

Office of the Independent Monitor

Modified Consent Decree
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Re: Substantial Compliance

Dear Ms. Howell, Mr. Myers and Ms. Blakemore:

As noted in the 2012-2013 annual report, the Independent Monitor (IM) believes that the Los Angeles Unified School District (District) is on track to fulfill the requirements of the Modified Consent Decree (MCD) within the next two years. As required by the MCD, upon certification that all outcomes and requirements of it are met, the IM is charged with making a judgment that the District's special education program has no systemic problems that prevent substantial compliance with applicable federal and state special education laws and regulations.

A framework for making such judgment has been developed and reviewed by the parties. This framework is based on the premise that the District must have a system to effectively monitor compliance and the capacity to correct noncompliance. Successful implementation and execution of such system will require the District to demonstrate initiative and engaged leadership. It is the expectation of the IM that the District commit the necessary resources to build and maintain the capacity of its system beyond the conclusion of the MCD. The Office of the Independent Monitor is available to provide clarification and/or assistance with this framework, upon the District's request.

Thank you in advance for your continued commitment to working toward implementing and successfully concluding the MCD.

Sincerely,

A handwritten signature in black ink, appearing to read "David Rostetter". The signature is fluid and cursive, with a prominent loop at the end.

David Rostetter

c: John Deasy, Matt Hill, Diane Pappas, Deneen Cox, Brigitte Ammons, Veronica Smith, Marian Mason

Substantial Compliance

The *Chanda Smith* Modified Consent Decree (MCD) is a federal class-action settlement agreement that requires the Los Angeles Unified School District (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 upon achieving compliance with the MCD.

The MCD states that this agreement is “binding on all public schools in the District, including, but not limited to, charter schools, alternative schools, charter complexes, magnet schools and to any schools formed or approved in the future by the District.” It also clearly delineates the requirements the District must meet in order to be disengaged from court oversight. Section 16 and 17 of the MCD summarize these requirements by stating:

“Upon the Independent Monitor’s certification that the District has achieved each of the outcomes in accordance with paragraph 87 above and in the Independent Monitor’s judgment that the District’s special education program has no systemic problems that prevents 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.”

Section 17 of the MCD requires that the Independent Monitor (IM) must also determine there are no systemic problems within the District’s schools that prevent substantial compliance with the program accessibility requirements of special education laws and regulations.

To assist developing criteria for such judgment, the IM commissioned Dr. David Rostetter to prepare a report to examine what a compliance system would look like that effectively monitors compliance with the capacity to correct the issue. Dr. Rostetter is the former head of the branch of the US Department of Education responsible for compliance with IDEA. He has also served as a monitor and master in several special education court orders, consultant to state education agencies (SEAs) and local education agencies (LEAs), and as an expert witness in numerous court cases. In June 2011, this report was provided to the parties.

The District has met 16 of the 18 outcomes and has demonstrated progress toward achieving the facilities and MiSIS requirements of the MCD. As stated in the 2012-2013 annual report, “the IM believes that the District is on track to successfully complete the MCD within the timeframes of its own plans” which conclude June 30, 2015.

To determine whether the District’s special education program has no systemic problems that prevent substantial compliance with applicable federal and state special education laws and regulations, a framework was designed for making such determinations. This framework was based on a review of Rostetter’s report. While his report includes a variety of monitoring and compliance requirements based on the federal to state compliance monitoring model, this framework is focused on the District’s capacity to monitor compliance and to correct any such noncompliance at all District schools.

A limitation in developing such a framework is the lack of guidance of applicable requirements and standards for determining substantial compliance with IDEA. Rostetter noted that states are required to monitor local districts on 20 key indicators. While the state collects and compiles data and determines a district’s compliance utilizing the State Performance Plan, there are indicators that may not provide the necessary guidance to adequately monitor compliance and performance. For example, the state measure of compliance for completing timely evaluations is that 100% will be done within 60 days. This measure may not be a realistic expectation for a large urban school district like LAUSD.

Therefore, this framework is intended to have the District examine the strengths and weaknesses of its current processes in place to determine substantial compliance and hold schools and personnel accountable for

noncompliance. This may include determining quantitative compliance and performance targets for key indicators that differ from the state or MCD, as well as establishing compliance and performance targets for schools. The aim of this framework is to ensure that a system is in place to serve the District's needs in monitoring and enforcing compliance with IDEA and promote progress with performance indicators that improve special education programs before the MCD is concluded. The system must also be capable of responding to instances of noncompliance with effective and timely corrective action.

The framework consists of five general elements and requires the District to provide the Office of the Independent Monitor (OIM) with any relevant reports from federal, state or court agencies. The following five elements include:

- I. Data system capable of monitoring key compliance and performance indicators at the District and school level
- II. Process for monitoring special education compliance and performance at the school level
- III. Process for receiving and resolving compliance complaints
- IV. Process for resolving IEP disputes
- V. Management and administrative structure with authority to monitor and enforce compliance

Additionally, the District is required to submit any reports, documents and/or findings within the past three years from federal, state or court agencies (e.g., State Performance Plans, OCR Rulings) that show findings of noncompliance with special education laws and regulations and any responses and/or action plans aimed to remedy the problem(s). These reports are to be provided by June 1, 2014 and within 30 days of receipt of any new reports until the conclusion of the MCD. Lastly, the District must demonstrate compliance with the facilities requirements of the MCD (Section 10 and 17).

To determine substantial compliance, the District must provide clear evidence to the OIM that it can perform all duties and functions listed below, to the approval of the IM.

Substantial Compliance Criteria

- I. Data system capable of monitoring key compliance and performance indicators at the District and school level

Data systems with the capacity to monitor the key indicators required by the state and MCD (see attached for a complete description of the 20 key indicators required by the state):

- Participation and performance on statewide assessments
- Graduation and drop out
- Long-term suspensions and expulsions more than 10 days
- Time spent in the LRE
- Transition data
- Timely completion of IEPs (initial, annual and three-year reviews)
- Dispute resolution and complaint management
- Parent participation
- Disproportionate representation
 - Race and ethnicity by special education categories and related services
 - Placement in particular educational settings
 - School discipline including suspensions and expulsions
- Service Delivery
- Timely translations of IEPs, including all requests and languages

Data systems have a notification system in place to alert District staff and school personnel of areas of noncompliance

Data systems utilized at all District schools (i.e., District-operated, charter, magnet) provide consistent and reliable data

II. Process for monitoring special education compliance and performance at the school level

Criteria to monitor each indicator and that identify unacceptable performance levels or noncompliance with corresponding responses from central office and/or local support centers (i.e., Educational Service Center, ESC)

A unit within the District responsible for collecting data, monitoring and enforcing compliance at all schools

Methods for monitoring key indicators

Periodic and timely review of data

Procedures for communicating findings to local support centers and schools

Capacity to generate reports at the school level for monitoring compliance

Methods for validating the accuracy of data

Capacity to monitor performance of the 18 MCD outcomes and generate an annual report

Additional methods to collect data at the school level (i.e., DVR)

- Evidence that these findings are aggregated to determine if systemic noncompliance exists
- Standard for responding to such noncompliance
- Provide three years of DVR findings provided to the state and relevant responses
- A review of the existing DVR process and data collection procedures. The District shall report on whether this adequately meets compliance monitoring expectations or if these processes should be enhanced. If so, the District will provide the parties a report outlining any changes and expected outcomes.

Clear standards for the correction of deficiencies identified that:

- Call for the immediate cessation of the violation
- Initiate steps to prevent recurrence
- Identify actions to correct the violation
- Identify documentation and timeline for correction
- Eliminate or cure any harmful past effects of the violation

III. Process for receiving and resolving compliance complaints

Capacity to ensure that timelines for receiving and resolving complaints are met

Policies and procedures that meet generally acceptable standards of investigation and resolution of complaints under IDEA and Section 504

Clear standards for the correction of deficiencies identified that:

- Call for the immediate cessation of the violation
- Initiate steps to prevent recurrence
- Identify actions to correct the violation
- Identify documentation and timeline for correction
- Eliminate or cure any harmful past effects of the violation

System for parents to call (i.e., hotline) or access (i.e., person or online) with concerns or complaints that initiate investigation and facilitate resolution in a timely manner

An annual public hearing held to hear from the public regarding issues related to compliance of special education laws and regulations at schools. The District must present its outreach procedures, including methods and timelines for notifying parents of these hearings as well as methods for publicly reporting the findings

Capacity to collect and maintain data on issues and resolutions of complaints

- Analysis of the issues and findings to determine if systemic problems exist which are reported annually to the Superintendent of schools

IV. Process for resolving IEP disputes

Policies and procedures to ensure procedural safeguards of notice and consent, mediation, due process and state complaints

Capacity to ensure that timelines are met for resolving IEP disputes through informal and formal dispute resolution

Capacity to collect and maintain data on issues and resolutions of informal and formal dispute resolutions

- Analysis of the issues and findings to determine if systemic problems exist which are reported annually to the Superintendent of schools

V. Management and administrative structure with authority to monitor and enforce compliance

Operational and measurable policies and procedures consistent with federal and state regulations that:

- Contain all underlying legal obligations and standards (applicable federal, state, and MCD requirements)
- Communicate applicable obligations clearly
- Result in a clear determination of when the obligation starts and ends (i.e., when an evaluation is required and what constitutes a complete evaluation)

Provide analysis of policies, procedures and description of the methods of communication for the following:

- §300.114 – Least Restrictive Environment
- §300.116 – Placements
- §300.324 – Development, Review and Revision of IEPs
- Methods for review and implementation of newly developed federal and state requirements

Capacity of the administrator in charge of special education to direct District personnel including school administrators (i.e., District operated, NPS and independent charters) to comply with special education laws and regulations

The administrator in charge of special education shall have the authority and responsibility to ensure the correction of noncompliance with special education laws and regulations

Capacity of the administrator in charge of special education to have access to all school data (i.e., District operated, NPS and independent charters) necessary for monitoring and enforcing compliance with special education laws and regulations

Capacity to identify school administrators and special education providers who fail to monitor special education compliance within required timelines

Clear accountability standards for the use of progressive discipline for personnel responsible for noncompliance and/or behaviors that do not adhere to the District special education policies and procedures

- Evidence of effective utilization of progressive discipline to correct noncompliance and/or violations of the District's special education policies and procedures

Additional Findings of Noncompliance

Are there any outstanding federal or state findings that have found the District noncompliant with special education laws and regulations?

- If so, provide District responses and/or action plans to address noncompliance

Are there any outstanding litigation or court rulings that have alleged or found the District to have systemic noncompliance with special education laws and regulations?

- If so, provide District responses and/or action plans to address noncompliance

Facilities

Capacity to build and renovate schools consistent with ADA and Title 24 requirements

Capacity and a plan for complying with the federal requirements of developing transition plans that identify existing barriers and a schedule for the removal of such barriers

Capacity and procedures for responding to requests for providing program accessibility within a reasonably timely manner

Annual Report on Substantial Compliance

By August 15, 2015, the District must make publicly available a report on the implementation of all items within this framework

- By November 1, 2014, the District will provide the OIM a draft framework for the annual report

Key Indicators

1. Percent of youth with IEPs graduating from high school with a regular diploma compared to percent of all youth in the state graduating with a regular diploma
2. Percent of youth with IEPs dropping out of high school compared to the percent of all youth in the state dropping out of high school
3. Participation and performance of children with disabilities on statewide assessments:
 - a. Percent of districts that have a disability subgroup that meets the State's minimum "n" size and meets the state's AYP objectives for progress for disability subgroup
 - b. Participation rate for children with IEPs in a regular assessment with no accommodations; regular assessment with accommodations; alternate assessment against grade-level standards; alternate assessment against alternate achievement standards
 - c. Proficiency rate for children with IEPs against grade-level standards and alternate achievement standards
4. Rates of suspension and expulsion:
 - a. Percent of districts identified by the state as having a significant discrepancy in the rates of suspensions and expulsions of children with disabilities for more than 10 days in a school year; and
 - b. Percent of districts identified by the state as having a significant discrepancy in the rates of suspensions and expulsions of more than 10 days in a school year of children with disabilities by race and ethnicity
5. Percent of children with IEPs aged 6 through 21:
 - a. Removed from regular class less than 21% of the day
 - b. Removed from regular class greater than 60% of the day
 - c. Served in public or private separate schools, residential placements, or homebound or hospital placements
6. Percent of preschool children with IEPs who received special education and related services in settings with typically developing peers (i.e., early childhood settings, home and part-time early childhood/part-time early childhood special education settings)
7. Percent of preschool children with IEPs who demonstrate improved:
 - a. Positive social-emotional skills (including social relationships)
 - b. Acquisition and use of knowledge and skills (including early language/communication and early literacy)
 - c. Use of appropriate behaviors to meet their needs
8. Percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities
9. Percent of districts with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification

10. Percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification
11. Percent of children with parental consent to evaluate, who were evaluated within 60 days (or state established timeline)
12. Percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthday
13. Percent of youth aged 16 and above with an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals
14. Percent of youth who had IEPs, are no longer in secondary school and who have been competitively employed, enrolled in some type of postsecondary school, or both, within one year of leaving high school
15. General supervision system (including monitoring, complaints, hearings, etc.) that identifies and corrects noncompliance as soon as possible but in no case later than one year from identification
16. Percent of signed written complaints with reports issued that were resolved within 60- day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint
17. Percent of fully adjudicated due process hearing requests that were fully adjudicated within the 45-day timeline or a timeline that is properly extended by the hearing officer at the request of either party
18. Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements
19. Percent of mediations held that resulted in mediation agreements
20. State reported data (618 and State Performance Plan and Annual Performance Report) are timely and accurate