Statement of Clarence J Sundram to the Court,

Blackmon Jones Court Monitor

Status Conference, December 16, 2014

In submitting my year-end report for the 2012-13 School Year, I noted that the District stood at the Threshold of achieving compliance with the specific measures in the Blackman Jones Consent Decree. With the requirement for eliminating the initial backlog already having been met, all that remained was to achieve compliance with two other measures.

First, to timely implement 90% of the Hearing Officer Decisions/Settlement Agreements issued during the preceding 12 months; and second, that no case is overdue more than 90 days (¶ 148)

As a backdrop to the year-end report for the 2013-14 School Year, I should note that the census of the schools increased by 11% from 74,510 in 2010-11 SY to 82,958 in 2013-14. (P. 6) During the same period, the number of due process complaints declined by 58% from 1,518 to 636. (p. 7)[1]

Unlike previous years in which the year-end review examined samples of cases, to assess whether the Defendants had met the compliance requirements for the 2013-2014 School Year, I examined ***all*** of the 214/412 HOD/SAs that were reported as having been implemented on time. This review was conducted by examining the documentation in case files in the Blackman Jones database that is used to manage the implementation process. In addition to having access to a variety of legal documents relevant to each case, I was also able to review the contemporaneous progress notes entered by case managers, and e-mails and other correspondence between case managers, school personnel, and parents and their attorneys. Beyond reviewing information in

---

[1] **Defendants Explanation** – significant improvements in delivery of special education and related services; improve responsiveness to parental concerns; early dispute resolution prior to the filing of due process complaints. **Other factors** include the virtual elimination of due process complaints about the failure to implement previous HOD/SAs; progressively better accountability for implementation of HOD/SAs due to more accurate data systems and the work of compliance case managers; new protocols for the scheduling of IEP meetings as a result of ADR agreements; a strong emphasis on training for both the staff at the LEAs and in the DCPS central office; and the elimination of the statutory fee which may have created incentives for multiple complaints on behalf of the same student.
Plaintiffs' Explanation –fewer attorneys are practicing special education law, and of those that do, fewer are representing indigent clients due to issues with the payment of attorney's fees, which was the subject of a report to the court. (Also, the virtual elimination of implementation fees by eliminating the term compensatory education from settlement agreements, despite lengthy negotiations about such fees during the ADR process.)

the case files, in several cases I made direct contact with the parent's attorney to seek supplementary information or clarification of the events described in these files.

As a result of this review, with the exception of two cases which are described in the report I filed with the court, I found that the evidence supported the determination that these cases were properly classified as timely implemented, and that the Defendants had met the first requirement of timely implementing 90% of the HOD/SAs issued during the school year.

I also reviewed all of the 12 cases that had been closed administratively pursuant to the Outstanding Protocol, that permits cases to be closed while one or more provision remains outstanding. As these cases are removed from the count in calculating the rate of timely implementation, so long as the Defendants can demonstrate "diligent efforts" to secure timely action by the parent/guardian, it is important to ensure that such administrative closures are proper. Typically, these cases involve independent evaluations that are the responsibility of the parent/attorney to secure and, for a variety of reasons, these evaluations are not obtained despite numerous reminders and offers of assistance. As a result, subsequent actions, such as the holding of an IEP meeting to review the evaluation, are left undone. (Moving out of the jurisdiction, student no longer enrolled in school, etc.)

Here again I found that these administrative closures were proper. In some of the cases, there was not strict compliance with the expectation of documented contact with the parent/attorney every 14 days, but in the context of a prolonged period of non-responsiveness by the parent/attorney to repeated efforts by the case manager to contact them about implementation of the HOD, it was not evident that strict adherence to the diligent efforts protocols would have made any difference in the outcome.

In reviewing these administrative closures, it became apparent that some of these cases can remain on this status for years without any further review. In fact, since the Consent Decree was entered in 2006, there are cumulatively 390 cases that are in the Outstanding Protocol status. While some of these cases are unlikely to ever be opened again due to the student having aged out, moved out of the jurisdiction, or no longer interested in the relief that was granted, there is probably a subset of these cases where the services may be of benefit to a current student. I have therefore made two recommendations to the Defendants.

First, unlike cases which are closed as implemented timely, which are subject to an independent State Final Review process administered by the OSSE, cases which are administratively closed are not subject to such a review before the student's right to services granted pursuant to an HOD is suspended, often indefinitely. I have recommended extending the State Final Review process to administrative closures.

Second, I have recommended that the District consider implementing a process for periodic review of the status of these cases with a view to determining the current needs and circumstances of the affected students, and whether the implementation of the HOD has become feasible again and desired, or if there are alternate services that may be of assistance to the student.

To assess the compliance requirement that no case is overdue more than 90 days, I reviewed a sample of 85 cases which were open in the 2013-14 School Year, and had been issued more than 90 days before the end of the school year. I found that these cases were appropriately categorized as open and not overdue more than 90 days. Although some of these cases had significant delays in implementation, these were caused by student unavailability, sometimes due to incarceration; provider delays in submitting invoices for independent evaluations or other services provided; or in responding to inquiries from case managers about the status of independent services and about whether payment had been received.

In reviewing these open cases, it occurred to me that the formula for calculating the rate of timely implementation of HOD/SAs excludes from consideration and from review approximately 40% of all HOD/SA issued during the school year due to the focus on cases which have been implemented or which have been administratively closed. I wondered whether, when these cases were closed after the end of the school year, their timeliness status would have affected the rate of timely implementation had they been closed during the school year.

So I examined the 192 cases that remained open at the end of the 2012-13 School Year to assess whether there were patterns of case closures after the end of the school year that would have changed the percentage of reported timely implementation. (Report page 19) What I found was that the closures of these 192 cases followed a similar pattern as the cases closed during the school year, and that the rate of timely implementation would have been virtually the same. The

cases closed after the end of the school year had remained open most frequently awaiting the submission evidence of payment for a service provided by a third-party not under the control of the District and the vast majority of them were eventually closed and properly determined to have been implemented timely. (19-20)

In summary, my review determined that the Defendants had met both of the remaining measures of compliance identified in the Consent Decree.

This review of 491 cases spanning two school years provides a level of confidence that the systems of internal review at the CPS and external review by the OSSE of the case closure process are holding case managers accountable for complying with the case closure protocols that have been developed. While there have been initial issues with faithful compliance with these processes in previous years, and with the shortcuts taken by the Defendants in their haste to achieve compliance, in the last two years it has become clear how much these procedures have been embraced and integrated into the Defendants' routine business practices. As the Court is aware, over the life of this Consent Decree, numerous procedures and protocols have been negotiated by the parties, sometimes in the context of ADR processes. These include the case closing protocols that were part of the 2006 Consent Decree; protocols for communication with parents and their attorneys; the provision of information regarding the availability of assistance, interim services, child care and transportation; development of a parent guide regarding access to independent Related Services providers and providers of compensatory education; diligent efforts and documentation guidelines; protocols for timely scheduling of meetings; and tighter limits on the granting of extensions of time.

The results speak for themselves. Not only have the Defendants achieve compliance with the specific measures in the Consent Decree, but from my examination of two years' worth of data regarding the implementation of HOD/SAs, it is very encouraging that they have achieved a level of stability in their performance, which provides a degree of assurance about their capacity to sustain this effort. I also believe that the Defendants have come to appreciate the extent to which these processes are helping them maintain internal accountability for performance and I am reasonably optimistic that they will maintain many if not most of these systems even when they are no longer required to by the Consent Decree.

I know that the parties anticipated this day when they signed the Consent Decree in 2006. Although it is a bit later than anyone expected at the time, it is nevertheless an occasion for acknowledging the success of the Defendants' efforts and the persistence of the plaintiffs' advocacy on behalf of the class. I am only sorry that my two colleagues who started on this journey with me are not here for this occasion. Amy Totenberg, who helped in the negotiation of the consent decree and serve as the first Court Monitor, is probably presiding over cases in Atlanta, Georgia on the federal bench, and Rebecca Klemm, who helped make sense out of a tangled morass of the District's data systems, is on a flight back to the United States from China.

I thank the Court and the parties for the opportunity to serve as the Court Monitor and to help bring this case to a successful conclusion.