

***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, 24<sup>th</sup> Floor  
Los Angeles, CA 90017

Honorable Board of Education  
Los Angeles Unified School District  
333 S. Beaudry Avenue, 24<sup>th</sup> Floor  
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 2014-2015 School Year – Part 1**

Dear Mr. Cortines and Board of Education:

Section 13 of the Modified Consent Decree (MCD) requires the Independent Monitor (IM) to present an annual, written report to the superintendent and the Board of Education concerning the progress and effectiveness of the implementation of the MCD's terms and conditions. The MCD has three primary sets of requirements the Los Angeles Unified School District (District) must meet. The first set is 18 performance-based outcomes pertaining to students with disabilities (SWDs) receiving special education services. Prior to this report, the District had met the requirements of 16 outcomes. The second set of requirements pertains to making District schools, programs, and activities accessible to individuals with disabilities. The third concerns the development and implementation of the My Integrated Student Information System (MiSiS).

This report addresses the status of the District's performance on three outcomes (Outcome 7: Placement in the Least Restrictive Environment [LRE], Outcome 13: Delivery of Services, and Outcome 16: Increase in Qualified Providers); making schools, programs, and activities accessible; and MiSiS. It also includes discussions regarding schools of choice, updates on Outcome 10 – Timely Completion of Evaluations, annual hearings, the Complaint Response Unit (CRU), progress on the District's capacity for ensuring substantial compliance, and a summary of an investigation on the authority of Individualized Education Program (IEP) teams. In spring 2016, the IM will issue Part II of this report to update on the District's progress toward outstanding requirements.

The MCD outcomes are statistically based. Each remaining outcome has at least one data target that the District must meet. It is the IM's responsibility to determine whether the target has been achieved. All targets in an outcome must be achieved before the IM can determine that the outcome has been met. The Parties (Plaintiffs' Counsel, the District, and the Office of the Independent Monitor [OIM]), agreed to the protocol used to measure performance for each target. Data used in the analyses are validated and derived from District data sources. The appendixes to this report contain studies and other analyses the IM used to make determinations on the District's performance of the outcomes.

This report addresses the following outcomes:

- Outcome 7: Placement in the Least Restrictive Environment

- Part 1: Placement of SWDs at Special Education Centers
- Part 2: Students at Co-located Sites Will Participate in 12% of the Instructional Day with Their Nondisabled Peers
- Outcome 13: Delivery of Services
- Outcome 16: Increase in Qualified Providers
- Outcome 10: Timely Completion of Evaluations (update)

It also reports on:

- Making District schools, programs and activities accessible
  - Rapid Access Program (RAP)
  - New schools and repair and renovation
  - Section 17
- Schools of choice – Charter and magnet schools
- Data systems – MiSiS
- Annual hearings
- Complaint response unit
- IEP complaint investigation
- Substantial compliance
- Disengagement

**OUTCOME #7: PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**

- ◆ **Outcome 7 - Part 1:** Reduce the number of students with moderate to severe disabilities ages six to 18 at special education centers by a total of 33% over three years, beginning with the 2012-2013 school year.

Placement of SWDs at Special Education Centers

School Year	# of Students	# of Students Reduced from Target	% of Students Reduced
2014-15	1,277	913	41.69%
2013-14	1,621	569	25.98%
2012-13	2,121	69	3.25%
2011-12*	2,190		

\* Baseline year data

- ◆ **Data Source:** Students in the Special Education (SPED) Census database, ages six to 18, enrolled at special education centers on April 15 of each school year make up the dataset.
  - Baseline data = 2,190 students at centers (April 15, 2012). The target is a reduction of 723 students for a total number of no more than 1,467 students enrolled at special education centers by 2014-2015.
- ◆ **Note:** The percentage of SWDs at co-located schools shall not exceed 28% of the school population. (Average of the total number of SWDs is divided by total school population at eligible co-located schools, ages six to 12 for elementary schools and ages 13 to 18 for secondary schools.) The number of general education students used in this calculation shall not be less than the number reflected in the California Longitudinal Pupil Achievement Data System (CALPADS) during the initial year in which the co-location of the designated schools occurs. The number of special education students shall not exceed 35% of the population (ages six to 12 for elementary schools and ages 13 to 18 for secondary schools). SWDs outside the approved age ranges described above for co-located schools will be counted as attending a center for the calculation purposes of Outcome 7 - Part 1.
- ◆ **Discussion:** Outcome 7 - Part 1 requires the District to reduce the percentage of SWDs attending special education centers by 33%. The District presented a two-year plan, beginning July 1, 2012, to achieve this outcome by merging four special education centers with nearby general education campuses. The pairs of schools to be merged include Blend and Van Ness Elementary Schools, Banneker and Avalon Gardens Elementary Schools, McBride and Grand View Elementary Schools, and Miller and Cleveland High Schools. The Parties agreed to establish student population parameters for the new co-located sites to ensure that they did not consist primarily of SWDs.

Although Outcome 7 - Parts 1 and 2 include Miller and Cleveland High Schools; these two schools were never physically co-located. Therefore, Miller students are considered as attending a special education center for this part of the outcome and have no impact on the performance reported. This part of the outcome focuses on the overall reduction in students with moderate to severe disabilities attending special education centers.

Performance for this outcome is based on enrollment data from April 15, 2015. As of this date, the District reduced the number of students attending centers by 41.69%. This demonstrates considerable progress and exceeds the 33% target. Therefore, this part of the outcome is met.

Since the renegotiation and stipulation of this outcome, the District demonstrated great effort to relocate students from special education centers to general education campuses as well as to enroll students at general education sites at the beginning of their educational experience. Although this outcome was designed to reduce the population of students attending centers by co-locating three sites, the District engaged in a larger initiative that included moving classes from other centers to general education campuses as well as opening new alternate

programs. This has resulted in more students being afforded an opportunity to participate in instructional and noninstructional activities with their nondisabled peers.

Of those students who have been relocated to general education campuses, only 152 (16.6%) attend the three co-located sites. This means that approximately 85% of the reduction comprised students relocated from other centers or new students enrolled directly onto a general education site. This effort is commendable and shows the District's commitment to create a large system change to improve educational opportunities for students with moderate to severe disabilities. Since the 2014-2015 school year, 37 classes have been relocated from special education centers to general education campuses. In addition, SWDs constituted 39.8% of students attending inclusive early childhood education programs.

The District reports that the following programs opened across the five local districts during the 2015-2016 and 2014-2015 school years:

**2015-2016 – 57 new alternate curriculum programs**

- 28 autism alternate
- 1 community-based instruction
- 12 multiple disability
- 16 intellectual disability

**2014-2015 – 63 new alternate curriculum programs**

- 35 autism alternate
- 1 community-based instruction
- 5 early education
- 7 multiple disability
- 15 intellectual disability

Although this effort demonstrates successes, it has also experienced many challenges. Past annual reports have documented the lack of readiness and missteps regarding accessibility at these sites. Last year's annual report described the overall lack of readiness and consideration for ensuring program access at eight schools (both co-located and non-co-located). Concerns included the District's decisions regarding access to bathrooms, changing rooms, and bus drop-off zones. Questionable decision making and a lack of a coordinated plan to improve program accessibility were also noted, raising concerns about the capacity of those responsible for these efforts. At the co-located sites, some work was behind schedule and noncompliant. Due to these concerns, the OIM directed the District to identify an individual or persons responsible for the design, management, and oversight of the program accessibility efforts at these schools; revise and update work plans for each site with detailed information, including expected date of completion; provide a monthly progress report of each site; and meet with and inform school principals of the schedule and obtain input on the barriers to be removed. The IM noted that this outcome would not be considered met until all programs were accessible at these sites.

In response, the District developed plans to improve program access at six schools where students from centers were relocated, and committed to completing construction at four schools by August 31, 2015.<sup>1</sup> It also continued its ongoing accessibility renovations at the co-located sites that were phased over three years. Monthly updates on the progress of these renovations at nine schools were provided to the Plaintiffs' Counsel and the OIM.

On August 31 and September 1, 2015, the OIM and its accessibility consultants visited the three co-located sites and three non-co-located sites to verify the work's completion. At three sites, construction was not complete, and all sites had noncompliance issues. For instance, the OIM found noncompliant or missing signage, mix-use restrooms that used adult standards in children's restrooms, passenger loading zones with inaccessible features, stairs without compliant striping, and noncompliant door hardware.

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<sup>1</sup> The remaining two schools will have construction completed by January 31, 2016.

In addition, during the 2014-2015 school year, the OIM and external integration experts visited the co-located sites and three non-co-located sites to observe integration and discuss these efforts with school principals and staff. These experts developed and provided a report to the District with findings and recommendations for supporting integration.<sup>2</sup> This report's findings are discussed in more detail in the Outcome 7 - Part 2 section. Interviews were conducted to gather information on the ongoing integration progress, the positive experiences, and the additional support needed. The lack of planning and readiness regarding program accessibility at these sites was a noted concern by school staff and administrators.

Although the District developed plans and fast-tracked renovations to address program accessibility at the nine sites, much of this was due to the OIM's close monitoring of students attending these sites, highlighting the deficiencies observed during visits, and obtaining school personnel input. Although the plans were developed to address the immediate needs of students being relocated, this approach and the lack of site transition plans resulted in unintended consequences. Although the renovations improved access to some site features, such as changing rooms and restrooms, they also created enclaves where students' programs, goods, and services were limited. For example, at Edison Middle School, students were limited to one wing of the school where a small changing room/restroom was renovated. At Irving Middle School, changing rooms were renovated in the storage space between two classrooms and only accessible from within. Although these approaches are practical, students are limited to areas in which renovations occurred and continue to lack the necessary accessibility features throughout the site to ensure equal access. Despite good-faith efforts, these examples highlight the District's shortcomings for developing capacity in planning and providing program access. It also shows the impact that a lack of transition plans has on the provision of accessible schools, programs, and activities.

The renovation of these nine sites also shows that making schools accessible requires time and careful planning. The process associated with the six non-co-located sites is an example of what the District is capable of when it engages in a committed and concerted effort to improve accessibility. Although there is need for improvement, and given the District's long history of underperformance in this area, the progress made in the relatively short time period should serve as a baseline standard for future projects. The District should objectively examine this effort's successes and shortcomings and continue to strive for fast and more comprehensive approaches to ensure program access.

The District met its obligations to improve accessibility at the nine schools and thus fulfilled Outcome 7 - Part 1. However, many more students with moderate to severe disabilities attend general education campuses. The District does not have a lengthy track record in demonstrating initiative or capacity for making schools accessible. This is a serious concern. The OIM will continue to engage the District and Plaintiffs and monitor accessibility at schools where these new alternate curriculum programs are located under MCD Sections 10 and 17. The IM expects the District to dedicate the necessary resources to aggressively address these students' accessibility, health, and safety needs.

- ◆ **Determination:** Outcome 7 - Part 1 met.

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<sup>2</sup> See the full report at [http://oimla.com/pdf/20150319/LAUSDReportOctober2014\\_Final.pdf](http://oimla.com/pdf/20150319/LAUSDReportOctober2014_Final.pdf).

## OUTCOME # 7: PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT (CONT.)

- ◆ **Outcome 7 - Part 2:** Students with moderate to severe disabilities at co-located schools shall participate with their nondisabled peers in general education classes an average of 12% of the instructional day and during lunch, breaks/recesses, and schoolwide activities.

SWDs at Co-located Sites Participating 12% of Instructional Day with Their Nondisabled Peers

School Year	Total # of Students	Average % of Time in General Education
2014-15	275	25.36%
2013-14	280	27.65%

- ◆ **Data Source:** Students in the SPED Census database enrolled at eligible co-located schools (ages six to 12 for elementary schools and ages 13 to 18 for secondary schools) on April 15 of each school year make up the dataset.
- ◆ **Note:** Students with moderate to severe disabilities at co-located schools shall participate with their non-disabled peers in general education classes an average of 12% of the instructional day and during lunch, breaks/recesses, and schoolwide activities.
- ◆ **Discussion:** The second part of the outcome requires students at co-located sites to participate with their nondisabled peers in general education classes an average of 12% of the instructional day. Not all students with moderate to severe disabilities at each co-located site must be integrated for this amount of time, but the average time must meet or exceed this target.

During the 2014-2015 school year, class schedules and IEPs were collected for students attending the co-located sites. Information regarding integration in general education settings from both sources was compared and analyzed. Performance for Outcome 7 - Part 2 was based on class schedules, which accurately represent time spent in the general education setting. The findings were disaggregated by school site.

The review found that the average time spent in general education classes was 25.36%, exceeding the target of 12% (see Appendix A). In addition, 69.9% of students have schedules that indicate time in the general education setting for 12% or more of the day. Therefore, Outcome 7 is met.

Integration time varies by school at co-located sites. Avalon Gardens showed the lowest (13.4%) average time spent in the general education class, whereas Grandview (33.48%) and Van Ness (24.19%) showed that, on average, SWDs spend one-quarter to one-third of the day in general education classes. At Grandview, all SWDs had class schedules that indicated integration of 12% or more of the day, and more than half the students at Avalon Gardens (61.5%) and Van Ness (51.4%) met or exceeded the target.

Integration levels of 12% or more were noted for students attending Cleveland (100.0%) and Miller (40.0%). This performance must be viewed carefully because the only integration that occurred last year involved students from Miller attending physical education classes on the Cleveland campus. The integration reported at these schools occurred primarily in school for Cleveland students and in the community for students attending Miller.

Discrepancies remain between the course schedules (69.9%) and time indicated in the Individualized Education Programs (IEPs) (84.7%) regarding the number of SWDs in general education for more than 12% of the day. High levels of agreement (within 10% of the least restrictive environment [LRE] time in course schedule) were noted for Avalon Gardens (92.45%), Van Ness (94.44%), and Grand View (82.14%).

As mentioned in the Outcome 7 - Part 1 discussion, external experts on SWD integration conducted site visits and interviews with school staff to examine the integration efforts at the co-located and non-co-located sites.

Their report noted good progress with the integration activities at three of the co-located sites, with two demonstrating exemplary practices. All three schools noted positive experiences, such as natural integration in which SWDs interact with nondisabled peers in unstructured settings and activities. The District made other improvements, including making schools accessible and increasing participation in instructional elective classes such as art, cooking/gardening, and physical education.

The integration efforts' sustainability was a noted area of concern. This included a lack of central office support to maintain administrators' and elective teachers' staffing levels, staff training, and resources to increase common planning time such as funding for substitutes. Furthermore, consistency in the District's support and trust of school administrators was also a noted challenge.

The Miller Career and Transition Center was a model integration program for students ages 18 to 22. Although the site administrator noted very little integration with neighboring Cleveland High School, students engaged in work programs such as landscaping, automotive detailing, and culinary arts in the local communities.

The non-co-located sites were at various stages of their integration efforts. Schools were supported by integration specialist teachers and community groups, including Circle of Friends and UC Play. Electives such as art (music, drama, and dance), leadership, and physical education were the primary integration opportunities. School staff noted upcoming plans for expanding integration and participation in Districtwide events such as the Very Special Arts Festival, a celebration of the arts for students with and without disabilities. Staff noted similar challenges at co-located sites, including support for promoting collaborative planning time and teacher training.

The report included recommendations to increase and sustain SWD integration, including that the District gather, monitor, and use data about successful integration practices at co-located sites in its framework development. Furthermore, it recommended resources for providing release time for staff to visit model integration programs, collaboration between schools, and ongoing training on co-teaching. SWD integration into content area instruction was also recommended.

One administrator directly cited the need for a Districtwide framework, and all administrators acknowledged feeling mostly on their own when developing integration programs. Site administrators also noted the sustainability of supports as a concern. Several administrators noted that the District decreased initially offered resources (for instance, assistant principals and elective teachers) or felt the resources had to be negotiated at the beginning of the school year. The District should aggressively address these concerns as a large number of students in alternate curriculum classes are now attending general education campuses. The availability of a framework is critical in ensuring equitable programs across the District.

The District continues to expand its integration activities at sites and Districtwide. Examples of this include the integrated arts activities, including the annual Very Special Arts Festival. Integrated sports and physical education activities are successful examples of student integration. The District has a Young Athlete's Program for students in preschool and kindergarten, School Games for students in kindergarten through eighth grade, and Unified and Inclusive Sports for high school students. Select high schools have programs for wheelchair basketball, cheerleading, and soccer. Although the District is to be commended for this commitment, it should strive to dedicate resources to developing its capacity to integrate students into content area instruction.

- ◆ **Determination:** Outcome 7 - Part 2 met.

### OUTCOME #13: DELIVERY OF SERVICES

- ◆ **Outcome:** By June 30, 2006, 93% of the services identified on the IEPs of SWDs in all disability categories except specific learning disabilities (SLDs) will show evidence of service provision. By June 30, 2006, 93% of the services identified on the IEPs of students with an SLD will show evidence of service provision.

Delivery of Services

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 for SLD Only	
	IEP – Log Analysis	IEP – Site Visit*	IEP – Log Analysis	IEP – Site Visit*
2014-15	98.1%	N/A	97.6%	N/A
2013-14	96.4%	N/A	96.2%	N/A
2012-13	98.1%	N/A	97.7%	N/A
2011-12	94.1%	N/A	94.5%	N/A
2010-11	94.5%	N/A	90.8%	N/A
2009-10	94.8%	N/A	93.0%	N/A
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 eliminated as part of the Services Study during the 2006-2007 school year.

- ◆ **Data Source:** Services Study
  - Office of Data and Accountability (ODA) and American Institutes for Research (AIR).
- ◆ **Outcome:** By June 30, 2006, the District will provide evidence that at least 85% of the services identified on SWD IEPs have a frequency and duration that meet IEP compliance. For the purposes of assessing frequency and duration, provider absences will constitute evidence of service provision if such absences are the result of short-term (a maximum of two consecutive weeks) illness, family emergency, or jury duty. Student absences and no-shows will also constitute evidence of service provision.

Frequency and Duration of Services

School Year	IEP – Log Frequency Agreement	IEP – Log Duration Agreement
	% of Services with Frequency at Least Equal to the IEP	% of Services with Duration at Least Equal to the IEP
2014-15	87.4%	72.4%
2013-14	84.4%	67.7%
2012-13	86.0%	71.4%
2011-12	83.5%	70.2%
2010-11	81.8%	68.9%
2009-10	74.5%	66.6%
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
  - ODA and AIR.

- ◆ **Discussion:** The purpose of this outcome is to ensure that SWDs receive services as specified in their IEPs. This includes instructional services like the resource specialist program (RSP) and related services such as speech and language, occupational (OT), and physical therapy (PT). The outcome's performance is determined by a study that examines evidence of eight weeks of service for meeting both the frequency and duration requirements as specified in a student's IEP. This outcome requires the District to maintain accurate service delivery records in the Welligent system of thousands of special education teachers and service providers.

During the 2014-2015 school year, ODA and AIR, in collaboration with the OIM, conducted a study to measure service delivery to SWDs (see Appendixes B and C). Overall, the District's performance showed a slight increase for all three targets, meeting two (evidence of service and frequency), but failing to meet one (duration).

The first part of the outcome measures evidence of students who received at least one session of the services specified in their IEPs for the eight-week period. The District's performance on this part met or exceeded the target level (93%) for demonstrating evidence of service for students with SLD (97.6%) and for students who have a disability in all other categories (98.1%).

To assess frequency and duration, the study compared the number of sessions and duration minutes specified in the IEPs and the information in the Welligent provider logs for the same time period. Students must receive 98% of all minutes prescribed to meet the outcome's duration requirement.<sup>3</sup> The District met the frequency target (87.4%) but fell below the 85% target for duration (72.4%). Although this performance appears to be progress, last year noted decreases in all measures. This year's performance levels are consistent with those noted in the 2012-2013 school year.

<sup>3</sup> Under the current methodology, the study considers the duration requirement to be met if it falls within 2% of the total required minutes over the eight-week period.

All services met the 85% frequency target except speech and language (84%), school mental health or counseling (83%), OT (83%), and visual impairment (82%). Despite not meeting this target, improvement has been noted in these service areas from the previous year.

Approximately 53% of the cases that did not meet the frequency requirement (n=639) were missing one session (n=338). Nonpublic agency (NPA) (91%), RSP (77%), speech and language (47%), and adapted physical education (APE) (41%) had the largest percentages of cases missing services by more than one session. In other words, 91% of all NPA services missed the requirement by more than one session. As noted above, 87.4% of the students in the sample received all the sessions at the frequency specified in their IEPs. This number would increase to 94% if those missing only one session were included.

The performance for duration (72.4%) continues to fall well below the target. The only service to meet the duration target was PT (87%). Deaf and hard of hearing (82%) and OT (81%) services were also close to the 85% target. The following services had the lowest duration rates: behavioral intervention services provided by NPAs (49%), school mental health (68%), RSP (70%), APE (73%), and speech and language (73%).

Cases that did not meet the duration requirement (37.4%; n=1,312) were further examined. Forty-three percent of these cases were missing service time equivalent to one session. If those missing one session were included and considered as having met the duration, the performance would increase to 84%. The services with the largest percentage of cases missing more than one session were RSP (81%), NPA (75%), APE (53%), and speech and language (47%).

The OIM examined the reasons services weren't provided in cases that missed the duration requirement by one session. The review found that 21.5% of the cases that missed the duration requirement by one session were due to attendance at an IEP meeting, and 65.7% did not indicate any reason for missing the session. The latter percentage is of concern to the OIM because it indicates that providers fail to provide appropriate documentation for service delivery. The OIM observed and reported similar findings over the past several years, and questions remain about management's effectiveness in monitoring data.

At the OIM's request, ODA examined services that were reportedly missed due to attendance at the student's IEP meeting. The data was analyzed by date, provider, and time. For services noted as canceled due to a student's IEP meeting (n=152), three-quarters (75%) had an IEP meeting verified as occurring the same day, whereas 25% had an IEP meeting held on another day. Next, the times of the session and IEP meeting were compared to see whether the service session was scheduled at the time of the meeting. RSP and APE services were removed from this analysis because these providers are not yet required to enter time information into the tracking log. Of the 93 cases reviewed, 55% had times that matched while 25% had sessions scheduled at times prior to the IEP meeting, and 20% had a later time. This means that, of those cases in which providers claimed to have canceled a session due to attendance at the student's IEP, 53% did not occur as reported.

The provision of services to SWDs in the District has been examined over the course of the MCD. The OIM, ODA, and AIR have worked together to better understand service delivery, explored other areas of inquiry related to identifying school-level factors that might contribute to service delivery challenges, and examined the effectiveness of the "300 Reports"—a series of reports used to self-monitor service delivery. This includes focus groups of providers and managers as well as an online survey of all providers.

The IM has reminded the District annually that failure to provide the services specified in IEPs constitutes substantial noncompliance with federal and state law. Despite the OIM providing the District years of information and recommendations, the District's performance on this outcome remains relatively stagnant. To illustrate this, excerpts from past reports are included to highlight OIM comments, recommendations, and directives over the past seven years.

2007-2008 – Annual Report, p. 15

The District was directed to aggressively address the following problems: the supply of speech and language pathologists; require that all providers, including charter schools, enter their logs electronically;

and, ensuring that school principals are held accountable for ensuring that students receive services specified in their IEPs.

2008-2009 – Annual Report, p. 9

The District reported hiring 80 speech and language pathologists and three speech and language pathology assistants. ... 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.

2009-2010 – Annual Report, p. 10

Specifically, the District needs to develop the capacity to identify students whose services are not being provided, and the ability to correct these issues within a timely manner both centrally and at the school sites. While the District has developed some reports to monitor service delivery within the Welligent system (referred to as the "300 Reports"), these reports do not contain all the necessary information and are not designed intuitively so that site administrators can monitor service delivery efficiently.

During the 2010-2011 school year, the District is required to collaborate with the OIM in revising the business rules of the Welligent "300 Reports" utilized by schools and central office administrators. The development of intuitive and efficient reports for monitoring service delivery should increase the District's internal capacity for identifying issues that may prevent substantial non-compliance. In addition, the District will need to show credible efforts to hold teachers and providers accountable when student services are not provided or inaccurately documented.

2010-2011 – Annual Report, p. 10

The District needs to demonstrate the capacity to identify students whose services are not being provided, and the ability to correct these issues in a timely manner both centrally and at the school sites. While the District has made improvements in its reports to monitor service delivery within the Welligent system (referred to as the "300 Reports"), it must demonstrate the effective utilization of such reports.

2011-2012 – Annual Report, pp. 12-15

Overall, the focus groups and survey findings bring context and insight into the District's performance and ability to meet this outcome. Schools are dynamic in nature, with many factors that may result in changes to a student's or provider's schedule. While some factors may be beyond the control of schools or providers, the District should establish guidelines for reducing their impact. For example, providers identified work activities such as coordinating and attending IEP meetings as impacting their ability to deliver services. Ways in which these activities impacted delivery included: IEP meetings scheduled at the last minute; lengthy meetings; limited time at the school (provider serves a particular school for only one day); administrator or clerical staff shortages; and numerous limitations with Welligent (e.g., system is down, cannot close the IEP). Since attending IEP meetings is a critical aspect of a provider's role, the District needs to examine these factors and provide guidelines or policies to promote the efficient coordination and scheduling of IEP meetings. This should include how access is assigned to the Welligent system, particularly since assistant principals and clerks may have limited time at a school. The District should also consider District wide guidelines for scheduling IEPs so schools limit, to the best of their ability, the times IEP meetings are held. For example, if IEP meetings are mostly held after 1p.m., providers can limit the number of students they schedule at this time, thereby increasing the likelihood that other students' sessions are not missed.

The District must also improve the manner by which changes are made, as many providers and administrators encounter changes in the system without the proper notification or training. The District should also focus on reducing the time providers spend on Welligent. This should include having administrators, providers and programmers collaborate on ways to improve the system's ability to access, input, manipulate and save the necessary data.

To summarize, there are many daily circumstances that can impact service delivery, and providers must have the flexibility and time to do their primary job to serve students. The District must find ways to reduce the impact of other factors to ensure that providers have the necessary time to deliver services. The District is required to submit to the IM by February 1, 2013 a targeted strategy plan to improve service delivery. In the past, focus has been heavily placed on improving documentation practices and the accuracy of the data entered. This plan should be enhanced to include ways to support providers in serving students by reducing and simplifying job factors that do not directly impact delivery of services.

In developing the targeted strategy plan, the District should examine the impact of existing policies and practices and determination of caseload assignments (for employees and per diems). This should also include an analysis of whether the current staffing level is adequate for meeting the demands at schools. It should also examine workloads (not just the number of students on a caseload) and additional job factors affecting providers to determine if additional staff is necessary and/or responsibilities can be reduced or eliminated. The District should consider ways to effectively free up time by reducing requirements such as mandatory staff meetings that may require four to eight hours a month (not including travel time).

Further, the District should examine the impact of staffing shortages (administrative and clerical) on providers in their attempts to ensure that communication and coordination of IEP meetings and services are not delayed. The District should also consider improvements toward making the Welligent system a time saving and user friendly tool that captures only the necessary information and significantly reduces a user's time spent documenting. The OIM is available to provide assistance in the development of the plan.

#### 2012-2013 – Annual Report, p. 10

During the last annual report, the District was required to submit a two year targeted strategy plan that addressed issues identified from the provider surveys. To assist the District in determining if additional staff is necessary and/or responsibilities can be reduced or eliminated, the plan was to focus on existing policies and practices, determination of caseload assignments, analyses of current staffing levels and workloads, and additional job factors affecting providers. On March 21, 2013, the District submitted the targeted strategy plan which addressed these issues. The District has begun working on some of the actions of the plan, many of which coincide with the DSE [Division of Special Education] Strategic Plan 2015.

The IM has repeatedly stated that service provision is the cornerstone of Free Appropriate Public Education (FAPE) and substantial compliance. It is the hope of the IM that the improved “300 Reports” may provide the necessary tool for providers to self monitor service delivery and result in improvement toward meeting the duration target. However, the District needs to continue to evaluate factors preventing providers from delivering all of the service minutes as required by IEPs and make the necessary changes to policy, practice and staffing to ensure students receive their services.

#### 2013-2014 Annual Report, pp. 10-12

After the 2011-2012 annual report, the District was required to submit a two-year targeted strategy that addressed issues identified from the provider surveys. The District submitted the targeted strategy plan on March 21, 2013 to address these issues.

Scheduling of secondary students was also noted as a factor impacting service delivery. The District conducted a survey of the scheduling practices for secondary schools and summarized its findings. During this school year, the District will include training on how to program SWD during administrator meetings as well as professional development modules around master scheduling for RSP students. The District will continue to examine issues related to the effective tracking of service delivery in the Welligent system. These include issues such as: limitations within the scheduler module; variables associated with different school levels (elementary, middle and high); and documentation of services by substitute teachers. It will also examine enhancing efficiencies by importing data such as attendance from the MiSiS.

As noted in previous reports, Outcome 13 is a simple compliance requirement; to provide SWD the services specified in their IEPs. Concerns regarding limitations with the methodology of this outcome have also been well documented, particularly with the measure used for duration. In the last annual report, the IM encouraged the Parties to reexamine the appropriateness of the duration target. The Parties agreed to have the OIM provide alternative ways to measure service delivery, which was provided on May 5, 2014. On May 12, 2014, the Parties met to discuss these alternatives. The District still has not pursued further discussions or proposed alternatives for modifications to Outcome 13. This year the District is required to provide the following information for each service: Staffing levels with caseloads and school assignments of each provider; lists of schools that demonstrate performance below the 85% duration target; and corrective actions taken, including offers of compensatory services to parents. This information will be provided on a quarterly basis.

Similarly, ODA analyzed the past five years of recommendations (see Appendix B, pp. 11-15) and noted that some of the "past recommendations may not have been adequately addressed by the Division (of Special Education)." It also reports that the District has implemented some of last year's recommendations, but others are still in progress. Outstanding and ongoing issues include the following:

- Not all providers use Welligent service tracking to document service delivery, particularly NPA providers.
- Data entry problems remain, such as the system showing completed sessions with no minutes or zero minutes listed (494 cases).
- The District has not examined how IEPs are scheduled to limit the impact of service delivery interruptions.
- Providers are not inputting into Welligent a reason a service was not delivered.
- Outdated IEPs remain in Welligent.
- The District has not included a time value in Welligent for RSP and APE providers to clearly delineate when a service was provided. This option exists for all other providers.
- Students appear in Welligent as not having received any service, which questions the capacity of the missing services "300 Report."
- The District has not examined the impact of provider workload versus caseload.
- The District has not examined the high use of ranges in IEP prescriptions and its impact on service delivery.

This documentation shows a long history of problems that range in severity. Some of these issues are low hanging and should have been resolved by now, particularly those regarding data entry and maintenance in the Welligent system. All providers must use Welligent service tracking and enter accurate and complete data. The Welligent system should be updated to prevent providers from leaving values blank, such as session minutes and reason for not providing a service. The approach to addressing these problems has been inadequate and brings into question management's effectiveness and capacity to monitor and ensure substantial compliance.

Similarly inadequate is the District's approach to addressing larger issues such as making assignments based on workload factors, minimizing the impact of scheduling and attending IEP meetings, and holding schools and staff accountable. During the IEP complaint investigation focus groups, staff expressed frustration with management for taking years to develop guidelines for workload factors in making assignments.

Although the District has provided an update of progress toward its two-year plan that addresses many of these issues through March 2015 (see Appendix D), the impact of these efforts do not appear to have improved this year's performance. The District extended the timelines for some activities in its plan to the end of the 2015-2016 school year. The District conducted workgroups to examine caseload processes and practices and noted it would submit updated information at the end of the 2014-2015 school year. In addition, it noted during the 2015-2016 school year that it would pilot these practices and processes to address workload factors. No information has been provided to the OIM, and based on the update description, it is unclear what these workgroups' findings were and what the pilot will consist of. Similarly, the District reports having created and required trainings for all providers on writing prescriptions but did not provide any detailed information to the OIM for review. The District

continues to examine Welligent service tracking and technology issues and notes that some revised or new functions will be rolled out in fall 2015.

Although it appears that the District has been engaged in examining these problems— for instance, providing training and making changes to Welligent and data systems—the two-year plan's effectiveness cannot be determined.

As noted in the excerpt above, in the 2013-2014 Annual Report, the District was to provide the OIM the following information on a quarterly basis: staffing levels with caseloads and school assignments of each provider; lists of schools that demonstrate performance below the 85% duration target; and corrective actions taken, including offers of compensatory services to parents. The District failed to comply with this directive. This same report noted longstanding concerns with the methodology of this outcome and the OIM's proposal of alternatives (see Appendix E) for measuring performance. The District's lack of initiative in pursuing discussions of alternatives, coupled with the lack of progress addressing problem areas identified within its own plan, raises concerns about the organization's desire to disengage from the MCD.

Given the lack of data provided on the two-year plan's activities and last year's directives, the OIM will conduct analyses of provider assignments and caseloads through Welligent tracking records and any other available data. Low staffing levels have been an area of concern, and the District has failed to address this and provide Districtwide information on schools that are underserved or lacking assigned providers. It has similarly neglected to provide evidence that it can identify noncompliance and provide remedies, such as compensatory services or the assignment of NPA providers, when District personnel are not available. The OIM will require evidence of accountability measures taken when providers do not provide services or fail to accurately document service delivery. For example, management should routinely monitor the accuracy of data, particularly when providers cancel a session and do not enter a reason. Simple data verification procedures must also be in place, such as when providers claim to have missed a session due to attendance at the student's IEP meeting. Similarly, the District must provide evidence of accountability measures taken with school administrators and central office personnel who fail to monitor and hold providers accountable. Finally, the District must provide information on service providers who are not assigned to schools full time. This includes providers who are assigned centrally or in local support units. This information must be provided no later than January 15, 2016.

The lack of urgency to improve service delivery is troubling. As demonstrated by the years of comments from annual reports listed in this section, the OIM, AIR, and ODA have repeatedly provided findings of factors that impact service delivery and recommendations. Again, staff have expressed frustration with management's lack of support in reducing caseloads and minimizing workload factors that impact their ability to deliver services. Some of these factors will require considerable effort and transparency.

Service provision is a fundamental part of a system that is substantially compliant. Disengagement will occur only when assurances of addressing these problems turn into credible action and students receive services as per their IEPs. Although the targets of this outcome have never increased, the IM will consider an increase in Part II of this report if the District continues to fail to implement real changes in policies, procedures, and practices. The District is responsible for providing the OIM data requested or directed within the timelines stated. The Division of Special Education (DSE) has staff in management positions responsible for overseeing the MCD outcomes, including service delivery. These persons have been absent in meetings with the OIM, failed to comply with directives, or simply been ineffective. It is highly recommended that senior leadership, particularly the associate superintendent of special education, examine the effectiveness of such individuals. Service provision is critical in the determination to disengage, and this lack of progress has persisted too long with no semblance of accountability.

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

**OUTCOME #16: INCREASE IN QUALIFIED PROVIDERS**

- ◆ **Outcome:** The District shall increase the percentage of credentialed special education teachers to 88%. Under MCD paragraph 88, the IM shall not certify that the District has achieved each of the outcomes unless, on the date of such certification, the percentage of credentialed special education teachers is at least 88%.

Qualified Providers

School Year	Qualified Special Education Teachers	% Qualified Special Education Teachers
10/15/2015	3,828	89.7%
2014-15	3,720	92.3%
2013-14	3,770	96.4%
2012-13	3,739	96.3%
2011-12	3,784	96.0%
2010-11	3,824	94.4%
2009-10	3,904	92.2%
2008-09	3,840	88.9%
2007-08	3,748	87.9%
2006-07	3,484	83.2%
2005-06	3,342	80.0%
2004-05	3,063	72.3%
2003-04	3,480	70.6%

- ◆ **Data Source:** Human Resources/Personnel Research. Classroom teachers make up the dataset.
  - Numerator is the number of qualified special education teachers.
  - Denominator is the number of special education teachers.
- ◆ **Discussion:** This outcome requires the District to increase the percentage of fully credentialed special education teachers to 88% and maintain that level. The District will be disengaged from this outcome after all other outcomes are met and the District has achieved and maintained at least the 88% level. As of June 15, 2015, 92.3% of the District's special education teachers were fully credentialed. Although this exceeds the target, there was a decrease in the percentage of fully credentialed special education teachers owing to an increase in the number of provisional and intern teachers from last year (310 vs. 139, 2013-2014). As of October 15, 2015, the percentage of qualified teachers decreased to a level close to the target (89.7%). This is of serious concern.

It is possible that this increase of provisional and intern teachers is due to the state and national shortages in qualified teachers.<sup>4</sup> The District is mounting an aggressive campaign to find, recruit, or train qualified

<sup>4</sup> See <http://laschoolreport.com/facing-shortages-lausd-stepping-up-efforts-to-find-special-ed-teachers>.

teachers. By January 15, 2016, the District must provide the OIM information on its recruiting campaign and report on its progress by June 30, 2016.

- ◆ **Determination:** Outcome 16 is met. The District will be disengaged from this Outcome after all other outcomes are met, provided it has achieved and maintains at least 88% fully credentialed special education teachers.

## OUTCOME #10: TIMELY COMPLETION OF EVALUATIONS

- ◆ **Outcome:** By the end of the 2005-2006 school year:
  - a. 90% of all initial evaluations shall be completed within 60 days.
  - b. 95% of all initial evaluations shall be completed within 75 days.
  - c. 98% of all initial evaluations shall be completed within 90 days.

An initial evaluation is any evaluation other than a District-initiated three-year reevaluation. Completion means that the evaluation has been concluded and an IEP meeting convened. If the evaluation or IEP meeting is delayed because of a parent request or because the student is unavailable for testing, the completion period shall be extended by the period of such parental request or unavailability.

Evaluations

School Year	# of IEPs	Within 60 Days (50 Days Prior to 10/8/05)		Within 75 Days (65 Days Prior to 10/8/05)		Within 90 Days (80 Days Prior to 10/8/05)		More than 90 Days (80 Days Prior to 10/8/05)	
		#	%	#	%	#	%	#	%
2014-15	15,376	13,720	89.2%	14,553	94.6%	14,881	96.8%	495	3.2%
2013-14	16,489	14,012	84.9%	15,237	92.4%	15,759	95.6%	730	4.4%
2012-13	14,056	12,231	87.0%	13,105	93.2%	13,434	95.6%	622	4.4%
2011-12	14,079	12,603	89.5%	13,372	94.9%	13,628	96.8%	451	3.2%
2010-11	14,282	12,991	90.9%	13,714	96.0%	13,960	97.7%	322	2.3%
2009-10	14,762	13,423	90.9%	14,222	96.3%	14,496	98.2%	266	1.8%
2008-09	15,671	14,199	90.6%	14,956	95.4%	15,251	97.3%	420	2.7%
2007-08	15,874	14,345	90.4%	15,229	95.9%	15,523	97.8%	351	2.2%
2006-07	14,438	13,142	91.0%	13,728	95.1%	14,010	97.0%	428	3.0%
2005-06	13,465	11,565	85.9%	12,495	92.8%	12,933	96.1%	532	3.9%
2004-05	11,213	7,025	62.7%	8,870	79.1%	9,974	89.9%	1,239	10.9%
2003-04	12,300	8,142	66.2%	10,038	81.6%	11,056	89.9%	1,244	10.1%

- ◆ **Data Source:** Welligent
  - Numerator is the number of initial evaluations completed (with IEP convened) within the appropriate number of days (60, 75, or 90).
  - Denominator is the number of requested initial evaluations according to the number of days overdue on June 15, 2015.
- ◆ **Discussion:** This outcome requires the District to complete an initial evaluation within the timelines required by law.<sup>5</sup> The District is to complete 90% of all initial evaluations and hold an IEP within 60 days. During the 2007-2008 school year, the District completed 90% of the initial evaluations within the 60-day timeframe, 96% within the 75-day timeframe, and 98% within the 90-day timeframe, based on data from the District's Welligent system.

This update is being provided due to the decrease in performance for completing timely evaluations between the 2012-2013 and 2013-2014 school years. During the 2014-2015 school year, performance improved, yet two of

<sup>5</sup> At the beginning of the MCD, California law required that evaluations be completed within 50 days, but as of October 2005, California law changed to correspond with the federal timeline of 60 days, at which time the Parties agreed to amend this Outcome to reflect the change in law.

the three measures (60 and 90 days) did not meet the targets. Although very close, 11% of initial evaluations were not completed within 60 days, and therefore, the District did not comply with state and federal timelines. The timely completion of evaluations is a primary indicator of substantial compliance.

On May 15, 2015, the IM provided the District a letter (see Appendix F) that noted the superintendent's commitment to the Board of Education for completing initial evaluations and IEPs in a timely manner. It acknowledged that this issue was being monitored by the California Department of Education (CDE). To better understand the effectiveness of the District's monitoring and its mechanism for holding schools accountable, the OIM requested the following:

- criteria to monitor each indicator and identify unacceptable performance levels or noncompliance with corresponding responses from central office and/or local support centers (e.g., Educational Service Center [ESC]);
- the responsible unit or persons responsible for collecting data, monitoring, and enforcing compliance at all schools;
- procedures for communicating findings to local support centers and schools and for following up with them;
- capacity to generate reports at the school level for monitoring compliance;
- methods for validating data accuracy;
- lists of schools that have consistently shown poor performance on these indicators;
- copies of letters sent to schools and corrective actions taken;
- remedies taken to complete IEPs and evaluations;
- any additional information related to the monitoring, enforcement, and remedies taken; and
- all documentation related to the CDE intervention, including correspondence, a corrective action plan, etc.

The District failed to provide this information. Over the past few years, the Plaintiffs' Counsel and parents have noted instances wherein the District denied assessments using informal methods that do not comply with law. During the 2015-2016 school year, the OIM will review assessment data as well as CDE and dispute resolution findings to determine whether these practices occur systemically.

- ◆ **Determination:** Outcome 10 met on July 30, 2008.

## MAKING SCHOOLS, PROGRAMS, AND ACTIVITIES ACCESSIBLE

MCD Section 10 requires that:

- All new construction and renovation or repairs by the District shall comply with Section 504 and the Americans 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 the 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.

MCD Section 17 requires that the IM must also determine District schools have no systemic problems that prevent substantial program accessibility compliance.

Meeting the requirements of Sections 10 and 17 has presented considerable challenges during the course of the MCD. Historically, progress has been delayed with setbacks in meeting these obligations, with inaction and regression over the past few years further prolonging the MCD. For these reasons, this report includes a lengthy and detailed chronological account of these challenges and progress.

This section summarizes the District’s progress toward meeting the requirements of Section 10: Facilities since last year’s October 2014 report. Since then, the District has submitted 53 projects under the on-demand Rapid Access Program (RAP).

### ***\$67.5 Million Repair and Renovation Projects***

On August 10, 2011, the District met this requirement of the MCD.

### ***\$20 Million On-Demand RAPs***

The MCD established an on-demand program to respond to site-level requests to improve program accessibility for SWDs attending these schools. This program was to provide flexibility to direct minor renovations in an expedited manner so students could participate in programs and activities. Since the MCD’s inception, this effort has been riddled with mismanagement and a lack of clear direction for ensuring rapid program access. Since 2004, the OIM has pointed out these inadequacies and highlighted the lack of clear leadership and competency for addressing rapid, on-demand program access. Throughout the course of the MCD, on-demand projects have taken months to years to complete, with minimal or no benefit for students requiring program access during the school year the request was made.

Over the years, the District has made repeated assurances that it would improve this program’s effectiveness and processes. The following illustrates the program’s inadequacies and mismanagement.

2003-2004 – Annual Report p. 7

In regards to the \$20 million, the MCD requires the Division of Special Education to “establish a unit ... to address on-demand requests related to accessibility staffed by a special education professional and a facilities professional.” While there is evidence that the District has attempted to address some “task order procedures” to improve the accessibility of school programs in a few sites, there is no evidence that this has been done “rapidly” as required by the Modified Consent Decree. In addition, the small number of sites applying for the funding indicates that the District has done little to publicize the availability of funding to improve accessibility in individual schools.

This situation raises concerns about the District’s commitment to increasing program accessibility. Full compliance with the mandates of IDEA [Individuals with Disabilities Education Act], Section 504, and the ADA at all District school sites would likely cost hundreds of millions of dollars. The Modified Consent Decree provides the District with the flexibility to direct a smaller amount of funding at specific sites. These sites can be identified by the District or by principals seeking accessibility improvements. In light of the degree of flexibility provided by the Modified Consent

Decree and the financial savings associated with the final agreement, the District would be well advised to follow through on its commitments.

2004-2005 – Annual Report p. 8

The failure of the District to consider rapid accessibility renovations that would contribute to the integration of these students and the low rate of expenditures associated with this funding raises concerns about both the District's commitment to placement in the least restrictive environment and accessibility renovations. I strongly recommend that the District develop a plan to publicize this funding and increase its utilization by schools in the final year of the MCD.

2006-2007 – Annual Report p. 22

Overall, the verification audit<sup>6</sup> clearly found that the documentation required to support the data reported on the May 2006 MCD tracking log for both the \$67.5M and \$20M projects was so incomplete or inaccurate that it could not be relied upon for making determinations on the progress of the District in meeting fiscal obligations under Section 10 of the MCD. Furthermore, there was a high frequency of non-compliant work found on both new construction and renovations and/or repairs of existing sites.

2007-2008 – Annual Report Part II p. 7

The District has not submitted any additional projects associated with the \$67.5M and \$20M obligations of the MCD. Although the District was not required to submit any projects, it is the IM's hope and expectation that the leadership of the District's existing schools personnel proceed with same openness and willingness that has proven effective with the new school unit.

2008-2009 – Annual Report Part I p. 16

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.

2010-2011 – Annual Report Part I p. 12

In June 2011, the District and OIM met to discuss making modifications to improve the on-demand program to ensure a more timely response and approval process, as well as compliant construction and inspections. One primary goal is to establish a sustainable program with clear guidelines and protocol for responding to on-demand requests. The District committed to creating and implementing these new procedures in October 2011.

2010-2011 – Annual Report Part II p. 7

To better streamline the process and to enhance the efficiency and consistency of requests for program accessibility, the District made recent modifications to the "On-Demand" program. These changes were made in collaboration with the Division of Special Education, Facilities Division, Office of General Counsel and Office of Risk Management.

The goals of these revisions were to: reduce the time spent finding solutions that provide program accessibility and do not require extensive physical alterations; focus on minor renovations that improve program accessibility; provide interim solutions for program accessibility while physical alterations are made; ensure funds are readily available for beginning required renovations in a timely manner; and develop a system for assessing and referring projects that may require

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<sup>6</sup> Determination of the District's progress toward meeting its obligations under Section 10: Facilities, of the Modified Consent Decree, 2006-2007 School Year - May 29, 2007.

extensive repairs. The IM commends the District's efforts to enhance this program and ensure that it follows a process that is sustainable while at the same time meets the needs of individuals with disabilities in a timely manner.

2011-2012 – Annual Report p. 18

During the 2011-2012 school year, the District made modifications to improve the on-demand program to ensure a more timely response and approval process, as well as to ensure compliant construction and inspections. One primary goal was to establish a sustainable program with clear guidelines and protocol for responding to on-demand requests. Another was to ensure that approved requests would be minor in nature and focused on providing interim solutions that quickly provide program access for students. This program is now referred to as the Rapid Access Program (RAP).

While the RAP has noted some improvements, the process still needs to be better streamlined and more collaborative between the Division of Special Education and the Facilities Access Compliance Unit (FACU). Decisions for determining interim solutions and for recommending minor renovations should be more consistent and based on an assessment of the site conditions from trained personnel. A fragmentation and lack of effective leadership has persisted since the inception of the on-demand program. In order for it to be effective and sustainable, this program requires leadership that is fully committed and understands program accessibility. Additionally, a better tracking mechanism is needed to facilitate a timely response and resolution to requests.

2013-2014 Annual Report Part I pp. 5, 17

It's apparent that outside the ACU [Access Compliance Unit], the District continues to lack the capacity for developing program accessibility at its schools. This has long impacted the effectiveness of the Rapid Access Program (RAP) or on-demand program. While it makes sense that staff from the DSE assumes leadership and responsibility for ensuring program accessibility, its effectiveness will continue to remain limited unless staff are adequately trained and knowledgeable. During the 2014-2015 school year, the District must identify staff responsible for ensuring program accessibility. This group is required to participate in training that is approved by the OIM.

Overall, the RAP program appears to be more streamlined than in past years. However, the intent of this part of the MCD is to provide rapid program access. The fact that 10 of the projects requested were not completed during the school year raises the question of the effectiveness of the program. Only three of the projects were requests made at schools where programs for students with moderate to severe disabilities have been placed on general education campuses, including one co-located school. These projects were recent requests made at the conclusion of this past school year (June and August 2014). Considering the observations noted above in the discussion of Outcome 7.1, this program was not utilized during the 2013-2014 school year, raising questions of the effective use of the program by District staff responsible for the implementation of this outcome.

The District must review its administrative procedures to further promote timely completion of renovations. The program should strive to promote an approach where a project is completed within a reasonable timeframe and provides program access. The project to provide a student with access to a graduation ceremony was pursued with the necessary priority and urgency and should be the goal for all future requests, especially since many of the requests received are for access to bathrooms and changing areas.

During the 2014-2015 school year, the District reported 53 RAP requests at 44 different schools. Of these, 35 projects were completed by June 24, 2015, and three were awaiting a notice to proceed (NTP). This included projects at five sites that were part of the nine Outcome 7 schools. The District provided tracking information on the number of days to receive funding approval, an NTP, and completion of construction. The tracking form included general information on the request or renovation approved, with 11 stating ADA repairs (Outcome 7). On September 15, 2015, the OIM requested additional information on the renovations approved and the verification process for completed and compliant work. The District did not provide such

information. Without this information it is not possible to assess the effectiveness of the RAP because the responses' appropriateness and project scope cannot be factored in. Due to limited information, completed work could not be verified and additional credit cannot be approved. Progress with the RAP will be updated in Part II of this report, and credit issued upon review of the necessary information and verification of compliant work.

Last year, it was noted that many delays in work were due to administrative delays. The time to secure funding and a contract to proceed with work has improved; more than half the requests (58.5%) received an NTP within 15 days, with another 15.6% within 30 days. Approximately one in three (34%) projects took between one to two months to obtain an NTP.

The time between the request and an NTP are as follows:

- sixteen projects: 0-15 days
- fourteen projects: 16-30 days
- six projects: 31-45 days
- thirteen projects: 46-60 days
- three projects: still pending

Project completion also improved with approximately eight of 10 projects (77%) being closed out within 90 days of the request. Three projects took more than four months to complete, with the longest requiring more than six months (190 days).

The time to complete construction from the date of the request is as follows:

- two projects: 0-30 days
- fifteen projects: 31-60 days
- nine projects: 61-90 days
- six projects: 91-120 days
- three projects: 121+ days

The increase in the number of requests and decrease in the completion time from the date of request are an improvement from past years' performance. Although this is progress, problems with the decision-making processes in the RAP were brought to the OIM's attention in May 2015. The following case study is an example of District officials' mismanagement of the RAP.

### *Case Study*

At the end of the 2014-2015 school year, the ADA compliance manager alerted the OIM of a situation at an elementary school in which three students in wheelchairs had several program access needs for which the principal had submitted RAP requests. The individual alleged that senior officials were delaying action, and the interim solution resulted in students being placed in dangerous situations and injury to staff. The situation was described as a school on a hillside where a student required a ramp to access the lower part of campus where the playground and evacuation or refuge area is located. The OIM immediately investigated these allegations and visited the site to meet with the school's principal and assistant principal.

The OIM attempted twice to interview staff involved in this situation and in the RAP. The first request was withdrawn by the OIM on the Office of the General Counsel's (OGC's) assurance that the revised Districtwide transition plan would address RAP procedures associated with the problems experienced at this school. When it was deemed that the revised plan failed to do so, the OIM made a second request to interview District personnel.

District personnel did not cooperate with the second request, and it was alleged that the OGC instructed staff to not meet with the OIM. For both requests, the ADA compliance manager accepted the request while all other officials ignored or denied the invite. The interviews aimed to give District staff an opportunity to explain the events and decision-making processes. The information described in this discussion was obtained from conversations with the ADA compliance manager and the provisional ACU manager, the school principal and

assistant principal, RAP request forms, and email correspondence between school officials. Copies of emails and documentation provided to the OIM were given to the OGC and chief facilities executive.

On December 15, 2014, the school principal submitted a formal RAP request for the ramp and stated the following reason for needing the renovation:

Student is on a manual wheelchair and needs to [be] rolled through a driveway and down hill and then up another driveway in order to access lower yard for recess and lunch. In addition, during emergency drills a total of three students must go through the same process.

The form notes the interim solution was having campus aides roll the student up and down the street four times a day. It also states that ACU and DSE staff reviewed this concern prior to the request. This request form was omitted in the District's submittal of projects to the OIM and tracking sheet of RAP projects. Furthermore, during the OIM's site visit, the principal revealed that he had recently received a call from FSD staff asking him to change the request date to a later date. The OIM walked the route being used and found clear safety concerns with the hill's steepness as well as route length, which required students and staff to go through vehicular traffic and two locked safety gates. The principal noted that this path required the student to lose considerable instructional time daily to access the playground and lunch area. It was reported that staff had been injured assisting the student up and down the hill.

The following highlights the sequence of events and senior officials' responses to this RAP request. This information was derived from numerous emails provided to the OIM.

- March 14, 2014 – DSE official to DSE senior official in charge of the RAP:
  - DSE official informs administrator in charge of the RAP of a site visit to assess the access problems. DSE official notes that there is only stair access to the main office and there is a lack of access to the playground and refuge area. Notes that the alternative route requires students to exit the campus through two pedestrian gates. Suggests asphalt repairs on the route.
  - The DSE official also indicates there was an access project for this school that was voided after four years, and that drawings might exist that could be used for a new RAP project for the entrance and playground ramps.
- November 20-21, 2014 – Communication between DSE senior official in charge of the RAP to ACU staff with copies to the OGC:
  - Several exchanges indicate that the provision of a ramp is beyond the capacity of the RAP.
  - RAP administrator informs officials that the school principal reported three students in wheelchairs with a fourth enrolling the same week. Indicates that all students are attending their resident school and that the principal has worked hard to welcome all students and work through the situation.
    - RAP administrator notes that an additional adult assistant has been provided to ensure that students have two adults when they are taken off campus, onto the public sidewalk, and through the pedestrian gates to access the playground.
    - RAP administrator also acknowledges that parents are unhappy with this solution and are asking who to contact to address the problem. Administrator asks that a solution be found that does not require students to be taken off campus to access the playground.
- November 21, 2014 – DSE staff member to a senior official of FSD:
  - DSE staff member describes the tri-level campus and recommends two ramps and corrections to an existing noncompliant ramp.
  - Notes that drawings are available for the FSD official to review.
- November 21, 2014 – FSD senior official response to FSD, DSE, and ACU management:
  - Requests suggestions for an interim solution as well as a long-term solution.
- December 16, 2014 – FSD senior official to school principal
  - FSD official states that ACU will conduct a site survey and, once finished, will assign an architect to design the ramp and submit the plans for California Division of the State Architect (DSA) approval. FSD official indicates that the work will take 18 months to

complete, acknowledges the DSE's efforts in providing an extra assistant, and states that he considers this project a priority.

- February 3, 2015 – ACU staff
  - The ACU forwards an estimate dated December 15, 2014, for construction of the ramp to another ACU member.
- June 5, 2015 – School principal to several senior officials:
  - Principal states that the surveying has been completed “for some time” and has not received any update regarding the commencement of work. Principal notes that student’s physical condition is worsening and that the adult assistants helping the student have been caused physical injury. Principal requests assistance in expediting the project.
- June 8, 2015 – FSD senior official to principal
  - FSD senior official informs the principal that he plans to take the project proposal, with a group of other school projects, to the board of education in August/September 2015, and that once approved, the FSD will select an architect for design.
- June 19, 2015 – ADA compliance manager to senior FSD official:
  - States that the OIM is requesting a schedule for completion of the ramp.
  - FSD official responds and indicates that the design and DSA approval will occur between June 15 and July 20, 2015, and construction will occur between July 13 and August 15, 2015.
- July 8, 2015 – ADA compliance manager to OIM:
  - ADA compliance manager states that another senior FSD official reported DSA had approved the design and that the ramp would be constructed within two months, contrary to the nine months estimated by the senior FSD official overseeing this request.

This case study exemplifies the mismanagement of the RAP and lack of capacity by DSE and FSD senior officials. Although many RAP requests were handled appropriately, this case highlights senior officials’ failure and disconnect in ensuring program accessibility. Despite repeated requests from the principal and ACU and DSE staff recommendations to install a ramp, action was not taken until the OIM intervened. District staff who brought this case to the OIM’s attention and candidly discussed the details are to be commended for not tolerating the inactions of their colleagues or superiors.

For an FSD senior official to state that this project was a priority and allow for an 18-month timeline (in December 2014), and then inform the principal that the project would not be submitted for approval until August/September—all while school staff are injured assisting the student—is deplorable. This official was provided with good assessments of the situation and previous plans for constructing the ramp that could have been used to circumvent design and approval processes but chose to expend resources on surveying the entire site instead of taking action. This behavior is indicative of senior officials’ disconnect and lack of urgency that has plagued this program. This situation also highlights the need for more District staff advocacy and courage to meet student and staff needs.

This case further shows the District’s capacity to design, receive DSA approval, and construct a concrete ramp in a rapid manner (within two months). Given the District’s building program’s magnitude and leverage, it is conceivable that accessibility and safety issues requiring immediate remediation can be accomplished quickly.

#### *Revisions to the RAP*

On August 29, 2015, the District provided the OIM a flowchart with its newest revision to the RAP (see Appendix G). The new process includes ADA compliance manager involvement and oversight. The process also calls for principals to resolve program access problems by implementing nonstructural solutions. If unable to do so, principals are to contact the DSE for guidance. If the DSE is unable to assist and implement a nonstructural solution, a formal RAP request is to be made. At this time, the DSE notifies the ACU and the Special Education Local Plan Area (SELPA) Access Team conducts a site visit. After the visit, the ADA manager reviews the request and determines one of the following: request is not approved and no structural

betterment is required, request is approved and structural betterment is required, or a ramp is required to be built within six months.

Although this procedure might reduce the time to initiate and complete projects, the initial steps of the process raise concerns. First, the new process requires principals to be first responders; they must be knowledgeable of nonstructural modifications for providing program access. This will require extensive training of more than 1,000 administrators to ensure adequate implementation. Second, a RAP request is made only after the DSE provides assistance and determines that a nonstructural modification cannot resolve the issue. This means that the program access request will not be tracked or documented unless a structural modification is needed or if both the principal and the DSE representative cannot determine a nonstructural solution. At this point, the ACU is notified of the RAP request and the SELPA Access Team is mobilized to conduct a site visit. This process allows individuals with varying capacity to respond to and find solutions prior to a formal request and assistance from the specialized team.

Reassigning RAP management to the ADA compliance manager is cause for optimism. As noted in the case above, both senior DSE and FSD officials lacked the capacity and concern for executing this program. It is unknown whether these individuals visited the site between March 2014 and May 2015. A site visit should have immediately raised serious concerns and cause for action. These concerns were raised more than one year prior to the OIM's knowledge of this situation, and remediation would not have occurred without intervention. Before disengagement can occur, the District must demonstrate initiative without requiring federal court oversight and intervention.

### *Summary*

The on-demand RAP has a long history of DSE staff making poor recommendations and approving RAP projects that were neither rapid nor minor. More important, program access has historically not occurred for students in a timely manner. Although improvements are noted, more than one in five projects (23%) still take longer than three months to complete, which is one-third of a school year.

This program continues to fall short of its intended goal: to ensure SWDs receive rapid program access. The District continues to address the program's shortcomings and has submitted a revised process for request handling. These revisions were a response to the poor execution of the requests at the elementary school discussed above as well as intervention by the OIM. Although the shift to having an ADA compliance manager oversee this program is promising, it is yet to be seen whether this individual has the authority to direct senior DSE and FSD officials and allocate the necessary resources to get the job done.

The OIM is concerned with the initial steps of new process as it requires principals and DSE staff to be knowledgeable of program access solutions. Ideally, principals and school personnel would have knowledge of program accessibility; however, this seems like a lofty and unrealistic expectation given past performance and the large number of District administrators.

Although the District provided program accessibility training to staff at the end of the 2014-2015 school year, the majority of training was for ACU staff and other members of the facilities unit, such as architects and inspectors. It is reported that some DSE staff participated in trainings, but it is unclear whether these individuals are the first responders who assist principals or members of the SELPA Access Team who respond after a formal request is made. The impact of this training will not be seen until the end of the 2015-2016 school year. Finally, the OIM has not reviewed the training materials despite directing the District to provide these materials for approval in the 2013-2014 Annual Report.

District staff's failure to cooperate with the OIM's request to interview individuals involved with the RAP shows senior officials' and the OGC's lack of interest in accountability. A system that ensures substantial compliance must demonstrate initiative in holding staff accountable when instances of disregard for inaccessible programs, and the health and safety of students and staff, arise.

## *New Construction, Repairs, and Renovations*

MCD Section 10 requires that any new construction, repairs, and renovations comply with federal and state requirements. This requirement has no timeframe or minimum cost expenditure. The OIM will evaluate the District's processes related to this requirement until disengagement. The processes to ensure compliance are discussed in the next section.

### *Section 17*

Section 17 requires the IM to determine that District schools have no systemic problems preventing substantial program accessibility compliance. The expectation for meeting these obligations include compliance with ADA requirements for transition and self-evaluation plans that identify barriers and a schedule for their removal at all District schools and buildings, the designation of an ADA coordinator, and the capacity to conduct consistent and comprehensive surveys. The RAP is a large part of ensuring a system that can prevent substantial noncompliance; however, because this requirement was discussed above, this discussion focuses on the other requirements of Section 17.

The District continues to struggle with meeting these requirements. The District has designated an ADA coordinator;<sup>7</sup> however, it has made unsatisfactory progress in developing a Districtwide transition and self-evaluation plan. Although the capacity to conduct consistent and comprehensive surveys has improved, concerns still exist.

The District has a history of prolonged inaction and poor management decisions in meeting its obligations with Sections 10 and 17. At times, it has demonstrated progress in building its capacity to conduct quality surveys and complete compliant construction; however, this progress is usually short-lived and followed by setbacks. The District has developed capacity within the ACU, but it has mismanaged staffing levels and used its expertise ineffectively.

This behavior continues to persist. The District provides many assurances yet continues to fall short of meeting its own expectations and complying with ADA requirements. Similar to the discussion regarding RAP, excerpts are included here to illustrate the District's historical performance with these obligations. It also shows the longstanding challenges in meeting these obligations and operating with transparency and credibility.

2004-2005 – Annual Report p. 8

In regards to the \$67.5 million, I have serious concerns about the reported expenditures. For the majority of projects, the District provides no information on the nature of the work. The District's Facilities Division has identified work that predates the MCD as expenditures associated with the MCD. This is a curious interpretation of the language of the MCD that indicates that the District will "within five years enter into binding commitments" to expend these funds to make schools accessible for children with disabilities. Over the course of the coming year, I will expect additional information on these expenditures and extensive justification of their association with the District's commitments under the MCD.

2006-2007 – Annual Report Part I p. 22

Overall, the verification audit clearly found that the documentation required to support the data reported on the May 2006 MCD tracking log for both the \$67.5M and \$20M projects was so incomplete or inaccurate that it could not be relied upon for making determinations on the progress of the District in meeting fiscal obligations under Section 10 of the MCD. Furthermore, there was a high frequency of non-compliant work found on both new construction and renovations and/or repairs of existing sites.

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<sup>7</sup> The ADA compliance manager position became effective April 1, 2015.

2007-2008 – Annual Report Part I pp. 20-21

The first project binder seeking credit was submitted twice during Fall 2007, and retracted by the District both times. The District was then instructed to focus their efforts on six "model" binders, three for each of the \$67.5M and \$20M projects. The District was encouraged to submit "model" binders they were confident would meet the requirements of both the documentation needed and of compliant work. These binders if approved would be the model for future submissions.

Although some improvements were noted in the documentation related to the scope of work for the three binders submitted for credit under the \$67.5M obligations, the work was overall deemed non-compliant and lacking sufficient financial documentation necessary to identify credit for the components of the projects related to access compliance.

Based on the review of the three \$67.5 M binders and denial of all credit requested, the District was directed to place their efforts toward one project binder that was deemed complete and compliant, and possessed the necessary documentation for granting credit. The objective was to develop a perfect binder that would clarify the expectations for all future binders associated with projects under the \$67.5M. The District selected the access compliance work at Peary Middle School. At the time of the submittal, the District indicated that this work was neither complete nor compliant despite an acknowledgement within the binder by the District's expert that this project had complete documentation and compliant work. The District opined that Peary MS would bring forth common issues that would require clarification beneficial for future projects.

Despite the clear evidence of potential for promoting systemic improvements in the ability to identify and correct non-compliant work, it is clear that many processes failed to permit so many new schools to open with numerous non-compliant findings. These surveys are a testament to the failure of the District and the Division of the State Architect (DSA) to ensure that schools meet compliance with applicable code. Although the District is currently addressing this issue internally, the District should expand these efforts by meeting with DSA and developing an action plan to eliminate any future oversights of non-compliant findings prior to new schools obtaining DSA approval for occupancy.

During the 2007-2008 school year, a considerable amount of time and effort was expended by both the OIM and the District in the clarification of the documentation required and methods for conducting site inspections. This resulted in an agreement detailed in the summary letter. At times the District challenged the decisions made by the IM and its consultants, Disability Access Consultants, Inc. regarding access code requirements. In almost all cases the findings of the IM and DAC prevailed. The onus now lies on the District to provide all relevant information and data consistent with the agreement when submitting a binder prior to the OIM inspection, as it relates to any exceptions for completing non-compliant work. For projects submitted during the 2008-2009 school year, the District is advised to exercise judicious caution in disagreements with the IM's findings and determinations.

2007-2008 – Annual Report Part II p. 7

Overall, the review of the sample of schools found the independent inspections to be adequate. Consistent with the phase one school inspections reviewed, the phase two and phase three independent inspections found non-compliance in all schools surveyed. In addition, our site reviews generally agreed with the findings, and found areas of over and under identification of non-compliant findings. The inspections also found some significant non-compliant findings missed by the phase two and phase three surveys.

Overall, it appears that the intent of the stipulation has resulted in an increase in the understanding and capacity of the District to identify areas of non-compliance that are barriers for students with disabilities to access programs and services within their facilities. In addition, the District has developed an accountability plan that incorporates the multiple systemic mechanisms such as design, construction, and inspections, necessary to prevent such failures in the future. Lastly, the

District has been engaged in discussions with Division of the State Architect to better improve such mechanisms.

Finally, the District has not submitted any additional projects associated with the \$67.5M and \$20M obligations of the MCD. Although the District was not required to submit any projects, it is the IM's hope and expectation that the leadership of the District's existing schools personnel proceed with same openness and willingness that has proven effective with the new school unit.

2008-2009 – Annual Report Part I pp. 15-17

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 which has been instrumental in the progress noted this year.

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 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.

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.

2008-2009 – Annual Report Part II pp. 7-8

Non-compliant items were found at all 29 sites (independent charter schools). These findings are continued evidence of the District's systemic problems that prevent substantial compliance with the accessibility requirements of the Americans with Disabilities Act and Section 504. These problems are not unique to independent charters. However, these problems appear to be more significant at independent charters since many exist in buildings that were not intended to be utilized as schools and/or have not been properly updated. Furthermore, the current processes for relying on the certificate of occupancy to indicate compliance with Title 24 of the CBC [California Building Code]

contribute to these problems at independent charters. While the District may be correct in relying on the inspection processes of local municipalities as required by the California Education Code, the MCD clearly holds the District accountable for compliance at all of its schools, including independent charters. Therefore, the District must review the current process that relies on the capacity of the local municipalities.

2009-2010 – Annual Report Part I p. 16

The performance and progress of the District's Facilities Access Compliance Unit (FACU) has observed a remarkable turnaround in a relatively short period of time. This unit has been consistently demonstrating credible actions that strive for continued improvement in making schools accessible. These actions include the development of an internal capacity to ensure the consistent and accurate documentation of field conditions during site inspections.

The District also streamlined its inspection process by utilizing a PC tablet with accessibility inspection software. This technology has enabled the District to conduct quality and consistent inspections as well as maintain and manage this data. These efforts and increased expertise have led FACU to become an integral part of additional areas of school construction such as modernization projects, new school construction, design, inspection and the validation of the Los Angeles Department Building and Safety inspections of charter schools.

The approval of both the repair and renovation and on-demand projects submitted are evidence of some of the benefits of these efforts. The project submittals are now presented in a clear and concise manner, with photo reports of non-compliant findings that include field conditions. The District also has taken a conservative approach in requesting credit and is utilizing industry standards for determining estimated values of barrier removal.

It is important to note that while the District demonstrated an increase in its internal capacity, two changes of senior leadership positions occurred. These changes did not negatively impact the District's performance, and in fact, the new leadership continued to build on the momentum and efforts already in place. Ultimately, this is indicative of real organizational changes that can be sustained over time despite changes in personnel. Lastly, it is evident that the culture of the facilities unit has dramatically improved to one that is proactive and striving to getting things right the first time. While this progress has been impressive, it is the expectation of the IM that the District continue to move forward by maintaining its training efforts and keeping staff that have specialized knowledge and skills.

2009-2010 – Annual Report Part II p. 11

The efforts to meet the requirements of Section 10: Facilities, continues to be a shining example of the District's ability to develop and sustain the internal capacity necessary to prevent systemic non-compliance. Overall, the District has demonstrated credibility in all of its efforts associated with this obligation of the MCD. Despite another set of changes in leadership, the Facilities Division and the FACU continue to sustain a high level of performance in delivering quality surveys and compliant work. Additionally, the FACU has demonstrated a valuable impact in curbing and preventing non-compliant elements at its new schools. These efforts have positive implications on saving the District time and money as it continues to reduce barriers at all its sites while ensuring accessibility and creating positive and welcoming environments for all individuals with disabilities. More importantly, the FACU has continued to develop its expertise and build a proactive model based on providing consultation and technical assistance across multiple areas of construction such as design, inspection and construction. While the IM recognizes the difficult financial constraints of the District, it is imperative that the FACU maintain staffing levels and expertise required to fulfill all its obligations.

2010-2011 – Annual Report Part I p. 13

In March 2011, the OIM and its consultants were scheduled to visit six of these schools to validate compliant work. After visiting several schools with the Facilities Access Compliance Unit (FACU), it

was determined that the progress at the Phase I schools did not match what was reported by some officials. To summarize, the visits revealed that these schools were still in construction and lacked compliant work. In addition, the remedies were based on inadequate and inconsistent surveys. At this time, officials from the FACU requested a halt to the validation visits to evaluate the progress of these Phase I schools. As a result, the FACU deemed the existing efforts to be inadequate and inconsistent and decided to abandon the completed surveys for a more effective and consistent, electronic-based survey. The FACU developed a new plan for surveying the 83 schools and remains committed to completion of all repairs by the original date of December 31, 2012.

During the 2011-2012 school year, the OIM will work closely with the FACU to frequently monitor these efforts to ensure implementation and adherence to the new schedule. It is important to note that despite the disappointment by all parties (the OIM, plaintiff's counsel and District), the District demonstrated the capacity to hold personnel accountable for this poor performance.

2010-2011 – Annual Report Part II p. 7

As reported in Part I of this Report, the District committed to re-surveying and developing new corrective action plans for the 83 new schools included within the stipulation made by the parties. As promised, the District has completed surveys on all 83 schools that identified existing barriers for removal by December 31, 2011.

2011-2012 – Annual Report p. 23

The District is close to meeting the requirements of Section 10 pertaining to facilities. To do so will require continued diligence in completing the repairs on the 83 new schools, ensuring that independent charter schools meet the accessibility requirements of the ADA, and putting into functioning order the Rapid Access Program (RAP).

As noted in the report, before the IM can determine that the District has met Section 10, the IM must conclude that the District has no systemic problems that prevent substantial compliance with program accessibility requirements of federal special education laws and regulations. In order to make such a determination, the IM will need to feel assured that the District is able to build and repair schools that meet accessibility standards, there is a process in place that over time will bring existing schools into compliance and that there is a functioning system to ensure that SWD have program accessibility to the programs they require.

2012-2013 Annual Report Part I pp. 13, 17

Over the past several years, the District has increased its capacity to build compliant new schools and make necessary renovations. This has included working collaboratively with external agencies such as the Los Angeles Department of Building and Safety (LADBS), Division of the State Architect (DSA) and vendors. The FACU has noticed an increase in demand for their expertise from other District departments, which they attribute to an increase in awareness raised by the efforts to meet Section 10 of the MCD. The FACU reports an increased importance of accessibility at schools by the District staff. This increased demand has been a challenge due to the reduction in personnel of the FACU. However, an increase in staffing levels was approved at the end of the 2012-2013 school year.

One persistent area of concern is the non-compliant findings that may have been attributed to the design phase, considering the processes in place set to prevent such non-compliance. While the District has had procedures in place to review designs to ensure compliance, this has historically not been conducted by FACU staff.

Before the IM can determine that the District has met Section 17, the IM must conclude that the District has no systemic program accessibility problems that prevent substantial compliance with program accessibility requirements of federal laws and regulations. This includes a process for developing transition plans over time that identifies existing barriers and a schedule for barrier removal to bring schools into compliance.

2013-2014 Annual Report pp. 18-19, 27

Despite several meetings to discuss the components of transition plans, offers of technical support by the OIM and its consultants, and assurances by the District to develop a plan for completing transition plans by July 30, 2014, there has been no observable progress to date. The District failed to provide any explanation on why it did not meet its own timeline.

The lack of progress highlights areas of concern regarding the organizational will and commitment by senior leadership for complying with the ADA and achieving disengagement. It was expressed on numerous occasions that in order for disengagement from the MCD to occur, the District must have a plan to complete transition plans within a reasonable timeframe.

The expectation of the qualifications and designation of an ADA coordinator also was discussed. Over the past 15-18 months, the District has made no progress in this area, which resulted in delays of potential disengagement.

The capacity to conduct consistent surveys has been a persistent issue over the course of the MCD. The District has been repeatedly advised that such a system is critical to ensuring substantial compliance, and the OIM has observed numerous instances where multiple survey formats and the use of consultants have resulted in non-compliant schools and barriers being built.

The District requested a meeting with the OIM in October 2013 to present its plan to have an electronic system for conducting surveys developed internally by the Information Technology Division (ITD). During this presentation, it was apparent that the District was in the early stages of development. Further, disagreements between management on the specifications of some aspects of its system were observed, raising concerns about the readiness of the system and the District's capacity to carry out such an endeavor.

In spring 2014, the OIM was notified that the District had contracted with an external vendor for an electronic survey. The District reported that staff received training in June 2014 and began using the system in July of that year, and noted that the system was not being utilized by all staff.

This delay in adopting or developing a system for conducting consistent and comprehensive surveys is a concern as it impacts the District's capacity to begin conducting surveys for transition plans and ongoing renovation projects.

Concerns with the design review process have been repeatedly noted in the IM's annual reports and non-compliance due to such limitations that can only be characterized as a failure to prioritize resources to prevent non-compliance. This is particularly concerning considering the ACU's technical capacity. In August 2014, the OIM met with senior management of the Facilities Division and expressed this concern, and was assured that the ACU's involvement with design reviews would be mandatory.

While the District has made great strides to increase the capacity and management of its ACU, there has been an overall lack of leadership and commitment in the interest of complying with the ADA and the intent of the MCD. While the completion of repairs at 81 new schools and charter schools was an accomplishment, progress was plagued with missteps and delays. Many of the District's efforts have been reactionary in nature, and often progress has been followed by setbacks. Within the past 18 months, the District's progress has regressed because of questionable decision making.

The District's progress has been stagnant in meeting the requirements of Section 10 pertaining to facilities. The limited progress has been a result of leadership decisions made around the delays for adopting a system for conducting comprehensive surveys, the reduction in ACU staff, and the voluntary process for design review. Before the IM can determine that the District has met Section

17, the IM must conclude that the District has no systemic program accessibility problems that prevent substantial compliance with program accessibility requirements of Federal and State laws. Progress on this has also been stagnant, and the District has failed to provide a course of action for completing transition plans and assigning an ADA coordinator.

#### *Progress on the Development of a Districtwide Transition Plan Update*

During the 2014-2015 school year, the District submitted four versions of a draft Districtwide Transition Plan Update and a plan developed in May 1978 to comply with the requirements of Section 504 of the Rehabilitation Act of 1973. The following discussion covers the salient features of the drafts. It also provides an in-depth discussion of the final version and analysis by two external consultants commissioned by the OIM.

#### **District Transition Plan Update – October 16, 2014 Plan for Completing Transition Plan – October 20, 2014**

The District Transition Plan Update described the District's history of compliance as follows:

- May 1978 – The Plan for the Education and Employment Rights of the Handicapped (see Appendix H) was established.
- 1991 – The Superintendent's Advisory Committee on the Education and Employment of Persons with Disabilities wrote a "Barrier Removal Plan Revision."
- March 1993 – The Affirmative Action/Equal Opportunity Section published a "Self-Evaluation and Transition Plan in Compliance with the Requirements of Title II of the Americans with Disabilities Act."
  - Document states it "primarily looked at employment responsibilities."
- 1996 and 1997 – The District conducted an updated survey of facility barriers for people with disabilities that was used to update the transition plan.

The following commitments or actions were included in the Districtwide Transition Plan Update:

- The chief facilities executive was identified as the official responsible for implementing the transition plan.
- The District was to submit a full survey to OIM in October 2014.
- The ADA compliance manager position would be filled in February 2015.
- The District was to submit the plan to the BOE for approval in February 2015.
- The plan identified 600 schools as part of this effort.
- The plan listed 90 prioritized schools for the next two years (through 2016).
  - The ACU is to complete surveys of 45 schools in the first year.
  - Within 12 to 15 months of a completed survey, the District will have designed and removed the identified barriers.
  - The District will remove barriers at 45 to 50 schools after the first two years.

#### **Transition Plan Update – December 5, 2014**

- This document removed all activities of the District's historical compliance as described in the October 2014 draft.
- The plan did not include the number of schools that are part of this effort.
- The plan listed 195 prioritized schools for the next three years.
  - ACU was to complete surveys of 65 schools in the first year.
  - The plan did not provide information on the number of schools scheduled for barrier removal.
  - The plan did not provide information on efforts to survey after the first two years.

#### **Transition Plan Update – July 20, 2015**

- This document reintroduced the May 1978 plan.
- It introduced an estimated cost of \$1.295 billion for the barrier removal program.

- The plan reassigned the responsibility for implementing the plan to the ADA compliance manager from the chief facilities executive.
  - The ADA compliance manager's duties include:
    - establishing ADA compliance workshops for teachers, staff, and administrators;
    - RAP management and project approval; and
    - overseeing the District's grievance procedure for receiving and investigating complaints arising under the ADA Title II program accessibility requirements.
- The plan identified 983 school sites and other facilities to be part of this effort.
- The document omitted previous commitments and schedules for surveying schools and removing barriers.

### Transition Plan Update – August 14, 2015

- This plan introduced a schedule for the complete removal of barriers over a 15-year period, commencing in 2015 (see Appendix I).
  - The schedule identified 622 schools part of this effort.
  - By the end of 2015, 33 surveys are to be completed, with 50 surveys completed over the next 12 years.
  - Barrier removal will occur at two schools by the end of 2016, 36 additional schools by the end of 2017, and 40 additional by the end of 2018 (for a total of 78 schools).
- The document included a footnote that independent charter schools occupying private sites will be required to provide evidence of compliance with ADA Title II Transition Plan requirements.

On February 2, 2015, the OIM provided the District a letter with feedback on the first two versions of the Districtwide Transition Plan Update (see Appendix J). The letter identified several areas requiring clarification due to discrepancies between the drafts or insufficient information. This letter was intended to clarify expectations for the revision plan as well as establish acceptable benchmarks for surveys and barrier removal projects in a short timeframe in order for the IM to determine disengagement. The letter included various comments; the following three highlight some of the larger issues requiring additional information or clarification:

- The final plan must include a timeline and number of sites required to become fully compliant with these ADA requirements. While a shorter timeline may provide an acceptable standard for disengagement of the MCD, a full commitment that is approved by the Board must be submitted to ensure that these efforts will continue until full compliance is achieved.
- The December revised draft removed the section of the history of the District's efforts to comply with the ADA requirements. The inclusion of this in the first draft was a gross misrepresentation of the District's efforts and minimized the credibility of the proposed actions in the plan. Additionally, the use of the term "Update" in the title of the document misrepresents the District's lack of effort and compliance with a law that was enacted in 1992 and was to be complied with in 1995. This includes the failure to have an ADA coordinator or official responsible for implementation of the plan.
  - The failure of the District to comply with the ADA for over 20 years is inexcusable. Through the course of the MCD, the OIM has been unable to obtain evidence of efforts to comply with the ADA and transition plan requirements. For officials to misrepresent such compliance undermines the monitoring efforts of the OIM and Plaintiffs' counsel.
- Section 7, G. excludes independent charter schools from the projects that will be overseen by the ADA Compliance Manager and included in the Planning, Coordination and Input from Interested Parties.
  - Independent charter schools fall under all provisions of the MCD. The District cannot exclude these schools from compliance with the ADA requirements and MCD. The MCD considers these District schools. While this may require alternative methods and processes for providing oversight and ensuring compliance, the District must present a viable plan to include these schools.

The IM also noted that, after more than two decades of noncompliance with the ADA, "the plan must include District commitments that the Board of Education will approve to ensure that this effort will be carried out." These include:

- A timeline that includes a sizable number of schools that will have completed transition plans within the 36 months defined.
- A timeline that includes a sizable number of schools that will have barrier removal completed within the 36 months defined.
- A process, including a timeline, for the validation of compliant work at these schools by the ACU.
- A long-range timeline committing to the completion of transition plans at all District buildings, including independent charter schools.
- A list of all District schools and buildings, including independent charter schools, that will have transition plans in compliance with Title II of the ADA.
- A plan, if needed, for requiring and completing transition plans at all independent charter schools.
- Staffing and professional development commitments through the duration of this effort.
- Commitments for the short- (36 months) and long-term (to achieve full compliance) funding for completing transition plans and barrier removal. These commitments must be based on reliable and realistic estimates that account for inflation and potential increases in scope of work and costs.
- An organizational structure that authorizes the ADA coordinator to obtain and deploy the necessary resources for ensuring compliance with the plan. This includes the decision-making authority that cannot be undermined by middle and senior management of individual departments, such as those from the divisions of facilities and/or special education.
- A list of new policies, or changes to existing policies, to institutionalize this commitment and processes and procedures required for complying with this plan.

In response to the July 20, 2015, version, the IM sent the District a letter (see Appendix K) acknowledging the amount of resources necessary for the District to “address the long standing failure of noncompliance with ADA” (more than \$1 billion). It noted that, on several occasions during the year, the IM had “explicitly stated that any acceptable plan must have specific benchmarks with the completion of surveys, transition plans, and betterments. Given this, any plan to address ADA program accessibility must include the elements set out in the February 2, 2015 letter.”

In response to the August 14, 2015, version, the IM provided a letter acknowledging the work that had been done to get to this point, particularly by the superintendent. However, it expressed the plan’s inadequacy and noted that:

- Any plan must be measurable and operational. This means it is self-executing and its implementation can be measured. This plan is lacking in both regards. At this point, I will only provide a few examples:
  - The ADA manager, responsible for implementation, has no line authority and no budget and staff;
  - The major activities to be undertaken in the plan lack timelines. Most are described as “annual”;
  - A year is a long time getting done at the beginning of the year as compared to the end of the year. This can mean a difference of as much as two years in an implementation timeline;
  - Additionally, the issues raised in the February 2, 2015, letter were not addressed sufficiently.

Despite these shortcomings, the IM urged the District to begin implementation of the plan and said that it could be adjusted in the future. Last, the letter noted that “proof of the viability of the plan will be determined by the extent to which its implementation meets applicable federal requirements and constitutes a viable system to ensure substantial compliance.”

#### *Analysis by External Consultants*

To better assist the Districtwide Transition Plan’s improvement and revision, the OIM commissioned two external experts to provide the following:

- examination of the self-evaluation and transition plan’s legal requirements and nonmandatory advice, and,
- analysis of the plan’s adequacy for compliance with ADA and Section 504 requirements.

## Examination of Legal Requirements and Nonmandatory Advice

The first point was addressed by Mr. Jeffrey Champagne,<sup>8</sup> an attorney who served as Chief Counsel to the Pennsylvania Department of Education, and a trial attorney and program manager in the U.S. Department of Education in Washington, D.C.

Champagne notes that the "link between the self-evaluation and full compliance is the transition plan, which was to have been completed by July 26, 1992" (see Appendix L). Structural changes to bring a building into compliance were to have been completed by January 26, 1995. He summarizes the process for transition plan development as follows (p. 6):

The transition plan:

- should follow from the analysis in the self-evaluation;
- has its own public comment opportunity in addition to the one that applies to the self-evaluation;
- responds to a "program accessibility" standard, but responds also to the fact that it may be particular architectural barriers that cause the "program accessibility" problem, thus sometimes requiring a building-specific solution; and
- must include a schedule – in some cases a year-by-year schedule – for taking the steps by which the public agency will transition from noncompliance to compliance.

Champagne concludes that the self-evaluation and transition plan requirements are clearly established in the regulations. Nonmandatory guidance documents supplement these requirements to provide public entities ideas and approaches to adopt when pursuing compliance with these requirements. For example, the regulations require public entities to accept comments from the public on the self-evaluation, but they are not required to hold public hearings. However, public entities are encouraged to include individuals with disabilities and organizations that represent them as part of the self-evaluation process.

## Analysis of the Adequacy of the Districtwide Transition Plan Update

The OIM commissioned Mr. Jim de Jong to examine the Districtwide Transition Plan and analyze its adequacy for achieving compliance with ADA requirements. de Jong is the executive director and principal investigator of the Great Plains ADA Center at the University of Missouri School of Health Professions and was instrumental in working with Congress to pass the original ADA.

His report includes a review and analysis of the following (see Appendix M):

- Legal requirements under the ADA
- District Plan for the Employment and Education Rights of the Handicapped, May 1978
- Districtwide Transition Plan Update, August 14, 2015
- 1st St. Elementary School Barrier Removal Plan (site transition plan)
- Schedule of Architectural Barrier Removal in Compliance with the ADA Title II

### *District Plan for the Employment and Education Rights of the Handicapped, May 1978*

de Jong notes that the plan outlines the personnel function and estimated resource cost estimates, but it fails to show any actions taken. He notes that the District did not demonstrate a good faith effort to comply with the law at the time, or with its own plan to achieve compliance, as it claims to have taken action to fix, modify, or remodel inaccessible features yet provides no evidence that these modifications were made.

He contends that the plan does not constitute a compliance plan but rather a management outline. He views the plan as incomplete and notes the document acknowledges the District's lack of action for removing barriers (p. 21).

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<sup>8</sup> Mr. Champagne's curriculum vitae can be viewed at the end of his report.

*Districtwide Transition Plan Update, August 14, 2015*

The review found that the updated plan broadly addresses the following ADA requirements for the Districtwide Transition Plan:

- Methodology for removing barriers and the responsible personnel
- Designated person to oversee the implementation of the plan
- Posted notices at all District facilities identifying the ADA compliance manager and contact information
- Grievance procedure
- Accessible reviews of facilities
- Input from interested parties on the plan
- Compliance with new construction and alterations
- Coordination with outside agencies
- The need for an accessible website with updated information on program access compliance and accessible paths of travel of sites, and contact information for the ADA compliance manager

He notes that the plan describes only a broad methodology for prioritizing modifications, such as school level (elementary, middle, and high school and pre K) or within a site (path of travel to doorway). To better identify priorities, the District must obtain a current inventory of students and conduct a needs assessment of the public in particular areas of the District.

de Jong notes that the plan fails to address the ADA's self-evaluation requirements and states that, although the plan seeks to obtain public input, it does not specify whether this includes individuals with disabilities or organizations that represent them. The plan does not include any evidence that it has obtained public input, which must be included to "develop a comprehensive and logical plan of action to be delineated in the Transition and Self Evaluation plan." Furthermore, public input must be obtained any time the plan is updated or revised and at the action prioritization for barrier removal stage.

A review of the District's website found the site did not appear to comply with the accessibility requirements under Section 508 of the Rehabilitation Act, and de Jong recommended a professional in this area to access the website. In addition, the website did not contain the ADA compliance manager's contact information or the grievance procedures.

He summarizes that the District has failed to demonstrate a sense of urgency and did not comply with the ADA and MCD, given that the passage of the ADA occurred in 1990, ADA Amendments Act in 2008, and MCD in 2003. de Jong concludes that:

Failure to provide a comprehensive, timely plan complying with federal law which guarantees access to programs, services and activities to citizens with disabilities by LAUSD is egregious. This is compounded by their failure to address and/or implement the Self-Evaluation plan, accessible communication access and ignoring citizen input and involvement in a pro-active manner.

*Site Transition Barrier Removal Plan – 1st Street Elementary School*

de Jong notes that the program and spreadsheet are good tools for identifying ADA and California Building Code (CBC) deficiencies for accessibility standards and code compliance. The barrier removal plan captures information on the deficiencies, location of the items, possible solution, use type, Department of Justice (DOJ) priority codes, persons responsible for overseeing barrier removal, estimated removal dates, and surveyor notes. He adds that although the program and spreadsheet are good, trained and experienced staff are needed to survey sites and identify noncompliant elements.

The estimated barrier removal schedule for fixing all inaccessible features is March 31, 2017. de Jong notes that some items are considered "low-hanging fruit," such as the floor mats at the entryways. This issue could be brought to compliance quickly with low cost in material and human resources, yet the plan calls for these items to be remediated in 18 months. Another example is providing signage at inaccessible entrances to each of its facilities directing users to the accessible entrance or to a location where they can obtain information or

assistance. He notes this is a “top priority and should be accomplished by now.” Furthermore, an individual with a “mobility impairment or other disability does not need to waste limited energy by wheeling or walking all over the grounds of a school to find the accessible entrance when a simple sign can prevent this from occurring.” He states that applying the same removal date for all items “is an illogical approach and impossible to defend when easily fixed items such as the one noted above could be fixed and compliant today or soon in the future.”

The barrier removal transition plan does not include a review of playgrounds, play equipment, or paths of travel to such areas covered by the 2010 ADA standards. He notes that the survey did not contain information on automobile- and van-accessible spaces and facility arrival points. The arrival points are required to provide an accessible path of travel to the facility; they are located at different points of the sites and might have specific standards for vehicular drop-off spots.

The severity code references a DOJ recommendation for Title III entities, which de Jong has never seen used with Title II entities. Furthermore, he states (p. 8):

Title II entities are stated to be held to a higher standard than private entities most likely due to the prior years of obligation under the Rehabilitation Act and the fact they are operated by citizen funds and are meant to represent and serve all citizens regardless of race, religion, sexual orientation, gender, age and disability. So, when one applies that criterion to a Title II multi-facility transition plan it may cause confusion, divert activity away from an immediate citizen need, and cannot be looked at in isolation of the overall LAUSD responsibility to provide program access while meeting individual students needs under IDEA (Individuals with Disabilities Education Act).

#### *Schedule of Architectural Barrier Removal in Compliance with the ADA Title II*

The architectural barrier removal schedule is a plan to inspect and complete betterments at District schools over a 15-year period. However, it does not include all facilities and buildings owned or controlled by the District. de Jong notes that maintenance, administration, sport, and other facilities are not listed and are required to be accessible under the ADA and Rehabilitation Act. Individual building assessments must be merged in a Districtwide transition plan that includes all District buildings to allow for cost-effective practices. He notes that the District’s approach is “wasteful and demonstrates a complete lack of concern or showing a good faith effort in compliance.”

de Jong considers the plan’s 15-year timeframe as “weak and unambitious.” He states:

Generations of students, parents, and the general public are being subjugated to discrimination while this slowly evolves over the next 15 years. It is inexcusable for a governmental entity to first ignore the mandates of the Rehabilitation Act, ignoring the ADA followed by ignoring the Consent Decree of the Courts while failing to acknowledge the immediacy of addressing the Civil Rights of millions of citizens. An education institution or district should be leading the efforts to ensure the equality of civil rights implementation as an example and teaching entity of a community. Unfortunately, this timetable with missing data as stated above and a timeframe of review which extends to the average length of a student in a public school system, is woefully inadequate and an egregious denial of Civil Rights to persons with disabilities and their families and friends.

#### *Review and Verification of Site Transition Plans*

On August 22, 2015, the District submitted 22 site transition barrier removal plans. These plans were reviewed by an OIM consultant, Disability Access Consultants, Inc. (DAC). The following highlights DAC’s concerns with the process and contents of the site transition plans:

- Surveys and subsequent “transition or barrier removal” plans do not include all of the potential physical barriers that might deny access to persons with disabilities because they are only including “program access barriers” and there is not a clear process how program access barriers were defined and what information these program access barriers were based upon.
  - DAC notes that based on experience, the majority of the noncompliant findings (barriers) identified in a school’s comprehensive plan impact the programs, services and activities of a school district.

- The location of programs might change in a school site from year to year, therefore, the plan should contain all findings to ensure proper planning and decision making for determining program access.
- Many of the surveys do not address playgrounds, parking and other items needed to provide access to programs, services and activities.
- The application of the same barrier removal date across the board for all items at a school is unusual. Some items can be addressed prior to larger construction projects such as: door pressures, toilet paper dispensers, grab bars, as they deny access to programs, services and activities.
- As is conditions are not included for all items. For example, an inspector does not include as is measurements to show how a restroom is noncompliant but rather states “a complex redesign beyond the scope of this survey is required to provide an accessible toilet room.”
- Misunderstanding and misapplication of safe harbor provisions of the 2010 ADA and CBC requirements:
  - For many of the items that the District states do not need to be done under the safe harbor provisions of the 2010 ADA, they were required to be done under the state CBC standards.
  - Safe harbor applies to covered items that were compliant under a prior federal ADA code, but are not compliant under the newer 2010 code. The District attempts to use the safe harbor provisions under the 2010 ADA on items that were not compliant.
- District indicates they are not required to meet state standards for some noncompliant items. However, the District is required to meet the accessibility standard that applies the higher standard (either federal or state). The District acknowledges this in their Transition Plan “update.”

DAC notes that the industry standard for developing site transition plans consists of a process that first identifies all barriers through a comprehensive survey, and then establishes priorities for removal. The District’s process, which sets priorities after budgetary approval by the superintendent and without an opportunity for public input, is inconsistent with the law and its own Districtwide Transition Plan Update.

On August 31, 2015, the OIM and DAC met with the ACU manager and the ADA compliance manager at 1st St. Elementary School to validate the site transition plan. At the beginning of the walk-through, the OIM inquired about information missing from the plan such as priority codes, estimated schedule for barrier removal, and person responsible for barrier removal. District officials noted that this information was not provided in the plans submitted to the OIM and columns were “hidden.” Inconsistent explanations were provided as to why information was not included, such as the estimated removal schedule could not be completed until the superintendent and Board of Education approved a budget to address ADA compliance. The ACU manager described these plans as a “work in progress.” The absence of this information rendered the plan a basic survey of noncompliant items and not a barrier removal transition plan. Furthermore, the ACU manager noted that the plans included only findings that were considered to impact program access, rather than all noncompliant elements identified in the survey. The ACU manager also stated that although the 1st St. Elementary School plan contained approximately 400 noncompliant findings, more than 900 had been identified.

Due to the incompleteness of the site transition plans, the OIM canceled the remaining nine scheduled site verification visits. Shortly after leaving 1st St. Elementary School, the OIM emailed the ACU manager inquiring about missing findings of the site’s passenger loading zone. The ACU manager provided a spreadsheet of the findings via email. The spreadsheet was opened using a mobile telephone and revealed the “hidden” columns with values for the priority codes, estimated dates for barrier removal, and the person responsible. The OIM reviewed all the transition plans submitted using this technology and revealed that all columns were visible using this technology. Subsequently, the columns were unlocked using the Excel program.

On September 3, 2015, the OIM provided the OGC a letter describing the events above and noted that, based on the comments made by the ADA compliance manager and ACU manager and the revelation of values contained in the unlocked site transition plans, “this information was deliberately hidden and withheld” (see Appendix N). The IM requested complete transition plans with all findings by September 14, 2015.

On September 3, 2015, the OGC responded to the events above and contested the facts of the events and referred to the IM’s statements as “misrepresentations” that “contain quite accusatory and adversarial language” (see Appendix O). In response to the allegations that information was withheld from the OIM, the OGC contended

that columns in question were not “hidden” but rather collapsed, as is routinely done for the purposes of sorting data. Furthermore, it stated that the “columns that showed the schedule when expanded, were collapsed or hidden because the scheduling was a work in progress.” It was asserted that if the District was deliberately hiding information, a PDF copy of the plans would have been provided so the functions of the Excel program could not be utilized.

The exclusion of approximately 500 noncompliant findings was described as the District providing only those items affecting program access, and that the District was under no obligation to remove the remainder of the 900 items under the requirements of ADA Title II. Despite the values contained with information on the removal schedule, the OGC agreed with the officials’ statement made that “the estimated schedule for removal of barriers could not be determined until the superintendent and Board of Education approved a budget to address ADA requirements.”

On September 7, 2015, the IM responded, thanking the OGC for explaining how the documents provided contained collapsed information (see Appendix P). The response notes that:

“... at no time, was this explained during the discussion at 1st St. Elementary on August 31. As a result of this information not being available and no explanation provided as to how this information was rendered unavailable, the site visits planned for the two days had to be canceled. At any rate, we now know the District process for collapsing information when provided to us.”

The IM noted that although the District considered these documents “site transition plans,” District officials consider them a “work in progress” that lacks the information necessary to be considered complete site transition plans. Although the OGC agreed with the school officials’ statement that the plans would not be complete until the “Superintendent makes his decisions and funds are allocated,” this was contrary to the process described in the Districtwide Transition Plan Update (August 14, 2015) and law.

The IM concluded that:

... my comments are not made to be adversarial. They are, rather an expression of complete frustration with the District’s inability to provide a single transition plan that might yield a process compliant with the requirements of the 25-year-old Americans with Disabilities Act. More specifically, on May 12, 2014, during my first visit as Independent Monitor, I was assured, unequivocally, that after two years of doing nothing the facilities division was on its way to develop compliant transition plans. That was some 15 months ago. Pending the Superintendent’s decisions, there is still no completed transition plan. Additionally, any betterments pursuant to a completed transition plan are not scheduled by the District until the end of the calendar year 2016. This is some two and a half years from the assurance I received. This pace is per se unacceptable but unfortunately not surprising. So, let’s see if we can pick up the pace by committing to absolute transparency and the necessary resources to get the job done.

### *Conclusions*

The District has a longstanding history of noncompliance with the ADA and Section 504 of the Rehabilitation Act. Although the District describes its Districtwide Transition Plan as an “update” to its 1978 plan, it has failed to produce any evidence of compliance with the ADA since its passage in 1990. As noted earlier, the 1978 plan does not appear to provide evidence of compliance with the Rehabilitation Act and is best described as a management plan. The 1978 employment plan is not an ADA Transition Plan; therefore, the District did not have an ADA Self-Evaluation and Transition Plan as required by the ADA in 1990 for compliance with the law and receipt of federal funding.

The MCD is in its 12th year, and the District still does not have a transition plan that meets the intent or letter of the law. It presented a plan that requires an additional 15 years before achieving compliance. This effort would bring the District into compliance 40 years after the enactment of the law. This behavior is unconscionable. The lack of accountability for this performance and complete disregard for providing accessibility at its schools, programs, and services can no longer be overlooked. The District has repeatedly failed to act in good faith, allocate the necessary resources, and secure capable and competent individuals to get the job done. Assurances

no longer suffice. Credible action, transparency, and accountability will lead to progress and compliance. The District has repeatedly failed to meet its obligations to its students, families, and the public.

A Districtwide Transition Plan that complies with the process as prescribed by public policy and acceptable practice is still months away. In developing its transition plan, the District has failed to include the self-evaluation process, obtain public input, and define an appropriate method for prioritizing barrier removal. The failure to include all findings, despite the assurance in the plan update, and misuse of safe harbor provisions, standards for identifying noncompliance (state vs. federal), and Title III requirements show that the District continues to lack the necessary capacity for implementation of this plan. The District should evaluate the effectiveness of its consultants and ADA compliance manager.

The District designated an ADA compliance manager and hired 10 additional staff to the ACU, which now constitutes 24 individuals. Given this additional capacity, it is difficult to gauge the effectiveness of the plan, which commits to conducting surveys at 50 schools annually, commencing in 2016.

Similarly, the RAP is still not functional and, as demonstrated in the case study, is subject to the influence and mismanagement of senior officials who after many years do not show concern or competence in fulfilling these obligations. Although some individuals carried out their duties by raising concerns and appropriate recommendations to senior staff, the collective inaction and lack of advocacy must turn around. The new ADA compliance manager acted in such a role, however, the expected behavior should come from internal management, including superiors such as the superintendent, and not via the federal court monitor.

Historically, the District has failed to secure bond funds for barrier removal. Although the MCD required a commitment of \$87 million for renovations at existing schools and the RAP, these funds were allocated in 2003. Subsequent to the cutoff date for submitting information for inclusion in this annual report, discussions with the superintendent indicated a commitment to propose to the BOE an allocation of \$600 million for moving the District toward transitioning into ADA compliance.

Since the MCD's inception, the FSD has engaged in behaviors that undermine its credibility. Misrepresentations, withholding of information and documents, and expending of energy on circumventing its obligations are not new. The OGC and District's posture and defense of officials who engage in these behaviors is disappointing. This report provided two examples in which officials were told not to cooperate with or defended the misrepresentation of facts to a federal court monitor. For the IM to make a determination that the District is capable of monitoring and holding itself accountable, officials must act accordingly.

### ***Determination***

1. All new construction and renovation or repairs by the District shall comply with Section 504 and the ADA – **Progress at the nine Outcome 7 schools**
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 – **Total approved: \$67,523,202. Target met**
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**  
**Additional credit approved: None**  
**Total approved: \$13,683,525.**
4. Section 17. **Not met**

## SCHOOLS OF CHOICE

### *Charter Schools*

SWD enrollment at independent charters continues an upward trend. During the 2014-2015 school year, enrollment at charter schools increased by 5.8% (n=5,561) while SWDs increased by 10.6%, or 993 students. This continued increase in SWD enrollment is evidence that the changes to the policies and practices for servicing SWDs have resulted in a positive outcome.

Number and Percentage of SWDs who Enrolled at District-Operated and Charter Schools by School Year

School Year	Total # of Students Enrolled	% of SWDs Enrolled District Operated Schools	# of SWDs Enrolled Charter	% of SWDs Enrolled
2014-15	100,768	12.63%	10,324	10.25%
2013-14	95,207	12.46%	9,331	9.80%
2012-13	88,613	12.30%	8,244	9.30%
2011-12	82,888	12.04%	7,143	8.62%
2010-11	69,444	12.10%	5,699	8.21%

### *Magnet Schools*

The District continues to increase the number of SWDs who apply for and are selected to attend magnet schools. The 2014-2015 data show that the number of SWDs who applied increased by 10.5% from the previous year, and SWDs selected increased by 176 students (9.5%). This growth continues to demonstrate the effectiveness of the District's efforts to improve SWD recruitment, enrollment, and retention at magnet schools.

The District is to be commended for this progress as it continues to increase opportunities for SWDs to attend schools of choice with enriched academic programs.

Number and Percentage of SWDs who Applied and Were Selected for Magnet Schools by School Year

School Year	Total # of Students Applied	# of Students Selected	% Selected for SWDs who Applied
2014-15	3,387	2,037	60.14%
2013-14	3,065	1,861	60.72%
2012-13	2,608	1,199	45.97%
2011-12	2,401	857	35.69%
2010-11	2,126	664	31.23%
2009-10	2,238	850	37.98%
2008-09	2,061	575	27.90%

## DATA SYSTEMS

### *My Integrated Student Information Systems (MiSiS)*

MCD Section 11 requires the District to comply with the stipulation to develop and implement an Integrated Student Information System (ISIS). This requires all schools, including charter schools, to utilize one common data system that is connected to all sites and enables instant access to students' records throughout the District.

Since the last annual report, issues related to the significant turmoil around data, lack of training, and performance issues led to a MiSiS reorganization. This included replacing MiSiS leadership: the project director and chief information officer (CIO) left the District, and the deputy CIO was no longer involved in the project. The reorganization resulted in a new executive sponsor who reports directly to the superintendent, a new CIO, and a new program director. New MiSiS Steering and Advisory Committees were formed to assist with project governance and support.

The MiSiS team was previously organized to follow the Agile Scrum development methodology, with project personnel assigned to cross-functional Scrum teams. Under the new management, this organization was abandoned, and teams were reorganized by subject matter-specific "pods." Then, with the commencement of a new agreement with Microsoft Consulting, another development methodology was introduced, and team members are now organized to participate in the Sketch/Build/Stabilize/Release process. This was a significant organizational disruption in a short time. The measure of its value will be apparent in the next six to 12 months.

The extent of system issues related to the poorly executed data conversions was compounded by pushing "bad data," with varying inaccuracies, into other related systems, such as the Welligent IEP system. In addition, performance problems took considerable resources to correct. This resulted in users having low confidence in the system. The District set aside the previous MiSiS Project Plan to conduct multiple technical and functional assessments before any new development work could begin.

The new management team approached the multitude of problems by focusing on stabilizing the program and shifting most available resources to several school-based events and functions that required MiSiS support. These functions were tested as built prior to the events' occurrence so that defects could be corrected. All the objectives for these school-based events were met.

The MiSiS training team also shifted its approach by refocusing on outreach to schools and the transparent reporting of progress and challenges. The superintendent performed similar reporting on a monthly basis. The increase in training availability, combined with proactive communication with schools, made the start of the 2015-2016 school year much smoother than the previous year.

Planning for a pilot launch of a parent portal (Passport) was completed. In response to the OIM's report on the accuracy of SWD graduation data,<sup>9</sup> as well as a letter to the superintendent regarding the persistent problems with graduation and completion data inaccuracies (see Appendix Q), the MiSiS team created a set of audit reports that allow proactive monitoring and validation of graduation requirements. Changes were implemented to prevent invalid or inconsistent data entry for certain codes. The lack of these safeguards was one of the main causes of inaccurate data. Although the District used the validation reports to identify problems with the 2014-2015 graduation data, the impact of the new changes will not be known until the completion of the 2015-2016 school year.

In Resolution 2015-25A, published on May 28, 2015, the School Construction Bond Citizens' Oversight Committee (BOC) endorsed an allocation of \$79.6 million from bond program funds to sustain the MiSiS project through June 2016 (see Appendix R). The BOC expressed that it is "favorably impressed with the turnaround of this project since it has been reorganized, properly staffed with the required level of expertise, been paid proper attention at the highest levels within LAUSD, adequately funded, and, in particular, well led by current project and top District management."

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<sup>9</sup> See the full report at [http://oimla.com/pdf/20150611/Grad\\_Data\\_Report\\_Final.pdf](http://oimla.com/pdf/20150611/Grad_Data_Report_Final.pdf).

However, the BOC resolution cited a number of concerns and imposed several conditions on its endorsement. Among the concerns were the following:

- Whereas, the District has embarked on major Enterprise Resource Planning (ERP) projects, but has failed to properly utilize the vital starting point for ERP, Business Process Engineering, to study world-class ways of conducting business and then transferring these concepts to how the District should operate at higher levels of productivity and cost-effectiveness, prior to beginning the design of the IT system, and
- Whereas, it appears that lessons learned in past projects have not been carried forward to newer ones, such as ... lack of adequate training of users at schools and at other field locations, that were major problems in payroll, were duplicated almost entirely in the initial rollout of MiSiS, and
- Whereas, the BOC is concerned that these issues are reflective of significant LAUSD institutional issues with such large projects, including, but not limited to,
  - (a) inadequate understanding of and attention to IT projects at the highest levels of the District,
  - (b) insufficient funding of IT, particularly in consideration of how improved processes, supported by appropriate IT systems, can improve District outcomes, reduce expenditures, and increase revenues,
  - (c) inadequate compensation and other employment and recruitment factors that make it extremely difficult for the District to attract and retain the necessary IT technicians and managers as employees;
  - (d) inadequate training of users,
  - (e) resistance to new ways of doing things by users,
  - (f) insufficient provision for maintenance and development of IT systems once initially installed
- Whereas the Bond Oversight Committee is concerned that the substantial investment of bond funds in this and other projects will not be matched by continuing investment in general funds to operate and maintain the projects once they become operational ...

A third party, the Viramontes Group, Inc., expressed similar concerns in its October 2014 "Oversight Report" (see Appendix S).

With the BOC's approval of funds and the Board of Education's approval of additional funds in June 2015, the District negotiated a 12-month contract with Microsoft Consulting to continue developing new MiSiS functionality. This work was slated to begin in July 2015 but was delayed due to resources being focused on preparation of the upcoming school year.

At the beginning of 2015, the IM directed the District to submit a revised plan for completing MiSiS; the District provided a draft to the Parties in September 2015. This draft is being revised to update the original schedule due to the delayed start in the development of new functionality. The draft plan appears to adequately address the outstanding issues in a thoughtful manner with reasonable timelines. The MiSiS management team reorganization, revised plan, and system stabilization are cause for optimism; however, several concerns exist.

Although the MiSiS system is stabilized, it is incomplete. Minimal progress has been made on the remaining MCD requirements, with some previously developed functions requiring rework this year. No progress has been made on the implementation of a mandated Gradebook module. The existing module is being reevaluated, and the MiSiS team is contemplating a pilot of a new module as part of the Learning Management System. Ad hoc reporting functions previously built into MiSiS will be replaced by a new set of tools during the coming year.

The Passport pilot is in progress in a few schools, but information is limited. The program's rollout will take considerable time. In addition, the District has yet to present a plan for MiSiS implementation at independent charter schools and has not committed the resources necessary to determine the functional gaps that must be closed.

The new software development methodology lacks a focus on supporting whole business processes; rather it focuses only on missing requirements. The MiSiS project does not have a team or individuals dedicated to

Business Process Engineering or Reengineering. This is critical for examining the organization's workflow and business processes to better support its mission and reduce cost.

At this point, MiSiS planning and funding goes through June 2016. It is clear that this project will not be completed by this time, and the effort to identify scope and resources required for continuing work must be done soon. Furthermore, although there is cause for optimism, the District has a long history of unraveling with the development and implementation of this integrated student information system. The IM shares the BOC's concerns about the District's capacity and commitment to sustain MiSiS. The BOE's long-term planning and commitment will be critical for ensuring that this effort results in meeting the MCD's intent that student records be accessible so that schools can meet the needs of its SWDs.

## **ANNUAL HEARINGS**

As per the September 17, 2012, stipulation of the Parties, the OIM is to conduct two annual hearings per school year. This report includes findings from two hearings: the first conducted on May 15, 2015, and the second on October 14, 2015. To facilitate attendance, each hearing had two sessions—one in the morning and another in the evening. Notices inviting persons to attend were made available in English, Spanish, Armenian, Chinese, Japanese, Korean, Russian, and Vietnamese. To promote the annual hearing, a direct mailing was sent to homes of parents of SWDs; a Districtwide mailing was sent to all schools, including charter and nonpublic schools; and an ongoing advertisement was broadcast on the District's television station, KLCS.

The May 2015 hearing was attended by 106 people, with 44 presenting oral testimony. In addition, seven written comments were submitted. Individuals who presented specific complaints or problems were afforded the opportunity to meet with District staff to discuss the matter in greater depth to find a resolution. This resulted in a total of 24 referrals seen by District staff.

The most frequent concerns related to noncompliance with IEPs (15.5%), perceived closure of the Parent Resource Network and location of its office (16%), LRE placement concerns and closures of special education centers (15.5%), and bullying or safety concerns (7.5%).

The October 2015 hearing was attended by 87 people, with 25 presenting oral testimony. Six written comments were submitted. Twenty-six people met with District staff to discuss their concerns. The main issues were with the IEP process (predetermination of FAPE, lack of participation, and pressure to agree) (22%), due process filings and failure to implement settlement agreements (13%), IEP provisions not being implemented (10%), and difficulties getting assistance from the call center (6%).

## **COMPLAINT RESPONSE UNIT**

The MCD established the Complaint Response Unit (CRU) and processes for reviewing and responding to parents' complaints. The CRU's primary function is to assist and facilitate families with inquiries and complaints regarding compliance with special education laws. The CRU is charged with providing parents a lawful response that demonstrates the District's legal obligation to address their inquiries and complaints.

During the 2012-2013 school year, at the request of the Plaintiffs' Counsel, the OIM studied CRU compliance as it pertains to MCD Section 9. To summarize,<sup>10</sup> the study found problems with the procedures for receiving, categorizing, prioritizing, and investigating complaints. It also found problems with the process for issuing a lawful response, which lacked oversight and quality control mechanisms. Additional problems arose from CRU staff's perceived beliefs that they lacked the necessary training to provide a lawful response as well as CRU data system limitations in maintaining and reporting data.

The District provided a plan to address these issues by July 2014 but extended some timelines to July 2015 to coincide with the expected date of a fully functional Welligent call-in center. Similarly, the District was to implement a uniform call-in center for all Division of Special Education offices (central and local), which was to coincide with the implementation of the Welligent call-in center.

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<sup>10</sup> See the full report at [http://oimla.com/pdf/20130607/CRUFinal3\\_13\\_13.pdf](http://oimla.com/pdf/20130607/CRUFinal3_13_13.pdf).

During the 2014-2015 school year, the Division of Special Education established the School and Family Support Services (SFSS) Unit, which supports the District's complaint management system. This new unit is staffed by approximately 20 administrative, certificated, and classified personnel. The SFSS, along with the CRU, takes calls from parents who have inquiries, concerns, or complaints about their children's IEPs and educational programs. This unit is now responsible for responding to parents' complaints and issuing a lawful response.

The District reports that between July 20 and October 8, 2015, the SFSS unit had logged 6,907 calls. Of these, the majority were inquiry calls (88.7%, n=6,126), whereas approximately one in 10 were concern calls (7.7%, n=531) or complaints (3.6%, n=250).

In July 2015, the District provided a draft *Procedures and Protocols Manual* for the Districtwide Complaint Response System and screenshots of the Welligent enhancements to show how calls are taken and data are collected. The District also committed to providing a reference guide that informs schools of the call center and complaint management process as well as staff protocol when taking a call. To date, these documents have not been provided; an update will be included in Part II of this report.

On October 13, 2015, several parents who attended the annual hearing commented on difficulties getting help from the hotline. They noted that, at times, no one answered the calls; they were told to call their local District, who in turn told them to call someone else; and they experienced difficulty with the system, as it abruptly ended calls. On the same day, the OIM called the call center phone line and noted similar outcomes. One salient finding is that the call center hotline lacks a basic option for callers to make an inquiry or express a concern or complaint. The options available are as follows:

- Prerecorded MCD hotline of frequently asked questions (FAQs)
- Upcoming Community Action Committee (CAC) meetings, Parent Resource Network (PRN) training, or other activities for parents or guardians
- Infant and preschool students
- Questions about transportation
- Records request
- Reimbursement helpline
- All other questions

The calls found that the MCD FAQ option was a blank recording, and the message with information on upcoming meetings and training for parents was a recording that mentioned two scheduled training events for the 2012 school year. This recording also informed parents that the event calendar would be updated monthly.

OIM staff made three calls stating we were parents of a student in the District. When the option for transportation was selected, we were instructed to call the local district transportation office. When we asked about filing a complaint, staff immediately placed the call on hold and transferred us to the CRU, which went to voicemail. Preschool was the only option for which the staff identified themselves and appeared to begin an intake. Although the OIM made only a few attempts, there did not appear to be any protocols for handling calls and performing an intake to determine the nature of the call (inquiry, concern, or complaint).

It has been reiterated that an effective system to receive, respond to, and manage parent complaints is a fundamental part of a system to prevent substantial noncompliance and will be an integral part of disengagement. Although the system is relatively new, the lack of information in the FAQ option and extremely outdated training calendar demonstrate management's lack of regard for system quality. Simple quality assurance protocols should have identified these problems. It has been more than two years since the OIM recommended the District create a universal intake and protocols to ensure consistent and accurate call recording. The District has yet to produce these, despite assurances and inclusion of these objectives in its two-year plan. This is a fundamental aspect of ensuring a quality and consistent system; a lack of such protocols undermines the efforts and resources dedicated to staffing and training. Furthermore, staff telling parents to call their local district support unit contradicts the intent of this hotline and the District's assurance to facilitate parent calls and track concerns and complaints centrally.

The District must address the maintenance and update of these options by December 1, 2015. In the same timeframe, it must also include an option that clearly delineates a dedicated line for making complaints and methods to ensure quality assurance. In spring 2016, the OIM will review a sample of inquiries, concerns, and complaints taken by the SFSS and CRU personnel to examine the effectiveness of these processes.

### **IEP COMPLAINT INVESTIGATION**

Following the procedures set forth in MCD Section 14, the Plaintiffs' Counsel provided the District with a written notice of intent to file a complaint, as well as declarations and supporting documentation of the alleged complaint, and met and conferred with the District in an attempt to resolve the complaint through mutual agreement. The basis of the complaint was that IEP teams lack the authority to determine services and placements during IEP meetings and that these decisions are often predetermined by school officials.

Because a resolution could not be met, on September 8, 2014, the Plaintiffs' Counsel filed a formal written complaint with the IM<sup>11</sup> alleging that the District was in systemic violation of its obligations under the Individuals with Disabilities Education Act (IDEA) in the following ways:

1. Decisions regarding the placements, services, and supports that the District will provide to individual students are, as a matter of policy and regular practice, made outside the IEP process.
2. District representatives or administrative designees present at individual IEP meetings are neither knowledgeable about the availability of District resources nor authorized to offer the provision of these resources as part of the regular IEP process.
3. District members of individual IEP meetings who are service providers are systematically prohibited from exercising their independent judgment in recommending the type and amount of service to be provided to students. Rather, they defer to decisions about services dictated by supervisors outside the IEP process.
- 4(a). District policy prohibits individual IEP teams from making decisions about moving a student to a more restrictive placement. Rather, District policy requires that all such decisions be made after the meeting is recessed to satisfy District-imposed requirements for additional assessment and administrative review of the placement decision.
- 4(b). Conversely, the District routinely initiates the process to move students to less restrictive placements prior to and outside individual IEP meetings.
5. The District's current policy prohibits assessment for and provision of Educationally Related Mental Health Services (ERMHS) to all students whose primary basis of eligibility for special education is intellectual disability (ID).

On October 8, 2014, the IM stated that there was sufficient cause for an investigation to determine whether these allegations resulted in systemic violations of the IDEA and California Department of Education (CDE) regulations. MCD Section 14 notes that the IM's resolution decision is "final and binding on the parties."

The OIM conducted a three-part investigation.<sup>12</sup> First, it conducted a telephone survey of parents, focusing on their experience of the allegations at IEP meetings. Second, the OIM conducted interviews with staff regarding the allegations to obtain perspective regarding policies, procedures, and practices that might limit the IEP teams' authority and decision making when determining the appropriate services and placements for students. The third part included a review of related District policies and procedures contained in bulletins and reference guides.

On August 5, 2015, the IM issued a report of the investigation's findings and a series of corrective actions.<sup>13</sup> The investigation yielded information that requires changes in LAUSD procedures and practices. It found all allegations valid. These findings support the OIM's more than 10 years of research, monitoring, and findings as well as parent and community input received at Parents' Council meetings and annual hearings.

To summarize, the investigation found that:

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<sup>11</sup> See the complaint at <http://oimla.com/pdf/20150805/AttachmentA.pdf>.

<sup>12</sup> See the report at <http://oimla.com/pdf/20150805/AttachmentC.pdf>.

<sup>13</sup> See the report at <http://oimla.com/pdf/20150805/ResponsetoIEPUpdateFinal.pdf>.

- IEP teams do not approach the decision-making processes for determining services and placements in a manner that views parents as equal partners.
- A prevalence of IEP team members behave in ways that undermine the IEP process, including presenting predetermined services and placements with minimal opportunity for parental participation and encouraging resolutions outside IEP meetings.
- IEP teams lack the knowledge of District resource availability and require assistance outside the IEP process.
- IEP team members recess meetings to accommodate administrative procedures associated with securing services and placement.
- Although providers can use their independent judgment to offer services at IEP meetings, they are constrained by the demands of the job and an ineffective organizational structure for determining assignments.
- The IEP development sequence is inconsistent with District, state, and federal regulation for establishing LRE, which determines placement prior to services.
- There is no evidence that the District's policies explicitly exclude students with ID from receiving ERMHS. However, the low frequency at which students with ID receive ERMHS and counseling services, compared to students with all other eligibilities, demonstrates systemic practices by IEP teams who share the general assumption identified in this investigation that these students do not benefit from these services.

Based on evidence from the investigation and the IM's determination that the District engages in behaviors that contribute to systemic violations of the IDEA, the District was ordered to implement 12 corrective actions and immediately cease such behaviors. The District was to respond to the 12 corrective actions within 45 days and implement all but one<sup>14</sup> no later than June 30, 2016.

The 12 corrective actions are:

1. Establish an objective, neutral complaint investigation mechanism that has the authority to cease noncompliant behavior and ensure remedies.
2. Review policies and procedures to ensure alignment with state and federal regulations as well as consistency among bulletins and reference guides.
3. Develop an IEP process that ensures placement based on IEP team consensus. This includes establishing a standard for how meetings are conducted that aligns with the Welligent IEP system and promoting a decision-making process that establishes goals, objectives, supports, and services prior to program placement.
4. Issue a bulletin/directive on the use of draft IEPs. The Welligent system must be revised to prevent input of program placement information prior to the IEP meeting.
5. Prepare a statement to be read and made available at every IEP meeting. Before an IEP meeting can proceed, the statement must be in the Welligent system with a checkbox indicating it was read. This statement must inform the participants that:
  - an IEP meeting is a collaborative process, and all participants have the opportunity to ask questions and provide recommendations and suggestions;
  - the IEP team has the authority and responsibility to design a program from which the child can derive meaningful benefit;
  - the draft IEP, behavior intervention plan, or assessment plan might change as a result of the IEP team's deliberations;
  - the IEP will continue until it is complete, unless all members agree to an extension;
  - the decision on related services and placement will occur during the IEP meeting, unless the team agrees that there is not sufficient information to make a placement determination;
  - the District considers the family equal partners in the educational decision-making process; and
  - any team member may add an objective or goal to the IEP, even if it is not included in the Welligent goal bank.

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<sup>14</sup> The IM approved the extension of the implementation of the Districtwide professional development timeline to August 31, 2016.

6. Develop a comprehensive list and descriptions of all related services and program options available. This must become part of the Welligent system and made available at IEP meetings.
7. Address the caseload procedures to reflect workload throughout the school year. The District must stop allocating resources based solely on caseload and initiate allocating workload to all providers including resource specialist programs and related service providers, such as per diem personnel.
8. Eliminate barriers and obstacles for the IEP team's placement determination. When considering nonpublic school (NPS) placement, the District must first conduct any necessary evaluations prior to the IEP meeting. The evaluations must determine that the identified needs cannot be met by any District service. If NPS placement is supported by such evaluation, then the placement must be implemented, and no further evaluation shall be required.
9. Clarify procedures for recessing IEP meetings. A recess may not be used to deter or delay a placement determination or the provision of related services.
10. Ensure that whenever the District initiates or refuses an evaluation, change in placement, or provision of FAPE, it provides notice to the parent. Whenever the operations unit receives notice to look for a change in placement, parents must be notified.
11. Conduct an analysis to examine how the social-emotional needs of students with ID are being supported. This must include a review of data, policies, procedures, and practices for the provision of behavior supports, counseling, and other related supports.
12. Establish professional development to address these corrective actions and improve the IEP team's collaborative process.

Many of the findings and corrective actions address systemic problems that have been persistent areas of concerns over the course of the MCD. An effective complaint management system is critical to ensure that the District can identify and address noncompliance with remedies while holding staff accountable. Workload constraints that impact providers' ability to recommend the type of services affect not only the IEP process's integrity but also service provision.

For years, parents have informed the OIM of their experiences during IEP meetings in which school personnel were unknowledgeable and lacked the authority to allocate services and programs without conferencing or deferring to central office personnel. They also described a culture in which parents are not treated as collaborative partners at IEP meetings and are given no other option than to pursue dispute resolution procedures to resolve disagreements.

The IEP process should operate with transparency—parents and staff should be aware of student and family rights and the available services and programs. Parents and staff should be welcome to speak up and advocate on students' behalf. The reported behaviors directly undermine the intent of the law and the IEP process.

Although implementing the 12 corrective actions will move the District toward an improved IEP process, the District must acknowledge these problems and proactively change the culture to improve trust and collaboration with families. This requires staff to be adequately trained on parents' rights, the intent of the law, and the services and programs available in the District. Any staff member who engages in inappropriate behavior that undermines the IEP process must be held accountable. Management must change its behavior to support schools and not micromanage or limit the IEP teams' authority. Leaders at the central, local, and school level must be responsive to parents and students and advocate for their rights. Leaders must not tolerate or participate in IEP processes that marginalize parents.

#### **SUBSTANTIAL COMPLIANCE**

The MCD is a federal class-action settlement agreement that requires the District to address and improve its systemic compliance with special education law. The agreement charges the federally appointed court monitor with the determination to disengage the District from court oversight when MCD compliance is achieved.

The MCD states that this agreement is "binding on all public schools in the District, including, but not limited to, charter schools, alternative schools, charter complexes, magnet schools and to any schools formed or approved in the future by the District." It also clearly delineates the requirements the District must meet to be disengaged from court oversight. Sections 16 and 17 summarize these requirements by stating:

Upon the Independent Monitor's certification that the District has achieved each of the outcomes in accordance with paragraph 87 above and in the Independent Monitor's judgment that the District's special education program has no systemic problems that prevent substantial compliance with applicable federal special education laws and regulations then sections 5, 6, 7, 8, 9, 12, 13 and 18 of this Modified Consent Decree shall automatically terminate and have no further force or effect. The parties shall file a joint report informing the court of the termination of these sections.

MCD Section 17 requires that the IM also determine that there are no systemic problems in the District's schools that prevent substantial compliance with special education laws' and regulations' program accessibility requirements.

On July 28, 2014, the Parties were presented with a substantial compliance framework based on the premise that the District must have an effective compliance-monitoring system as well as the capacity to correct noncompliance.<sup>15</sup> In the 2014 annual report, the IM noted that "successful implementation and execution of such system will require the District to demonstrate initiative and engaged leadership." Furthermore, the District is expected to commit the necessary resources to build the system and maintain it after the conclusion of the MCD.

By August 15, 2015, the District was required to make publicly available an annual report on the implementation of all items in this framework. The framework consists of six general elements. The District was required to provide the OIM any relevant reports of noncompliance from federal, state, or court agencies. The expectations of the framework are highlighted below:

- I. Data system capable of monitoring key compliance and performance indicators at the District and school level
  - a. Capacity to monitor key indicators required by the state and the MCD
  - b. Data system with a notification system that alerts staff and school personnel of noncompliance
  - c. Consistent and reliable data
- II. Process for monitoring special education compliance and performance at the school level
  - a. Criteria to monitor each indicator and identify triggers of unacceptable performance levels or noncompliance
  - b. Methods for monitoring key indicators
  - c. Periodic and timely review of data
  - d. Procedures for communicating findings to local support centers and schools
  - e. Capacity to generate reports at the school level for monitoring compliance
  - f. Methods for validating the accuracy of data
  - g. Capacity to monitor performance of the 18 MCD outcomes and generate an annual report
  - h. Additional methods to collect data at the school level (e.g., District Validation Review [DVR])
    - i. A review of the existing DVR process and data collection procedures (The District shall report on whether these processes and procedures adequately meet compliance monitoring expectations or if they should be enhanced. If enhancement is necessary, the District will provide the Parties a report outlining any changes and expected outcomes.)
- III. Process for receiving and resolving compliance complaints
  - a. Capacity to ensure that timelines for receiving and resolving complaints are met
  - b. Policies and procedures that meet generally acceptable investigation standards and complaint resolution under IDEA and Section 504
  - c. System for parents to call (i.e., hotline) or access (i.e., person or online) with concerns or complaints that initiate investigation and facilitate resolution in a timely manner
  - d. An annual public hearing on issues related to compliance of special education laws and regulations at schools (The District must present its outreach procedures, including methods and timelines for notifying parents of hearings and methods for publicly reporting the findings.)
  - e. Capacity to collect and maintain data on issues and resolutions of complaints

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<sup>15</sup> See the framework at [http://oimla.com/pdf/20141010/AppendixL\\_SubstantialComplianceFinal\\_7-27-14.pdf](http://oimla.com/pdf/20141010/AppendixL_SubstantialComplianceFinal_7-27-14.pdf).

- i. Analysis of the issues and findings to determine existing systemic problems, which are reported annually to the superintendent of schools
- IV. Process for resolving IEP disputes
  - a. Policies and procedures to ensure procedural safeguards of notice and consent, mediation, due process, and state complaints
  - b. Capacity to ensure that timelines are met for resolving IEP disputes through informal and formal dispute resolution
  - c. Capacity to collect and maintain data on issues and resolutions of informal and formal dispute resolutions
- V. Management and administrative structure with the authority to monitor and enforce compliance
  - a. Operational and measurable policies and procedures consistent with federal and state regulations
  - b. Analysis of policies and procedures as well as a description of the communication methods for the following:
    - i. §300.114 – Least Restrictive Environment
    - ii. §300.116 – Placements
    - iii. §300.324 – Development, Review, and Revision of IEPs
    - iv. Review and implementation methods of new federal and state requirements
  - c. Administrator in charge of special education with the capacity to direct District personnel, including school administrators at District-operated schools, NPSs, and independent charters, to comply with special education laws and regulations
  - d. Administrator in charge of special education with the authority and responsibility to ensure correction of noncompliance with special education laws and regulations
  - e. Administrator in charge of special education with access to all school data, including data from District-operated schools, NPSs, and independent charters, necessary for monitoring and enforcing compliance with special education laws and regulations
  - f. Capacity to identify school administrators and special education providers who fail to monitor special education compliance within required timelines
  - g. Clear accountability standards and use of progressive discipline for personnel responsible for noncompliance and behaviors that do not adhere to the District special education policies and procedures
- VI. Facilities
  - a. Capacity to build and renovate schools consistent with ADA and Title 24 requirements
  - b. Capacity and a plan for complying with the federal requirements of developing transition plans that identify existing barriers as well as a schedule for the removal of such barriers
  - c. Capacity and procedures for responding to requests for program accessibility in a reasonably timely manner

During the 2014-2015 school year, the District made minimal progress on the establishment of such system. Despite several meetings with the OIM to discuss the framework requirements, the District did not produce any verifiable product other than its annual report.

On August 15, 2015, the District posted its annual report online without notification and submittal to the OIM. This report was inadequate. It contained information on key indicators but failed to address many requirements in the framework. On August 27, 2015, the IM provided the District a letter (see Appendix T) stating that the annual report did not address all the items in the framework and asked the District to review the framework, which contained “sufficient detail for a much more comprehensive effort,” and provide a report that complied with all the requirements. In a subsequent telephone conversation, the IM requested that the District remove the report from its website.

On August 29, 2015, the District responded with a letter (see Appendix U) expressing that the IM “had expectations that were not at all clear to the District” regarding the annual report and requested a meeting with the OIM to clarify expectations.

Although there might have been some misunderstanding and unresolved issues, aside from meetings related to the outline of the annual report, the District did not initiate discussions with the OIM about its efforts to complete

the elements of the framework. As noted earlier, the framework provides sufficient detail of the requirements, including clear expectations for monitoring and correcting noncompliance. Although the annual report is the District's mechanism to attain transparency and communication with the public on its efforts to monitor and ensure compliance, many activities should have occurred and findings shared with the OIM prior to the issuance of the report. The IM understands that the annual report will not contain all the elements of the framework, but it clearly must address more than performance on key indicators.

On October 13, 2015, during the annual hearing, an attorney from a local nonprofit agency provided comments and documentation illustrating that the CDE had conducted an investigation and found that the District had not implemented and complied with 21 Final Settlement Agreements (FSAs).<sup>16</sup> The District failed to provide these or any other CDE findings to the OIM. The District is required to provide all reports of noncompliance from federal, state, or court agencies by December 15, 2015, and quarterly thereafter.

### *Disengagement Alerts*

On April 22, 2015, the IM provided the superintendent a letter with priority disengagement activities accompanied by the first in a series of disengagement alerts (see Appendixes V and W). The purpose of this letter was to give notice of tasks that must be achieved for the District to demonstrate substantial compliance. The letter was intended to assist the District in focusing on persisting problem areas that stand in the way of disengagement. The IM noted that:

1. Achievement requires system wide leadership and management across many components;
2. The Office of the Independent Monitor (OIM) has provided recommendations that could resolve the problems that preclude achievement of each of these tasks;
3. These tasks are characterized as long-standing, and repeated failures and/or persistent lack of attentiveness; and,
4. These tasks are absolutely essential to the IM's determination that the District does not exhibit systemic problems that preclude substantial compliance.

Four tasks require a more coordinated and directed management approach across numerous organizational components in order to meet the requirements of the MCD. These include:

1. The accurate and timely correction of graduation rates including the development of a process that guarantees that any errors in determining each student's graduation eligibility are corrected within three months of that student's likely graduation date;
2. The participation of all charter schools, now and in the future, in the integrated student information system, access compliance surveys and transition plans, and elimination of significantly depressed performance in all MCD outcomes where significantly depressed performance is exhibited;
3. The documented capacity to correct deficiencies and program operations that constitute noncompliance with federal requirements expeditiously and effectively ... including a demonstrated capacity and application of progressive discipline where such nonperformance results in noncompliance and affects the failure to secure the educational rights of a student with a disability; and
4. A complaint investigation capacity that resolves complaints expeditiously and remediates any past harmful effects that a student might endure as a result of a failure to provide appropriate services and/or secure the educational rights of student with a disability.

### Accuracy of Graduation Data

The disengagement alert highlighted the problems associated with the graduation data reported by the OIM over the past 10 years and the District's inaction in correcting these issues. On April 8, 2015, the OIM met with MiSiS staff to discuss the persistent problems with the graduation data as it related to the data entry and management within the student information system. Specifically, the OIM recommended the MiSiS team examine the workflow procedures and MiSiS capabilities for ensuring accurate data. As had been repeatedly suggested, the system

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<sup>16</sup> FSAs are settlement agreements resulting from due process filings and are legal binding contracts.

required edits that would prevent users from entering inconsistent information and leave codes. For example, the OIM validation studies annually reported students who were coded as graduates but did not meet graduation requirements and vice versa. These edits would prevent users from erroneously coding students as graduates if the system recognized missing requirements. It was strongly recommended that edits be in place prior to the end of the 2014-2015 school year. Another concern was related to the owner of the processes and graduation data, as many departments were involved and relied on the accuracy of this data.

The MiSiS team responded with a plan for capturing, maintaining, and reporting graduation data. The District provided a status update outlining the following objectives:

1. Policies and procedures must be clearly written, communicated, and enforced across schools.
2. School administrators and school staff must be adequately trained.
3. Graduation and completion data must be analyzed for accuracy, corrected as needed, and monitored across schools.
4. Safeguards must be built into system functionality.

This resulted in reports that identified discrepancies in students' graduation data. The MiSiS team conducted an analysis of records and found approximately 7,500 students with discrepant information consistent with that described above. The District has resolved many of these inconsistencies for students who graduated in the 2014-2015 school year. This effort included all students, and the OIM recommended the District conclude its validation of graduation data of the cohort of SWDs as per Outcome 3 (Graduation) and 4 (Completion) prior to the release of this report. The District's validation findings will be reported in Part II of this report.

Part II will also include the findings of the validation efforts for data related to Outcome 18 (Disproportionality) and timely completion of annual and three-year IEPs. Although the District provided preliminary findings for Outcome 18, the OIM was unable to verify its findings prior to the release of this report.

## DISENGAGEMENT

The MCD's goal is to ensure compliance through the establishment of a system that is capable of monitoring itself while correcting noncompliance and holding staff accountable. The MCD was designed to steer the District toward this goal within a three-year timeframe. Furthermore, it created a framework with an end in mind, after which the District would no longer require federal court oversight or intervention from Plaintiff attorneys. Despite a three-year timeframe and outcomes with modest targets that never increased, the District continues to require oversight and monitoring by the OIM and Plaintiff attorneys as evidenced by the lack of progress and performance in the outstanding areas noted in this report.

As has been repeatedly stated, the keys to disengagement are and continue to be in the District's hands. Prior to concluding this lawsuit, the District must demonstrate the necessary capacity and organizational will that shows a commitment to sustaining a system that is compliant, transparent, and accountable. The District must show demonstrable effort and initiative in achieving this system.

The MCD's extension has been solely due to the District's lack of progress and setbacks owing to poor management decisions and lack of organizational will in the outstanding areas. The OIM is committed to seeing the end of the MCD. This interest has been repeatedly stated and evidenced by years of identifying problems and providing recommendations for improvement. This section will establish a clear expectation for disengagement.

The following framework outlines the District's requirements for enabling the IM to determine disengagement. Although this framework will likely remain constant, it is amendable to changes as issues of noncompliance might arise, similar to those identified in the IEP investigation. The IM will not establish timelines but will observe and monitor those established by the District.

1. Program accessibility/ADA components
  - a. Complete transition plans and program accessibility betterments within 10 years. There must be a firm commitment for funding of the proposed \$1.2 billion estimate. These commitments must be Board approved and irrevocable.

- b. Complete a sufficient number of surveys to ensure institutional commitment of at least 150 schools with completed surveys and transition plans, with 50% of these schools having completed betterments.
  - c. Establish a functioning RAP with ongoing commitment to fund requests and outreach to schools.
2. MiSiS
    - a. A solution for integrating the full participation of charters
    - b. The full implementation of the Gradebook and Passport parent portal
    - c. A commitment to comprehensive training
    - d. A commitment to system sustainability with a long-range financial and management plan
  3. Substantial Compliance – Elements of the Framework
    - a. Data system capable of monitoring key compliance and performance indicators at the District and school levels
    - b. Process for monitoring special education compliance and performance at the school level
    - c. Process for receiving and resolving compliance complaints
    - d. Complaint management system that demonstrates integrity and a basic posture of advocacy on behalf of students (The system must have a thorough, objective, and responsive investigation process.)
    - e. Process for resolving IEP disputes
    - f. Management and administrative structure with authority to monitor and enforce compliance
  4. Outcome 13 – Delivery of Services
    - a. Address all factors that might contribute to the inability to provide services. This must be a transparent and exhaustive good-faith effort to remediate factors that prevent providers from delivering services.
    - b. Leadership must be engaged and focused on finding solutions that support a provider's case and workload obligations.
    - c. Demonstrate the ability to allocate resources to support schools and providers to ensure service provision.
  5. Substantial Compliance
    - a. Meet the standards set forth in the substantial compliance framework.
    - b. Resolve the problem with the graduation and completion data inaccuracies.
    - c. Establish training initiatives to improve school and parent communication and collaboration at IEP meetings.

## CONCLUSION

This report has documented the District's progress in meeting three components of the MCD and provided updates on Outcome 10, schools of choice, the CRU, and progress in establishing a system to ensure substantial compliance. In addition, it introduced a section on disengagement. The District met Outcome 7, Placement in the LRE. Outcome 13, Delivery of Services, remains the only unmet outcome.

The 2012-2013 annual report noted the IM believed the District was "on track to successfully fulfill the requirements of the MCD within the timeframe of its own plans." This optimism was based on progress made on Outcome 7 and MiSiS at the time, and plans for addressing issues related to the Outcome 13, complaint management system, and compliance with ADA over the next two to three years. Unfortunately, the failure of the MiSiS implementation during the 2014-2015 school year, and lack of progress and delays of timelines in the District's plans for Outcome 13, complaint management system, establishing a substantial compliance system, and meeting ADA requirements, rendered this expectation unattainable. As noted in last year's report, there is no timeline for disengagement. The onus lies solely on the District.

The District is to be commended for meeting Outcome 7 and reducing the numbers of students with moderate to severe disabilities attending special education centers. Increasing students' opportunities to attend general education campuses and participate in instructional and school activities with their nondisabled peers is a sizeable achievement. The District persisted despite political and legal challenges. This effort has begun to change the District's culture and the schools in which integration is occurring; benefits to students, staff, and families have been noted. The District must continue to aggressively pursue building its capacity to ensure that

schools and programs meet students' instructional needs with proper accessibility. The District is encouraged to examine its successes and challenges throughout this process and develop a Districtwide framework for integrating students with moderate to severe disabilities.

Progress on Outcome 13 and the District's two-year plan remains a problem. The District has repeatedly demonstrated a lack of:

- urgency and commitment for addressing issues that have been reported for years;
- interest in implementing ODA and OIM recommendations;
- interest in exploring alternative measures for determining achievement with this outcome;
- capacity for monitoring and reviewing service tracking data;
- transparency and compliance with OIM directives to provide information; and
- accountability for stagnant processes.

This behavior raises a question of the District's desire to disengage from the MCD. It further raises considerable doubt about the District's capacity to establish a system that ensures substantial compliance. The high demands of a system with more than 80,000 SWDs and limited resources understandably make meeting this outcome a formidable challenge. Transparency of the problems, implementation of both conventional and unconventional strategies, and the capacity to identify and remedy noncompliance will prove credible action. Finally, providers, site administrators, and management who fail to provide, accurately report, or monitor service delivery must be held accountable.

The shortage of qualified teachers is cause for concern. The IM expects to be kept informed regarding the District's recruitment plan and anticipated shortages for the 2016-2017 school year.

This report covered extensively the persistent challenges and the District's inability to meet the obligations of Sections 10 and 17, which address accessible schools and compliance with ADA requirements. Inaction and noncompliance can no longer be tolerated by senior officials and the Board of Education. Righting this noncompliance is an aggressive effort and will require competence and accountability for those who impede progress.

Compliance with the requirements of a self-evaluation and transition plan is straightforward and has been complied with by many public entities for more than 25 years. Securing the expertise to accomplish this should not take years. The approach senior leadership have taken to comply with this law lacks consideration and regard for the civil rights of individuals with disabilities. A plan that achieves compliance in another 15 years is unacceptable. The IM expects significant progress over the next 18 months.

The District has made progress in stabilizing and addressing the many issues of the MiSiS program and is on course to meet this requirement in near future. The District is to be commended for its focus, commitment, and allocation of considerable resources for the completion of MiSiS. Despite this progress and promise, considerable challenges must be addressed prior to disengagement. This includes:

- demonstrable progress of all teachers using a single Gradebook module, with data available to parents and students as assignments, papers, quizzes/tests, etc., are completed;
- implementation of a parent portal that provides substantive student data in a timely manner (e.g., attendance, grades, discipline, and IEPs);
- agreement on, and launch of efforts to solve, the charter schools' MiSiS utilization dilemma;
- proof that the graduation process is properly managed, both centrally and in schools, and that students with disabilities are not overlooked in this process; and
- evidence of sustainable management of continuing MiSiS efforts.

An effective complaint management system is critical for ensuring a system capable of identifying and remediating noncompliance. The District has committed considerable resources to establishing such a system with the implementation of its SFSS complaint management hotline. The lack of progress with its two-year plan and poor execution of the hotline raises concerns about management's capacity to get the job done. Uniform intake protocols are critical for ensuring that a system effectively captures and maintains complaint information; the lack of these

protocols after more than two years is incomprehensible. The hotline system's inadequacy—with its extremely outdated information, blank recording, and no clear selection options for making complaints—indicates a lack of regard for parents.

The lack of progress in the development of a system that ensures substantial compliance is disappointing. The framework for substantial compliance clearly delineates the expectations and behaviors that must occur for system implementation. To ensure an effective system, the District must effectively use and commit to the development of its leaders and managers. The DSE has a capable unit for collecting and using information to make compliance determinations. However, use of this capacity at the director level has been plagued by incompetence, non-responsiveness, and complete lack of urgency to hold individuals accountable when required services are not provided. It must examine the efficacy of its management structure and individuals who do not provide effective leadership. Although the associate superintendent of special education has provided effective leadership in many areas, this District is too large for one person to manage.

The IEP complaint investigation on the authority of IEP teams brought to light an issue that parents have raised since the MCD's inception. The District must address these problems to provide a compliant IEP process that values parents as an equal member of the team. The District must demand a transparent and collaborative IEP process, with staff who are knowledgeable and authorized to secure the services and programs students require.

The IM recognizes the efforts of Superintendent Cortines on behalf of the MCD, particularly with fixing MiSiS and graduation data. His efforts to engender the Board of Education to make future commitments of \$600 million to support compliance with ADA pave the way for progress toward improving program accessibility.

The MCD has witnessed numerous school board members, superintendents, chief facilities executives, chief information officers, and senior staff over the course of 12 years. With change in leadership looming, this report included a historical perspective of the outstanding requirements that must be met. The problems associated with these outstanding obligations have been persistent and well documented. The District has met the majority of the MCD requirements, but those left will require focus, commitment, allocation of resources, and accountability. Assurances must be backed up with credible, observable, and measurable action. Ideally, the new superintendent must raise the District's commitment to meet the MCD requirements and, more important, the needs of SWDs.

Disengagement is within the District's reach and control. Accountability must not occur solely to appease the IM or the public but rather should be the result of an organization that values the students and families it serves. These final objectives must be a top priority of the superintendent and Board of Education for reasons beyond disengagement from the MCD.

#### *Essential Accountability Provisions of the MCD*

First, for outcomes that were met by June 30, 2006, 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 progress reports on the outcomes. As data become 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 not making adequate progress and the individuals responsible.

Third, the MCD authorized the IM to increase the outcome measure in the event that an outcome was not achieved by June 30, 2006, and that its achievement was delayed by more than six months. The IM will consider increasing the target of Outcome 13 in Part II of this report if credible action is not taken to address the variables discussed here.

Section 8 states that the chief administrator of special education has the authority to direct District staff as necessary to correct noncompliance with special education laws and regulations or prevent any such noncompliance. Although efforts and responsibilities to comply with the MCD might be bestowed on numerous personnel, the chief administrator of special education is ultimately accountable for compliance with the MCD and

applicable laws. This authority will be instrumental in the establishment of an effective system that ensures substantial compliance.

#### ACKNOWLEDGMENTS

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. Agreement is not always possible in such a broad and significant undertaking. However, the Parties have consistently demonstrated both the desire and ability to reach appropriate resolutions.

Although 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.

Recognition must also be given to the OIM staff, research assistants, consultants, and researchers who diligently gathered and analyzed data and reviewed documents to ensure the validity of our determinations. Their professionalism and dedication are greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Rostetter".

David Rostetter

C: Hon. Judge Ronald Lew, Robert Myers, Catherine Blakemore, David Holmquist,  
Sharyn Howell, Deneen Cox, Brigitte Ammons

Table A

#	Outcome		Status 6/30/13	Outcome Determination Status	Outcome Target	Outcome Met
1	Participation in the (STAR) Statewide Assessment Program (without modifications)	ELA/Math	86.2%	85.2%	75%	Yes 6/30/06
		Comparable to Non-Disabled	97.6%	95.0%	95%	
2	Performance in the (STAR) Statewide Assessment Program (at basic or above)	ELA	48.41%	35.74%	27.5%	Yes 6/30/11
		Math	41.58%	34.96%	30.2%	
Current Status - 6/30/15						
1	Participation in the (Smarter Balanced and alternate assessment) Statewide Assessment Program	English/Language Arts/Math	86.7%	85.2%	75%	Yes 6/30/06
		Comparable to Non-Disabled	96.4%	95.0%	95%	
2	Performance in the (Smarter Balanced and alternate assessment) Statewide Assessment Program – Met or Exceeded Standards	English/Language Arts	7.73%			Yes 6/30/11
		Math	6.13%			
	Performance in the (Smarter Balanced and alternate assessment) Statewide Assessment Program – Nearly Met, Met, Exceeded Standards	English/Language Arts	21.62%			
		Math	18.71%			
3	Increase Graduation Rate		To be determined	55.98%	39.79%	
4	Increase Completion Rate/Reduce Drop-Out		To be determined	72.4%	76.3%	Yes by Stipulation of the Parties 9/14/12
5	Reduce Suspensions of Student with Disabilities		1.50%	7.6%	8.6%	Yes 6/30/09
6	Increase Placement of Students with Specific Learning Disabilities (SLDs) and Speech and Language Impairment (SLI) in the Least Restrictive Environment		87.7%	73.7%	73%	Yes 6/30/06
7	Part 1: Placement of Students at Special Education Centers		1,277	41.69%	33%	Yes 6/30/15
	Part 2: Students at Co-Located Sites Will Participate 12% of the Instructional Day with Their Non-Disabled Peers		275	25.36%	12%	
8a	Increase Home School Placement: SLI/SLD		93.8%	92.7%	92.9%	Yes by Stipulation of the Parties 9/16/08
8b	Increase Home School Placement: All Other Disabilities	Grade K	62.2%	59.1%	65%	
		Grade 6	70.1%	65.0%	65%	
		Grade 9	70.8%	60.0%	60%	
8c	Increase Home School Placement: All Other Disabilities	Grades 1-5	61.0%	58.8%	62.0%	
		Grades 7-8	72.3%	60.3%	55.2%	
		Grades 10-PG	56.7%	41.4%	36.4%	
9	Individual Transition Plan in IEP (14 years and above)		99.9%	99.8%	98%	Yes 6/30/06

Table A

#	Outcome		Current Status 6/30/15	Outcome Determination Status	Outcome Target	Outcome Met
10	Timely Completion of Initial Special Education Evaluations	60 Days	89.2%	90%	90%	Yes 6/30/08
		75 Days	94.6%	96%	95%	
		90 Days	96.8%	98%	98%	
11	Response Time to Parent Complaints	5 Days	47.5%	54%	25%	Yes 6/30/06
		10 Days	69.7%	82%	50%	
		20 Days	93.1%	97%	75%	
		30 Days	100%	99.9%	90%	
12	Informal Dispute Resolution Prior to Formal Due Process (within 20 days)		92%	77%	60%	Yes 6/30/06
13a	Delivery of Special Education Services	SLD Only	97.6%	90.8%	93%	No
		Other Disabilities	98.1%	94.5%	93%	
13b	Delivery of Special Education Services	Frequency (# of times)	87.4%	81.8%	85%	
		Duration (length)	72.4%	68.9%	85%	
14a	Increased Parent Participation (Attendance at IEP meetings)	Attendance	84.1%	82%	75%	Yes 2/1/08
14b	Increased Parent Participation (Attempts to convince parent to attend IEP)	Sufficient Attempts	NA	96%	95%	
15	Timely Completion of IEP Translations	30 Days	97.3%	96%	85%	Yes 6/30/07
		45 Days	99.2%	99%	95%	
		60 Days	99.5%	99%	98%	
16	Increase in Qualified Special Education		92.3%	88%	88%	Yes 7/15/08 Not disengaged
17	IEP Team Consideration of Behavior Support Plans for Autistic and Emotionally Disturbed Students	Autism	75.3%	61%	40%	Yes 6/30/06
		ED	100%	97%	72%	
18	Comprehensive Evaluation of African American Students Identified as Emotionally Disturbed	% Meeting Criteria	78.5%	81%	90%	Yes 6/30/10