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Modified Consent Decree
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Re: 2004-05 Annual Plan

Dear Dr. Ott, Ms. Jaque-Anton, Mr. Myers and Ms. Blakemore:

The 2004-05 school year is the second or “middle” year of the three-year timeline of the Modified Consent Decree. Consequently, I expect that the 2004-05 Annual Plan and the efforts by the District to implement it will lead to substantial progress toward meeting the Outcomes of the Modified Consent Decree by June 30, 2006. In this letter I will briefly review the District’s progress to date, address the 2004-05 Annual Plan and rule on the remaining areas of disagreement between the parties.

During the 2003-04 school year, I have, as required by the Modified Consent Decree, “verified the accuracy of [District] data required to measure performance” and “conducted an independent review of the District’s progress.” This review has identified areas of improvement and deficiency in the District’s efforts to comply with the Modified Consent Decree. This information, together with the expert advice of a Core Team of special education experts informs my response to the 2004-05 Annual Plan. I will begin by addressing the District’s progress toward the Outcomes.

- The District achieved its 2003-04 Benchmarks in:

Outcome 1: Participation in the Statewide Assessment Program
Outcome 6 & 7: Placement in the Least Restrictive Environment
Outcome 10: Initial Evaluations within 50 and 65 days
Outcome 11: Complaint Response Time

- The District did not achieve 2003-04 Benchmarks to date:

Outcome 9: Individual Transition Plans
Outcome 10: Initial Evaluations within 80 days
Outcome 15: Translations of IEPs
Outcome 16: Qualified Special Education Teachers

- 2003-04 data is not available for Outcome 3: Graduation Rate and Outcome 4: Completion rate. However, data from 2002-03 indicates that the District regressed since the 2001-02 baseline used to establish the Outcomes.
- Similarly, while the District achieved its Benchmarks for Outcomes 6 & 7, data indicates that the District regressed since 2002-03.
- The District did not establish a Benchmark for Outcome 5: Reduction in Long-term Suspensions but instead proposed to create a district-wide behavior support system. Current suspension data area indicates that the District will need to make considerable progress to meet the Outcome in this area.
- It is unclear how much progress the District made towards achieving Outcome 12: Informal Dispute Resolution since the District has only conducted a pilot of this model and not yet submitted its results to the Independent Monitor.

Overall, the District’s progress in the first year toward the final Outcomes has been limited in all areas except for Outcome 1: Participation in the Statewide Assessment Program and Outcome 11: Complaint Response Time. Even though the District achieved two out of three of its Benchmarks in the area of initial evaluations, a substantial gap remains between its current performance and the final Outcomes. Similarly, while the District achieved its Benchmarks in LRE, its performance in this area has regressed since 2002-03 and a substantial gap remains between current performance and the LRE Outcomes. The same can be said for almost every Outcome in the Modified Consent Decree. For the District to achieve the Outcomes and disengage from court oversight, it must far exceed the progress it made in 2003-04. With this in

mind, I have carefully considered the various elements of the 2004-05 Annual Plan, including the Benchmarks, Action Steps, Evidence of Completion and Timelines.

The Modified Consent Decree states, “In adopting the Annual Plan, the Independent Monitor shall take into account the need to ensure that the interim Benchmarks and final Outcomes are achieved and shall be guided by his independent review of District progress.” In my initial review of the 2004-05 Annual Plan, I was pleased to see that the 2004-05 Annual Plan incorporated three strategies: an increased emphasis on the local district and school level activities, a review of data disaggregated by local district and school, and the targeting of interventions toward schools that are performing poorly in any Outcome area. However, in light of the failure of the District to achieve many of the 2003-04 Benchmarks, my review raised concerns about the numerous elements in the 2004-05 Annual Plan that were duplicated from the first Annual Plan. Many of the new Action Steps are simply rewordings of the 2003-04 Action Steps. There are few new Evidence of Completion criteria and many of the duplicated or reworded Action Steps have extended timelines.

Based on these concerns, I requested that the District produce “any analysis or analyses that were used in the development of the 2004-05 Annual Plan as a whole and individual Benchmarks and Action Steps in each Outcome area.” I noted that “Such analysis would provide the basis for the development of a 2004-05 interim Benchmark or Action Step with the goal of ensuring that the final Outcomes are achieved.”

In its response, the District stated that “the 2004-05 Annual Plan was a much more comprehensive process than the 2003-04 Annual Plan.” The District established “Action Teams” involving a “larger number of stakeholders” for each Outcome area to “review the implementation of Action Steps and to provide feedback to responsible personnel and to monitor the achievement of the Outcome Benchmarks.” These action teams reviewed preliminary data and applied a rubric for the evaluation of each Benchmark and Action Step based on “whether the Benchmark and Action Steps were calculated to achieve the Outcome, whether they would move the district toward achievement of the Outcomes and compliance and whether there was need for coordination of Action Steps among the Outcomes to reduce the redundancy of effort...particularly by school staff.”

This process clearly involves some analysis. The District goes on to mention that it removed, added or maintained certain Action Steps based on available data. However, the District fails to follow through on this promising opening. It does not provide an analysis of progress in each Outcome area in 2003-04. Nor does it provide an explanation of how this analysis contributed to the development, deletion or maintenance of Benchmarks, Action Steps, Timelines, or Evidence of Completion in the 2004-05 Annual Plan that could be reasonably calculated to lead to achievement of an Outcome. Rather, the District presents an Outcome-by-Outcome explanation of the development of Benchmarks and Action Steps that is almost entirely focused on the “process” of development rather than an analysis of previous actions.

Fundamentally, in requesting an analysis that “would provide the basis for the development of a 2004-05 interim Benchmark or Action Step,” I was assuming that the District would present me with a brief data-driven review of what worked and what didn’t work for each Outcome in the 2003-04 Annual Plan, an explanation of how this review contributed to the development of the elements of the 2004-05 Annual Plan and a presentation of how the new plan would lead to

achievement of the Outcomes by June 30, 2006. For example, in Outcome 7: LRE, why does “an increase of 19.2% over last year’s Benchmark appear to be a reasonable goal for 2004-05” What is the evidence that this goal can be achieved or that this is a reasonable target? What is the evidence that any of the Action Steps in the 2003-04 Annual Plan contributed to the ability of the District to achieve the 2003-04 Benchmark? In light of this evidence, why were Action Steps maintained or deleted and new Action Steps added? Did performance in 2003-04 lead to a reassessment of the types of Evidence of Completion needed or the feasibility of Timelines. Why does the District believe that its 2004-05 Annual Plan will ensure that schools increase the percentage of students with moderate to severe disabilities in the least restrictive environment?

None of these questions are addressed. Instead, the District states that Outcome 7 Action Steps were based on three considerations including “the continuation of the positive direction established in 2003-04; partnering with instructional services to integrate professional development and district initiatives to include information on research-based strategies for strategic teaching and learning; and the regular review of relevant data to determine progress.” The first is an obvious restatement of the goal of the Outcome and the second and third, restatements of Action Steps in the 2004-05 Annual Plan. It would be far more illuminating to know why the District expects that “integrating professional development and district initiatives...” will lead to an increase of the amount of time that students with moderate to severe disabilities spend in the general education classroom and what data or research this supposition is based on.

Overall, the District’s “analysis” is more a description of a “process” and a restatement of Modified Consent Decree and the Annual Plans than a review of the effectiveness of an initial plan prior to the development of a second plan. In the absence of such an analysis I cannot determine the basis for the District’s belief that the 2004-05 Annual Plan will result in achievement of either interim Benchmarks or the final Outcomes of the Modified Consent Decree.

Section 5.32 (d) of the Modified Consent Decree states that “The Independent Monitor shall adopt the Annual Plan with such additions, deletions, or revisions as he deems appropriate.” Section 5.34 adds that “the decision of the Independent Monitor shall be final and not subject to further review.” While this part of the Modified Consent Decree permits the Independent Monitor to independently revise the District’s Annual Plan prior to adoption, I do not intend to pursue this course of action. The District, not the Independent Monitor is charged with the implementation of the Annual Plan. Therefore, the District, not the Independent Monitor should produce and revise the Annual Plan. On that basis, I will provide preliminary approval for the adoption of the 2004-05 Annual Plan depending on the District’s response to a series of recommendations for revision.

Most of these recommendations focus on Evidence of Completion, Responsible Staff and Timeline. I have considered recommendations for changes to specific Action Steps. However, I believe that it would be counter-productive to systematically micromanage the Annual Plan since this would negatively impact on the District’s ownership of its initiatives. Instead, for the second year of the Modified Consent Decree, I will present a few general recommendations for the Action Steps and give the District the benefit of the doubt that these steps are reasonably calculated to achieve the Outcomes. Conversely, in the area of Evidence of Completion, I intend to be considerably more rigorous in my oversight. During the course of the 2003-04 school year,

I accepted the statements from the Division of Special Education that Action Steps were completed. In light of the District's performance this year, I will no longer accept such statements. In 2004-05, upon request by my office, the District must present the evidence of the completion of a "completed" Action Step. Below are guidelines for revision in this area.

Evidence of Completion

- The District will provide definitions or descriptions of each of the types of Evidence of Completion in a manner that is specific to each Benchmark. Among the types of evidence to be defined are: written communication, Welligent report, documentation of analysis, school-level report, random review, early intervention plan, written procedures, and IDR data, etc. See attachment A for a comprehensive list.
- DVR findings do not derive from a district-wide sample and therefore do not, by themselves, constitute Evidence of Completion of an Action Step. They must be combined with another source of evidence.
- The achievement of a Benchmark will not constitute evidence that an Action Step has been completed. Evidence of Completion must derive from the implementation level of the Action Step. For example, if the Evidence of Completion of a school level Action Step is a DSS report, the report should be produced at the school level. If the evidence is an activity completed by the principal or a member of his/her staff, the evidence that this activity was completed must be maintained at the school level. Similarly, evidence of analysis completed at the local district level should be maintained at the local district level.
- Reports or analysis produced by the staff of the Independent Monitors Office will not constitute Evidence of Completion, particularly in the area of Documentation of Analysis. This year my office has analyzed data and produced reports used by the District. The role of the Independent Monitor's office is to verify District data, not to conduct analyses for the Division of Special Education. The District must conduct its own analysis of data during the 2004-05 school year and produce its own reports.

Responsible Parties

- The District will provide a definition of the MCD Review Team at each level, listing the members and explaining their responsibilities. The District is also strongly encouraged to explain how these teams will be organized and trained and the resources they will be provided with to complete their work.
- I strongly recommend that the District partner with the Program Evaluation and Research Branch (PERB) to produce necessary analysis or conduct data collection and analysis at the school level. The Division could benefit from the research or analysis expertise of PERB in completing this work.

Timelines

- The District will place the Action Steps in chronological order of completion. The steps appear as disjointed elements without a rational progression. The District should also consider adding an initiation date to each Action Step.
- Action Steps whose completion date falls outside the 2004-05 school year timeline such as 6.C.7 should be revised to fall within the 2004-05 timeline.

Action Steps

- The District should strongly consider combining or grouping plans for similar Outcomes to limit redundancy. For example, the plans for Outcomes 3 & 4 contain numerous redundant elements and could be combined into a comprehensive plan with data for each specific Outcome reported separately. Other Outcomes such as 1 & 2 or 5 & 17 lend themselves to grouping into a comprehensive plan.

Other

- The issue of capacity to complete Action Steps at either the local district or school level is rarely addressed. How does the District intend to augment the capacity of local districts, schools and principals to complete these Action Steps?
- How does the District intend to enforce accountability. This issue underlies many of the plaintiff's objections and the commentaries submitted by parents and community members. How does this District intend to enforce accountability for completion of Action Steps? I recommend that an Action Step addressing the issue of accountability be included in every Outcome area.

It is my expectation that the District will respond to these recommendations for revision or provide a reasonable justification for a failure to respond to any specific recommendation in a letter attached to a revised 2004-05 Annual Plan by July 9, 2004. The alternative will be for me to pursue the course set forth in Section 5.32 (d). My staff will be available if the District needs additional clarification on these guidelines.

I will now consider the remaining areas of disagreement between the parties. I will address each in turn, using the Outcome as a reference:

Outcome 1: I agree with the plaintiffs that the IEP of every student with disabilities should identify how the student will participate in the statewide assessment program. This requirement is explicitly stated in Section 6.A.35 the Modified Consent Decree. The District will add an Action Step to address this requirement at each level of implementation and provide Evidence of Completion from the relevant database/s.

Outcome 3: The plaintiffs recommend that high school principals certify that students with disabilities have assessments of their progress toward graduating with a high school diploma in their IEPs. I agree with the District that conducting such an assessment should be the role of the

IEP team and that this information should be incorporated into a student's Individual Transition Plan as required by IDEA. The District should be responsible for providing targeted high schools and their principals with the guidance and support they need to increase the graduation rate. If the District feels that forceful action is necessary in targeted schools, it is free to pursue such a course. Prior to taking this course, the District and/or local districts should analyze whether the written guidelines specified in 3.S.1 are being implemented by high schools and should develop an Action Step that describes this analysis. I expect that this analysis will include a review of the reports presented in 3.S.2.

In regards to the issue of whether the District should include the identification of additional supports available to students in its last bullet point in 3.S.4, I agree with the plaintiffs. If, as the District argues, this bullet point is "inclusive of interventions and supplemental services that the District is obligated to provide" then the District should have no objection to delineating the exact services in the Action Step.

Outcome 4: The plaintiffs argue that every high school principal should ensure that the IEP of every high school student contains an assessment of the risk of dropping out and the necessary interventions to prevent this from occurring. I agree with the District that this process will be unnecessary if IEP teams address these issues within the context of the IEP. Since a risk assessment should be based on the individual need of each student, a blanket bureaucratic mandate is inappropriate. However, principals can only be expected to target their "high risk" students if they have access to information on their progress. The District will provide an Action Step detailing how this information will be accessible to principals. The District will also review its school level IEP and ITP guidelines to ensure that staff consider and conduct such a risk assessment when necessary.

In regards to the second area of disagreement, the issue of describing available transition services in the school plan detailed in 4.S.4, I agree with the plaintiffs. Since all students with disabilities should have a transition plan, I do not understand the District's objection to including a description of these services (in addition to the existing bullet on "school staff who have transition service roles") in the school plan. The District will add a description of available transition services to the school plan described in 4.S.4.

Outcome 5: The plaintiffs recommend the inclusion of an Action Step mandating that principals write a memorandum to their local district superintendent whenever a student with disabilities is suspended six or more days. The District states that the resources that it expended during 2003-04 in addition to existing provisions for accurate data reporting will result in a reduction in long-term suspensions and eliminate the need for such an Action Step. In their letter the plaintiffs state that the proposal "does not interfere with the authority of the principal to take appropriate disciplinary action" but simply mandates that they provide a justification for the suspension. In reviewing the Action Steps in this section, I believe that the 2004-05 Annual Plan already provides for a similar process.

Action Step 5.LD.3 requires local districts to analyze suspension data and "identify schools that need additional support for students with disabilities at risk of long-term suspensions." 5.LD.4 requires local districts to establish and monitor the monthly use of data systems to ensure accountability for students with disabilities who have been suspended" by communicating with schools about students suspended 5 or more days and collaborating on the "investigations of

legalities of suspensions of 10 or more days.” 5.S.4 requires schools to use “suspension data alert systems” to identify students with disabilities who have been suspended five or more days for identification of IEP procedures and positive behavior supports and in the case of students suspended ten or more days, investigation/targeted assistance. Lastly, 5.S.5 requires schools to convene a School Disciplinary Review Team to review the student’s behavior and initiate a plan for targeted assistance the first time a student is suspended and convene an IEP team meeting the second time a student is suspended to review positive behavior supports and develop a behavior support plan. This provides schools with a mechanism to review a suspension at an earlier stage in the process than recommended by the plaintiffs.

If schools follow these procedures, the number of long-term suspensions may decrease. However, the likelihood that schools will follow these procedures depends on the level of oversight provided by local districts and the central office. Existing Evidence of Completion provides minimal proof of such oversight. Additionally, much of the Evidence of Completion for these Action Steps is insufficient in ways that I identified above – for example, the use of DVR findings for 5.S.4 and 5.S.5.

The District shall revise the Evidence of Completion for these Action Steps to provide Evidence of Completion for the content of the Action Step at the indicated level (central, local district, school) on a district-wide basis. For example, if a principal will use suspension data alert systems to provide targeted assistance to students with disabilities who have been suspended for five or more days, the Evidence of Completion will provide evidence of the use of suspension alert systems by principals throughout the District. Thus, if the local district or central office seeks to determine whether this Action Step has been accomplished, it can request the information directly from the school.

Outcome 10: The plaintiffs state that “the parties remain in disagreement over the reduction of the work schedules of school psychologists.” This issue has provoked considerable concern from a variety of interested groups. The Action Step in question states that that District “will continue the percentage of school psychologists working on a year-round basis in order to serve schools on year-round calendars so that it is no less than the percentage of students who attend year-round schools.” In their response to this Action Step, the plaintiffs noted that the District, outside the context of the Annual Plan, planned to reduce the work schedules of psychologists working in year-round schools. The District responded that the affected psychologists would still be working a year-round schedule. Both parties directed the question of whether the District could alter the schedules of school psychologists to the Independent Monitor for a decision. On June 18, 2004, the Division of Special Education resolved the issue by stating in an Informative to the Board of Education that it would not alter the schedules of year-round psychologists. While this problem has been resolved to the satisfaction of the plaintiffs, I believe that the parties erred in their efforts to seek a resolution on this issue from the Independent Monitor in the context of my response to the Annual Plan. In the absence of any evidence to the contrary, I cannot determine whether a change in the work schedules of psychologists will impact the District’s ability to achieve Outcome 10 by June 30, 2006. In this case and other similar cases, if the parties believe that an action is in violation of either the Modified Consent Decree or the Maintenance of Effort agreement, they should pursue the Complaint Process detailed in Section 14.

Outcome 15: The plaintiffs noted that the District intends to make the principal responsible for the timely completion of translations and stated that an Action Step should be added to require a

“quality assurance process” for translations completed at the school level. Since the District recently submitted a revision of the translation section, I will wait until the plaintiffs have reviewed the changes before addressing this issue.

In conclusion, the 2004-05 Annual Plan is a pivotal point in the brief history of the Modified Consent Decree. The full implementation of the 2004-05 Annual Plan should result in substantial progress toward the Outcomes. However, the Division of Special Education cannot expect to implement the plan in isolation. While the recent reorganization of the special education may strengthen the ability of the Division to obtain the cooperation of special education staff, fully implementing the Annual Plan will require the assistance of a variety of central office departments, local district administrators and staff, and general education administrators and staff distributed among hundreds of schools. The Division would be ill-advised to pursue many of the steps of the Annual Plan without first securing or ensuring the support of all District lines of authority. As the Division attempts to secure this cooperation, it should keep in mind the authority accorded to the Chief Administrator of Special Education under Section 8 of the Modified Consent Decree “to direct District staff as necessary to correct any non-compliance with special education laws and regulations or prevent such non-compliance.” By its very nature, the provision of such broad authority limits any excuses for failure.

Sincerely,

Carl A. Cohn

c: Roy Romer, Allyn Kreps, Brigitte Ammons, Thomas Hehir, Jay Alleman

att: (1)

Evidence of Completion

Additional Funding Sources
Analysis of School Suspension Data and Interventions
Calendar of Interventions
Certification Form
Division of Special Education Analysis
Documentation of Analysis
Documentation of Data Analysis
Documentation of Meeting
Documentation of Monitoring
Documented completion of overdue IEPs
DSS Reports
DVR Findings
Early Intervention Plan
Guidelines
IDR Data Reports
IEP and Assessment Activity Logs
Instructional Models
Intervention Activities Log
Intervention Enrollment Data
Local District Report to the Independent Monitor
Local District School Intervention List
Log of Corrective Actions
LRE Implementation Team Roster
Marketing summaries
Production Standards
Publicity Material
Random Review of Documents Provided at IEP Meetings
Recommendations
Recruitment Plan
Report on Progress toward Graduation with a Diploma by Students with Disabilities
Review of reports and data available from the Personnel Reports and Services Branch
Roster of Regional Training Teams
School Plan
School Roster of Technical Support to School Translators
School Summary Reports
Survey results by low incidence area
Suspension Reports
Transition Curriculum
Vacancy Report
Welligent IEP Reports
Written Communication
Written Communication and Form
Written Communications to District Negotiators
Written Notification
Written Plans, Policies, Strategies
Written Procedures