United States District Court
Office of the Court Monitor
***Emma C., et al., v. Delaine Eastin, et al.* (No. C96-4179 TEH)**

P.O. Box 51170
Palo Alto, CA 94303-9998
(650) 329-2800 x60125
(650) 326-3410 (fax)

Mark A. Mlawer
Court Monitor

MEMO

TO: Judge Thelton E. Henderson

FROM: Mark A. Mlawer

DATE: March 29, 2016

RE: Fifth Joint Statement

The parties' 12/21/12 *Fifth Joint Statement Re: CDE Monitoring of the Provision of FAPE in Ravenswood City School District*, approved by the Court on 1/2/13, sets forth a process for consideration of "any proposed substantive changes in the design of its state-level monitoring system that will be applied to the District." The process calls for CDE to provide notice via email to the parties and Monitor 30 days in advance of any such proposed changes, a 21-day timeline for any objections to the proposed changes, a meet-and-confer discussion within ten days of objections, and determinations by the Monitor regarding any objections should the parties not reach agreement (*Fifth Joint Statement*, Section VII A-G, at 9-10).

In its 6/25/15 *State Defendants' Reply in Support of Motion to Set Aside Draft CDE Corrective Action Plan*, CDE acknowledged its awareness of these provisions of the *Fifth Joint Statement*. In responding to what it described as speculation by Plaintiffs that CDE had ignored these provisions by making substantive changes to its monitoring system without providing advance notice, CDE wrote: "CDE is well aware of the Fifth Joint Statement's terms and denies this allegation" (fn. 12 at 12).

However, in its 2/1/16 responses to CAP Sections 1, 10, 12, and 15, CDE states that it "*will be phasing in* a comprehensive, integrated set of results-driven measures" in the District "in the upcoming year." Instead of the Special Education Self Review (SESR) process, CDE "*will require*" an Annual Submission Process (ASP), and then lists the components of the ASP process. CDE adds in a footnote that "…LEAs *will no longer conduct* the SESR on a cyclical basis. Instead, the SESR *will be reserved* as a tool that LEAs can use, in their discretion, or as directed by CDE as part of the ASP or other quality assurance activities." Further, CDE states that it "*has also converted*" its Verification Review (VR) into a Comprehensive Review (at 2; fn. 2 at 2; emphases added).

Despite the requirements of the *Fifth Joint Statement*, CDE did not provide advance notice of what appear to be important substantive changes to its monitoring system. This issue is not mentioned by Plaintiffs in their 3/2/16 comments on CDE's submission.

While the parties are free to stipulate to a different process regarding proposed changes to CDE's monitoring system from that agreed to in the *Fifth Joint Statement*, and Plaintiffs can waive any objections to specific substantive changes after CDE advance notice of such changes pursuant to the *Fifth Joint Statement* if they so choose, CDE is not free to simply ignore the notice provisions of the *Fifth Joint Statement*.

In addition, CAP Sections 9-11, 17, and 19-43 concern the SESR process, and CAP Sections 12-15 and 18 concern the VR process. Without engaging in the process called for by the *Fifth Joint Statement*, it is unclear how any necessary modifications to the CAP that may be called for by these changes would be made. Moreover, the parties have not yet agreed to a stipulation regarding the relation between CDE compliance with the CAP and its initial burden of proof (see Section 13.0 of the Consent Decree, and *Fifth Joint Statement*, Section H (1), at 10). Failure by the parties to grapple with the CAP-related implications of any changes to CDE's monitoring system, and the relation, if any, between CAP compliance and the initial burden of proof regarding Section 13.0 of the Decree, could result in prolonging this litigation.

Therefore, by this memo the Court Monitor brings this issue to the Court's attention, and seeks the Court's guidance regarding next steps.