

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

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

EXECUTIVE SUMMARY
OF THE REPORT OF THE EVALUATION TEAM
FOR THE 2008/09 SCHOOL YEAR

Submitted by:

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Court Evaluation Team

Filed: September 25, 2009
By: Amy Totenberg, Monitor

EXECUTIVE SUMMARY

This annual report of the Evaluation Team for SY 2008/09 assesses the progress made by the Defendants in implementing their obligations under the Blackman/Jones Consent Decree. Throughout this past school year the Evaluation Team has noted the more focused, coordinated efforts of the District of Columbia Public Schools ("DCPS") and the Office of the State Superintendent of Education ("OSSE") to address the requirements of the Consent Decree and the underlying federal special education law on several fronts. Their efforts have resulted in demonstrably improved levels of compliance with the core measures in the Consent Decree although these clearly fall short of the standards required both under the Consent Decree and the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.* At the same time, the Evaluation Team has noted that the systemic problems in special education programming and related services capacity described in our earlier reports persist. These systemic problems, coupled with the District's on-going difficulties in maintaining fully functional and accurate data systems which support management and delivery of special education services, continue to impede the extent of the progress that has been made.

Although the rapid expansion of charter schools has positively contributed to the range of educational program options in the District of Columbia, independent charter schools generally have neither offered a full continuum of services nor served students with the most intensive needs. OSSE initiated work in 2008/09 school year ("SY") to address charter school enrollment and referral practices that limited services available to special education students attending charter schools and entailed potential discrimination. While OSSE's initiatives indicate a measure of progress in this area in collaboration with the Public Charter School Board, the fault lines between charter and DCPS schools and their respective data systems posed continuing challenges in the 2008/09 SY which in turn fed into the problems of displaced special education students and due process complaints and private placements.

The major findings contained in this report are as follows:

A. Compliance measures

1. The rate of timely implementation of Hearing Officer Decisions and Settlement Agreements ("HOD/SAs"), as reported by Defendants, 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 standard of 80% timely implementation. (Report, Section II.B) The cumulative rate of timely implementation from March 1, 2006 to June 30, 2009 is 36.5%.
2. The Jones initial backlog of cases predating March 1, 2006 has been substantially eliminated with one remaining case administratively closed in August 2008 but recently re-opened by DCPS for further review. (Report, Section II.A)
3. Since the case closure process is critical to the validity of the timeliness data being reported, the Evaluation Team conducted an audit of the case closure process for

samples of cases which were closed by implementation of the terms of an HOD/SA and cases closed administratively without such implementation.

- a. The audit of cases closed based on actual implementation found a 100% rate of agreement between the auditor's findings and those posted in the B/J database both as to timeliness and actual implementation.¹
 - b. The audit of administrative closures of cases outstanding and unimplemented from March 2006 forward found that 11% of the cases were improperly identified as administrative closures. It found that DCPS complied with the final 30 day notice provisions in the closure protocols in 97% of the cases, but had delayed taking actions for which it was responsible in 89% of the cases before they became administrative closures. In 65% of the sample, student residency issues arose only after the HOD/SA had not been implemented for a period of time ranging from five months to 2 ½ years. These cases took an average of 428 days from the date of issuance of the HOD/SA to closure, indicative of the previous inattention to meeting the educational needs of the students affected. (Report, Section II.C.3)
4. Defendants reported that 16 HOD/SA cases were overdue and not implemented for more than 120 days as of June 30, 2009. The Evaluation Team has been provided insufficient information at this time to verify affirmatively the accuracy of the District's report of the number of open and overdue cases beyond 120 days or its method of identifying this group of cases. (Report, Section II.C.2.)
5. The data reported by the OSSE indicates that overall DCPS has made a modest improvement in the timeliness rate of current IEPs and is close to the 2008 target of 90% set forth in the Action Plan appended to the Consent Decree. Timeliness in re-evaluations (required at least once every 3 years) has improved by nine percent to 57% since last year; however, the DCPS rate of timely assessments has declined by almost 23 percentage points to a 50% rate of timeliness. The performance of charter and nonpublic schools and OSSE State placements 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 this report. (Report, Section V)
4. The rate of timely adjudications of requests for hearings has improved and is moving toward the 90% standard of timeliness but falls below that standard. There remain questions about whether hearing continuances have been properly approved and calculated in determining HOD/SA issuance timeliness, as well as whether all relevant cases were included in the calculations reported by the Defendants. Our own audit of

¹ The auditor, Dr. Deborah 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.

the files of a sample of cases revealed many irregularities in the granting of continuances and in adequately documenting the reasons and the required reviews of such continuances. (Report, Section VIII.A & B)

B. General Observations

1. The expanded staffing and focused implementation of a Backlog Reduction Plan, that was originally part of the parties' ADR agreement of December 2007 and subsequently revised in November 2008, were integral to the District's increased success both in closing older cases and responding to newly filed due process complaints. (Report, Section III.A)
2. There has been a marked decline in the volume of due process complaints filed and in HOD/SAs issued during the 2008/09 SY, and in particular in the latter half of the school year. (Report, Section II.B) The parties have significantly different explanations for this decline, with the Defendants generally attributing it to improved and more responsive special education services, and the Plaintiffs attributing it to a concerted effort to limit parents' access to counsel by DCPS' failure to timely and adequately pay attorneys' fees with the result that some members of the special education bar have laid off staff and cutback on their legal representation of students with disabilities (Report, Section III.C & E)
3. Despite the increased focus on special education compliance, the general environment of special education in the District continued to be a difficult one. It remained characterized by shortages of special education teachers and aides in the classrooms, and shortages of social workers and psychologists and other related services providers for much of the school year. These deficits in addition to other substantive program challenges in turn affected the ability to offer responsive special education or related services to implement HODs or settle due process complaints. (Report, Sections III.B & V.A.1)
4. Charter school enrollments have been increasing but the proportion of special education students enrolled remains well below that of DCPS, and the limited capacity of most charter schools to serve students with significant disabilities results in such students either not being enrolled at all or transferred after enrollment to a nonpublic school. (Report, Section VI.B.1 & 3)
5. As a result of these conditions, the stream of students exiting both DCPS (275) and the charter schools (67) and into expensive nonpublic schools has continued and in fact increased in the past school year. These placements significantly exceed the numbers of students in residential (46) and nonpublic schools (51) who returned to a public or charter school during the SY. At year's end, DCPS could confirm that only 18 of these 97 returning students were enrolled in school. (Report, Sections VI.B.3, VII.B)

6. The District has placed its reliance on several newly implemented data systems to help it manage the special education system. The new Special Education Data System (“SEDS”) should in the long run offer far improved functionality over its predecessor data system, but to date has been seriously handicapped by design and data flaws that have limited its utility for the intended purpose. (Report, Section IV) DCPS’ interim data system solution for tracking implementation of hearing decisions and settlements has markedly improved the District’s capacity to manage oversight of these cases but has also been limited by its lack of integration with other student data systems. (Sections III.F., IV., V.B.1., VI.B.4.).

a. **SEDS.**

- i. The SEDS system, which is the successor to ENCORE, has experienced problems with accuracy and usability at the school level. The SEDS system has not been able to produce accurate reports regarding related services ordered or needed, assessments, or missed services whether prescribed in an IEP, HOD/SA or a compensatory education plan. Additionally, the current version of SEDS does not offer critical functionalities such as the ability to track and manage due process complaints and HOD/SAs.
- ii. SEDS has also not been used by most charter and nonpublic schools, and the movement of students between schools continues to affect the reliability and accuracy of data. There have been difficulties in maintaining accurate and current data on the enrollment status of students, especially the approximately 25,000 students attending charter schools.
- iii. At the start of the 2009/10 SY the District began rolling out new SEDS module of “core module improvements” in an effort to address previous data system functionality limitations.

b. **B/J Database.**

The Blackman/Jones database has been used as an interim measure to manage the implementation of HOD/SAs for all students – DCPS, charter and nonpublic schools. Until sometime in December 2008, the Blackman/Jones database did not have updated enrollment information from the STARS database used by DCPS to maintain current enrollment information. Consequently, the Blackman/Jones database was frequently inaccurate in reporting the location of a student with an open HOD/SA, which resulted in school personnel not being aware of the requirements of HOD/SAs for some students in their schools. As the SY progressed, DCPS implemented a regular STARS update to the Blackman/Jones database, substantially improving its accuracy. However, similar regular updates from the OLAMS database for charter schools are not in place. (Report, Section III.F)

- c. A separate database used to manage assessments and related services has similarly been plagued with accuracy problems since the SY 2007/08, which continued throughout the past school year, for some of the same reasons. This system has been unable to maintain an accurate record of students needing related services, 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. It is thus unable to help identify the workload for related services, the capacity that is needed, the gaps in capacity and the productivity of the related service providers. (Report, Section V.B)
- d. In summary, these data systems have not been able to produce the full operational functionality or data reports required by the Consent Decree at the rate of accuracy required. (Consent Decree ¶¶ 60-66) (Report Section IV) OSSE and DCPS staff members and contractors are continuing their ongoing efforts to address these data system deficiencies.
- e. 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, provides sufficient hearing rooms, maintains an operational records management system, produces audio and written hearing transcripts much more rapidly than in prior years, and recently added a full time, highly qualified and experienced chief hearing officer to its leadership. While the SHO continues to wrestle with some critical issues that negatively affect the functioning, timeliness, and quality of the hearing review process, the overall improvement in the SHO's management and operations represents a major transformation from the deplorable conditions in the SHO in the 2006/07 SY and preceding years. (Report, Section VIII.C)