

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

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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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**REPORT OF THE EVALUATION TEAM  
FOR THE 2008/09 SCHOOL YEAR**

**Submitted by:**

Amy Totenberg & Clarence J. Sundram

Court Evaluation Team

Filed: September 25, 2009

By: Amy Totenberg, Monitor

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## **I. INTRODUCTION**

### **A. Overview**

Pursuant to the monitoring and evaluation provisions of the Consent Decree of August 24, 2006 (Docket # 1856), the Evaluation Team files this monitoring report covering the District of Columbia's implementation of the Consent Decree in the 2008/09 school year ("SY").

The 2008/09 SY was the first school year since the Consent Decree was approved in August 2006 that the District of Columbia<sup>1</sup> ("DC") and the District of Columbia Public Schools ("DCPS") used the whole school year to engage in constructive, focused work designed to meet the express objectives of the Consent Decree. In both school years 2006/07 and 2007/08, the Evaluation team found that at least half of the school year had passed before the District concentrated on implementation of targeted tasks and strategies to begin to tackle the formidable gaps between DC's record of performance and its compliance with the Consent Decree and federal special education law.

Both OSSE and DCPS devoted far greater resources to the nuts and bolts effectuation of the Consent Decree's requirements as well as new special education initiatives in the 2008/09 SY. District management oversight of development and coordinated implementation of plans for achieving compliance with the Decree and corresponding provisions of the Individuals with Disabilities Education Act ("IDEA") also improved through the 2008/09SY. This progress was

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<sup>1</sup> In the context of this case, the District of Columbia ("DC" or "the District") 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 statutory oversight role of the Office of the State Superintendent of Education ("OSSE").

clearly made evident in status hearings held by the Court in February, April, and June 2009. It is also reflected in the District's marked improvement in its reported annual rate of implementation of the critical compliance standards set forth in Consent Decree paragraphs 29, 41, and 42 (timeliness measures for issuance of Hearing Officer Decisions and Settlement Agreements<sup>2</sup> and for implementation of such Decisions and Settlements). The Student Hearing Office ("SHO") appears to be approaching, though not yet meeting, the Decree's requisite standard for 90% timely adjudications, albeit for a truncated part of the school year.<sup>3</sup> The rate of timely implementation of HOD/SAs, as reported by DC, increased from approximately 33.9% in June 30, 2008 to 60% in June 30, 2009, though this remains 20 percentage points below the Decree's June 30, 2009 standard of 80% timely implementation. The cumulative rate of timely HOD/SA implementation compliance over the period March 1, 2006 – June 30, 2009 period falls in the range of 36% to 43%, depending on whether cases without express due dates are included and considered timely implemented.

The Evaluation Team affirmatively recognizes the leap forward in the District's marshalling of DCPS central office and OSSE's core special education staff management resources. However, we also have found serious continuing major management gaps at local school and higher management levels, legal compliance deficits, and substantive program deficiencies in special education and related services delivery that directly impact the District's capacity to meet the requirements of the Consent Decree and the Individuals with Disabilities

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<sup>2</sup> Hearing Officer Decisions and Settlement Agreements are also referred to herein as "HOD/SAs."

<sup>3</sup> OSSE has reported a 90.33% compliance rate for timely HOD/SA decision issuances for the period starting August 11, 2008 when due process complaints first started being entered into the docketing system. However, as discussed further in Section VIII herein, the Evaluation Team finds that this number is somewhat overstated and the eleven month period reported on is more truncated than appears at first glance.

Education Act (“IDEA”). The significance of the challenges that remain before the District, as well as the vulnerability to reversal of this year’s institutional progress, should not be understated.

The requirements of the Consent Decree are deeply rooted in fundamental mandates of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., including: requirements for the timely development and actual delivery of annual, tailored Individualized Education Programs (“IEPs”) with appropriate consideration of evaluations and each student’s level of academic performance and specific strengths and needs;<sup>4</sup> provision of timely evaluations and reevaluations;<sup>5</sup> establishment and operation of due process complaint and hearing procedures that adhere to specific federal requirements;<sup>6</sup> and timely implementation of binding due process hearing decisions and agreements. A host of exacting federal law timeline, procedural, and substantive requirements surround these obligations. Due process complaints in the District of Columbia typically raise basic legal compliance issues under IDEA with respect to evaluations and the development of appropriate IEPs, claims of the District’s failure to implement earlier HOD/SAs, and claims of the denial of a Free and Appropriate Public Education (“FAPE”) associated with the above legal breaches or schools’ failure to implement required IEP services and provide adequate educational services. The District’s capacity to

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<sup>4</sup> Individualized Educational programs include provisions for specialized instruction, related services (by counselors, speech and language therapists, occupational therapists, etc. as applicable), supplementary aids and services, accommodations, program modifications as needed, positive behavior supports, and transition services to address the post-secondary needs and goals for students 16 years or older with respect to education, training, employment, and independent living skills. The IEP must also address the student’s appropriate educational placement and the extent to which the student will be served inside or outside of the general education classroom. 20 U.S.C. § 1414(d).

<sup>5</sup> 20 U.S.C. § 1414 (a)-(c).

<sup>6</sup> 20 U.S.C. § 1415.

achieve and durably sustain compliance with the Consent Decree's central requirements and their parallel requirements under IDEA is tied to the District's capacity to implement management accountability changes, functional data tracking systems, and substantive changes in schools' delivery of special education services.<sup>7</sup> This Report reviews and assesses:

1. the status of Defendants' attainment of the Consent Decree's performance measures and associated underlying IDEA legal requirements;<sup>8</sup>
2. the District's progress in implementing a host of reforms in management, oversight, and delivery of special education and related services at DCPS, charter and nonpublic schools essential to both immediate and long term change in schools' capacity to meet the needs of students with disabilities as well as their obligations under law;<sup>9</sup>
3. the extent to which the Defendants' student data systems and the student hearing office docketing system meet the Consent Decree requirement to maintain an accurate, functional data system with a reliable reporting capacity;<sup>10</sup>
4. whether the Student Hearing Office is functioning consistent with the standards set forth under the Consent Decree;<sup>11</sup>

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<sup>7</sup> In this same vein, DCPS' 2008/09 self assessment report submitted to OSSE recognizes DCPS' need for "compliance with IDEA through consistent and excellent implementation of service delivery" and that "compliance with IDEA and other obligations to students with disabilities will require full implementation of the Special Education Data System" ("SEDS"). (DCPS Self Assessment Findings and Action Plan, pp. 1-2).

<sup>8</sup> Consent Decree ¶ 29,41, 42; IEP, evaluation and reevaluation rate timeliness, as referenced in the Consent Decree (pages 9-10, 24) and Attachment A to the Consent Decree; 20 U.S.C. § 1414-1415.

<sup>9</sup> Consent Decree, pp. 8-10; ¶65, 70, 71, 72, Attachment A to Decree.

<sup>10</sup> Consent Decree ¶60, 62-64.

<sup>11</sup> Consent Decree ¶ 55.

5. the implementation of other legally required obligations under the Consent Decree, including the delivery of compensatory services to class members, operation of a special education parent center, and timely reporting;<sup>12</sup> and
6. the obstacles that impede the District's sustained progress in achievement of compliance with the Consent Decree

This Report revisits critical elements of the Consent Decree reviewed by the Evaluation Team's August 2008 and February 2007 Reports (Court Docs. # 2117, 2118 and 1934). It also reports on implementation of particular provisions of the parties' ADR agreement of December 10, 2007 (Court Doc. #2032) that bear immediate relevance to the school district's capacity to meet the substantive requirements and goals of the Consent Decree.

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

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

1. Regular ongoing meetings, phone and in-person interviews, and email exchanges with a broad range of DCPS and the OSSE staff<sup>13</sup> throughout the school year relating to a wide range of issues touching their management of operations and initiatives in the realm of special education and the Consent Decree.

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<sup>12</sup> Consent Decree ¶¶67-69; ¶¶79-82; ¶¶117-125.

<sup>13</sup> Meetings included, among others, DCPS and the OSSE special education staff, the Chancellor and various members of her cabinet, the State Superintendent and various members of OSSE staff with responsibility for special education, school based staff, the Student Hearing Office staff and its consultants and hearing officers, and DC information technology staff and consultants.

2. Ongoing review and analysis of the school district's new data bases developed to track HOD/SA implementation, related services, compensatory services, and the Student Hearing Office ("SHO") docketing system.
3. Ongoing meetings and interviews with the lead consultants with the DC Office of Chief Technology Officer and the Student Hearing Office regarding the District's launch of new data systems.
4. An audit of HOD administrative closures performed on behalf of the Evaluation Team by Dr. Deborah Carran, Associate Professor, Johns Hopkins University.
5. An audit of a sample of SHO cases involving continuances in excess of 20 days.
6. Interviews with lead staff representatives of the Public Charter School Board.
7. Visits to twenty-eight schools<sup>14</sup> (including DCPS, charter, and nonpublic schools) where interviews were conducted with multiple staff members, and reviews were made of due process complaints, HOD/SAs, student files, school staff's special education data base access and usage, and school management reports.
8. Communications with nonpublic schools' representatives.
9. Meetings with Defendants' staff and consultants and participation in web-based conferences with respect to the operation and issues presented by currently functioning or planned data systems and programs.

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<sup>14</sup> School site visits were made 17 DCPS schools, including 5 elementary schools (Garfield, Miner, Emery, Stanton, and Stuart Hobson), 8 middle schools (Kramer, Kelly Miller, Johnson Jr., Shaw at Garnet-Patterson, Eliot-Hine, Sousa, MacFarland, and Hart), and 4 high schools (Ballou, Transition Academy at Shadd, Spingarn, and Cardozo). Additionally visits were made to: 3 nonpublic schools (Accotink, High Roads Academy, Rock Creek Academy); and 8 charter schools (Friendship Academy – Blow Pierce Campus; Young America Works; School for Arts Learning; Center City – Brightwood Campus; Howard Road Academy; Hospitality PCS; IDEAL Academy, Cesar Chavez (Capitol Hill Campus). These school visits typically lasted at least a half day, during which time extensive interviews were conducted and school and student records were reviewed.

10. Meetings and interviews with Defendants' contractors for provision of educational, related services, and technology services.
11. Ongoing meetings, interviews, and communications with Plaintiffs' class counsel as well as miscellaneous individual plaintiff's attorneys and attorneys within the DCPS Office of General Counsel ("OGC").
12. Meetings and interviews with Defendants' consultants as well as relevant school-based staff and contractual staff for all ADR and Consent Decree initiatives.

## **II. STATUS OF DEFENDANTS' ACHIEVEMENT OF CONSENT DECREE PERFORMANCE BENCHMARKS FOR TIMELY IMPLEMENTATION OF HOD/SAs**

The Defendants reported data for the 2008/09 SY as of June 30, 2009 which reflects that the District has made significant progress in moving toward achievement of the Consent Decree's quantitative compliance standards for timely implementation of HOD/SAs. However, this data also clearly demonstrates that the District is not in compliance with either prong of ¶42c, as Consent Decree ¶43 requires strict and complete compliance with the specified Decree standards.<sup>15</sup>

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<sup>15</sup> Consent Decree ¶43 provides: "The Defendants shall achieve a 100 percent compliance level with the obligations set forth in paragraphs 41 & 42 above. Defendants hereby waive any right they may otherwise have to argue that they are in "substantial compliance" with the obligations set forth in paragraphs 41 & 42 above if they are close to meeting the obligations but have not absolutely met them."

**A. ¶41: By June 30, 2007 the Defendants shall eliminate the Jones initial backlog by implementing and/or closing all of the initial backlog.**

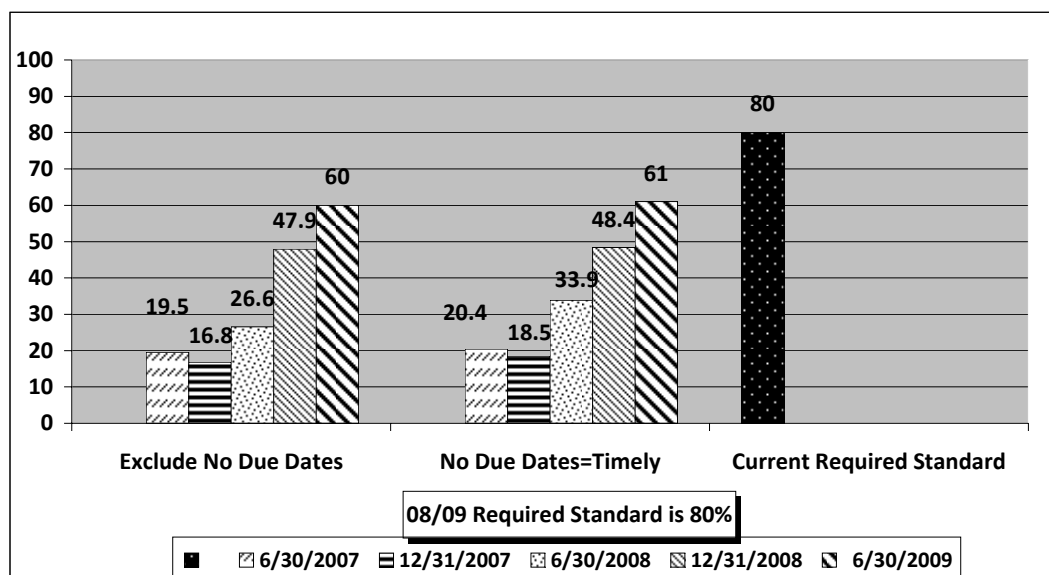
As of June 30, 2008, one case with an HOD dated April 24, 2004 remained in the “initial backlog” – that is, the large backlog of HOD/SA cases that pre-dated March 1, 2006 that the District remained responsible for implementing as of August 24, 2006 when the Consent Decree was approved. This case was administratively closed in August 2008 but recently re-opened by DCPS for further review.

**B. ¶42c: By June 30, 2009, (i) no case in the subsequent backlog will be more than 120 days overdue and (ii) 80% of the HOD/SAs issued on or after July 1, 2007 will be timely implemented (i.e., not “overdue”).**

The Defendants have reported in Exhibit 1 the following HOD/SA data as of June 30, 2009 with respect to the status of HOD/SA implementation:

1. Number of HOD/SA cases more than 120 days overdue: 16.
2. Rate of timely closure if HOD/SAs with no due dates and timeliness unknown are eliminated from the calculation: 60%.
3. Rate of Timely Closure for 08/09 SY if HOD/SAs without due dates and timeliness unknown are included and considered timely closed: 61%.

Figure 1 below shows while significant progress was made in the 2008/09 SY in timely implementation of cases compared to the preceding periods since execution of the Consent Decree, the District’s current implementation rate still falls approximately 20 percentage points lower than the standard required pursuant to ¶42c of the Decree.

**Figure 1: Annual Timeliness Measures of HOD/SA Closures**

The timeliness rate reported reflects the implementation of HOD/SAs issued in the period starting July 1st of each relevant school year identified. The annual (or partial annual) timeliness rate does not represent a cumulative timely implementation data for HODs or SAs that may have been issued in earlier years and the current year. Similarly, the annual (or partial) timeliness rate does not reflect data for HOD/SAs issued in earlier school years but implemented in the current school year. For this reason, the Defendants update HOD/SA data reported for earlier years in their monthly compliance reports, to add data for HOD/SAs originating in earlier years but implemented in the instant year. Thus, Defendants' June 30, 2009 compliance report, Exhibit 1, reports that "the reporting period 2 [2007/08 SY] cumulative timeliness, when updated with 2008/09 SY results, is 37% with 1,715 of 1,723 (99%) cases closed as of June 30, 2009 as compared to 26.6% cumulative timeliness with 769 of 1,733 (44%) cases closed as of June 30, 2008." By comparison, in the 2008/09 SY, 969 of 1,182 HOD/SAs

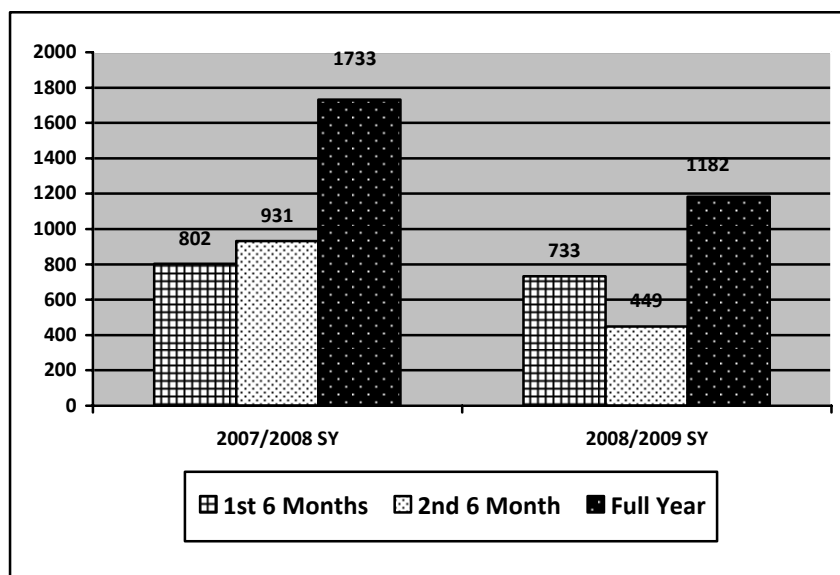
issued in the school year were implemented (both on a timely and untimely basis) and an additional 29 2008/09 HOD/SA cases were administratively closed.<sup>16</sup> Thus, the Defendants' Report provides closure data on approximately 84% of the HOD/SA cases issued in the 2008/09 SY. This means that 40% more cases issued in the current year were closed within the same school year compared to the previous year, confirming the increased capacity of the DCPS' backlog reduction team to tackle the implementation of new HOD/SA cases in the current school year.<sup>17</sup> Nevertheless, approximately 40% of cases issued this year were still closed on an untimely basis.

A significant development reflected in Defendants' compliance data reporting is the marked decline in the volume of due process complaints filed and HOD/SAs issued during the 2008/09 SY, in particular in the latter half of the school year. A total of 1,182 substantive HOD/SA orders (final orders or agreements containing relief or remedy provisions) were issued in the 2008/09 SY as compared to 1,733 in the 2007/08 SY. In the first six month period of the 2008/09 SY, a total of 719 HOD/SAs were issued; in the latter half of the school year, 462 cases were issued. By comparison, in the 2007/08 school year, 805 HOD/SAs were issued in the first half of the year and 928 cases in the second half of the year. (Source: Defendants' 6/30/09 Compliance Reports for 2008SY and 2009 SY)

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<sup>16</sup> According to the Defendants' June 3, 2009 Compliance Report (Exhibit 1), 185 of the cases issued in 2008/09 SY cases were outstanding as of June 30, 2009. Decisions and settlement agreements issued in the last 6 weeks of the school year, naturally, are the most likely cases to be implemented in the following school year and therefore not covered in the June 30, 2009 report.

<sup>17</sup> We note, though, that this improvement (229 additional case closures) is somewhat more modest than it facially appears. As discussed further in Section III, the volume of due process complaints and HOD/SAs decreased this year while DCPS expanded its staff handling case management and closures, enabling their greater focus on smaller caseloads as the year proceeded.

**Figure 2: Change in the Volume of HOD/SAs Issued 2007/08 – 2008/09 SY**

This decline in the volume of due process complaints and HOD/SAs (mirrored in data reported by the Student Hearing Office) has clearly positively impacted the District's capacity to manage and implement cases. As discussed further in Section III of this report, the permanence and causes of this volume decline are open to different interpretations and explanations.

Exhibit 1 reflects that 29 of the 2008/09 HOD/SA cases were closed pursuant to the parties' agreed upon administrative protocols for temporarily or permanently closing cases where circumstances preclude moving forward in the case due to reasons such as the parent/guardian not providing a required independent evaluation or a student's residency change to outside the district. (The Protocols are attached to Exhibit 3, the Report of Professor Deborah Carran.).

Defendants report that 185 of the HOD/SA cases issued in 2008/09 remain outstanding, of which 42 are identified as overdue less than 120 days (past timelines) and 9 are identified as overdue more than 120 days. A total of 16 cases – covering all HOD/SAs issued from March 1,

2006 forward -- were reported as open and overdue more than 120 days. (Exhibit 1) Questions relating to the verification of this total of 16 cases reported are discussed in Section C. below. Whether or not somewhat understated, the volume of cases outstanding in violation of the standard set forth by Consent Decree ¶42a(i) has clearly diminished significantly. By comparison, at the conclusion of the 2007/08 SY, 411 cases were reported as open and overdue beyond the applicable 150 days standard for the 2007/08 SY.

A substantial number of older cases issued in earlier school years and still lingering unimplemented were administratively closed in the 2008/09 SY. Per Exhibit 1, a total of 280 cases issued in the period March 1, 2006 – June 30, 2009 have now been administrative closed.<sup>18</sup> According to DC data provided to the Evaluation Team, 261 of these administrative case closures, covering cases issues from March 1, 2006 forward, were effectuated in the 2008/09 SY. Two hundred thirty-two (232) of this group of 261 cases administratively closed this year stemmed from HOD/SAs issued in the period March 1, 2006 – June 30, 2008. The nature of these administrative closure cases and the extent of their conformity with the provisions of the Consent Decree and the parties' agreed administrative case closure protocols is further discussed in Section C. below. The volume of administrative closures of cases stretching back to 2006 completed in the 2008/09 SY both points out the increased efficacy of the backlog reduction effort this year and the sad reality regarding the impact of years of inadequate management of these cases. As Defendants were so slow to focus their resources and management on resolution of HOD/SAs in the first two years of the Consent Decree, many

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<sup>18</sup> A separate report provided to the Evaluation Team by DCPS reported 281 administrative case closures for this same period as well as an additional 7 cases closed at an unknown time period.

cases went unimplemented for substantial periods of time preceding this school year.<sup>19</sup> By the time DCPS conducted due diligence and contacted parents and their counsel or implemented its own substantive obligations in these cases in year three of the Decree (2008/09), frequently families had recently moved from the District or other developments -- including subsequent due process enforcement complaints and Orders to address students' unmet needs -- had superseded the HOD/SAs at issue. (See also, Discussion of Dr. Carran's audit of administrative files in II.C below.) Our review of student case files indicates that these delays exacted a serious toll on the educational opportunities and lives of some of the affected children. Paragraph 48 of Decree provides that "the Defendants will use their best efforts to prioritize resolution of the oldest overdue HODs/SAs." Although the Evaluation Team does not find that DC pursued a bad faith plan over the last three years to prioritize newer cases in front of older ones, the results of DC's management of HOD/SA cases for the three year period as a whole indicate that, in effect, this is what occurred in terms of results. And clearly, in the past year and half, the greatest staff resources were devoted to addressing new cases as they arose. The older cases easily could become lost in the shuffle, and many did and eventually became moot as the students exited the system.<sup>20</sup>

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<sup>19</sup> The records in some cases indicate that multiple HOD/SAs had gone unimplemented for some students or multiple unimplemented HOD/SAs existed for siblings within a family.

<sup>20</sup> In the 2008/09 SY DCPS contracted with the Klemm Analysis Group to handle the largest portion of older cases. The remainder of this case load was transferred in March 2009 to DCPS case managers/expeditors.

## **C. Verification of HOD/SA Implementation Data Reported**

### **1. Background**

The Evaluation Team has monitored the accuracy and quality of HOD/SA implementation data throughout the 2008/09 SY. The accuracy of the data reported by Defendants monthly and year end summary reports (Exhibit 1) depends largely on the accuracy and completeness of the information entered and maintained in DCPS' Blackman/Jones database, created and maintained by DCPS.

The new Special Education Data System ("SEDS") introduced in the 2008/09 SY did not include a component for tracking HOD/SAs and due process complaints. DCPS initially developed the Blackman/Jones Database during the second semester of the 2007/08 SY as a temporary data base and "dashboard" tracking solution when it became apparent that delays in development and implementation of a SEDS module for addressing HOD/SAs and due process complaints would not be available, at earliest, until mid 2009/10 SY.<sup>21</sup> DCPS has devoted significant resources to refining the Blackman/Jones Database ("B/J Database") design this school year and improving its accuracy and reliability. Despite these efforts, as discussed in greater detail in Section III herein, a variety of significant data accuracy problems have persisted in the B/J Database, such as the accuracy of school enrollment information. Most of these data issues affect school staff's capacity to manage timely implementation of HOD/SAs. However, these data issues generally do not affect the integrity of the ultimate HOD/SA closure data

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<sup>21</sup> As discussed further in Section III, there currently is no indication that this module is under development or that it will be available until next school year, at earliest.

reported because DCPS uses a separate, tightly supervised process for review and verification of cases identified for closure based on actual implementation of an HOD/SA or for administrative closure based the parties' Protocols Agreement.<sup>22</sup>

## **2. The Closure Review Process and Reporting of Cases Overdue More Than 120 Days**

All HOD/SA cases proposed for closure go through two levels of management review within DCPS's special education department. Established written guidelines require the provision of specified documentation to support closure, with correspondence from an attorney or parent confirming that a HOD/SA case has been fully implemented and may be closed treated as the "best" evidence of closure. (See Exhibit 2, "DCPS Process for Closing Hearing Officer Determinations and Settlement Agreements.") Alternatively, closure must be supported by documentation substantiating implementation of each item specified in the HOD/SA. (Exhibit 2) The special education staff manager ultimately responsible for final approval of HOD/SA closures (a role previously performed by Dr. Rebecca Klemm) is an attorney who has performed her closure review responsibility with independence and diligence. Documentation reviewed in the B/J Database reflects that proposed cases are not routinely rubber stamped for closure but instead have been carefully reviewed and "kicked back" at various times for further information or school action.

While the Evaluation Team has confirmed the independence of the management review process for case closures, this confirmation does not mean that errors have not been made in

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<sup>22</sup> The B/J Database covers all students within the District, whether or not they attend DCPS schools. Similarly, DCPS handles the case closure process for all HOD/SA cases for reporting purposes, regardless of whether the case concerns a student attending an independent charter school which functions as its own LEA or a nonpublic school.

staff's data entry with respect to case closures or that other substantive mistakes have not been made in the handling of closed cases. Case documentation historically was so poor that even with the benefit of the digitizing of a substantial portion of relevant HOD/SA records in the 2008/09 SY, the electronic records were not always complete or linked in the most efficient way to facilitate easy or accurate review. Between the high degree of institutional job pressure placed on individual "expeditors" (case managers) to submit cases for closure and the continued chaos of many schools' records, a wide range of attorneys understandably have complained that they receive demands to submit the same documents multiple times, despite prior provision of the records, or risk dismissal of their clients' cases.<sup>23</sup> The persistence of this concern on the part of the plaintiffs' bar coupled with the weak records management practices at many schools and fact that the B/J Database was in a development phase should be considered as qualifications to the findings we provide here with respect to case closure data.

Finally, our finding with respect to the independence and functioning of the case closure review process does not by itself confirm the accuracy of the reporting of cases "outstanding but not overdue" or the number of cases overdue more than 120 days identified in Defendants' year-end compliance report. Cases classified as open have not been fully implemented and are still being worked on by a case manager. Some cases with provisions that have been non-implemented for more than 120 days are not included in DC's identification of cases "overdue more than 120 days" because timeline extensions have occurred in these cases. The DCPS manager responsible for oversight of case closures also is charged with the responsibility for approving extensions of due dates on HOD/SAs provisions. These extended due dates are most

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<sup>23</sup> We note, however, that we have also confirmed via review of documentation substantial delays on the part of attorneys in providing independent evaluations in a range of cases as well.

frequently connected with delays in the provision of independent evaluations by parent/guardians, parental requests to delay IEP meetings, and other comparable circumstances that potentially may justify an extension of the due date(s) of HOD/SA provisions if due diligence on the part of the LEA has been demonstrated. The Evaluation Team is not in a position at this time to verify the “overdue more than 120 days” case data or extensions produced by this process due to the absence of sufficient and necessary information sources for an efficient review. In particular, the District was unable to produce systemic data reports identifying all cases that would be overdue more than 120 days as of June 30, 2009 but for one or more extensions internally approved. Additionally, the Evaluation Team could not access and review all notes maintained in the B/J Database regarding extension approvals from the responsible DCPS manager because of data system glitches or other circumstances unknown to the Evaluation Team. Accordingly, as of this date we cannot affirmatively validate and verify the District’s reporting of the number of cases that are more than 120 days overdue. We recognize though that case managers have been given an ample incentive to close cases rather than to leave them in an open status unnecessarily and that the Manger responsible for the extension review process has demonstrated her independence in functioning. However, we simply do not have sufficient data available at this point to provide a verification of the District’s systemic method for handling, identifying, and reporting cases that are open and overdue more than 120 days.<sup>24</sup>

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<sup>24</sup> The Evaluation Team attempted other alternate strategies as well for confirmation of the accuracy of the DCPS’ data report reflecting a total of 16 cases open and overdue more than 120 days, identified in Defendants’ June 30, 2009 end of year report. (Exhibit 1) On August 28, 2009, the Evaluation Team ran a canned report on the DCPS B/J Database to determine the number of cases outstanding more than 120 days. Forty-two (42) cases were reported as of that date as 120 days overdue. The great majority of the cases listed contained HOD/SAs requiring action prior to March, 1 2009. (HODs’ which required actions after March 1, 2009 could not be more than 120 days overdue as of June 30th). On August 31, 2009, the same report run reflected 38 such cases. DCPS has explained

### 3. Audits of HOD/SAs Implemented and Administratively Closed

To verify case closure data provided by DC, the Evaluation Team worked with Dr. Deborah Carran, Associate Professor, Johns Hopkins University, who conducted an audit of a representative sample of cases closed from July 1, 2008 – January 9, 2009.<sup>25</sup> This audit was a cumbersome, lengthy process, entailing review of both paper files and data in the B/J Database system. The Evaluation Team determined that it was important to initiate the review mid-way in the school year because of the shift of responsibility for oversight of case closure from Dr. Klemm to DCPS, in the event significant issues were flagged that required DCPS follow-up during the remainder of the school year.

Dr. Carran conducted two different audits – one of a sample of cases closed based on actual implementation of the HOD/SA terms and another of cases closed administratively through the parties' Protocols for Closing HOD/SAs. (Exhibit 3 attached) In sum, the audit of cases closed based on actual implementation found an extremely high rate of agreement between the auditor's findings and those posted in the B/J Database both as to timeliness and actual implementation. The findings in the administrative closures audit were consistent with this Report's discussion of administrative closures in Section II.B. above. While cases had generally been closed after appropriate notices to parents and counsel 30 days prior to case

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that because the reports reflect the status of cases as of the date the reports are run, the data changes on a daily basis. Some cases became overdue after June 30, 2009 and others that were open and overdue as of June 30, 2009 may have closed. For the report including 38 cases, DCPS provided evidence with regard to 14 potentially late cases. The Evaluation Team was not able to review the notes concerning extensions in these cases, though the evidence seemed to facially suggest that 13 of the cases were not overdue yet. DCPS acknowledged that 1 of the 14 cases was more than 120 days overdue. (The HOD/SA for this case had been misplaced and not entered into the database, but this was not known at the time of the June 30th report.). We continue to think it essential that the District address our need for B/J Database data reports that are consistent and can be replicated and easily verified.

<sup>25</sup> Dr. Carran's vita may be found at <http://education.jhu.edu/faculty/index.cfm?i=14709> (last visited, September 2, 2009).

closure, Defendants had failed on a timely basis to implement actions for which they were responsible or to initiate due diligence contacts with parents/counsel regarding outstanding independent evaluations in the far earlier time frames specified in the Protocols. Dr. Carran expressed concern that 11% of the cases in the random sample were inaccurately flagged in the B/J Database as administrative closures, as this was a high percentage given the size of the sample.

**(i) Audit of Substantive Closures**

Professor Carran's audit on behalf of the Evaluation Team of a statistically significant random sample of closures of HOD/SAs confirmed extremely high rates of agreement between the independent auditor and the case implementation / closure data determinations made and entered by DCPS. For the July 1, 2008 – January 9, 2009 period, the audit results found a 100% rate of agreement that the case closures implementation and timeliness determinations were properly supported by record evidence or written verification by the student's counsel of implementation, as determined by the independent auditor's review of student case files. However, there was a 2.5% error rate (1 case) in classification of cases for reporting, as DCPS classified and counted one case as a substantive timely HOD/SA implementation closure when, in fact, it was an administrative closure based on student residency. (As this case was removed from the sample, it was not considered in reviewing the accuracy of the sample of actual substantive case closures.)

Dr. Carran was not asked to review whether Defendants had paid reasonable attorneys' fees authorized under the terms of some of the HOD/SAs. Accordingly, her review findings do

not reach the question of what portion of these cases might potentially be deemed not fully implemented based on non-payment of fees.

## **(ii) Administrative Closures per Protocols**

This audit sample included cases that were classified as overdue as of June 30, 2009 as well as cases that became overdue in the current school year. The audit involved a far more complex and challenging review, because some of the cases originated in earlier school years. As the auditor's report states, "in a variety of cases, neither the Blackman/Jones Quickbase nor the manual files were complete. Some documentation was contained in the hard folders that was not contained in Quickbase. Similarly, some evidence relating to implementation was contained in Quickbase that was not included in the hard folders." (Exhibit 3, Administrative Closure Report, p. 3).

The Audit found:

- a. 97% of the audit sample was administratively closed properly following the due diligence notice provisions of the Administrative Closure Protocols requiring that notice be provided to both the student's representative and parent/guardian at least thirty days prior to closure; attempted phone communication with the parent; and giving the parent an opportunity to provide information requested in the notice. However, the Audit also reports that this finding is applicable only if no consideration is given to the lack of timeliness for the initiation of notices to counsel/parents regarding outstanding independent evaluations for which the parent/guardian was responsible. These notices often were initiated many months or even years after the 60 or 120 day periods identified in the Protocols

for the initiation of due diligence for securing parents' provision of independent evaluations authorized by the relevant HOD/SAs.<sup>26</sup>

- b. 11% of the cases in the sample (4 of 38) were invalid or inaccurate administrative closures -- that is, the cases were actually non-implemented or implemented HODs (timeliness not specified); or, cases that should not have been closed pursuant to the administrative Protocols.
- c. In 89% of the cases in the sample, administrative closures occurred after DCPS had either delayed in implementing due diligence under the parties' agreed protocols or delayed in implementing obligations set forth under the HOD/SAs and established DCPS internal default guidelines for implementation of requirements specified by HOD/SAs (Exhibit 2, p. 5 ).
- d. In 24% of cases in the total sample, DCPS failed to implement one or more HOD/SA elements for which it was fully responsible.
- e. In 92% of the cases in the sample involving independent evaluations, DCPS failed to initiate by the 120th day after HOD/SA issuance the due diligence notice process to student representatives or parents with respect to securing outstanding independent evaluations.
- f. In 65% of the cases in the sample, student residency issues (students' families ultimately often moved to adjacent counties in Maryland) arose only after the

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<sup>26</sup> The parties' agreed protocols for such cases requires that "the compliance specialist will send a letter to the parent's representative, with a copy to the parent, inquiring as to the evaluation(s) and notifying the representative that if the evaluations have not been received within the 120 calendar day timeline, the case will be administratively closed." Exhibit 1 to Report of Dr. Deborah Carran, attached as Exhibit 3.

HOD/SA had not been implemented for a period of time ranging from 5 months to two and a half years.

- g. The average number of days from the date of HOD/SA issuance to the date of administrative closure in the sample was 428 days.

### **(iii) Other Verification Reviews**

The Evaluation Team performed a range of spot checks of individual student data reported in an effort to determine the accuracy and consistency of other HOD/SA data that supports the Defendants' compliance reports.<sup>27</sup>

With the caveat that the new Quickbase II database rolled out in August 2009 has made the closure status of a variety of cases more confusing and tangled at this initial stage of introduction, these spot checks have confirmed the accuracy of the timeliness determination and implementation status reporting of specific closed cases. The review of cases that are open, especially those involving extensions of timelines, remains difficult, as discussed in Section C.2 above.

Finally, the Evaluation Team reached out to counsel representing students in due process proceedings in an effort to confirm from their perspective whether selective cases they had handled were in fact closed, consistent with the information posted in the B/J Database.

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<sup>27</sup> Our review was rendered far more difficult because in August 2009 DCPS modified its B/J Database reports, format and data at a time when the Evaluation Team was intensively engaged in review of 2008/09 data. While these program modifications were made in anticipation of the start of school, Defendants did not advise the Evaluation Team in advance that we would not continue to have access to the 2008/09 version of Quickbase, so that appropriate efforts could be made to coordinate in arranging to freeze data views and reports linked to 2008/09 SY. The Evaluation Team and DCPS staff members have worked together to attempt to address this challenge. However, the process has proved time consuming, and we have not been able to resolve some data questions that DCPS indicates are linked to the ongoing evolution of data after June 30th as well as changes in school enrollment.

One of the attorneys interviewed disputed the veracity of information contained regarding an administrative closure case in the audit sample, indicating that all independent evaluations had been furnished although the file does not contain these evaluations and instead contains closure notice letters without a record of response. No other evidence regarding this case was supplied to the Evaluation Team. By contrast, the attorney's position regarding the invalidity of file data supporting another administrative closure (for a different student) in February 2008 case was confirmed. This case was administratively closed based on the attorney's putative failure to submit independent evaluations and failure to respond to notices for such. Clear evidence available in separate and subsequent HOD files for this student contradicted the validity of the administrative closure of the February 2008 case. As asserted by the attorney, a June 2008 HOD found that DCPS had failed to take requisite actions to hold an MDT/IEP meeting, review the independent evaluations in fact provided by counsel on behalf of the student (the evaluations at issue in the administratively closed case), and determine an appropriate placement.<sup>28</sup> As addressed in our discussion of the audit findings, the potential for erroneous case closures and case closure data reporting was particularly raised where multiple cases were handled by different "case managers" for DCPS and file documentation supporting HOD/SA closure appears to have been reviewed on a segmented basis.

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<sup>28</sup> The June 23, 2008 Decision found, "There is no dispute that DCPS violated the February 21, 2008 HOD, there is no dispute that the student's IEP has not been reviewed and revised, and there was no dispute that DCPS had not determined an appropriate placement for the student." The student at the time was twelve years-old and was classified with a disability of mental retardation held after the meeting ordered by the June 2008 HOD. In still another subsequent HOD dated June 11, 2009, a different hearing officer found that the DCPS failed to provide an appropriate placement for the student then attending Kramer Middle School, based on the school special education coordinator's admission that the school did not have the staff nor the behavioral supports to address the needs of the student. The June 11, 2009 HOD ordered the student's placement at a nonpublic school (High Roads Academy), almost a year and a half after non-implemented February 2008 HOD.

With the above real concerns noted, as a whole, attorneys interviewed did not dispute the accuracy of the actual final closure information posted in specific cases reviewed with them. (However, they noted their view that full implementation did not occur where the District had failed to pay fees required by the provisions of some settlement agreements.) As will be discussed in further depth in Section III of this report, counsel did express considerable concerns regarding the District's staff's handling of cases and well as disputed some of the information posted in the B/J Database concerning the sequence of events leading up to the HOD/SA and through HOD/SA implementation.

### **III. District Organizational Efforts to Address Timely Resolution and Implementation of Cases and HOD/SA Backlog Reduction**

#### **A. Organizational Change and Development within DCPS**

The Evaluation Team's 2007/08 SY Report identified as a central concern the management dysfunction created by the operational isolation of the new special education reform team from the central office special education department management staff overseeing related services, and other key staff members. In the 2008/09 SY, DCPS re-organized and integrated its central office special education management leadership, including staff devoted to Blackman/Jones implementation and related programming. This organizational change occurred over the first semester of the school year with some missteps, but ultimately produced a far more functional and unified department, with heightened capability to tackle the formidable challenges before it. The DCPS Resolution Team was expanded and given responsibility for handling and closure of due process complaints, a process consisting of

investigation of complaints; review and contact with school staff; negotiations of settlements/resolutions, and implementation of due process complaints and HOD/SAs.<sup>29</sup>

When the Evaluation Team filed its last written report on August 28, 2008, DCPS had formally taken over responsibility from its contractor, Dr. Rebecca Klemm, for both daily and overall management of the backlog reduction plan. The system was in the process of recruiting ten compliance case managers (also referred to as “expeditors”) who would be charged with the responsibility of overseeing the execution of the nitty-gritty details of all HOD/SAs. We noted in our August 2008 report that “[T]his 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.” (2007/08 SY Evaluation Team Report, p. 30) As the 2008/09 SY proceeded, DCPS would hire and/or deploy a total of 17 case managers,<sup>30</sup> increasing from 15 case managers in the winter to 17 by the conclusion of the year. Additionally, 4 lead managers were employed to supervise case managers as well as function as links to different sections of DCPS with respect to the range of issues posed by due process complaints (legal, related services, etc.). Further, DCPS would deploy lead management staff to supervise case management staff (expeditors), the settlement review process, the case closure review process, and the Blackman/Jones compensatory services process. The managers of the resolution “Team” (encompassing these staff groups) also worked particularly closely with the data and accountability departmental staff supporting the Blackman/Jones Database system as well as the related services unit staff.

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<sup>29</sup> The work of the Resolution Team is often referred to as “Backlog Reduction” work. However, the reality is that a substantial part of the Team’s work entails work on ongoing newer cases, not on reduction of the backlog.

<sup>30</sup> DCPS gained additional staff support for case management and closure from First Home Care case managers. See section VIII A *infra*.

This was the first year that the District developed and effectuated an Implementation Plan that contained an operational working structure, provisions addressing the deployment of adequate staff resources, and a substantive dose of reality.<sup>31</sup> While the District did not follow through on all of the provisions or timelines of the Implementation Plan filed with the Court,<sup>32</sup> it did pursue the operational contours of the Plan as a whole. The Resolution Unit sought to manage due process cases and HOD/SA implementation in a focused, information driven, and efficient manner, with the B/J Database used as a prime source for managing and handling cases. New staff members were recruited for these positions, which carried a high degree of accountability. The Implementation Plan set interim target goals for reviewing and handling due process complaints and reaching timely implementation of HOD/SAs measures. Case managers were evaluated based on their regular progress in meeting implementation objectives in handling and closing their HOD/SA caseloads. Through the better part of the first semester, the Klemm Analysis Group shouldered the responsibility for handling the oldest, often most stale, HOD/SAs. This permitted DCPS staff to focus on new cases on a “real time” basis and aggressively follow-up with staff and parent counsel regarding implementation of the tasks required by the terms of each HOD/SA. A Resolution Unit attorney handled early review of new cases for settlement purposes and functioned as a liaison with the Office of General Counsel. And as discussed in Section II above, a different attorney has been responsible for review of the validity of HOD/SA closures and implementation. An expanded number of DCPS

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<sup>31</sup> The Evaluation Team’s two preceding reports both contained recommendations for the District’s development and actual use of an Implementation Plan that would provide a structured, nuts and bolts plan for coordinated deployment and management of its staff and multitude of contractors to meet its array of obligations under the Blackman/Jones Consent Decree and ADR Agreement.

<sup>32</sup> Doc. # 3142-2, Appendix 6, December 1, 2008.

nonpublic school placement specialists were also available to follow through on issues for students attending nonpublic schools that had been flagged by case managers. (See Section V. A. 2, for a more detailed discussion of nonpublic schools and Section VI regarding Charter Schools.)

In sum, the Resolution Unit team was far better organizationally equipped to handle its work in comparison to staff in prior years, when a small cadre of employees assigned similar but less coherent duties had been moved from job to job and required to report to a changing cast of supervisors in the special education department with unclear lines of accountability.

## **B. Limitations on Efficacy of the DCPS Resolution Unit Work**

Despite the organizational improvements in the DCPS Special Education Department and moderately heightened oversight role played by OSSE relative to charter schools,<sup>33</sup> significant limitations continued to impact the efficacy of the Resolution Unit. These limitations are described below.

### **1. Inability to Address Underlying Issues in Cases**

Perennial issues defined time and again the origins of many due process complaints and HOD/SAs. The connective relationship between due process complaints and school programmatic and service failure should not be underestimated. The 8 middle schools where the Full Service School reform initiative<sup>34</sup> was launched this school year had relatively large populations of students with disabilities. Most of the schools also were deeply challenged. In

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<sup>33</sup> See, Section VI *infra*.

<sup>34</sup> In connection with the ADR Agreement, the Full Service School reform initiative was introduced in 8 middle schools to provide an integrated behavioral and academic intervention support model as well as services.

our visits to these schools, we observed that some of these schools' special education programs or classes, such as those serving emotionally disturbed or mentally retarded students, lacked staff for required positions and effectively were unable to provide educational or related services that would support students' academic progress. Significant behavior management and student discipline issues existed in a number of the schools, resulting in a large number of suspensions, some of which appeared to be in violation of IDEA's provisions relating to discipline. 20 U.S.C. §1415(k). The volume of due process complaints involving students enrolled in these schools – and the number of resulting nonpublic placements and substantive HOD/SAs (see Table 3 below) – bespeak the gravity of the educational program and service delivery deficiencies that will not be addressed simply by dint of increased efficiency on the part of the Resolution Unit team or even increased accountability on the part of school special education coordinators. We recognize that no educational reform model will transform a school in the space of months or one year and that increases in the testing scores for students with disabilities in some of the FSS schools did occur this year.<sup>35</sup> However, the special education

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<sup>35</sup> The initial rollout of the FSS initiative in the 2008/09 SY did not proceed successfully in most of these schools for a variety of reasons: (1) it was introduced without sufficient preparation and staff training at the start of the school year; (2) the FSS programs were not well integrated into the operation of the school or linked sufficiently with school staffing; (3) the FSS staffing itself was incomplete initially in two schools and a number of FSS' limited positions were unfilled at points during the school year; (4) caseloads of the FSS staff members carrying caseloads were not fully identified until January 2009; (4) although many of the principals were dedicated and conscientious, they did not fully embrace the FSS model, at least as introduced last year. The program at this time is unable to identify for us what percentage of the students on caseloads served were students with disabilities. We agree with DCPS that 5 of these 8 schools achieved notable progress in their testing results in the 08/09 SY. While the percentage of students with disabilities achieving proficiency remained very low as a whole in the schools, there still was marked progress, resulting in 4 of the 8 FSS schools having met "annual yearly progress" for the special education sub-group for both Math and English and one of the schools having met proficiency standards in Math. The Evaluation Team notes that enormous effort has been devoted to developing an improved preparation and training platform for start of the second year of the FSS initiative. Additionally, DCPS has employed a special "Intervention" Assistant Principal in the 09/10 SY for each of the FSS schools to address the school wide coordination and integration problems the FSS initiatives encountered in the 08/09 SY. While the FSS work represents an important initiative, we do not think a one-year increase in low proficiency achievement rates means that the special education program and service issues represented by the placement data and due process complaints have been resolved. And we have no evidence that the scores of students placed into other schools

program deficiencies we observed these results indicate the great distance that must be travelled before many of the FSS regular middle schools are able consistently to offer educational services and supports to students with significant needs sufficient to provide an antidote to the profound problems represented by this tide of due process cases and private placements.

**Figure 3: Due Process Complaint Results for Students Attending FSS Middle Schools Through 2008/09 SY Until June 11, 2009**

School	# Complaints	# turned into HOD	Total # of HOD/SA	# HOD/SA ordering placement
Eliot- Hine JHS	12	4	5	0
Hamilton	11	3	10	2
Hart MS	38	15	26	12
Johnson JHS	15	4	6	3
Kelly Miller MS	41	14	20	8
Kramer MS	33	16	21	5
Ron Brown MS	18	4	11	2
Shaw at Garnet-Patterson-	12	6	6	2
Sousa MS	13	5	6	0
<b>TOTAL</b>	<b>193</b>	<b>71</b>	<b>111</b>	<b>34</b>

As Resolution Team case managers and staff are not in a position effectively to address inadequate educational programming and services where major deficiencies exist within schools, commonly, the only “solutions” they can craft to address such issues have been (a) offers of non-public placements for cases involving substantial need or a total failure of service;

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were counted toward the FSS schools’ testing results. The Schoolwide Application Model (“SAM”) elementary school education reform initiative, another ADR initiative agree upon, was rolled out far more smoothly in 2008/09 because of earlier foundation work and careful selection of schools that requested to participate in the initiative. These elementary schools generally enrolled proportionately far fewer students with disabilities.

or (b) authorization for independent evaluations where DCPS assessments had lagged or compensatory services where services had not been provided.<sup>36</sup>

## **2. Schools' Disengagement and Capacity Issues**

By design, the DCPS largely focused its "backlog reduction" efforts on strengthening the central office Resolution Unit team rather than on improvement of local school special education management capacity. Our school visits and interviews indicated that school special education coordinators did not view themselves as bearing immediate responsibility for managing cases through the Blackman/Jones Database or for even regularly accessing the data base for managing compliance until late spring of 2009. While some principals in schools with fewer due process complaints were aware of the nature and status of extant cases, this was not the norm at the schools with a volume of complaints. In most schools visited, principals had delegated complete accountability for special education to the special education coordinator, as in prior years.

Special education coordinators, in turn, voiced major concerns that they received a blizzard of requests and directions, some of them conflicting, from a multitude of case managers and other central office staff and consultants acting on behalf of the school district. They indicated that while they generally received timely notice of the issuance of HODs, they were often left out of the development of settlement options for students and did not always receive timely notice of the settlement agreements reached. We observed a clear divide between the work of special education coordinators and the resolution team, in part fostered

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<sup>36</sup> Due to the significant costs and educational issues entailed in nonpublic placements, the District often litigates cases involving such placements through a due process complaint hearing. See discussion of related services and independent assessments in Section IV and compensatory services in Section VII.E.

by the absence of an established, continuing relationship between the Central Office case managers and staff in the school. This may be somewhat ameliorated in the coming year when Resolution Unit case managers are assigned to work with specific schools. Finally, while some special education coordinators maintained a strong, organized command over their responsibilities in oversight of school special education management and compliance, others struggled with a host of demands on their time, chaotic school conditions, and unorganized student records.

### **C. Resolution and Settlement of Cases Warranting Resolution on Prompt Basis**

The DCPS Deputy Chancellor for Special Education personally became engaged in reviewing a range of due process complaints and authorizing settlements in these cases. Additionally, DCPS has reported that it settled 184 due process complaints with settlements in the period July 1, 2008 – July 19, 2009.<sup>37</sup> (July 20, 2009 DC Reply to Question #26 of Evaluation Team.) However, the Evaluation Team's review of a range of cases for the 2008/09 SY indicates that on an institutional basis, DCPS unnecessarily delayed case settlements and took to hearing cases that clearly seemed to warrant quick resolution. The District proceeded to hearing on relatively simple cases requesting assessments for the purpose of the MDT/IEP team review of the appropriateness of the students' services or disability classification, as subsequently almost routinely ordered by the hearing officer, consistent with IDEA's provisions. Other cases were

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<sup>37</sup> DCPS was not able to furnish evidence that would confirm whether these settlements were reached by the settlement team within the Resolution Team or by counsel prior to or at the day of hearing. Some cases were settled close in time to their filing, while others were not. Resolution of cases appeared to slow down as the year proceeded. The 184 settlements covering the entirety of the 2008/09 SY, in fact, represents fewer settlements, in proportion to the half year of settlements documented in our report last year. We reported then that in 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.

more complex, but still presented significant repeated long patterns of District failures in the provision of educational and related services for students with severe disabilities that needed to be addressed as soon as feasible. We understand that the Defendants may have a variety of valid reasons for litigating any given case that may not be apparent on the surface of a case file. However, in a remarkable number of both types of cases referenced above, the school system ultimately put up little and even no evidence to support its position at the hearing.

DCPS made a blanket waiver of resolution sessions during the 2008/09 SY until April 1, 2009. At that time, it launched a pilot resolution program at 3 schools for 59 complaints and otherwise, generally continued to waive resolution sessions at all other schools through the school year. While the results from this small pilot bear promise (as of July 20, 2009, 22 of the cases were settled), it is too soon to obtain a realistic analysis of the extent to which the re-initiation of resolution sessions on a district wide basis in the 2009/10 SY will help to address the dynamics described here.<sup>38</sup>

#### **D. Issues Re Functioning of Case Manager/ Expeditors**

Counsel for students with due process complaints articulated mixed views regarding the efficacy of the new case manager/expeditors. There was a general appreciation for DCPS's heightened availability and focus on its HOD/SA implementation obligations. On the other hand, counsel expressed consistent major concerns that case managers focused narrowly and sometimes in a bullying fashion on securing paper confirmation of case closures or other

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<sup>38</sup> In the 2009/10 SY the same case manager will handle a case from start to finish – from the point of the investigation and resolution session through implementation and will work with a defined group of schools. This may, at minimum, improve the continuity of oversight of cases and case managers' scope of understanding of the issues posed at the specific schools which they support.

actions due to concerns regarding their own personal job ratings -- disregarding the realities of what actions needed to be taken for the benefit of the student in the case and the dictates of the HOD/SA and IDEA. We note, in fairness, that case managers experienced significant difficulties in obtaining timely replies from some attorneys in response to their phone calls or emails. Concerns were also expressed that some case managers' lack of any in-depth knowledge of special education and IDEA negatively impacted their role as effective participants and facilitators in MDT/ IEP meetings held to implement the HOD/SAs. Case managers identified their own concerns as well regarding counsel's functioning in the case implementation process.

Our observations and review of District data and records indicate that multiple due process complaints, including enforcement complaints, continue to be filed and result in multiple HOD/SAs for the same student when the root issues in cases are not carefully addressed and followed through prior to closing an HOD/SA. Due to the limitations of its data system that have been described elsewhere in this report, the District was not able to provide complete data with respect to the volume of multiple due process complaints and HOD/SAs for the same student over the past two years because of the absence of student identifying information for some cases as well as the absence of data base tracking of this issue prior to January 1, 2008. For these reasons, the data for the two years is not strictly comparable, much less complete due to missing cases. While Dr. Nyankori testified at the June 26, 2009 hearing to his perception that a decline in multiple HOD/SAs for the same student had occurred this school year, the evidence to support this perception remains thin or unavailable. The total number of students with multiple complaints in SY 2008-09 appears to have been larger than

the number tracked for the second half of 2007/08 SY. The ongoing pattern of multiple due process complaints for a student in the same year reflects continuing difficulties in the oversight of implementation of HOD/SAs and the development of remedies that address the issues underlying the student's due process complaint(s).

### **E. The Significance of the Decrease in Due Process Complaints and HOD/SAs**

As discussed in Section II above, a significant decrease in the volume of due process complaints and HOD/SAs occurred during the course of the 2008/09 SY. See, Figure 2 in Sec. II above. For the first part of the school year, case managers carried caseloads of 40-45 HOD/SAs for implementation, but in the last 4 months of the year, caseloads decreased to a 20 case range. This major decrease clearly permitted case managers to sharpen their management focus on a smaller number of cases and yielded heightened timely HOD/SA implementation rates. We cannot conclude at this early stage, though, that the efficacy of the new Resolution Unit team and other District initiatives were the dispositive cause of this decline in complaints. The Plaintiffs' Report on Non-Payment of Attorneys' Fees to the Special Education Bar (Docket # 2177, August 28, 2009) contends that the compelling explanation for this decline is the alleged concerted effort on the part of the District over the past year to restrict the financial capacity of private law firms to operate and represent students in due process special education proceedings by dint of its alleged non-payment of fees, delayed payment, or under-payment of requisite reasonable fees. The plaintiffs' bar allege that they have been thereby forced to cut significant numbers of staff and limit their legal work on behalf of students with disabilities. The plaintiffs bar also complained to the Evaluation Team that at the same time as they were

experiencing problems with payment of attorneys fees, their workload on cases was increasing due to the delegation of responsibility for assessments to parents and their lawyers through Independent Educational Evaluations (“IEEs”), while providing parents no support and assistance to secure such IEEs and refusing to compensate the attorneys for the time spent in assisting their clients with such arrangements. The Evaluation Team does not reach a conclusion as to the merits of these contentions or the evidence submitted in support of Plaintiffs’ Report. However, the concerns identified in the Plaintiffs’ Report are serious ones that should be considered in evaluating the permanence and significance of the decline in both due process complaints and HOD/SAs.

#### **F. Use of the Blackman/Jones Database in Backlog Reduction Work**

The Blackman/Jones web-based data tool, Quickbase, has functioned this year as the critical foundation for documenting and updating information regarding the status of management of individual student due process complaints. As discussed in prior reports, in the past staff had encountered major difficulties in assembling and updating documentation essential to responding to due process complaints and managing implementation of HOD/SAs. The new database offered a system where both school and central office staff could access documents relevant to students with due process complaints and HOD/SAs and post and share the progress of their actions and communications relevant to the case.

While this database tool was critical to the central office case managers’ work, as noted earlier it appears to have been largely irrelevant to the work of school special education coordinators and schools for the better part of the school year. Although DCPS initiated the process of training school special education coordinators in use of the B/J dashboards and

Quickbase in the fall of 2008, the Evaluation Team's school visits revealed that until the spring of 2009, not even a handful of coordinators in schools with a high volume of due process cases accessed or actively utilized the B/J dashboards. The District set as a goal that special education coordinators would access the Blackman/Jones database at least once per week. Based on this standard of B/J Database access once per week, DC conducted an analysis of schools usage of the Database in the 7 week period of May 4, 2009 – June 20, 2009. DCPS reported these usage results: 26 DCPS schools reached a 100% standard (accessing the Blackman/Jones database at least once per week for 7 weeks); 16 schools reached an 86% standard; 27 schools reached a standard between 57% and 71%; 30 schools reached a standard between 14% and 29%; and 4 schools did not access the Database at all (0%). No data was provided regarding charter schools' usage of the B/J Database. However, our school visits and interviews indicate that only a small fraction of Charters accessed the Blackman/Jones Database this past year, even though the database would have helped to give Charters information regarding the status of cases that have routinely fallen through the cracks as students moved between regular and charter public schools.<sup>39</sup>

Accuracy problems associated with students' actual school enrollment location continued to plague the B/J Database this year, just as it had undermined the accuracy and effective use of other special education data tracking systems in earlier years. In the fall of 2008, the Evaluation Team reported to DCPS our observations from school visits that lists of students with outstanding HOD/SAs and complaints by school provided in the B/J data were

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<sup>39</sup> We note, however, that DCPS does not appear to have provided Charters with a meaningful option of access to the B/J Database until the middle of the school year. Placement specialists serving nonpublic schools may have accessed the B/J Database but no data has been supplied as to the regularity of their usage.

inaccurate. In November 2008, a DCPS review of schools' lists in the data base from 12 randomly selected schools indicated that 17% of the students (21 of 121) were not enrolled in the school listed on the B/J dashboard. In December 2008, the District took a major step in addressing this issue by arranging for a nightly integration of the student school enrollment information data base ("STARS") with the B/J Database. Charter school enrollment information for students still is interfaced less reliably with the B/J Database because DCPS did not have authorization to access the charter school enrollment database, OLAMS, and regularly feed updated charter school student enrollment data into the B/J database.

During the course of the school year, we observed during our school visits an increase in the accuracy of the overall student school enrollment information in the B/J Database that in turn improved the efficiency and reliability of its usage. However, the accuracy of school enrollment data continues to arise as a prime reason for schools' disputing the accuracy of due process complaint and HOD/SA information relating to their school and disregarding the data. When DCPS conducted an audit in January 2009 to validate enrollment of students with open HOD/SAs, it found an enrollment match with STARS or accuracy rate of 91% based on 1,013 record reviews. In June 2009, shortly before the conclusion of the school year, an audit was conducted in a smaller number of schools, with 191 records reviewed. This later audit found that the enrollment accuracy match rate had declined to 76%. We do not know whether factors associated with the end of year movement of students and automatic "dis-enrollment" of students in STARS post the school year's end may have produced this accuracy rate decline.

During the course of monitoring this year, the Evaluation Team found that when we posed data queries, the B/J Database program produced inconsistent reports as to the number

and identity of pending due process complaints and HOD/SAs by school.<sup>40</sup> DCPS has been responsive to this concern in development of a revamped design for the database reports. However, we are unable at this time to report whether the concern has been resolved by the upgraded version of the B/J Database system.

#### **IV. STATUS OF DEFENDANTS' OPERATION OF AN ACCURATE AND RELIABLE STUDENT DATA SYSTEM**

The Consent Decree requires the District to maintain “an accurate and reliable” special education tracking system to ensure schools’ appropriate management and timely provision of special education services, compliance with IEP meeting and evaluation requirements under IDEA, and implementation of HOD/SAs. (Consent Decree ¶¶60 -66). OSSE, through its vendors and the City’s Office of Chief Technology Officer has overseen the development of the new Special Education Data System (“SEDS”) system introduced for use in the District’s schools at the start of 2008/09 SY. DCPS was fully engaged in the data system’s development and rollout. Public Charter School Board representatives also participated in planning sessions for the new data system, although ultimately, most charters did not proceed with full implementation and usage of the new data system this past year. As discussed earlier in this report, the current version of the SEDS system does not contain a module for tracking due process complaints, HOD/SA implementation, or management of the Student Hearing Office’s docketing system’s data.

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<sup>40</sup> DCPS has expressed the view in its comments that “untrained” users may elicit inconsistent report results. However, to be useful, the data system’s reports must be easily reproducible for a wide range of school staff as well as the Evaluation Team.

OSSE pursued an extremely aggressive time schedule for development and implementation of the new SEDS system to ensure that a new special education data system could replace Encore at the start of the 2008/09 SY.<sup>41</sup> Based on OSSE's tight schedule, sufficient time could not be allocated for piloting, feedback, and correction of the new data system modules, including reporting functionality, before the new system's rollout. Given this compressed development schedule and the typical software architectural problems that need to be addressed when major new data systems are implemented, we do not find it surprising that the new SEDS system presented a range of data accuracy and functionality problems during the course of the school year.<sup>42</sup> These systemic problems did not cause a "melt down" in the system's overall functioning at any time. However, they did present substantial problems for school based and central office staff and limited the new system's capacity for accurately tracking vital information needed for efficient management of delivery of IEP services and legal compliance with IDEA. The following areas proved problematic or error ridden for first part the school year or in some cases, all of the school year: the population listing of students actually attending the school;<sup>43</sup> eligibility data; entry of evaluation and assessment information; status

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<sup>41</sup> As training of school special education coordinators did not occur until the last week of September 2008, the system started actual full usage in October.

<sup>42</sup> Defendants' comments in response to the Evaluation Team's Draft Report make the point that the problems of use of an inaccurate data system would not have been addressed by delaying the replacement of Encore with new data system, given the well documented problems with Encore. We do not question the District's decision to move forward with SEDS on an expedited basis. However, as we believe Defendants will acknowledge, the compressed time schedule compounded other weaknesses in the new system's development (i.e., inadequate special education staff understanding and engagement in the initial critical stages of project development and the absence of an adequate piloting and feedback process) as well as software limitations to make for the data system challenges encountered this school year.

<sup>43</sup> The SEDS system requires daily feeds from STARS (DCPS's overall student enrollment system) to ensure that students' actual enrollment school is correctly identified and schools' special education and related services staff have access to information concerning students for whom they are responsible. In the initial part of the 08/09 SY, school population errors occurred apparently because the STARS feed included thousands of students who had left

and classification of assessments; last dates of reevaluation and due dates for reevaluation; parental consent information; report functions for assessments, evaluations and delivery of related services.

During the first semester the OSSE and DCPS data team progressively worked through the accuracy issues surrounding SEDS' reporting of student enrollment, re-evaluation dates and status, and the import of inaccurate eligibility data from the prior data system. It developed temporary "work-around" solutions to attempt to fix the new assessment module that effectively invited fundamental errors in providers' data entry and in turn, resulted in inaccurate reporting of both the number and timeliness of evaluations. Unfortunately, the temporary solutions did not cure ongoing data accuracy problems<sup>44</sup> and associated reporting issues in the assessment module or address the cumbersomeness of the module's operation.<sup>45</sup>

Based on the above issues as well as the need for other module changes to improve SEDS functionality, reporting,<sup>46</sup> and ease of operation, at the start of the 2009/10 SY, OSSE introduced a package of "Core Module Improvements" that it views as "critical to the ultimate success of the SEDS." (SEDS power point presentation to Evaluation Team, August 11, 2009)

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the school system. Interface with charter school enrollment data is also essential as students move regularly between charter and DCPS schools. OSSE receives biweekly feeds from OLAMS (the Public Charter Schools' enrollment system) of charter school enrollment data, though there have been occasional interruptions and delays in their provision that have impeded maintenance of up-to-date information for students attending or exiting charter schools.

<sup>44</sup> An OCTO analysis of data errors associated with specific flaws in the SEDS architecture indicated a high volume number of final SEDS record errors in the following areas: students with missing assessment types (1,667 SEDS records); students with missing parental consent (286 SEDS records); duplicate assessment types (1,110 SEDS records). The analysis was apparently conducted toward the end of the 2008/09 SY.

<sup>45</sup> We note that while staff during our school visits voiced strong concerns and frustration about various problems in the data system, no one indicated that the effort to replace the prior flawed data system was not necessary.

<sup>46</sup> Included in this package is a new report that supposedly will address the requirements of Consent Decree ¶165 and document the delivery of and lapses in delivery of services, to permit early proactive remedy. See also, discussion of this related services reporting issue in Section V *infra*.

OSSE believes that these core module improvements and enhanced reporting capacity “will address the vast majority of challenges encountered during the first year of SEDS use.” (District Draft Comments) As these improvements were launched at the start of the school year, we cannot report on their efficacy to date. Training of school staff on the new improvements is targeted for completion in late October 2009.

Simultaneous to introduction of the new SEDS improvements, OSSE is launching with DCPS a major data clean-up of all “historical” assessment SEDS data entered for DCPS students in the 2008/09 SY. The projected completion date for this data clean-up is December 1, 2009. Charter schools will not participate in this assessment data clean-up because they will need to focus on large scale data entry and training in order to fully participate for the first time in the SEDS data system in SY 09/10, as now mandated by OSSE.<sup>47</sup> As the rollout of the SEDS improvements, data accuracy cleanup, and effort to bring all charters into the SEDS data system are just commencing as this Report is filed, we are unable to comment on the efficacy of these efforts. (See also, Section VI re Charters’ SEDS usage in the 2008/09 SY.)

The District did not perform in 2008/09 SY the special education data systems accuracy audit called for by Consent Decree ¶¶62-64, given the scope of issues faced in introduction of the new SEDS system. For the reasons discussed in this section, it is clear that the District did not meet the Decree’s 96% accuracy standard with respect to key SEDS data elements for students with disabilities. As the District did not conduct an audit of a representative sample of files from the Student Hearing Office and B/J Database of all elements specified in Decree ¶¶63, our analysis of the accuracy of this data is based on the results of our own smaller scale record

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<sup>47</sup> OSSE concluded that this need to launch Charters’ usage of SEDS dwarfed the problem of errors made by the small number of Charter schools that used SEDS in the 2008/09 SY.

reviews and the two enrollment accuracy reviews for the B/J Database discussed in other sections of this Report. We note that the District does plan to perform the first annual accuracy audit of the SEDS system in October 2009 and other special education databases.

Finally, we briefly touch here upon the status of the District of Columbia's development of a Statewide Longitudinal Educational Data (SLED) system, as it bears on the foundation requirement of fully functional student data system to support schools' compliance with IDEA, delivery of services to students with disabilities, and compliance with the Consent Decree. The SLEDs project was developed to provide a comprehensive, accurate student data platform that would obviate the need for interfaces of different student enrollment data systems and permit a "clear determination of each student's identity" in enrollment systems to avoid confusion arising from recording of multiple versions of similar names or dual enrollments. (OSSE Report on SLED for the Reporting Period July 1, 2008 – June 30, 2009, p. 9) These issues affect the accuracy of data in all of the data systems in current use. As of June 30, 2009, unique student identifiers had been generated for 40% of schools and 35% of current public school students. (Id. at p.10.) This number had substantially increased by the start of the 09/10 SY but was not near completion. Based on OSSE's projected timelines for actions critical to the development of SLEDs in the coming year, we surmise that SLEDs will not become a full-fledged operational reality in the near future. In the interim, the District indicates that it is committed to utilizing and working through the issues associated with interfacing the current data systems of record.

## **V. RELATED SERVICES**

The role of related services as a foundational element for Consent Decree compliance continued in the 2008-09 SY. The Blackman/Jones Consent Decree recognized that

approximately one third of all hearing requests involved allegations of untimely assessments and IEPs. (Consent Decree, p. 9) As we have reported in our two previous reports, untimely evaluations, assessments, and IEPs continue to contribute to due process complaints and HOD/SAs, and problems with related services capacity continue to lead to non-timely implementation of HOD/SAs. According to information provided by DCPS (Court Doc. # 2157), approximately 70% of due process complaints contain allegations of incomplete assessments, evaluations or plans. Complaints with allegations of failure to perform services or implement the IEP comprise 66% of the total complaints. As of April 2009, 301 of 550 (54.72%) open HOD/SAs required assessments to be completed.

Another indicator of the critical role of related services is found in the Rate of Timeliness reports that are prepared monthly by the OSSE regarding basic measures of legal compliance under IDEA. The Blackman/Jones Action Plan attached as Exhibit "A" to the Consent Decree identified performance measure goals for timely assessments at 85-95% by June 30, 2008,<sup>48</sup> and at a 90-100% standard of current IEP timeliness for students with disabilities. In Figure 4 below, we report on the data pertaining to the District's performance with respect to these and other measures. The numbers presented are as reported to us. The Evaluation Team has not conducted an audit to verify the accuracy of the numbers. The data indicates that overall DCPS has made a modest improvement in the rate of current IEPs and is close to the 2008 target set forth in the Action Plan. Timeliness in re-evaluations (required at least once every 3 years) has improved by nine percent since last year; however, the rate of timely assessments has declined by almost 23%. The performance of charter and nonpublic schools and OSSE State placements

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<sup>48</sup> The Action Plan assumed achievement of these measures by the 2008 SY and therefore did not contain goals for school years past June 2008.

trails much farther behind on almost every measure, although this data may be distorted based on significant incomplete data entry for charters and nonpublic schools as discussed in previously in this report.

**Figure 4: Timeliness Data Reported for July 2008 & July 2009**

Percent Rate of Timeliness Report <sup>49</sup>		July 2008	July 2009
<b>DCPS</b>	IEP	84.55	87
	Assess	72.53	50
	ReEval	48.15	57
<b>NPS</b>	IEP	45.3	39
	Assess	50.98	36
	ReEval	8.01	44
<b>Dep PCS</b>	IEP	N/A	56
	Assess	N/A	33
	ReEval	N/A	43
<b>Indep PCS</b>	IEP	10.45	39
	Assess	30.16	54
	ReEval	5.81	41
<b>OSSE State</b>	IEP	N/A	33
	Assess	N/A	N/A
	ReEval	N/A	25

The problem in timely delivery of related services seems to be a combination of:

1. Shortage of some types of related services providers, notably social workers in DCPS schools, and the availability of psychologists to perform assessments at

<sup>49</sup> In 07-08 SY, the data reported for charter schools represented a small number of the total charters, and mostly data regarding independent charters. It was not separated between DCPS (dependent) and independent charters. In this table, we have arbitrarily assigned 07-08 SY charter school data to independent charters. The 07-08 SY data regarding nonpublic schools also represented a significant underreporting of information regarding those schools. The 08-09 SY data is believed to represent a larger number of reporting charter and nonpublic schools although, as has been reported at periodic status conferences, there remain significant concerns regarding the overall accuracy of these data.

DCPS, charter and nonpublic schools, and shortages of speech and language pathologists. In addition, there were shortages of special education teachers and aides in many schools, particularly in the first semester, which affected attendance at IEP meetings and timely educational assessments;

2. Weakness in the management of related services providers and the related services workload, in part
  - a. due to the difficulty in maintaining accurate data systems to identify the work needing to be done, the location of the student and an available related services provider, and the required time frame for completion, and
  - b. due to the fragmented and segmented management of related services resources at the school level; and
3. DCPS' apparent focus on strategies other than increasing related services capacity at the school level. As Dr. Nyankori testified at a status conference in April 2009, DCPS leadership has come to believe that there is a level of over prescription of evaluations and related services due to a lack of a coherent approach at the school level to identifying how such services advance instructional objectives. Per this view, there is sufficient capacity within DCPS for supporting a more limited and targeted related services role geared to attaining proper educational objectives, but current patterns of prescription of related services create a demand for more resources than are currently allocated or than ought to be needed. This belief, and DCPS' plans to reduce over prescription, has led to DCPS' pursuing a range of strategies other than directly increasing related services

capacity. However, the reality remains that current legally binding IEPs and HOD/SAs require the provision to students of specific amounts of regular related services. Similarly, whether or not all evaluation and assessment requests may be reduced over time or addressed by other means, DCPS is legally required to perform evaluations and assessments within express legal timelines when requests and referrals are initiated.

## **A. Staffing Shortages**

### **1. DCPS**

The most significant related services staffing shortage is for social workers at the schools. According to DCPS data submitted to the Evaluation Team for preparation for this year-end report, there were vacancies at 22 schools for a total of 13.5 Full Time Equivalent (FTE) social workers with most of those vacancies existing throughout the school year. The total number of vacancies had been 24 FTEs at the start of the school year but DCPS continued to hire social workers during the school year and reduced the gap. There were vacancies at 16 schools for physical therapists and occupational therapists at year's end accounting for an additional 7.3 FTEs. Several of these vacancies had existed for varying periods of time during the school year. Also, at the beginning of the school year there was a shortage of nine psychologists and 10 speech and language pathologists, but as the school year progressed the vacancies for psychologists were filled and the gap for speech and language pathologists largely eliminated.

The problems being experienced by DCPS in the fall of 2008 were a combination of budget shortages, identifying positions that could be filled and finding qualified providers for

some types of related services. In addition, the school year began with 60 vacant special education teacher positions, and shortages of classroom aides. At year's end, there remained 54 vacant special education teacher positions.<sup>50</sup>

During our site visits to several schools, staff reported that untimely performance of psychological evaluations was due to inadequate staffing (e.g. Ballou SHS, Emery, Sousa, & McFarland). The staffing shortages also affected the schools' ability to deliver related services identified in IEPs. For example, they reported that providing the counseling called for in the students' IEP is difficult because psychologists have been assigned to complete evaluations only; and there are inadequate numbers of social workers to provide the services. At Springarn SHS and Ballou SHS, the ratio of special education students to social workers was approximately 1:100, making it difficult for them to attend to the needs of special education students as identified in their IEPs. At some schools, in lieu of the individual counseling called for in IEPs, social workers scheduled group counseling due to staffing shortages.<sup>51</sup>

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<sup>50</sup> In a response to a draft of this report, DCPS does not dispute that the school year started with 60 special education teacher vacancies but stated that the information they provided to the Evaluation Team in preparation for our report about the 2008/09 SY reflected the positions vacant for the SY09-10 in the July summer recruiting season rather than the number of vacancies at the end of SY08-09. They assert that there were 15 vacancies at the end of SY08-09. In a follow up inquiry by the Evaluation Team, we learned that there were 30 special education teacher vacancies in the first semester and 15 such vacancies in the second semester. But, we were also informed that this is an incomplete and understated count as it only counted vacancies in the positions in the *school* budgets and there were likely more vacancies district-wide as some teacher positions were centrally funded. Moreover, there may be other vacant teacher positions that were in fact vacant special education teacher vacancies but not coded in that way. In short, the number reported to the Evaluation Team in response to our follow up inquiry, although considerably greater than the 15 vacancies reported in the DCPS response, is a "low end estimation of the number of SPED teacher vacancies, particularly for first semester data."

<sup>51</sup> In Defendants' comments to a draft of this report, they state that when assigning related services providers to the schools and managing caseloads, DCPS factors in the schools' absenteeism rates. They also state that group counseling as a service delivery model in a school setting is an evidence based practice. However, it should be noted that the IEP developed by an MDT team, presumably composed of qualified professionals, determined that individual rather than group counseling was appropriate for the specific student (s) and that the changes in services were made solely to cope with a staff shortages.

Several of the schools visited also had a shortage of special education teachers which affected their ability to meet IDEA requirements (e.g. Springarn SHS, Garfield ES, Sousa MS, Transition Academy at Shadd, MacFarland and Hart MS). The shortage of teachers for the Emotionally Disturbed (“ED”) cluster at Springarn reportedly affected the low rate of timeliness (mostly for educational assessments) due to teachers not having time to attend IEP meetings or perform educational assessments required for the IEP process because they spend their free time covering other classes. At some of the schools, the recognized inability to deliver the services in the IEP led to IEP teams planning to provide months of compensatory services as a way of coping with staff shortages and the non-provision of timely services over sustained periods of time. These conditions contribute to the filing of due process complaints as well as the non-implementation of HODs, which itself can generate new due process complaints. The case of a 14-year-old student with autism and a classification of multiple disabilities illustrates how these issues affect students.

An HOD was issued in June 2007 which determined that the placement of the student at his school was inappropriate and a denial of FAPE in part because he did not receive related services. The hearing officer ordered an MDT meeting prior to the beginning of the next school year to revise the IEP and determine an appropriate placement in another school. DCPS was also ordered to determine compensatory education.

DCPS did not comply with the HOD. Without holding a placement meeting, the student was sent to another school. An IEP meeting was not held until that December at the second school. It prescribed 24.5 hours of specialized instruction, one hour of speech and language services, one hour of psychological services and one hour of occupational therapy. It issued a prior notice of placement for the student’s IEP to be implemented at the second school, but did not discuss compensatory education. The IEP also did not reference evaluations in the present levels of performance for the student’s related services. There was a reference to educational testing that had been conducted in May 2007.

At the second school as well, the IEP was not implemented. The student did not progress academically, and the hearing officer found that he was mistreated and verbally abused by both students and staff. Both the student and parent complained about the placement during the year but DCPS made no attempt to provide another placement.

In May 2008, another MDT meeting was convened and the student was offered a general education placement in an autism program, with no specific location mentioned. In August 2008, another due process complaint was filed. On October 1, 2008 DCPS issued a prior notice of placement agreeing to place and fund the student at a nonpublic school selected by the parents and a week later authorized the parents to obtain independent evaluations.

The second complaint resulted in an HOD ordering the independent evaluations, an MDT meeting to review the evaluations and update the student's IEP and to comply with the provisions of the earlier HOD. (Case #2008-0073)

## **2. Related services at charter schools**

Charters provide related services through in-house staff or contractors, or some combination of the two. All of the charters seemed to have adequate related services for students and in monitoring visits done by the PCSB are generally found to be providing the educational and related services called for by the IEP. However, to the extent that charters, which have elected to have DCPS as their LEA (17 schools) depend upon DCPS for related services assessments and other services, they suffer from the effects of the staffing and capacity shortages discussed above.

As described in our previous report (pp. 48-49), due to communication gaps with the OSSE/SHO and DCPS, the charter schools 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. The section of our report on charter schools (section VI) discusses the selective enrollment practices of these schools as well as how their stated mission affects their ability to serve special education students with more intensive needs than they anticipated. The

variable and generally low participation of charter schools in the SEDS system and the absence of any other effective way of reporting timeliness data regarding IEPs, assessments and re-evaluations has resulted in a persistent failure to provide reliable data regarding performance. This has also produced inconsistencies between the generally low rates of compliance reported by the OSSE and the generally far higher findings of IEP compliance in the PCSB's monitoring of these schools. These reporting gaps leave the Evaluation Team with inadequate reliable information upon which to form a judgment about the adequacy of special education and related services staffing at these schools. As we have noted elsewhere in this report, the OSSE has proposed regulations making the use of the SEDS by charter and nonpublic schools mandatory.

### **3. Related services at nonpublic schools**

The relationship of DCPS and nonpublic schools has been a difficult one in the past, in part because of the excessively high caseloads maintained by Placement Specialists who are the primary point of contact with the nonpublic schools. These caseloads have exceeded 1:200 in recent years and have made it virtually impossible for the Placement Specialists to perform their many duties at the multiple nonpublic schools they cover. This has resulted in very poor communication between the DCPS and nonpublic schools as a consequence of which there have been major gaps in communication about the presence of students in the nonpublic schools, the requirements of IEPs, HOD/SAs, the assignment of assessments to related services providers, the completion of those assessments, the delivery of completed reports to one but not the other entity, and generally poor paper record-keeping about important special education compliance obligations. This pattern of ineffective communication has also affected

the communication with vendors of related services and has resulted in much wasted time and effort and duplication of work.

DCPS has embarked upon a major effort to remedy these deficiencies which it has recognized. The school system's remedial actions include: hiring additional Placement Specialists, and deploying a group of case managers from a contract with First Home Care (FHC) to work with the Placement Specialists, effectively adding capacity to support students at these schools; and a plan to progressively bring the ratio of Placement Specialists to students to a more manageable 1:60 in the next school year.<sup>52</sup> According to information provided by DCPS, the ratio had been reduced to an overall average of approximately 1:128 by November 2008 with some Placement Specialists carrying caseloads as low as 44 while others remained as high as 205.

Placement Specialists are now assigned to schools where they are expected to be a consistent physical presence, attend IEP meetings, enter IEP information into SEDS and make assignments of needed assessments through this system. This presence has been welcomed by the schools and is helping to correct many of the record-keeping and communication problems that have existed, and is also intended to implement consistent processes for determining the necessity of various types of assessments and for checking whether similar assessments have been completed within the previous year. (As discussed in earlier sections of this report, in the course of the past school year, assessments for charter and nonpublic schools were not consistently entered into SEDS.) DCPS has assigned six additional psychologists to nonpublic

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<sup>52</sup> The Plan for 2009/10 SY is to hire 25 Placement Specialists on contract with FHC. This contract would replace the expired contract for the provision of case managers that had been implemented pursuant to the parties' ADR agreement.

schools, and also recently commenced an effort to clean up what is recognized to be inaccurate data for nonpublic schools in its data system, and to proceed with its work with a more reliable and accurate data set. However, this process of cleaning the database regarding assessments has been an on-going struggle since the end of the previous school year when the Columbus contract ended, and at the end of the current school year the goal of reliable data had not yet been achieved. A recent report of an audit confirmed that this database had errors with respect to the assessments that had not been entered into the system as well as errors as to whether the evaluation and related meeting had occurred.

DCPS has attempted to remedy the deficits in staffing and related services capacity through a variety of strategies some of which were described in our last report (p. 42). Some of these efforts are long range plans that would not be expected to show early results. Others, such as working with Managed Care Organizations to add capacity, proved not to be as helpful as anticipated. Aside from on-going attempts to recruit staff to fill existing vacancies as described above, DCPS entered into Blanket Purchase Agreements (“BPAs”) with private contractors to add related services capacity and make up for the capacity lost when the contract with Columbus Educational Services LLC was terminated. Ultimately, six BPAs were signed and according to billing data provided by DCPS, these contractors provided 531 evaluations for 471 students. Contractors were used predominantly for performing various types of psychological evaluations (396), with lesser use for OT (43), PT (16), social history (22) and speech and language (6) assessments.

DCPS also planned to delegate responsibility for performing some assessments to six nonpublic schools which had the capacity to do so; and to enter into another contract with the

District of Columbia Association for Special Education (DCASE) for the performance of a subset of the outstanding assessments at a select group of 15 nonpublic schools, six of which are participating in a Quality Provider Network through which they offer to perform assessments for other DCASE schools which do not have the internal capacity to do so. However, although this plan was first articulated in October 2008, the contract was not actually finalized until the spring of 2009, and cases were not assigned to DCASE until the end of April and the beginning of May 2009, close to the end of the school year. Due to the problems with its data system, DCPS was unable to provide DCASE with the information about which of these assessments were required to be done as a result of open HOD/SAs or required triennial evaluations. DCASE, in turn, was unable to determine how to prioritize these cases.

DCPS also increased the authorization given to parents to seek Independent Educational Evaluations (“IEE”) without first waiting for the evaluation to become untimely as had been the past practice. According to DCPS, 40 such authorizations were issued and 22 have been assigned to DCASE to perform.

DCPS had also planned to adopt an Immediate Receipt of Services Policy to obviate the need for an assessment as a precursor to the provision of related services that were evidently needed by students with disabilities. Such a policy was intended to reduce the demand for assessments and cope with the staffing and capacity shortage. Although this strategy was also identified early in the 2008/09 SY, it did not come to fruition before the school year ended, and is still not in place.

The initiatives actually implemented are in their early stages and there is not yet an adequate record to gauge their success. As the new school year starts, there is an estimated

current backlog of 548 open evaluations (352 psychologicals) affecting 440 students, which is in the same range as the numbers last year (Report of the Evaluation Team for 2007/08 School Year, p. 39). However, there is not a high degree of confidence in this number, as discussed below, and the actual workload may be substantially higher.

## **B. Management of workload**

### **1. Data systems**

The problems of accuracy of the data system discussed earlier in this report also affect related services. In some respects, due to the low level of participation of charter and nonpublic schools in the SEDS data system,<sup>53</sup> the available data regarding outstanding assessments and re-evaluations, and evaluations required by HOD/SAs for students in these schools is even less accurate, less well known to the persons responsible for managing the related services delivery, and more of an elusive target.

The Consent Decree ¶ 65-66 provides:

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...

The SEDS system itself has not been able to produce accurate reports regarding related services ordered or needed, or missed services whether prescribed in an IEP, HOD/SA or a comp ed plan. Although goals for producing such reports were repeatedly set and extended,

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<sup>53</sup> According to an OSSE evaluation, of the 64 nonpublic schools assessed, only 14 were making full use of the SEDS, as were 12 of 43 independent charter LEAs and 4 of 17 DCPS charters.

including in the Implementation Plan filed with the Court on December 1, 2008,<sup>54</sup> at years' end they were still not fully functional. Without such reports, the District is significantly handicapped in understanding the magnitude of the need for related services, the types of services most in need, the schools where such services need to be readily accessible and the specific students to whom they should be delivered. The Defendants have placed their reliance on the development of data systems that, to this point, have not been able to deliver the functionality they sought. There are as yet no functional, reliable and useful reports on related services provider productivity or service gaps to facilitate effective management of available resources, or to hold providers responsible for their performance. As discussed in section IV, DCPS has funded another Assessment Data Cleanup effort to correct the known errors in the SEDS system as it affects students in DCPS schools.

To the extent that the SEDS system is relied upon to provide evidence of the delivery of services eligible for Medicaid reimbursement, the gaps in adequately documenting the delivery of such services due to problems with data entry and issues affecting data reliability create a risk of disallowances which could have significant fiscal consequences for the District.<sup>55</sup>

Further complicating the management task, the B/J Database, used to manage HOD/SA implementation, has faced significant challenges in maintaining an accurate record of where students are located, given the high level of mobility of students between DCPS, charter and nonpublic schools. As noted earlier in this report, it has been the experience of the Evaluation

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<sup>54</sup> In a filing with the Court on December 1, 2008, DCPS reported that as of 11/25/08, they were able to run the reports required by paragraph 65 of the Consent Decree and would be beginning to validate the data to run the reports as of December 8, 2008. (Docket No. 2141-1)

<sup>55</sup> DCPS reports that the Medicaid Recovery Unit, in collaboration with the Related Services Team, is conducting an audit of the service tracker supporting documentation for Medicaid claims, and that an audit firm will work with providers to ensure that all claims submitted for the 2009/10 SY have a service tracker generated, signed and faxed into SEDS.

Team in making school visits that the rosters of special education students obtained from the B/J Database sometimes contained students who were no longer at the school, as well as other students with outstanding HOD/SAs who were present at the school but not recognized as such in Quickbase. Such errors compound the difficulty of delivering necessary related services required by IEPs or HOD/SAs to students, and have frustrated previous efforts to catch up with the large volume of untimely assessments. As noted earlier in the report, as the school year progressed, the frequency of such errors decreased noticeably. As discussed in section IV, to their credit, DCPS has recognized these shortcomings and developed new systems to reconcile their STARS data system, which maintains DCPS student enrollment status, with the B/J Database, resulting in a data system that has progressively become more accurate, although it does not contain regularly updated charter enrollment data.

Finally, as mentioned above, the Charter and Nonpublic Assessment Database has significant problems in producing accurate and reliable information. One indicator of the current status of these efforts to grapple with related services capacity comes as a result of the recent initiative of DCPS to engage the assistance of DCASE to perform needed assessments at a group of nonpublic schools. DCPS assigned 160 assessments to DCASE in April and May 2009 to complete at these schools. In the course of responding to this assignment, DCASE discovered, as had Columbus before it, that there were many errors in the list as to the location of the students and the assessments needing to be done. In reconciling this list with the school records, 104 of the 160 assessments (65%) did not need to be done because there was already a current assessment in the student file (85-90% of the cases) or the student was no longer at the school. More troubling, they uncovered at three of these schools over 200 additional

assessments needing to be done that had not been included on the list given to them by DCPS.

<sup>56</sup> Since DCASE was assigned to work only 15 of the nonpublic schools, this suggests that there may be a significant additional, unknown and unrecognized related services workload at other nonpublic schools and perhaps charter schools as well which has not been factored into the workload and resource calculations to date. This is a disturbing conclusion given the long-standing recognition of the problems with the related services data base that date back to the end of the Columbus contract in the previous year. Targets for cleaning up the data have been set repeatedly during the year, and missed each time. The data was then transferred from the spreadsheets used to manage the workload to a new Quickbase system but again required cleaning. The errors now being uncovered with the incomplete entry of assessments needing to be done arise after the latest data cleaning effort and provide little confidence either to the managers of the data system, or the related services manager or the Evaluation Team that the full magnitude of the work needing to be done has been identified.

Against this backdrop, we find it difficult to accept the view that there is adequate related services capacity. We are not faulting the sincerity of the effort to develop a functioning and reliable data system for related services, merely pointing out that the goal has not yet been achieved. In the absence of a fully functional SEDS system that can produce reliable and complete information on assessments being ordered, as well as on provider productivity and gaps and lapses in services, the DCPS related services database is an indispensable tool, and it is imperative that the efforts to correct its inaccuracies are finally successful.

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<sup>56</sup> DCPS notes that these referrals have not been validated against DCPS records and that some of them may be in its database but labeled incorrectly and therefore did not show up in the appropriate school's list provided by DCPS to DCASE in April 2009.

## **2. Fragmentation/segmentation of related services resources**

In previous reports, we have commented on the disconnectedness of school principals from management of the provision of related services at school sites. The line of supervision of related services providers runs through clinical discipline supervisors, and to the Related Services Program Manager in DCPS Central Office. However, there are many different programs that bring clinical professionals into the school building. As noted in our previous report:

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. (P. 41)

In our site visits to schools, the Evaluation Team often observed SECs and social workers assigned to the special education program struggling to cope with workload demands while in another part of the school building other social workers, working in the new Full Service Schools (“FSS”) program in eight middle schools, seemed to be less than fully occupied. The FSS social workers, however, were separately managed and did not see it as part of their responsibility to work with the special education students. While this was not a universal experience at Full Service Schools, the degree of variability in implementation of the program at the different sites and the frequent segmentation of special education from the general life of the school or even ADR reform initiatives such as the FSS program resulted in missed opportunities for inclusion of special education students and for making more effective use of available resources.

In response to requests of the Evaluation Team for information in preparation of this year-end report, the District indicates that for SY 2009-10 they are in the process of restructuring behavioral and mental health services provided by social workers and psychologists in the schools by creating a unified workforce of clinicians with common goals to serve all students in the schools. We believe this is a step in the right direction, if implemented appropriately.

### **C. Over prescription of services**

DCPS has been attempting to address its concern about over prescription of related services by strengthening the clinical supervision of related services providers, providing additional training for IEP teams regarding the proper role of related services in special education, issuing guidelines on related services and developing more detailed protocols in the electronic system for prescribing and assigning related services to ensure that IEP teams consider with greater specificity the rationale for ordering a particular assessment or service, and the scope and duration of the service. The OSSE has also promulgated a Policy on Related Services which is posted on its website to be effective in October 2009. It is too early to tell whether these initiatives will make a significant difference in the prescription of related services, especially in the absence of a more functional data reporting system or sustained, coordinated related service management.

The Evaluation Team notes that during our school visits and interviews with special education teachers, SECs and related services providers, the perception that there is significant over prescription of related services is not widely shared. In fact, at some of the schools, staff suggested that there is a need for more related services than have been identified as needed to

enable students to stay in the classroom and function appropriately. This suggests that it will require a significant effort by DCPS to alter current practices for prescribing related services.

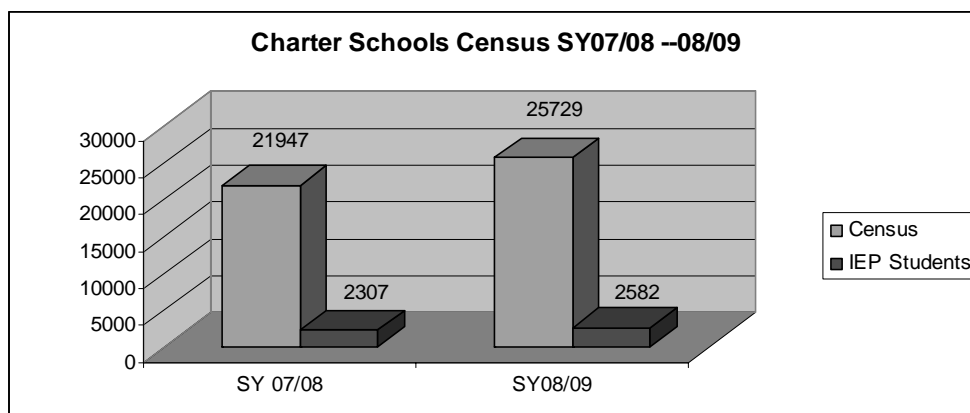
#### **D. Conclusion**

Although the District and OSSE have poured significant energies into addressing related services issues, the efforts made over the past year have unfortunately left the system in essentially the same position as it was last year, with a similar if not larger backlog of assessments needing to be done. The same deficiencies in tracking missed services, and provider productivity remain. The changes in the data system remain in a state of flux, still contain much erroneous data that results in a wasteful duplication of effort and confound the managers of the system. More fundamentally, students in schools are not receiving the related services that they have been determined to require for their educational needs. But it is a sign of hope that DCPS recognizes the current shortcomings of the system. In the Self-Assessment prepared for the OSSE, the DCPS report states: "The assessment team noted an apparent lack of understanding about educating and supporting students with disabilities among the special education and related services provider workforces. Little focus has been placed on the professional development of special educators and offering them meaningful classroom support." The Self-Assessment outlines DCPS' plans to remedy the problems with special education and related services it recognizes.

## VI. CHARTER SCHOOLS

The 2008/09 SY Enrollment Census Report indicates that there were 25,729 students enrolled in 94 charter school campuses, both independent charters and the 17 schools that elected to have DCPS as their LEA for special education purposes.<sup>57</sup> About 10% or 2,582 students at the charter schools were enrolled in special education, a lower rate of enrollment than the 12.9% of the students attending DCPS schools, without reference to the 2,379 students with disabilities placed in nonpublic schools for services.

**Figure 5: Charter School Census**



According to the OSSE Rate of Timeliness Reports for all independent charter schools for the period ending July 2009, the IEP timeliness rate was 39%; the assessment rate was 54% and the reevaluation rate was 41%. For charter schools which had elected DCPS as their LEA “dependent charters”), the rates were 56%, 33% and 43% respectively. As will be discussed below, the accuracy of these Rates of Timeliness are likely to be affected by the uneven use of

<sup>57</sup> According to a report compiled by the OSSE, as of September 22, 2009 there are 58 open Public Charter schools, with 41 independent charter LEAs and 16 electing DCPS as their LEA for special education purposes. Four charter schools closed in the 2008/09 SY. Some of the charter LEAs operate multiple schools.

the SEDS data system by charter schools and the failure to enter current data regarding key measures of special education performance. According to a usage analysis of SEDS by the OSSE, of the 17 DCPS charter schools, only 4 fully used the SEDS system. Of the 43 independent charter LEAs whose usage was analyzed, 12 were classified as making full usage of SEDS.

During the period from June 30, 2007 to July 1, 2009, there were 169 due process complaints filed involving students at the dependent charter schools, and 104 complaints filed regarding students at independent charter schools. For the same period, there were 47 HOD/SAs issued regarding students at the dependent charters and 46 at the independent charter schools.

## **A. Monitoring and oversight of charter schools**

### **1. The role of the OSSE in charter school monitoring and oversight**

The OSSE as the State Educational Authority is required under 20 U.S.C. § 1412 (a)(1) 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 taking prompt corrective action where such performance is found deficient. 20 U.S.C. § 1416. 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)

In our last report the Evaluation Team noted that the OSSE, as a relatively new agency had not yet developed a monitoring and oversight structure for the LEAs for which it was responsible. Having inherited an historically relatively weak oversight system from DCPS, the OSSE was still struggling with establishing basic operational protocols and hiring staff, and had done no monitoring of the LEAs. In part, this deficiency related to the absence of policies and procedures establishing expectations for performance and clarifying the nature of the relationship between the OSSE and the LEAs. In the current school year, the OSSE has begun to remedy these conditions with the promulgation of several policies and procedures, proposed rules and guidance memoranda. These include a Policy on Initial Evaluations/Reevaluations, a Policy and Procedure for Placement Review, a Policy on Related Services (effective October 2009), a Guidance Memorandum on discrimination against students with disabilities in the charter school enrollment process, and proposed rules applicable to charters and nonpublic schools. The OSSE also developed a monitoring framework and required 39 LEAs to conduct and submit self-assessments, following which it selected a handful of LEAs based on several criteria for prioritization, for direct monitoring of IDEA compliance. The LEAs included DCPS, DC Prep PCS, Friendship PCS, Mary McLeod Bethune PCS, Meridian PCS, SAIL PCS, and Washington Latin PCS.

The OSSE Monitoring Unit is not yet fully staffed. Moreover, the plan is to cross train the monitoring personnel to also staff the state complaint process, which has had a light workload (8 complaints last year) and lost several positions due to recent fiscal pressures. Due to the slow process of filling vacancies at the OSSE, as well as turnover in the monitoring staff, OSSE's monitoring role has been slow to develop. Unlike DCPS which has its own personnel authority,

OSSE's hiring process must not only navigate its own bureaucracy but the District's personnel system as well. The recent economic downturn has also led to creating additional review processes in the City Administrator's office to obtain authorization to fill positions. As a result, there remains a significant level of vacancies in the Department of Special Education at the OSSE which is impairing its ability to carry out its responsibilities for monitoring and oversight.<sup>58</sup> These processes, as well as OSSE's significant reliance upon training and technical assistance arranged through OSEP,<sup>59</sup> as precursors to actually implementing its monitoring role, led to on-site monitoring not taking place until close to the end of the school year.

The OSSE monitoring effort is obviously a work in progress. The monitoring protocol includes a review of a small sample of student records, identification of untimely HOD/SA implementation based on review of the B/J Database data, the record of change of placement requests by the school, submission of Part B data and financial information to OSSE, interviews with key stakeholders including educators, parents, students and related services providers. The monitoring reports at present are relatively brief summary reports containing conclusions regarding IDEA compliance, which also examine HOD/SA implementation. These reports lack sufficient detail to understand the full scope of the on-site reviews or the information collected and assessed from the various sources. The reports result in findings of Promising Practices, recommendations for Continued Improvement and findings of Non-Compliance with regulatory requirements. For findings of noncompliance, the LEA is directed to submit "Evidence of Correction" within 90 days. The reports of the monitoring visits completed in 2008/09 SY were

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<sup>58</sup> As of September 22, 2009, there were 19 vacancies in the Department of Special Education of the OSSE, with 12 approved for hiring, two pending for City Administrator's approval, and five for which additional actions were needed by the OSSE before seeking the City Administrator's approval.

<sup>59</sup> OSEP is the acronym for the U.S. Department of Education's Office of Special Education Programs.

submitted at the end of July 2009 and there has not been sufficient time to assess how effective the monitoring process will be in spurring the correction of identified areas of noncompliance. The monitoring process provided the OSSE with the opportunity to assess the importance of accurate data to substantiate its findings of noncompliance and underscored the need to gain fuller participation from the charter schools in the SEDs system.

## **2. PCSB Role in monitoring special education compliance at charter schools**

The PCSB has authority under District law to authorize the chartering of independent charter schools. While a small number of charters have elected to have DCPS as their LEA for special education purposes, most do not. The PCSB is responsible for monitoring the performance of charter schools and their compliance with the law as well as the terms of their charter. With respect to special education, there is an area of overlap between the responsibilities of the PCSB under the D.C. School Reform Act<sup>60</sup> and those of OSSE under IDEA and implementing regulations. However, as the State Education Agency, OSSE is exclusively ultimately responsible for LEAs' and schools' delivery of special education services consistent with the provisions of IDEA.

We obtained from the PCSB copies of all education school reviews that had been performed at charter schools in the 2007/08 and 08/09 school years. The PCSB had been relying upon consultants to perform special education compliance reviews. These relatively brief reviews, which largely consisted of reviews of samples of the files of special education students, examined "paper compliance" with core requirements of IDEA, but did not make any qualitative judgments about educational or related services. The PCSB review protocol did not require that

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<sup>60</sup> D.C. Code § 38 -1800 et. seq.

the reviewer obtain or review due process complaints or HOD/SAs or their implementation at the schools being reviewed. The PCSB informed the Evaluation Team that there is no process for them to become aware routinely of the filing of due process complaints involving charter students or the issuance of HOD/SAs either arising out of compliance issues at charter schools or involving students present at such schools. While OSSE has provided documentation that suggests that PCSB could have gained access to the B/J Database in the 08/09 SY, the reality remains that the PCSB did not and does not have access to the Blackman/Jones Database which contains this information.<sup>61</sup>

There were common patterns of compliance issues noted in these PCSB reviews. They generally find evidence of implementation of IEP requirements and delivery of related services; similarly, most IEPs are found to be current (contrast this with the OSSE ROT data reported above); and parental participation is virtually always present in the development of the IEP. But these reports also reflected high rates of noncompliance on other IDEA measures, including:

- 66% of the schools were not compliant with the requirement for consideration of Extended School Year;
- 63% of the schools were not compliant in documenting the presence of all required participants at IEP meetings, and 34% were not compliant on the content of the IEPs;

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<sup>61</sup> In our previous report, we had recommended that data available to the OSSE regarding due process complaints and hearing decisions be provided to the PCSB and charter schools on a real time basis. (Report at 70.) The OSSE and the PCSB have not yet concluded an agreement regarding data-sharing and reporting as it affects not only access to the Blackman/Jones Database but also affects SEDS and regular feeds from the PCSB's OLAMS charter enrollment database to the SEDS and Blackman/Jones Database.

- for children with Specific Learning Disabilities, evidence of observations conducted in a regular classroom by a team member other than regular teacher was not present in 37% of the schools, and the required written report to support the disability determination was missing in 60% of the schools;
- 34% of the schools did not have evidence of assessments in all areas of suspected disability and 40% were noncompliant with the requirement for re-evaluations to be conducted every three years;
- 29% were found noncompliant with the requirement for the least restrictive environment; and
- records of staff qualifications/licensure/certification were not consistently available in 26% of the schools.

The PCBS monitoring process does not require specific follow up to assure correction of the noncompliant conditions. Instead, reports of the review are sent to the charter school leadership for their attention, and unless the PCSB receives information about significant problems with either general education or special education at the school, these issues would be reviewed when the school was next scheduled for routine monitoring. The PCSB informed the Evaluation Team that they had been considering the implementation of a “Concerns and Remedies” chart to track corrective actions, but decided instead to change their monitoring process. With the planned mandatory use of SEDS at all charter schools in the current school year, the PCSB has decided to do its compliance reviews using SEDS data for “desktop monitoring.”

Recognizing the limitations of its past monitoring process as well as the likely duplication of the compliance monitoring role of the OSSE, the PCSB has adopted a more in-depth Program Development Review (PDR) process which focuses more directly on the qualitative aspects of general and special educational and related services implementation. In place of the five page summary reports, the PDR report format produces a lengthier report, which uses a five point evaluation scale to rate performance from Exemplary to Inadequate levels of development and implementation, to identify strengths and weaknesses of the schools reviewed, and to provide comments and recommendations from a team of reviewers. The PDR process specifically examines the implementation of students' IEPs, the allocation of resources to meet their needs, and the provision of related services and accommodations as specified in the IEPs. It also assesses whether procedures to ensure accurate and timely identification and evaluation of students with special needs are in place.

In 2008/09 SY, reviews were conducted at 65 of the 97 charter campuses. As in the past, unless there is a specific reason to think that there is a problem at a school, the PCSB reviewers do not plan to return to the school until the next scheduled visit but do receive response from the charter schools to their recommendations. In the past school year, one charter schools lost its charter in part due to problems with its special education program according to the PCSB.

### **3. Coordination of Roles Between the OSSE and the PCSB**

The potential for duplication, overlap and inconsistent messages being given to charter schools by the two agencies currently exists. The OSSE and the PCSB have not yet worked out their respective monitoring roles for charter schools. However, both agencies have taken steps to improve their level of communication and coordination. The OSSE has sought the input of

the PCSB in adopting its policies and procedures and rules. It has invited the participation of the PCSB representatives in the meetings of workgroups that are re-designing the SEDS system for the coming school year. The PCSB is also involved in providing current enrollment data from its OLAMS data system to the OSSE and DCPS for keeping track of the location of students, although there have been reported occasional delays in providing this information. However, the PCSB still does not receive regular reports on due process complaints or HOD/SAs affecting students at charter schools which would provide them with a valuable source of information about special education compliance at these schools which are under their jurisdiction.

## **B. Evaluation Team Visits to Charter Schools**

During 2008/09 SY, the Evaluation Team visited the following eight charter schools: Center City -- Brightwood Campus; Friendship Academy -- Blow Pierce Campus; Hospitality PCS; Howard Road Academy; IDEAL Academy; School for Arts Learning (SAIL); Cesar Chavez (Capitol Hill campus); and Young America Works. These schools were selected because they had higher numbers of students with disabilities and students with HOD/SAs than most other charter schools. We also attempted to visit different charter schools than had been visited in the 07/08 SY. Generally, the schools had no more than five students with an outstanding due process complaint at one time (excluding students who no longer attended the school but who might still have been identified on the B/J Database as attending the school). We reviewed samples of complaints and HOD/SAs involving students at these schools drawn from the B/J Database records. We also reviewed the most recent monitoring reports of the Public Charter School Board pertaining to the schools visited. The site visits included review of school records, interviews with SECs, special and general education teachers, principals, and related services

providers. In addition, we interviewed the Charter School Board Executive Director, the program manager responsible for special education, the academic and non-academic performance officers working on special education issues, and the staff member working with the performance team on special education.

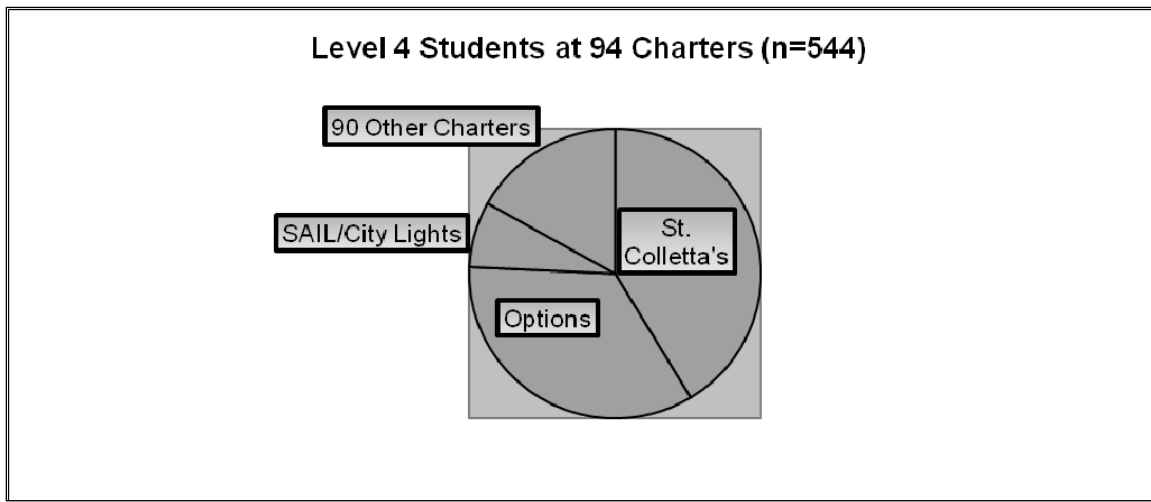
### **1. Selective Enrollment Practices**

As we have noted in the past, charter schools have in effect maintained selective enrollment practices. Not only do they enroll special education students at a rate below that of the DCPS schools, but also they generally have not enrolled students with significant disabilities who required extensive hours of special services or education.<sup>62</sup> According to the 2008 Enrollment Census Report, the 94 charter school campuses covered had 544 students classified as Level 4, the most severe level of disability. Two charter schools, St. Coletta's PCS (225) which exclusively serves students with this level of disability, and Options PCS (187) accounted for 75.73% of all such students. Two other schools accounted for another 7.35%. City Lights PCS, which has since closed,<sup>63</sup> served 28 and SAIL, which exclusively serves special education students, had 12.

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<sup>62</sup> The OSSE Guidance Memorandum "recognizes the practical concerns that charter schools may face regarding the provision of special education and related services." OSSE Memo. 09-005.

<sup>63</sup> The PCBS's PDR report for this school in December 2008 had rated this school as Limited or Inadequate on virtually every measure assessed.

**Figure 6: Level 4 Students at Charter Schools**

The OSSE issued a Memorandum of Guidance on March 9, 2009 regarding discrimination against students with disabilities in the enrollment process in an attempt to limit the type of information that can be requested from parents in furtherance of the policy of nondiscrimination. Thus, schools are directed not to seek information which directly or indirectly would disclose the special needs of a prospective student prior to the admission decision. The PCSB reinforced the legal obligation of charter schools to have a nondiscriminatory admissions process and has been collecting and responding to reports of discrimination against children with disabilities. The PCSB has also been collecting admission packets from all of the charter schools and reviewing them for evidence of improper exclusion of children with disabilities.

Charter schools which are their own LEA generally do not offer a full continuum of services and this factor likely influences the outcome of the admission process for students with disabilities. Some charter schools explicitly identify the number of hours of weekly special education services they can provide, and the levels of need they can accommodate. For

example, Hospitality states that it can provide “up to 6.5 hours of special education.” Friendship Blow-Pierce sets the limit at 27.5 hours of special education. IDEAL limits admission to students at Levels I and II only. Staff at these schools informed the Evaluation Team that they “counsel” parents to place their children at other schools that offer a broader continuum of services (e.g., public schools) or those nonpublic or charter schools that primarily serve students with disabilities. Consequently, most charter schools do not have students with significant levels of disability or extended hours of IEP service (e.g., more than 20 hours). When they enroll students whose needs they cannot meet, they similarly tend to refer them elsewhere (often to a nonpublic placement). (See discussion of change of placement, *infra*.) This latter circumstance is one trigger of due process complaints in charter schools.

The Evaluation Team previously recommended the consideration of options of pooled charter school resources that would provide an opportunity for a greater continuum of services without referral of students to outside placements (Evaluation Team SY07/08 Report, p. 70). The OSSE has informed us that it has provided a grant to the Charter Schools Special Education Cooperative to do a feasibility study for the creation of a transition classroom and support services to charter schools, and to develop proposals for how charter schools can share resources to serve special education students without facilitating their transfer to nonpublic schools. This work is progressing in partnership with Phillips Academy. A significant issue to be addressed is how such pooled services will be financed.

HODs appear to deal both with issues arising at the charter schools themselves and DCPS responsibilities in public schools previously attended by students. Howard Road Academy inherited a large number of outstanding student IEP obligations, compensatory service

requirements, and resulting due process complaints when it acquired Washington Academy which was closed during the preceding school year. (Washington Academy appears to have failed on a systemic basis to have delivered requisite special education services, assessments, and IEPs.)

## **2. Education and Related Services**

Perhaps reflective of the nature of their student population, charter schools tended to serve students in regular classrooms, with some pullout services. They generally had adequate numbers of special education teachers and classroom aides for special education resource rooms. However, as in DCPS at large, many of the schools did not provide the requisite level of professional development and staffing support for regular educators to implement students IEPs and to deliver special education effectively in the general education classroom. On the other hand, some of these schools appeared to provide more individualized attention to all students overall and to the relatively small proportion of students with disabilities enrolled. (The Evaluation Team notes, though, that SAIL's enrollment consists of a majority of special education students.) According to the PCSB, with the general increase in charter school enrollments, some schools have expressed an interest in adding more self-contained programs. (See, e.g. PDR Report for LAMB PCS, February 2009)

Most of the schools had adequate related service providers as a whole, but faced gaps in timely provision of services or evaluation to the extent that they relied on DCPS for evaluations or services. This occurred because DCPS was responsible for an evaluation under the terms of a HOD/SA or because DCPS served as the charter school's LEA. Charter schools' special

education staff expressed considerable frustration regarding untimely evaluations, IEP meetings, and conflicts over services stemming from long delays in DCPS' performance of assessments.

### **3. Change in Placements**

During our site visits, we heard of concerns from some schools about the OSSE Change of Placement policy and process, and OSSE's increased efforts to require schools to address the needs of students whom charters would otherwise recommend for more restrictive educational placements. While concerns were raised about their inability to serve these students, some schools also recognized that they were able to meet the students' needs with additional technical assistance and support.

As noted above, the OSSE adopted a Policy and Procedure for Placement Review (revised July 31, 2009). Based on data submitted by the OSSE, from October 1, 2008 to August 2009, charter schools had made 130 referrals for change of placement. Four charter schools accounted for 46.15% of these referrals –Options PCS (17), Friendship PCS (16), Meridian PCS (15) and DC Prep PCS (12). The predominant reasons for the referrals (76.2%) were behavioral (40%), academic (20.8%) or a combination of the two (15.4%). The placement review process resulted in the IEP Team electing no change in placement in 32 cases (24.6%) or withdrawing the request in 13 cases (10%), but 69 cases (53.1%) resulted in more restrictive placements with all but two going to nonpublic schools.<sup>64</sup>

Thus, the self-defined limitations of charter schools in meeting the needs of students with special needs results in the exclusion of students with a high level of need during the

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<sup>64</sup> There has been discussion about adopting a similar Change in Placement process for DCPS schools but one is not in place as yet. In its Self-Assessment Report to the OSSE, DCPS identified this initiative as a Medium priority, to be implemented by the end of FY 2012.

enrollment process at some schools, and the transfer of significant numbers to more restrictive placements mostly in nonpublic schools after admission.

#### **4. Data & Communication Issues**

As with the nonpublic schools, charter schools reported significantly improved working relationships with DCPS and OSSE. However, charter schools' staff expressed some confusion regarding the different roles of DCPS, OSSE, and the Charter Board.

Charter schools reported on multiple contacts with different DCPS expeditors with urgent requests for documentation related to HODs. They identified in this connection the need for longer term working relationships focused on addressing the needs of particular students or resolving their HOD/SAs. They also indicated surprise at a number of outstanding due process complaints that we brought to their attention during the course of our visits.

While charter schools have generally been trained on and some are beginning to use SEDS, the usage is far from consistent or complete. Charter schools have voiced similar complaints to those that the Evaluation Team has heard from DCPS schools about problems with functionality, access to historic information, and cumbersome data entry processes for assessments. In particular, virtually every school stated that the rate of timeliness data reported by OSSE, drawn from SEDS was substantially inaccurate. We also note that Chavez's Capitol Hill campus encountered for the better part of the year an inability to enter or retrieve data fully as a campus in SEDS. (We attempted to facilitate DC's addressing this issue without any confirmed change.) Some of the charters continued to maintain their own independent compliance tracking procedures and systems. However, these processes also seemed to have distinct flaws and were not fully reliable. Some of the schools' compliance management

processes relied heavily on one administrative staff member's personal memory system. As mentioned above, in the 2009/10 SY, the OSSE is requiring that all charter schools and nonpublic schools use SEDS for special education record-keeping. There have been some concerns expressed by charter schools and the PCSB about transitioning from the existing data systems to a new one, which will require importing data from other systems as well as on-going training of school staff to use the new system. Nevertheless, the PCSB recognizes that the consistent use of this system could also facilitate its compliance monitoring for IDEA.

Although some charter schools have been given access to the B/J Database, they have all experienced difficulty in accessing and using it. Other schools state that they do not have access to this database. In every charter school that we visited, we found that a number of students with HODs who were listed in the B/J Database as present at the school were in fact enrolled elsewhere. The same was true for students with outstanding due process complaints. And there were some instances in which the schools were unaware that students who had been admitted had outstanding HODs, IEPs or complaints.<sup>65</sup> Still, we note that placement specialists and expeditors helped to plug some of these gaps and errors in information, and that the frequency of such errors has been declining.

## **5. Medicaid**

In our last report, we noted that 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

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<sup>65</sup> In that the charter schools; enrollment data base (OLAMS) has not been integrated with the B/J Database, this pattern of data inaccuracy is not surprising.

charters are being encouraged to enroll as Medicaid providers and to commence billing for Medicaid reimbursement. To date, 27 charter schools have enrolled as Medicaid providers and eight have reportedly begun to bill for their services, according to information provided by the PCSB. The Department of Health Care Finance has been working with the schools to streamline the enrollment and billing process and providing training for them.

## **VII. MISCELLANEOUS**

### **A. Case management**

In the first report of the Evaluation Team, we recommended the creation of an effective system of case management for students with HOD/SAs to monitor and assure the timely implementation of the required actions along with their special education services. In the ADR agreement, Defendants agreed to contract with First Home Care ("FHC") for a case management program that would be operational on or before April 1, 2008. The contract funded 30 case managers, five case manager supervisors and a program director, with an expectation that individual case managers would have caseloads of 15, for a total capacity of 450 students.

While FHC hired the requisite number of staff, early on a decision was made to shift the focus from assigning case managers to individual students to assigning them to eight specific schools that were willing to accept the new program. However, these schools did not have sufficient students with HODs to fill the caseload. 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.

As the school year progressed, case managers were assigned to work with students at other DCPS schools as well as at charter and nonpublic schools. By November 2008, case managers were working with students at 55 public schools, 22 nonpublic schools and seven charter schools. Like others attempting to work with students at schools, case managers found themselves spending large amounts of time trying to track the whereabouts of students identified in the B/J Database as enrolled at a particular school but who were not there. There were on-going problems with maintaining a consistent focus for the case management program, targeting the resources available and managing it. Instead of implementing the core concept of assigning case managers to students with HOD/SAs, who would be a consistent presence and provide service coordination for them, the program evolved into another set of helping hands who were used to address many disparate needs that emerged in the school system. At schools where there were insufficient students with HOD/SAs, Special Education Coordinators assigned case managers to work with students who had behavioral problems in the school environment. Working with these students resulted in case managers performing a variety of functions at the school from classroom assistance, to hall monitoring, to bus and cafeteria duty. The issue of the role and scope of authority of case managers was never settled, leading to confusion, role conflicts and resistance at some schools, including denying case managers access to necessary information and student files.

With caseloads remaining well below the intended levels, early in the school year, OSSE asked FHC to assign case managers to work intensively with the families of 10 students who were being removed from the Judge Rotenberg Center in Massachusetts to be relocated to new placements in and around the District. Later, in December 2008, 10 case managers were

assigned to DCPS to work with the expeditors on overdue HOD/SAs.<sup>66</sup> In February 2009, OSSE asked First Home Care to assist with the relocation of 52 students who attended City Lights Public Charter School which was closing. Five case managers were assigned to this project and helped in transitioning these students to new schools. These additional assignments, helpful as they were to DCPS and the OSSE, fed into the underlying role confusion for the case managers as well as school and the DCPS staff with whom they interacted. Later that month, OSSE informed FHC that it would not be renewing the contract, which officially ended on March 31, 2009.

The management and execution of the case management program did not proceed as expected, at least in part due to the high level of vacant positions in the OSSE and its inability to devote sufficient staff time and attention to addressing operational issues as they arose during the year. There were few regular performance reports from the contractor and insufficient response to the reports that were issued, or attempts to resolve the early problems being experienced in implementation of the case management program. None of this is to imply that the contract was devoid of accomplishment. The small caseloads permitted case managers to work with students and families more intensively, to make home visits and to understand and help address a variety of issues that were manifesting themselves in problems at the school. Through developing relationships with families, case managers were able to identify students in nonpublic schools who wish to return to public schools. However, case managers also encountered many of the same barriers faced by school personnel in attempting to arrange for related services that were difficult to obtain. Although there had been discussions in the design

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<sup>66</sup> DCPS later invited five of these staff to accept employment as expeditors; three accepted.

phase of this program about allocating a pool of flexible funds to overcome this anticipated problem, this did not happen. Case managers simply became another group in the queue asking for such services on behalf of students on their caseloads with no more success than others with similar requests.

Eventually, according to FHC, the program served 375 students, helped implement over 70 overdue HOD/SAs and worked with school staff to keep over 250 IEPs in compliance. Case managers were averaging close to 150 face-to-face contacts with parents and guardians and assisted them in a variety of ways, including providing transportation to and from meetings, and facilitating communication with school staff. Approximately 50 students were linked to FHC's Medicaid Rehabilitation Option program which gave students, their siblings and families access to a variety of services.

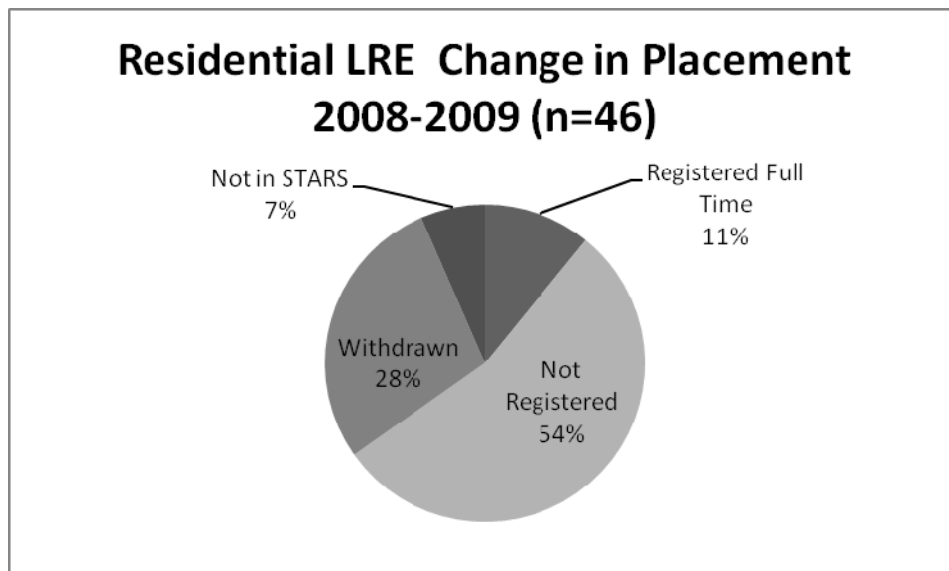
## **B. Case Managers, Placement Specialists, and Nonpublic Placements**

In the 2008/09 SY, the work of case managers in nonpublic schools required development of a closer working relationship between case managers and Placement Specialists assigned to these schools. Case managers played a key role in working with students and families to transition students who were brought back from the Judge Rotenberg Center to schools in the District and vicinity. Although the efforts of the case managers assisted the Placement Specialists in carrying out one of their objectives – facilitating the return of students from residential and nonpublic schools to DCPS schools (see discussion below) – the division of responsibility ultimately did not work well. There were continual issues with the scope of responsibility and authority of contracted case managers and initial resistance at some of the nonpublic schools to allowing them ready access to the schools and their students.

As the contract with FHC neared its end, DCPS made the decision to change its approach and contract with FHC for 25 Placement Specialists who would have the same qualifications and responsibilities as its staff Placement Specialists, and thus achieve its goal of reducing the caseload of the Placement Specialists to 1:60. The focus of some of these contractors would be to assist DCPS in transitioning students currently in residential and nonpublic schools back to DCPS schools.

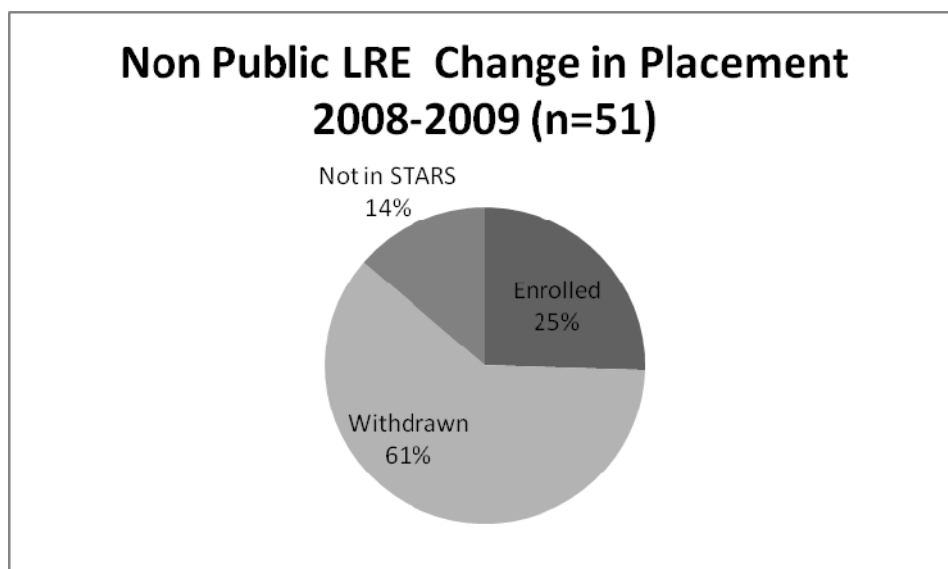
In the 2008-2009SY, DCPS reports that 46 students were returned from out of state residential programs and relocated to DCPS, charter and nonpublic schools in the vicinity of the District. Of these students, as of a DCPS report submitted on September 1, 2009, five were registered as full-time students, 25 were not registered, 13 had withdrawn from school, and three could not be located in STARS. (Fig. 7)

**Figure 7: Change in Placement of Students in Residential Schools**

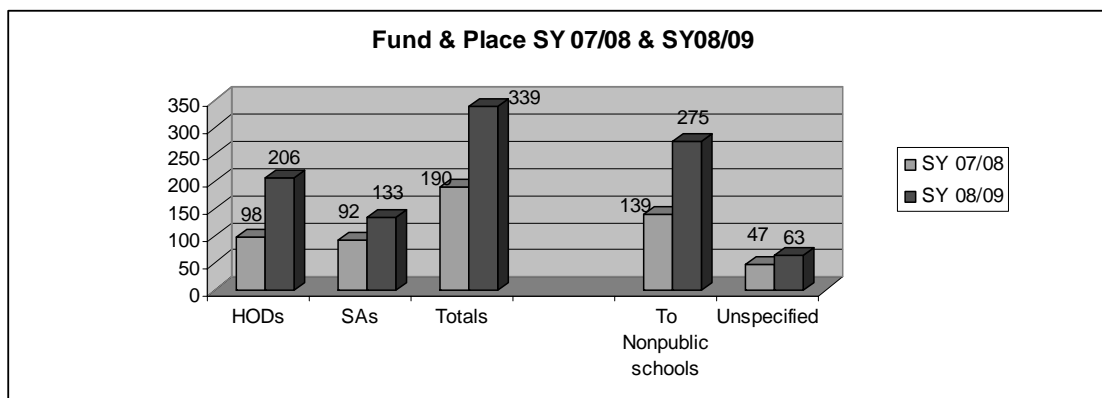


In addition, DCPS reports that 51 students were returned from nonpublic schools to DCPS schools. Of this group, as of the report submitted on September 1, 2009, 13 were enrolled in a DCPS school, 31 had withdrawn and seven could not be found in STARS and had no student IDs. (Fig. 8)

**Figure 8: Change in Placement of Students in Nonpublic Schools**



While the Placement Specialists and case managers were working on transitioning students from residential and nonpublic schools back to the public schools, the reverse movement of students from public and charter schools to the nonpublic schools continued. Earlier in this report, we discussed the movement from charter schools to nonpublic schools in the Change in Placement Process managed by the OSSE. Separately, through HODs and SAs, the numbers of students placed in nonpublic schools almost doubled from 139 in SY 07/08 to 275 in SY 08/09. (Fig. 9)

**Figure 9: Placements of Students from DCPS to Nonpublic Schools**

The parties' ADR agreement called for the creation of "incentive seats" in public schools, to make special efforts to develop attractive options for students in nonpublic schools who were interested in returning to public schools. However, this initiative was not implemented in the 2008/09 SY.

### **C. 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, and funds a total of 10.75 FTEs, including 3 Education Support Specialists, 2

Outreach workers, 2 Intake/Reception staff, a Project Coordinator and a part-time Parent Services Coordinator.

The Evaluation Team reviewed four quarterly reports submitted during the school year.<sup>67</sup> The reports describe the numbers of persons reached each month through a variety of means including a newsletter, website, a listserv, telephone calls and walk-ins. In addition, training sessions are offered for parents and students with varying numbers of such sessions and participants each month. General community education sessions are also offered on a variety of topics and reach a significant additional numbers of persons in the community. Although the Parent Center does not file due process complaints on behalf of students in order to preserve its “neutrality,” it does provide parents and students access to AJE’s legal services division, which is not part of the Parent Center contract.

The Parent Center reported that it opened 75 cases in the first quarter, 170 in the second, 87 in the third and 86 in the fourth. The quarterly reports sent to the OSSE and shared with the parties report on the different types of special education issues raised in these cases, the types of disabilities of the students, the economic status of the families, and the gender, age and ethnicity of the persons served. During the year, the Parent Center used differing reporting formats capturing data in different ways which does not lend itself to easy summarization. But the overall impression left by a reading of these reports is a healthy level of outreach and activity by the Parent Center pursuant to the contract with the OSSE, but no real sense of the outcomes of individual cases. Two undated Parent Survey forms were also

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<sup>67</sup> The reports are not strictly quarterly. The first covers the 3 month period May-July 2008, the second covers a 5 month period of August-December 2008, the third covers January to March 2009 and the fourth covers two and a half months from May to July 17, 2009. For inexplicable reasons, the month of April 2009 is not covered in any of these reports.

submitted representing the results of telephone surveys of 25 parents each, one of which apparently followed a workshop. These surveys generally indicate that the respondents found the services of the Parent Center helpful and strengthen their understanding of special education services and their ability to advocate on behalf of their child.

#### **D. Teacher Evaluations**

Paragraph 71 of the Consent Decree requires that defendants will revise the teacher performance evaluation process so that it adequately evaluates the teacher's compliance with IDEA requirements that are under the teacher's area of control and responsibility.

In response to a request from the Evaluation Team, DCPS submitted the Professional Performance Evaluation Process ("PPEP") for the 2008-2009 SY. The PPEP addresses special education as a System Wide Target, and sets performance standards for general and special education teachers. In the Special Education Rubric (page 24), it sets forth expectations against which general and special education teachers will be evaluated in assisting students to achieve their IEP goals and to be included in the school. Similar standards are applied to counselors and librarians. We did not evaluate the implementation of this process. DCPS has informed us that the PPEP is being revised for school year 2009-2010.

#### **E. Parent Evaluations**

Paragraph 72 the Consent decree requires DCPS to revise the annual parent evaluation form so that it includes a section specific to special-education parents. In response to a request from the Evaluation Team, the OSSE submitted a Parent Involvement Survey for families of children receiving special education services. This survey provides parents the opportunity to

express their opinions about the school's performance in developing partnerships with parents, their relationships with teachers and administrators, the quality of information they receive and the responsiveness of school personnel to their concerns, the implementation of the student's IEP and the student's progress in school.

The OSSE reports that this survey was provided to all parents of special education students in the 2008-2009 SY but that the responses from the survey were not received from the vendor in time to be tabulated and analyzed for inclusion in the OSSE's Annual Performance Report ("APR") for 2007, which was submitted in February of 2009. Approximately 400 survey responses were received and the OSSE intends to use them to inform the department's ongoing planning efforts. The OSSE states that it will conduct the survey again in 2009-2010 SY, and that it has put the appropriate safeguards in place to ensure timely responses and formal tabulation for reporting purposes for the FFY 2008 APR, which is due to OSEP on February 1, 2010.

## **F. Compensatory Education**

As discussed earlier in this report, the failure to fully implement the educational and related services in IEPs can result in due process complaints which seek compensatory education for such service lapses (non-Blackman/Jones comp ed). In addition, Blackman/Jones class members are entitled to compensatory education for the failure to provide timely due process hearings and HODs, and for the failure to implement the services required by HOD/SAs. (Blackman/Jones comp ed) The Consent Decree establishes a rebuttable presumption of harm for the failure to provide timely due process hearings, HOD decisions or implementation of services ordered by HOD/SAs. (¶. 74) In 2008/2009 SY, of the 2,331 due process complaints,

687 (29.47%) included as allegations or relief sought reference to compensatory education.<sup>68</sup> Of the 1,200 HODs issued during the school year, 275 (22.91%) had provisions for compensatory education, with 100 of those directly ordering the funding or implementation of a specified service. It is not unusual for HODs to refer the issue of compensatory education to the student's MDT for determination subsequent to the hearing.

The issue of Blackman/Jones compensatory education awards to class members for violations predating March 1, 2008 was substantially closed out in 08/09 SY following an outreach effort to contact class members who had not responded to earlier notices that had been distributed, although there may be a small number of "stragglers" who may still have viable claims.. The parties have had discussions regarding the entitlements to Blackman/Jones compensatory education awards subsequent to March 1, 2008 but, as of the date of this report, have not reached a resolution regarding such entitlements. DCPS has recognized that non-Blackman/Jones compensatory education is a barrier to timely implementation of HOD/SAs at nonpublic schools because in recent years there has been no LEA representative available to attend the IEP meeting. Some nonpublic schools have also expressed an unwillingness to implement compensatory education plans after normal school hours due to transportation problems. The assignment of Placement Specialists to these schools which began in 2008/09 SY and is expected to increase as more Placement Specialists are hired in the next school year is intended in part to remedy the problem of a lack of an LEA representative at IEP meetings. Moreover, for some types of service, DCPS has determined that an hour-for-hour replacement of the missed service may not be the most effective or desirable as compensatory education to

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<sup>68</sup> The B/J Database data system did not capture compensatory education claims as a separate category during this year. These figures are reported based on a search through the category of "other issues" for references to "compensatory education" or "comp ed."

remedy the educational deficit for the student. Consequently, their approach has placed a sharper focus on the individualized *effects* of missed services rather than the *amount* missed. Therefore, in 2008/09 SY DCPS assigned staff to develop a variety of compensatory education packages and to identify qualified vendors who could provide suitable choices to students and families.

Through the course of the year, a compensatory education database has been developed to enable staff in the central office to provide assistance to schools in addressing compensatory education needs of students. This database is still in the process of development and vetting of vendors and has not yet been made directly available to staff and the schools. Such access is not expected to occur until SY 2010/11.

Some members of the plaintiff's bar have reported to the Evaluation Team that DCPS appears to favor funding "one-shot" types of compensatory education packages that resolve open issues rather than compensatory education awards that require ongoing service delivery (Consent Decree, ¶ 76 (b)). One attorney reported that approximately 30 cases in which he asked for compensatory education instead of accepting a package award proceeded to litigation.

#### **VIII. DEFENDANTS' STATUS OF ACHIEVEMENT WITH CONSENT DECREE REQUIREMENTS RELATING TO THE TIMELY ISSUANCE OF HOD/SAs AND OPERATIONS OF THE STUDENT HEARING OFFICE**

OSSE's management of the Student Hearing Office ("SHO") has yielded concrete positive benefits over the past two years. The hearing office is run professionally, now utilizes an

electronic docketing system for internal management of due process cases,<sup>69</sup> provides sufficient hearing rooms, maintains an operational records management system, produces audio and written hearing transcripts much more rapidly than in prior years, and most recently, added a full time, highly qualified and experienced chief hearing officer to its leadership as well as significantly altered its corps of hearing officers after conducting a broadly advertised selection process. While the SHO continues to wrestle with some critical issues affecting due process hearings, the overall functionality in the SHO's management and operations represents a major transformation from the deplorable conditions in the SHO in SY 2006/07. We present in this section both a summary update on the operation of the SHO and an analysis of the different data reports that indicate that DC has improved its rate of due process adjudication timeliness, but falls below the 90% standard of timeliness required by Consent Decree ¶29.

**A. 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)**

The Defendants' June 30, 2009 report for the SHO reflects that that the rate of timely due process complaint adjudications has generally increased over the course of the year. The timeliness rate reported for November 2008 was the lowest rate in the year, at 82.95%, while the highest rate of 98.46% occurred in June 2009. The new docketing system introduced on August 11, 2008 reports on all due process cases filed from that date forward. The system does not report on cases filed before August 11, 2008 but adjudicated or resolved in the 2008/09 SY. For this reason, the SHO data reports for this school year do not report on a full 12 months of

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<sup>69</sup> Phase I of the docketing system implemented in the 08/09 SY does not permit external users (counsel for either LEAs or parents) to file pleadings or access documents within the system.

due process complaints or adjudications and resolutions. Similarly, the volume of HOD/SAs and relevant Orders reported as issued in August (0 HOD/SAs) and September (61 HOD/SAs) is relatively small<sup>70</sup> as cases filed prior to the docketing system's commencement and likely to have been adjudicated in August and September were not included in the timeliness reports for those two months.

There are a variety of ways in which the SHO's timeliness data for HOD/SA adjudication could be reported and indeed, has been reported by Defendants. Of course, any case reporting and management method used should be consistent with the clear purpose of IDEA's timeline requirements for due process complaints adjudication -- to resolve disputes in a short time frame to enable students with disabilities to obtain appropriate educational services and programs that meet their needs on a timely basis. 20 U.S.C. §1415(f); 300.C.F.R. §508-515; *Blackman v. District of Columbia*, (Liability Opinion of June 3, 1998).

The Defendants' June 30, 2009 submission reports the following data relative to timely due process complaint adjudications and resolution:

**Figure 10: SHO Timeliness Data<sup>71</sup>**

Disposition	2008					2009						
Month	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
HOD/SAs		61	151	129	136	99	96	90	84	87	65	993
Untimely	0	4	17	22	23	7	8	4	5	3	1	94
Orders	4	50	90	74	65	91	74	99	72	43	70	735
TOTAL	4	111	241	203	201	190	170	189	156	130	135	1728
Percent Timeliness	----	93.44	88.74	82.95	83.09	92.93	91.67	95.56	94.05	96.55	98.46	90.33

<sup>70</sup> See Figure 10 *infra*.

<sup>71</sup> Data for August 08 is from 8/11 to 8/31.

The above data calculates timeliness based on cases closed through HOD/SAs in each month and cumulatively but does not recognize or include in the calculations cases that are open and untimely. Adding in these cases would increase the size of the denominator and accordingly reduce the percentage of cases that are timely closed. The Defendants' end-of-year 2008/09 report identifies 7 open untimely cases,<sup>72</sup> assuming that all continuances granted for open cases are valid. If these 7 cases were included in the June timeliness calculation as untimely determinations and counted in the same way as other untimely cases, their inclusion would result in an 88.8% monthly timeliness rate. While we can calculate the impact of counting open cases by revising the timeliness counts for June or the overall period of August 11, 2008 – June 30, 2009 period, sufficient data was not reported during the course of the year to permit our performing a quick calculation of monthly timeliness rates based on reference to the open cases for individual months prior to June 2009.

Carrying open cases effectively in a separate account means that at any time, a group of open due process cases may be overdue for determination for a longer period of time than authorized by IDEA but not reported upon.<sup>73</sup> In practical terms, this might mean that individual students would be left to wait for a lengthy period, beyond that authorized by federal law, before having fundamental issues regarding their educational services or program resolved and acted upon.

The OSSE maintains that inclusion of open cases in its calculation of HOD/SA timelines is inconsistent with the United States Department of Education's Office of Special Education

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<sup>72</sup> This number includes 1 case that dated back to October 2008 that was not flagged as late in the report.

<sup>73</sup> We note that while DC has not included overdue open cases in its reporting of timeliness, the SHO Administrator has appropriately tracked and managed open cases on an ongoing basis with the benefit of weekly reports.

("OSEP") Indicator 17 for State Performance Annual Reporting for special education. This Indicator requires reporting of cases that are fully adjudicated within the statutory 45-day or 75-day timeline or a timeline that is properly extended. Yet Defendants' inclusion of open cases in their calculation would not preclude their reporting of data to OSEP pursuant to Indicator 17, when (as here) cases have now been properly tracked and identified as open or adjudicated cases. Most significantly, the instant case originated in part based on OSEP's findings that DCPS had failed to comply with federal law because final due process hearing decisions "had not been issued and were overdue in 482" of 655 pending due process administrative hearing cases. *Blackman v. District of Columbia*, (Liability Opinion, at p 6). Accordingly, the Evaluation Team's main concern here, most simply, is to ensure that any calculation of hearing decision timeliness provides a clear and complete picture of whether due process cases are being decided on a timely basis or not, consistent with the requirements of federal law and the central legal principle established by the *Blackman* case itself. In the context of a challenge to DCPS' failure to provide timely hearings to 11 students, this Court held specifically that the failure to provide timely due process hearings itself constituted irreparable harm and a denial of a free and appropriate public education. *Blackman v. District of Columbia*, 277 F.Supp.2d 71, 78-79 (D.D.C 2003).<sup>74</sup> Given the specific history and context of this case, the Evaluation Team concludes that it is appropriate to consider cases which remain open and outstanding beyond requisite legal timelines in determining whether 90% of the requests for timely hearings have been timely adjudicated or settled. (Consent Decree ¶129).

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<sup>74</sup> See also, Opinion of the Court in this matter in Claim of L. and B. Gibson on behalf of minor (April 10, 2005; Doc. #1711) (Student's rights under IDEA violated where DCPS failed to provide a special education student with a timely due process hearing and decision within 45 days after hearing officer granted ongoing improper extensions.)

We also reviewed the question of whether all hearing decisions and settlements issued had been included in the Defendants' timeliness reporting. The Student Hearing Office reports that it substantively reviews all adjudications denominated as "Orders" and "Dismissals" to determine whether they should be included in the calculation of timely final adjudications of HOD/SAs or excluded as procedural matters. While most orders are interim procedural ones and correctly excluded from the calculation, hearing officers often do issue orders and dismissals that reflect substantive closures of the case. For example, an order of dismissal may be issued when the parties have reached a settlement, or there may be a withdrawal of the case following a settlement. Some orders determine that specific actions are warranted (assessments and an IEP meeting thereafter), order such relief and then enter a case dismissal. Both DCPS and the SHO separately review case orders to determine whether final orders which contain substantive obligations or terms have been issued that should be included in the reporting of HOD/SAs and in the case of DCPS, implemented. The Evaluation Team has not had time this year to verify the SHO's practices with respect to determination of which Orders are counted as substantive closures. However, we have compared DCPS' Blackman/Jones reporting to SHO reporting of HOD/SAs for verification purposes.

We included all open due process complaints as obtained from the Blackman/Jones Database and calculated timeliness of case closure based on open and closed cases filed during each month. In performing these calculations, we have excluded ***all*** orders in order to keep the calculation methodology close to that of the Student Hearing Office. However, there may not be complete congruence in the methodologies since we have not made any attempt to classify orders as substantive or procedural, and had we done so, there is no assurance that our

method of classification would have been the same as that of the SHO. As displayed in Figure 11 below, the results of this method of calculation of timeliness of case closures indicates a somewhat lower rate of timeliness than reported by the Student Hearing Office.

**Figure 11: Merged Database and SHO Docketing Timeliness Data**

Merged QB & SHO data Dispositions		2008					2009						
Month Complaints Issued		Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Timely Dispositions	Orders	77	80	79	71	86	96	72	68	50	40	8	727
	HOD	107	103	97	65	80	70	57	78	44	12	1	714
	Settled	15	10	18	15	16	13	15	10	19	9	5	145
Untimely Dispositions	Orders	7	8	8	1	5	6	4	11	9	1		60
	HOD	15	20	25	7	4	8	6	3	5			93
	Settled								2	1			3
Not overdue	Open								1	12	52	147	212
Overdue	Open	1	5	6	2	4	4	5	4	15	13		59
	Totals	222	226	233	161	195	197	159	177	155	127	161	2013
Percent Timeliness		88.4 1	81.8 8	78.77	89.8 9	92.3 1	87.37	86.75	90.72	75	61.76	100	84.71

We emphasize that the above table and data computations should not be treated as an accurate, dispositive calculation of due process complaint determination, but instead, a window into reporting issues relevant to assessment of the completeness and accuracy of SHO reported monthly and annual data.

The SHO has also recognized in its earlier reporting in 2008/09 SY that the validity of continuances significantly impacts timelines rates. In the SHO's monthly compliance reports for the months covering September 2008 - February 2009, the SHO reported timeliness based on

the “best case” and “worst case” determination with respect to the validity of continuances. A valid continuance, approved in accord with the provisions of the Consent Decree, properly moves the due date for a case adjudication. An invalid continuance, by contrast, cannot be considered in calculating the case due date. (Consent Decree ¶¶31- 32b) Given the Evaluation Team’s analysis of a sample of continuance cases involving multiple continuances and/or a period of more than 10 days of continuance,<sup>75</sup> we believe that the SHO responsibly reported on the range of timeliness rates that it projected likely applicable at that time. In the February 2009 report, for instance, the SHO reported the data summarized in Figure 12 below:

**Figure 12: February 2009 Report of Compliance Rates Based on Best/Worst Case Determinations**

	Month	% “Best Case”	% “Worst Case”
<b>2009</b>	<b>February</b>	91.67	81.25
	<b>January</b>	95.96	89.9
<b>2008</b>	<b>December</b>	83.82	76.4
	<b>November</b>	84.5	78.29
	<b>October</b>	90.7	87.42
	<b>September</b>	93.44	90.16
	<b>August</b>	No data reported	No data reported
<b>Avg. Timeliness</b>		<b>88.96</b>	<b>83.58</b>

We do not conclude that either the “best case” or “worst case” data is totally accurate or that such “compliance range” reporting is necessary. However, under the circumstances of the SHO’s practices for handling continuances in 2008/09, we find that it is appropriate, as SHO implicitly recognized in its mid-winter reports, to consider the potential impact of invalid continuances in calculating the timeliness of SHO resolution of due process complaints.

<sup>75</sup> Section VIII B. *infra*. provides an analysis of this continuance review.

Finally, we note that small discrepancies exist in the HOD/SA data reported within the monthly reports and in data reported in the monthly reports vs. the final end of year report in June 2009. For instance, the February 2009 report reflects a total of 670 HOD/SAs but makes a calculation of timeliness based on a total of 671 cases. The February reports its timeliness calculation for November based on 130 timely HOD/SAs and 20 untimely ones, with a “best case” timely compliance rate of 84.5%. The June report provides for November two different HOD/SA data totals (129 and 130) and identifies 22 untimely cases, with a timeliness rate of 82.95%. Numerous similar minor discrepancies exist in the reports, some of which would boost the adjudication timeliness rate and others which depress the rate. The SHO has acknowledged these discrepancies and believes that it will minimize instances of human error in reporting when it implements Phase II of the docketing system. Currently, Phase II of the docketing system, which is just at the start date of planning, is projected for full implementation in or about February 2010.

## **B. Continuance Provisions of the Consent Decree**

The continuance provisions of the Consent Decree provide explicit guidance regarding how hearing continuances are to be handled and in particular, under what circumstances a continuance will not be deemed a valid extension of hearing decision timelines. (Consent Decree ¶¶29-32, 55b) These provisions, while technical, attempt to address the underlying due process violations that this Court has concluded occur when hearings and HODs are repeatedly delayed past IDEA’s limited time frame for due process adjudication. (See also, Court’s Opinion of August 11, 2005, granting plaintiffs’ motion for preliminary injunction in class member’s case involving repeated hearing continuances and re-scheduling; court doc. # 1711). The Decree

also includes provisions crafted to address previous abuses in the continuance process, including specifically requiring at ¶55b that,

Hearing Officers must issue written determinations when continuances are granted or denied, and the written determination must state the basis for granting or denying the continuance, including whether good cause was found. No more than one continuance per side shall be granted in any case unless the Chief Hearing Officer grants another continuance based on *exceptional circumstances*. Continuances shall be limited to ten (10) days unless the Chief Hearing Officer orders otherwise after review. (Emphasis supplied.)

One or more continuances were granted in approximately 27% (268) of the closed HOD/SA cases (996) reported by the SHO in the 2008/09 SY.<sup>76</sup> According to the SHO June 2009 report, these 268 closed cases entailed a total of 396 continuances due to the grant of multiple continuances in many cases. Additionally, a significant number of individual continuances were for more than 10 days and sometimes substantially more than 10 days. In total, 11 of the continuances granted in closed cases were ruled as invalid for Blackman/Jones counting purposes in the 2008/09 SY. As of the June 2009 SHO report, all 49 continuances in the 222 pending open cases had been approved as valid extensions.

In prior school years, the Evaluation Team had observed that hearing officers and the SHO had paid minor attention to the Consent Decree continuance provisions. Prior to the 2009/09 SY and commencement of the docketing system, the SHO had not tracked and reported on continuances. Based on these overall factual and legal circumstances, the Evaluation Team determined it was appropriate to review more closely SHO continuance practices and their effect upon hearing determination timeline compliance.

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<sup>76</sup> For unknown reasons, the total number of cases with continuances and total without continuances identified in the SHO June 30, 2009 report add up to 996 cases, which is 3 cases more than the aggregate number of HOD/SA cases identified in this same report's cover summary.

We selected a random sample of 28 cases with continuances extending for more than 20 days in total and filed throughout the course of 2008/09 SY. The great majority of the cases included two or more extensions.<sup>77</sup> In other words, our sample was drawn, from a cohort of continuance cases potentially most likely to raise questions with respect to compliance with the Consent Decree continuance provisions as well as due process decision timelines. (In total, 122 of the 268 closed cases with continuances reported on for the 2008/09 SY were extended for more than 20 days, representing 45.5% of the pool of closed case continuances. Thirty-three of the 49 open cases with continuances reported were for more than 20 days, representing 67.3% of this separate pool of continuance cases.)<sup>78</sup>

We proceeded with our review based on the paper record in these 28 files as well as supplementary checking of information contained in the student docketing system.<sup>79</sup> Our record review as well as monitoring indicated the SHO's tightening of management of the scheduling and continuance process during the course of the school year. However, our

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<sup>77</sup> The SHO ultimately provided us with copies of relevant documentation from 30 of the original 38 files requested, with one file substituted in place of another. Due to time constraints, we did not attempt to secure copies of the files not sent. Two files were also randomly omitted from review based on our time constraints.

<sup>78</sup> When DCPS lifted its blanket waiver of resolution sessions on April 1, 2009, the SHO and/or some hearing officers began to routinely schedule cases based on the normal 75 day hearing decision timelines provided for under IDEA 2004 (based on the allocation of 30 days to the resolution process). However, as DCPS continued to waive resolution sessions in cases arising in all but 3 schools and petitioners routinely waived resolution sessions, the hearing due date for these cases by law in fact should have been reset to 45 days after the date of resolution waiver. Hearing officers' initial reliance on the longer 75 day time frame appears to have caused an upswing in continuance activity, as initially hearing officers did not learn promptly that waivers had been entered and in turn, that the shorter hearing time frame therefore would apply. Subsequently, SHO management took responsibility for ensuring that the adjusted time periods were recorded in the docketing system.

<sup>79</sup> As the SHO docketing system currently is slow and stores documents relating to continuances in a variety of fields, we asked the SHO to provide the Evaluation Team with all documentation in the 38 identified files that related to the granting of continuances, including all motions, correspondence, e-mail, and Orders addressing continuances and the scheduling of the case. The SHO ultimately provided us with copies of relevant documentation from 30 of the original 38 files requested, with one file substituted in place of another. Due to time constraints, we did not attempt to secure copies of the files not sent. Two files were also randomly omitted from review based on our time constraints.

analysis of the 28 case sample reveals that distinct problems remain in the handling of the continuance process and resulting determinations of timeliness of some HOD/SAs.<sup>80</sup> In summary:

- In 9 cases the decisions to grant continuances was not put in writing.<sup>81</sup> In one of these case, 2 such decisions were not in writing.
- orders granting continuances of more than 10 days lacked evidence of review by the Chief Hearing Officer (there were several cases with more than one such order granting a continuance).
- In 22 Orders and 16 cases there was no evidence of review by the Chief Hearing Officer for continuances after the first one granted to a specific party. Even when such Chief Hearing Officer reviews occurred, there were cases with no evidence of review or an initial bare finding of "exceptional circumstances" warranting approval of such additional continuances in five cases.
- In 6 cases (with multiple Orders) continuances were granted for reasons that did not entitle the defendants to an exemption from the compliance calculations.
- Significantly, 16 cases out of the 28 reviewed were assessed as untimely as a result of continuances found to be invalid under the continuance provisions

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<sup>80</sup> Discrepancies were noted in a variety of instances with the calculation of the length of the continuances on the SHO spreadsheet as well as the dates of the continuances and reasons for such. Given the absence of a clear record in some cases, this is not entirely surprising.

<sup>81</sup> It should be noted that in addition to that number, in some instances where the database identified a written order having been issued, there was no Order in the paper file provided by the SHO, and no attachment in the computer record of such an Order. In such instances, the conclusion is reasonable that there was no written Order as part of the record.

terms of the Decree.<sup>82</sup> Four of these 16 cases had already been classified by the SHO as untimely for other reasons. Two of the 16 cases were open cases.<sup>83</sup> Our review of the sample cases reveals that not one of the roughly 100 continuance motions ruled upon and reported had been denied by the hearing officer. And, not one of the continuances in those sample cases had been rejected on review by the Chief Hearing Officer. Nor had any been deemed invalid by the SHO.

There appear to be common practices that effectively circumvent the intent of the Consent Decree to avoid multiple continuances and continuances of greater than ten days' duration in all but extremely limited cases. Many of the problematic cases include continuances that are granted without creation of an adequate or reviewable record. Without an adequate factual basis in the record for the initial finding by the Hearing Officer of "good cause" for the continuance, it would not be possible for the subsequent Chief Hearing Officer review to identify the existence of "exceptional circumstances." Additionally, we note in some instances where the database identified a written order as having been issued, there was no Order in the paper file provided by the SHO, or in the docketing system.<sup>84</sup> The record in these cases is also made more confusing because many motions are not made in writing. Although the SHO Standard Operating Procedures (§402B) requires written continuance motions, such motions are often not submitted in writing, or where a form motion is filed, it is inadequate to

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<sup>82</sup> We note that there are another three cases that involved invalid continuance approvals but also a credit of time to the Defendants for continuances granted to Parents in connection with their unavailability / lack of preparation to proceed. If these three cases were included in the count, they would be deemed untimely and decided beyond the 45 day hearing period.

<sup>83</sup> Three open cases from the June 2009 report were reviewed overall.

<sup>84</sup> We also observed occasional circumstances where the parties and the Hearing Officer prepared written Motions for Continuance and Interim Orders after the fact to document a record of what they have already done and acted upon and after the date for action had passed.

demonstrate the existence of the requisite facts which the Hearing Officer may rely upon in granting the continuance.

This problem is exacerbated by Hearing Officers' nearly complete reliance on the practice of checking one or more boxes of the form the Interim Order on Continuances as the sole record basis for grant of a continuance. In the review of the sample cases, there were very few Interim Orders on Continuances that contained more than the most perfunctory checking of boxes, without further explanation upon which good cause could be factually established.

In some cases, the Petitioner was cast as the movant for the continuance where they did not seem the primary movant and multiple reasons, including among others the availability of the SHO and/or DCPS counsel, were identified as factors. The circumstances where responsibility for the continuance might be attributed to the Defendants were extremely rarely noted in the record, even though such might be reasonably expected to occur. The files suggested a certain random quality to who was chosen as the movant when scheduling changes were needed, though attention appeared at times to be paid to avoiding the same party having to make more than one continuance request. Liberal use was made of Joint Motions, and of motions not attributed to any party, and called "Other."

Given the obligation to complete these particular cases within 45 days of the date of service of the due process hearing request,<sup>85</sup> it is notable that the usual practice within the SHO appeared to be to set the initial hearing at or very near 35<sup>th</sup> day after the filing of the complaint and in some instances beyond that date, eroding the reasonable prospect of a timely decision

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<sup>85</sup> DCPS's blanket waiver of resolution sessions in 2008/09 SY applied to these cases.

within 45 days. Seventeen of the 28 cases in the sample reviewed had the initial hearing date scheduled 32 to 61 days after the filing date.<sup>86</sup>

The following cases illustrate the concerns discussed above.

**Case 2008-0239:** A continuance for 28 days was granted on October 21, 2008, without CHO review of the continuance although that is required for all continuances of more than 10 days' duration. The basis for the continuance was "Other" and no explanation was provided as to the reason therefore, so there is no information upon which to find good cause, especially, where as here, no written Motion was filed supporting the request for a continuance (as dictated by the applicable SOP). The SHO spreadsheet characterized the continuance as based on an unanticipated conflict for DCPS with the scheduled hearing date. This basis is one that could not be counted in calculating the Defendants' compliance under the Consent Decree. (There is also an unexplained discrepancy between the October 21, 2008 extension granted to November 5, 2008 and the hearing not occurring until the following day, without an additional continuance being entered.) The HOD in this case was issued within 10 days of the hearing date, but 82 days after the filing of the due process complaint. The initial hearing date scheduled in the case was 35 days after the filing of the complaint, leaving no time for any further errors or delay. After crediting the valid continuance considered at the prehearing conference, this reduces the gap between filing the complaint and the Hearing Officer's decision (which was issued 8 days after the conclusion of the hearing) to 64 days.

**Case 2008-0926.** This is also a good example of what can go wrong. The complaint was filed on December 9, 2008, and a hearing scheduled in that case through the Pre Hearing Conference Order for February 9, 2008 -- 61 days from the filing date. This case was already untimely before the first continuance was issued. In an email to the plaintiff's attorney, a DCPS representative suggested that if the confusion of scheduling the hearing could not be resolved by the next day, counsel, "recommend[s] that you withdraw [sic] complaint and refile as 45 day timeline has long passed." This would be an example of the "tail wagging the dog" as the 45-day promptness goal became a vehicle for further obstacles and delays to fast resolution of the case. A continuance of

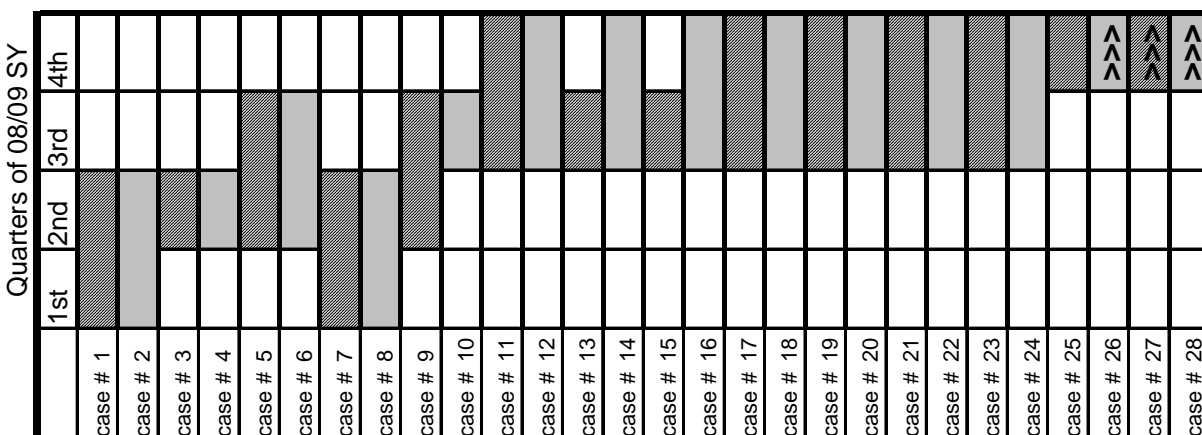
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<sup>86</sup> The Defendants' comments regarding this scheduling issue to date appear to reflect a misunderstanding of the point made here. While the Consent Decree refers to local DC law that provides that hearings will be scheduled within 35 days of the filing of the due process complaint (assuming a 45 day hearing schedule), this does not preclude earlier scheduling. The point here is that when hearings are always provisionally scheduled on the cusp of the decision deadline (within 10 days of the hearing deadline), there is little space for adjustment of the hearing date to accommodate scheduling needs and therefore, extensions beyond the required hearing decision time frame are made far more likely. Our review of the scheduling practices indicates that it was rare for hearing officers to move up hearing dates (rather than extend these) due to scheduling issues.

23 days duration granted thereafter bore no indication of the requisite Chief Hearing Officer review necessary for all continuances longer than 10 days. Ultimately, the HOD was issued within 7 days of the conclusion of the hearing, but 91 days after the filing of the complaint.

In summary, while we saw a clear trend of improved management of overall hearing timeline practices during the course of the school year, the annual data with respect to continuances as well as our sample review indicated that substantive work remains to be done to bring continuance practices into alignment with Consent Decree's provisions and related due process hearing decision timeline requirements. While we recognize that OSSE provided training to hearing officers on an ongoing basis, including training on the Consent Decree continuance provisions, continuance practices unfortunately posed problems throughout the year. In this connection, we note that the sample we reviewed covered the entire school year and beyond in the duration of the cases from point of filing to resolution and involved 13 total hearing officers.

**FIGURE 13: TIME DURATION OF SAMPLE CASES REVIEWED, FROM FILING TO CONCLUSION, BY SCHOOL QUARTER**



Based on the findings in our sample review, we conclude that the SHO's original timeline reporting for HOD/SA issuance as falling within a "worst case" and "best case" data range due to continuance issues was most on target. As the SHO ceased using this form of reporting in February 2009, we do not have the benefit of its projected calculation of the hearing decision for the period August 11, 2008 – June 30, 2009. However, given the sample continuance data we have reviewed and the SHO reported compliance rate of 90.33% based on 11 total invalid continuances for the entire school year, we find that the evidence indicates the timeliness data for this period in actuality falls under 90% when proper consideration of the Decree's continuance provisions is given. Similarly, monthly timeliness rates identified in the June 2009 report, as indicated by the February 2009 report's data would fall somewhat lower.

Defendants have pointed out that OSSE has demonstrated its unequivocal commitment to professional operation of the hearing system consistent with legal standards through the scope of its overhaul of the hearing system – ranging from the implementation of regular professional development and technical assistance and issuance of regular management directives to the imposition of fines and sanctions on hearing officers who issued late decisions. By the end of the 08/09 SY, OSSE also had not renewed the contracts of multiple hearing officers and removed others from its list of qualified hearing officers based on noncompliance issues. The Evaluation Team does in fact recognize the major reform and management measures that the SHO implemented over the past two years to improve both the quality of hearing officer decisions and their timeliness. Yet these reform measures did not cure or remedy in one fell swoop the full range of challenges posed by common hearing practices and problems within the SHO. While the evidence indicates significant progress in timely

adjudications and settlements, the facts as closely examined demonstrate clearly flawed continuance practices<sup>87</sup> which rendered many timeline extensions invalid pursuant to the terms of Consent Decree and in turn resulted in more untimely decisions than Defendants reported as of June 30, 2009.

### **C. Operation of the Student Hearing Office and the Hearing Process**

As discussed above, the SHO implemented substantive reforms in management of the office commencing in the 2007/08 SY, when OSSE assumed responsibility for the SHO's operation. SHO's work addressed the key provisions of the Consent Decree which in sum require that SHO "hold hearings in a timely and professional manner," and "maintain sufficient staff, equipment, and other resources to accomplish this." (Consent Decree, ¶155) We review below the status of the SHO's handling of a variety of elements essential to legally appropriate and professional administration of the hearing office.

#### **1. Docketing System**

The SHO's launch and operation of the new docketing system was the most significant development in operation of the office in the 2008/09 SY. Despite its imperfections, the system represents a huge leap forward in the office's capacity to manage and report on cases on an efficient basis. In the 2009/10 SY, OSSE plans to initiate the development of Phase II of the Docketing System, providing for external filing and access to the system. When this functionality is furnished, it should add to the transparency of scheduling, filing, and management of cases.

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<sup>87</sup> Defendants have suggested that certain provisions of the Standard Operating Procedures and problems with the Continuance form contribute to these practices. However, Defendants have not yet initiated any effort to change these particular provisions to date.

As noted earlier in Section III of the Report, Defendants have not as of yet conducted an accuracy audit of the docketing system. The accuracy audit planned for the 2009/10 SY should provide helpful insight into which issues still require attention in the docketing system to assure due process complaints' timely and proper adjudication or resolution. Some of these issues have been preliminarily identified in our discussion of the way SHO has recorded documents and data relating to continuances in the docketing system. Issues raised by the SHO's use of the docketing system's document management function and architecture are discussed further below in our discussion of records management.

## **2. Records Management**

Our on-site observations indicate that the SHO's management of the large volume of physical files maintained by the office has genuinely been transformed in the period since summer of 2008 SY. Current records management practices are fully evidenced and in place. Appropriate storage of files is afforded and files are properly organized and retained.

Our review of the continuance sample indicated the spottiness of documents pertaining to continuance motions and orders. We believe that this spottiness reflected inconsistent drafting as well as filing of motions and continuance orders.

Our interviews with counsel indicate that a significant number have experienced repeated problems with hearing officers' timely receipt of motions and disclosure statements that have been filed. They relay that frequently hearing officers report that they have received neither the electronic nor courtesy hard copy of a document that has been filed days earlier. Counsel also indicate that this problem contributes to delay in hearing officer review and resolution of significant motions (including motions to expedite hearings) and makes hearing

conferences far less productive. We also heard reports that some transmission delays were attributable to delays of several days in the SHO's scanning of documents into the docketing system. The SHO management indicates that it is not aware of such a pattern of filing transmission problems and that any uploading delays in the docketing system have been incidental. We are not able at this time to resolve the differences in these two different views regarding the delivery of essential pleadings and records to hearing officers. Our interviews certainly suggest that some form of record transmission problem affects hearing officers' timely receipt or review of pleadings and records in numbers of cases. That said, we have also personally observed major improvements in overall records management practices within the SHO since 2006. Whatever the source of the problem, any delayed or missing filings should always be a source of immediate concern to staff and trigger more communication with the bar about these issues.

Finally, based on our thorough review of the sample of 28 continuance cases as well as other electronic case files, we note that the redundancy and inconsistency of how filings are electronically stored under the docketing system's tabs renders it difficult to track motion practice, scheduling in cases with substantial activity, and the completeness of the record. Motions, orders, and scheduling communications are included in any number of tabs in the electronic system, sometimes redundantly. This is a soluble problem that requires attention and standardized electronic filing practices.<sup>88</sup>

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<sup>88</sup> The SHO Administrator has advised the Evaluation Team of his expectation that Phase II of the Docketing System will address these and other information access and management issues.

### **3. Chief Hearing Officer**

The SHO and the OSSE continued to use the services of two national special education experts<sup>89</sup> to assist in guiding a variety of SHO operational reform initiatives, including technical assistance and professional development for staff and hearing officers. After a highly competitive, open selection process, one of these experts, Mr. Beekman, a nationally recognized expert in special education law, was selected to serve as the first permanent chief hearing officer, starting at the end of the 2008/09 SY. As the Chief Hearing Officer is expected to play a significant role in the hearing office, we cannot assess the contribution of the permanent chief hearing officer's role until next year.

### **4. Hearing Procedures**

One of the challenges that the Chief Hearing Officer along with fellow hearing officers must face this coming year is Respondent schools' continuing practice of failing to file Answers and five day disclosures, as required by IDEA's due process complaint provisions, in an unacceptable number of cases. In the 2008/09 SY, 2,331 complaints were filed on behalf of students, whereas 1,410 Answers were filed by Respondents. Taking into consideration that some number of complaints are withdrawn after filing, this gap is significant. Similarly, whereas counsel for students filed 1,548 disclosures in response to IDEA's requirement for *all* parties' disclosure of relevant evaluation evidence five business days prior to a hearing (28 U.S.C. §300.512(b)), 1,408 were filed on behalf of Respondents. Under federal law, evidence not disclosed in conformity with the five day rule should be precluded from introduction at the hearing. 28 U.S.C. §300.512(a)(3).

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<sup>89</sup> These experts included 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.

The SHO's presumptive 2 hour hearing rule caused a need for ongoing re-scheduling of a number of cases. Even when cases were initiated and continued, they often were continued for a short slot of time, to be continued anew. As the SHO Management now recognizes, hearing officers' should be able to use preliminary hearings to plan for appropriate time scheduling for hearings, rather than rely on a 2 hour rule.

Hearing officers instituted pre-hearing conferences with far greater regularity this year, so as to properly manage cases on a timely and fair basis. We have been provided with no specific data, however, regarding in what proportion of cases such conferences were conducted.

#### **5. Transcript and Audio File Requests**

The SHO managed counsel requests for transcripts and audio recordings of hearings in generally efficient time frames, as required by the Decree and SHO Standard Operating Procedures §1007 (requiring production of audio tape of hearing within 5 *business days* of request.). Based on the data the SHO provided to us, we determined that the office was able to provide the requested transcripts, audios, or other documentation within the average *calendar day* frames specified below:

**Figure 14: Transcript / Recording Turnaround Times**

<b>July – December 2008 Requested Items</b>	<b>Average # of Days to Provide Documents/Tapes from Date of Request</b>	<b>Range of Days</b>	<b>Number of Cases</b>
Audio	4.8 days	0-11 days	12
Certified Record	46.7 days	4-97 days	11
Transcript	33.2 days	8-97 days	25

<b>February – June 2009 Requested Items (No data provided for January)</b>	<b>Average # of Days to Provide Documents/Tapes from Date of Request</b>	<b>Range of Days</b>	<b>Number of Cases</b>
Audio	6.8 days <sup>90</sup>	1-14 days	5
Audio/Certified Record/ Transcript	14.7 days	1-33 days	8
Audio Transcript	17.8 days <sup>91</sup>	8-44 days	12
Certified Record / Transcript	19.0 days	0-28 days	24
Transcript	13.4 days	2-33 days	25
Certified Record	14.3 days	4-19 days	25

<sup>90</sup> As we counted calendar and not business days, we think it fair to assume that the great majority of requests for audio tapes were satisfied within the 5 day time frame set forth in the SOP.

<sup>91</sup> This data excludes one request from April 14, 2009. The SHO log does not show the precise when these documents were supplied or collected by the attorney, if at all. This case as well as all other requests withdrawn by counsel have been omitted in our computation of averages.

## **6. Prompt Communications**

While various parents counsel' recognized definite improvements in communications with the SHO office staff, they continued to voice concerns regarding SHO staff's failure to return phone calls on a prompt and professionally courteous, responsive basis, as required by the Consent Decree (§55c.-55d) and SHO Procedures (§201A). Timely, responsive, professional communication with counsel remains critical to the SHO's actual and perceived efficacy. The SHO management agrees that this is essential but believes that such timely responsiveness is now the general norm in the office. Defendants point out that customer service training of office staff has been provided and staff have received favorable ratings on mandatory email and voicemail testing.

## **IX. CONCLUSION**

The themes touched on by this Report are clear. The District this year has taken real steps forward in a wide array of work to address the requirements of federal special education law and this Consent Decree. While the Defendants have not met the Consent Decree's performance standards or the requirements of underlying federal law, concrete measures of progress have been shown in a number of critical areas. At the same time, the District continues to struggle with fundamental special education and related service delivery and educational programming issues that give rise to an ongoing stream of due process complaints and nonpublic placements. Coordination of the District's special education management reform efforts and resources has markedly improved this school year; yet as traced in this report, significant gaps remain in a host of areas that negatively impact both legal compliance with the Decree and the opportunities of students with disabilities to a free and appropriate public education.

The District has properly pursued initiatives for the development of its data systems to guide oversight and delivery of special education services affecting thousands of students in hundreds of school locations. Some progress on this front has been made. However, the District has continued to experience significant deficiencies in its data systems, data collection, and coordinated data management issues on diverse fronts, as detailed in this Report. These systemic deficiencies undermine the District's and schools' capacity to manage and implement the array of work required to meet their obligations under federal law and this Consent Decree to students with special needs.