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Modified Consent Decree  
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January 30, 2018

Ms. Vivian Ekchian  
Interim Superintendent of Schools  
Los Angeles Unified School District  
333 S. Beaudry Avenue, 24<sup>th</sup> Floor  
Los Angeles, CA 90017

**Re: Disengagement Alert: Overdue IEPs and Service Providers**

Dear Ms. Ekchian:

On April 22, 2015, I provided Superintendent Cortines a letter stating that I would be issuing “disengagement alerts” when the District is no longer meeting the targets of the Modified Consent Decree (MCD) outcomes and/or requirements or is demonstrating other systemic problems that prevent substantial compliance. The letter included a disengagement alert regarding the persistent problems in maintaining graduation and completion data for students with disabilities (SWDs).

As a result, the Superintendent directed MiSiS staff, in collaboration with the Office of the Independent Monitor (OIM), to address and resolve these issues. On October 25, 2017, in the Independent Monitor’s (IM) Annual Report, I reported that after a decade of highlighting problems with graduation and completion data, these issues had finally been resolved.

On April 11, 2017, I met with Superintendent King and informed her of my commitment to facilitate disengagement by providing alerts in areas with a decline in performance that falls below the standards as defined in any outcome or in areas that impact substantial compliance. It is my hope that providing this information eliminates any unintended surprises as we approach the possibility of disengaging while enabling the District to engage in remediating performance in a timely manner.

To date, the District has attained 17 of the 18 measured outcomes and continues to make progress on MiSiS and the elements of the substantial compliance frameworks. In addition to meeting the 18 MCD outcomes and tasks such as MiSiS and improvements with the program accessibility requirements of the Americans with Disabilities Act (ADA), Section 17 of the MCD

requires that the IM must determine there are no systemic problems within the District's schools that prevent substantial compliance.

As stated in my April 22, 2015, letter, disengagement alerts focus on tasks that demand more from the District and fit the following criteria:

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

This letter is the second alert and will hopefully enable the District to prioritize efforts and resources aimed at remediating performance over the next two years. As you are aware, the MCD is, with reasonable certainty, progressing toward possible disengagement within the foreseeable future.

### **Timely Completion of Individualized Education Plans (IEPs) (Initial, Annual, and Triennial)**

The timely completion of a student's IEP is a fundamental compliance safeguard afforded to students and families. By ensuring timely assessments and IEP meetings, it enables the prompt delivery of services and accommodations aimed at helping students access the general education curriculum and/or benefit from their specialized educational programs and IEP goals.

Outcome 10: Timely Completion of Evaluations, monitors initial IEPs that are to be held within the following parameters:

- 90% of all initial evaluations shall be completed within 60 days.
- 95% of all initial evaluations shall be completed within 75 days.
- 98% of all initial evaluations shall be completed within 90 days.

As of December 15, 2017, the performance on all three timeframes fell below the targets as follows (Attachment A):

- 86.6% were completed within 60 days.
- 94.7% were completed within 75 days.
- 97.6% were completed within 90 days.

Since the 2010-11 school year (six school years), the District has met the performance for the 60-day timeline, which coincides with both federal and state regulations, for only one year (2015-16); met the 75-day timeline two years (2015-16 and 2016-17); and hasn't met the 90 day timeline since 2009-10.

Annual IEPs are also not being held on time, with 5.35% of those held to date, are overdue (Attachment B). Although the District has made progress over the past few years (12.49%

overdue in 2011-12 to 6.98% in 2016-17), several factors raise concerns and could contribute to this performance. First, the District passed recent policy that increases the number of triennial assessments and IEPs (BUL-6639.0)<sup>1</sup>. The impact of this policy on meeting compliance timelines was noted as a factor by the Associate Superintendent of the Division of Special Education at the January 2018 meeting of the Parties. Second, while progress was noted in completing IEPs on time since 2014-15, Superintendent Cortines initiated a campaign for monitoring and notifying schools with overdue IEPs and requiring them to hold meetings and report on their status . It is my understanding that while close monitoring of overdue IEPs continues, these letters have been discontinued.

In spring 2017, the Division of Special Education's May 2017 Edition of *Data Corner* informed the field that the California Department of Education (CDE) provided the District a Data Identified Non-Compliant (DINC) notice stating that based on an April 21, 2017, download, 3,940 IEPs were overdue (Annual – 2,705 and Triennial – 1,235) (Attachment C). The newsletter informed the field that noncompliance with IEP timelines could result in the withholding of funds by the CDE. It emphasized the importance of meeting compliance timelines as follows:

So, as you can see, the fuss is big because it's a big deal!

In fall 2017, the CDE provided the District another DINC notice regarding 537 overdue IEPs (Annual – 291 and Triennial – 246) as of a September 18, 2017, data download.

The timely completion of assessments and IEP meetings are a substantial compliance indicator that has challenged the District's capacity for years. Although one might consider meeting compliance timelines for the majority of students adequate performance, the size and scope of this District has a considerable impact when up to seven or eight percent of students do not get their assessments or IEPs completed on time. These delays also trigger other areas of noncompliance and might delay the provision of services and instructional accommodations. Noncompliance with completion of timely IEPs also has financial implications, as it can increase cost associated with due process filings and/or result in withholding of funds by the CDE.

Other factors that contribute to not meeting initial, annual, and triennial IEPs are staffing and workload concerns of related service providers and site administrators, including assistant principal instructional educational specialists (APEISs). This leads to the second area of concern for this disengagement alert: the recruitment and retention of qualified special education teachers and related service providers. These issues will be further discussed in the next section.

### **Qualified Special Education Teachers and Related Service Providers**

The issue of having enough qualified personnel for both teachers and related service providers directly impacts service delivery to students, as well as the timely completion of assessments and

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<sup>1</sup> Three-year review Individualized Education Program (IEP) Psycho-Educational Reassessment Requirements, dated February 1, 2016.

IEP meetings. These fundamental compliance tenets of the Individuals with Disabilities Education Act (IDEA) are necessary for a system that can ensure substantial compliance.

The lack of qualified providers has a direct impact on three MCD performance outcomes (Outcome 10: Timely Completion of Evaluations, Outcome 13: Service Delivery, and Outcome 16: Qualified Providers) and Section 17, which requires the IM to make a determination that no systemic problems exist that prevent substantial compliance.

Although the shortage of qualified providers for both special education teachers and some related service providers, such as speech pathologists, is a national and state phenomenon, school districts can and should implement processes to ensure students receive their required services, assessments, and IEP meetings on time.

Outcome 16 requires the District to have at least 88% of its special education teachers fully credentialed. A stipulation by the Parties requires that this performance be maintained for disengagement from the MCD to occur. As of January 18, 2018, 85.73% of special education teachers were fully credentialed (Attachment D). After seven years of good performance, the District fell below the target (86.67%) in the 2016-2017 school year.

Despite national shortages, it is critical that this performance be increased as disengagement from the MCD is directly tied to Outcome 16 by stipulation of the Parties. Although the District has engaged in considerable recruitment efforts, it is unknown if future variables such as pending cohorts of teacher retirements will further impact the number of qualified teachers. The other unknown variable is whether the retention of qualified teachers or related service providers for nonretirement reasons has resulted in higher losses of staff over the past couple years.

The lack of enough related service providers has a considerable impact on the District's ability to ensure a system that prevents substantial compliance. Because providers are usually assigned to more than one school, the impact of these vacancies or leaves can become exponential. These services are harder to provide when a provider is not available, unlike instructional services that can be delivered by substitute teachers or another special education teacher at the school.

The OIM has led and collaborated with the Office of Data and Accountability (ODA) and American Institutes for Research (AIR) several inquiries (2012<sup>2</sup>, 2014<sup>3</sup>, 2015<sup>4</sup>, 2017<sup>5</sup>) to gain a better understanding of the challenges to meeting service delivery. This has included a number of

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<sup>2</sup> Study to measure the delivery of services in accordance with the Individualized Education Programs of students with disabilities: Provider survey report 2011-2012 (October 24, 2012).

Report on the findings of focus groups to identify factors that may be limiting the ability to deliver services in accordance with the Individualized Education Programs of students with disabilities (April 10, 2012).

<sup>3</sup> Discussion paper on alternatives for Outcome 13 (DATE, 2014).

<sup>4</sup> Report on the IEP investigation to determine the validity of the Plaintiffs' counsel allegations that IEP teams lack the authority to determine services and placement during IEP meetings (August 5, 2015).

<sup>5</sup> Summary of Methods and Findings of Online Survey and Focus Group/Interviews (March 13, 2017).

Discussion Paper: Outcome 13 Alternatives (March 7, 2017).

Study to Measure the Delivery of Services in Accordance with the Individualized Education Programs of Students with Disabilities: Provider Survey 2016-17 (May 8, 2017)

surveys and focus groups of related service providers; RSP teachers; and site-based, local district, and central office special education administrators. This research has identified factors contributing to the lack of progress with the duration target of Outcome 13 and overall service delivery system, and explored potential alternatives designed to improve service delivery by focusing on systemic weaknesses that impact service delivery and accountability, with solutions that are within management's control.

While this disengagement alert is not intended to describe factors contributing to the problem or possible solutions, these efforts have led to a series of recommendations and at times directives for analysis of problems. The majority were dismissed or not followed through with satisfactorily. The following bullets summarize some of the most salient and persistent findings from these inquiries:

- Providers carry high caseloads while management continue to be given responsibilities. Simply put, providers are spread too thin, and making up services is at times not possible. There is a need for more emphasis on workload when making assignments.
- Service prescriptions often overpromise and do not factor in realistic contingencies that result in missed sessions.
- The District has focused too much on data monitoring and made processes cumbersome, resulting in increased workloads.
- A lack of processes for providing services and shortcomings in communication between schools, parents, and local and central office staff in instances where vacancies or staff leaves result in uncovered schools.
- Organizational fragmentations exist at various levels, such as differences of line authority between elementary and secondary school site administrators responsible for special education, and the centralization of the majority of related service providers with limited or no collaboration with local districts for the allocation of these services.

The most recent effort was at the request of the Plaintiffs' Counsel to explore alternative measures for Outcome 13. This has led to ongoing negotiations but has yet to yield a new approach to measure service delivery. This progress is disappointing considering the OIM provided the Parties a discussion paper with alternatives on March 7, 2017. Although the Parties have engaged in several rounds of proposals and counterproposals, the primary area of disagreement lies with the inclusion of one element.

The District has been reluctant to include a component in Outcome 13 that focuses on students not receiving the majority of their services, with the primary effort focused on raising services received for the aggregate of students. It has stated that it will focus on students not receiving the majority of their services through substantial compliance. Plaintiffs' Counsel has disagreed with this approach. A focus on these students also increases the monitoring and remediation of students receiving no services due to schools lacking personnel.

The Office of the General Counsel (OGC) provided a concerning explanation to the Parties for not including this focus as part of the Outcome.

With respect to the other Outcome Measure you proposed (regarding students receiving services below a certain threshold), tracking and managing these students on an

individualized basis would be bureaucratically unfeasible. Nevertheless, the number of students in this category will necessarily be reduced as part as our planned overall increase in the aggregate percentage of services while also being addressed as part as our planned overall increase in the aggregate percentage of services while also being addressed as part of substantial compliance<sup>6</sup>.

This statement is troubling as it seems to insinuate that the District lacks the organizational will to establish systems of monitoring and accountability for students not receiving the majority of their services. This is concerning since the District does possess this capacity and has the technology and resources to monitor these students and remediate noncompliance. In fact, it already engages in such monitoring. It is technically feasible to do this, and blaming bureaucratic shortcomings or lack of organizational will is unacceptable. This is also troubling given the recent statement by the OGC regarding the OIM's findings from the District's program accessibility high-level survey data. The OGC noted that "the focus on alleged noncompliance could serve as a disincentive to thoroughly evaluate and reveal current issues." In the October 25, 2017 IM's Annual Report, I noted that school districts are public entities and accountable to the public, and that the "notion that conclusions based on District data on systemic noncompliance would deter the District from being transparent is alarming" (p. 32).

Regardless of whether this component is included within an alternative measure for Outcome 13, I will not be able to, in good faith, disengage the District from the MCD if the District is not capable of monitoring students not receiving the majority of their services, remediating noncompliance, and establishing accountability mechanisms as outlined in the substantial compliance framework. The ability to do so will require the efficient deployment, recruitment, and retention of related service providers.

On January 8, 2018, at the monthly meeting of the Parties, the Division of Special Education provided data on recent hires, responding to an OIM request regarding Outcome 10: Timely Completion of Evaluations. The data showed that, as of January 8, 10.6 positions (FTE) were open for speech pathologist, with 10 pending new hires. It also showed eight openings (FTE) for school psychologists. Missing from the data tables was information on the total number of FTEs by related service and number of schools that may be uncovered due to these vacancies or staff leaves, which the District agreed to provide.

To better understand the impact of leaves/vacancies or schools that are underserved, the OIM reviewed data to identify the number of schools where the majority of students were not receiving any of their speech and language services (Table 1). During the month of October 2017, 84 schools had 50% or more of their students not receiving any speech and language services. Similar performance was noted in November (n=80 schools) and decreased for December (n= 34 schools). The table also shows the impact by the percentage of students, ranging from 72.9% to 85.0% of students not receiving any services.

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<sup>6</sup> Email communication from D. Cox to Plaintiffs' Counsel and OIM (December 20, 2017).

Table 1. Schools with more than 50% of students not receiving any Speech Services by Month\*

	<b>October 2017</b>	<b>November 2017</b>	<b>December 2017</b>
Number Schools	84	80	34
Number of Students with Speech	779	1208	582
Number of Students with – No Speech Services	622	1027	424
Percentage of Students with No Speech Services	79.9%	85.0%	72.9%

\* Data: SER 311

Several solutions have been recommended for dealing with the shortage of qualified providers to ensure that students receive their services. This will require systemwide leadership and management across many components. The capacity to meet evaluation and IEP timelines and deliver all IEP services to all students will require system changes that allow special education teachers and providers to focus on their primary responsibilities, which is working with students. This will require changes to “bureaucratic processes” that detract staff from their primary responsibilities. It will likely require focusing on the existing organizational fragmentation and structures that negatively impact communication, the allocation of resources, and accountability.

The recruitment, retention, and efficient deployment of qualified special education teachers and related service providers are the key factors for disengagement from the MCD. This issue is directly tied to meeting the three outcomes discussed above, as well as the determination that the District has mechanisms in place to prevent, and/or identify and remediate noncompliance.

The OGC continues to state that the District will meet all of the requirements of the MCD within the next 18 months. While I share this optimism, the remaining areas present a formidable challenge, one that must be led with transparency and organizational will. It is also my hope that this disengagement alert results in credible action that yields positive results and real change, as was the case with Superintendent Cortines resolving the longstanding problems with graduation and completion data.

I am happy to meet with you to discuss these two areas in further detail. I recognize the District’s urgency for disengagement from the MCD. I am hopeful that this sense of urgency prioritizes this issue during this school year.

Sincerely



David Rostetter, Ed.D.

C: Robert Myers, Catherine Blakemore, Beth Kaufmann, David German,  
Deneen Evans Cox, Brigitte Ammons, Veronica Smith

**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 completed and an IEP meeting convened. If the evaluation or IEP meeting is delayed because of parent request or the child 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)		Over 90 Days (80 Days prior to 10/8/05)	
		#	%	#	%	#	%	#	%
2017-18 12-15-17	6,551	5,675	86.6%	6,201	94.7%	6,393	97.6%	155	2.4%
2016-17	15,866	14,147	89.2%	15,064	95.0%	15,384	97.0%	482	3.0%
2015-16	16,300	14,853	91.1%	15,609	95.8%	15,900	97.6%	400	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 and the IEP convened within the appropriate number of days (60, 75 and 90).
  - Denominator is the number of requested initial evaluations aged according to the number of days overdue on 6/15/2017.
- ◆ **Note:** For this outcome caution must be taken when comparing the outcome performance by year due to the use of different data sources and quality of data during the years of 2003 - 2006.
- ◆ **Determination:** Outcome 10 was met during the 2007-08 school year

Summary Report of Overdue IEPs Overtime  
School Years 2011-12 thru January 19, 2018

Status	2011_12	2012_13	2013_14	2014_15	2015_16	2016_17	2017_18 1-19-18
Total IEP Meetings Held (no amendments)	92,464	92,789	93,310	94,801	95,712	96,912	97,763
IEPs Excluded **	20,480	20,084	18,880	20,023	18,599	19,638	44,992
IEPs used in Overdue Calculation	71,984	72,705	74,430	74,778	77,113	77,274	52,771
IEPs on Time	59,062	58,143	61,408	63,498	68,535	67,380	27,813
IEPs on Time (Parent Reschedule)	3,929	4,573	5,200	4,780	3,910	4,504	1,290
	62,991	62,716	66,608	68,278	72,445	71,884	29,103
IEPs Overdue 1 to 30 Days	5,313	5,742	4,955	4,229	3,251	3,836	1,292
IEPs Overdue 31 to 60 Days	1,449	1,831	1,246	1,104	777	943	276
IEPs Overdue 61 to 90 Days	656	810	548	412	263	376	66
IEPs Overdue More than 90 Days	1,575	1,606	1,073	755	377	235	11
	8,993	9,989	7,822	6,500	4,668	5,390	1,645

Status	2011_12	2012_13	2013_14	2014_15	2015_16	2016_17	2017_18 1-19-18
Total IEPs	71,984	72,705	74,430	74,778	77,113	77,274	30,748
% Held on Time	87.51%	86.26%	89.49%	91.31%	93.95%	93.02%	94.65%
% Overdue	12.49%	13.74%	10.51%	8.69%	6.05%	6.98%	5.35%
% Overdue 1 to 30 Days	7.38%	7.90%	6.66%	5.66%	4.22%	4.96%	4.20%
% Overdue 31 to 60 Days	2.01%	2.52%	1.67%	1.48%	1.01%	1.22%	0.90%
% Overdue 61 to 90 Days	0.91%	1.11%	0.74%	0.55%	0.34%	0.49%	0.21%
% Overdue More than 90 Days	2.19%	2.21%	1.44%	1.01%	0.49%	0.30%	0.04%

\*\* Exclude Reasons: Exit before next IEP; Exit school; Left District; Not enrolled; No longer eligible; No consent; Parent revoked; Private school; No new IEP held

Data Source: Overdue 20180119.mdb

### **Data Identified Noncompliant (DINC) IEPs**

LAUSD reports information on the timely completion of IEPs to the California Department of Education (CDE) multiple times during the year. Timely completion of IEPs is extremely important as noncompliance may cause withholding of funds to the school district from the state. The District's eligibility for IDEA funds is contingent upon meeting the federal legal requirements regarding IEP timelines. The CDE sends corrective actions, referred to as "DINCs", to LAUSD. The term DINC stands for "Data Identified Noncompliant." This term refers to an IEP that has violated the federal annual or triennial requirement of completing an IEP review. It is imperative that all schools update the Meeting Notes frequently with all attempts made to contact the parent to hold the IEP. The information documented in the Meeting Notes may be shared with the CDE. Please include the date, type of attempt made and reason the IEP has not been completed in the Meeting Notes section.

Data was downloaded for the CDE on April 21, 2017, and the following noncompliant IEPs were identified:

<b>IEP Type</b>	<b>#</b>
Overdue Annual IEPs	2,705
Overdue Triennial IEPs	1,235

Any of the current IEPs that the CDE has identified as noncompliant and are not corrected before June 30, 2017 will be identified as DINCs again.

**So, as you can see, the fuss is big because it's a big deal!**

## Qualified Providers

2016-17 School Years	# of Special Education Teachers	# of Intern Teachers	# of Provisional Teachers	Qualified Special Education Teachers	% Qualified Special Education Teachers
January 18	4,451	406	229	3,816	85.73%
December 17	4,450	409	229	3,812	85.66%
November 17	4,440	406	214	3,820	86.04%
October 17	4,422	403	206	3,813	86.23%
September 17	4,404	399	197	3,808	86.47%
August 17	4,348	383	165	3,800	87.40%
June 17	4,358	284	282	3,792	87.01%
May 17	4,448	304	289	3,855	86.67%
April 17	4,447	302	287	3,858	86.76%
March 17	4,463	302	287	3,874	86.80%
February 17	4,462	308	275	3,879	86.93%
January 17	4,455	321	261	3,873	86.94%
December 16	4,381	324	255	3,802	86.78%
November 16	4,383	324	245	3,814	87.02%
October 16	4,371	328	221	3,822	87.44%
September 16	4,343	326	201	3,816	87.87%