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Modified Consent Decree
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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 2016-2017 School Year—Fall 2016**

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 is the mid-year Annual Report for the 2016-2017 school year; it provides an update of outstanding MCD outcomes and requirements as well as 2015-2016 data for Outcome 13: Delivery of Services.

The MCD establishes 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 MCD 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, information on the fall annual hearing, an update on 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 a 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 are validated and derived from District data sources.

This report addresses the following outcomes:

- 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
 - Rapid Access Program (RAP)
 - New schools and repair and renovation
 - Section 17--Substantial Program Accessibility Compliance
- Schools of choice—charter and magnet schools
- Data systems—MiSiS
- Annual hearing
- 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*
2015-16	97.7%	N/A	97.2%	N/A
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
2015-16	85.3%	70.5%
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: assessing whether students are receiving their services, and the frequency and duration requirements specified in IEPs.

During the 2015-2016 school year, ODA and AIR, in collaboration with the OIM, conducted a study to measure service delivery to SWDs (Appendix A). Overall, the District's performance showed a decrease for two of the three targets, meeting two (evidence of service and frequency), but failing to meet one (duration). The first part of the outcome measures evidence of students who received at least one session of the services specified in their IEPs for the eight-week period. The District's performance on this part met or exceeded the target level (93%) for demonstrating evidence of service for students with SLD (97.7%) and for students who have a disability in all other categories (97.2%).

To assess frequency and duration, the study compared the number of sessions and duration minutes specified in the IEPs and the information in the Welligent provider logs for the same time period. Students must receive 98% of all minutes prescribed to meet the outcome's duration requirement. The District met the frequency target (85.3%) but fell below the 85% target for duration (70.5%). These performances are slight decreases from the previous school year and remain consistent with those noted over the past several years.

All services met the 85% frequency target except OT (83%) and speech and language (81%). Approximately 48% of the cases that did not meet the frequency requirement (n=594) were missing one session (n=284). Eighty-three percent of nonpublic agency (NPA), 64% of RSP, and 51% of school mental health services missed the frequency requirement by more than one session. As noted above, 85.3% of the students in the sample received all the

sessions at the frequency specified in their IEPs. This number would increase to 92% if those missing only one session were included.

The performance for duration (70.5%) continues to fall well below the target. The only services to meet the duration target were PT (87%) and deaf and hard of hearing (85%). The following services had the lowest duration rates: behavioral intervention services provided by NPAs (45%), RSP (67%), school mental health (71%), speech and language (74%), and adapted physical education (APE) (79%). Cases that did not meet the duration requirement (n=1,152) were further examined. Fifty-nine percent of these cases were missing service time equivalent to one session. If those missing one session were included and considered as having met the duration, the performance would increase to 81%. The services with the largest percentage of cases missing more than one session were RSP (80%), NPA (78%), and APE (54%).

An update was provided on the progress of two of the five items in the District's two-year plan to address issues with Outcome 13. Although 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 first item addresses an ongoing factor limiting progress with this outcome related to the documentation of RSP services when substitute teachers provide services. This has resulted in a lack of documentation of service delivery despite students receiving these services. The production of a new module in Welligent to allow substitute RSP teachers to document service delivery is nearing completion and will be made available in spring 2017.

The second regards new Welligent system functionality that will automatically create service records for newly identified students based on their IEP prescriptions. This will eliminate user error and alert service providers when a service has been added. This new feature is slated to be piloted in spring 2017.

Updates were not provided on three remaining items of the two-year plan, related to the creation of dashboards and alerts to facilitate monitoring by supervisors and providers. Although the District reported it would provide a revised timeline for two of the remaining three actions by the end of June 2016, it did not. In addition, information regarding a study of workload issues compared to caseload, making assignments, and reducing the number of IEP team meetings has not been provided.

The District continues to develop capacity and engage numerous stakeholders in efforts to monitor the provision of services. This includes developing a series of reports—for example, related service department administrators are provided daily reports of students who are new to a service, and weekly reports identify when students have not been assigned a provider or have not started receiving services. A year-to-date report (SER 300) is also available for providers to self-monitor their service provision and compare to the number of minutes owed to date. Training has been provided and made available online for administrators and providers to effectively use these reports and improve service provision documentation.

Summary reports that include service delivery data for RSP and behavior intervention implementation (BII) services have been developed and are provided to local district administrators and Special Education Center Administrators (SESCAs). These reports are dashboards that alert site and central office administrators of service provisions based on six performance tiers, enabling the identification of degrees of noncompliance. In addition, the District reports that an updated reference guide and comprehensive training on RSP service provision, documentation, and monitoring are being prepared for publication in spring 2017.

The District responded to the IM's directive for caseload information by providing data extracts of provider and student service logs. Although this data did not yield the expected results, the Division of Special Education (DSE) leadership has been responsive and open to collaboration for developing solutions for Outcome 13. The IM is hopeful that this continued collaboration and transparency with data and District staff will lead to progress and solutions for improving service delivery.

Over the past several years, a lack of progress with the targets of this outcome, particularly the duration measure, has been a dark cloud over the prospect of disengagement. In past reports, the IM has expressed concerns over the

limitations associated with the measure used for determining compliance and progress with this outcome. Since the last annual report, the Parties have discussed exploring alternative approaches to an outcome that improves service delivery rates and provider accountability. Over the past two months, the OIM has met with District staff to discuss data, monitoring, and accountability structures in place to guide this inquiry. To obtain feedback, an online survey of related service providers was conducted in early November 2016. In early December, focus groups of related service providers, managers, and supervisors were also conducted to explore factors that impede service delivery as well as gain insights into possible alternatives. The OIM expects to have proposed alternatives by the end of February 2017 in hopes that the Parties will consider revising the measure so that it is attainable while addressing areas that will yield improved service delivery for SWDs.

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
2016-17 11/15/16	4,383	324	245	3,814	87.02%
2015-16	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 November 15, 2016, 87.2% of the District's special education teachers were fully credentialed. This performance is below the 88% target; therefore, this outcome is now considered unmet.

The District has been engaged in a recruiting campaign to address state and national shortages of special education teachers and related service providers. The plan includes a multilevel approach for acquiring these professionals by 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.

Several short-term solutions are also in place to address related service provider shortages. This includes the recruitment of retirees to form a substitute pool of providers, the use of NPAs, service delivery via telepractice, and psychologists with offsite assignments deployed to schools for short-term coverage.

The District reported hiring 136 related service providers for the 2016-2017 school year. Although the recruitment of related service providers yielded a considerable number of hires, the District projected needing 260 providers during the 2016-2017 school year. As of October 31, 2016, new related service provider hires included:

- Speech and Language Pathologists – 65
- School Psychologists – 37
- Occupational Therapists – 20
- Adapted Physical Education Teachers – 8
- Physical Therapists – 3
- Audiologists – 2
- Recreational Therapists – 1

Information was not provided on the number of qualified special education teachers hired during this timeframe. Since the 2015-2016 school year, the overall percentage of special education teachers increased 8.7%, outpacing those considered qualified (2.5%). This has resulted in an increase in intern and provisional teachers, thus lowering this target's performance measure. The timeline for intern and provisional teachers to reach qualified status is unknown; therefore, it is difficult to anticipate an overall increase in qualified teachers. In addition, no information on the number of newly hired qualified teachers was provided.

Although the District is to be commended for these recruitment efforts, particularly those of related service providers, the lack of an update on the recruitment of qualified teachers makes it difficult to gauge progress, current needs, and trends.

- ◆ **Determination:** Outcome 16 is no longer 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)	
		#	%	#	%	#	%	#	%
2016-17 11/15/16	4,864	4,457	91.6%	4,686	96.3%	4,778	98.2%	86	1.8%
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. Timely completion of IEPs is a primary indicator of substantial compliance.

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.

Performance information for the 2015-2016 school year was provided in the July 11, 2016, IM annual report. It reported the District was meeting two of the three targets, and was close to meeting the third (more than 60 days, 95.7%). This update is provided to show the District's performance to date as well as its ongoing efforts to address overdue IEPs. As of November 15, 2016, the District was meeting all three targets. Although this is encouraging, the spring semester is the busiest time for completing evaluations and holding IEP meetings.

Several new reports and efforts have been implemented to further ensure compliance with IEP timelines. At the end of July 2016, the DSE's Strategic Planning and Data Management Department published an updated comprehensive IEP 200 timeline report. The report now includes students with IEPs pending or in process, students receiving services while attending private schools, and timelines for all IEP types (i.e., annual, three-year, 30-day, initial, and re/evaluation). Color codes are now incorporated to help schools check and sort IEP status by urgency. New messages are included for IEPs in "pending" status for extended periods of time.

In September 2016, these reports were sent to various stakeholders including the SESCAs, DSE Charter Schools Department, the Division of Charter Schools, nonpublic school (NPS) administrators, and elementary and secondary administrators who oversee special education. In October and November, the distribution of these reports expanded to include the Superintendent, local superintendents and directors, and other senior-level managers.

A tool that functions as a dashboard for school administrators (principals and assistant principals), referred to as the Principal Summary Form, was provided; this contained IEP timeline data and service delivery data for RSP and BIIIs. To inform senior leadership including local superintendents and directors, as well as central office administrators, school summary reports with historical data were provided to enable targeted interventions.

The District continues to demonstrate a commitment to improving its capacity to monitor and ensure compliance with IEP timelines. It is to be commended for these efforts and its strong start in meeting IEP timelines for 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 determine that District schools have no systemic problems preventing 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 Sections 10 and 17 since the previous report issued July 2016.

\$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 make minor renovations in an expedited manner so students could participate in programs and activities.

The Districtwide Transition Plan Draft (August 2015) shifted the oversight of the RAP program to the ADA compliance manager and included a flowchart outlining the process for approval of requests. The District has been without an ADA compliance manager since July 1, 2016, and it is unclear how this lack of oversight impacted performance during the 2015-2016 school year, or who is now responsible for these projects.

At the time of the July 2016 annual report, the District did not provide any information on RAP applications received or projects completed. In response to the OIM’s November 2, 2016, request for information for inclusion in this annual report, the District provided three spreadsheets. Two provided information on RAP requests made during the 2015-2016 and 2016-2017 school years. The third spreadsheet (Rapid Access Program Detail) provided additional details on the interim solution and number of days to complete each renovation or fulfill the request. No additional information was provided on improvements or the implementation of the RAP process.

During the 2015-2016 school year, 89 RAP requests were received, 19 of them unapproved. For the 2016-2017 school year, 48 RAP requests were received, 24 projects were unapproved, and two were canceled. The District’s spreadsheets contained very limited information on whether the projects were approved or completed, and contained no information on columns intended to track when certain forms were returned or when projects were approved by the Associate Superintendent of Special Education. Of the 137 requests made over the 17 months, only four contained information in the “actual modification” column.

The District provided copies of the RAP requests received during this timeframe. Of the 89 received during the 2015-2016 school year, 52 were for issues related to toileting or changing areas, with 17 applying to Preschool for All Learners (PALs) programs. Thus far during the 2016-2017 school year, 48 were received; 44 were for toileting or changing areas, with 26 applying to PALs programs. One request to address accessible parking for a community member was approved. For one of the changing area requests, the Office of Environmental Health and Safety (OEHS) was involved in the approval of two folding tables. It is encouraging that the District is using these resources, particularly after the Office of the General Counsel (OGC) dismissed the relevance of their role

and guidance for ensuring safe, sanitary, and hygienic conditions in changing areas in non-restroom situations and industry-standard tables.

The Rapid Access Program Detail spreadsheet contained 77 projects requested between August 18, 2015, and November 3, 2016. Of these, 64 projects were reported as completed. The District reported completion times, or days from the time of the request to the renovation's completion, as follows:

- 0-20 days – 0 projects
- 21-40 days – 6 projects
- 41-60 days – 12 projects
- 61-80 days – 13 projects
- 81-100 days – 22 projects
- 101-120 days – 5 projects
- 121-150 days – 5 projects
- 150+ days – 1 project

Eighteen projects were noted as delayed for various reasons, including the Porter Ranch gas leak, principals changing their minds on the scope of work (SOW), shortage of labor, on-site filming, extensive revisions to SOWs, and budget limitations. It is unknown how school principals can alter the SOW by deciding against procuring a stage lift or changing table, when the need was assessed and approved.

The limited and incomplete information in the spreadsheets does not allow for proper evaluation of the effectiveness of the processes for receiving and approving requests, and completing projects. The timeliness of project completion (72% required more than 81 days to complete) shows little improvement in meeting the intent of the RAP program, particularly since many were requests for meeting students' toileting needs.

In May 2016, the Plaintiffs' Counsel raised concerns with the lack of accessible features at Banneker Career and Transition Center (CTC), a program for older students with moderate to severe disabilities. In August, the OIM visited the site with the Plaintiffs' Counsel and observed noncompliant features such as a lack of accessible restrooms, stage, and changing areas. Despite being made aware of these conditions, the District did not initiate remediation of these conditions until after the OIM's and Plaintiffs' Counsel visit. Although some of these elements required design and Division of the State Architect (DSA) approval, the lack of responsiveness by the District is indicative of a system that cannot ensure substantial compliance. To make matters worse, the Principal had communicated some of these noncompliant elements, and a SOW had been prepared in the past, but no action was taken. Although all of these features may not be appropriately addressed through the RAP provide, these mechanisms should have been utilized to address the immediate need such as toileting. This is another example of poor planning and preparation for programs sites that serve a population of SWDs with mobility and self-care needs.

In early 2017, the OIM will engage the District to discuss the RAP program to better evaluate its effectiveness. The OIM will also obtain feedback from schools to better understand the program's strengths and weakness. This is a critical component of a system that ensures substantial compliance and must be funded, effective, and responsive before disengagement from the MCD.

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 compliance manager, 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.

Progress on the Development of a Districtwide Transition Plan Update

In February 2016, the District submitted its fifth version of a draft Districtwide Transition Plan. This plan was discussed in the previous annual report wherein the IM noted many shortcomings. The District withdrew the plan and, in August 2015, requested a meeting with the OIM noting it had procured a new consultant and was developing another approach to achieve compliance with the ADA and its Districtwide Transition Plan. On September 6, 2016, the OIM met with the District and its new consultant to discuss the new approach to transition planning. On September 22, the District provided a letter outlining the new approach with a schedule and measurable objectives (Appendix B).

The new approach is based on the model used by the San Francisco Unified School District (SFUSD) to meet the requirements of a settlement agreement to achieve compliance with the ADA. To summarize, this approach divides all schools into three categories “based on criteria relating to use, population, complex, geography, etc.” The three categories are defined as (p. 3):

Category 1: Key Schools/Program Access PLUS – Approximately 26% of schools

These schools would meet new construction/alterations standards to the maximum extent feasible (elevators would not have to meet exact standards where not feasible)

Category 2: Program-Accessible Schools – Approximately 44% of schools

The core spaces and features of these schools (see Category 3) would be made accessible, PLUS program accessibility would be provided to all programs and activities:

1. Access to and use of at least one accessible area for each program offered at the site, for example –
 - a. First-grade classroom, second-grade classroom, science classroom, etc.;
 - b. Gymnasium and locker rooms;
 - c. Assembly areas (auditoriums, theaters);
 - d. Unique-use spaces such as biology labs, art studios, music rooms, swimming pools, play areas, football stadiums, tennis courts
2. Access to adequate number of restrooms, drinking fountains, etc., serving the accessible spaces
3. Access between buildings
4. Signage

Further improvements would be made as needed, through the Rapid Access Program or other means.

Category 3: Schools with Core Access – Approximately 30%

Group Three – The core spaces of these schools would be made accessible, to ensure a basic level of access to the building (certain common spaces), including –

1. Parking and drop-off/approach points
2. The main entrance or alternate entrance in historical conditions
3. Access from parking/drop-off/approach points to the entrance
4. Access to the main office

5. Access to an assembly area (auditorium, gym, cafeteria) [Note: DOJ Said access to all these]
6. Some restrooms, drinking fountains, etc.
7. Directional signage

As needed, classrooms and other spaces would be made (accessible), through the Rapid Access Program or other means; or programs would be moved to accessible locations within the school or to other schools.

The letter states that the ultimate goal is to improve all schools to at least a Category 2, and notes that the percentages of schools included are approximate and subject to change.

A schedule of activities with measurable objectives as well as a timeframe for achieving disengagement from Section 17 by December 31, 2018, was included. Some of the more salient objectives include:

- By May 31, 2017 – Conducting high-level overview surveys of all schools, revise the approach to site surveys, develop criteria for categorization, and obtain Superintendent approval of a 10 year plan to achieve compliance, and submit the plan to the OIM.
- By December 2017 – Make improvements to 20 schools to standards for Category 1 and 55 schools for Category 3
- By January 31, 2018 – Complete 150 surveys
- By March 2018 – Make improvements to 25 sites to standards for Category 2
- By August 31, 2018 – Complete removal of barriers at 75 sites

The IM has expressed optimism with this approach and the ambitious two-year timeframe for conducting surveys at 150 schools and making betterments at 75 sites. The District has also engaged in a more collaborative approach, including participating in joint site walks with the OIM to better understand this approach.

Despite this progress, the concurrent barrier removal effort raises concern with the intent of this approach. Prior to this new approach, the District had initiated surveys and betterments at 75 sites, dispersed in five groups (phases), with a completion date of June 30, 2018. Group one included 20 schools scheduled to have betterments completed at the end of December 2016. Concerns with the adequacy of these efforts were discussed in the previous IM annual report, which noted that the findings and SOWs at these sites were limited in addressing program accessibility. The District has acknowledged that the betterments at these 20 sites will not adequately achieve the new standard of Category 3 and will require additional work.

Collaborative joint site walks at six sites were conducted to better understand the proposed categorization approach and observe the improvements of changing areas at PALs programs. After these visits, the IM provided a letter to memorialize expectations and concerns expressed during the two days of site observations (Appendix C).

This section addresses many of the OIM's concerns expressed in its November 7, 2016, letter and the District's corresponding responses. In addition, it addresses issues raised in the District's November 22, 2016, letter (Appendix D)—a response to the IM's November 7 letter—which notes the District's "views about our respective roles and responsibilities going forward."

The section is organized as follows. The first bullet represents the IM's concerns or issues, while the italicized and bold comments are the District's recent (November 22) response. The third and fourth levels include the IM's response to the November letter.

- Comprehensive surveys will be carried out at all sites (Categories 1-3). These findings will be the basis for determining barrier removal prioritization.
 - *The District noted that Category 1 schools would receive a full and detailed survey of all spaces. Categories 2 and 3 would undergo detailed surveys to identify barriers needing remediation to bring them up to their respective requirements. Details were yet to be determined for the respective categories.*

- The adequacy of the detailed surveys for sites designated Category 2 and 3 will be assessed when the District provides the three sample schools, as agreed upon during the October 13 and 14, 2016, site visits.
- Any renovations and new construction must yield readily accessible conditions and meet all applicable codes. The ADA specifically states an intent to avoid applying lesser standards than are required under other federal, state, or local laws; therefore, the most stringent law has precedence.
 - ***The District agreed to follow all substantive and procedural requirements of all applicable laws, including the ADA and California Building Code (CBC).***
- Any previous access compliance work must be surveyed to determine whether it met applicable code at the time. If not, these conditions must be corrected to meet the most current code.
 - ***The District stated that although much of this work would already be included in the surveys, work that wasn't included would be issued at the end of the full effort to comply with the ADA.***
- All projects must include DSA closeout and certification on previous work (if applicable).
 - ***The District agreed to this requirement, noting it would follow all substantive and procedural requirements of all applicable laws, including the ADA and CBC.***
- All projects must have DSA closeout and certification to be considered complete.
 - ***The District agreed to this requirement, noting it would follow all substantive and procedural requirements of all applicable laws, including the ADA and CBC.***
- During the site visits on October 13 and 14, the District agreed to revise the SOWs at three of the schools visited. The purpose of the revised SOWs was to identify the Category (2 or 3) of each site and illustrate the work required to achieve the designated category. The District was to provide the OIM a timeframe for completing the revised scopes.
 - Neither the revised SOWs nor a timeline for their completion was provided to the IM. The revised SOWs will serve as templates for determining the adequacy of the surveys for Category 2 and 3 schools and a model for consistency of the barrier removal effort for these categories moving forward.
- The OIM noted concern with the limited scope of the current projects of the phase-one barrier removal projects at 20 sites as well as the succeeding projects in the design and survey phases. In particular, because the criteria for group categorization has not been established and agreed to, the OIM is concerned that these projects will lead to a piecemeal approach, increasing project costs due to multiple designs and fees, and leading to situations where the SOWs result in differing standards.
 - ***The District cited the ADA Safe Harbor provisions, which state that elements that have not been altered in existing facilities on or after March 15, 2012, that comply with the corresponding technical and scoping standards of the 1991 Standards or those in the Uniform Federal Accessibility Standards do not need to be brought to current code.***
 - The OIM agrees that if elements were altered and met the applicable standards of the time, alterations to those elements would not be required per Safe Harbor.
 - However, over the course of the MCD, noncompliant findings with the applicable standards of altered elements have been observed and well documented. Therefore, the assessment (survey) of these elements and inclusion of noncompliant elements in SOWs are relevant.
 - The OIM's concern of a piecemeal approach remains, particularly for areas that might have alterations that exclude previously altered areas and elements that are noncompliant with the applicable standard of the time.
- Guidance from the 2004 San Francisco (SF) settlement agreement regarding the path of travel (POT) requirement was included in the IM's letter, noting this as a common component of work for all categorization groups.

- *The District responded to this guidance by stating that the definition included was used out of context, claiming that POT alterations are required when a “primary area” function is altered and subject to the “disproportionality” limit rule, and that altering a primary function area does not trigger POT changes if elements along the POTs were altered and met the standards applicable at that time (Safe Harbor).*
- *It also included language from the regulations that address POTs in the context of program accessibility, noting that section 35.151(b)(2) requires POT requirements only for alterations undertaken for purposes other than to meet the program accessibility requirements of section 35.150.*
- *The District adds that “of course, the District will make alterations along the route to an altered area if it is needed to provide program access,” while pointing out that this obligation is different from the POT requirement.*
 - It is unclear how this definition was used out of context when the letter simply included a definition used from the SF settlement agreement the District is purportedly following. However, the IM agrees that if the elements along the POTs were altered and met the applicable standards of the time, POT alterations would not be required.
 - The information provided by the District in citing 35.150 and 35.151 is required by federal ADA requirements. However, and in addition, the California DSA that defines accessibility standards for school sites in California has issued an Interpretation of Regulations (IR) 11B-10, which defines scoping and POT upgrade and accessible route requirements for facility alterations, additions, and structural repair projects. The IR states that a project at an existing site is an alteration of that facility and subject to the requirements of CBC Section 11B-202.4: Path of travel requirements in alterations, additions and structural repairs. The IR applies to 1) alteration or structural repair of an existing building or feature on the site or 2) addition of a new building or new elements to an existing building, facility, or site. The IR further confirms that a project at an existing facility is an alteration of that facility. The IR discusses the requirements for accessible routes and POT requirements. The OIM understands that the number of requirements for accessible routes might be lower than the number of requirements for POTs, but that there are requirements for both.
 - The District has said it would follow all substantive and procedural requirements of all applicable laws, including the ADA and CBC, and thus would include the accessibility requirements as stated in IR 11B-10.
 - The argument above that these POT requirements do not apply to alterations for meeting the program accessibility requirements would only be applicable for schools that have not been altered since the passage of the ADA.
 - Over the course of the MCD, noncompliant findings with the applicable standards of altered elements including POTs have been observed and well documented.
- The IM has concerns regarding the DSA’s allowing SOWs with various elements selected for renovation, which might not require renovation of related items during the barrier removal project, but would otherwise be required if these areas were part of a larger modernization effort. The IM noted that although the DSA might have the authority to exempt items from a SOW, the IM does not. The IM also noted that the expectation for the SOW, whether considered “voluntary” barrier removal or not, was to address program accessibility as intended by the ADA. In addition, the District should provide any exemptions authorized by the DSA in writing.
 - *The District responded that it is not within the IM’s authority under the MCD to determine whether something should or should not be exempt.*
 - To reiterate, the barrier removal effort is expected to have SOWs that address program accessibility compliant with the ADA.

- MCD Section 10, paragraph 76 requires all new construction and renovation or repairs to comply with Section 504 and the ADA.
 - As mentioned above, the ADA specifically states an intent to avoid applying lesser standards than are required under other federal, state, or local laws; therefore, the most stringent law has precedence.
 - The District agreed to follow all substantive and procedural requirements of all applicable laws, including the ADA and CBC.
 - Therefore, it is reasonable to conclude that compliance with the ADA and CBC is within the purview of the IM's authority under the MCD.
 - Because the DSA is the state agency that ensures CBC compliance, it is reasonable to conclude that the request and collection of written exemptions granted by the DSA are within the purview of the IM's authority under the MCD.
 - No DSA written exemptions have been provided.
- The IM expressed concern over the District's assertion that staff parking would not be included in the surveys and barrier removal SOWs (unless a reasonable accommodation had been requested), because employee areas are a Title I requirement. The IM's letter pointed out that the 2013 California Building Standards, as stated in the Chapter 11B sections regarding scoping and technical requirements for accessible parking, do not support the District's claim that it does not have to provide a compliant accessible faculty parking lot unless an employee asks for a Title I accommodation.
 - *The District responded that the IM's statements regarding the inclusion of staff parking in surveys was beyond the scope of the MCD. Furthermore, it contended that the purpose of the MCD is not to comply with the CBC or ensure employee access.*
 - *The District noted that it agreed that the CBC applies to new construction, but not to program access. Furthermore, it added that if the employee parking lots were modified for the sake of program accessibility—for instance, if at times they are used by parents or the public—then they would be required to meet the ADA and CBC.*
 - To reiterate, the barrier removal effort is expected to have SOWs that address program accessibility compliant with the ADA.
 - MCD Section 10, paragraph 76 requires all new construction and renovation or repairs to comply with Section 504 and the ADA.
 - As mentioned above, the ADA specifically states an intent to avoid applying lesser standards than are required under other federal, state, or local laws; therefore, the most stringent law has precedence.
 - The District agreed to follow all substantive and procedural requirements of all applicable laws, including the ADA and CBC.
 - Therefore, it is reasonable to conclude that compliance with the ADA and CBC is within the purview of the IM's authority under the MCD.
 - As was stated in the IM's November 7, 2016, letter, the CBC requires accessible on-site parking when parking is provided.
 - The District's response includes contradictory statements noting that the CBC applies to new construction, and when parking lots are used by the public and parents, they are required to meet the ADA and CBC.
 - The argument implies that parking lots are not open to the public and parents. This is incorrect. The OIM has used many parking lots when visiting schools and has observed parents using them when dropping students off or visiting the school.
 - The District also responded to and approved a RAP request for an individual from the community for accessible parking.

- The new approach for Category 1 states that these schools would meet new construction/alteration standards, meeting the CBC requirements for accessible parking as noted above by the District.
 - In addition, these statements do not align with the considerable resources spent on bringing parking lots into compliance during the District's effort to expend \$67.5 million to renovate existing facilities under MCD section 10, paragraph 77.
 - The statements also contradict the draft Districtwide Transition Plan's (August 2015) approach for prioritizing barrier removal to make facilities accessible, stating that:
 - In alignment with the Department of Justice's priority items, at a minimum, the District will address the following priority items that have been identified as providing the greatest access:
 1. An accessible entrance;
 2. An accessible route to the altered area;
 3. At least one accessible restroom for each sex or a single unisex restroom;
 4. Accessible telephones;
 5. Accessible drinking fountains; and
 6. When possible, additional accessible elements such as parking, storage, and alarms.
- The IM noted the need for a two-phase public input process, with the first phase occurring after the design of a Districtwide approach. Phase two consisted of obtaining public input on the actual transition plan as completed.
 - ***The District stated its intention for a two-phase public input process.***
 - Although this is good, the IM has stated in the past and reiterates that current barrier removal projects and those succeeding in phases 2 to 5 have not included public input for the development of the transition plan as required by Title II of the ADA, or the self-evaluation process, and will not count toward those projects required for disengagement.
- The IM noted that the District's approach to conduct a "high-level survey of all schools, revise approach to site surveys, develop criteria for categorization, and obtain Superintendent approval of revised 10-year plan" by May 31, 2017, was reasonable, but expressed concerns regarding how the District was proceeding with surveys and construction at sites prior to the completion of this effort. Given that one of the assurances of the categorization approach is that decisions for selecting sites for barrier removal would be based on the identification of unique programs and needs across the District, it was unclear how those projects already in construction and slated for design and construction related to this approach.
 - ***The District did not respond to this concern.***
- The IM requested the following information:
 1. A flowchart of the barrier removal process from beginning to end, including site selection, survey, design, and DSA closeout.
 2. The process used to determine programs at a site.
 3. Copies of surveys for all projects completed since the submittal of the 20 received.
 4. Operationalized definition of "some" and "adequate" number of drinking fountains and bathrooms.
 - ***The District did not provide the above items.***

The District's November 22, 2016, letter also includes assertions regarding the IM's authority under the MCD. Specifically, it states:

"The MCD charges you as the federally-appointed court Independent Monitor with making a determination that will disengage the District from court oversight when compliance with the MCD is achieved. Specifically, as to access to facilities, Section 10 of the decree (paragraphs 76-78) requires that

1. All new construction and renovation or repairs comply with Section 504 and the ADA.

2. The District 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.
3. The District establish a unit to address on-demand requests related to accessibility and expend up to \$20 million for task orders related to requests for program accessibility.

“Section 17, para. 89 that (as to facilities) the MCD will terminate when the Independent Monitor certifies in his judgement the District has met all special education-related outcomes, that the District has entered into binding commitments to spend the \$67.5 million required by Section 10, and 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 MCD focuses on the District’s special education program and was entered into to complete the undertaking of bringing the District into compliance with the IDEA and Section 504 (section 1.1). Section 17 seems to suggest that there is a ‘program accessibility’ aspect to the ‘special education’ laws specifically stated in the MCD. In fact, Section 504 and the ADA, where the ‘program accessibility’ requirements are found, are not special education laws. They are both nondiscrimination laws. Furthermore, the IDEA does not have a program accessibility requirement. pp 5-6.”

- It is unclear what the District is arguing as these comments are contradictory with regards to the authority of the IM granted by the MCD and the nature of the laws in relationship to the MCD.
- As stated above, MCD Section 10, paragraphs 76-77 grant the IM the authority to monitor the District’s compliance with Section 504 and the ADA. The District appears to interpret Section 17 as only pertaining to the IDEA, which is a federal special education law.
 - ***The District contends that Section 504 is not a special education law and implies that the MCD does not cover ADA program accessibility requirements.***
 - Section 504 is a civil rights law to prohibit discrimination on the basis of disability in programs and activities, public and private, that receive federal financial assistance, which covers public school districts.
 - The law specifically covers educational programs and services, including special education–related services, and states that an “appropriate” education means an education comparable to that provided to students without disabilities. The law defines this as being regular (general education program) or special education services. Students are able to receive related services under Section 504 even if they are not provided any special education. Although Section 504 does require the development of a plan, a written document is not mandated. However, the IEP of IDEA can be used for the Section 504 written plan.
- The IM will engage the Parties to discuss the District’s new interpretation of the MCD and the IM’s authority.
- The IM, including my predecessor, and the OIM have consistently monitored compliance with the requirements of the federal and state special education laws and regulations as well the ADA and Section 504 as stated in the MCD (such as Section 10).

The District’s letter also alleges that the IM has overstepped the authority granted by the MCD by monitoring and engaging in oversight of “DSA actions as to specific projects with regard to exemptions, close-out, and certifications, and requiring changes to employee areas.”

- As stated earlier, Section 10, paragraph 76 of the MCD requires all new construction and renovation or repairs to comply with Section 504 and the ADA.
- The ADA specifically states an intent to avoid applying lesser standards than are required under other federal, state, or local laws; therefore, the most stringent law has precedence.

- *The District agreed to follow all substantive and procedural requirements of all applicable laws, including the ADA and CBC.*
- In many iterations of its draft Districtwide Transition Plan, the District has mentioned it relies on the DSA to ensure compliant design and construction. The February 2016 draft transition plan included a claim that it had completed ADA improvements and betterments totaling \$678 million since the year 2000. The IM questioned the validity of this claim with the District responding as noted:
 - *“The Facilities Services Division 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, inspected by DSA and certified by DSA.”*
 - Because the DSA is the state agency that ensures CBC compliance, it is reasonable to conclude that the request and collection of written exemptions granted by the DSA, close-outs, and certifications are within the purview of the IM’s authority under the MCD.
- Furthermore, the request and collection of DSA documents is not new; it has been a part of Section 10 monitoring efforts for about 10 years.
- It is unclear why the District is now objecting to the review and inclusion of such documents when they are procedures and processes required by the DSA to show evidence of compliant work. This is consistent with the duties specified in MCD Section 3, paragraph 18, which states that:
 - in fulfilling his obligations under the Modified Consent Decree, the Independent Monitor shall verify the accuracy of the District’s data required to measure the District’s performance and shall make determinations only on data that the Independent Monitor finds to be accurate (p. 5).

The District’s letter requests that the IM monitor and not guide or direct the District as it proceeds with its new effort to comply with the ADA. It also claims that the five revisions of its Districtwide Transition Plan were a result of the IM’s changing expectations. Last, it includes a schedule for the OIM to start monitoring these efforts, beginning May 2017.

- The District has yet to produce a Districtwide Transition Plan after several iterations and more than two and a half years since the current IM’s appointment. The OIM has been requesting a compliant transition plan since 2006 and yet to receive it.
- As stated in the referenced March 2016 letter, the IM will monitor whatever plan the District chooses to implement and determine whether these efforts align with the letter and intent of the law to ensure compliance. In the past, the OIM has provided guidance, both solicited and unsolicited, to assist the District in its own capacity to produce a compliant plan. The notion that revisions or failures to produce a Districtwide plan is due to changing IM expectations is inaccurate. All revisions were initiated by the District or a result of feedback that deemed the corresponding plans inadequate. It is reasonable to assume the District’s previous plans were inadequate given the lack of advocacy for such plans.
- Although the OIM is considerate of the District’s schedule for completing work, it will continue to monitor as it deems necessary. The OIM has demonstrated that ongoing monitoring has resulted in the District being informed of compliance problems and shortcomings with the implementation of plans. Because of the OIM’s monitoring, the District was able to reconcile or address problems in a timely manner to minimize the financial impact of these mistakes. These include noncompliant findings at new schools (both initially and during the efforts to reconcile noncompliant elements at the 81 sites); problems with the sanitary and safe conditions at PALs programs and the nine Outcome 7 schools; inaccessible elements at all independent charter schools; and existing renovations and repairs under the \$67.5 million effort.
- The District’s letter aims to redefine the program accessibility requirements inconsistent with past behavior and assurances. The District must define program accessibility, particularly for those areas it believes are excluded from this requirement. Schools are dynamic and fluid environments where programs, activities, and services are made available throughout the majority of the campus. A common understanding of program accessibility is critical for moving forward.

Review of Preschool for All Learners Programs

The IM's July 2016 annual report highlighted the OIM's concerns raised in April 2016 regarding the poor conditions of changing areas at PALs programs. In May 2016, the District noted it was in the process of obtaining the necessary approvals to offer the following recommendations regarding restroom facilities for PALs classrooms. On August 17, the IM expressed concern that no documentation had been provided to convey the status of the efforts to seek approval to make recommendations or whether approvals had been obtained. On August 22, the District provided an update, and a second update on November 11. The following outlines the District's actions and the status of the approval or implementation.

- A. Review classroom availability on school sites for PALs classes; these should be assigned in the following order of preference:
 - 1. Classroom with a self-contained restroom (i.e. transitional kindergarten/kindergarten classroom).
 - a. Approval reported November 10, 2016.
 - 2. Restrooms reconfigured to allow for a changing table (wall mounted) with weight capacity that accommodates 250 pounds or more.
 - a. The RAP program is being used to address diapering, toileting, and restroom needs. Seventeen RAP projects were reported pending, in process, or completed.
 - b. The same update was provided in August and November 2016.
 - 3. Placement of PALs class in proximity to nursing office or other locations, allowing for a changing table if not feasible in self-contained restroom.
 - a. The DSE is working with school personnel to ensure PALs classes and the nursing office are not more than 50 feet away when the necessity to use the nursing office for changing students is required.
 - b. The same update was provided in August and November 2016.
 - 4. Placement of privacy screens in appropriate designated classroom areas, allowing allows for adequate space to change students when necessary, while taking into account precautions against staff being in enclosed areas without proper visibility by other adults.
 - a. Privacy screens are provided via the RAP process.
 - b. The DSE provided 59 changing tables to PALs programs.
 - c. The DSE ordered 400 privacy screens and an additional 200 changing tables for new PALs classrooms, which were placed in a warehouse available for schools.
 - d. The same update was provided in August and November 2016.
- B. Annually, each PALs classroom staff will receive Universal Precaution training from LAUSD Nursing Services, including hygienic toileting.
 - 1. Training was provided during September and October 2016 as part of the California Preschool Learning Foundations and Framework and Desired Results Developmental Profile professional development available to all current staff. Beginning with the 2017-2018 school year, this training will be provided to all new teachers.
 - 2. The same update was provided in August and November 2016.
- C. Annually, and upon additional request, each PALs program is provided Universal Precaution materials, including gloves, wipes, changing table covering, etc.
 - 1. A memorandum and starter kit for the 2016-2017 school year were provided to all PALs programs by September 30, 2016.
 - 2. The same update was provided on August and November 2016.
- D. Annually, each school with a PALs program will be audited using a standard protocol regarding the toileting procedures, including the use of Universal Precautions and student privacy issues.
 - 1. Annual audit commences during the 2016-2017 school year utilizing REF-6777.0.
 - 2. The same update was provided on August and November 2016.

The August and November updates did not differ in describing the effort's implementation status to improve changing area conditions at PALs programs. The District also did not provide the Reference Guide instructing

schools on how to order privacy screens and changing tables. Therefore, it is difficult to gauge improvements in the implementation of these efforts. Although the large number of RAP requests for privacy screens, changing tables, and renovations of bathrooms indicates school site staffs' awareness of these efforts, it also highlights the District's lack of planning when placing these programs and the need to improve changing area conditions.

The District has been expanding the PALs program, opening classrooms at 51 schools during the 2015-2016 school year, and 32 more during the 2016-2017 school year. Although the large number of RAP requests is encouraging, the District must be proactive and responsive to the needs of existing and new PALs programs.

ADA Compliance Manager

The District has not filled the ADA compliance manager position since July 1, 2016. Since the previous annual report, the District has mentioned two searches and two rounds of candidates. The District did not provide an update on the search for the ADA compliance manager. Neither did it provide information on whether the duties of the ADA compliance manager related to ADA compliance and grievances are being fulfilled. If there is no designated responsible person, per 35.150 of the ADA, the District is out of compliance with this requirement. The District is required to provide an update by January 15, 2017.

To reiterate the IM's expectation, 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 letter² 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 compliance manager/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.

SCHOOLS OF CHOICE

Charter Schools

SWD enrollment at independent charters continues an upward trend. As reported in the July 11, 2016, IM annual report, 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. As of October 15, 2016, enrollment at charter schools noted an increase of 8.6%, while those of SWD rose 5.6% (n=634). Although 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, the percentage of SWD enrolled has decreased.

² The letter can be viewed at <http://oimla.com/pdf/20151110/appj.pdf>.

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

School Year	Total # of Students Enrolled at Charters	% of SWDs Enrolled in District-Operated Schools	# of SWDs Enrolled in Charter	% of SWDs Enrolled
2016-17 10/15/16	111,683	12.60%	11,986	10.73%
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

As noted in the July 11, 2016, IM annual report, there was a large decrease for SWD who applied (-28%) and were selected (-38%), during the 2015-2016 school year. Those selected to attend also decreased in 2014-2015 from 60% to 51%. Despite fewer applicants and SWDs selected, the total enrollment increased by approximately 750 students or 18.5%, raising the overall percentage of SWDs enrolled to 6.45%.

The previous IM annual report required the District to examine the application process to determine factors that contributed to the decrease in the numbers of SWD applying to magnets. The District reported that its review found no changes in the application process that would attribute to this reduction and expressed concerns with this decrease. The District noted it would engage in concerted efforts to recruit SWD by targeting schools with larger populations of SWD and continue to encourage parents to apply. The effectiveness of these efforts should be seen in spring 2017.

The decrease in those selected was described as a result of fewer SWDs with elevated points, as selection is based on a point system and does not factor in subgroup status such as special education eligibility.

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%

Magnet School Enrollment Overtime

School Year	# of Schools	CBEDS/ NORM *	SWD Enrollment	% SWD Enrollment
2016-17* 10-15-16	213	75,427	4,865	6.45%
2015-16*	198	69,859	4,106	5.88%
2014-15	188	66,881	3,792	5.67%
2013-14	178	62,363	3,075	4.93%
2012-13	174	59,482	2,549	4.29%
2011-12	175	58,838	2,451	4.17%
2010-11	169	56,556	2,236	3.95%

DATA SYSTEMS

My Integrated Student Information Systems (MiSiS)

MCD Section 11 requires the District to comply with the stipulation to develop and implement an Integrated Student Information System. 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 continued to keep the MiSiS system stable and introduced incremental improvements while pursuing a large volume of needed enhancements. 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, communication, and training and a much improved software.

Many significant enhancements have been delivered in at least a dozen modules of MiSiS, but the amount of remaining work is considerable. The District and Microsoft agreed to extend their agreement through December 2016, so that Microsoft could perform additional development work. Because of reductions in the scope of work, the pace of software development during the 2015-16 school year, continuing through mid-November 2016, has been extremely rapid. At least 35 separate software releases (to the live system) have occurred, with more than 500 enhancements delivered. Given this rapid release schedule, it is not surprising that more than 2,000 software bugs have also been repaired. The MiSiS team has managed to keep the system stable throughout this period of rapid change.

For the 2016-2017 school year, the District has contracted with "managed services" vendors who will take over the software development from Microsoft. Transition to the primary vendor, InfoSys, is still underway. The District is hoping that this decision will reduce costs going forward, both for completing remaining development requirements and for future system maintenance.

In the near future, the MiSiS team will begin Functional Roadmap sessions that will establish the scope and priority of software work to be done for the remainder of 2016-2017 (and most likely beyond that timeframe).

The MiSiS training team continued both its outreach to schools and transparent reporting of progress and challenges. Proactive communication with schools and timelier training sessions seem to have had a positive impact. Although these efforts are encouraging, there will be challenges in ramping up training for the Gradebook as well as finding creative methods by which parents can be trained to use the Parent Portal (Passport) in the coming year. Challenges also remain in organizing and delivering Gradebook training and support and especially for the Parent Portal.

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 pilot has been expanded to another 38 schools and training offered to approximately 6,000 teachers during the fall 2016 semester. A few schools have also chosen to opt in to the pilot, once they saw its capabilities. In addition to containing a feature-rich Gradebook module, Schoology is a complete learning management system (LMS) that teachers will be able to use for building course content and other creative uses. The Gradebook/LMS team is currently working with Elementary Instruction on the Elementary California Content report card. The OIM is concerned that inclusion of this element may ultimately delay rollout of the Gradebook to all LAUSD elementary teachers.
- Parent Portal (Passport)—The Parent Portal has been launched as a pilot. By the end of September 2016, more than 2,000 parents had direct access to the Schoology Gradebook via this Parent Portal. Additional subject areas (e.g., IEPs and service data for SWDs) will be added in the upcoming year.
- Data Integration Strategy and Enterprise Ad Hoc Reporting—The Information Technology Division (ITD) launched an initiative that will greatly improve data integration and create new capabilities for transparent views of both operational and longitudinal data. This includes dashboards, cross-functional views of student and school data, and new individual ad hoc reporting capabilities. Several dashboards and the ad hoc tools (for seven subject areas) were released during the fall semester. Additional dashboards and expansion of data available for ad hoc reporting will continue in the 2016-2017 school year.
- Data Quality—ITD has licensed a product called Certify that has, in a short time, improved the quality and completeness of data entered into MiSiS. The greatest benefit of this product is its ability to track those responsible for properly recording data at the point of origin in a timely manner. This will improve data quality and reduce the number of students for whom data must be corrected. As evidence of this, more than 30,000 data exceptions were corrected during the last two weeks of September 2016 alone. The business rules employed in this initiative will be expanded in the near future.

The successes delivered by the MiSiS team in 2016 are encouraging. However, many of the concerns expressed in the previous report remain.

1. Although the MiSiS system is stabilized, it is still incomplete. Previously delayed requirements have been changed or replaced in some cases, and the team has yet to identify the scope of work that will be completed for the remainder of the 2016-2017 year.
2. Minimal progress has been made on the remaining MCD requirements, with some previously developed functions still requiring rework this year.
3. Although progress has been made on the implementation of a mandated Gradebook module, it has been done with an expanding, but still small pilot. The existing module is being replaced by a new module as part of the LMS. Promotion of and training on this module for teachers will be critical. Change management is especially important for this function, as the expectations for timely, accurate, and complete recordkeeping by teachers will now be visible and critiqued by parents and students alike.
4. Ad hoc reporting functions previously built into MiSiS are being 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. Progress to date has been very encouraging.
5. The Passport pilot in a few schools seems to have been successful, but sharable information, while slowly expanding, is still limited. The Passport team has very limited resources. Design and technical obstacles must be overcome along the way (e.g., security issues to display an IEP in the portal), and assignment of resources will be critical to make this successful.
6. Progress on charter schools' integration with MiSiS is very slow, and the original projected timeline will not be met. Ownership of this project appears to have landed with the MiSiS team, instead of the business owners. That team is forging ahead with sound technical concepts and focused effort, but support and active participation from the business owners will be essential for success.

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 November 16, 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 70 people, with 25 presenting oral testimony. In addition, five 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 41 referrals seen by District staff.

The most frequent concerns related to noncompliance with IEPs, including not getting services, lack of collaboration and hostile IEP meetings, lack of Assistant Principal/Elementary Instructional Specialist support, and inequities of services and programs.

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.

The MCD requires the District to address and improve its systemic, substantial compliance with special education law. The IM, through annual reports, the substantial compliance framework, and correspondence with the District, has consistently stated that a viable complaint management system is necessary for substantial compliance.

On November 11, 2016, the District provided an update on the efforts taken to address the recommendations in the April 2013 OIM CRU report. It noted that it was still reviewing the most recent October 2016 report and has yet to address those recommendations. The update also provides information on the call center's performance for responding to 22,230 calls processed through November 10, 2016. Timelines associated with Outcome 11 were used to measure performance, demonstrating a high percentage (98%) of calls being closed within five days. This included all call types (inquiries, concerns, and complaints); therefore, performance of complaint calls cannot be disaggregated.

Procedures for quality assurance were described as checks and balances for identifying and closing out call types. Calls are initially identified by CRU or call center (classified) staff as inquiries, concerns, and complaints and, if not resolved, are forwarded to program specialists, specialists, or administrators, who try to resolve the call. A final assignment of the call type is made depending on the investigation and resolution. This relabeling of calls resulted in 27% (114 of 517) of the initially identified complaints by the CRU and call center staff to be confirmed by certificated staff to be actual violations. The procedures of checks and balances and relabeling of calls was addressed in the OIM's 2016 report, noting several shortcomings with this approach, resulting in the misapplication of the lawful response letters and obscuring of complaint data.

During the 2014-2015 school year, the DSE established the School and Family Support Services (SFSS) unit, which supports and oversees the District's complaint management system. The CRU, established by the MCD, merged with the SFSS; the combined unit is now responsible for responding to parents' complaints and issuing a lawful response. Despite having equal and parallel functions, the complaint management system maintains two phone numbers: the existing CRU (800) hotline and the SFSS call center line.

To determine the effectiveness of the District's complaint management system, the OIM conducted a study and provided a report³ with findings and recommendations in October 2016. The study included a review of the following: policies, procedures, and communication related to the complaint management system and other District

³ The report can be view at: http://oimla.com/pdf/20161005/cmsystem_final.pdf

policies; a sample of calls (N=1,514) to the call center (SFSS and CRU) between July 20 and December 15, 2015; and staff interviews (8).

Given that the call center was in its first year of operation and processed a large volume of calls (more than 10,000) during the study's timeframe, the progress noted since the OIM 2013 CRU study is cause for optimism. Despite these improvements, system weaknesses were noted, some consistent with those highlighted in the 2013 study.

The policies, procedures, and protocols of the complaint management system provide a fundamental framework for a valid and credible complaint system. The structure and processes established for processing and resolving calls are noted areas of strength and improvement in the complaint management system. It is evident that the District has committed significant time and resources to develop this system.

The OIM's document review and staff interviews noted inconsistencies in the application and understanding of processes for categorizing call types (complaint, concern, inquiry), closing cases, and determining lawful response types. Several weaknesses were noted, primarily the two-tier process for identifying call types—once at the opening and once at the closing of a call. Furthermore, the system lacks a decision-making process for selecting call priorities, call topic categories, and subcategories.

The data review found examples of acceptable practices for investigating claims and issuing lawful responses. However, inconsistencies were noted in documentation practices, with many cases missing call types, call topics, and investigation (CESAR) steps.

Differences between CRU and SFSS documentation were noted throughout the process. CRU cases demonstrated higher rates of complaint calls and better identification of these calls. SFSS call center cases considerably underidentified complaints, with staff reporting recategorizing complaint calls as concerns or inquiries when resolutions were quickly applied. Staff's misunderstanding of three of the four lawful response types also contributed to this underidentification of complaints. These practices result in the significant underreporting of complaints and renders data utilized for Outcome 11 as invalid for the 2015-2016 school year.

The system lacks clear guidance and mechanisms for closing cases and ensuring that schools or support units follow through with remedies or actions to resolve a parent's concern. A credible complaint management system cannot rely on assurances from schools or support units, particularly for a system this impacted and large.

The provision of an accurate lawful response is the cornerstone of a credible complaint management system. The quality of the lawful response letters is much improved since the 2013 study, with the majority accurately reflecting the complaint and remedy. However, oversight of lawful response data and letters requires improvement. The District provided 68 letters that matched students in the sample, yet the District identified 79 complaint cases while the OIM identified 448 complaint cases.

Although participants noted implementing the same procedures and processes for calls related to students attending independent charter schools and non-special education related issues, the transferring of these calls to other departments and closing of cases without resolution were common practices.

The lack of follow-through by these departments, and closing of these cases once referred to the DSE's charter office or local districts' operations unit, circumvents the lawful response process. Cases related to charter schools, particularly issues related to the student's special education program, cannot be abdicated to the DSE's charter office, any other office, or SELPA. The MCD is clear that students attending independent charter schools are under the purview of the MCD and, therefore, cannot be excluded from the complaint management system established to ensure substantial compliance.

The District must address the issues related to the CRU, including any differences in roles and responsibilities between the CRU and SFSS customer service representatives as well as inconsistencies in the varied inclusion and reference of the CRU as part of the SFSS call center. Full integration of the CRU must occur if the new complaint management system is to be the mechanism to ensure substantial compliance.

SFSS leadership appears to have a good understanding of the complaint management system's processes and direction to ensure systemic substantial compliance. Although the system and performance are developing in several areas, the structure and mission of the complaint system vastly improved since the 2013 study. Similarly, CRU staff performance improved.

The study found that the complaint management system addresses seven of the eight OIM recommendations in the 2013 study, to varying degrees. Required next steps were included to further the development of the complaint management system. These include continued improvement for the accurate identification and documentation of complaints, application of the four lawful response types pursuant to the MCD, and provision of ongoing professional development. Oversight mechanisms must be improved and implemented by certificated and administrative personnel, pursuant to the SFSS's own processes established in its policies, procedures, and protocols.

It is critical that the District continue 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 found in the recent study is 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 IM is hopeful that if the District addresses the recommendations of the most recent report and continues to provide the training and tools needed to process calls, it will have a functional and credible complaint management system.

IEP COMPLAINT INVESTIGATION

On August 5, 2015, the IM issued a report on 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 this one corrective action. 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 OIM reviewed the effectiveness of the complaint management system and provided findings and recommendations in October 2016 as well as in the previous section.
 - b. Although considerable progress was noted, issues such as those related to the two-tiered approach for identifying calls and the application of lawful responses must be addressed to ensure a credible system.
 - c. This corrective action is unmet.
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. This corrective action is met.
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. This corrective action is met.
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. This corrective action is met.

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 added the introductory statement to the *Parents' Guide to Special Education Services* in September 2016. The revised publication was distributed to schools the week of November 14, 2016.
 - b. This corrective action is met.

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 added the introductory statement to the *Parents' Guide to Special Education Services* in September 2016. The revised publication was distributed to schools the week of November 14, 2016. Stand-alone handouts of programs, supports, and services on the District's website and through Welligent downloads were also available as of November 14, 2016.
 - b. This corrective action is met.

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 individuals (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

to work collaboratively with the OIM on a methodology for monitoring such implementation. In spring 2017, 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” (p. 26). 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 (pp.24-25):

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 October 12, 2016, the District met with the OIM to discuss the Substantial Compliance Framework, including the Key Performance Indicators (KPIs) and requirements for reporting progress. It was agreed that the OIM would operationalize the framework and guide the District through a series of questions. The District agreed to respond to these questions.

The District continues to work with the OIM to replicate the methods utilized for monitoring compliance and performance with MCD outcomes. Efforts to validate the 2015-2016 graduation data are ongoing, and they should be available in the near future. It also reports ongoing monitoring of and communication with schools through reports for compliance indicators of IEP timelines and service delivery.

On October 31, 2016, the District submitted a review of its District Validation Review (DVR) process in accordance with the Substantial Compliance Framework. The purpose of the review was to evaluate the current processes within the DVR and make improvements in its compliance monitoring. The District proposed four changes to its current review. Two of these changes are technological enhancements, such as developing a DVR module in the Welligent IEP system and prepopulating individual school level performance data to improve data reliability. The third change will incorporate school’s progress data so DVR teams have baseline performance of KPI data to monitor compliance and identify areas of need. The last will require schools demonstrating low performance during the DVR review to go through the DVR process the following year, with the expectation that increased attention and support to these schools will yield improved compliance.

DISENGAGEMENT

The MCD’s goal is to ensure compliance through the establishment of a system 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.

Since the previous annual report, the District has made minimal verifiable progress with some outstanding areas. To date, the District has still not fully implemented or met the following:

- Outcome 13: Delivery of Services
- Outcome 16: Increase in Qualified Providers
- 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:

- Complaint Management System
- MiSiS

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. The following reiterates the expectation for disengagement and 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 are irrevocable.
 - i. The District has committed only \$600 million of the original \$1.295 billion estimate. This raises serious doubt regarding the District's credibility and commitment to comply with the ADA.
 - ii. Although the District's new approach gives cause for optimism, it has still not produced a compliant Districtwide Transition Plan that has allowed for public input and a self-evaluation process.
 - 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 yet to provide examples of Category 2 and 3 sites and details regarding the standards for assessing these sites. Its concurrent barrier removal effort raises concerns as it continues to expend limited resources on efforts that the District has acknowledged are inadequate in meeting the Category 3 standard.
 - c. Establish a functioning RAP with ongoing commitment to fund requests and outreach to schools.
 - i. The poor documentation and reporting of the RAP process and completion times are cause for concern. Although the number of requests for improving the conditions of changing areas and bathrooms is encouraging and a sign of increased awareness, this is evidence of poor decision making and lack of planning by school officials when moving and opening classrooms for students with toileting needs. This is a critical component of a system that ensures substantial compliance and must be funded, effective, and responsive before disengagement from the MCD. 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 noted. However, the timeline for implementation has been delayed a year and is cause for concern.
 - b. The full implementation of the Gradebook and Passport Parent Portal
 - i. Progress noted.
 - c. A commitment to comprehensive training
 - i. Progress noted.

- d. A commitment to system sustainability with a long-range financial and management plan
 - i. Concerns remain about 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
 - i. Progress noted.
 - b. Process for monitoring special education compliance and performance at the school level
 - i. 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. Progress noted. The October 2016 report on the Complaint Management System provides recommendations for improving this capacity.
 - e. Process for resolving IEP disputes
 - i. The OIM will assess this in spring 2017.
 - f. Management and administrative structure with authority to monitor and enforce compliance
 - i. The OIM will assess this in spring 2017.
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. No progress was noted in the 2015-2016 school year. The OIM is conducting an evaluation of components of the service delivery system to come up with possible alternatives to Outcome 13 that will improve service delivery and accountability for noncompliance.
 - b. Leadership must be engaged and focused on finding solutions that support a provider's case and workload obligations.
 - i. The OIM will further explore this capacity in its evaluation of the service delivery system.
 - c. Demonstrate the ability to allocate resources to support schools and providers to ensure service provision.
 - i. The OIM will further explore this capacity in its evaluation of the service delivery system.
5. Substantial Compliance
- a. Meet the standards set forth in the substantial compliance framework.
 - i. Some progress noted. The OIM will work with the District to operationalize the framework in spring 2017.
 - b. Resolve the problem with the graduation and completion data inaccuracies.
 - i. Progress noted. The validation of 2015-2016 school year will determine if this has been met.
 - c. Establish training initiatives to improve school and parent communication and collaboration at IEP meetings.
 - i. 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 Evaluations, Outcome 16: Increase in Qualified Providers, MiSiS, schools of choice, the complaint management system/CRU, and the fall annual hearing as well as progress on disengagement. Outcome 13: Delivery of Services was the only unmet outcome, until this year, when the District failed to maintain targets for Outcome 16: Increase in Qualified Providers.

The lack of progress on Outcome 13 continues to cast doubts of meeting the targets as currently constructed. Despite the significant resources dedicated to improve the service delivery monitoring mechanisms, the District has yielded minimal measurable progress toward meeting the outcome. As mentioned earlier, the OIM is exploring the

service delivery system to identify possible alternatives that might replace the current methodology of Outcome 13. A suitable alternative will aim to improve service delivery to students and will require the District to identify and remedy issues of noncompliance in a timely manner. Alternatives will be presented to the Parties by the end of February 2017.

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 District is no longer meeting Outcome 16. 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 ADA compliance, has been limited since the previous annual report. Although there is cause for optimism with the District's new approach, there are concerns with the implementation of its concurrent barrier removal effort, which the District has acknowledged will not meet the standard of Category 3 schools. Furthermore, these schools have not been part of the self-evaluation process or public input, and thus will not be counted toward meeting the betterments at the 75 sites.

Consensus on elements of the District's approach is critical for moving this forward and meeting the District's objectives and timelines. However, the OGC's new interpretation of Section 17 and the IM's authority of the MCD will require discussions with the Parties, potentially delaying this effort. These arguments, while within the prerogative of the District, once again appear to be unnecessarily contentious instead of acknowledging problems and focusing on solutions. The IM is confident the Parties will reach consensus on the MCD's intent and requirements. However, this is an example of the District's leadership focusing on minimizing its obligations, rather than mobilizing itself to reach ADA compliance.

Although progress has occurred with the deployment of privacy screens and changing tables at PALs programs and for older SWDs with toileting and changing needs, the number of RAP requests is indicative of the high need for improvements at these sites. The lack of accessible features at Banneker CTC illustrates poor planning and preparation of sites that house programs for students with mobility and self-care needs. Identification and timely remediation of such problems are key to ensuring a system that prevents program accessibility.

The District has yet to produce a compliant Districtwide Transition Plan. 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. Consistent with the previous report, 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/compliance manager, and
- the capacity to conduct consistent and comprehensive surveys.

The District continues to demonstrate a stable MiSiS while developing enhancements and new initiatives. Over the past two and a half years, 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. It is critical that the District continue 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 found in the recent study is cause for optimism in meeting this obligation of substantial compliance. The IM is hopeful that if the District addresses the recommendations of the most recent report and continues to provide the training and tools needed to process calls, it will have a functional and credible complaint management system.

Over the next six months, the OIM will continue to work with the District to move forward with the requirements of the Substantial Compliance Framework. The IM is encouraged by the DSE's collaboration and ongoing efforts to monitor KPIs.

The District made progress with more of the corrective actions from the IEP Complaint Investigation. Although the implementation of these corrective actions is encouraging, the ultimate test will be the change in culture of IEP teams to ensure that families are equal members of the team and are authorized to make decisions on the appropriate services for SWDs.

Disengagement is within the District's reach and control. The District has provided ambitious timelines regarding accessibility betterments and is generally on course with the timelines for full implementation of MiSiS. The IM is hopeful that the 2016-2017 school year will be productive through collaboration, transparency, and a joint commitment to finding an alternative to Outcome 13 that will improve the service delivery system and lead 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. 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. In the previous report, it was noted the IM would consider increasing the duration target of Outcome 13 this fall if credible action was not taken to address the variables discussed. At this time, the IM will defer any increase pending the ongoing effort to find alternatives. Similarly, the IM noted it would consider increasing the number of comprehensive surveys and ADA betterments if the District does not show a good-faith plan that meets the requirements of the law. The IM will again defer any increase pending the District's new plan and good-faith efforts for achieving compliance with the requirements of Title II of the ADA.

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

ACKNOWLEDGMENTS

The IM commends both the District and Plaintiffs for the constructive and positive manner in which they have worked together in the process of implementing the MCD. Agreement is not always possible in such a broad and significant undertaking. However, the Parties have consistently demonstrated both the desire and ability to reach appropriate resolutions.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "David Rostetter". The signature is fluid and cursive, with a prominent initial "D" and "R".

David Rostetter

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

Table A

#	Outcome		Status 6/30/16	Outcome Determination Status	Outcome Target	Outcome Met
1	Participation in the (Smarter Balanced and alternate assessment) Statewide Assessment Program	English/Language Arts/Math	94.0%	85.2%	75%	Yes 6/30/06
		Comparable to Non-Disabled	96.6%	95.0%	95%	
2	Performance in the (Smarter Balanced and alternate assessment) Statewide Assessment Program – Met or Exceeded Standards	English/Language Arts	7.97%			Yes 6/30/11
		Math	6.44%			
	Performance in the (Smarter Balanced and alternate assessment) Statewide Assessment Program – Nearly Met, Met, Exceeded Standards	English/Language Arts	22.22%			
		Math	19.47%			
3	Increase Graduation Rate		Data not available	55.98%	39.79%	
4	Increase Completion Rate/Reduce Drop-Out		Data not available	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%	Yes by Stipulation of the Parties 9/16/08
8b	Increase Home School Placement: All Other Disabilities	Grade K	61.1%	59.1%	65%	
		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
10	Timely Completion of Initial Special Education Evaluations	60 Days	91.1%	90%	90%	Yes 6/30/08
		75 Days	95.8%	96%	95%	
		90 Days	97.6%	98%	98%	

Table A

#	Outcome		Current Status 6/30/16	Outcome Determination Status	Outcome Target	Outcome Met
11	Response Time to Parent Complaints	5 Days	59.2%	54%	25%	Yes 6/30/06
		10 Days	84.2%	82%	50%	
		20 Days	97.5%	97%	75%	
		30 Days	100%	99.9%	90%	
12	Informal Dispute Resolution Prior to Formal Due Process (within 20 days)		94%	75%	60%	Yes 6/30/06
13a	Delivery of Special Education Services	SLD Only	97.7%	90.8%	93%	No
		Other Disabilities	97.2%	94.5%	93%	
13b	Delivery of Special Education Services	Frequency (# of times)	85.3%	81.8%	85%	
		Duration (length)	70.5%	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%	
15	Timely Completion of IEP Translations	30 Days	86.4%	96%	85%	Yes 6/30/07
		45 Days	96.3%	99%	95%	
		60 Days	98.4%	99%	98%	
16	Increase in Qualified Special Education		87.02% 11/15/16	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
		ED	100%	97%	72%	
18	Comprehensive Evaluation of African American Students Identified as Emotionally Disturbed	% Meeting Criteria	Da	81%	90%	Yes 6/30/10