%
Nonpublic schools ReEval		7.62%	8.01%

In Table 2 above, we report on the data pertaining to the District’s performance with respect to these measures. The numbers presented are as reported to us. The Evaluation Team has not conducted an audit to verify the accuracy of the numbers.<sup>29</sup>

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<sup>29</sup> In May 2008, in reviewing earlier reports on the Rate of Timeliness for IEPs, Assessments and Reevaluations done for students at DCPS, charter and nonpublic schools, we noted that the calculations excluded “Overdue” items from the timeliness calculations. “Overdue” items were previously defined as those not completed and the only ones counted as “Untimely” were those that were held late. The effect of such exclusion was to overstate consistently the

The data indicates that DCPS has not reached the range of current IEPs contemplated in the Action Plan for DCPS schools, and that charter and nonpublic schools remain far below the target of 90-100% current IEPs.<sup>30</sup> DCPS remains significantly below the target for current assessments, with charters and nonpublic schools lagging much farther behind. The issue of capacity for related services is particularly acute at charter schools. With the large number of students opting for charter schools (21,947), if these schools do not have the capacity to meet the needs of students with IEPs (2,307), they may improperly exclude students with disabilities or having admitted them, fail to meet their educational and related service needs and become a way station to increased placements in nonpublic schools, at great expense to the District. There are signs that this is happening. The low rates of current IEPs, timely assessments and reevaluations are all indicators of a lack of capacity to provide related services. The OSSE will only obtain the capacity to monitor charter school performance in these areas in the coming year with the implementation of the new special education data system in most charter schools. Until then, the completeness, accuracy and reliability of the data provided for charter and nonpublic schools remains an open question.

The fundamental problem with timely access to related services in the IEP process, for assessments and delivery of services required by students, remains, despite attempts by the District to address the shortage of staff and services. The school district contracted with Columbus Educational Services, LLC (“Columbus”) to provide eight teams (with up to 46 qualified Special

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actual timeliness of performance and to understate the magnitude of untimely performance of critical functions. The method of calculation has since been amended to include “Overdue” items in the “Untimely” category and thus in the “Total”, which should result in an accurate performance measurement of timeliness.

<sup>30</sup> We note that the Charter School data through the 2007/08 SY was reported by only a fraction of DC schools and that the nonpublic school data often is not up-to-date because nonpublic specialists have insufficient time to enter data on a timely ongoing basis.

Education Professionals<sup>31</sup>) for the assessment of: children 3-5; children enrolled in Nonpublic schools; and assessment of school based children with overdue assessments. According to the *Blackman/Jones* Action Plan, in year one, the related service intervention teams would focus on completing and ensuring that all assessments are current. The Columbus contract was modified in year 2 to provide that Columbus teams would solely work with students in charter and nonpublic schools, given the enormity of the assessment backlogs in charter and nonpublic schools.<sup>32</sup> But as the data indicate, that goal has not been achieved in either year 1 or 2 due to a combination of factors, including staffing shortages at Columbus, which never hired the number of staff anticipated, inadequate management and oversight of the contract by the District and Columbus' own internal management shortcomings.

In reviewing the data provided by Columbus, we noted that there were several points of unnecessary delays in processing requests for assessments. For example, there were delays of approximately two weeks between the date of a request for an assessment and its assignment to Columbus. There was also an average and inexplicable delay by Columbus of approximately 20 days between the date of an assessment report and its submission to DCPS. The practice of tracking average dates between assignment of cases and completion provides little usable information and masks the cases with long delays while providing no analysis of the reasons for such delays nor identifying actions taken to address the problem.

Aside from the issue of insufficient capacity of related service providers, there is abundant

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<sup>31</sup> According to the Columbus contract in year 1 and Section I.C. of the Action Plan, each team is to include a special education teacher, psychologist, speech language pathologist, master social worker, occupational therapist, and physical therapist. The contract was modified in December 2007 simply to require the services of a total of 36 staff. According to staffing information provided in May 2008 by Columbus, 29 staff were available to provide services, leaving seven vacancies. See also, Consent Decree, ¶51.)

<sup>32</sup> The assessments required for students with disabilities in nonpublic schools most frequently were associated with outstanding HOD/SAs.

evidence that the existing capacity is not being managed well. In our first report, the Evaluation Team highlighted the concern of the lack of accountability of related service providers to the school principals and made a recommendation to address this issue. There has been no action taken on this recommendation. Moreover, there are no effective productivity measures for monitoring the performance of related service providers, whether provided by staff or contractors. Although the Consent Decree required the data tracking of related service delivery and gaps in delivery,<sup>33</sup> the Encore reports produced are inaccurate and virtually unusable for management purposes. As in the 2006/07 SY, Columbus reported that problems with reliable information continue to plague the process of assigning cases to providers (though to a lesser extent), with students either not enrolled at the reported schools or the assessment already having been completed prior to the assignment but not recorded in the information system.<sup>34</sup>

The end result was that when the contract terminated at the close of the school year, there were still 238 cases that had been referred to Columbus which had not been completed, including 171 psychological assessments. Further, in anticipation of the end of the contract, DCPS had ceased making referrals to Columbus since May 5, 2008, allowing another backlog of 573 requests for assessments to develop, including 428 psychologicals.<sup>35</sup> The shortage of related services and difficulty in obtaining timely access to related services also likely played a role in the limited

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<sup>33</sup> See, Consent Decree ¶ 65-66. (“To ensure that related service delivery functions as required by law, the defendants shall establish an effective process to identify related service lapses as soon as possible and to resolve service lapses and individual complaints in an expeditious manner. . . . (b) DCPS will monitor and analyze the data from the ET system, to obtain an early warning on related service lapses and to determine individual staff performance and accountability...”)

<sup>34</sup> While this problem was less pervasive than in the 2007/08 SY, Columbus documented that these student information problems continued to impact the efficient delivery of assessments in multiple cases.

<sup>35</sup> On August 21, 2008, DCPS reported that the number of assessments left uncompleted by Columbus was 632, which had been assigned to new vendors. Of those, 242 had been completed although new requests for assessments were coming in daily. Due to the limitations of time, we have not been able to reconcile these numbers.

success of the Backlog Reduction Plan (“BRP”) in increasing the rate of timely closures of HODs/SAs.

The Backlog Reduction Plan identified the need for related services capacity as critical to its success, and required DCPS and the OSSE to investigate and produce a report on DCPS’ capacity to provide related services and make recommendations for increasing capacity where necessary. While DCPS/OSSE engaged a contractor to perform the study, no report was issued by May 16, 2008 as required. The BRP also authorized Klemm Analysis Group and DCPS to pay for independent evaluations outside the rate schedule as a means of adding capacity, while conducting a study of the adequacy of the rates leading to a revised policy on rates to be issued by May 2008, including a process for updating rates. This authority was rarely exercised, and apparently proved to be either unnecessary or beyond the operational capacity of the BRP staff.

As an alternative to the unsatisfactory contractual arrangement with Columbus, DCPS determined to enter into Blanket Purchase Agreements (“BPA”) with a number of other providers for psychological services. The BPA was issued on June 23, 2008 for services to be provided until September 30, 2008, and seven vendors have been initially selected, although DCPS plans to eventually have between 25-30 vendors available to deliver timely services as needed. By August 8, 2008, DCPS reported that 110 of the unfinished evaluations left by Columbus had been completed by the new contractors. We have no information about the 573 cases that were backlogged and not sent to Columbus starting in May 2008, or any additional cases that may have joined the queue subsequently. Finally, on July 18, 2008, DCPS entered into a new Letter Contract with Columbus to provide related services by attending IEP/MDT meetings where the presence of various clinical professionals or teachers was required over the summer.

One of the intentions of the new contracting process is to change the payment method used



in the Columbus contract from payment for maintenance of capacity and staff to payment for the service delivered based on invoices for completed services.

As this report is being written, DCPS states that it plans to issue a Request for Proposals for additional related service providers for services until November, using the unspent balance of the Columbus contract.

The related services environment is a complex one. In DCPS schools, DCPS retains a cadre of related services professionals who are assigned to the schools. DCPS also contracts with independent vendors for the performance of some related services functions. The Department of Mental Health has its own professional staff assigned to 48 schools. The Department of Health supplies school nurses. There are plans to assign DCPS Wellness Center teams consisting of social workers, psychologists and behavior specialists to 23 schools. The Full Service Schools and the SAM schools will also engage the services of mental health professionals. While each of these initiatives has its own rationale and purpose, the extent of coordination at the point of service delivery in the schools remains an open question. Adding to this fragmented approach to related services, the Backlog Reduction Plan assigned tasks to Dr. Klemm and DCPS to investigate and update rates for independent evaluations. It required DCPS/OSSE to retain a contractor to study the related service environment and issue a report in May 2008. At the same time, DCPS SERT staff were drafting a related services plan. Earlier, the District had contracted with the American Institutes for Research (“AIR”) for a detailed study of the educational system during which related services workloads and staffing were examined. And there are efforts to improve interagency coordination in the delivery of services to multi-system students in schools. In many of these efforts, there seemed to be no clear role or input from the Chief of Related Services, in charge of day-to-day management of related services for DCPS.

Under the best of circumstances, managing related services for DCPS, as well as ensuring the timely delivery of such services at charter and nonpublic schools would be a challenging job. That management job has also just become vacant, joining a score of other critical positions in the senior ranks of the District educational system that are vacant. DCPS is in the process of formulating a related service plan to address the issues of service capacity and accountability. (DCPS – SERT Long-term Related Services Plan – July 2008) Elements of the plan include contracting with some nonpublic schools to authorize them to provide related services directly and bill the District, devising strategies to reduce the number of unnecessary evaluations that are ordered, building capacity through changes in qualifications for some specialists, encouraging local colleges and universities to produce more qualified professionals in needed disciplines, and reducing the timeline for completing assessments to change the culture of untimeliness.

We remain concerned about whether these measures are adequate to address the magnitude of the present need for related services, which is likely to increase with the numbers of changes of placement resulting from school closures, relocations, and the closures of four special education centers. There is also insufficient clarity about the immediate plan for related services past this November.

With all of the ambitious plans for reforming special education and the many different initiatives being undertaken, the timely availability of quality related services is an essential building block and its absence an Achilles heel of the reform effort. As the Backlog Reduction Plan recognized, there was and remains a capacity deficit for related services that needs to be addressed urgently, comprehensively and definitively. The District needs a comprehensive and coherent vision for related services that supports its Expectations for Schools for meeting special education needs of students, that includes its plans for mental health services in schools, and

identifies needed capacity to make the IEP process a more meaningful one. It needs an implementation plan that addresses the nuts and bolts of how such services may be accessed by school personnel as needed, levels of payment that are needed to assure dependable service, and responsibility for managing the diverse network of providers and assuring accountability for productivity.

## **VI. DEFENDANTS' EFFORTS TO CREATE AN ACCURATE AND FUNCTIONAL DATA SYSTEM AND DATA REPORTS**

### ***A. Student Data Systems***

The Consent Decree requires that “defendants will achieve and maintain an accurate and reliable data system that will allow DCPS to track implementation of HODs/SAs, and to identify impediments to timely implementation of HODs/SAs.” (Consent Decree, ¶60). The Evaluation Team’s February 6, 2007 Interim Report documented at length the profound system-wide deficiencies in Encore and the District’s other data systems which undermined the capacity of individual schools or the system at large to properly manage and track the timely implementation of IEPs, assessments, related services, HOD/SAs, student enrollment, or special education hearings. A significant number of the Report’s recommendations addressed data system issues. (Evaluation Team Interim Report Recommendations, Section C.) The Evaluation Team similarly found that the Student Hearing Office’s tracking of hearing timelines through Encore and its own data systems was broken and recommended development of an automated docketing system. (Interim Report, pp. 50-56; Interim Report Recommendations, Section C.) The Defendants’ pilot accuracy audit of Encore data and reports for 125 student files that was conducted in September 2007 pursuant to the Consent Decree requirements (¶62-64) highlighted these and other major deficits in data and student folder completeness, availability, consistency, and accuracy.

Since the late fall of 2007/08 SY, Defendants have moved aggressively to develop a new special education data system as well as a hearing office docketing system designed to provide the data functionality and reliability desperately required. Both systems will be fully rolled out for the first time in the 2008/09 school year.<sup>36</sup> The development of both systems has proceeded in a basically well managed way in compressed time frames. The new Special Education Data System (“SEDS”) will be used by almost all of the DC charter schools in addition to DCPS schools, which should address the significant issues faced by schools in retrieving and updating information about students as they move between charter and public schools. The introduction of any data system on a system wide basis, but particularly one in a school system spread out between hundreds of separate buildings, is fraught with pitfalls and challenges. The success of the SEDS rollout in the schools and users’ experience of its reliability will be critical to creating the groundwork for actual establishment of an accurate data system that can be relied upon for tracking the delivery (and gaps in delivery of) assessments, services, and IEP meetings – gaps which constitute the most elementary causes of due process complaints.

Phase I of the new Special Education Data System will not include a component for tracking HOD/SAs and Due Process Complaints – this instead will be in development this coming year with likely full rollout in the 2009/10 SY. As discussed in Section III *infra*, this delay in part drove DCPS’ decision to develop its own internal web based Quickbase to provide DCPS staff with access to a more functional, user friendly data system for tracking due process complaints, HOD/SAs, and the documents associated with these. Quickbase lacks some of the functionality of a full student data system and cannot interface for tracking student enrollment with the District’s

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<sup>36</sup> OSSE and OCTO meanwhile have also continued to proceed with a five year plan for development of the State Longitudinal Educational Data Warehouse. See, [http://www.osse.dc.gov/seocwp/view,a,1222,q,561228,seoNav\\_GID,1507,seoNav,%7C31195%7C,,asp](http://www.osse.dc.gov/seocwp/view,a,1222,q,561228,seoNav_GID,1507,seoNav,%7C31195%7C,,asp)

STARS data base, SEDS, or the new docketing system. This will mean that for the year to come, we will still see a somewhat patch worked data system for tracking HOD/SA implantation and complaints – for instance, student enrollment data will have to be manually interfaced with Quickbase so as to update each student’s school of enrollment on an ongoing basis. Similarly, as the Evaluation Team has already noted, HOD data reported by Quickbase does not appear to completely correspond with data reported by the hearing office over June and July. Clearly, the greater the inconsistencies in these data sets in the coming year, the less staff or the Evaluation Team will be able to rely on the data. That said, the Evaluation Team notes that both the Hearing Office and DCPS data team appear keenly aware of the need to address and resolve data incongruities as they proceed. Finally, from a pragmatic perspective, the full utility of Quickbase will be curtailed until it is available to and easily useable by DCPS and charter schools for “real time” HOD/SA implementation tracking and accountability.

### ***B. Data Reporting Required under the Consent Decree***

Our Interim Report noted “the school system’s inability to issue the basic, regular reports required by the Decree or even to prepare and circulate a strategy that addresses how such reports may be issued in the future ...” (Interim Report, p. 57). Defendants’ data work group has met and worked on an ongoing basis over the last year to address reporting issues. Any priority this work may have enjoyed disappeared once the District determined it would develop and implement new special education and docketing systems for the upcoming school year.

The end result in regular reporting has been that Defendants have since the second semester distributed regular monthly timeliness reports for IEPs, assessments, re-evaluations, and HOD/SA implementation (Klemm’s reports). The IEP, assessment, and re-evaluation reports of are uncertain accuracy but will be replaced by new reporting from the SEDS system upon its

rollout. No regular reports have been generated or distributed relating to delivery of related services (required by Consent Decree ¶65-66).<sup>37</sup> However, functionality has been developed in the SEDS system to generate reports of related service tracking, assuming appropriate and accurate entry of related service delivery data. Student based data reporting relating to unimplemented HOD/SAs required by the Consent Decree should also be accessible via the new Quickbase. Finally, while Dr. Klemm and the SHO have made some efforts to produce *Blackman* hearing decision timeliness reports in recent months, the SHO has planned for the new docketing system to produce hearing decision timeliness reports in the future.

Accurate and complete data reporting remains an essential vehicle for systemic and personnel accountability as well as Consent Decree monitoring. The rollout of the new systems' reporting functions in the next year will be critical and closely watched and audited as needed.

## **VII. CHARTER SCHOOLS**

### ***A. Charter Schools' Implementation of IEPs, Assessments, and HOD/SAs***

Charter schools have been playing an increasing role in the education of DC students. In 2007-2008 SY, according to 2007/08 SY enrollment data maintained by the OSSE, 81 charter school campuses enrolled 21,947 students including 2,307 students with IEPs.<sup>38</sup> To gain a better understanding of services available to special education students in charter schools and the challenges these schools face in implementation of the Consent Decree, members of the

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<sup>37</sup> Encore Related Service productivity reports were issued for two months. The reports appeared to be neither reliable nor comprehensible.

<sup>38</sup> CharterEnrollmentIEPvsGeneral.xls.

Evaluation Team visited several charter schools,<sup>39</sup> and interviewed principals, special education coordinators, related service providers and special education teachers. We reviewed samples of complaints and HOD/SAs involving students at these schools. We also reviewed the most recent monitoring reports of the Public Charter School Board pertaining to the schools visited, as well as other charter schools. In addition, we interviewed the Charter School Board Deputy Director and program manager responsible for special education; the Executive Director and the Medicaid consultant to the Special Education Cooperative and the Senior Program Advisor for the Student Support Center about services available at charter schools; charter school special education support staff within DCPS as well as relevant staff within the OSSE.

The schools visited included charters which served as their own LEAs as well as charters which elected to have DCPS serve as their LEAs. The schools we visited varied widely from one another. We saw a range of facilities from converted warehouses with limited classroom and office space and limited recreational facilities, to modern, purpose-built schools with many amenities. As could be expected, the schools also represented a range of approaches from college preparatory work and rigorous academics to schools struggling with the demand of rapid growth that taxed their capacities. Some schools like Maya Angelou (Shaw) had a strong, school-based mental health service available to all students while others substantially relied upon DCPS and its contractor, Columbus, for the provision of related services.

We found the following issues impacted students' receipt of assessments and IEP services as well as triggered due process complaints and HOD/SA implementation failures:

1. *Admission of students with IEPs.* Charter schools report that some parents, worried that

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<sup>39</sup> The schools visited included Maya Angelou (Shaw), Meridian PCS, Options PCS, Cesar Chavez (Parkside), Friendship Blow-Pierce, St. Coletta's Special Education PCS, and Paul PCS.

their child may not be admitted to a charter school, withhold information in the admissions process about the student's special education needs and requirements of an existing IEP or HOD. On the other hand, advocates express concern that charter schools, which cannot exclude students on the basis of disability, may use this information to deny admission to such students, especially in an environment where there is high demand for admission to the charter school. Some schools were frank to concede that they would not admit students who required a large number of hours of specialized service (16+) or had specific diagnoses they were not equipped to serve (e.g., mental retardation).

2. *Information about students' IEPs, HODs/SAs.* Pursuant to the ADR agreement, the Defendants have agreed that the OSSE, as the District's designated SEA for IDEA purposes, has ultimate legal responsibility under both federal and District law for ensuring timely hearings and timely implementation of HODs and SAs. (Court Doc. #2036) Due to difficulties with transfer of information between DCPS/OSSE and charter schools, the charters often lack basic information about the students' needs, including whether the student has an IEP or there are obligations flowing from an outstanding HOD/SA. There has been no regular and systematic communication from DCPS/OSSE with charter schools about due process complaints or unimplemented HOD/SAs affecting students enrolled at their schools. At the same time, there is no consistent practice of charter schools reporting back to the OSSE/DCPS about the implementation of the requirements of HOD/SAs. The absence of timely information about the requirements of IEPs and HOD/SAs in some cases results in a student attending a charter school for a substantial period of time without the required services, the need for which may only be discovered later when the student experiences academic or other problems at the school.



3. *Capacity to serve special education students.* At this point, some charter schools, especially single campus schools which are their own LEAs, may have limited capacity to meet the student's needs. Such charters assume that they have no obligation to offer services to those students requiring the most intensive and extensive services – and refer the students for full-time therapeutic placement.<sup>40</sup> This type of referral process typically will ultimately result in placements in non-public settings.

During our visits, we were informed that schools have various thresholds of hours outside the regular classroom that trigger the process of change of placement (e.g. Meridian PCS reported that they can provide up to 15 hours of specialized instruction, while other schools like Friendship Blow Pierce, Options and Cesar Chavez [Parkside] reported they can provide 27+ hours of specialized instruction). If such events occur well into the school year, the available options are limited for alternate placements that can meet the student's needs and are acceptable to the parent. These circumstances often ultimately result in placement in a nonpublic school. When charter schools which have DCPS as their LEA, hold IEP meetings to discuss or recommend a change of placement, it is not the usual practice to invite a representative of DCPS to attend the meeting. There are

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<sup>40</sup> District court case law from the District of Columbia makes clear that those charter schools that have elected to be their own LEAs for IDEA purposes are initially responsible for providing an enrolled child with FAPE unless the “LEA Charter concludes that it cannot serve a child with a disability enrolled in its facility with the funds available to it, . . . appeal[s] to DCPS, in DCPS’s role as the SEA, for assistance . . . [.] DCPS agrees that the LEA Charter cannot serve the student . . . [and] assumes responsibility for the child.” *Idea Pub. Charter Sch. v. Belton*, No. Civ.A. 05-467, 2006 U.S. Dist. LEXIS 13321, \*2 (D.D.C. Mar. 15, 2006) (Collyer, J.) (internal citations omitted) (citing D.C. Mun. Reg. § 5-3019.9; § 5-3019.11). This responsibility includes implementing HODs/SA requirements “unless DCPS has responsibility for implementing the decision appealed from, . . . or assumes responsibility for the student, in its role as SEA, because the LEA Charter cannot serve the student.” *Id.* at \*5 (internal citations omitted); *see also* D.C. Mun. Reg. § 5-3019.13 (stating LEA Charters are “responsible for implementation of all agreements or decisions resulting from mediation and due process hearings involving children enrolled in their school, unless implementation of the agreement or decision is the responsibility of DCPS as a result of any actions or inactions of DCPS while a child had been enrolled at an LEA Charter school or pursuant to federal or local law or regulation.”); D.C. Mun. Reg. § 5-3019.11 (stating that if DCPS agrees that the LEA Charter cannot serve the student, it will assume responsibility for the child).

two DCPS placement specialists and a supervisor responsible for all charter schools. As we have reported previously, the shortage of placement specialists upon whom this responsibility would fall, as well as their large caseloads, would be a barrier to such attendance. The recommendation for change of placement goes to DCPS which seeks to find an appropriate public school placement, or failing that, a placement at a nonpublic school.

For either type of charter school, the process of effecting a change of placement can be a time-consuming one during which, due to the “stay put” requirement of IDEA, the student remains in a charter school that has acknowledged that it can no longer meet the student’s needs. The phenomenon of charter school students being placed in nonpublic schools has prompted DCPS/OSSE to consider the value of a placement review process to ensure that all appropriate less restrictive alternatives are considered. Many charter schools have seen their capacity to properly serve students with disabilities and deal with compliance issues outstripped by the influx of students with special education needs. Some of the larger charters have engaged in thoughtful planning to meet the changing needs of their student body (e.g. Cesar Chavez [Parkside]), have conducted formal assessments of their needs and have identified and planned to meet the staffing and space implications of the changing demand, the imperative to change teaching methods, strengthen the Student Support Team process, and add and integrate mental health and other related services into special education. But such efforts are the exception.

As the data reported in the section on related services indicates (Section V, *supra*), most charter schools are struggling with meeting the requirements of IDEA and the Consent Decree for timely IEPs, assessments and reevaluations. Despite the assignment of

two teams from Columbus to assist the charter schools, due to the problems discussed earlier, the substantial deficits in the provision of timely assessments and maintenance of current IEPs remain a serious problem.

4. *Compensatory education.* A common reason why HOD/SAs involving students at charter schools remain open is the failure to address the issue of compensatory education that is often included in these decisions/settlements. Charter schools express their inability to address the comp ed issue without assistance/guidance from DCPS which is usually not represented at the IEP meetings where such issues are supposed to be addressed and resolved. The failure to resolve the comp ed issue not only keeps an existing HOD/SA open, but may itself be the basis for a subsequent complaint regarding the failure to comply with the HOD/SA, leading to a new cycle.
5. *Medicaid.* Charter schools typically do not bill Medicaid for related services. However, the Special Education Cooperative has an initiative, funded by a grant from the OSSE, to improve this deficit that obviously impacts schools' financial capacity and long term ability to properly support the provision of special education and related services. The charters are being encouraged to enroll as Medicaid providers and to commence billing for Medicaid reimbursement. The Cooperative's projections are that charter schools could gain approximately \$950 per student per year on average.

### ***B. SEA Responsibility for Oversight of Delivery of Special Education Services***

While 60 existing Charter Schools and DCPS function as their own Local Educational Agency and exercise initial responsibility for direct delivery of special education services under IDEA, the OSSE as the State Educational Authority is required under 20 U.S.C. §1412 (a)(11) to

ensure that all LEAs comply with their obligation to provide students with disabilities the delivery of a Free and Appropriate Public Education, as well as comply with all other requirements set forth under IDEA, including hearing officer decisions which adjudicate such requirements. As part of its general supervisory obligations, the OSSE is responsible for monitoring and reporting on LEAs' performance of their legal responsibilities and take prompt corrective action where such performance is found deficient. 20 U.S.C. §1416.

DCPS in its state capacity prior to the 2007/08 SY had maintained a *de minimis* special education monitoring and oversight of charter schools beyond the 17 charter schools that designated the school district as its LEA.<sup>41</sup> However, in the 2006/07 SY, DCPS in its State capacity for the first time focused its monitoring on charter schools. DCPS' historically weak exercise of its state monitoring responsibility<sup>42</sup> was further diminished in the case of charter schools by the preeminent value placed in DC in the last decade on the development of independent charters, unfettered by DCPS entanglement. The OSSE thus inherited a weak, nearly non-functional state monitoring process and a virtually non-existent monitoring process for charter schools. The Public Charter School Board ("PCSB") performed the only regular monitoring of the special education functions of charter schools, however non-substantive that monitoring might have been. For these reasons, the Parties' ADR agreement recognized the OSSE's obligation to develop "a process for evaluating the special education and related services delivered at charter" and other schools. (ADR agreement, ¶16)

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<sup>41</sup> For this group of schools, DCPS provided support and oversight through a team of one to two special education placement specialists.

<sup>42</sup> The United States Department of Education has classified DCPS in its State capacity and now OSSE as a high risk grantee and placed special conditions on the State's receipt of funds for successive years based on the District's failure to monitor, identify and correct LEA noncompliance with the requirements of part B of the IDEA as well as its failure to ensure timely evaluations, to implement due process hearing decisions in a timely manner, and ensure students' placement in the least restrictive environment.

We therefore first examined the special education monitoring of charter schools conducted by the Public Charter School Board to determine if its monitoring had created an adequate foundation to ensure charters' performance of their responsibilities under IDEA and the OSSE's discharge of its duties via reliance on the Board. We obtained from the PCSB copies of all education school reviews that had been performed at charter schools in the 2005/06 and 2006/07 school years as well as any available from the 2007/08 SY. One consultant under contract with the PCSB performs all school reviews on a three year cycle, except where an additional review is recommended by a PCSB program manager due a prior year's findings. Generally, based on record reviews of 10% of the files of special education students, these relatively brief reviews look at paper compliance with core requirements of IDEA rather than addressing any qualitative issues. Several recurring findings appear in the reviews of many of the schools. They typically find evidence of implementation of IEP requirements and delivery of related services; similarly, most IEPs and re-evaluations are found to be current; and parental participation is virtually always present in the development of the IEP. But records of staff qualifications/licensure/certification are not consistently available; evidence of consideration of Extended School Year is frequently missing; for children with Specific Learning Disabilities, evidence of observation conducted in regular classroom by a team member other than regular teacher is rarely present, nor is there the required written report to support the disability determination. Significantly, the school reviews appear neither to seek nor evaluate evidence in connection with outstanding due process complaints or hearing officer decisions involving students attending the charter school.

Although the PCSB monitoring reports are sent to school leadership for improvement purposes, the PCSB does not take substantive follow-up actions to address identified deficiencies other than scheduling an identical monitoring review for the following year. At least through the

winter 2008, the PCSB did not maintain or have access to information regarding the number and nature of due process complaints filed and hearing decisions issued relating to each charter school. Nor was executive staff aware of the ADR agreement or its provisions that pertain to charter schools at the time of our interview. In essence, these issues fell off the PCSB's radar.

Due to its own start-up staffing issues, the OSSE conducted no school monitoring of its own this year, for charter or regular schools. As reported to the US Department of Education, the OSSE also has been largely unable to obtain appropriate evidence of follow-up and remedy in connection with the pro-forma corrective action plans required of the 19 charter schools monitored by DCPS last year and for which non-compliance findings were issued. Charter schools have failed to provide required documentation of follow-up actions, despite being months overdue. The OSSE has recently added several key staff members to its team to develop the State monitoring program, but thus far, this program is clearly in the most fledgling of conditions.<sup>43</sup>

The OSSE had initiated the most initial of communication with the PCSB as of the winter of 2007 regarding collaboration on systemic special education issues affecting special education. Further conversations and collaborative work, however, occurred in the second semester, with the greatest scope of collaboration surrounding the new Special Education Data System in which charter schools participated. As noted in Section IV, *supra*, collaboration with respect to charters' participation in the backlog plan did not materialize. Clearly, the relationship of the OSSE with independent charters carries some turf and political sensitivities, but, as the OSSE has recognized in its communications with the Evaluation Team, concerted action in tandem with the Charter

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<sup>43</sup> Additionally, an OSSE contractor along with various members of OSSE/DCPS staff participated in a pilot Quality Services Review ("QSR") for 24 special education students, conducting an intensive review of the students' overall educational and personal status as well as their receipt of educational and related services. The OSSE is currently reviewing the scope of the QSR it will be capable of implementing in the 2008/09 SY.

School Board must be taken to enable the OSSE to properly discharge its responsibility to ensure charter schools' implementation of student's rights under IDEA, including their FAPE due process rights protected under the *Blackman/Jones* decree.

## **VIII. TIMELY ISSUANCE OF HEARING DECISIONS AND THE OPERATION OF THE STUDENT HEARING OFFICE**

### ***A. Blackman Performance Measures***

The Evaluation Team's February 8, 2007 Interim Report focused on the Defendants' redundant but unreliable processes for tracking the progress of Complaints, continuances, hearing scheduling, and hearing officer decisions as well as the unreliable *Blackman* hearing decision data produced by Encore in conjunction with these processes. (Interim Report, pp 50-56) The Consent Decree (§29) requires that (a) 90% of the requests for hearings are timely adjudicated through the issuance of a final HOD or settlement and that (b) no due process hearing requests are more than 90 days overdue. The parties recognized by the end of the 2006/07 SY that *Blackman* hearing decision data for the 2007/08 SY would continue to be unreliable and incomplete until an appropriate docketing system and continuance tracking (whether or not computerized) were implemented. The Evaluation Team finds that despite Dr. Klemm's and the SHO's efforts to produce data that addresses the first prong of the *Blackman* timeliness standard, this data remains incomplete for the year and insufficiently reliable to provide the basis for a compliance finding for the *Blackman* performance measures.

The actual data counts that Dr. Klemm, OCTO, and the SHO have provided are somewhat inconsistent for the 07/08 SY and only cover the months of January – June, 2008. Table 3 below summarizes the data presented in three different end-of year reports provided by the Defendants. Whichever report is used, the data indicates that the *Blackman* HOD/SA timely issuance standard

was not met. The Defendants presented no data with respect to the second standard regarding the number of cases more open more than 90 days.

**TABLE 3**

	<b>Total HODs issued January – June 2008</b>	<b>% Timely Issued</b>
<b>KLEMM</b>	1,021	77.7%
<b>SHO</b>	996	81.7%
<b>OSSE/OCI<sup>44</sup></b>	1,111	71.3%

A new continuance form, consistent with the provisions of the Consent Decree, was developed in the fall of 2007 and started being implemented in late November 2007. The Student Hearing Office implemented use of the Consent Decree by December 2007, though it did not maintain a specific data tracking system for analysis and reporting of continuances granted pursuant to these new forms, nor did the Quickbase system do so. Accordingly, the half-year of hearing timeliness and extension data reported by Defendants does not consider the information provided in the revised *Blackman/Jones* extension Order.

The parties predicted in their original ADR submissions that compliance results might be adversely affected by DCPS’ systemic waiver of resolution sessions effective February 21, 2008, pending development of an effective complaint resolution process and associated staffing. The waiver decision meant that under the SHO Standard Operation Procedures (“SOP”), all cases

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<sup>44</sup> This data was distributed by the OSSE Office of the Chief Information Officer. Data reported here has been re-calculated to exclude July 2008 data that was included in the report distributed.



would be scheduled according to the expedited 20-day SOP hearing rule.<sup>45</sup> This would result in a sudden surge of scheduled hearings mid-winter. All three sets of data reports reflect that the rates of HOD/SA issuance timeliness wavered from January through June. The January timeliness rate – prior to DCPS’ waiver of the resolution process – was 82.77% according to both the SHO and Klemm reports and 88.7% according to the OSSE/OCI report. The only HOD/SA issuance rate reported that exceeded the 90% standard occurred in June according to Dr. Klemm’s and SHO’s reports, although OSSE/OCI’s report indicated a 44.5% rate for this same month.

### ***B. Docketing System***

The Evaluation Team Interim Report recommended the immediate implementation of a new hearing office docketing system in light of the fundamental hearing tracking deficiencies identified. (Interim Report Recommendations, Section C-2) DCPS action on this recommendation, though acknowledged as a need, stalled until the fall of 2008 when the new OSSE administration launched an RFP process for a vendor for a docketing system. The contract was issued in February 2008 and the system is in its first stage of implementation this summer. The docketing system appears to provide a variety of important functions and reporting capacities that will be important for smooth operation of the Student Hearing Office and scheduling and tracking of hearings. The Evaluation Team is not in the position yet to comment on its actual implementation and efficacy.

### ***C. Professional Management of the SHO and Document Management***

The Evaluation Team also made findings and recommendations in our Interim Report with

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<sup>45</sup> The Student Hearing Office has recently issued notice of its intent to revise this rule and authorize hearings to be held consistent with the IDEA 45 day period for decision issuance, subject to various exceptions where expedited hearings are justified.

respect to the severe inadequacy of the physical facility of the hearing office and record storage and the overall need of the Student Hearing Office (“SHO”) to maintain its operations consistent with professional hearing office standards and the requirements of the Consent Decree. (Interim Report Recommendations, Section C; Consent Decree ¶55)

The SHO moved to the Van Ness Building at the conclusion of the 2007/08 SY. This building offered significantly more hearing rooms and file storage capacity, as required for appropriate conduct of a hearing office handling the volume of cases coming before the SHO. The OSSE has since made a few additional modifications and improvements to the facility.

The most significant material impediment to professional management of the hearing office at the start of the 07/08 SY was the disastrous, chaotic state of hearing office records upon the SHO’s move to the Van Ness facility. The scope of disorganization of files in the basement of the SHO at Van Ness cannot be overstated. Additionally, “current” files were not maintained on an ongoing basis in a form consistent with minimal standards for a legal file. When Defendants performed their data systems accuracy audit in September 2007, only 22 of the 40 student files in the sample could be retrieved and many of those 22 retrieved files did not contain appropriate data and documentation, according to Defendants’ audit findings. (*Blackman Jones Beta Audit Results*, November 2007, p. 22). The Student Hearing Office has undertaken major efforts with the assistance of a documents manager and other staff to bring order to the SHO student hearing files. Although the Evaluation Team has not performed an on-site review of the condition of the files as of the end of the year, counsel for students as well as for DCPS have reported in interviews that file management and availability have vastly improved. Counsel indicated that the main remaining impediment now to proper review of case filings at hearings consists of some hearing officers’ failure to review case files prior to the day of the hearing.

The SHO and the OSSE used the services of two national experts<sup>46</sup> in special education hearings to assist in guiding a variety of their major reform initiatives, including intensive technical assistance and professional development for hearing officers, review and development of recommendations relative to SHO operations and procedures, assistance on development of a new RFP for hearing officers, support for the new docketing system, document management, and other SHO initiatives. This consulting assistance appears to have been instrumental in helping the SHO to move forward significantly in professionalizing its operation.

A range of counsel continue to express concerns regarding substantive as well as scheduling issues involving the Student Hearing Office, including concerns as to: the quality of hearing officers' decisions, the pressure placed on hearing officers and scheduling during use of a 20-day expedited hearing rule for almost all cases; the scheduling and double-booking of hearings with the same counsel; and, hearing officers' continued inability for scheduling or other reasons to use preliminary hearings to manage cases. Additionally, students' counsel consistently have raised concerns regarding a hearing process where DCPS counsel are allowed to ignore their obligation to file answers and five-day disclosures in a significant number of cases as required under IDEA. OGC has experienced staffing fluctuation problems this school year which have compounded SHO scheduling problems, with the number of counsel available for representing DCPS at hearings declining from 8 to 5 during the winter months.

In summary, major progress has clearly been made in professional management of the Student Hearing Office, but significant challenges remain in the provision of a quality, professional hearing process, consistent with standards under IDEA.

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<sup>46</sup> Gail ImObersteg and Lyn Beekman. Additional experts were retained to provide several legal update training sessions, including multiple days of training given by Art Cernosia.

## **IX. CASE MANAGEMENT**

In the first report of the Evaluation Team, we recommended the creation of an effective system of case management program for students with HOD/SAs to monitor and assure the timely implementation of the required actions. We recommended that case managers be assigned to students rather than solely to schools, recognizing the substantial level of movement of students between schools, between regions, and from public to charter or nonpublic schools and back. Case managers must have “ownership” of students on their caseload, wherever they are served.

In the ADR agreement, Defendants agreed to contract for a case management program that would be operational on or before April 1, 2008. The initial budget for the program was established for at least \$3 million on an annual basis. The Scope of Work developed for the contract anticipated the hiring of 30 case managers, plus supervisors at a ratio of 1:6 and administrative and support staff. With planned initial average caseloads of 15, and not to exceed 20, the capacity of the program was anticipated to be 450-500 students in the first year.

Unlike many other ADR initiatives, work on this project actually began in early Spring 2007, in response to the Evaluation Team Report and well before the formal ADR agreement. Responsibility for operating the program was lodged with the OSSE, and pursuant to the ADR Agreement, the District retained two experienced and highly qualified consultants, Narell Joyner and Michael Turkeltaub, to help guide the implementation of the program. As a result of these efforts, the District was able to achieve the goal of entering into a contract with First Home Care for operation of the case management program. In turn, First Home Care was able to hire and begin training a staff of case managers and supervisors, so that the program was operational by April 1, 2008. Of the 30 case managers hired, six were parents of students with disabilities.

While the pool of students who could benefit from case management was believed to be

large, the parties agreed that the initial target should be children with multiple unimplemented HODs, multi-system children and children at risk of placement in non-public schools. The parties agreed that a process that allows SECs and MDTs to nominate children for the case management program would not only help target this resource but would also empower these school personnel and help obtain “buy-in” for the program.

With the program commencing operation close to the end of the school year, this was seen as an opportunity to gain experience for the upcoming school year while working through operational issues that were anticipated to arise. In launching the case management program, the parties agreed upon an initial focus on a cluster of schools in Wards 5, 7 and 8 and to begin working on issues of special education compliance more generally, as a strategy to reduce complaints and HOD/SAs, rather than working solely on unimplemented HOD/SAs. Office space for case managers was located in two schools, Kelly Miller Middle School and Hart Middle School. Case managers were assigned initially to students at two middle schools, Kelly Miller MS and Hart MS; five Elementary schools, Burrville ES, Aiton ES, Simon ES, Beers ES and Hendley ES; and to the Hamilton ED Center.

As anticipated, the case management program experienced a number of “growing pains.” Some of these related to the overall conditions of the schools in which case managers were housed, including problems with infrastructure, adequate space, privacy, access to telephone lines, computers and the Internet. Others related to stresses the schools were experiencing including the lack of adequate staff and special education teachers, IEP services, condition of the records, and the environment of uncertainty created by prospective school closures, layoffs and principal tenure. The new program faced the challenge of defining and communicating its role within the school system, while maintaining cooperative working relationships with principals and Special

Education Coordinators who may have had differing expectations and demands of the case managers. Case managers also have had to walk a tightrope between school personnel, who view them as an extension of the school, and parents and students who expect them to be their advocate for services. Navigating these currents led the program to rely more heavily than originally anticipated on case referrals from SECs in an attempt to build working relationships. Some of these students or their attorneys declined services from case managers. More basically, the schools selected for the launch of the program did not have many students with HOD/SAs. Therefore, SECs also referred students with IEPs and who had complaints that had not resulted in HOD/SAs but who were on a track out of the school. In some cases, SECs referred students who were having problems in school or issues with special education compliance which would predictably lead to a due process complaint, although none had been filed. As a result of these factors, in the initial assignments of students to the case manager caseload, only 25-30% were students with HOD/SAs but all were reported to be experiencing difficulties with special education.

Recently, the program has been expanded to two nonpublic schools, Sunrise Academy and High Road schools (all six DC campuses). Ten case managers with a capacity for 150 cases have been assigned with a focus on cases with open HOD/SAs. In addition, case managers have been assigned to a few students relocated from the Judge Rotenberg Center in Massachusetts to local facilities at Youth In Transition, Coastal Harbor RTC, Philips day schools, and Keystone Newport News. The current caseload stands at 275.

The expansion of the program to Nonpublic schools creates a need and an opportunity to coordinate with the work of the Placement Specialists (8 currently) who have caseloads of 250-300 apiece. An effective working relationship could strengthen the case manager's role in facilitating the implementation of HOD/SAs and the requirements of students' IEPs, although it

will not obviate the need for DCPS to hire adequate staff so that Placement Specialists have manageable workloads. Case managers have met with the Placement Specialists assigned to these schools, and are beginning to follow-up on cases with HOD/SAs. Also, currently under consideration is a plan to expand the program to charter schools which have students with multiple outstanding HOD/SAs.

Due to the relative newness of the program and the short span of the school year during which it was operational, there is not a substantial body of work to evaluate. Anecdotal reports indicate that case managers experienced many of the same difficulties that members of the Evaluation Team previously faced in attempting to track down students and make contact with families. In some cases, members of the private bar have refused to permit their clients to be served by the case managers. These types of problems reportedly caused 125 students initially assigned a case manager to be dropped from the program.

Due to the relatively small number of students with HOD/SAs assigned to the caseload, there is no data to indicate the level of case manager success in closing HOD/SAs. Case managers are identifying students with missing evaluations, and related services prescribed on their IEPs that were unmet in whole or in part. In these cases, case managers assist in gaining access to the needed services. They report that the largest unmet need experienced so far is for speech and language services, which are in short supply in the District. However, they also report that the process of accessing such services through DCPS has become progressively smoother. For all the students on the case management caseload, there was only one complaint filed since April, and the case manager facilitated settlement. To date, case managers have referred about half the cohort to community mental health services under the Medicaid waiver. They also report good success helping students get summer jobs.

The real test for the program will be in the coming weeks and months with the start of the new school year, as students move to new schools, IEPs change and there are changes in personnel at the schools. As the program focuses more sharply on its original target of students with HOD/SAs and students in nonpublic and perhaps charter schools, their work is likely to become far more demanding and their results more measurable.

## **X. MISCELLANEOUS**

1. *Parent Center.* Paragraphs 18 & 19 of the ADR Agreement required the Defendants to contract with an independent agency by February 1, 2008 to implement the provisions of paragraphs 67-69 of the Decree and establish a Parent Center to serve all students and their families, starting April 1, 2008. In accordance with this agreement, Defendants entered into an agreement with Advocates for Justice and Education, Inc. for the operation of the Parent Center. The contract requires the AJE to provide parent support & training, including early intervention and student support, and educational advocacy and direct services. The contract was finally signed in mid-May 2008, providing insufficient time to report on any significant accomplishments in the current year.

In the first Quarterly Report submitted by AJE for the period May-July 2008, it reports having hired most of the staff positions authorized by the contract, with 4.75 FTEs remaining to be filled. The Parent Center reportedly opened 75 cases over this period, with the number of cases increasing each month. Cases dealt with problems in categories such as Suspected Disability, Requests for Evaluation, Placement, Discipline, Transportation, and IEP development and/or implementation. In addition, they report having substantial walk-ins and telephone contacts. A number of community training



sessions were offered over the period in various aspects of the special education process, and were attended by 253 participants.

2. *Compensatory Education.* Recognizing the shortcoming of previous efforts to notify class members of their eligibility for compensatory awards as required by paragraph 79 of Consent Decree, the ADR Agreement required the Defendants to make a new and more effective effort to reach class members through direct mailing and additional outreach efforts calculated to provide actual notice of the availability of a simplified menu of awards. Defendants secured the services of a contractor to perform the mailing and outreach function. They report that between May 27 and 29, 2008 approximately 4,965 award offers were mailed to eligible class members and as of July 22, 2008, 1,080 new orders have been received. In addition, during the period July 19-20, 2008, a pick-up was held at Best Buy for previously unclaimed orders and the approximately 120 orders resulting from the test mailing. Paragraph 51 of the ADR Agreement requires that by March 1, 2008, “defendants, in collaboration with plaintiffs, will develop and implement a written policy that identifies the process and criteria that DCPS will itself use to award compensatory education when related services are not adequately provided. The process, which will be tied to the IEP process, will involve parents and respect their views.” Such a policy was promulgated and issued on July 9, 2008.
3. *Schoolwide Application Model (“SAM”) Schools and Full Service Schools.* These initiatives identified in the ADR agreement are scheduled to be implemented in the coming school year. The Defendants, with the assistance of their contractors, have been engaged in substantial preparatory work, including hiring of the necessary staff and providing training

in anticipation of the opening of schools. We will report on these projects in our next report.

4. *Other.* There are several other provisions of the ADR agreement on which there has been no notable progress to report including the initiative to reduce private placements (paras. 39-43), contract schools (paras. 44-45), development of a state complaint process (paras. 56-58) and developing a statement on diligent efforts (para.20). In other instances, initial plans and strategies have been altered in the process of implementation. For example, the Defendants abandoned plans to hire 10 Resolution Specialists (para. 59, Attachment D) to conduct resolution sessions. Instead, as reported in the Backlog Reduction section of this report, the Defendants entered a blanket waiver of resolution sessions pending efforts to make such sessions more meaningful methods of resolving due process complaints.

## **XI. CONCLUSIONS**

We have no doubt about the commitment of the Defendants to achieving compliance with the Consent Decree. They have shown themselves willing to test new approaches to remedying long-standing problems and have developed a constructive working relationship with Plaintiffs' counsel. As a result, the District has invested substantial resources to bring to fruition the many initiatives undertaken to remedy the underlying problems with special education in its schools, which manifest themselves in the due process complaints which eventually resulted in this Consent Decree. The Defendants have recruited and assigned talented, passionate and hard-working staff and charged them with a broad set of responsibilities, partially described in this report.

As discussed in this report, there has been notable progress in several areas including the development of a data and docketing system, improved conditions at the Student Hearing Office,

promising early signs in preparing for the launch of the pilot SAM schools and Full Service schools, and the commencement of a case management program on time. Yet, the key measures of compliance with the Consent Decree described above reveal that the Defendants are far from making the amount of progress they had anticipated and that is required.

It is clear that creative and ambitious plans, talented staff, and new resources are not enough. The tasks the District has undertaken through the OSSE and DCPS are massive and involve actions at numerous levels within the respective agencies, require actions at dozens of schools operated by DCPS, charters and nonpublics, and depend critically upon the efforts of personnel not only at these locations but at a host of others including contracted related services providers, case managers, and independent hearing officers. They are also complex and inter-related. A deficit in one area can and does ripple through many others, as has been described with respect to related services. In the areas in which the Defendants have not made adequate progress, the underlying cause is usually a combination of a failure to adequately anticipate the need for resources and assign them, confusing lines of authority and responsibility, a lack of clarity and focus about the tasks to be performed, and inadequate regular monitoring of progress, identification of barriers to achieving outcomes and prompt remedial action to put the effort on the right course.

In the course of our monitoring and evaluation activities, we have found that, at the level of service delivery, the Defendants' wide-ranging plans and their relationships to one another are not well understood by all relevant staff or integrated. The school system and all stakeholders would benefit from a clear and succinct articulation of a vision for a reformed education system, and especially the actual reform plan for special education that the District has undertaken.

## **XII. RECOMMENDATIONS**

**1.     *Implementation Plan.*** (a) Achieving compliance with the goals of the Consent Decree (and implementing the ADR projects as a means of doing so) requires a coherent and lucid plan of implementation that addresses the nuts and bolts of how the tasks will be prioritized to transform that vision into reality. We recommend that the Chancellor and Superintendent adopt an Implementation Plan which makes a realistic assessment and commitment of the resources needed to accomplish specific tasks or achieve specific outcomes required by the Consent Decree and in the ADR Agreement, provides unambiguous assignment of responsibility *and* authority, creates periodic benchmarks to assess progress and prompt correction if they are not achieved, and has the attention of senior management. Senior managers in DCPS and the OSSE who are responsible for the implementation of special education reforms, including the Chancellor and Superintendent, should not only insist on accountability but hold regular reviews of progress against the benchmarks.

(b) The Plan must address the role and responsibilities of principals for special education in the schools, and the resources that are needed and available to meet their obligations, including Special Education Coordinators, clerical and administrative support, professional development and staffing required to furnish an appropriate continuum of services, staffing and oversight required for compliance management, and timely and reliable access to quality related services. Principals and Special Education Coordinators must be provided access to up-to-date information on the status of due process complaints, and HOD/SAs involving students at their schools.

**2.     *Related Services.*** There is an urgent need to address related service capacity within the educational system. The absence of timely and quality related services and assessments is one of the primary elements in due process complaints and affects the ability to timely implement

HODs/SAs. As this report is being written, there is no clear operational plan for the provision of related services past November of the current school year. As reported above, the school system is entering this school year with an enormous backlog of assessments left over from the previous year and an uncertain capacity to meet current demand. Without an adequate, dependable and easily accessible resource for related services, the school system will likely dig itself into a hole once again in the first school semester and the modest progress of the Backlog Reduction Plan will be undone. We recommend that the an implementation plan referenced above specifically address for related services the operational details of how such services may be accessed by school personnel, needed, levels of payment that are needed to assure dependable service, and responsibility for managing the diverse network of providers and assuring accountability for productivity.

**3.     *Data integrity.*** The concerns raised earlier in this report regarding improper administrative closures must be addressed in a meeting between the Defendants and the Evaluation Team to explain the decision-making and review process leading to these closures. As already expressed to the parties, the Evaluation Team notes our concerns that Defendants have yet to produce a solid plan for the 2008/09 SY for (1) how they will execute and verify case closures on a credible, reliable basis to ensure their consistency with legal standards and the provisions of the Decree; and (2) how (and who) will produce *Blackman/Jones* implementation data reports for the Court.

**4.     *Charter Schools.*** As an ever growing percentage of students with disabilities attend charter schools, it is important that the State (OSSE) and school district tackle with the Public Charter School Board (PCSB) the significant holes, inconsistencies, and oddities that characterize charter schools' delivery of special education services. We have previously made detailed

recommendations to address the issues reported above.<sup>47</sup> Three recommendations are among the most pressing.

- (a) The OSSE and the PCSB need to devote concerted effort toward coordination of their efforts to ensure effective accountability for special education at charter schools. Neither entity currently is monitoring charter schools' delivery of special education services in a manner that meets IDEA standards as determined by OSEP. Given the independent but public status of charter schools, it is particularly important to establish standards that all charter schools are apprised of on a timely basis for planning and accountability purposes.
- (b) Data available to the OSSE regarding due process complaints and hearing decisions needs to be provided to the PCSB and charter schools on a real time basis. Similarly, mechanisms must be established to ensure that charter schools provide the OSSE and DCPS with timely relevant information regarding implementation of hearing officer decisions. The OSSE/DCPS should develop a plan with charter schools to address HOD/SA implementation within the framework of the broader implementation plan.
- (c) The OSSE, DCPS, and the Charter Board should meet with charter school representatives and consider options of pooled charter school resources that would provide an opportunity for a greater continuum of services without referral of students to outside placements.

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<sup>47</sup> Evaluation Team Memo dated May 21, 2008, distributed to parties' counsel and staff.