

Office of the Independent Monitor
Modified Consent Decree
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Ramon Cortines
Superintendent of Schools
Los Angeles Unified School District
333 S. Beaudry Avenue, 24th Floor
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Honorable Board of Education
Los Angeles Unified School District
333 S. Beaudry Avenue
Los Angeles, CA 90017

**Re: Report on the Progress and Effectiveness of the Los Angeles Unified School District's
Implementation of the Modified Consent Decree during the 2008-2009 School Year – Part I**

Dear Mr. Cortines and Board of Education:

Section 13 of the Modified Consent Decree (MCD) requires the Independent Monitor (IM) to annually present a written report to the Superintendent and the Board of Education concerning the progress and effectiveness of the implementation of the terms and conditions of the MCD. The MCD has three primary sets of requirements the Los Angeles Unified School District (District) must meet. The first is 18 performance-based outcomes pertaining to students with disabilities (SWD) receiving special education services. Prior to this report the District had met the requirements of 12 of the outcomes. The second set of requirements pertains to making District schools accessible to individuals with disabilities. The third concerns the development of the Integrated Student Information System (ISIS).

This year the IM has chosen to submit the report in two parts. Part I, this report, will address the status of the District's performance on five outcomes and accessible schools for which data was available by the end of June. Part II, expected in February 2009, will report on the District's performance on the remaining two outcomes, ISIS and personnel accountability.

The outcomes of the MCD are statistically based. Each remaining outcome has at least one data target that the District has to meet. It is the responsibility of the IM to determine if the target has been achieved. All targets within an outcome must be achieved before the IM can determine that the outcome has been met. For each target the parties agreed to the protocol that was used to measure performance on the target. Much of the data used in the analyses are derived from District data sources. In all cases the data are validated. The appendix to this report contains studies and other analyses the IM used to make determinations on the District's performance on the outcomes.

This report makes determinations on the following outcomes:

- Outcome #5: Reduction of suspensions
- Outcome #7A: Placement of students with other disabilities

- Outcome #7B: Placement of students with Multiple Disabilities Orthopedic (MDO)
- Outcome #13: Delivery of services
- Outcome #18: African American students identified as emotionally disturbed

It also reports on the following:

- Making Schools Accessible
- Charter Schools
- Annual Hearing

OUTCOME # 5: REDUCTION OF SUSPENSIONS

- ◆ **Outcome:** The District will reduce the number and percentage of suspensions for the population of students with disabilities to a rate lower than 8.6%.

Number and Percentage of Suspensions for All Students by School Year

School Year	General Education Students Enrollment	# of General Education Students Suspended	% of General Education Students Suspended	Special Education Students Enrollment	# of Special Education Students Suspended	% of Special Education Students Suspended
2008-09	627,668	28,419	4.53%	72,172	5,463	7.57%
2007-08	614,630	30,083	4.89%	71,965	6,428	8.93%
2006-07	623,026	36,224	5.81%	74,346	7,638	10.28%
2005-06	634,890	41,216	6.49%	75,380	8,644	11.47%
2004-05	662,538	42,332	6.39%	76,059	10,741	14.12%
2003-04	673,443	38,777	5.76%	75,943	9,671	12.73%

- ◆ **Data Source:** SIS/Welligent
 - Numerator is SWD ages 5-22 suspended.
 - Denominator is all SWD ages 5-22 enrolled on 12/1/2008.
- ◆ **Discussion:** This outcome requires the District to reduce the overall number of suspensions of SWD to a rate lower than 8.6%. During the 2008-2009 school year, the District met these requirements with a rate of suspensions of 7.57% for SWD. This achievement demonstrates the effectiveness of the District's efforts and capacity to target and implement positive behavioral supports as well as implement the School-wide Discipline Program adopted by the Board of Education.

This performance is commendable because it represents a reduction in the utilization of suspensions by almost half within the past five years for SWD. Additionally, the reduction in suspensions of students in the general education program is evidence of the positive impact of policies and initiatives that implement best practices and benefit all students.

While this achievement is encouraging, the District still has schools and local districts that continue to utilize suspension at high rates. As example, two secondary schools continue to suspend approximately half (46.5% and 47.5%) of their SWD (Appendix A). Of added concern are the Innovation Division schools where 20% of SWD were suspended for at least one day, and their secondary schools remain on the high suspension list (Appendix B).

While the District met this outcome, it should continue to implement positive behavioral supports and monitor its suspension data to quickly identify and attend to any increases in suspensions. Furthermore, the District should continue to address the schools that utilize suspensions at high rates.

- ◆ **Determination:** Outcome 5 was met.

OUTCOME # 7A: PLACEMENT OF STUDENTS WITH DISABILITIES (AGES 6-18) WITH ALL OTHER DISABILITIES

- ◆ **Outcome:** Placement of Students with Disabilities (Ages 6-18) with All Other Eligibilities excluding SLI, SLD and OHI. The District will demonstrate a ratio of not less than 51% of students placed in the combined categories of 0-20% and 21-60%, and not more than 49% of students placed in the 61-100% category utilizing instructional minutes as the methodology. In determining whether the District has achieved this outcome, any fraction percentage of .51 or above shall be rounded up to its nearest whole number.

All Other Disabilities Placed in General Education 40% or More of the Instructional Day

School Year	Total # of Students	# of Students 40% or more	% of Students 40% or more
2008-09	15,773	7,994	50.68%
2007-08	15,131	7,106	46.96%
2006-07	14,328	5,433	37.92%
2005-06	14,147	4,133	29.21%

- ◆ **Data Source:** Welligent. Students with an eligibility other than SLI/SLD/OHI ages 6 to 18
 - Numerator is the number of all other disabilities placed in the combined categories of 0-20% and 21-60% in a special education setting.
 - Denominator is the number of all other disabilities.
 - For this outcome caution must be taken when comparing the outcome performance by year due to the number of IEPs and quality of data.
- ◆ **Discussion:** Outcome 7A requires the District to increase the percentage of students with disabilities (Ages 6-18) with all other eligibilities, not including specific learning disabilities (SLD), speech language impairments (SLI) and other health impairments (OHI) placed in the general education setting for 40% or more of the day. The goal of this outcome is to increase the percentage of students with all other disabilities to 51%. During the 2008-2009 school year, the Welligent IEP data system indicated 50.68% of students with all other eligibilities were placed in the general education classroom for 40% or more of the day.

Although the District's performance was near the 51% target, inaccuracies found by the Office of the Independent Monitor (OIM) validation study within the LRE data suggest an overestimation of the time students with all other disabilities spend in the general education setting (Appendix C). To impact the performance of this outcome, discrepancies within the Welligent data and a student's class schedule must place them into a different category. For example, if the Welligent system reports that a student is in the general education setting for 60% of the day and the class schedule reflects integration for 45% of the day, this discrepancy does not result in a change in category. If this same student's class schedule reflects 30% of the day in the general education setting, this would shift the student into the 40% or less category resulting in an overestimation of Welligent data.

In the past, such discrepancies either did not result in a shift into the "other" category (i.e., 20% to 25%) or found similar numbers of students that shifted between the two categories to minimize the impact on the performance outcome. Within the past two years, these data inaccuracies have begun to skew the data to overestimate the number and percentage of students in the general education setting for 40% or more of the day.

This may be a result of two primary factors. The first may be due to the edit function within the Welligent IEP that requires schools to acknowledge placements of time in the special education of 60% or more (or 40% or less in the general education setting) of the day. This edit appears to influence some schools into entering a time of less than 60% to comply with the target of the outcome regardless of the student's schedule. This was evidenced by multiple cases of students with an LRE time between 56%-60%, but had schedules that showed higher amounts of time in the special education classroom. The study examined the students with LRE times in this range to determine if differences based on their classroom schedule resulted in a change in category.

Of the 235 students whose IEP indicated an LRE time in the range of 56-60% in the special education setting, only 65 (27.7%) had class schedules with a percent of time of 60% or less. The remaining students had schedules that showed time in special education greater than 60%, thereby shifting them into another category. Therefore, it appears that this edit may be misleading schools into entering an LRE time of less than 60% to comply with the target of the outcome.

The second factor that may be resulting in the overestimation of LRE is that schools continue to consider non-instructional time as time spent in general education. For instance, some schools calculate recess, lunch and common assembly periods as time spent in the general education setting. While this may meet the federal definition of LRE time, the MCD specifically calculates time in general education only for instructional time. Therefore, the inclusion of non-instructional activities within the calculation of LRE time may be resulting in discrepancies that shift students into the 40% or less category.

While the District has made efforts to include more students with other disabilities in the general education setting, and appears to be near the 51% target, the accuracy of the Welligent LRE data is not considered reliable for making a determination at this time. During the 2009-2010 school year, the OIM will expand the LRE study to further examine the accuracy of the data and the impact of discrepancies on the District's performance.

The District should continue its efforts to increase the capacity of schools and general educators to integrate students with moderate to severe disabilities. The District should provide schools with clarification of the MCD's definition of what constitutes time in the general education setting. Lastly, the District should review the Welligent edit function that appears to influence schools to enter a percent of time of less than 60% regardless of the student's actual academic program and participation in the general education setting.

- ◆ **Determination:** Outcome 7A not met.

OUTCOME # 7B: PLACEMENT OF STUDENTS (AGES 6-18) WITH MULTIPLE DISABILITIES ORTHOPEDIC (MDO)

- ◆ **Outcome:** Placement of Students with Disabilities (Ages 6-18) with MDO Eligibility. The District will demonstrate a ratio of not less than 23% of students placed in the combined categories of 0-20% and 21-60%, and not more than 77% of students placed in the 61-100% category utilizing instructional minutes as the methodology. In determining whether the District has achieved this outcome, any fraction percentage of .51 or above shall be rounded up to its nearest whole number.

Students with the Disability of MDO in General Education 40% or More of the Instructional Day

School Year	Total # of Students	# of Students 40% or more	% of Students 40% or more
2008-09	1,109	45	4.04%
2007-08	1,107	114	10.30%
2006-07	1,114	72	6.46%
2005-06	1,124	52	4.63%

- ◆ **Data Source:** Welligent. Students with a eligibility of MDO ages 6 to 18
 - Numerator is the number of MDO students placed in the combined categories of 0-20% and 21-60% in a special education setting.
 - Denominator is the number of MDO students.
- ◆ **Discussion:** Outcome 7B requires the District to increase to 23% the number of students with multiple disabilities orthopedic (MDO) (Ages 6-18) placed in the general education setting for 40% or more of the instructional day. At the time of the negotiation that created this outcome, during the 2007-2008 school year, the Welligent data reported 10.30% of students with an eligibility of MDO as being placed in the general education classroom for 40% or more of the day. This rate was determined as the baseline for this outcome.

During 2008-2009 school year, the OIM conducted a study to better understand the population of students with MDO and validate the accuracy of the District's LRE data for students with MDO (Appendix D). As a result of the validation study, the OIM noted inaccuracies within the Welligent LRE data when compared to student schedules. These inaccuracies indicate that the District's performance for this outcome is considerably lower than the initial baseline of 10.3%. This is mainly a result of poor quality data at the time of the negotiation which resulted in an over-estimation of the baseline.

To determine the baseline, the study compared the Welligent LRE data for all of the students with an eligibility of MDO attending general education campuses to their class schedules. While the population of students with MDO includes over 1,100 students, the majority attend special education centers and thereby are limited in their potential to be integrated into the general education setting. Overall, only 325 students with MDO attend general education campuses, with 75 of these students attending Pacific Boulevard School, which was formerly a special education center. Although these students attend a general education campus, the majority remain in special day classes and programs similar to those provided when Pacific was a special education center.

The study noted that many of the students attending general education campuses with Welligent LRE data of 40% or more had class schedules that showed placements in the general education setting of less than 40%. Similar to the data inaccuracies observed for Outcome 7A, this was primarily due to the inaccurate calculation of LRE time and the Welligent edits that encourage

schools to enter data in the general education setting of 40% or more. Unfortunately, these inaccuracies have a tremendous impact on the overall baseline since the population of students with MDO is relatively small. This also has an overwhelming impact on the District's performance for meeting this outcome. Based on the findings of the validation study, 45 students (4.04%) have classroom schedules that reflect time in the general education setting of 40% or more of the day.

The OIM study also sought information on the abilities of students with MDO to create a profile to help the District develop strategies for increasing the integration of students with MDO. The study found that students attending general education campuses demonstrated higher levels of independence in mobility, toileting, communication and feeding. The study also noted 45 students attending general education campuses that were receiving the general education curriculum and participating in the California Standardized Test¹. While the IEPs indicated participation in the general education curriculum, about one-third (35%, n=16) were integrated in the general education setting for 40% or more of the day. Although it is possible to deliver the general education curriculum in the special education setting, this raises questions as to why the majority of these students are not being integrated for a larger percentage of their instructional day.

The performance on this outcome is well below the target and will require considerable efforts and strategies to achieve the level of integration required. This will not occur without the integration of some of the students with MDO attending special education centers. To meet this outcome, the District must increase the number of students in the general education setting by 208 students. As the District continues to explore and develop strategies and programs that provide opportunities for integration of students with MDO, it is important to consider and respect the rights and opinions of parents and IEP teams in the placement decisions for these students. While the IM acknowledges the challenges that exist for integrating students with MDO, it is the expectation that this be done carefully and thoughtful of the well-being of the students and their families.

During the 2009-2010 school year, the District should identify and examine schools that implement best practices for integrating students with the eligibility of MDO. Furthermore, the IM expects that the integration of any student be done with all of the necessary supports and services to ensure a successful experience for students, families and teachers.

This outcome presents a unique opportunity for the District to develop programs and services that include students with MDO with their general education peers. While this consent decree has noted much progress in the past five years, the improvement on this outcome will demonstrate the District's ability to affect a change in the culture of educating all students with moderate to severe disabilities.

- ◆ **Determination:** Outcome 7B not met.

¹ Participation in the CST is primarily for students in the general education curriculum. Students with moderate to severe disabilities who are educated on an alternative curriculum, participate in the California Alternative Performance Assessment (CAPA).

OUTCOME # 13: DELIVERY OF SERVICES

- ◆ **Outcome:** By June 30, 2006, 93% of the services identified on the IEPs of students with disabilities in all disability categories except specific learning disability will show evidence of service provision. In addition, by June 30, 2006, 93% of the services identified on the IEPs of students with specific learning disability will show evidence of service provision.

Delivery of Services

School Year	Percentages of Services Provided: Overall Population Estimate Weighted to the Population without SLD		Percentages of Services Provided: Overall Population Estimate Estimate for SLD Only	
	IEP-Log Analysis	IEP-Site Visit*	IEP – Provider	IEP – School Visits*
2008-09	93.7%	*N/A	91.2%	*N/A
2007-08	92.0%	*N/A	93.0%	*N/A
2006-07	86.6%	*N/A	74.0%	*N/A
2005-06	84.8%	86.4%	79.4%	85.0%
2004-05	93.2%	77.2%	72.8%	79.0%
2003-04	63.7%	85.6%	33.8%	92.6%

* Site visits were conducted as part of the services study during the 2006-2007 school year, however, the purpose of the site visits was modified and is described below.

- ◆ **Data Source:** Services Study
 - Research and Planning Division and American Institutes for Research (AIR).
- ◆ By June 30, 2006, the District will provide evidence that at least 85% of the services identified on the IEPs of students with disabilities have a frequency and duration that meets IEP compliance. For the purposes of assessment of frequency, provider absences will not constitute evidence of non-provision of service if such absence is the result of short-term (maximum two consecutive weeks) illness, family emergency or jury duty. Student absences/no shows will not constitute evidence of non-provision of service. For the purposes of assessment of duration, sessions not completed as the result of conflicts with a student's school schedule or late arrival/early departure by a student will not constitute evidence of an incomplete session.

Frequency and Duration of Services

School Year	IEP – Log Frequency Agreement	IEP – Log Duration Agreement
	% of services with monthly frequency at least equal to the IEP	% of services with monthly duration at least equal to the IEP
2008-09	72.3%	66.9%
2007-08	76.0%	72.0%
2006-07	73.0%	70.0%
2005-06	63.0%	65.0%
2004-05	57.2%	59.9%
2003-04	57.2%	61.5%

- ◆ **Data Source:** Services Study
 - Office of Data and Accountability and American Institute for Research (AIR).

- ◆ **Discussion:** The Office of Data and Accountability and the American Institute for Research (AIR) conducted the sixth year of the study to measure the delivery of service provision for students with disabilities (See Appendix E and F). Over the years of this study, the methods for documenting the delivery of special education services by providers has evolved and become a model for maintaining student-level service data. Additionally, the District and AIR should be commended for developing efficient and accurate methods for examining the provision of services in large school systems. These accomplishments are an example of the effectiveness of developing and sustaining quality data systems and improving documentation practices, guided by sound research and oversight. While the methodology of this study has continuously improved, the IM recommends modifications to the 2009-2010 study to better examine areas of minimal or no progress.

The District's performance toward the outcome continues to meet or be near the target level (93%) for demonstrating evidence of service for both disability categories: students with specific learning disabilities (93.7%); and students who have a disability in all other categories (91.2%). However, the District's performance for meeting the targets for frequency (72.3%) and duration (66.9%) continue to fall below the 85% target, and demonstrated a decrease from the 2007-2008 school year. Further examination of this data indicates that about one-third of the cases that did not meet the frequency or duration were missing the equivalent of one 30-minute session. These discrepancies will be looked at during the 2009-2010 study to determine the causes for such differences.

Services provided by non-public agencies, school mental health providers, occupational therapists and speech and language pathologists had the lowest rates of frequency and duration. This low performance may be attributed to the incomplete and/or inaccurate documentation of Welligent service logs. This premise is supported by the findings of the observation component of the study.

The observation study found adequate levels (78%) of matches between the service provided and what was documented in the Welligent logs. For services observed as completed during the site visit, the agreement between the event and what was reported in the Welligent log was 78%. For cases where services were observed and completed, the study found that 21% of services observed as provided did not have a log demonstrating evidence of that service. The District did not receive credit for the provision of these services. Additionally, 12 cases (14%) recorded a duration lower than that observed, while 12 cases (14%) reported a higher duration. As noted earlier, the inaccurate and incomplete documentation of services impacts the District's performance on the frequency and duration target of Outcome 13.

The IM has continually reminded the District that failure to provide the services specified in IEPs constitutes substantial noncompliance with Federal and State law. The IM also has directed the District to aggressively address the following problems: the supply of speech and language pathologists; require that all service providers, including charter schools, enter their logs electronically; and ensure that school principals and charters are held accountable for providing the services specified on students' IEPs.

For the 2009-2010 school year, the District reported hiring 80 speech and language pathologists and three speech and language pathology assistants. The District reports this level of staffing will leave no school without an assigned speech and language pathologist. This is considerable progress from last year, where 126 schools did not have a speech and language pathologist assigned. While the staffing increase undoubtedly boosts the capacity to serve more students, it is imperative that the District continue to promote the utilization and accurate entry of service provision data of its new and existing speech and language providers, especially since a good number of the new hires are per-diem contractors.

The District must also continue to improve the accuracy of the data entered by site providers and ensure that all charter school providers are fully implementing the Welligent Service Log system.

Improvement in this area will further enhance the District's performance for the current school year.

During the 2009-2010 school year, the OIM will closely monitor the delivery of services of speech and language services and the utilization of the Welligent data system at all Charter schools. In addition, it is the expectation of the IM that the District demonstrate its willingness and capacity to hold all schools, administrators and providers accountable for the provision of special education services and the accurate documentation of such services.

- ◆ **Determination:** Outcome 13 not met.

OUTCOME #18: AFRICAN AMERICAN STUDENTS IDENTIFIED AS EMOTIONALLY DISTURBED

- ◆ **Outcome:** By June 30, 2006, 90% of African American students identified as emotionally disturbed during an initial or triennial evaluation, will demonstrate evidence of a comprehensive evaluation as defined by the Independent Monitor and consideration for placement in the least restrictive environment as determined by Independent Monitor.

Comprehensive Evaluations

School Year	Ethnicity	# of Observations	# of Students Meeting Criteria	% Meeting Criteria
2008-09	African American	254	206	81.1%
	Latino	325	278	85.5%
	White	150	129	86.0%
	Total	729	613	84.1%
2007-08	African American	181	127	70.2%
	Latino	200	156	78.0%
	White	128	110	85.9%
	Total	509	393	77.2%
2006-07	African American	190	96	50.5%
	Latino	262	145	55.3%
	White	145	75	51.7%
	Total	597	316	52.9%
2005-06	African American	174	44	25.3%
	Latino	206	73	35.4%
	White	105	35	33.3%
	Total	485	152	31.3%
2004-05	African American	73	2	2.7%
	Latino	119	3	2.5%
	White	45	4	8.8%
	Total	237	9	3.8%

- ◆ **Data Source:** Study conducted by the Office of the Independent Monitor.
- ◆ **Discussion:** Outcome 18 requires the District to reduce the disproportionate identification of African American students identified as emotionally disturbed (ED) by providing 90% of African American students a “comprehensive evaluation” as defined by the IM (See Appendix G).

Since the inception of this outcome in the 2003-2004 school year, the District has demonstrated significant improvements in the pre-referral, referral, identification and placement processes of students identified with ED for all students. These improvements extend beyond meeting compliance with the requirements of the “comprehensive evaluation.” Notable improvements have been observed in the quality of the psycho-educational assessments and IEP documents. More importantly, IEP teams have consistently applied the requirements of a “comprehensive evaluation” for all students suspected of having ED. This has resulted in a year-to-year decrease

in the numbers of students identified as ED and those attending non-public schools. This consistent decrease in the overall ED population is evidence that prior to this outcome, schools were inappropriately identifying students with ED. The decrease in the population of students with ED attending non-public schools supports the premise that the inappropriate identification of students with ED was driven by placement in separate, more restrictive settings. While this pattern stabilized during the 2008-2009 school year, this is a positive finding since it was expected that those students who may have been inappropriately identified as ED would have received a three-year re-evaluation resulting in a change of eligibility or exit from special education. This stability also indicates that the schools continue to identify students with ED that meet the eligibility requirements for services.

During the 2008-2009 school year, the OIM conducted a study to measure the District's performance for Outcome 18. The study found that 81.1% of African American students received a comprehensive evaluation as defined by Outcome 18, which fell below the 90% target.

While the District did not meet the target, a closer examination of the District's compliance with specific elements raises questions regarding the structure of the outcome. First, the requirements of the outcome were intended to improve the pre-referral and identification practices of the District and minimize any unintended consequences such as the cessation of identifying of African American students as ED, or an increase in the identification of all other students. The criteria for a "comprehensive evaluation" were designed to include those processes and safeguards that would reduce inappropriate identification and the over-reliance of more restrictive placements. This includes having a parent participate in the decision-making processes during the IEP that initially identifies a student with ED, or during the triennial evaluation that re-establishes this eligibility. The outcome established a high threshold for meeting compliance, requiring that all elements of the comprehensive evaluation be met in order for that student to be counted for compliance. While this design promotes a high level of quality in meeting this outcome, there are some limitations.

Primarily, while the intent of 100% compliance is sound, missing even one of the 28 items automatically eliminates that student from complying with this outcome. For example, of the 254 African American students that received a comprehensive evaluation and were identified with ED, 48 were missing one or more items. Of these, 30 did not meet the criteria because the IEP meeting did not include parental participation. To examine the impact of one element such as parent participation on compliance with the outcome, an analysis was conducted removing the parent participation element. This analysis resulted in 90.2% of all African American students having met all of the requirements of the comprehensive evaluation. While the attendance or participation of a parent at the IEP meeting is critical and mandated by this outcome, this is not a legal requirement and is the only one that is beyond the complete control of the school.

When we examined compliance by the four processes of pre-referral and referral interventions, assessment, determination of eligibility, and IEP team considerations, the OIM discovered that the District exceeds the 90% criteria for all sections except one. While compliance with the criterion for IEP team considerations is below the target for African American students (87.0%), this is primarily due to the parent participation requirement. Over the years, the file reviews have noted improvements in the efforts to encourage parents to attend the IEP meeting and an increase in the number of parents participating via teleconference.

Compliance of the Elements of a "Comprehensive Evaluation" by Section and Race/Ethnicity

Process	Ethnicity	# of Observations	# of Students Meeting Criteria	% Meeting Criteria
Section 1. Pre-Referral Interventions Initials IEPs	African American	39	38	97.4%
	Latino	87	84	96.6%
	White	29	29	100.0%
	<i>Total</i>	<i>155</i>	<i>151</i>	<i>97.4%</i>
Section 1a. Referral Interventions Change of Eligibility IEPs	African American	48	46	93.8%
	Latino	93	85	91.4%
	White	36	33	91.7%
	<i>Total</i>	<i>177</i>	<i>164</i>	<i>92.7%</i>
Section 2. Assessments All IEPs	African American	254	235	92.5%
	Latino	325	307	94.5%
	White	150	138	92.0%
	<i>Total</i>	<i>729</i>	<i>680</i>	<i>93.3%</i>
Section 3. Determination of Eligibility All IEPs	African American	254	251	98.8%
	Latino	325	320	98.5%
	White	150	149	99.3%
	<i>Total</i>	<i>729</i>	<i>720</i>	<i>98.8%</i>
Section 4. IEP Team Considerations All IEPs	African American	254	221	87.0%
	Latino	325	296	91.1%
	White	150	138	86.7%
	<i>Total</i>	<i>729</i>	<i>655</i>	<i>89.8%</i>

The study also noted higher rates of compliance with the criteria for African American students newly identified as ED compared to those students receiving a triennial re-evaluation. For newly identified African American students, 89.7% met compliance with the outcome, while 89.6% students with a change of eligibility IEP met compliance. For those students who received a triennial IEP, 76.6% met compliance. This is important since the initial point of identification is the critical juncture for reducing inappropriate identifications.

Overall, the District must once again be commended for the continued efforts to improve the referral and identification process for students identified as ED. While the District did not meet the 90% target, its progress and performance can be deemed a success. The District has undoubtedly changed the culture of identifying students with ED from one driven by placement to one that applies a *rigorous* and *consistent* referral and identification process for all students. The results of this outcome are a shining example of the District's capacity to implement a systemic intervention and improve best practices at schools. Furthermore, this outcome is an example of the District's capacity to provide oversight over its schools and providers. Over the past several years, the District has been conducting file reviews similar to the methodology of the OIM to monitor its compliance with the requirements of the "Comprehensive Evaluation."² This is prime

² See letter from Sharyn Howell to the Board of Education and Ramon Cortines dated September 23, 2009.

evidence of one of the fundamental goals of the consent decree, which is to create internal capacity to ensure systemic compliance with IDEA.

During the 2009-2010 school year, the IM will consider modifying the parent participation requirement of the outcome. While it is still the expectation that schools expend all efforts to include a parent in the IEP meeting, the IM recognizes such ability is limited in some cases. The IM will require the District to develop a letter where a parent is made aware of the parental participation requirement of this outcome and acknowledges this requirement while granting permission to proceed with the IEP in their absence. This letter is to be maintained by schools for those students whose parents did not participate in the IEP meeting discussions.

Determination: Outcome 18 not met.

MAKING SCHOOLS ACCESSIBLE

Introduction

Section 10 of the MCD requires that:

- All new construction and renovation or repairs by the District shall comply with Section 504 and the American with Disabilities Act (ADA).
- The District shall enter into binding commitments to expend at least \$67.5 million on accessibility renovations or repairs to existing school sites consistent with Section 504 and ADA.
- The District shall establish a unit to address "on-demand" requests related to accessibility. The District shall expend up to \$20 million for task orders related to requests for program accessibility.

Section 17 of the MCD requires the IM must also determine there are no systemic problems within the District's schools that prevent substantial program accessibility compliance.

This report will summarize the progress of the District toward meeting the requirements of Section 10: Facilities for the 2008-2009 school year. During this year, the OIM made two determinations regarding the allowance of credit for the Repair and Renovations (\$67.5M) program and On-Demand program (\$20M). The District submitted 16 projects for credit for projects associated with the \$67.5M, and nine projects under the \$20M MCD obligations. Upon review of the documents submitted and subsequent site inspections, the IM was able to approve credit toward both obligations. To examine the inspection and process of the New Schools Access Compliance Surveys, the OIM conducted four site reviews of newly opened schools. The report also includes an update on the District's efforts to improve the practices and oversight related to access compliance.

\$67.5M Repair and Renovation Projects

During the 2008-2009 school year, the District submitted a total of 16 repair and renovation projects for credit. The first submittal occurred on February 4, 2009, and consisted of four projects. Three were approved for credit for a total amount of \$383,009.57. The remaining project required additional clarification and was retracted by the District. This project was re-submitted on August 10, 2009.

On August 10, 2009, the District submitted 13 projects from 10 sites for a total request of \$12,637,299.00. To date, the District was granted credit for 10 projects for the amount of \$10,747,577.00. The remaining three projects will be applied credit pending additional clarification of costs by the District. For the 2008-2009 school year, the District was granted credit for a total of 13 projects in the amount of \$11,130,586.00.

While the approval of repair and renovation projects and credit has taken a long time, the District has demonstrated great strides in the improvement of their processes in the documentation, construction and inspection of work related to access compliance. Historically, the District had not demonstrated the necessary credibility and internal capacity for the OIM to approve projects submitted. This year, the District initiated a change in leadership which has resulted in a good faith effort for improving the internal capacity of the District. In turn, these actions have vastly improved the credibility of the District's MCD team to oversee and inspect projects, as well as the documentation submitted for projects. This change also has facilitated a collaborative working relationship with the OIM and its consultants Disability Access Consultants, Inc. (DAC), which has been instrumental in the progress noted this year.

It is the IM's expectation that the District build on this momentum by continuing to develop its internal capacity. This will undoubtedly yield positive results for the approval of credit toward meeting the \$67.5M obligations during the 2009-2010 school year.

\$20M On-Demand Projects

On August 10, 2009, the District submitted nine On-Demand projects for a credit request total of \$1,713,340.50. On September 15, 2009, an additional five projects were submitted for a credit request total of \$688,733.00. During September 21-23, 2009, these projects were inspected to determine if the completed projects provided

program accessibility as required by the \$20M projects. Although the additional five projects did not meet all of the accessibility code requirements, it was determined that they all met the objective of program accessibility and credit was granted for \$687,645.99. The total credit granted for the 2008-2009 school year for On-Demand projects totaled \$2,400,986.49.

For the purpose of compliance with the MCD, the District is not required to meet or exceed the \$20M allocated for the On-Demand program. To date, the program has responded to 189 on-demand requests since the 2003 school year. While the majority of these requests have initiated task orders or renovation of existing sites, 27 have resulted in programmatic changes (i.e., change of classroom) to enhance program access without requiring facilities upgrades. An inherent aspect of program accessibility is making readily available accommodations and programmatic changes that immediately impact students.

During the 2008-2009 school year, the District began to make modifications to improve the On-Demand program. First, the District streamlined the oversight of its operations to ensure a more timely response and compliant construction. The program also has begun to shift and emphasize alternative solutions for program access through programmatic modifications. This focus should ensure that the On-Demand program does not unnecessarily rely on the \$20M funds and can remain sustainable over the long-term. Fundamentally, the development of a sound and responsive On-Demand program will provide the District the ability to meet the programmatic needs of students with disabilities long after the MCD.

New Schools

After the 2006-2007 OIM verification audit of the District's new schools, the parties entered into a stipulation agreement requiring the District to contract with independent inspectors and survey all of its 54 new schools. The results of the independent inspections concluded that the new schools had significant noncompliant findings. During the 2008-2009 school year, the District committed to re-surveying all of these schools to identify areas of non-compliance that were over and under identified, and developing corrective action plans for each site. The District also improved this process by prioritizing the correction of these deficiencies to have a greater impact on students. This included focusing on deficiencies that present significant barriers to program accessibility and those considered high-risk items related to safety. Additionally, the Facilities Unit examined the needs of the student population by obtaining information from the Division of Special Education on the composition of disabilities at each of the 54 schools. It also examined information on any students with eligibilities of multiple disabilities orthopedic (MDO), orthopedic impaired (OI), visually impaired (VI) and hearing impaired (HI) who would be matriculating to these schools for the 2009-2010 school year.

In addition to addressing the areas of non-compliance at the 54 new schools, the District has committed to proactively surveying new schools not included in the previous surveys that would be newly opening during the 2009-2010 school year. The rationale for conducting these surveys was to identify areas of non-compliance prior to occupancy and addressing areas of non-compliance prior to the opening of these schools. The idea was to hold contractors and architects accountable while they remained on contract. All of the nine newly opened schools were surveyed prior to the beginning of the 2009-2010 school year. Between September 21-23, 2009, the OIM and DAC conducted a walk-through at four of these schools to validate the survey process. In addition, a document review was included to examine the effectiveness of the inspection and survey process at these schools.

The findings of the walk-through and document review of the inspection and survey processes indicate minimal progress in the capacity of the New Schools unit to identify areas of non-compliance. While some areas of improvement were found, similar trends were noted from the inspections of 54 schools where the inspectors and external surveyors under-identified some basic and common areas of non-compliance (i.e. auditoriums, passenger loading zones), and over-identified areas that have minimal impact on program access (i.e., electrical receptacles/outlets). This is discouraging since the District has expended considerable time and resources on finding areas of non-compliance at its new schools.

A positive aspect of these walks was the involvement of the Existing Facilities MCD Team, which conducted spot-checks prior to the walk through. The MCD Team identified many of the areas of non-compliance missed

by the Inspector of Records (IOR) and external surveyors. Many of these findings were confirmed by DAC at the time of the walk-through, and allowed for agreement of both the OIM and the MCD team in validating the inaccuracies of the surveys. While the IOR and external surveys continued to show similar shortcomings and inconsistencies within their inspections, the findings of the MCD team indicate that the District has developed the internal capacity necessary to inspect new schools. It is strongly recommended that the District continue to include members of the MCD team within the survey process of its new schools to ensure consistency and better quality surveys. This is particularly important prior to engaging in the corrective action phase of the 54 new schools. The District should also consider whether to continue to utilize the external surveyors as they have demonstrated minimal improvements after conducting multiple surveys.

The walk-through and document review also noted weaknesses within the design, construction and inspection processes in place that ensure compliant work. For instance, it was noted that some areas of non-compliance were a result of a combination of poor design, construction that did not adhere to the plans, and poor quality inspection. These repeated failures are of concern as this demonstrates that the safeguards within these processes show weaknesses that must be addressed in order for the District to demonstrate systemic compliance. Additionally, it was discouraging to observe the lack of non-compliant or incomplete passenger loading zones and entrances at the four schools. In some cases, the District reports limitations in obtaining permits from the City for the completion of these loading zones. While this may be the case, it is incomprehensible that the point of entry is inaccessible at new schools.

During the 2009-2010 school year, the District is required to conduct analyses to closely examine common failures within the design, construction and inspection processes at new schools. For example, the District should closely examine the processes associated with the failures noted within the passenger loading zones, including those related to the City's permitting procedures, to better understand these failures. In addition, the District shall provide detailed documentation, including but not limited to: DSA approved plans, DSA Waivers, IOR reports, and City permits and/or communication related to the passenger loading zone.

Facilities Accountability Plan

On September 11, 2008, the District provided an Accountability Plan for holding staff responsible for meeting the obligations of Section 10: Facilities, of the MCD. This accountability plan presents strategies the District will implement to ensure and/or improve accessibility at schools. The plan includes strategies aimed to improve the three processes of school construction related to the MCD. These include: Existing facilities, new construction, and construction inspection. The plan also focuses on three phases of construction which include design, construction and inspection.

The plan includes strategies that promote the collaboration between departments on activities such as the development and revision of design and inspection guidelines; peer reviews of designs; joint reviews of construction documents; and periodic trainings. While the full impact of these strategies will be observed over time, the OIM and DAC have noted demonstrable improvements in the internal capacity, practices and attitudes of District staff regarding access compliance.

Summary

The performance and progress observed during the 2008-2009 school year reflect the good faith efforts of the District for improving access compliance at its schools. While this progress has been slow and contentious, it appears the District has turned the page. Last year, the OIM noted that the ultimate barometer of progress would be the completion of compliant work and approval of credit. This progress has finally been realized.

The District should be commended for its efforts to increase the awareness and consciousness of access compliance by ensuring that schools are accessible for all students, staff and the public. The District has demonstrated increased organizational capacity to implement and oversee construction related to access compliance. While this progress has been notable, there is still room for improvement, particularly for new schools. The OIM also is encouraged by the District's raised awareness of the impact of physical barriers on the integration of students, staff and others with disabilities within their schools.

The District also has demonstrated some actions to address systemic weaknesses to improve compliance. The District has recently identified common barriers or areas of non-compliance such as kick-down door stops, missing or vandalized signage, and misplacement or non-accessible toilet tissue dispensers that can be addressed by Maintenance and Operations. The District also has begun to demonstrate improved vetting of the specifications of components incorrectly identified by manufacturers as ADA compliant. For example, it was noted during a new school walk-through that the District had purchased non-compliant lavatories that were advertised as ADA compliant, recognized that the lavatories were non-complaint by design, and addressed this with the manufacturer, which replaced the non-compliant lavatories with compliant ones at no-cost. This proactive vetting of the specifications of products is encouraging as it will promote systemic compliance, ensure accountability of its vendors, and save the District resources in the long run. While these are two examples of the District proactively affecting systemic improvements, there are many more areas to engage in similar efforts.

While the implementation of the accountability plan and approval of projects for credit increases the District's credibility, it is the expectation of the IM that the District continue to develop its organizational capacity to ensure systemic compliance with ADA and Section 504. The District should further promote consistency between the quality of inspections at existing facilities and new schools. While the IM recognizes the challenges presented by the limited resources and time needed to address the corrective actions of the 54 new schools, it is strongly recommended that the District continue to invest in the capacity building of its MCD unit.

During the 2009-2010 school year, the OIM will closely monitor the implementation of the strategies of the accountability plan. Furthermore, it is the expectation of the IM that the District continue to make significant strides in the quality of projects submitted for credit.

Determination

1. All new construction and renovation or repairs by the District shall comply with Section 504 and the American with Disabilities Act (ADA) – ***Minimal Improvement***
2. The District shall enter into binding commitments to expend at least \$67.5 million on accessibility renovations or repairs to existing school sites consistent with Section 504 and ADA – ***\$11,130,586.00 credit***
3. The District shall establish a unit to address "on-demand" requests related to accessibility. The District shall expend up to \$20 million for task orders related to requests for program accessibility – Unit established, model project binder approved, ***\$\$2,400,986.49 credit***

CHARTER SCHOOLS

During the 2008-2009 school year, the OIM conducted a study to examine the role and impact of the District's charter schools on its performance toward achieving the requirements of the MCD and compliance with Federal and State special education laws and regulations³. Specifically, the study examined whether the District's policies and procedures pertaining to charters promoted compliance with the MCD, and Federal and State special education law, and the equitable access and opportunity for students with disabilities (SWD) for a free and appropriate education at schools of choice. The study also examined the District's organizational capacity to ensure the implementation and oversight of the mandated activities of the MCD and special education law at its charter schools. Also examined was whether charter sites presented potential barriers to the substantial systemic compliance with the program accessibility requirements of the MCD.

In summary, the study found areas of weaknesses within policies, procedures and practices that impact the attendance of SWD at charter schools. Additionally, these weaknesses have implications on the District's capacity to demonstrate systemic compliance with the requirements of the MCD and Federal and State special education law. As a result of this study, the District has committed to addressing these programmatic weaknesses during the 2009-2010 school year.

³ The report can be viewed at: <http://oimla.com/pdf/PilotCharterSchool.pdf>

During the 2008-2009 school year, the District had 148 charter schools serving approximately 58,000 students. While the number of charters will continue to grow, the IM expects that these efforts to improve charter schools' compliance with the MCD and special education law will be mandated and enforced at both existing and new charters granted by the District. The IM will continue to monitor the processes that pertain to the recruitment and retention of SWD to ensure that these processes do not violate the rights of SWD for a free and appropriate education at charters, particularly for students with moderate to severe disabilities.

ANNUAL HEARING

Section 13 of the MCD requires the IM to conduct at least one hearing each year to hear from parents and other interested persons about the District's compliance with special education laws. This year's hearing was held May 13, 2009. Notices inviting persons to attend were made available in the eight primary languages of the District which include: English, Spanish, Tagalog, Chinese, Korean, Russian, Vietnamese and Armenian. To promote the annual hearing, the following means of outreach were conducted: a direct mailing to homes of parents of students with disabilities; district-wide distribution to all schools including charter and non-public schools; and a press release to all local media.

To facilitate attendance, a hearing was held in the morning and another in the evening. A total of 63 persons signed in as attending in the morning, and 34 persons attended the evening session. A total of 51 persons presented oral testimony, 33 in the morning and 18 in the evening. Additionally, 18 written statements were received.

Individuals who presented specific complaints or problems were afforded the opportunity to meet with District staff to discuss the matter in greater depth and hopefully find a resolution. This resulted in a total of 37 referrals seen by District staff.

An analysis of comments expressed at the Annual Hearing indicates that non-compliance with the supports and services specified in the IEP (17.4%), along with questions on how to obtain more information regarding the IEP process and how to help their child (14.6%), were the most common concerns for parents. Concerns regarding the IEP included: non-compliance with accommodations; non-compliance with timelines; and the lack of progress with IEP goals. Additional concerns expressed were related to: hostile environments (8.0%) budget constraints (5.5%); and equitable access to magnet schools and choice programs (5.0%).

CONCLUSION

This Report has documented the District's progress in meeting two major components of the MCD. Of the five performance-based outcomes pertaining to students with disabilities, the District has met one and is close to meeting two. The remaining two are new. As of this date the District has met 13 outcomes (see Table A). Part II of the Annual Report will document the District's progress on two outcomes: Outcome 2: Performance in the Statewide Assessment Program; and, Outcome 4: Completion Rate.

The District is to be commended for its progress toward meeting the outcomes. The progress appears to be the result of the targeted planning process that focuses research-based interventions and resources on schools and students whose improved performance is essential to the District's meeting the outcome. However, plans are only paper until they are implemented and monitored, and individuals who are responsible are held accountable. The IM recognizes that these are difficult economic times for the District. Superintendent Cortines is to be commended for his expressed commitment to ensure that resources necessary to implement the MCD will continue to be available.

The IM has noted in previous reports and in meetings with District officials that the MCD, the targeted strategy plans and District special education policies and procedures apply to all District schools. This includes schools chartered by the District and those under the Innovation Division. During the past year the OIM conducted a study on charter schools that is summarized in this Report. The study found significant compliance issues and that SWD were significantly underrepresented in the charter school student population. The OIM also has found that SWD are underrepresented at magnet schools. The District is in the process of developing corrective actions to address the problems identified in the study report. This report noted performance problems at I Division schools. It appears that schools of choice and schools

managed outside of the traditional structure of the District are failing to appropriately serve SWD. It is essential that the District take the necessary actions to correct these problems and put in place policies and procedures that ensure that any new school will serve the percentage and diversity of SWD found in a traditional District school in manner compliant with District special education policies and procedures and the MCD.

This past year the District has made significant progress in making District facilities accessible to individuals with disabilities. If such progress continues the District can reasonably be expected to meet the requirements of Section 10 of the MCD.

Three provisions of the MCD are worth reiterating at this time:

First, for outcomes that have been met, the IM is required to continue to monitor the District's performance until all outcomes are met. Thus it is expected that the District will maintain or improve its performance on these outcomes.

Second, the IM is required to issue periodic reports on progress in meeting the outcomes. As data becomes available, the IM will report on the District's performance on specific outcomes. As described earlier in this report, the reports will contain, when appropriate, the schools that are not making adequate progress and the individuals responsible.

Third, the MCD authorizes the IM to increase the outcome measure in the event that an outcome is not achieved by June 30, 2006 and that its achievement will be delayed by more than six months. While the IM has no plans at this time to do so, the District should be aware of this possibility.

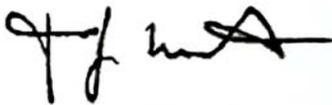
ACKNOWLEDGEMENTS

The IM commends both the District and Plaintiffs for the constructive and positive manner in which they have worked together in the process of implementing the MCD. It is not to be expected in an undertaking so broad and significant that there is always agreement. However the parties have consistently demonstrated both the desire and ability to reach appropriate resolutions.

While all outcomes have not been met, the IM wishes to commend the many individuals in the District who worked diligently to achieve the outcomes that have been met and the progress that has been made in others.

Recognition must also be given to the staff of the OIM, the graduate assistants, consultants and researchers who diligently gather and analyze data and review documents to ensure the validity of our determinations. Their professionalism and dedication is greatly appreciated.

Sincerely,



Frederick J. Weintraub

c: Hon. Judge Ronald Lew, Robert Myers, Catherine Blakemore, Judy Elliott, David Holmquist, Sharyn Howell, Diane Pappas, Deneen Cox, Brigitte Ammons, Thomas Hehir

Current Summary of Final Determination of the Modified Consent Decree Outcomes

#	Outcome	Status	Outcome Target	Outcome Met	
1	Participation in the (STAR) Statewide Assessment Program (without modifications)	ELA/Math	85.7%*	75%	Yes 6/30/06
		Comparable to Non-Disabled	94.6 %*	95%	
2	Performance in the (STAR) Statewide Assessment Program (at basic or above)	ELA	27.9%*	27.5%	To be determined
		Math	27.2%*	30.2%	
3	Increase Graduation Rate		41.66%	39.79%	Yes 6/30/08
4	Increase Completion Rate/Reduce Drop Out		52.5%**	76.3%	To be determined
5	Reduce Suspensions of Student with Disabilities		7.6%	8.6	Yes 6/30/09
6	Increase Placement of Students with Specific Learning Disabilities (SLD) and Speech and Language Impairment (SLI) in the Least Restrictive Environment		73.7%	73%	Yes 6/30/06
7A	Increase Placement of Students with All Other Disabilities in the Least Restrictive Environment		50.7%	51%	No
7B	Increase Placement of Students with the Disability of MDO in the Least Restrictive Environment		10.9%	23%	No
8a	Increase Home School Placement: SLI/SLD		92.7%	92.9%	Yes By Stipulation of the Parties 9/16/08
8b	Increase Home School Placement: All Other Disabilities	Grade K	59.1%	65%	
		Grade 6	65.0%	65%	
		Grade 9	60.0%	60%	
8c	Increase Home School Placement: All Other Disabilities	Grades 1-5	58.8%	62.0%	
		Grades 7-8	60.3%	55.2%	
		Grades 10-PG	41.4%	36.4%	
9	Individual Transition Plan in IEP (14 years and above)		99.8%	98%	Yes 6/30/06
10	Timely Completion of Initial Special Education Evaluations	60 Days	90%	90%	Yes 6/30/08
		75 Days	96%	95%	
		90 Days	98%	98%	
11	Response Time to Parent Complaints	5 Days	54%	25%	Yes 6/30/06
		10 Days	82%	50%	
		20 Days	97%	75%	
		30 Days	99.9%	90%	
12	Informal Dispute Resolution Prior to Formal Due Process (within 20 days)		77%	60%	Yes 6/30/06

Current Summary of Final Determination of the Modified Consent Decree Outcomes

#	Outcome		Status	Outcome Target	Outcome Met
13a	Delivery of Special Education Services	SLD Only	91.2%	93%	No
		Other Disabilities	93.7%	93%	
13b	Delivery of Special Education Services	Frequency (# of times)	72.3%	85%	
		Duration (length)	66.9%	85%	
14a	Increased Parent Participation (Attendance at IEP Meetings)	Attendance	82%	75%	Yes 2/1/08
14b	Increased Parent Participation (Attempts to convince parent to attend IEP)	Sufficient Attempts	96%	95%	
15	Timely Completion of IEP Translations	30 Days	96%	85%	Yes 6/30/07
		45 Days	99%	95%	
		60 Days	99%	98%	
16	Increase in Qualified Special Education		89%	88%	Yes 7/15/08 Not disengaged
17	IEP Team Consideration of Behavior Support Plans for Autistic and Emotionally Disturbed Students	Autism	61%	40%	Yes 6/30/06
		ED	97%	72%	
18	Comprehensive Evaluation of African American Students Identified as Emotionally Disturbed	% Meeting Criteria	81%	90%	No

* Preliminary data from June 30, 2009

** Data from June 30, 2008