

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MIKEISHA BLACKMAN, et al.,
Plaintiffs,

v.

DISTRICT OF COLUMBIA, et al.
Defendants.

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Civil Action No. 97-1629 (PLF)
Consolidated with
Civil Action No. 97-2402 (PLF)

**INTERIM REPORT OF EVALUATION TEAM
FOR THE PERIOD AUGUST 24, 2006 - JANUARY 17, 2007**

Submitted by:

Amy Totenberg
Rebecca Klemm
Clarence J. Sundram

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By: Amy Totenberg, Monitor



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RECOMMENDATIONS (Separate Document)

EXECUTIVE SUMMARY

Although the first report of the Evaluation Team is not due until March 2007, the Evaluation Team decided to issue an Interim Report following our initial review of DCPS' efforts to implement the *Blackman/Jones* Consent Decree. It is our collective view that there is an urgent need for a more cohesive and integrated managerial approach to the implementation of the wide-ranging obligations of the Consent Decree. This report is not intended to be a comprehensive assessment of all aspects of compliance with the Consent Decree but reflects initial findings that we believe warrant attention.

In the initial phase of the Evaluation Team operations, team members reviewed a number of previous reports regarding special education, interviewed various stakeholders and staff within all levels of the District of Columbia Public Schools, conducted site visits to a sample of elementary, junior high and high schools, and examined the structure and work product of the principal data system, Encore, used by DCPS for the special education system.

This is a summary of our major observations and recommendations.

1. A total of 219 or 18.0% of the HOD/SAs issued during the time period March 1, 2006 – October 10, 2006 were timely implemented as of January 17, 2007, if HOD/SAs without due dates are removed from the calculation (351 or 25.9% if HOD/SAs closed without due dates are considered timely implemented). The Consent Decree requires a 50% implementation rate as of June 30, 2007. (§42)
2. The current best estimate of the *Jones* initial backlog of HOD/SAs is 2,593 (rather than the 2,521 initial backlog in the Consent Decree). As of January 17, 2007, a total of 1,571 of these cases (60.6%) have been closed. Many of the initially closed cases entailed simple additional data entry for closure. The Consent Decree requires that the entire original backlog be eliminated by June 30, 2007. (§41)
3. Between March 1, 2006 and October 10, 2006, 1,162 cases became open and overdue, joining the Subsequent Backlog.
 - a. New cases are joining this backlog at a rate of 100-200 per month.
 - b. As only a few HOD/SAs issued since October 10, 2006 have been entered into the Encore database, the exact number joining the subsequent backlog is not known.
 - c. As of January 17, 2007, 420 of the 1,162 cases (36.1%) in the Subsequent Backlog have been closed. Of these, 28 were at least 180 days overdue. There are an additional 338 open cases of the 1,162 (29.1%) that are

already over 180 days overdue. As the Consent Decree (§42) requires that no case in the Subsequent Backlog be more than 180 days overdue by June 30, 2007, the DCPS has failed to meet this requirement as of this date, unless Encore data regarding these overdue cases is incorrect.

4. The seeming precision of the preceding numbers, and other numbers in the report, is belied by an Encore database that is so riddled with errors that none of its regular users have any confidence in the reliability and accuracy of the reports it produces.¹ These errors are the result of multiple factors including:
 - a. Lack of regular, usable reports to stakeholders resulting in the absence of a broad commitment to maintaining an accurate data system, and inability of the data system to consistently replicate reports;
 - b. Inconsistent information in STARS and Encore regarding the schools to which students are assigned, with the consequence that students frequently are enrolled in schools which do not have access to Encore data regarding the student's IEP requirements or HOD/SA or alternatively, possession of the student's confidential special education folder;
 - c. Fundamental software design flaws which rely heavily on text fields rather than data fields;
 - d. A difficult and time-consuming process for data entry, inability of key users of the system to update records or correct obvious data errors in the records they review, and unreliable preservation of data entered;
 - e. Lack of a process for quality control of data being entered, which permits duplicate and illogical entries that result in invalid reporting;
 - f. Poor communication to users regarding information ostensibly entered into the system;
 - g. Non-reliable access to the data system, especially for users attempting access from remote locations such as schools, and periodic non-functionality of its report feature;
 - h. Lack of timely and effective integration of information into Encore from the "Closer" program used to close pre-December 2005 HOD/SAs;
 - i. Non-linkage of data in the Encounter Tracker, used by related service providers for Medicaid billing, to Encore to enable Special Education Coordinators to verify the delivery of related services or obviate the need for duplicative data entry of assessments in two different modules; and
 - j. Lack of adequate training for users of the system or the ready availability of help.
5. The lack of reliability of the system and inaccuracy of the data has resulted in various stakeholders (Special Education Coordinators, Compliance and

¹ Getting to these numbers took substantial effort by the Klemm Analysis Group to clean and analyze the data extractions from Encore, and to verify and correct the data by comparison with other sources of information including primary records where possible.

Dispositions Specialists, Placement Specialists, Hearing Office, etc.) developing their own informal data tracking systems, often relying on paper and pen, for their own use. Such informal methods, which are an understandable development, are nonetheless uncoordinated, duplicative and competitive with Encore, further undermining a shared stake in a functioning, reliable data system. Moreover, the redundant and unnecessary work required by such manual tracking has consumed the human resources of additional compliance staff added in recent months and impeded their focus on actual service delivery and HOD/SA implementation.

6. Data reliability problems have also resulted in the ineffective use of contractual resources that have been made available to the compliance effort. Columbus Educational Services, LLC was contracted to perform overdue assessments but since June 2006 has not made a significant dent in the backlog because most of the contractor's time was expended from August – December in trying to identify overdue assessments rather than performing them. As of January 26, 2007 Columbus had performed 12 assessments associated with overdue *Blackman/Jones* cases. Columbus providers found after extensive file reviews that sixty-eight percent of the assessments (2,204 of the 3,264) which they were assigned already had been completed by DCPS or independent providers.
7. Despite staff's manual record keeping efforts, and perhaps in part because of them, the core tasks required for implementation of HOD/SAs remain elusive implementation challenges within DCPS: accurate identification of a list of outstanding HOD/SAs, the HOD/SA elements to be completed to achieve compliance, the deadlines for doing so, the location of students, and making school staff aware of their obligations under existing HOD/SAs. Cases involving students transferring between schools, between regions, or from public to nonpublic schools and back are most likely to get lost in the process. Furthermore, there are consistent reports from Special Education Coordinators and related service providers of lengthy delays in informing them of their obligations under HOD/SAs, while the clock is running on actions they are required to take. Transmission of HOD/SA Orders is unnecessarily delayed because currently no DCPS arrangements are in place for the Student Hearing Office to circulate electronically decisions to all relevant special education and school personnel immediately upon entry.
8. Senior managers within DCPS, who have responsibility for various aspects of the implementation effort, have no access to reliable data and regular reports measuring progress made in achieving key benchmark objectives.
9. Given the major inadequacies in its data tracking systems, DCPS has been unable to provide most of the regular monthly and quarterly monitoring reports required by the Consent Decree. Similarly, the school district does not appear to be tracking on a system-wide basis assessment and IEP compliance timeline rates, although it based a significant part of its Action Plan (attached to the Consent Decree) to achieve Decree compliance on measures designed to improve these

- timeline compliance rates. DCPS' inability to provide regular monitoring reports and system-wide data ultimately damages the school district's own capacity to monitor its progress and institute appropriate remedial measures to address compliance barriers.
10. Charter schools' enrollment and special education tracking systems do not interface effectively with DCPS' systems or processes, thereby increasing the likelihood that students will be lost as they move between DCPS and charter schools and that slippage in implementation of HOD and IEP requirements will occur.
 11. Special education coordinators, compliance specialists, and nonpublic placement specialists all articulated significant concerns regarding the absence of an organized, systematic approach to training compliance staff with respect to a consistent set of standards for managing HOD/SAs, resolution meetings, assembling special education confidential folders, use of Encore, and other critical compliance and special education management issues.
 12. The Nonpublic Unit has a substantial lack of staff and resources, and staggering caseloads for its placement specialists that make it difficult to keep up with the influx of new students, let alone tackle the backlog of work that needs to be done to implement HOD/SAs.
 13. Under IDEA, resolution sessions are intended to play an important role in promptly resolving administrative due process complaints through good-faith efforts to reach a mutually acceptable settlement. In practice, resolution sessions rarely accomplish their intended purpose within DCPS. While DCPS representatives and members of the plaintiffs' bar have different explanations for why this is so, there is little disagreement that at present resolution sessions are usually an exercise in futility that accomplish little more than delaying a resolution of the complaint for at least 30 days.
 14. DCPS has made substantial progress in issuing Hearing Officer Decisions (HODs) on a timely basis. However, it does not maintain an adequate system through either Encore or several alternate, redundant Hearing Office scheduling processes designed to compensate for Encore, to efficiently manage docketing, scheduling, or timeline compliance. For instance, due to the serious problems with the accuracy and reliability of the Encore database, in one sample month (April) the Team intensively reviewed, Encore data clearly demonstrated that DCPS was not in compliance with the *Blackman* 90% standard for timely hearings. The Evaluation Team painstakingly reviewed Student Hearing Office documentation for that month along with a detailed review of Encore data and determined that a compliance rate exceeding 90% for the month actually appeared to have been achieved. While data was not complete for the month of April regarding whether DCPS had met the Consent Decree requirement that no hearing request be more than 90 days overdue, one case was identified as of December 19,

2006 as beyond that timeline.

15. The DCPS has indicated that the Student Hearing Office is in a period of transition and that changes will be made to the Office's hearing officer staffing physical facilities, and location. The Evaluation Team considers current office conditions to warrant immediate attention. The Student Hearing Office conducts hearings and its operations in a limited space that restricts the effective use of hearing officers and creates unnecessary constraints on scheduling hearings. Working space is not congruent with minimal professional needs for the office.
16. The challenge of understanding and correcting the above operational problems is compounded by the complexity of a management structure which contributes to gaps in communication. Authority and responsibility is so widely dispersed within DCPS that, effectively, no one is in charge of managing the compliance efforts.
 - a. Although the issues with the data system are well understood, especially on the frontline of the special education system, no one seems to have the clear responsibility and authority to correct the myriad of problems identified.
 - b. Principals, especially in the larger schools, are often disengaged from special education operational needs and have no authority over related service providers upon whom the special education program relies to assess and serve its students.
 - c. DCPS does not have a comprehensive management plan for performing activities and compliance measures required under the Consent Decree and managing school district resources to support these efforts.
17. This report contains numerous recommendations for consideration by DCPS and the Evaluation Team urges thoughtful consideration of each one. The recommendations address the specific problems and challenges identified by the Evaluation Team. The Superintendent has initiated action to address the one overarching recommendation that bears mentioning in this summary and that is the creation of the position of Chief Implementation Officer to be responsible for internal management and monitoring of all decree implementation efforts, and ensuring that barriers to compliance are swiftly corrected. The person assigned to this position should have the authority to promptly remove systemic barriers to compliance or to call them to the attention of the Superintendent. This person should also serve as the principal liaison to the Court Monitor and the Evaluation Team. In response to the draft Interim Report and Recommendations, the Superintendent appointed the Executive Director of Special Education on January 12, 2007 as *Blackman/Jones* Project Manager along with a project management team composed of the leaders of critical departments within DCPS. Whether the DCPS organization's bureaucratic structure and fragmentation will permit the Project Manager to exercise the degree of authority and effective leadership called for by the Report recommendation will be seen in the months ahead.