Office of the Independent Monitor

Modified Consent Decree 333 S. Beaudry Avenue, 18th Floor Los Angeles, California 90017

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July 11, 2016

Michelle King Superintendent of Schools Los Angeles Unified School District 333 S. Beaudry Avenue, 24th Floor Los Angeles, CA 90017

Honorable Board of Education Los Angeles Unified School District 333 S. Beaudry Avenue, 24th 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 2

Dear Ms. King 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 (BOE) concerning the progress and effectiveness of the implementation of the MCD's terms and conditions. This report is part 2 of the November 10, 2015, Annual Report, and provides an update of outstanding MCD outcomes and requirements.

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 update, the District had met the requirements of 17 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 two outcomes (Outcome 13: Delivery of Services and Outcome 16: Increase in Qualified Providers); making schools, services, programs, and activities accessible; and MiSiS. It also includes discussions regarding schools of choice, updates on Outcome 10: Timely Completion of Evaluations, the spring annual hearing, the complaint management system, progress on the District's capacity for ensuring substantial compliance, an update on the corrective actions of the Individualized Education Program (IEP) complaint investigation, and the criteria for disengagement.

The MCD outcomes are statistically based. The remaining outcome has three data targets 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 Plaintiffs' Counsel, the District, and the Office of the Independent Monitor (OIM) (Parties) agreed to the protocol used to measure performance for each target. Data used in the analyses is validated and derived from District data sources. This report's appendixes contain studies and other analyses the IM used to determine the District's performance of the outcomes.

This report addresses the following outcomes:

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- Outcome 13: Delivery of Services
- Outcome 16: Increase in Qualified Providers
- Outcome 10: Timely Completion of Evaluations (update)

It also includes information on:

- Making District schools, programs, and activities accessible
 - o Rapid Access Program (RAP)
 - o New schools and repair and renovation
 - o Section 17---Substantial Program Accessibility Compliance
- Schools of choice—charter and magnet schools
- Data systems—MiSiS
- Annual hearings
- Complaint management system
- IEP complaint investigation corrective actions
- Substantial compliance
- Disengagement

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 illness (a maximum of two consecutive weeks), 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 programs (RSPs) and related services such as speech and language therapy, occupational therapy (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 specified in a student's IEP. This outcome requires the District to maintain accurate service delivery records of thousands of special education teachers and service providers in the Welligent system. Outcome 13 has three performance measures. To date, the District has met two of the three, with the duration target remaining and considerably below the 85% target (72.4%).

This report updates the progress on the District's two-year plan that extends through the end of the June 2016. It also addresses the District's responses to the IM's directives included in part 1 of this report. Progress toward the three targets will be updated in the IM's 2015-2016 Annual Report issued during fall 2016.

Two-Year Plan Update

On June 20, 2016, the District provided an update on progress with its two-year plan. The plan was originally to have been completed by March 2015; the District extended the timeline through the end of the 2015-2016 school year. The District reports that of the 35 actions in the plan, five remain outstanding. These actions require technology development to enhance service tracking and self-monitoring.

Substitute teachers for RSP classes have not had access to the track service delivery in the Welligent system. This access will be available in fall 2016. A service record will now be automatically generated via a link from the Welligent FAPE Part 2 section. This means providers will no longer be required to create service records manually,

a task that providers reported as time consuming and challenging due to technological limitations when students transferred schools.

The District is creating dashboards and alerts to facilitate monitoring by supervisors and providers. The alert system will automatically generate emails notifying central office staff, school administrators, related service providers, and resource specialist program (RSP) teachers when services have not been documented at the frequency and duration per students' IEPs. This effort encompasses three actions; the District reported it would provide a revised timeline for two actions by the end of June 2016. The third project has been modified, and no additional information regarding the timeline or nature of the change was provided.

The two-year plan has now surpassed three years. Since its last update, the District has not provided any evidence or documents that show changes in policies, procedures, and practices as a result of these requirements. It simply reported that actions have been completed. For example, the March 15, 2016, update includes comments of actions or products that would be a result of these efforts. These actions were not reported as completed.

- A-1-1. Establish service provider workgroups to study caseload versus workload issues to develop effective practices and policies.
 - Effective scheduling practices and assignment processes for most related services programs are complete. Once process for all programs is complete, revised documents will be submitted by the end of 2014-2015 school year.
- A-1-7a. Research strategies for reducing the number of IEP team meetings held annually including authorization under the Individuals with Disabilities Education Act (IDEA) to modify an IEP without convening a formal IEP team meeting provided parent/guardian agreement has been obtained in order to reduce number of meetings held to amend current IEPs.
 - The District will conduct an analysis regarding the root causes of multiple IEPs for some students conducted annually. The analysis will inform best practices regarding assessment, service delivery and implementation of the IEP. This analysis will be conducted annually as an element of substantial compliance beginning in 2015-2016.

The District must provide the necessary documentation, reports, and updates with dates of when these actions were completed by July 29, 2016. The District is encouraged to meet with the OIM to discuss the progress and completion of these actions and proactively provide updates.

IM Directives in Part 1 of This Report

Part 1 of this report included several directives to address areas that might be impacting progress on this outcome. Excerpts from that report and updates are provided below.

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 nonpublic agency (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.

The District did not provide information regarding problems with staffing levels or schools that have been identified as uncovered by a service provider. However, the recruitment plan for Outcome 16 provides some insight into the District's staffing needs. The table below shows actual and projected hires by service type for three school years as well as those projected for 2016-17. This indicates the District's considerable need for speech and language therapists, school psychologists, OTs, and adapted PE teachers. Given these actual and projected needs, it is reasonable to assume the District will require a staffing plan for uncovered schools and a contingency plan, such as contracting with NPA providers or offering compensatory services if these positions cannot be filled.

Similarly, the District needs hundreds of special education teachers. The projected need for the end of 2015-16 was 625 new teachers, and an estimated 850 more for the 2016-17 school year.

Table 3. Actual and Projected Hires by Service Type and Year

Service Type	2014-15 Total Hires	2015-2016 Year-to- Date Hires as of 9/29/15	2015-16 Year-End Hires (Projected)	2016-17 Total Hires (Projected)
Speech and Language Therapist	52	27	62	90
School Psychologist	65	37	45	75
Occupational Therapist	26	11	28	35
Adapted Physical Education Teachers	14	6	17	20
All others, including, Audiologist, Deaf and Hard of Hearing (DHH) PT, Recreational Therapist, Visual Impairment (VI)	15	20	18	40
Total	175	101	170	260

The following is an additional directive from part 1 of this report.

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.

On February 12, 2016, the District provided a packet of documents responding to the directives above. As evidence of accountability measures taken, several Welligent 300 reports and Summary of Documentation Compliance Follow-Up reports were provided. The 300 reports included two missing services reports for students attending nonpublic schools (NPS), and one SER311 30-day Service Report Single School. Although these reports are examples of the tools available for case management and identifying noncompliance, it provides no information on the accountability measures taken when services were not delivered. The reports continue to identify the target for meeting service delivery at 85%. This target is inconsistent with the requirements of this outcome, which requires 85% of the students in the sample to receive 100% of their services. This is misleading to providers who are tasked in considerable efforts to track and maintain service delivery information.

Two Summary of Documentation Compliance Follow-Up reports for school psychologists and speech and language therapists were included and provide information on providers who have failed to review or print 300 reports, steps taken by administrators for assistance and guidance, and follow-up steps. The following types of progressive discipline were noted: informal email reminders, informal meeting in person, informal conference memo, formal conference memo, and formal disciplinary notice. It was noted that some providers were notified repeatedly of their failure to comply with District policy; however, it was unclear whether the follow-up actions exercised progressive discipline.

The packet included information regarding professional development and materials (i.e., OT and PT handbook) of various related service departments for maintaining Welligent tracking logs and the use of specific 300 reports for managing caseloads and service delivery. One PowerPoint mentioned a tool providers use for reviewing caseloads in Welligent. This feature, My Caseload, lets users view active caseloads by location and includes student-level information on the number sessions scheduled, completed, and cancelled. It also includes a color-coded alert level to notify a provider of missing sessions. Although this feature does not include the student's service prescription (frequency and duration minutes), the 310 report does, allowing providers to cross-reference.

The IM recognizes the ongoing weekly and monthly efforts made to monitor and track service delivery by providers, RSP teachers, supervisors, local district special education staff, and related service coordinators. Previous reports

and studies, including focus groups of service providers and supervisors, have noted many dedicated professionals working to improve service delivery and compliance. These efforts have been persistent despite many challenges associated with workload capacity.

The IM has directed the District to provide caseload and workload information for the past two years. Senior leadership, including the Office of the General Counsel (OCG), have ignored this directive. The District is once again directed to provide caseload information for all services, including RSP. The District must provide all data from the My Caseload module and those captured in the 310 report. It is unclear why the District has not provided this information, given having such capacity for years. This information must be provided by July 29, 2016. The IEP Complaint corrective action also directed the District to address limitations created by caseload assignments by establishing a system for determining assignments based on workload. Furthermore, as identified by the District's recruitment plan, there is a high need for new personnel. It can be reasonably concluded that staffing and caseloads are an ongoing challenge that impact service delivery.

Lastly, part 1 of this report noted:

Although the targets of this outcome have never increased, the IM will consider an increase in part 2 of this report if the District continues to fail to implement real changes in policies, procedures, and practices.

The District's lack of transparency and refusal to respond to the IM's directives continue to impact the ability to determine the District's commitment to address the problems to ensure service delivery. The IM will make a determination on increasing the target of this outcome after the results from the 2015-2016 services study are available. The District is advised to act in good faith and respond to all directives as well as engage in a collaborative process with the OIM for examining the problems and possible solutions. It is the District's responsibility to provide periodic updates and demonstrate evidence of completion. These efforts must translate into improvements in service delivery and accountability.

During the 2016-2017 school year, the IM will pursue a working relationship with staff responsible for implementing these initiatives and efforts, including related service coordinators and supervisors, and local district Special Education Service Center (SESC) administrators. The IM hopes the new senior leadership, including the OGC, embraces transparency through direct communication and a working relationship between the OIM and those carrying out these efforts.

To reiterate, 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.

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	# of Special Education Teachers	# of Intern Teachers	# of Provisional Teachers	Qualified Special Education Teachers	% Qualified Special Education Teachers
2015-16 6/15/16	4,231	282	166	3,783	89.41%
2014-15	4,030	217	93	3,720	92.31%
2013-14	3,909	138	1	3,770	96.44%
2012-13	3,884	145	0	3,739	96.27%
2011-12	3,940	156	0	3,784	96.04%
2010-11	4,051	225	2	3,824	94.40%
2009-10	4,242	304	37	3,901	91.96%
2008-09	4,321	358	123	3,840	88.87%
2007-08	4,183	308	198	3,677	87.90%
2006-07	4,193	390	316	3,487	83.16%
2005-06	4,003	405	317	3,281	81.96%
2004-05	Data unavailable	Data unavailable	Data unavailable	3,063	72.3%
2003-04	Data unavailable	Data unavailable	Data unavailable	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, 2016, 89.4% of the District's special education teachers were fully credentialed. There has been no progress since the previous report, which noted 89.7% as of October 15, 2015. The District stated it was engaged in a recruiting campaign to address state and national shortages.

Part 1 of this report directed the District to provide information on its recruiting campaign by January 15, 2016, and report on its progress by June 30, 2016. On January 12, 2016, the District provided information regarding the recruitment campaign for the 2016-2017 school year. The document cites a 27% decline in the issuance of Education Specialist credentials in California between 2010-11 and 2013-2014.

The recruitment plan included a multilevel approach for recruiting special education teachers and related service providers. The plan includes efforts for developing teachers Districtwide through its longstanding Career Ladder program; recruiting from institutions of higher educations at the local, statewide, national, and international levels; and recruiting through professional organizations.

The internal efforts include the support of current special education paraprofessionals by providing mentoring and financial support to assist them in obtaining teaching credentials. The District is also exploring the creation of a certification program in which paraprofessionals earn a certificate as a registered behavior technician (RBT).

The recruitment campaign includes a description of efforts to recruit at local and statewide institutions of higher education and internationally (Canada). The document includes year-to-date certificated hires (special education teachers, and related service providers), which reported almost 488 new hires by September 2015 and projected 625 hires by the end of June 2016 and 850 by the end of June 2017. Although the District is to be commended for these recruitment efforts, it does not appear that the efforts have yielded additional qualified special education teachers. However, conclusions will be deferred until the District provides an update on these efforts.

• **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)	
Year		#	%	#	%	#	%	#	%
2015-16	16,317	14,823	90.8%	15,615	95.7%	15,933	97.6%	384	2.4%
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.¹ 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.

¹ 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.

This update is being provided due to concerns about the decrease in performance for completing timely evaluations between the 2012-2013, 2013-2014, and 2014-2015 school years. Although performance improved during the 2014-2015 school year, the District did not comply with state and federal timelines for approximately 11% of all IEPs held and was being monitored by the California Department of Education (CDE), which threatens to withhold federal funds for such noncompliance.

The District continues to show progress meeting two of the three targets; however, it continues to hold approximately 9% of all IEPs after the 60-day timeline. Timely completion of evaluations is a primary indicator of substantial compliance.

On May 15, 2015, the IM provided the District a letter that noted the superintendent's commitment to the BOE for completing initial evaluations and IEPs in a timely manner. It acknowledged that this issue was being monitored by the 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.

At the time of the part 1 of this report, the District failed to provide this information. On December 24, 2015, the OGC submitted a response that had been prepared in June 2015, noting that District staff did not provide it to the OGC at that time. The response also provided CDE documentation regarding noncompliance with meeting timelines of IEPs and triennials.

The complaint was based on 11 students who had been identified as noncompliant for more than one year, despite the CDE's efforts to get the District to correct noncompliance. As a result of continued noncompliance, the CDE made a preliminary determination the District was not eligible for assistance under Part B of Individuals with Disabilities Education Act for the 2015-16 school year, noting it would begin withholding funds. The CDE also noted another 3,223 students with noncompliant IEPs had been identified, stating that the District had to demonstrate correction of these cases. It also required the District to report monthly on the status of all noncompliant IEPs. The District responded to the 11 cases and stated it had a plan to address the 3,223 overdue IEPs.

The response to the IM's May 15 letter noted that, in 2014-2015, any school with at least one overdue IEP was monitored. A senior official would email the site principal with the name of the student whose IEP was overdue and a link to an electronic form where an explanation could be provided for the overdue IEP and/or corrective action taken.

A school with at least five overdue IEPs or 2% of the school's special education population is considered a "Target School." It received a similar notice and was required to provide an explanation. For Targeted Schools with overdue IEPs for two consecutive months, local superintendents were requested to follow up with the instructional directors overseeing the school's principal.

The Data Management and Reporting Unit (DMAR) is responsible for tracking overdue data and providing this information weekly to local District superintendents and the SESC administrators who oversee assistant principal of

elementary instructional specialist (APEIS) and least-restrictive environment (LRE) positions. Principals receive data monthly. Data on overdue IEPs is also tracked and distributed to NPSs, charters, and the infant/preschool program.

DMAR is responsible for reviewing the responses submitted by schools with overdue IEPs and sharing the findings with SESC administrators. The unit also assists schools via email and telephone when additional support is needed. DMAR validates data accuracy by cross-referencing different reports and reviewing student-level data.

Four reports assist schools in monitoring compliance with IEP timelines. These include:

- IEP 200—Time Sensitive IEPs—Action Required Support
- IEP 201—Assessment Plan and IEP Calendar—by Next Due Date
- CLSS101EL—School SESAC Student Details (School or ESC) report
- Timeline Activity Report to Monitor Initial and Reevaluation IEP Timelines

The monitoring effort reported noted that Intensive Support and Innovation Center (ISIC) and NPSs had the highest rates of overdue IEPs. To address this noncompliance, instructional directors and Education Service Center staff met with ISIC Target School principals and staff to develop a process for scheduling IEPs and reviewing reports. The District notes that these efforts reduced overdue IEPs dramatically but did not provide specific information on the number of schools or students impacted. An investigation of the overdue IEPs at NPSs revealed that many overdue cases were a result of students having left the school but their IEPs remaining active. To address this problem, a system was being created to inactivate NPS students after 20 consecutive days of nonattendance that are not attributed to illness. This information has not been verified by the OIM and it is unknown if other local Districts had overdue IEPs that were not resolved or if follow-up occurred.

As mentioned above, CDE is monitoring the problem of overdue IEPs. DMAR matched students identified as overdue by the CDE who continued to be noncompliant as of May 2015, and requested schools prioritize these IEPs. The impact of this effort is unknown.

Overall, the District is commended for establishing a process to identify and communicate noncompliance of overdue IEPs. The role of DMAR is an example of the importance of having empowered internal capacity to maintain data and utilize it to identify and correct noncompliance. Furthermore, this is an example of progress when District staff (i.e., DMAR) and the OIM work collaboratively.

Over the past few years, the Plaintiffs' Counsel and parents have noted instances wherein the District denied making assessments using informal methods that do not comply with law. Part 1 noted that the OIM will review assessment data as well as CDE and dispute resolution findings to determine whether these practices occur systemically. This will occur in the 2016-2017 school year.

◆ 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. This section summarizes the District's progress toward meeting the requirements of Section 10 and 17 since part 1 of this report.

\$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. This program was to provide flexibility to direct minor renovations in an expedited manner so students could participate in programs and activities.

Part 1 of this report included an update on the revised protocol for processing RAP requests and the new involvement and oversight by the ADA compliance manager. The report pointed out concerns with parts of the process, in particular, the role of principals as first responders and in resolving program access problems. It was noted that requiring more than 1,000 principals to possess such knowledge would require extensive training to ensure adequate implementation.

Since part 1 of this report, the OIM visited 20 sites as part of its monitoring efforts under Sections 10 and 17. During these visits, discussions with school administrators indicated that the majority had no knowledge of the RAP program. The OIM informed the administrators of the nature of the program and provided copies of the request form via email and hard copies. This observation highlights the need for more outreach regarding this program and its role established in the Districtwide Transition Plan for improving program accessibility.

At the time of this report, the District had not submitted any additional information regarding the revised process, the IM's concerns raised, or any project request and completion data. In addition, the OIM has yet to receive and review the training materials despite directing the District to provide these materials for approval in the 2013-2014 Annual Report, and raising this requirement once again in part 1 of this report.

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 continue to 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,
- 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 addressed earlier, this discussion focuses on the other requirements of Section 17.

The District continues to struggle with meeting these requirements and has demonstrated no progress since part 1 of this report. Although the District designated an ADA coordinator, it has decided to not renew his contract and is once again conducting a national search. It has yet to produce an acceptable Districtwide Transition and Self-Evaluation Plan. The following is an update from the previous report, which provided a lengthy and detailed description of the longstanding problems with meeting ADA requirements as well as concerns from the four iterations of a Districtwide Transition Plan.

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. These documents were reviewed extensively in part 1 of this report.

Since the last report, several noteworthy events transpired, including:

- The BOE approved \$600 million for moving the District toward compliance with ADA.
- In February 2016, a fifth version of the Districtwide Transition Plan was submitted.
- The OIM issued a report on the conditions of changing areas at Preschool for All Learners (PALs) classes.
- The OIM issued a report on the effectiveness of the 20 scopes of work submitted by the District for standalone ADA projects.
- The District did not renew the contract of the ADA compliance manager.

Districtwide Transition Plan Update (February 9, 2016)

On February 9, 2016, the District submitted its fifth revision of the Districtwide Transition Plan. After a meeting with the OGC and ADA compliance manager on February 12, the OIM provided a set of clarifying questions and requested additional information in order to provide feedback and respond to the revised plan. The District provided a response to this request on February 19. Several days later, on February 23, it provided Barrier Removal Reports (BRRs) for 13 schools slated for future modernization projects. The BRRs for the 20 stand-alone projects were delivered on March 11.

On March 1, 2016, the IM provided the District a letter with feedback (Attachment A) noting that the new version of the Districtwide Transition Plan contained considerable changes from previous plans and would require additional information and discussion. On March 11, the District submitted a response (Attachment B) to 38 questions or concerns from the IM's March 1 letter. This report will focus on some of the issues raised. Despite a response from the District, some explanations will require additional discussion due to inconsistencies and/or lack of clarity.

The IM stated that the revised plan "lacks credibility as the District was not able to fulfill its first obligation for completing the 33 BRRs by December 31, 2015, as noted in the document LAUSD Transition Plan (10 years)." The District responded that 29 of the 33 schools had been completed by the deadline and that one survey had to prioritize barrier identification for removal by Asset Management, for the development of the scope of work. While

the District contended the majority of surveys had been completed, some were still incomplete and the final BRRs were not provided to the OIM until late February and early March.

The IM raised issue with the District's assertion that it had engaged in ADA improvements and betterments totaling \$678 million since the year 2000. The District first made this assertion at the Parents' Council meeting held on January 11, 2016. The IM questioned the validity of this new claim and asked the District to provide information on how this work had been determined to be compliant and how much money was spent on surveying and repeated repairs at new schools.

The District described a process for how work was determined compliant, which states:

The Facilities Services Division (FSD) is confident that the work is compliant with state and federal requirements. Also, these projects are designed by a licensed architect, reviewed and stamped by DSA (Division of State Architect), inspected by DSA and certified by DSA.

The IM noted that this explanation was merely an assurance of the FSD's confidence in a process that had failed repeatedly in previous projects submitted as part of the MCD, with these failures having been well-documented. Furthermore, the IM stated that this assertion is not evidence that the District reviewed, inspected, or determined work to be compliant. The IM concluded that this assertion suggested a considerable effort by the District that must be validated to ensure it is credible for the public and Plaintiffs' Counsel. The District was directed to provide evidence of compliant betterments, including surveys, and the approval process for these projects.

In its March 11 letter, the District reiterated its assertion about the \$678M claim, noting it was a response to the IM comment in part 1 of this report that the District has a "longstanding history of noncompliance with the ADA and Section 504 of the Rehabilitation Act." It further stood behind the process followed by DSA and the FSD to ensure compliance.

In response to the question about how these expenditures were derived, the District provided a handout showing how the \$678M had been determined, using a percentage factor of cost of new schools or modernization projects. The majority (70.5%) was attributed to new construction and derived from a 5% factor of the total construction cost. Regarding the percentage of new construction cost attributed to the \$678M expenditures, it stated that \$199M was associated with renovations at existing facilities "in full compliance with ADA Title II and CBC [California Building Code]."

The IM determined that the District cannot claim new construction as ADA betterments because new construction is expected to comply with ADA and CBC standards. This would be analogous to asking for more money for seat belts in a new car when they are mandated by law. It was also noted that the District had yet to demonstrate betterments resulting from surveys and transition plans.

The District disagreed with the notion that no betterments had resulted from the survey and transition plan process, pointing out the nine projects recently completed for Outcome 7 schools. This small number of projects and betterments did result from a process that included partial surveys at the selected sites. They represent a very small percentage of projects and expenditures the District claims to have completed since 2000.

The District did agree that new schools are required to meet ADA and CBC requirements and stood behind the inclusion of new schools in ADA work, citing alignment with Title II requirements. The District contends that these regulations allow that "newly constructed facilities provide the District an opportunity to retire or close existing facilities that are no longer safe, operationally cost prohibitive or fail to provide program access." This interpretation fails to view the intent of the regulations, which is to help public entities transition into compliance with the law, and was supposed to have occurred by January 26, 1995. Even if the District applied this interpretation, it would need to identify existing sites that were replaced by the new construction. It seems unlikely that this has occurred with much frequency, but the District is welcome to provide this information, particularly for new construction that replaced existing structures between the date public entities were to achieve program accessibility, January 26,1992, and the

deadline for making structural changings in compliance with the law by January 26, 1995. However, new schools will not be considered ADA betterments.

Another source of contention was the discrepancy between the estimated cost of the entire barrier removal commitment, which was noted at \$1.295B, while the District had received BOE approval for \$600M. The IM noted the estimate was based on surveys from 10 elementary schools and should not be considered representative. Since the District had recently completed surveys at 11 middle and high schools, the IM directed the District to provide a summary of the survey findings as well as an analysis of the impact on the cost for the barrier removal program. The IM questioned the plan's contention that bond funds would primarily be used to execute modernization and new construction projects, and requested information on how monies would be credited for modernization projects. The IM stated that the \$600M allocated could not be used for new construction until the District was in full compliance with ADA.

The District responded that the original estimate of \$1.295B was overinflated due to the method used to calculate the anticipated cost. It explained that the estimate was based on "10 representative sites where comprehensive surveys had been completed...." It noted that this was not in alignment with Title II of the ADA and that the District misapplied the ADA Title II requirements; therefore, the original estimate did not reflect the actual costs for removing barriers. It is unclear what requirements were misapplied, but it appears to insinuate that the District is not required to conduct surveys that would identify all barriers. This was confirmed at the February 12, 2016, meeting with the OGC and ADA compliance manager.

The District further stated that its considerable effort to improve program accessibility could also result in reduced costs of the barrier removal program. The District claimed that the 11 middle and high schools recently surveyed "were specifically developed to provide data for 'project planning' not as an actual listing of ADA program barriers and as such are not included in estimating overall program budget." It is unclear how this is a response to the directive of providing a summary of findings and the impact on the estimates. There is sufficient history to expect estimates to vary by school size and features, particularly with comprehensive high schools that have larger auditoriums and athletic fields. It is unclear why the District contends the estimate is an overestimation of actual costs based on the sample, which included comprehensive surveys.

The District noted that the BOE approved the \$600M for stand-alone barrier removal projects and that modernization and new construction projects will be funded with bond dollars from a separate allocation. The IM questioned if funds would be used to cover overhead or administrative cost, to which the District stated monies would be used for direct costs, "defined as anything reasonably attributed to the project." This definition leaves the door open for interpretation of what direct costs include. The District must provide a list of these reasonably attributed costs. It can be assumed, given the District's multibillion building program, that direct costs can be defined more specifically.

The IM questioned the process for selecting schools slated for surveys and barrier removal, particularly since some schools surveyed will not have barriers removed until 2020—five years after completion of the surveys. The OIM also pointed out that schools selected for survey did not coincide with those planned for barrier removal. For example, the District had completed surveys at 10 high schools and anticipated completing surveys at four more sites, while it will begin removing barriers at its first high school in 2018 and one additional site in 2019.

The District explained that "modernization projects are selected under a separate process than is applied to the stand-alone barrier removal process," and these are "projects in which the surveys and resultant Barrier Removal Reports were developed to assist project planning data to develop project scope." It noted that these projects were part of the Comprehensive Modernization projects to which the District would be allocating \$1B to renovate. In response to the surveys at 10 high schools that are not part of the immediate Barrier Removal program, the District stated "the surveys completed at the 10 high schools are for comprehensive modernization projects and do not necessarily contain barriers to program access" and claimed that including modernization projects in its transition plan is consistent with Chapter 3 of the ADA Title II Action Guide for State and Local Governments. In its response, the District provided the following excerpt from this guide to show its approach to align with this resource:

Title II obligations are ongoing. Once the transition plan is in place, the entity must ensure that all required modifications are made in a timely manner. To accomplish this, the public entity's periodic capital planning and budgeting process must go hand-in-hand with the transition plan. Many units of government have long-range capital plans for facilities they own; barrier removal projects can often be planned to coincide with other schedule capital improvements.

Despite this explanation, it remains unclear why the District chooses to expend its limited resources on surveying schools outside the barrier removal program and will not have barriers removed for several years. It is unfathomable how the District can claim that the 10 high schools surveyed as part of the modernization effort "do not necessarily contain barriers to program access" when the 33 surveys provided to the OIM had hundreds of barriers identified. In addition, over the years, the OIM has walked many schools, with observable barriers that impact program access, including new construction that was to be fully compliant. The explanation and reference from the *ADA Title II Action Guide for State and Local Governments* might have made sense at the time of its publication in 1992, when public entities were executing transition plans to get into full compliance with the law. The District is correct in that its Title II obligations are ongoing. However, the District has failed to have a transition plan in place after more than 20 years, never mind ensuring all required modifications having been made in a timely manner.

The District is free to expend its limited resources as it deems fit. However, these decisions and explanations for surveying schools under the barrier removal program that are not slated for renovations for several years shows a lack of urgency in making services, programs, and activities, programs accessible at schools. It shows little interest in disengagement from the MCD and seems to be driven by other priorities and agendas. Senior staff making these decisions should walk schools and talk with staff, as seeing the daily needs of students and staff may influence the bureaucratic decision making reflected in this plan.

The OIM raised concerns with the site surveys provided, noting that the District applied one date for the barrier removal of all noncompliant items found at that school. The OIM stated that dates for priorities should be determined based on factors such as the need for access by students and staff, and the degree of deviation from the code. Easy-to-remove barriers should have earlier dates of removal, and schools should not have to wait for a modernization project or an arbitrary date to have barriers removed. For instance, adding grab bars where none exist, removing door stops, and adding signage can be done without waiting for the entire construction project to begin.

Regarding the IM's concern that all identified barriers on the surveys contained one removal date, the District did not provide an adequate or comprehensible response, stating that the Access Compliance Unit (ACU) provides data inputs to Asset Management and that "data input in the form of Barrier Removal Reports are not necessarily indicative of barriers to program access." Similarly, in response to the OIM's assertion that easy-to-remove barriers should have earlier dates of removal and should not require schools or students to wait for larger construction projects to gain access, the District stated:

Installing grab bars, removing door stops, installing signage, etc., for buildings that may be demolished is not a cost effective method or prudent use of public funds. It is always preferential to provide newly constructed facilities as opposed to retrofitted buildings.

Although this response did not address the notion that the District could prioritize some barriers to be removed quickly, it did provide a broad contention that it does not have to address barriers in buildings that might be demolished. This approach may be indicative of a Districtwide demolition plan of schools that has not been revealed to the OIM, and if so, the District should provide a schedule and list of schools slated for closing and demolition. However, this approach for compliance does not address the needs of individuals with disabilities who are denied program accessibility until a new building is constructed.

The OIM questioned the departure from conducting comprehensive surveys for identifying all noncompliant conditions at sites to one that addresses only programs, services, activities, and areas of public access. The process now requires ACU staff to identify areas of program access through interviews of school administrators, limiting surveys to the areas identified. The IM noted that:

This new approach for identifying only barriers that impact program access, as determined by the ACU and school administrators, is of serious concern. The District does not have a lengthy track record of conducting quality comprehensive surveys and is now increasing the subjectivity of the process, which might include individuals who lack training or insight to adequately identify areas of program access.

The District contends this approach is consistent and complies with ADA Title II regulations. This issue will require additional discussion to resolve. The OIM will continue to examine the effectiveness of the processes the District uses and will make determinations based on whether these efforts achieve program accessibility.

Due to all the concerns with the revised draft transition plan, the IM directed the District to "cease all current and future construction efforts until completed surveys and BRRs are reviewed by the OIM and determined to be valid." The District noted that the directive was cause for concern, citing several procedures that had already been put in place, and that it would stall efforts to remove barriers to program accessibility.

In March 2016, the OIM visited Lawrence Middle School and Broadous Elementary School to better understand the processes outlined in the plan. The IM raised concerns that the BRR for Lawrence MS contained only a few barriers to be removed, while the original survey had more than 50 pages of noncompliant findings. On March 25, 2016, in response to the District's March 11 letter, the IM expressed the following concerns and guidance:

I have many more doubts about the District's plan, internal and external capacity, and organizational will for complying with the ADA. However, I do not believe that going back and forth on the plan's content will yield a better strategy, as it is apparent that the District believes in its plan and leadership to ensure compliance with law

As I noted in the meeting, the Modified Consent Decree does not give the Independent Monitor (IM) the purview to approve the District's Transition Plan. However, it does charge me with determining, based upon my judgment, that the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations.

The implementation of a District-wide transition plan and compliance with the ADA cannot wait any longer. As I stated in the meeting, the District is free to implement any plan it deems fit to meet this obligation. I intend to monitor whatever plan the District chooses to implement and to determine if these efforts align with the letter and intent of the law to ensure compliance. Our agreement on an approach to achieve compliance is not necessary; however, the OIM will continue to monitor the District's independent progress utilizing national experts.

Findings of Site Visits

To better understand the processes outlined in the Districtwide Transition Plan, the OIM engaged in multiple site visits between March and June 2016. This included site walk-throughs to examine the effectiveness of the surveys provided. During the course of the site visits, several issues were brought to the District's attention and will be discussed later in this section.

On March 29 and 30, 2016, the OIM and its consultants visited six schools to gauge the effectiveness of the BRRs (provided by the District in February 2016; referred to as scopes of work [SOWs]) for ensuring program accessibility. The OIM also conducted a SOWs desk audit—which included a comparison of the SOWs with the Architectural Access Surveys submitted to the OIM in August 2015—to examine whether the SOWs adequately addressed program accessibility.

Report on the Effectiveness of the Scopes of Work to Ensure Program Accessibility (May 20, 2016)

On May 20, 2016, the OIM issued a report on the effectiveness of the scopes of work for ensuring program accessibility (Attachment C). The report included analyses of the original surveys and SOWs of the 20 sites; the implementation of the process outlined in the Districtwide Transition Plan was also included. Of these sites, the OIM selected six for walk-through visits.

An initial observation of the desk audit was the significant differences of barriers identified for removal between the original surveys and the SOWs. For example, 153rd Street Elementary had 716 barriers identified in the 2015 survey, whereas the 2016 SOWs included 20 findings and barriers to be removed. A review of the numbers of findings removed from the SOWs at each of the sites shows a high percentage of barriers that will not be addressed or remediated (Table 4).

Table 4. Programmatic Barriers Identified by School

School Site	2015 Survey Report	2016 SOW Report	Number of Findings Removed	Percentage of Findings Removed
153 rd Street Elementary School	716	20	696	97.2%
52 nd Street Elementary School	421	33	388	92.2%
6 th Avenue Elementary School	407	10	397	97.5%
Albion Street Elementary School	578	8	570	98.6%
Ambler Avenue Elementary School	581	29	552	95.0%
Annandale Elementary School	398	25	373	93.7%
Blythe Street Elementary School	396	64	332	83.8%
Broadous Elementary School	754	26	728	96.5%
Coldwater Canyon Elementary School	481	38	443	92.0%
El Sereno Middle School	1,317	30	1,287	97.7%
Erwin Street Elementary School	809	17	792	97.9%
Kennedy Elementary School	656	6	650	99.0%
Lawrence Middle School	1,076	11	1,065	98.9%
Marianna Avenue Elementary School	324	16	308	95.0%
O'Melveny Elementary School	569	32	537	94.4%
President Avenue Elementary School	497	42	455	91.5%
Robert Hill Lane Elementary School	585	19	566	96.7%
Short Avenue Elementary School	336	34	302	89.8%
Stephen White Middle School	1,357	28	1,329	97.9%
Taper Avenue Elementary School	556	30	526	94.6%

All SOWs lacked areas that provide program access for students and persons with disabilities. This includes primary areas such as auditoriums, restrooms, and drinking fountains. The OIM raised questions regarding the process carried out and how it omitted previously identified areas of noncompliance. The SOWs also lacked evidence of prioritizing program access, with the same removal date selected for all items regardless of ease of removal.

The OIM pointed out that SOWs continue to reference the ADA Safe Harbor provisions as what could only be characterized as an excuse for not complying with the CBC standard at the time the school was built or underwent major remodeling or renovation. Many examples of the improper applications of standards and codes were noted, particularly with those the District categorized as "No Action Required" because they are state-only requirements. Through this rationale, the District contends that it follows only federal ADA standards. This is incorrect as the ADA indicates that a state standard applies if its standard is higher than the federal ADA standard.

The items noted as not requiring action because they were state requirements include:

- 1. Lavatory centerline to wall at minimum 18"
- 2. Gender use door signage on restroom entrance door
- 3. Contrasting striping on stair treads
- 4. Directional signage
- 5. Door closing speed
- 6. Level landings at stairs
- 7. Clear floor space at a platform lift of 60' x 60'
- 8. Drinking fountain not in alcove or having wing guards
- 9. Minimum 48" width for ramps
- 10. Required 4" ramp edge protection

The site visits revealed many areas of noncompliance at schools that impact program accessibility that were not included in the SOWs. The OIM's report provided specific examples of areas of noncompliance noted at each site that were not addressed in the SOWs. To summarize, problems were noted with entrances to the building and main office, with one school having only stair access. Four sites had multiple barriers to access the main office including door hardware, signage, thresholds, and door closers. All schools had nonaccessible items at auditoriums such as entrance doors, signage, and wheelchair and aisle-side seating. Only two of the six schools had access to the stage by way of a platform lift. The two lifts had multiple compliance issues. All schools had noncompliant drinking fountains, student and staff restrooms, and special education classrooms.

Overall, the report noted that:

The effectiveness of the SOWs falls short of ensuring program accessibility and meeting the ADA's transition plan requirements. The limited scope, failure to address basic common areas of program accessibility, misapplication of code and standards, singular timeline for all barrier removal, and lack of information required to be considered a site transition plan render the SOWs grossly inadequate.

The observations during the site visits did not shed insight into the District's decision making for SOWs development. Based on these observations and the number of previously identified barriers that were removed from the SOW, the OIM questioned whether the individual who ultimately decided to not address so many of the barriers identified in the 2015 surveys understands program accessibility or had walked the site.

The report addressed the District's contention that its approach to achieving compliance with the ADA is to address program access and that it only needs to survey areas identified through a process that includes obtaining information from school administrators. The OIM noted that this new approach and the reduced number of barriers identified for removal in the SOWs indicates a fundamental lack of understanding of the regulations and requirements for achieving ADA compliance.

The regulations to implement the requirements of Title II clearly distinguish between existing facilities and newly constructed or altered facilities. Existing facilities require only "program access" (28 C.F.R. § 35.150), whereas newly constructed or altered facilities must be "readily accessible" to individuals with disabilities (28 C.F.R. § 35.151).

The OIM pointed out that newer facilities, or facilities altered or constructed after January 26, 1992, are subject to more stringent requirements. Specifically, they must comply with 28 C.F.R. § 35.151. Unlike 35.150, the 35.151 standards require the following: "Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is *readily accessible* to and usable by individuals with disabilities ..." (28 C.F.R. § 35.151(a)(1)).

To be readily accessible, the facility "must be constructed in conformance with the applicable state and federal guidelines." For ADA purposes, this includes ADA Accessibility Guidelines (ADAAG), Uniform Federal Accessibility Standards, or the 2010 ADA Standards.

The District cannot claim program access for newly constructed or altered facilities because it is the incorrect standard. It must comply with the more exacting readily accessible standards under 28 C.F.R. § 35.151. To this end, the report included a review of the DSA website for projects submitted to DSA for the 20 sites. The review looked to identify projects at these sites that would constitute an alteration and triggered the requirements of 28 C.F.R. § 35.151 standards. The review found that all 20 schools have had renovations that would require compliance with the readily accessible standard. The report stated:

This small sample, and the magnitude of bond money expended since the inception of the MCD, lends to a reasonable conclusion that the majority of LAUSD sites have undergone alteration and, therefore, 28 C.F.R. § 35.150 program access standards no longer apply. The District must provide a list of existing schools (prior to 1992) that have not had a major remodeling, renovation, or modernization.

The District has yet to provide the list of existing schools as specified above. In response to the assertion that the District has completed more than \$600M worth of compliant ADA betterments since 2000, and that it determined compliance based on the confidence of the DSA process and District oversight, the OIM noted it would conduct its own case studies to analyze the processes. To facilitate the case studies, the OIM requested all District and DSA documentation for the following schools for remodeling or new construction that includes, at a minimum, but is not limited to:

- Approved DSA plans
- DSA construction and required documents
- DSA 5, DSA 6, DSA 6 A/E, DSA PI, DSA 6C, DSA 7, DSA 102, 168, 292, 301 N, and 302
- Approval letters
- Approved drawings and specifications
- Inspection reports (DSA, OAR, etc.)
- DSA closeout letters with or without certification
- Other project closeout documents

The above documents were requested for the following schools:

- Broadus Elementary School: DSA application 116171
- 1st Street Elementary School: DSA applications 116829 and 108868
- El Sereno Middle School: DSA applications 108430 and 115014
- Stephen White Middle School: DSA application 112181
- Erwin Street Elementary School: DSA applications 111452 and 112610

The District has yet to provide this information or respond to this request. The District must provide this information no later than July 29, 2016.

Review of Preschool for All Learners (PALs) Programs

As part of the monitoring efforts for reviewing the effectiveness of the 20 SOWs, the OIM observed areas of concerns with the changing areas at Preschool for All Learners (PALs) programs. On April 7, 2016, the IM provided the District a letter raising serious concerns about the health and safety conditions of the PALs programs at 153rd Street and Broadus Elementary schools. Specifically, the District was informed about the lack of changing tables, privacy screens, ventilation, and running water. Noting that these problems had been raised in the past, the IM directed senior officials responsible for program placement, as well as the ADA compliance manager, to meet at the sites on April 11.

On April 8, 2016, the District responded that staff were deployed to investigate these conditions but that staff could not be made available at the set time due to the short notice provided. The IM pointed out the contradictory response as staff was not available to visit these sites with the OIM but had been immediately deployed to investigate the situation.

To gain a better understanding of the problem, the OIM visited an additional 11 sites with PALs programs. On May 6, 2016, the OIM provided the findings of the site visits, including photographs of the conditions, and next steps, which include the District submitting a plan to address these deficiencies (Attachment D).

The review found that all 13 sites shared common problems indicative of systemic failures to ensure program accessibility and the health and safety of SWDs. The findings at the 13 schools demonstrated evidence of a lack of planning when selecting schools to place programs for preschool SWDs. In all schools visited, conditions were observed that were noncompliant with ADA and the District's own procedures as well as existing manuals, guidance, and health and safety standards in California code and county requirements. Classrooms lacked the necessary equipment, including appropriate changing tables, privacy screens, ventilation, and running water.

Several schools used desks as changing tables, one changed students on a mat on the bathroom floor, and one program with two classrooms had no changing tables. Some schools had changing areas in private bathrooms or toilet compartments but lacked the necessary clear floor space or adequate stepping stools. In all cases, these bathrooms lacked basic compliant features, including acceptable heights, application of grab bars, toilets, dispensers, or lavatories. Many of these sites also lacked privacy screens, with staff changing students in open classrooms behind pocket charts or nothing at all. At one school, the OIM entered to find students being toileted in the bathroom with the door open, visible to adults and students. A staff member explained that District policy requires two adults to be present, and therefore the door remains open during toileting or changing.

At one school, staff expressed concerns over loss of instructional time, as several classrooms with 18 total students used the one bathroom for toileting and changing. Similarly, concerns over staff safety were also raised, noting that they lacked the appropriate stepping stools and were required to lift many students, multiple times a day, onto the table.

A lack of program access across the sites was also noted. The majority lacked essential program accessibility features in bathrooms, common areas such as auditorium and lunch areas, drinking fountains, and vertical access to programs in bungalows or two-story buildings. One school's main entrance was accessible only by stairs. These findings raise concerns regarding the planning and decision-making processes for placement of the PALs programs as well as ensuring educational continuity in the instructional and special education service delivery programs.

The IM noted that these findings were indicative of:

no uniform procedures for establishing changing stations or the site-selection process for PALs programs. The variability and inadequacy of changing stations is evidence of a lack of systemic processes that ensure program accessibility, and health and safety conditions. It is also indicative of a lack of support to schools and poor leadership by DSE [Division of Special Education] and FSD professionals.

The IM also pointed out that these failures were in violation of District polices, practices, and procedures. In particular, the District's *Special Education Paraprofessional Handbook* (2013), established procedures for changing students on tables, requiring paraprofessionals to secure a safety belt around the student. Many of the non-industry-standard tables being used—like desks—prohibit staff from complying with these procedures.

Furthermore, the lack of privacy screens and practice of changing students in open classrooms or bathrooms showed a disregard for students' dignity and are in violation of Title II of the California Code of Regulations and District Policy (Bul-3302.1), which ensures personal rights of children in early education programs.

To summarize, the IM noted that the findings of the 13 schools were consistent with the District's poor past performance in making programs accessible. This review highlights the continued shortcomings of the process and

management of school officials who oversee the programs' location, implementation, and accessibility. It also shows that the process described in the Districtwide Transition Plan for identifying program access is not being implemented.

The IM concluded by directing the District to develop short- and long-term plans to evaluate and address these concerns. The plan must include a review of all PALs programs and campuses and include timelines for addressing features including (not limited to) the following:

- Changing areas and restrooms: This must include a short-term timeline for ensuring all classrooms have the
 necessary changing tables, privacy screens, and step ladders. It must also include a long-term plan for ensuring
 adequate space as well as bathrooms with compliant features such as clear floor space, grab bars, ventilation,
 privacy, dispensers, and lavatories.
- 2. Play and physical education areas.
- 3. Lunchrooms and other common areas including, but not limited to, auditoriums, entrances, and drinking fountains.

The plan must also include:

- 1. A review of policies and procedures related to toileting or changing of students.
- 2. A timeline for establishing a standard that describes the District's expectation for uniform changing stations, including procedures for the disposal of diapers and waste.
- 3. The available general and special education programs, including those to be opened in the future, for each site that will support students once they leave the PALs program.
- 4. A process for matriculating students at the same school as well as those requiring external placements.
- 5. All training materials utilized in professional development of the DSE and FSD staff responsible for program placement, determining program accessibility, and RAP.
- 6. An outreach plan, training, and distribution of request forms for the RAP program.
- 7. Information on the process for selecting sites where classrooms for students with moderate to severe disabilities, including PALs, have been opened or relocated, including the materials used to collect information from site administrators and evaluate the readiness of the sites for ensuring program accessibility.

On May 6, 2016, the same day the OIM provided findings of its review of PALs program changing conditions, the District issued a response to the OIM's April 7 letter regarding the two PALs programs visited, at 153rd Street and Broadus Elementary. The District noted that it was responding to the conditions at both sites and committed to delivering a changing table to 153rd Street and renovating bathrooms at Broadus Elementary, providing rapid timelines for both.

The District disagreed with the IM's stated conclusions that the conditions observed during the visits to Broadus and 153rd Street "indicates the Division of Special Education leadership's deliberate indifference for ensuring basic health and safety conditions for its students and staff." Furthermore, it challenged the IM's determination that the District is engaging in behavior that is "negligent," stating this was an unsupported legal conclusion.

The District also requested information on "diaper changing rooms/toileting facilities ventilation requirements pursuant to code or otherwise so that the District may specifically respond to [the IM's] general findings that ventilation at the school sites ... visited is improper or lacking."

The letter also noted that the District was in the "process of obtaining the necessary approvals to offer the following recommendations regarding restroom facilities for PALs classrooms." The approvals the District sought are summarized below:

 Reviewing the availability of classrooms on school sites to assign PALs classes according to a priority to ensure the appropriate changing areas

- 2. Having restrooms reconfigured to allow for wall-mounted changing tables that accommodate a weight capacity of 250lbs
- 3. Placement of PALs class in proximity to nurse's office or other location that allows for a changing table if not feasible in the self-contained classroom
- 4. Placement of privacy screens in appropriate designated classroom areas that allow for adequate space to change students while ensuring proper visibility for student safety
- 5. Providing annual universal precaution training for all PAL classroom staff, to be delivered by Nursing Services
- 6. Providing, annually, upon request, universal precaution materials, including gloves, wipes, and changing table covering
- 7. Audit of each school with a PAL program, using standard protocol regarding toileting procedures, including the use of universal precautions and student privacy issues

On May 16, 2016, the IM responded to the District's May 6 letter. The IM pointed out that in a review of the District's own website, several ventilation requirements were found on the District's Office of Environmental Health and Safety (OEHS) page, with references to District bulletins and a link to the US Environmental Protection Agency (EPA) page. The website contains the *Safe School Inspection Guidebook*, which includes requirements for ventilation and indoor air quality. This guidebook was created by OEHS and served as the model for a similar inspection guide created by the EPA.

Included in the letter were excerpts from the EPA website regarding the purpose of ventilation and importance of air quality in schools and students. One of the excerpts included addresses the importance of air quality for younger students, stating:

In addition, the developing bodies of children might be more susceptible to environmental exposures than those of adults. Children breathe more air, eat more food and drink more liquid in proportion to their body weight than adults. Therefore, air quality in schools is of particular concern. Proper maintenance of indoor air is more than a "quality" issue; it encompasses safety and stewardship of your investment in students, staff and facilities (https://www.epa.gov/iaq-schools/why-indoor-air-quality-important-schools).

The IM's letter included several additional references and resources. The IM noted that he hoped this information from District offices and bulletins could assist the District to engage in due diligence in this matter, while expressing befuddlement at how an organization with a recent history of a multibillion dollar bond construction program could not provide this information.

The letter also addressed the District's comment that it was "in the process of obtaining the necessary approvals to offer recommendations regarding facilities for PALs classrooms." The IM raised questions regarding approvals for training schools on universal precautions, when this has been District policy for years, as well as the use of privacy screens, when this authority lies with the chief officer of special education.

The IM added that these approvals should include making restrooms compliant, so that students have the tools to meet the District's objective of training students to use the bathroom independently. In addition, the IM requested information on how the universal precautions materials would be provided and funded, noting this was a concern raised by many school staff members who claimed that materials are not provided by the DSE and they use different budgets to obtain them.

The IM's letter included an example highlighting the inconsistency in the process for providing program access. Two classrooms observed by the OIM had recently been visited by the ACU. Both classrooms lacked privacy screens for the changing tables inside the classrooms. Staff informed the OIM that after the ACU's assessment, one classroom would receive a privacy screen while the other would have the bathroom renovated to install a wall-mounted changing table. Staff noted that no timelines were provided for the table's installation, nor was a privacy screen offered in the interim.

On May 24, 2016, the OIM and Plaintiffs' Counsel visited four schools as part of the monitoring efforts of the 20 SOWs and the problems regarding the PALs changing areas. During one visit, at 52nd Street Elementary School, in

an attempt to find a large multiuser girls' restroom, the school administrator guiding the visit showed the OIM and Plaintiffs' Counsel two very large, renovated bathrooms situated in the basement of a school. The girls' bathroom contained 20 toilets and the boys' had 10 urinals and seven toilets. Both bathrooms were in an inaccessible location, with stair access only, and did not contain any accessibility features. The bathrooms appeared to never been used and were reported to have been renovated more than three years prior.

On June 13, 2016, the OIM provided the District a letter with photographs and noted that while these bathrooms were not part of the original surveys or SOWs, they are indicative of systemic failures that resulted in noncompliant construction and poor management of limited resources.

The OIM informed the District that it would engage in examining the processes that the District contends are in place to ensure ADA compliance. It noted that these bathrooms would be one of the primary case studies that will examine:

- how construction was selected and planned,
- how design and construction were reviewed for compliance by DSA and the FSD, and
- cost management of expenditures.

District's Responses to Various Independent Monitor Letters Related to Facilities (June 20, 2016)

On June 20, 2016, the District submitted a letter in response to various documents related to facilities (Attachment E). It stated that because there was "significant overlap in the observations, issues and allegations" in various letters, the response would address major categories of issues identified by the IM.

The District notes that it is contracting with national ADA Title II experts to review and analyze the Districtwide Transition Plan Update and that these findings will likely lead to revision of the plan. It acknowledged that the decision to have the plan analyzed stemmed from the IM's March 2016 correspondence regarding the content of the plan and District's approach to identifying and removing barriers.

The six categories of issues addressing the IM's letters are summarized below:

- 1. The District noted that many of the items highlighted in the April 7, 2016, letter, which provided feedback from the OIM's site visits, "are not required by ADA Title II for program accessibility."
- 2. In response to the May 6, 2016, letter regarding the PALs observations, the District states, "Many of the statements, allegations and claims made in your May 6, 2016 letter do not address the program accessibility requirements under ADA Title II regulations."
 - a. The District noted that many of the sites the OIM visited had not been surveyed and not all schools visited have been identified as high priority at this time.
- 3. The federal and state standards referenced in the IM's May 9, 2016, letter, which referred to the May 6 PALs report, apply only to new construction and/or alteration projects. In addition, the standards the OIM referenced from the ADA Accessibility Guidelines are enforceable under ADA 35.151 (New Construction and Alterations). These guidelines are applicable to built-in or fixed items. The District noted that the changing tables referred to in the OIM's letters are non-fixed, and therefore the guidelines do not apply.
- 4. In response to the IM's May 6 letter that provided information regarding ventilation requirements on the District's OEHS and EPA websites, the District noted that the OEHS guidebook on "restroom ventilation" language applies only to restrooms and is not intended to address non-restroom environments. It also explained that the highlighted OEHS and EPA references are only guidance, not universal, and not based on any regulation.
- 5. In response to the May 20, 2016, report on the effectiveness of the SOWs, the District claimed the report "included concerns and recommendations some of which were not ADA Title II requirements (i.e., comprehensive surveys)." It further stated that it is premature for the District to respond to the issues raised, and it will do so when the analysis being conducted by its experts is complete.
- 6. In regard to the bathrooms at 52nd Street Elementary, the District noted that these restrooms were not surveyed by the ACU because they are "not utilized by either students or staff, are in a locked area, and are not needed to provide program accessibility as required by ADA Title II regulations." It noted that the work

completed was part of deferred maintenance projects, and does not "constitute a 'renovation' as defined in the ADA standards which would trigger ADA upgrades." The District contends that the following IM's statement is not accurate:

the size and scope of the renovation should have required DSA plan check and closeout. These bathrooms are located in an inaccessible location and do not include any accessible features. This is indicative of systemic failures that resulted in noncompliant construction and poor management of resources

The District requested the IM not use these bathrooms as a case study in its review of District processes to ensure compliance because they are not within the scope of ADA Title II Transition Plan requirements.

The District pointed out the IM's statement in the March 25, 2016, letter, that the "MCD does not give the IM the purview to accept the District's Transition Plan" as well as the IM's charge that, based on his judgment, he must determine that the District has no systemic program accessibility problems preventing substantial compliance with the program accessibility requirements of federal special education laws and regulations. The District noted the importance of having a common understanding with the OIM regarding the ADA Title II program accessibility requirements.

Response to the District's June 20, 2016, letter

The following is the response to the six issues the District raised in the June 20 letter. In the first two categories, the District contends the OIM made "statements, allegations, and claims" that were not accurate because the issues raised are not required or do not address ADA Title II requirements. Although specifics were not provided, the issues highlighted in both letters relate to the variability and poor conditions observed with the changing stations in PALs programs, including lack of accessible bathrooms for the classrooms, lack of privacy screens, use of nonstandard changing tables, lack of running water, and ventilation.

It is difficult to speculate on the specific issues, claims, or allegations the District disagrees with, but the following will address the intent of Title II of the ADA. To illustrate this intent, the following excerpts were taken from the DOJ ADA website.

Title II applies to State and local government entities, and, in subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all activities of State and local governments regardless of whether these entities receive Federal financial assistance (https://www.ada.gov/ada_title_II.htm).

Equal treatment is a fundamental purpose of the ADA. People with disabilities must not be treated in a different or inferior manner (https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html).

It is unclear if the District contends that changing stations and/or the conditions of these environments are not required under Title II of the ADA. The ADA, and Title II of the ADA, are not about code compliance per se. First and foremost, it is a civil rights law that is intended to prohibit discrimination on the basis of disability. The standard for program access goes beyond code and protects SWDs from being treated inequitably based on their disability. Access to compliant bathrooms, appropriate changing tables, privacy screens, and adequate sanitary conditions are fundamental for ensuring equitable program access. Denying SWDs the same conditions offered for nondisabled students is in violation of Title II of the ADA.

The third category notes that the state and federal standards cited by the OIM apply only to new construction and/or alterations. Because the District did not provide specifics regarding areas of disagreement, the OIM will respond at a later time. The District also disagreed with the OIM's reference to ADAAG standards regarding changing tables as work surfaces, noting the standards address new construction and alterations, and that these guidelines do not apply because the changing tables in question were not fixed or built-in.

The OIM pointed out ADAAG and American National Standards Institute (ANSI) standards regarding changing tables to show that standards exist for ensuring a safe and compliant changing station. The site visits found conditions where schools used a variety of desks and tables, and the bathroom floor, as changing stations, which led to unsafe and unsanitary conditions. The fact that the tables were not fixed or built-in speaks to the poor planning and management of these programs, and not the OIM's misapplication of standards. This assertion is supported by the District's own plan to address the conditions of changing areas as stated in its May 6 letter, as it sought approval for the following:

To have restrooms reconfigured to allow for a wall mounted changing tables that accommodate a weight capacity of 250lbs.

It is troubling that the District doesn't have standards in place for ensuring safe and hygienic changing areas, whether ADA regulations require it or not. If the District contends these guidelines do not apply to non-fixed or built-in tables, it must provide external guidelines or establish policies and procedures that ensure safe and hygienic conditions. This argument appears to stem from an unnecessarily contentious stance rather than one that promotes students' health and safety, given the IM's insistence to work collaboratively.

The fourth issue argued that the ventilation requirements were simply guidance, not universal, and apply only to restroom situations. This response implies that ventilation requirements and guidelines for indoor air quality do not apply for changing areas situated in classrooms. Although classrooms are not restrooms, the changing of students inside a classroom creates a restroom situation; therefore, the guidelines should apply. This argument also contradicts the District's own commitment to assess programs to ensure students' health, safety, and welfare, which was included in the Districtwide Transition Plan (p. 4):

<u>Program Assessments:</u> The ACU will assess all of the programs, services, activities, areas of public access, as well as students and staff with qualifying disabilities by interviewing school administrators. ACU under direction of the FACM [Facilities Access Compliance Manager] will develop an ADA survey questionnaire to assist in identifying Architectural Barriers. The interviews/questionnaire will focus on the needs of students with disabilities. Surveys will ensure that health, safety and welfare of students with disabilities is included in ADA surveys with an emphasis on sanitary conditions, (i.e., changing rooms, lavatories, ventilation, etc.).

Again, this argument seems to stem from an unnecessarily contentious stance, and not one that has the interest of health and safety of students, given the IM's insistence to work collaboratively. Similarly, if the District does not believe the ventilation requirements and guidance for indoor air quality apply, it must provide its own standards for ensuring air quality. Bulletin 735.1, Policy on Restroom Access, Cleanliness and Repair (2007) requires the elimination of unpleasant odors. The bulletin notes that, in 2003, state legislation was enacted, requiring clean, functional restrooms and imposing penalties for noncompliance. Even if the District chooses not to establish ventilation requirements for changing areas, many of the restrooms in the PALs programs have strong odors that do not comply with District policy.

Issue five states that some concerns and recommendations made by the OIM were not ADA Title II requirements. While no other specifics were provided, the issue of comprehensive surveys was included with this assertion. This issue has been discussed with the District on many occasions and will likely require additional discussions.

The ADA technical assistance manual states that a transition plan should contain, at a minimum:

- 1. A list of the physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities;
- A detailed outline of the methods to be utilized to remove these barriers and make the facilities accessible;
- 3. The schedule for taking the necessary steps to achieve compliance with Title II. If the time period for achieving compliance is longer than one year, the plan should identify the interim steps that will be taken during each year of the transition period; and,
- 4. The name of the official responsible for the plan's implementation.

To fulfill the obligation for development of the transition plan, the District must identify a list of barriers at sites that limit access to programs, activities, or services. Programs, activities, or services are offered on the majority of areas on a school campus. The District must survey sites to identify barriers that limit program access and determine their impact. Although this might mean areas such as boiler rooms are not part of the comprehensive survey, the District must survey the majority of a site to determine the impact of the barriers.

The 20 SOWs reviewed did not address all areas of program accessibility, and were limited in those it addressed. Based on these observations, the District's process for determining program accessibility remains unclear and does not appear to result in valid barrier removal plans, as all schools visited omitted areas that the District had previously identified as requiring barrier removal.

This raises questions of the quality control and assurance processes included in the Districtwide Transition Plan. The plan requires that a "supervising access compliance specialist perform quality control (QC) for every survey identified on the BRR. The QC process ensures that the correct barrier and solutions have been identified for the existing condition...." The quality assurance (QA) process consists of the FACM performing QA of each survey completed by reviewing the interview questionnaire to ensure that all areas requiring program access are included in the BRRs. The District must provide documentation used and generated by these processes to assess the effectiveness of its approach to identifying barrier removal to improve program access.

The sixth and final issue regards the renovated noncompliant bathrooms in the basement of 52nd Street Elementary School, which the District contends is not part of the Districtwide Transition Plan to satisfy ADA requirements. The District contends that work completed was part of deferred maintenance projects and does not "constitute a 'renovation' as defined in the ADA standards which would trigger ADA upgrades."

It is unclear how this conclusion was reached, yet is inconsistent with the requirements of the 2010 California Administrative Code (4-309), which presided at the time of renovation, and the DSA Interpretation of Regulations (IR-A 10 Alteration and Reconstruction Projects – DSA Approval Exemption),² which states that "plans and specifications for any reconstruction or alteration project exceeding \$25,000 in cost shall be submitted to DSA for approval in accordance with Section 4-315." Although this section states that work classified as maintenance in Section 4-134 does not need to be submitted to DSA, the observed bathrooms do not meet the definition of maintenance.³ This section provides an exception for reconstruction or alterations that exceed \$25,000, but not \$100,000, if the following three (summarized) items are completed.

- 1. The structural engineer must determine and provide a written statement to DSA that the project does not contain any structural work.
- 2. The design professional must certify, in writing, that the project plans and specifications meet any applicable fire and life safety standards and do not specify any work or construction regulated by Title 24 accessibility standards.
- 3. Within 10 days of project completion, a DSA-certified project inspector must sign and submit a verified report on Form DSA-999.

Furthermore, the 2010 California Administrative Code and most recent DSA IR A-10 document contain clauses that "all new construction work, which is part of the reconstruction and alteration project should comply with currently effective regulations, including Title 24 as adopted by DSA."

The DSA IR 22 – Construction Projects Exempt from DSA Review document addresses smaller projects including maintenance work and states the following:

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² The limits in the updated DSA IR-A 10 document (February 2016) increased to \$42,217.81 and \$168,871.21.

³ CBC 2010 defines maintenance as the "ordinary upkeep or repair work such as replacements in kind, repainting, replastering and reroofing."

- 1.1 The following does not require DSA structural and fire and life safety approval. However, this work shall comply with all currently effective design, construction, and inspection provisions of the California Code of Regulations (CCR), Title 24, as amended by DSA. Inspection shall be performed by a DSA certified project inspector.
 - Maintenance work per section 4-315, Part 1, California Administration Code (CAC) and defined in Section 4-314 Part 1, CAC.

Although the deferred maintenance program (DMP) ceased in July 2013, the funding description on the California Department of Education website regarding these projects noted the following:

The DMP is subject to the provisions of California Education Code (EC), Section 17582 through 17588 and 17591 through 17592.5 and the State Allocation Board (SAB) Regulations, Title 2, California Administrative Code, Sections 1866 through 1866.14. Applicant districts are responsible for complying with all laws and regulations for any project undertaken pursuant to the requirements of the DMP. If the district's project contains work that requires Division of the State Architect (DSA) approval, the final plans and specifications for the project must have DSA approval prior to a district signing a contract for construction.

During the 2013-2014 school year, the District, including the FSD chief, agreed that all work would require mandatory ACU plan reviews to ensure compliant renovations. This is not the first instance of noncompliant work that circumvented DSA and ACU plan review, resulting in barriers being built; this issue was previously raised at Edison Middle School. Although the bathrooms at 52nd Street Elementary School were not part of the SOW or survey, it raises concerns about the District's processes to ensure compliant work. It is unclear how deferred maintenance projects were exempt from DSA review and compliance with ADA renovation requirements given the requirements as noted above. Because these bathrooms were remodeled in 2011, this construction must comply with 2010 requirements. This issue will be explored with DSA. While the OIM will reconsider the inclusion of this example in its review, it will make inquiries with the necessary agencies to better understand the District's processes for making renovations and repairs and ensuring compliant work.

ADA Compliance Manager

As mentioned earlier, the District did not renew the ADA compliance manager's contract. It has not provided any information regarding the timeline to fill the position or the selection process. Although the rationale for discontinuing his contract is unclear, it is imperative that the new ADA compliance manager be provided the necessary resources, independence, and authority to ensure compliance. In February 2015, the IM provided the District a letter⁴ with several commitments to be included in a revised Districtwide Transition Plan, which the BOE would need to approve. This included the following expectation of the ADA coordinator position:

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.

The revised plan does not include such commitment. Furthermore, it does not appear this organizational structure was in place for the previous ADA compliance manager, particularly the decision-making authority over middle and senior management in departments such as the FSD and DSE. The inability to gauge the effectiveness of the organizational structure for this position was exacerbated by the OGC's instructing the ADA compliance manager not to communicate with the OIM. Given the longstanding noncompliance with the ADA, the next individual selected for this position cannot be placed under such constraints and should have direct access to the superintendent. Independence, and ability to communicate and work collaboratively with the OIM, is essential to moving the District toward compliance.

An excellent example of this independence and advocacy by the ADA compliance manager on behalf of SWDs was highlighted in part 1 of this report, as noted in the excerpts below:

⁴ The letter can be viewed at http://oimla.com/pdf/20151110/appi.pdf.

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.

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.

The case study referenced above also demonstrates that, despite the ADA compliance manager's best efforts to address this situation internally, an appropriate response was not provided until the OIM intervened. This example shows the importance of sound organizational structure for the ADA compliance manager that does not limit his or her authority to direct others to comply or directly communicate with the OIM when internal efforts fail.

The IM is hopeful that the revised plan will include an organizational structure that enables the new ADA compliance manager to act with advocacy, authority, and the good faith necessary to address internal challenges and move the District toward ADA compliance.

SCHOOLS OF CHOICE

Charter Schools

SWD enrollment at independent charters continues an upward trend. During the 2015-2016 school year, enrollment at charter schools increased by 2.0% (n=2,081) while SWDs increased by 9.9%, or 1,028 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 Enrolled at District-Operated and Charter Schools by School Year

School Year	Total # of Students Enrolled	% of SWDs Enrolled in District-Operated Schools	# of SWDs Enrolled in Charter	% of SWDs Enrolled
2015-16	102,849	11.96%	11,352	11.04%
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 noted a large decrease of SWD who applied to attend magnet schools (n=945, 28%) in 2015-2016. Those selected to attend also decreased from 60% in 2014-2015 to 51%. This is the first decrease observed since the District's efforts in response to the OIM study to improve the application and enrollment process of SWDs applying for and attending magnet schools. The size of this decrease is concerning and might indicate changes in policies or procedures in the application process for SWDs. Despite fewer applicants and SWDs selected, the total enrollment increased by approximately 300 students, but this had minimal impact on the overall percentage enrolled; 5.88%, 2015-2016 vs. 5.67%, 2014-2015.

The District must examine the application process to determine factors that contributed to this decrease. The District must provide its findings to the OIM by July 29, 2016.

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 of SWDs Who Applied
2015-16	2,442	1,251	51.23%
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

MCD Section 11 requires the District to comply with the stipulation to develop and implement an Integrated Student Information System. 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, the MiSiS team has endeavored to keep the MiSiS system stable and introduce incremental improvements while pursuing a large volume of needed enhancements and related initiatives involving Microsoft and other vendors. System stability during the 2015-16 school year was markedly better than the previous year. Both the opening and closing of the school year were accomplished smoothly, and any issues that came up were swiftly addressed. This can be attributed to better planning, communications, training, and much improved software. The MiSiS team also played a critical leadership role in addressing the problems with graduation and completion data, which will be discussed in the Substantial Compliance section.

Microsoft Consulting introduced another development methodology and organized team members to participate in the Sketch/Build/Stabilize/Release process. Efforts to stabilize MiSiS caused some delays in the start of this process, and the Sketch phase proved to be more challenging than anticipated. Many of the initial Sketch work product documents (FARs) were rejected, causing additional delays. It became evident that the original scope of work Microsoft was expected to complete by June 30, 2016, could not be met within this timeline. At least three separate "reprioritizations" of the remaining work has been done, wherein features or functions that could still be used in the remaining months of school year 2015-16 were given higher priority, whereas other high-priority functions were delayed. Many significant enhancements have been delivered in at least a dozen MiSiS modules, but the amount of remaining work is considerable. The District and Microsoft have been engaged in discussions to extend their agreement through December 2016 so that Microsoft can perform the remaining development work.

The MiSiS training team continued both its outreach to schools and transparent reporting of progress and challenges. Proactive communication with schools and more timely availability of training sessions seem to have had a positive impact. While these efforts are encouraging, there will be challenges in ramping up training for the Gradebook as well as finding creative methods to train parents in Passport for the coming year.

Concurrent with Microsoft's MiSiS enhancements, the MiSiS team launched several key related initiatives:

- Gradebook—A pilot rollout of the Schoology Gradebook module was recently completed and deemed successful. The MiSiS leadership team is recommending that the pilot be expanded to another 38 schools and training be expanded to approximately 6,000 teachers for the upcoming semester. In addition to containing a feature-rich Gradebook module, the Schoology system is a complete Learning Management System that teachers will be able to use to build course content and other creative uses.
- Parent Portal (Passport)—The Parent Portal has been launched as a pilot. Although data and functionality are limited, it shows promise. In response to an emergency school closure during which it was difficult to reach parents of all students, a new feature was added to Passport that allows parents to update their emergency contact information directly. For teachers who are using the Schoology Gradebook, all assignment information from Schoology is automatically made available to students and their parents in Passport. Additional subject areas (e.g., IEPs for SWDs) will be added in the upcoming year.
- Data Integration Strategy and Enterprise Ad Hoc Reporting—Information Technology Division(ITD) is launching
 an initiative that will greatly improve data integration and create new capabilities for transparent views of both
 operational and longitudinal data. This will include dashboards, cross-functional views of student and school
 data, and new individual ad hoc reporting capabilities.
- Data Quality—ITD has licensed a product called Certify that, if implemented properly, can profoundly improve
 the quality and completeness of data entered into MiSiS. The greatest benefit of this product is its ability to hold
 accountable those responsible for properly recording data at the point of origin in a timely manner. This would
 improve data quality and reduce the number of students for whom data must be corrected. This feature will
 enter a pilot phase in the near future.
- Charter Schools Application Program Interface (API) Development—In November 2015, the District presented a
 white paper regarding the integration of charter schools into MiSiS. After working with the superintendent and
 the chief information officer, the IM and Plaintiffs' Counsel agreed to one of the options offered in the white
 paper, with some qualifications. The solutions proposed included developing an API for all non-MiSiS student
 information systems employed by independent charter schools, so that student data can be passed to MiSiS,
 rather than requiring each school to use MiSiS exclusively. There is a great deal of work involved in this
 initiative, with an ambitious schedule.

It's the IM's understanding the BOE has approved additional and/or carryover funding for the MiSiS project to be sustained in 2016-17. This includes funds previously allotted for Microsoft. The District has been negotiating an extension to the contract with Microsoft Consulting to continue developing new MiSiS functionality.

The successes delivered by the MiSiS team in the first half of calendar 2016 are encouraging. However, many of the same concerns expressed in our last report remain.

- Although the MiSiS system is stable, it is still incomplete. Improvements that were expected to be done by June 30, 2016, are substantially behind schedule, and with time delays, many requirements have been changed or replaced.
- 2. Minimal progress has been made on the remaining MCD requirements, with some previously developed functions still requiring rework this year.
- 3. While progress has been made on the implementation of a mandated Gradebook module, it has been done only with a very small pilot. The existing module is being replaced by a new module as part of the Learning Management System. Promotion and training of this module for teachers will be critical.
- 4. Ad hoc reporting functions previously built into MiSiS will be replaced by a new set of tools during the coming year. Although this is a complicated project, the tools selected and the proposed design appear to be well done. However, resources must remain available to complete the initiative.
- 5. The Passport pilot in a few schools seems to have been successful, but sharable information is limited, and the Passport team has very limited resources. Design and technical obstacles must be overcome along the way (e.g., security issues of displaying an IEP in the portal), and assignment of resources will be critical to success.
- 6. Progress on charter schools' integration with MiSiS is very slow, and the original projected timeline is in jeopardy.
- 7. Inadequate compensation and other employment and recruitment factors are apparently still making it difficult for the District to attract and retain the necessary IT technicians and managers as employees. Even if positions are "approved," the time-to-hire span is very long and might further delay projects.

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 one hearing conducted on May 11, 2016. To facilitate attendance, the 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 hearing was attended by 91 people, with 43 presenting oral testimony. In addition, eight 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 32 referrals seen by District staff.

The most frequent concerns related to noncompliance with IEPs (13 comments), bullying by staff or other students (7), staff lacking training to work with SWDs (7), translation issues including lack of qualified interpreters and IEP documents not being translated (6), and need for more parent trainings (5).

COMPLAINT MANAGEMENT SYSTEM/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 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.

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, 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. Eight recommendations were included to address the weaknesses of the processes identified.

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.

Part 1 of this annual report noted that, in spring 2016, the OIM would review a sample of inquiries, concerns, and complaints taken by the SFSS and CRU personnel to examine the effectiveness of these processes. On January 20, 2016, the IM provided the District a letter with the rationale for this study. The letter also requested the following: the database containing calls processed by the CRU and call center through December 15, 2015; copies of all lawful responses, training materials, policies, and procedures; and tools used by staff to process calls, such as intake protocol.

This study focuses on the complaint management system's procedures and protocols, SFSS and CRU processing of call center cases, and the data system's adequacy. To determine the effectiveness of the District's complaint management system carried out by the SFSS and CRU, the OIM is in the process of completing a review of the following: policies, procedures, and communication related to the complaint management system; a sample of calls to the SFSS hotline between July 20 and December 15, 2015; and other District policies.

On March 9, 2016, the District provided materials, policies and procedures, database, and lawful response letters. Many documents submitted were revised versions of previous documents or in draft form. It is unknown when staff received training or began to follow protocols for processing calls. The findings of the review of policies, procedures, and communication were utilized to design the OIM database to determine whether SFSS/CRU staff followed the new policies, procedures, and protocols when processing calls.

The database of call center cases from July 1 through December 15, 2015, contained 10,758 processed calls. The OIM created a separate database for analysis, which merged select data from the call center database with additional fields for data collection. The source database was also reviewed to evaluate the adequacy of the data system. Lawful response letters were reviewed to determine correspondence with the allegations and resolutions identified in the call center database. The following information was captured to examine the effectiveness of the complaint process:

- Call information priority categorization (complaint, concern, inquiry)
- Resolution type (complaint, concern, inquiry)
- Category, subcategory of alleged violation, concern, or category (i.e., IEP, compliance, transportation)
- Resolution priority (low, medium, high)
- Call management protocol—C.E.S.A.R. (claim, evidence, steps previously taken, actions to resolve, resolution)
- Number of working days to close case
- Lawful response type
- Evidence of investigation, including if the documentation was insufficient for determining a complaint, concern, or inquiry

 Resolution information, including information of the remedy and date of implementation, or if there was evidence that a complaint was unfounded

Although the study and review have not been finalized, general information regarding the methods and preliminary findings are included to provide feedback that might assist the District in ongoing efforts to improve these processes. The report is anticipated to be released in August 2016.

Overall, the District has made progress establishing processes necessary for a viable complaint management system. The procedures, protocols, and data system are considerably improved from the CRU system reviewed by the OIM in 2012. The case review noted instances in which concerns and complaints were investigated and validated the parent's allegations; however, some cases lacked the necessary information to make determinations on the findings of the investigation or resolution. In some instances, the allegations of a complaint were not identified as such and did not yield complaint investigation or resolution. Some cases that were found to have valid complaints did not have a lawful response available or did not address all the allegations raised by parents. Improvements to the lawful response are noted as the letters contained the reason for the call and resolution.

The number of calls processed by the call center was significantly higher (10x) than those handled by the CRU in 2012-13. This supports the finding that, prior to the call center, the majority of parent calls were received by local District or central offices other than the CRU. Therefore, the establishment of a centralized hotline provides an opportunity for the District to maintain data necessary for examining trends and identifying systemic weaknesses in processes or policies.

Part 1 reported concerns about the call center hotline raised by several parents who attended the fall 2015 annual hearing. 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. These calls also revealed that the hotline lacked a basic option for callers to make an inquiry or express a concern or complaint. The options available were 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 quardians
- 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 a prior school year. This recording also informed parents that the event calendar would be updated monthly.

The District was directed to address the lack of a dedicated option for filing concerns or complaints and to update the hotline information by December 1, 2015. The hotline was updated in late February 2016, with the District citing a lack of capacity for revising these options due to a staff member who programs the hotline being on leave. The lack of urgency and reliance on one individual to maintain the hotline is troublesome, particularly given the high number of calls received. It is critical that the District has systems in place that avoid reliance on one person and that are responsive to the needs of families and students.

On June 17, 2016, the District submitted a Proposed Staffing Plan for the CRU for the 2016-17 school year. The plan proposes to change the current staff of the CRU with staff who are current parents of SWDs. Over the next few months, the OIM will work with the Parties on a staffing plan that complies with MCD requirements and procedures.

It is critical that as the District continues to improve its complaint management system and hotline so it helps foster a trusting relationship with families through an objective and responsive experience. The progress observed within the case reviews are cause for optimism in meeting this obligation of substantial compliance. Although it is reasonable to expect that the SFSS and CRU staff will take time to increase their skill level for identifying and responding to complaints, the District must continue to provide training and the tools needed to process calls.

IEP COMPLAINT INVESTIGATION

On August 5, 2015, the IM issued a report with the findings of the IEP Complaint Investigation and corrective actions to be taken by the District to cease and remedy noncompliant behavior by June 30, 2016. On September 19, 2015, the District provided a response that included timelines for completion for each corrective action, with one receiving approval from the IM to be completed by August 31, 2016.

The District had until June 30, 2016, to implement all but one corrective action. On March 22, 2016, the OIM provided feedback on the progress of the corrective actions to date (Attachment F), and on June 20, 2016, the District provided an update on the progress of the corrective actions (Attachment G). Many of the actions and progress indicated are based on those reported in the June 20 letter. Determination of corrective actions met requires discussion and validation by the OIM. Below are the 12 corrective actions with the District's response and subsequent OIM feedback.

- 1. Establish an objective, neutral complaint investigation mechanism that has the authority to cease noncompliant behavior and ensure remedies.
 - a. The District states that it has established the Family Support Services Call Center Districtwide Complaint Response System as the identified complaint investigation mechanism. On July 20, 2015, it provided the OIM three documents: 1) Procedures and Protocols, 2) Lawful Response letter template; and 3) Module 5 Welligent Enhancement Screenshots.
 - b. The District and OIM met to discuss these documents, and as a result of the meeting, the District stated it would submit "responsive information," such as a reference guide and intake clarification, on or before October 30, 2015.
 - c. The responsive information materials were submitted March 9, 2016, as part of the OIM's request for information on the complaint management system review.
 - d. The call center has been in operation since July 1, 2015. The OIM is currently reviewing its effectiveness and will provide a report in August 2016.
 - e. Determination regarding this corrective action will be made upon the completion of the OIM study of the complaint management system.
- 2. Review policies and procedures to ensure alignment with state and federal regulations as well as consistency among bulletins and reference guides. Clarify and emphasize the IEP teams' authority in all policies related to the decision-making processes during IEP meetings.
 - a. The District was to revise Bulletin 5901.3 (Determining the Appropriate Educational Placement for Students with Disabilities in the Least Restrictive Environment) to address the clarification and emphasis above.
 - b. The revised Bulletin was to be submitted on or before November 20, 2015.
 - c. On January 26, 2016, the District submitted a draft of the revised Bulletin 5901.4, which clearly emphasized the IEP teams' authority. The District stated this would replace all other related policies.
 - d. The OIM noted that this bulletin addressed, in full or in part, corrective actions 2, 3, 4, 8, and 9.
 - e. The OIM requested a list of bulletins that would be replaced to ensure this corrective action has been met.
 - f. The District stated it would provide the list of bulletins reviewed and updated by June 30, 2016.
 - g. This corrective action is unmet.
- 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.

- a. The District was to revise Bulletin 5901.3 and edit the sequence of the IEP process in the Welligent system by June 30, 2016.
- b. Bulletin 5901.4 addressed the sequence of the IEP process, which ensures placement is determined after IEP teams establish goals, objectives, supports, and services.
- c. The District reported that edits to the Welligent system would occur in two phases. Phase one prevents IEP teams from saving placement information until sections A-B on the LRE Analysis Form are completed. Phase two prevents IEP teams from saving placement information until FAPE 1 sections A-D are completed.
- d. It appears Phase 1 has been implemented and no information was provided on the timeline of the Phase 2 rollout.
- e. Determination regarding this corrective action will be made upon the OIM's validation of items c and d.
- 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.
 - a. By June 30, 2016, the District was to revise Bulletin 5901.3 and update the Welligent system to prevent program placement information from being selected prior to the IEP meeting.
 - b. Bulletin 5901.4 clearly states that draft IEPs cannot contain program placement information; this can be determined only at the IEP meeting and after the IEP team meeting sequence listed in the bulletin.
 - c. The updates to the Welligent system are the same as described for Phase 1 above.
 - d. Determination regarding this corrective action will be made upon the OIM's validation of item d.
- 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.
 - a. The District was to include the statement in the *Parents' Guide* booklet, post it on the Division of Special Education website, include it in the *Special Education Policies and Procedures Manual*, and include a checkbox in the Welligent system that must be checked after the statement is read prior to the meeting.
 - b. The following are District timelines for implementing these parts of the corrective actions: October 1, 2015 (post on website); April 1, 2016 (include in *Parents' Guide*, and *Policies and Procedures* booklet); and June 30, 2016 (update Welligent).
 - c. The District began requiring the reading of this statement at IEP meetings in November 2015. The statement created includes six of the seven bullets identified in the IEP Complaint Investigation report. It contends that one bullet stating that the "IEP will continue until it is complete, unless all members agree to an extension," potentially violates collective bargaining agreements. However, the District has addressed this concern by eliminating the practice of schools recessing IEPs and now only allows recesses to be initiated by parents or in cases of emergencies.

- d. The District reported that schools were provided inserts with instructions to distribute it to parents with the *Parents' Guide to Special Education Services*. It notes the statement will be placed into the booklet in fall 2016. No dates were provided for when schools began distributing the insert.
- e. The statement has also been included on the District website and in the electronic version of the *Special Education Policies and Procedures* manual. No date was provided on when this information was included. A review of the District's website, on June 20, 2016, could not locate the statement on the website.
- f. The District stated that the edit requiring IEP teams to mark a checkbox upon reading the statement has been completed but did not provide information on the date it became active.
- g. Determination regarding this corrective action will be made upon the OIM's validation of items a-f.
- 6. Develop a comprehensive list and descriptions of all related services and program options available. This must become part of the Welligent system and be made available at IEP meetings.
 - a. The District was to develop a comprehensive list of program options and delivery models for inclusion on its website and in the *Parents' Guide* booklet.
 - b. The District provided these timelines for implementation: December 1, 2015 (post on website), and April 1, 2016 (include in *Parents' Guide*).
 - c. On January 11, 2016, the District provided the OIM a Comprehensive List of Programs, Supports and Services document. In a meeting with the OIM, the District noted that the list of programs, supports, and services included those identified in the education code. Although the list covers the majority of services in the education code, on March 22, 2016, the OIM directed the District to include the following:
 - i. CCR 3043—Extended School Year
 - ii. CCR 3051.17—Services for Students with Chronic Illnesses or Acute Health Problems
 - iii. CCR 3051.23—Behavioral Intervention
 - iv. EC 41850(d) —Transportation
 - d. The District has not provided evidence it has completed and revised the list, posted it on the website, or included it in the *Parents' Guide* booklet.
 - e. The District requested to discuss the items above as directed by the IM to ensure that "the additional elements align with the intent of the document."
 - f. The IM will meet with the District to discuss this matter, but these items meet the inclusion criteria utilized by the District, and parents have the right to be informed of these services' availability.
 - g. This corrective action is unmet.
- 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.
 - a. The District was to complete a staffing formula for each related service and RSP, taking into consideration extenuating factors that might impact the provision of services to individual services (i.e., age of student, school configurations, etc.) by February 19, 2016.
 - b. On February 19, 2016, the District provided an email containing two documents with staffing formulas for psychological service and related service providers. The email contained an explanation of the staffing information for determining RSP caseloads.
 - c. The OIM response noted the following:
 - The documents contain information on the activities required to meet the needs of schools and students, apply a unit of work to each activity, and define the length of time required to complete (weeks per year and cumulative hours per year).
 - The documents begin to present a picture of the District's needs, such as identifying the number of full-time equivalent (FTE) positions needed, and what appears to be an average number of students on a provider's caseload; however, they lack necessary information on the District's current staffing levels.
 - This corrective action, as well as directives in past annual reports, aimed to have the
 District conduct a comprehensive analysis of its caseload and workload demands and
 current staffing levels and practices. The documents provided appear to contain some

- workload factors for the overall District, but they do not sufficiently examine the problem. For example, for speech and language providers, the document identifies 522.842 FTEs needed to meet the total hours to complete all service-related tasks, but it does not contain information on the total number of FTEs employed and those on leave, or the number of District personnel compared to per diems.
- An effective analysis should contain median and mode information, particularly by local District and for District and per diem providers. It should similarly examine the number of schools assigned to providers.
- d. The District did not respond to this feedback, and based on the information provided, this corrective action is unmet.
- 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.
 - a. The District was to revise Bulletin 5901.3 to notify IEP teams that necessary evaluations must be conducted prior to IEP meetings when considering NPS placement.
 - Bulletin 5901.4 clearly states that if NPS placement is to be considered, the placement determination must be supported by the necessary evaluations that must occur prior to the IEP meeting.
 - c. This corrective action is met.
- 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.
 - a. The District was to revise Bulletin 5901.3 to clarify the procedures for recessing IEP meetings.
 - b. Bulletin 5901.4 clarifies procedures for recessing IEP meetings, limiting the reasons for recessing meetings to those initiated by parents and in case of an emergency, such as a school lockdown.
 - This corrective action is met.
- 10. Ensure that whenever the District initiates or refuses an evaluation, change in placement, or provision of a Free and Appropriate Education (FAPE), it provides notice to the parent. Whenever the operations unit receives notice to look for a change in placement, parents must be notified.
 - a. The District was to revise applicable bulletins by November 20, 2015.
 - b. The District has not provided any evidence of these revised bulletins. Bulletin 5901.4 does not address this corrective action.
 - c. The District added a new checkbox to the Notification to Participate in an IEP meeting form. In the Purpose of Meeting section of the form, a checkbox for "Change in Placement" was added. No dates were provided on when these checkboxes were added.
 - d. This corrective action is unmet.
- 11. Conduct an analysis to examine how the social-emotional needs of students with intellectual disability (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.
 - a. The District was to conduct a comprehensive review of all items noted above; report its findings; and make any necessary changes to its policies, procedures, and practices for supporting students with ID by January 15, 2016.
 - b. On February 19, 2016, the District provided a brief email explanation of its review of documents that did not discover any specific eligibility required for receipt of ERICS or counseling services. Also attached were data tables with information on students receiving these services by eligibility.
 - c. The OIM informed the District that this response did not constitute a comprehensive review of all items the District agreed to include in its analysis. Furthermore, its sole finding was clearly noted in the original OIM IEP Complaint Investigation report, which stated that policies do not prohibit students with specific eligibilities from receiving these services.

- d. The IEP Complaint Investigation report highlighted the misperceptions and lack of knowledge of the school psychologist and administrative designee regarding the provision of counseling services to students with ID.
- e. The corrective action required the District to examine whether certain practices contribute to the low rate of students with ID receiving these services.
- f. A comprehensive review should have included a review of a sample of student IEPs with and without behavioral support, as well as a sample of staff interviews, to see whether the teams adequately meet these students' needs.
- This corrective action is unmet.
- 12. Establish professional development to address these corrective actions and improve the IEP team's collaborative process.
 - a. The last corrective action addresses professional development for which the District requested an extension through August 31, 2016. This request was granted, and feedback will be provided upon the OIM's receipt and review of related materials.

The District made some progress with the implementation of the corrective actions, particularly the revision of Bulletin 5901.4. The District had until June 30, 2016, to implement all but one corrective action; however, there had been no communication and engagement with the OIM until the District's June 20 update. This does not provide much time to deal with issues that need further discussion, such as corrective action six. Hopefully, the incoming leadership will be more proactive in resolving these issues and keeping the OIM informed of progress. Furthermore, it is important that the new chief administrator of special education show leadership in implementing these corrective actions and changing the culture of IEP teams to ensure that families are equal members of the IEP team and are authorized to make decisions on the appropriate services for SWDs.

Despite corrective actions, the OIM and Plaintiffs' Counsel continue to hear of IEP teams with predetermined offers of FAPE. This was evidenced at the most recent annual hearing and Parents' Council meeting. Parents' Council members noted that although IEP teams are reading the required statement before the meeting, they continue to behave in ways that do not allow full parental participation, have predetermined offers of FAPE, and do not always consider parents' or other team members' recommendations.

For the past several years, the District has chosen to selectively attend Parents' Council meetings, participating only in those in which it is to provide information per the agenda. During the 2016-17 school year, the District must attend all Parents' Council meetings so that the parent members, who generously give their time and effort to attend, have District representatives to hear and respond to their concerns. The IM is hopeful that the new leadership embraces the role of the Parents' Council and affords the group the respect it deserves by having the appropriate staff present at the meeting.

The District must oversee the implementation of these corrective actions and changes in policies and procedures to ensure schools and IEP teams are complying. The District is encouraged to work collaboratively with the OIM on a methodology for monitoring such implementation. In the 2016-2017 school year, the OIM will conduct a study to examine the implementation of the corrective actions.

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. The framework was agreed upon by the parties with an expectation that the District would commit the necessary resources to build the system and maintain it after the conclusion of the MCD.

Since part 1 of this report, the District made minimal progress on the establishment of such system. As was noted in the previous report, despite several meetings with the OIM to discuss the framework requirements, the District did not produce any verifiable product other than its annual report. The OIM informed the District that its annual report was inadequate and did not address all the items in the framework. Since then, the OIM has worked collaboratively with DMAR, and made progress with the monitoring and data validation efforts of three outcomes, as well as working with the methodologies to measure progress on several other outcomes. Although these efforts have yielded some progress, senior leadership did not engage with the OIM on the framework during the remainder of the 2015-2016 school year.

On June 20, 2016, the District provided the OIM an update on progress made with its efforts to establish and implement a system to ensure substantial compliance. The District stated it submitted a draft substantial compliance plan on November 14, 2014, and has been working toward full implementation of the plan but has been awaiting OIM feedback regarding previously submitted documents. It is unclear what documents the District is referencing; however, since part 1 of this report, it made no effort to inquire or engage the OIM regarding these outstanding matters. The following update is based on the District's response to the OIM's request for information for inclusion in the annual report. The claims included have not been discussed with or validated by the OIM. Furthermore, the District did not present any evidence of these actions, with the exception of the data validation efforts regarding Outcomes 3-4: Completion and Graduation; 7.2: LRE at Co-located Schools, and 18: Disproportionality.

The status update is incorporated within the five elements of the substantial compliance framework.

- 1. Data system capable of monitoring key compliance and performance indicators at the District and school level
 - a. Welligent data is analyzed to determine performance on several indicators, including time spent in the LRE, transition, timely completion of IEPs, parent participation, service delivery, timely translations, and disproportionate representation in eligibility categories and educational placements.

- b. Data from the Office of Data and Accountability is analyzed to determine performance on the following indicators: participation and performance on statewide assessments, graduation and dropout statistics, and disproportionate representation in school discipline including suspensions and expulsions.
- 2. Process for monitoring special education compliance and performance at the school level
 - a. Service delivery and IEP timelines are monitored at the District, local District, and school level via the Welligent system reports.
 - b. Related service providers and RSP teachers can monitor service delivery with three reports: the 30-day service report, missing services, and a year-to-date cumulative report that compares minutes delivered to the IEP target minutes.
 - c. Bimonthly, the District sends service delivery data for RSP students with below-target performance to the SESCs, local District superintendents and directors, and school principals.
 - d. Site administrators and teachers monitor due dates for evaluations and IEPs via the Welligent system.
 - e. Bimonthly, the DSE sends data on upcoming and overdue IEPs to schools, local Districts, SESCs, and other offices. To facilitate monitoring, ITD is developing an IEP timeline calendar in Welligent to be implemented in 2016-2017 school year.
 - f. Monthly status dashboard reports are being finalized to contain data on 10 key performance indicators to facilitate self-monitoring by schools.
- 3. Process for receiving and resolving compliance complaints
 - a. The complaint management system is managed by the DSE's SFSS office, which carries out the responsibilities of the CRU, including providing callers an opportunity to make inquiries and file a concern or complaint. The SFSS office is responsible for providing a lawful response to all callers.
- 4. Process for resolving IEP disputes
 - a. LRE specialists are to assist schools, parents, and advocates in resolving disagreements within five days of the school's notification of nonagreement with any part of the IEP.
 - b. The DSE assigns resolution coordinators in each local District to work with parents and schools to resolve issues when an LRE specialist's intervention does not result in a resolution. The resolution coordinators are reportedly independent of the DSE and resolve the issues as they deem appropriate and legally compliant.
 - c. LRE specialists' and resolution coordinators' case management documentation is maintained in the SFSS data system.
- 5. Management and administrative structure with the authority to monitor and enforce compliance
 - a. The District develops and publishes policies and procedures consistent with federal and state regulations and incorporates these in administrator and staff training.
- 6. Facilities
 - a. The District did not include an update in its Substantial Compliance update and referred to the June 20, 2016, letter *District Responses to Various Independent Monitor Letters Related to Facilities*.

The status update provides information on efforts carried out since part 1 of this report. As noted above, these activities, statements, and claims have not been discussed or verified. While this represents some progress, several items still have not been addressed, such as the review of the existing District Validation Review process and data collection procedures. The OIM is available to meet and provide feedback, upon the District's request. While the OIM was unaware of pending items to be discussed, it is the District's responsibility to communicate and work with the OIM so that its efforts are not delayed or impeded. The following represents progress on the data validation and monitoring efforts on four outcomes (3 and 4 -- Completion and Graduation, 7.2 -- LRE at Co-located Sites, and 18 -- Disproportionality), on which the OIM worked collaboratively with DMAR staff.

Outcome 3 and 4 - Completion and Graduation Data

The April 22, 2015, 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. Since then, the OIM met several times with MiSiS staff to discuss the persistent problems with the graduation data as it related to data entry and management in the student information system.

Last year, in response to the OIM's report on the accuracy of SWD graduation data, as well as the disengagement alert letter to the superintendent regarding the persistent problems with graduation and completion data inaccuracies, the MiSiS team created a set of audit reports that allow proactive monitoring and validation of graduation requirements. Some changes were implemented at that time to prevent invalid or inconsistent data entry for certain codes; additional refinements, removal of invalid codes from selection lists, and other improvements were done in MiSiS this year. It is clear that more attention is being paid to this issue, as there have been several reminder messages in the periodic MiSiS updates that are distributed to all relevant school personnel. The impact of these new changes will be observed during the validation of the graduation and completion data for the 2015-2016 school year.

On June 20, 2016, the District provided a report on its validation of the graduation and completion data. To summarize, the OIM and DMAR worked collaboratively to ensure the methodology replicated previous years' validation studies conducted by the OIM. Both conducted the same review of the 12th grade cohort of SWD completion data indicators to determine if discrepancies existed between the leave codes in MiSiS and other graduation/completion indicators, such as credits. For example, if a student was identified as having received a diploma with a leave code of L7 and had transcripts showing less than the required 230 credits for graduation, the student was identified as having a discrepancy requiring additional follow-up with schools.

In past years, the number of cases with discrepancies exceeded 10%. This year, due to the safeguards and reports established by the MiSiS team, the data contained 127 records (3.2%) with discrepancies from 3,920 reviewed. The District followed up with schools to resolve these discrepancies and oversaw the corrections of data in the MiSiS database. In past years, the OIM conducted this follow-up, but it was agreed that to limit confusion and duplicative efforts of updating data at schools, DMAR would carry out this effort.

The OIM's and District's validation of graduation and completion data yielded similar results. DMAR found that 71.93% of students in the cohort received a diploma, compared to the OIM's 71.72%. For those counted as completers (students receiving a diploma plus students who received a certificate of completion or aged out), the District noted 74.1% of students in the cohort met this criteria, while the OIM found 73.6%.

The differences, while minimal, are a result of several factors. First, the District resolved the 127 discrepant cases, which might have resulted in changes to leave codes that were not updated in the OIM database. Another reason is minor discrepancies in identifying duplicate files or students who left the District. The OIM and DMAR discussed these differences and considered them acceptable.

Outcome 7.2 – LRE Time in Instructional Settings for SWDs at Co-located Sites

On June 20, 2016, the District provided a report on the progress of Outcome 7.2, which examines LRE time during the instructional day for SWDs attending three co-located schools (Avalon, Grand View, and Van Ness). The review aimed to replicate the methodology and analysis conducted by the OIM in previous years. The goal of the review was to see if SWDs attending these sites have IEPs and course schedules that demonstrate integration in the general education setting for an average of 12% of the instructional day.

The review found that on average, 22.5% of SWDs at the three schools met or exceeded the 12% performance target. This is a considerable drop from last year, which had an average of 33.7% of SWDs in the general education instructional setting for 12% or more of the day. This decrease was not examined further; however, the District should consider reviewing the availability of courses and electives for integrating students to determine if fewer resources and opportunities factored into this performance. Course and elective availability was examined by the OIM in the past and could be replicated.

Differences were noted between LRE time and course schedules for students at all schools, with the largest discrepancies occurring for SWDs attending Avalon Elementary. The review should examine whether practices for determining LRE time at IEP meetings account for course schedules as well as the impact of practices on the accuracy of the LRE time in IEPs.

Overall, the District replicated the methodology and analysis focused on the average percentage of time in the LRE. The OIM reviewed a sample of files to ensure the methodology was followed and yielded reliable and valid results. Although the review did not include all areas of analysis done in previous OIM evaluations, the District should consider these and other related inquiries to understand if the decision-making processes and availability of resources impacted the number of SWDs integrated in the general education settings.

Outcome 18 -- Disproportionality

On June 20, 2016, the District provided a report on its efforts to monitor and analyze compliance with the comprehensive evaluation criteria established by the OIM for students identified as emotionally disturbed (ED) for the 2014-2015 school year. The outcome requires IEP teams to follow a series of steps during the pre-referral, referral, identification, and placement processes.

During the 2015-2016 school year, the OIM worked collaboratively with DMAR staff to ensure files' reviews were consistent with the established methodology. All files were reviewed by the OIM and DMAR staff, with discrepant cases discussed and resolved.

The review found 81.8% of the students in the sample received a comprehensive evaluation, with the health assessment and parent participation elements accounting for the primary areas not met. Rates of compliance by IEP type noted that students with initial evaluation had higher rates of meeting the criteria than those with a change of eligibility or reevaluation IEP (94.1% initial vs. 84% change of eligibility and 76.3% reevaluation). These are all consistent with previous OIM findings.

The report includes an update on the District's risk and risk ratios for African American students identified with ED. The report notes that the risk of being identified with ED has decreased for African American students, from 1.16 in 2009, to 0.82 in 2016. This means that the probability of an African American students being identified with ED continues to decrease, signifying a positive effect of the intervention to reduce disproportionality. The overall number of students identified with ED and placed in NPSs has also continued to decrease. Decreases were also noted within the African American subgroup, which consists of 27.8% of all ED students, compared to 30.93% in 2013-2014.

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 its lack of progress and performance in the outstanding areas noted in this report.

Since part 1 of this report, the District has made minimal verifiable progress with some outstanding areas. To date, the District has still not fully implemented the following:

- Two-year plan for Outcome 13
- Districtwide Self-Evaluation and Transition Plan
- IEP Complaint Investigation Corrective Actions
- Substantial Compliance Framework

The District made some progress with the following areas; however, concerns still exist. These include:

- Outcome 10: Timely Completion of IEPs
- Complaint Management System

MiSiS

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.

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 as issues of noncompliance might arise, similar to those identified in the IEP investigation. Furthermore, the IM is considering changes to the Program Accessibility requirements and Outcome 13, given the District's lack of progress and willingness to implement the IM's directives, acknowledge problems, and work collaboratively on finding solutions. The IM will not establish timelines but will observe and monitor those established by the District. The following reiterates the expectation for disengagement, as established in part 1 of this report, and includes a corresponding status update.

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.
 - i. The District has committed only \$600M and reneged on original \$1.295B estimate. This raises serious doubt regarding the District's credibility and commitment to comply with the ADA.
- 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.
 - i. This requirement was established with the expectation that the District would conduct comprehensive surveys that identify all barriers at sites. The District has reneged on conducting comprehensive surveys and, based on the submitted SOWs, will fail to meet this requirement. Absent major improvements with the revised Districtwide Transition Plan, the IM will increase these targets within the next few months.
- c. Establish a functioning RAP with ongoing commitment to fund requests and outreach to schools.
 - i. Although the District did not provide any RAP projects for review, the site visits noted a lack of awareness of the RAP program by the majority of school administrators.

2. MiSiS

- a. A solution for integrating the full participation of charters
 - i. Progress was made due to the previous superintendent's request to work collaboratively with the OIM. Although a solution for integrating charters into MiSiS has been agreed upon, concerns exist with the timelines for implementation.
- b. The full implementation of the Gradebook and Passport parent portal
 - Progress noted.
- c. A commitment to comprehensive training
 - Progress noted.
- d. A commitment to system sustainability with a long-range financial and management plan
 - i. Concerns continue to exist with the sustainability of MiSiS 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
 - Progress noted.
- b. Process for monitoring special education compliance and performance at the school level
 - Progress noted.
- c. Process for receiving and resolving compliance complaints
 - i. Progress noted.

- 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.)
 - i. This will be discussed in the forthcoming OIM report on the complaint management system.
- e. Process for resolving IEP disputes
 - i. The District provided new information regarding resolution coordinators and their role in resolving IEP disputes. The OIM will discuss this new position and role and request applicable data for measuring progress with this item.
- f. Management and administrative structure with authority to monitor and enforce compliance
 - i. Although some examples of accountability have been provided, there are many areas of longstanding noncompliance where there appears to be no accountability for individuals responsible. This includes those responsible for the failures of the Districtwide Transition Plan and staff responsible for failure to comply with the IM's directives with Outcome 13, particularly providing information on caseloads.

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.
 - i. Although the District provided a status update on the implementation of its two-year plan, the District has not been transparent with its efforts, or compliant with the IM's directives.
- b. Leadership must be engaged and focused on finding solutions that support a provider's case and workload obligations.
 - i. No verifiable progress.
- c. Demonstrate the ability to allocate resources to support schools and providers to ensure service provision.
 - Status unknown.

5. Substantial Compliance

- a. Meet the standards set forth in the substantial compliance framework.
 - Some progress noted. Much of the progress reported by the District has not been discussed or verified.
- b. Resolve the problem with the graduation and completion data inaccuracies.
 - Progress noted. This issue was prioritized by the previous superintendent and resulted in ITD performing diligently in addressing the longstanding problems with graduation and completion data.
- c. Establish training initiatives to improve school and parent communication and collaboration at IEP meetings.
 - Status unknown.

CONCLUSION

This report has documented the District's progress in meeting three outstanding components of the MCD: Outcome 13, Sections 10 and 17 (making schools, services, programs, and activities accessible), and substantial compliance. It also includes updates on Outcome 10 (Timely Completion of IEPs), Outcome 16 (Qualified Providers), MiSiS, schools of choice, the complaint management system/CRU, the spring annual hearing, and progress on disengagement. Outcome 13: Delivery of Services, remains the only unmet outcome.

Although a report on the progress of Outcome 13 targets will not be available until fall 2016, efforts to monitor and track service delivery by related service providers, RSP teachers, SESC staff, site administrators, related service supervisors, and coordinators have been ongoing and commendable. These individuals dedicate a significant amount of time and energy to the weekly and monthly maintenance and monitoring of service delivery. It is reasonable to conclude that failure to meet this outcome is not a result of the majority of providers or administrative staff working diligently despite resource and time limitations. Furthermore, the District has the tools to identify noncompliance and continues to dedicate resources for enhancing these mechanisms in Welligent.

The notable vacancies of service providers and special education teachers identified in the recruitment plan, as well as years of feedback from staff regarding workload limitations, indicate that Outcome 13 will not be achieved without addressing the resource deficits needed to fulfill compliance with students' IEPs. These challenges have been

exacerbated by the lack of transparency and compliance with OIM directives by DSE senior leadership and the OGC.

The OIM has repeatedly pointed out the concerns with the structure of this outcome and encouraged the District to discuss alternatives with the Plaintiffs' Counsel. Delivery of services is an essential part of meeting the substantial compliance framework, providing a context for a comprehensive outcome that replaces the duration target, which the District is far from meeting.

Accountability for providers and teachers who fail to deliver services must exist. The District has shown evidence that it can initiate progressive discipline for site-level personnel. The District must also show it can hold senior-level staff accountable for not complying with federal court monitor directives. The behavior of these staff impedes progress and diminishes the credibility and efforts of the many site-, local District-, and central-level staff performing diligently within their resource means.

The shortage of qualified teachers and related service providers continues to be cause for concern that has direct impact on substantial compliance and service delivery. The IM expects to be kept informed of the District's recruitment plan and anticipated shortages during the 2016-2017 school year.

Progress with the obligations of Sections 10 and 17, which address accessible schools and compliance with ADA requirements, continues to diminish. Over the course of the MCD, there have been highs and lows in the working relationship between the OIM and District. This diminished progress is in part due to the OGC's disallowance of the ACU and ADA compliance manager from working collaboratively and communicating directly with the OIM. This working relationship was an integral factor for progress made in past years that resulted in a common goal for finding resolutions.

The diminished progress with the establishment of a Districtwide Transition Plan can be directly linked to those responsible for drafting the plan as well as the OGC, who continues to defend poor performance and persistent noncompliance with the ADA. The OGC's responses to a number of the issues raised by the OIM contradict the District's processes described in the plan, and even appear to be unnecessarily contentious instead of acknowledging problems and focusing on solutions. For example, the OGC argued that the problems with the poor conditions of the changing tables at PALs programs, including the lack of ventilation, are not addressed by or requirements of Title II of the ADA, contradicting the Districtwide Transition Plan commitment to assess programs to "ensure the health, safety, and welfare of students with disabilities is included in ADA surveys with an emphasis on sanitary conditions (i.e., changing rooms, lavatories, ventilation, etc.)." It is difficult to believe that an argument not in the best interest of students' health and safety is the opinion of one or few within the organization, and does not reflect those serving in students' best interests within the LAUSD. At best, it's a myopic argument rooted in motivation beyond the scope of the MCD or compliance with ADA.

The site visits continue to reveal systemic problems that prevent program accessibility as well as poor planning and management of limited resources. Identifying such problems is key to ensuring a system that prevents program accessibility.

After monitoring of the sample of schools from the 20 BRRs and reviewing the 13 modernization surveys, it is clear that the District is not implementing the processes described in the plan. The dramatic change in its approach to conduct comprehensive surveys is of considerable concern, particularly because this was agreed to by the FSD Chief, OGC, and previous superintendent. The revised SOWs are grossly inadequate and, if implemented, will not meet the criteria of having "readily accessible" schools.

The OIM has several other concerns:

- The quality control processes outlined in the Districtwide Transition Plan and ADA barrier removal flowchart were not consistently followed.
- It has not been confirmed that ACU staff participated in the creation of the BRRs.

- The processes that include the use of interviews and questionnaires were not consistently utilized in the development of the BRRs.
- Barriers to program access were omitted from the BRRs, some which had been previously identified in the original surveys.

In part 1 of this report, the IM noted that "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 District has once again delayed compliance, reports it has contracted external expertise to provide feedback on the plan, and intends to have a revised plan by the end of August 2016. It has also chosen to not renew the contract of the ADA compliance manager and has not provided a timeline for his replacement.

It is critical that the new plan meet the requirements and intent of the ADA Title II regulations. Furthermore, the plan must meet the expectations of Section 17, which requires the IM to determine that District schools have no systemic problems preventing substantial program accessibility compliance. 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,
- designation of an ADA coordinator, and
- the capacity to conduct consistent and comprehensive surveys.

The District cannot delay the establishment of its Districtwide Transition Plan any longer. If the revised plan does not meet the letter and intent of the ADA Title II regulations, the District must show it can hold staff accountable for failure to comply. The plan must also include a sound organizational structure for the ADA compliance manager that establishes the necessary independence, resources, and authority to ensure compliance. The superintendent has stated that the District would again visit schools collaboratively with the OIM in September 2016, which should help with finding solutions.

The District worked diligently to stabilize MiSiS while continuing the development of enhancements and new initiatives. In November 2015, the previous superintendent requested assistance from the OIM for integrating independent charter schools in MiSiS. This collaboration produced a plan that achieved consensus with the Plaintiffs' Counsel and, if implemented, a solution to a seemingly intractable problem. Over the past two years the OIM and MiSiS leadership have seen a collaborative and positive working relationship that is moving the implementation of MiSiS forward. Despite this progress, 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);
- implementation of the charter schools' MiSiS integration plan; 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 made progress with the implementation of its SFSS complaint management hotline and process for receiving and responding to parent inquiries, concerns, and complaints. Preliminary findings from the OIM's review of the complaint management system found inconsistencies in how calls are handled, particularly how complaints are identified and resolved. Quality assurance procedures should be reviewed and revised as necessary to improve the process and ensure a credible and valid complaint management system. The OIM's report on this review will be released in August 2016.

Although some progress was made in the development of a system that ensures substantial compliance, the District's lack of communication and engagement with the OIM is disappointing and a cause for concern. Progress made in

monitoring outcomes and key indicators was a result of the OIM and DMAR's collaborative work. The OIM will soon meet with District staff to discuss and validate the District's reported progress in this area.

The District made progress in its corrective actions but did not implement some within the required timelines. This is another situation in which the District's lack of communication and engagement with the OIM is cause for concern. The OIM is available to meet and provide assistance upon the District's request. During the 2016-2017 school year, the OIM will develop a study to examine the effectiveness of the implementation of the corrective actions.

Disengagement is within the District's reach and control. Historically, a collaborative relationship has set a steady path toward disengagement. When this collaboration wanes, disengagement becomes less likely, and the relationship less fruitful. The IM is hopeful that the 2016-2017 school year will be productive through collaboration, transparency, and a joint commitment to disengagement.

Essential Accountability Provisions of the MCD

First, 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 outcomes that have already been met.

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

Third, the MCD authorizes the IM to increase the outcome measure in the event an outcome was not achieved by June 30, 2006, and its achievement was delayed by more than six months. The IM will consider increasing the duration target of Outcome 13 this fall if credible action is not taken to address the variables discussed here. Similarly, the IM will consider increasing the number of comprehensive surveys and ADA betterments if the District cannot show a good faith plan that meets the requirements of the law.

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,

David Rostetter

C: Hon. Judge Ronald Lew, Robert Myers, Catherine Blakemore, David Holmquist, Beth Kauffman, Deneen Evans Cox, Brigitte Ammons

#	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 - 6/15/	16			
1	Participation in the (Smarter Balanced and alternate assessment) Statewide Assessment Program	English/Language Arts/Math	85.7%	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	7.98%			Yes 6/30/11
		Math	6.25%			
	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		71.93%	55.98%	39.79%	
4	Increase Completion Rate/Reduce Drop-Out		74.1%	72.4%	76.3%	Yes by Stipulation of the Parties 9/14/12
5	Reduce Suspensions of Student with Disabilities		1.49%	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		87.2%	73.7%	73%	Yes 6/30/06
7	Part 1: Placement of Students at Special Education Centers		1,021	53.38%	33%	- Yes 6/30/15
	Part 2: Students at Co-Located Sites Will Participate 12% of the Instructional Day with Their Non-Disabled Peers		165	23.30%	12%	
8a	Increase Home School Placement: SLI/SLD		95.2%	92.7%	92.9%	
8b	Increase Home School Placement: All Other Disabilities	Grade K	61.1%	59.1%	65%	Yes by Stipulation of the Parties 9/16/08
		Grade 6	74.5%	65.0%	65%	
		Grade 9	77.1%	60.0%	60%	
8c	Increase Home School Placement: All Other Disabilities	Grades 1-5	64.3%	58.8%	62.0%	
		Grades 7-8	76.9%	60.3%	55.2%	
		Grades 10-PG	58.0%	41.4%	36.4%	
9	Individual Transition Plan in IEP (14 years and above)		100%	99.8%	98%	Yes 6/30/06

#	Outcome		Current Status 6/15/16	Outcome Determination Status	Outcome Target	Outcome Met
10	Timely Completion of Initial Special Education Evaluations	60 Days	90.8%	90%	90%	Yes 6/30/08
		75 Days	95.7%	96%	95%	
		90 Days	97.6%	98%	98%	
	Response Time to Parent Complaints	5 Days	58.2%	54%	25%	Yes 6/30/06
11		10 Days	83.9%	82%	50%	
		20 Days	97.5%	97%	75%	
		30 Days	98.3%	99.9%	90%	
12	Informal Dispute Resolution Prior to Formal Due Process (within 20 days)		84%	77%	60%	Yes 6/30/06
	Delivery of Special Education Services	SLD Only	Data not available	90.8%	93%	No
13a		Other Disabilities	Data not available	94.5%	93%	
101	Delivery of Special Education Services	Frequency (# of times)	Data not available	81.8%	85%	
13b		Duration (length)	Data not available	68.9%	85%	
14a	Increased Parent Participation (Attendance at IEP meetings)	Attendance	83.8%	82%	75%	Yes 2/1/08
14b	Increased Parent Participation (Attempts to convince parent to attend IEP)	Sufficient Attempts	NA	96%	95%	
	Timely Completion of IEP Translations	30 Days	87.4%	96%	85%	Yes 6/30/07
15		45 Days	97.0%	99%	95%	
		60 Days	98.2%	99%	98%	
16	Increase in Qualified Special Education		89.4%	88%	88%	Yes 7/15/08 Not disengaged
17	IEP Team Consideration of Behavior Support Plans for Autistic and Emotionally Disturbed Students	Autism	58.8%	61%	40%	Yes 6/30/06
17		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