

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

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MIKEISHA BLACKMAN, et al.,)	
Plaintiffs,)	
v.)	Civil Action No. 97-1629 (PLF)
)	Consolidated with
DISTRICT OF COLUMBIA, et al.)	Civil Action No. 97-2402 (PLF)
Defendants.)	
_____)	

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

Submitted by:

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I. INTRODUCTION

The Consent Decree of August 24, 2006 (Docket # 1856) provides that the Monitor will establish an Evaluation Team by October 1, 2006 and that this Team will be responsible for both evaluating and assisting Defendants in their achievement of compliance with their obligations under the Decree. (¶101). The Evaluation Team held its first planning meeting on September 6, 2006 and shortly thereafter commenced its assessment of the status of the school district's compliance efforts on a school and systemic basis. The Team issued a draft Executive Summary of its Interim Report on December 19, 2006 and a draft of the full Interim Report on December 22, 2006. The Interim Report provides an early assessment of the scope of the Consent Decree compliance issues that the District of Columbia Public Schools ("DCPS") currently faces, so as to focus the parties on the significant challenges that must be addressed as a predicate to implementing the terms of the Consent Decree.¹ Having given the parties an opportunity to submit comments and discuss the Interim Report with the Evaluation Team, consistent with the provisions of paragraph 106 of the Consent Order, the Monitor now files the Evaluation Team's Interim Report with the Court.

This Interim Report focuses on five major areas reviewed in the course of the first three months of the Evaluation Team's monitoring. In sum:

1. The Report provides an assessment of the status of timely implementation of Hearing Officer Decisions ("HODs") and Settlement Agreements ("SAs") and a summary description of major data systems issues impacting assessment of this status.

¹ The Evaluation Team additionally met with the parties and their counsel on October 25, 2006 to give a preview of the significant concerns raised by monitoring and data review as of that date.

2. The Report gives a preliminary identification and analysis of impediments that adversely affect the District's capacity to implement HOD/SAs on a timely basis, and as a corollary, impediments to reducing the number of HOD/SAs. A review of the resolution session process, intended to resolve cases prior to hearing, is included within this analysis.

3. The Report addresses the status of timely implementation of *Blackman* timelines for issuing hearing decisions. It also provides an assessment of the data and docketing system issues that affect the capacity of the District to monitor and demonstrate compliance consistent with the provisions of the Decree.

4. The Report addresses several other critical monitoring issues identified in the first five months of the Evaluation Team's work.

5. The Report makes remedial recommendations.

The Evaluation Team ("ET") reached the findings contained in this report based upon the following investigative procedures.

A. Evaluation Team members visited 11 school sites, including four elementary schools, four junior high schools, and three high schools.² At each school, the ET member conducted interviews with the school special education coordinator, the central office special education compliance specialist covering the school, one or more related service providers, a special education teacher and the principal (as available). Additionally, each ET member spent significant time during the course of the site visit comparing Encore reports reflecting outstanding

² The schools visited include: Green Elementary, Meyer Elementary, River Terrace Elementary, Thompson Elementary; Garnet Patterson Jr. High; Jefferson Jr. High; Johnson Jr. High; Shaw Jr. High; Anacostia Sr. High; Cardozo Sr. High; Eastern Sr. High. The Special Education Coordinator at Shaw Junior High was on extended medical leave and was not interviewed.

HODs for the school with the school's student enrollment data and student special education confidential folders.

B. Interviews and meetings were conducted with the following central office staff:

- The Superintendent of DCPS
- The Assistant Superintendent for Differentiated Learning
- The Executive Director for Special Education
- The General Counsel and a staff attorney
- The Chief Academic Officer
- The Chief Accountability Officer
- The Director of Dispute Resolution, Compliance and Monitoring in Special Education
- The Director for Family and Federal Court Compliance in Special Education
- The Chief Information Officer
- The Director of the Special Education Non-Public Unit and several of the unit's placement specialists
- Supervisors of Speech and Language Services, Social Work Services and Psychology Services
- Technology/special education staff members specially handling special education technology and data
- Central office special education compliance specialists (10)
- Central office special education disposition specialists (7)

C. Additional interviews and/or meetings were conducted with:

- The Administrator of the State Hearing Office and various Hearing Office and State Education Agency staff
- Three hearing officers
- The Director of Research for the State Education Office and the Office's research department members
- Representatives of the accounting firm of Thompson, Cobb, Bazilio & Associates which is retained to conduct the annual census audit of DCPS
- The Project Director for Columbus Educational Services, LLP
- The Special Master for the United States District Court in *Blackman/Jones*
- Plaintiffs' counsel
- Members of the Plaintiffs' bar representing children in the special education process
- A parents' group at the Parent Center (Advocates for Justice and Education, Inc).

D. The Evaluation Team reviewed prior reports relating to DCPS special education and student tracking data functions within the DCPS. It also reviewed spreadsheets prepared by Columbus reflecting the status of assessments reviewed (not performed) by Columbus providers as well as Columbus reports and invoices for services.

E. The Evaluation Team expended significant time in analysis of the school system's student data systems and data bases with the assistance of Klemm Analysis Group. The Team additionally reviewed case tracking data and documents available from the Student Hearing Office.

The facts presented in the Report speak for themselves, reflecting the critical data system, organizational, and management issues that continue to severely limit the school system's efforts to transform its special education services and improve its status of legal compliance. The Evaluation Team recognizes that the new DCPS special education management leadership, General Counsel, and Chief Information Officer as well as various other staff have been in place for a short period of time and inherited problems accumulated over many years. Various other longer standing management members have had to cope as best they could in the preceding two years with serious staff shortages. However, the Evaluation Team has chosen to issue this Interim Report at this early date based upon the gravity of the Team's findings. Given the enormity of the issues and challenges ahead, the school system must take more direct, coordinated, and comprehensive action in tackling implementation of the Consent Decree to maintain a realistic chance of meeting the Decree's first major threshold compliance requirements established for June 30, 2007.

II. STATUS OF TIMELY IMPLEMENTATION OF HEARING OFFICER DECISIONS AND SETTLEMENT AGREEMENTS

A. *HOD/SA Compliance Data*

The Consent Decree requires that DCPS eliminate the *Jones* initial backlog by June 30, 2007 (¶41). The Decree further requires that the school District implement 50% of post March 1, 2006 HODs, with no case remaining in the “subsequent” backlog of overdue, non-implemented cases for more than 180 days. (¶42).

1. Current Status of the *Jones* Initial Backlog³

As of January 17, 2007 a total of 1,571 cases had been closed, leaving 1,076 open. Although the attending school listed in Encore is often not correct for these students, Encore data suggests that nearly 600 of these students are not attending a school in one of the six DCPS regions. It appears they are attending a nonpublic, charter, residential, or interagency school. (The initial backlog was reported in the Consent Decree to include a total of 2,521 HOD/SA cases; the best estimate of the actual number as of December 12, 2006 data was 2,593. We will continue to report on these 2,593 cases in the future. As of December 12, 2006, we have identified approximately 100 additional HOD/SAs that remain open and perhaps should have been included in the initial backlog.)

Many of the cases on the Initial Backlog required only data entry to close out the case since the actual tasks required for closure were completed prior to March 1, 2006. Of the 1,571

³ The compliance calculations in this Report, unless otherwise noted, are based upon the January 17, 2007 Encore extract and have all been generated by Klemm Analysis Group, as DCPS has yet to begin providing the Monitor and the parties regular monthly or quarterly compliance reports required by ¶ 117 or 121 of the Consent Decree.

cases closed from the Initial Backlog, 788 (51.9%) were cases where the only activity required to close the case was data entry into Encore demonstrating that all tasks had been completed. A total of 729 (48.1%) required some professional work to be accomplished in addition to data entry to communicate that the work had been accomplished. Analysis of Encore and other data sources since December 2006 indicates that even within the outstanding cases, few appear to require completing assessments or holding meetings at the specified attending school. Most require tracking down the student at a school that differs from the one listed as the attending school in Encore. Once located, the activities required to close the case will be able to be determined. We note that 37 students with an HOD/SA on the initial backlog are associated with a new HOD/SA since November 2006.

2. Status of Current Timely HOD/SA Implementation

- 18.0% (219/(1,219-1)) of HOD/SAs issued during the time period 3/1/06-10/10/06 were timely implemented, if HOD/SAs issued without due dates are removed from the calculation.⁴
- 25.9% (351/(1,355-1)) of HOD/SAs issued during the time period 3/1/06-10/10/06 were timely implemented, if HOD/SAs closed without due dates are considered timely implemented.

⁴ This calculation is closest to that of 22.5% Multi-Disciplinary Team (IEP Team) meeting compliance rate presented in Table 2 attached to Dr. Klemm's affidavit (Docket #1856) filed on July 14, 2006 in conjunction with Defendants' request for approval of the Consent Order, as HOD/SAs with only "no action" elements were eliminated from the calculation of Table 2.

3. Current Status of Cases Overdue for More than 180 Days

As of January 17, 2007, a total of 1,162 HOD/SAs issued between March 1, 2006 and October 10, 2006, became open and overdue and, thus, joined the "Subsequent Backlog." Every month between 100 and 200 cases join the Subsequent Backlog. As of January 17, 2007, 420 of the 1,162 cases in the Subsequent Backlog have been closed (36.1%; 30 required only data entry suggesting the HOD/SA was timely closed and thus should not have been part of the subsequent backlog). A total of 28 of these closed cases were at least 180 days overdue when they were closed. A total of 338 of the 1,162 (29.1%) remain open and are already over 180 days overdue. This suggests that the Consent Decree requirement that no case in the Subsequent Backlog be more than 180 days overdue by June 30, 2007 will not be met unless this data is inaccurate and the closure rate increases.

Unfortunately, for the reasons discussed in this section, the Evaluation Team finds that the Encore data base at this time does not provide a reliable or accurate basis for determining the school system's baseline rate of implementation of HOD/SAs, the status of its elimination of the backlog, or the status of the subsequent backlog. Some new HODs or SAs issued since October 10, 2006 were entered into the Encore data base using the previous data entry process. Klemm Analysis Group assumed temporary responsibility for data entry of all new HODs or SAs beginning with November 2006 in January 2007 in order to design a process that allows for improved creation of prospective work ticklers for appropriate DCPS staff. However, as Klemm Analysis Group has only recently assumed this responsibility, this Report focuses on the available

statistics for HOD/SA events between March 1 and October 10, 2006. This data still may be incomplete. Moreover, the compliance and legal module data are riddled with a host of additional data problems arising from a variety of sources that severely impact the data base's accuracy and currency.⁵

The data system issues described below were clearly a source of great frustration and highly redundant work for staff in DCPS schools and central office who handle compliance issues on a daily basis. They also impeded the work of the Columbus Educational Services, the contractor that DCPS hired to perform outstanding assessments beginning in the summer of 2006. The issues preclude an accurate assessment of baseline compliance data.

B. Data System Issues That Preclude Provision of Accurate Baseline Data for Evaluation and Hinder Compliance Progress

The Student Tracking and Reporting System (STARS) is the master electronic DCPS student database with basic information on every student enrolled in a DCPS school. STARS is a web-based school intranet system designed to track and collect data on all children in DC public schools (but not those attending public charter schools). The system contains demographic and personal information on students, along with emergency information on parents and guardians. Encore is a system peripheral to STARS regarding all DCPS students who are in (or referred for) Special Education. DCPS student information regarding DCPS Special Education students should be populated in Encore from STARS (such as name, address, student ID, birth date, school location). There should be a linkage program that populates these types of information from

⁵ The Consent Decree (¶60) requires that defendants "achieve and maintain an accurate and reliable data system that will allow DCPS to track implementation of HOD/SAs and to identify impediments to timely implementation of HOD/SAs."

STARS to Encore on a periodic basis. But the two systems operate independently and, as to students in the special education system, often have different and inconsistent information.

1. Overall Encore Database Issues

The DCPS special education Encore installation (Encore) is a database system that is not user-friendly for Special Education staff in the schools and does not allow DCPS to track compliance as required in the Consent Decree.

Encore is a cumbersome, illogical, inflexible system that does not, in its current form, accommodate the diversity and frequency of student migration, various avenues that generate assessments, IEP/MDT meetings, IEP service transactions as well as manage staff work-tasks and compliance requirements demanded of DCPS Special Education. It strains professional labor resources and the energies of many DCPS Special Education personnel yet returns almost nothing other than frustration for their efforts. Such frustration and experience of not being able to trust the data and/or reports generated from Encore have led many DCPS Special Education personnel to develop their own ad hoc procedures to track and manage their own work loads. These procedures range from paper-and-pencil text or forms to various digital recording and/or communication strategies (text or spreadsheet documents) loaded on personal desktop and laptop computers.

Encore does not meet standard system requirements of standardized data entry, data quality control, or consistent periodic reports generated from "frozen" or extracted files. It is basically a text-based web system designed so that many users with diverse levels of access and

data entry responsibilities can click on and read file materials. A tracking system must have the ability to include critical information, process it, create and send tickler messages to users in anticipation of critical impending dates, and allow for easy measurement of progress. Encore currently lacks these abilities.

DCPS' Encore installation suffers from design flaws and an implementation process that did not ensure that it met school-based program and managerial needs or adequate program testing prior to its being released to DCPS as their database system. It appears not to have been implemented in a "shadow" format with the prior SETS system for a sufficient period of time prior to its being launched as the sole DCPS Special Education database system.

2. Quality Control Issues

Encore utilizes student identification ("ID") and HOD/SA case numbers. The HOD/SA case numbers are generated when a hearing request is filed. Student IDs are obtained from the DCPS STARS student database. However, neither the student ID nor the case numbers are unique to one student or HOD/SA. Apparently some student ID numbers are retired and then recycled into the system for another student. Some HOD/SA numbers are not completely defined when generated. (Case numbers exist that include only some of the digits required to define a unique number; the year of the hearing request is basically the only part of the case number included in the space for the unique number.) Thus, it is difficult if not impossible to link all actions, assessments, events, etc. to the correct student or associated HOD/SA.

Often events are entered into Encore multiple times and others are not saved when professionals believe they have spent valuable resources entering data. For example, when

students are transferred from schools the same transfer can be entered, and accepted by Encore, multiple times. Dates of events are not checked for basic time logic; for example, years entered as later than 2006 are accepted by Encore.

3. Entry of Data into Encore

Data entry is accomplished in a myriad of methods by numerous types of DCPS Special Education professionals (e.g., Compliance Specialists, Special Education Coordinators, or Disposition Specialists). Data entry is cumbersome and has no mechanism requiring verification of data entry intent prior to placing the data in the Encore master database. For example, closing HOD/SAs requires a complex set of steps that are inflexible and demand entry of irrelevant data into fields not required of the specific HOD/SA. The complex steps are not user-friendly, generate frustration, and discourage users from following them. These data entry issues contribute to the common user complaint that data entered into Encore "does not take."

Some users become impatient and enter the same information multiple times not knowing if any of the entry attempts "took." For example, the Evaluation Team's review of the assessment table shows three apparently unique assessments were ordered on one day for one student; each assessment was entered five times, generating a total of 15 records in Encore. Only one data entry attempt for each of the three assessments was entered completely, the other four were only partially complete. Encore does not include built-in quality control procedures that flag these entries as possible duplicates. Only once lists are generated can such records be reviewed as possible duplicates and then manually deleted.

Compliance Specialists have adopted ad hoc procedures as a result of the unaccommodating attributes of Encore and the use of a special “Closer” program (described in Section 7) to address the system’s inability to directly integrate entry of data with respect to HODs issued before December 2005. They do not enter events into Encore as they occur for HOD/SAs, as there is no point to doing so, they believe, as long as HOD compliance reports can only be run by the Special Education IT staff on a bi-monthly basis and are themselves incomplete. They manually transfer their personal notes as to the status of implementation of specific elements of the HOD/SAs from one printout to the next, so as to maintain a record of each case, as new printouts are produced.

Due dates for services in a HOD are not always entered in a systematic way. Sometimes services should not have due dates but there are hundreds (maybe even thousands) of HOD/SA items that have due dates recorded only within the textual "notes" section that were not entered in date fields of Encore. This creates a very large problem for measuring timely compliance, because when due dates are entered as part of non-standard formatted textual "notes" there is no way to write a program to calculate if the associated cases are overdue. To reliably measure the extent of HOD/SAs with overdue meetings or services, every individual’s HOD or SA must be manually reviewed and updated in a systematic, structured manner. (During May and June 2006, members of the Evaluation Team performed an audit of HOD/SAs which demonstrated the need to code and re-enter every HOD/SA prior to being able to calculate compliance timeliness of a sample of cases – the "Totenberg sample” referenced in Rebecca Klemm’s affidavit filed with the Court. Docket #1856.)

As mentioned in the Court affidavit of Rebecca Klemm, Hearing Officer Decisions are entered into Encore in the textual world of "Word," whereas performance measures demand data entered in the tabular, spreadsheet world of "Excel." Further investigation of the operation of Encore demonstrates that it does not meet current user-interface communication methods observed daily by web-based users when ordering items from vendors.

4. Access and User Communication

Encore involves 19 levels of access. Some levels allow users to enter data on the "work ordering" side of the database and others have access to the "work completion" side. This complexity in access prevents data from being entered regarding one student by one user. Thus data about one student is entered by many users, which generates lack of uniformity in the frequency and dates that data is updated as well as mismatched information regarding the same student.

Many DCPS Special Education professionals have only access to read information in Encore. Thus, although they are aware of incorrect data within Encore, they are unable to correct it due to their inability to enter data into Encore. No standard data repository exists to gather and correct data known to be incorrect in Encore.

Encore's data dictionary is written as if for users, but it is 682 pages long and overly complicated. For example, Page 25 of 682 describes how the Assessment Table and how to use it:

Assessment Table

The Assessment table stores information about the tests that students in a particular client have taken to verify their eligibility for special education services. You can

query this table for the assessments due on specific dates, students who are missing parental approval, and so on.

Getting There

In ENCORE!, select the Search Encore link from the top navigation bar. Enter the search criteria and click the Run Search link. On the result list, select the student that you want. On the left navigation bar, select Programs>Special Ed>Assessment to display the Assessment screen on the right. Note the screen provides read-only information about the assessments associated with the student. Users cannot create assessments manually; they are created by future record rules.

Table Details

The following table provides details on all of the columns in the table . . .

This text is followed by a table with non user-friendly names and variable details that are relevant for system developers/programmers. The voluminous number of pages, mixed messages in the text and tables on such pages communicates that Encore is difficult to integrate into the user's daily work-life. Training is not the solution to such a complex manual. Encore should support the Special Education professionals by improving their work-life; at present it appears to make it more difficult.

5. Encore IT Department

Although many programmers were involved in the development of DCPS' Special Education installation of Encore, currently approximately three Encore staff/programmers remain on DCPS staff. These individuals run standard programs, respond to special requests and serve as the telephone and in-person "help-line" for Encore. Although likely helpful when available, these few individuals cannot respond to the myriad of questions/issues of a system intended for

hundreds of users. The IT department appears to have insufficient staff resources to run updated standard programs or merged versions of Encore plus the “Encore Closer” (see below) on a weekly or daily basis, while also responding to user demands.

Increased Encore training is frequently mentioned as the solution by Encore IT personnel and Encore users to understand the data entry, case closing, and user-interface procedures. Although some training on a system is required, one designed for a large, diverse audience should be able to "stand-alone" with built-in help systems to cover most issues discussed during a short training session. If web-based retailers required training of their clients to place orders from their sites, many clients would find another, easier-to-use competitor.

Encore lacks user-communication to verify the intent of data entry prior to all records being placed in the master Encore database. Encore does not create an "Is this what you intended to send?" communication to a person believing they entered data into Encore. An Encore user enters data about a particular student, believes Encore "took" the information, and then when next they review the status of the particular student either on-line or via an Encore-generated report, finds that the information they believed had been entered does not show up in Encore. Comparable to ordering items on the web, Encore does not send a communication that confirms acceptance of the information submitted. If such were available, the user would know to expect or not expect their efforts to have been successful.

6. Reports Created from Encore

Reports are created on a "demand" basis using queries which cannot be replicated a few minutes later, since the underlying database changes while reports are being created. Reports are

not standardized, lack documentation sufficient to replicate the results, and are often undated. Although reports received during our evaluation appear to demonstrate relatively sophisticated calculations ("Average dates to complete") the Evaluation Team has never been able to replicate any calculations on printouts of queries. This results from no "frozen" file maintained to replicate the table, no dates on reports, lack of details on the records used (for example, no number of records, or how missing dates are handled), as well as data inconsistencies and inaccuracies.

Information received from Encore is a moving target; for example lists of students requiring assessments generated on 10/10/06 included many individuals with apparently overdue assessments during 2004 who were not listed as overdue on a prior listing created during August 2006. Consequently the extent of DCPS staff achievements cannot be measured with any reasonable level of credibility.

The Evaluation Team is ultimately confused by what "all of Encore" – e.g., its entire scope – entails. The Team's experience is that particular programmers are assigned to create a data extraction, respond to a particular data inquiry (such as how to identify students who should receive a Best Buy catalog for compensatory education services). This suggests that individual programmers utilize different Encore tables to create what should be consistent reports or extractions. This is indicative of a system that is not well documented, still in development, and not ready for diverse users.

The Evaluation Team has obtained access to Encore at the lowest level to mimic the experience of most special education professionals. Team members have experienced difficulty logging into Encore via the web, in the same manner as most Encore users. Particularly difficult

times are around noon and 3:00 p.m. when, apparently, many users are trying to log in at the same time. However, the Evaluation Team has had difficulties logging on during other periods of time.

7. Closing Cases in Encore

Closing cases is a critical aspect of the Consent Decree requirements. There is no single "case closed" flag that can be clicked by any school-based user at any level of access to quickly communicate that a case has been closed.

Closing a case requires entering dates in both the "compliance date" and "completed date" columns of the Encore section listing "action data" whether or not it is meaningful to the particular actions of a HOD/SA. This generates excessive data entry (thus increased errors), requires additional labor resources, and generates discouragement with the Encore system. Encore does not allow for differences in relevance of all fields for individual records; it requires all fields to be filled prior to being able to save information. For example, if a user does not enter data into all possible cells, even if irrelevant to the particular record (clearly counter-intuitive), the entered relevant data will not close the case in Encore. The various date fields no longer mean whatever they were initially intended to mean since users have had to fill in data merely to close cases whether meaningful or not. Consequently calculating accurate timeliness is also compromised since there is no one particular place to look for the date when the action was actually completed.

Encore users are not able to close cases that entered the system prior to December of 2005 due to a "programming glitch." Encore IT programmers responded to this glitch by creating a program known as the "Closer." Compliance Specialists use the "Closer" program to close a case

and then the Encore IT staff transfer that data directly into Encore so the case is reported within Encore as actually closed. The “Closer” has led to subsequent problems. Work lists for Compliance Specialists are generated from Encore and there appears to be no systematic process by which one can be sure that the data was accurately transferred via the “Closer” to Encore before new work lists are generated. Compliance Specialists and Disposition Specialists frequently see lists including cases they closed via the “Closer” on current work lists. Some have begun to print copies of “Closer” screen shots as a means of preserving a record of their work for their supervisors’ review.

A total of 2,380 cases in the original March 1, 2006 backlog entered the system prior to December 2005. As of 1/17/07 1,008 (42.4%) of these cases remain open. This means that all data entered on this group of cases must be entered through the “Closer” program. Central office IT department must run the special “Closer” program to produce a "complete" printout or listing identifying the status of cases since the last printout. This is supposed to be run once or twice per month to reflect the status of work completed and remaining for Compliance and Disposition Specialists. The fact is that updated information is not available on a "real time" basis, reflecting the current status of cases. Compliance Specialists do not enter data reflecting the completion of events or services for the “Closer” until *all* events or services required by the HOD/SA are completed. Therefore, neither the Compliance Specialists nor the individual school Special Education Coordinators ever receive a printout on a real-time basis that actually identifies the specific progress status of implementation of each of the items on the HOD/SAs for cases that they are overseeing. Instead, they receive a printout that at best updates them on the *final* closures of cases that were previously on their case loads or on new cases placed on their caseloads. They

are unable to open a screen on the computer that will properly or accurately identify an updated status of implementation of each of the elements of the HOD/SAs they are overseeing.

8. School-based Issues

The only basis for Special Education Coordinators at the school level to review and verify data within Encore is to review manual records. When manual records are not transferred to the "current" school, there is no way for the Special Education Coordinators to manage the student's IEP. This may be relevant to implementation of certain HOD/SAs or alternatively, to conditions which give rise to disputes.

Data entered into Encounter Tracker by service providers regarding services provided or assessments completed (also attempted) does not cross-populate into Encore. Assessments or services are "requested" via a variety of mechanisms (IEPs, HODs, referrals) and are entered into Encore by the mechanism-defined designated personnel. The service providers (certified Speech/Language professionals, Psychologists, Social Workers, etc.) have "read only" access to Encore and thus become aware of the need for their services upon reviewing Encore or Encore-generated reports. The service providers, however, enter information that they actually provided IEP services or assessments into Encounter Tracker which is not a module of Encore. (Encounter Tracker is a separate file set up for billing Medicaid and is currently not linked to Encore.) Special Education Coordinators or other designated DCPS personnel subsequently enter information about the same assessment into Encore. Not only does this process create a gap in timely updates on services provided (service providers continue to see that the same assessments

they entered into Encounter Tracker show up on reports from Encore as still needing to be done),⁶ it allows for billing to occur for services Encore data may indicate has not been performed. This process also introduces errors as a result of entering essentially the same information twice to which comparisons are not systematically performed. Until these two systems are merged on a record by record basis, the extent of these errors, including billing, cannot be ascertained.

9. Enrollment Data Issues

There are several hundred "lost students" who may have transferred to a charter or non-public school, or out of a DC school. No one is really sure where they are at any one time. Discussions with the State Education Office suggest resolutions with the annual census were particularly difficult during 2006. Encore continues to list such students as attending the last DCPS school they ostensibly did attend; nobody has responsibility to "transfer" them out of that school. Columbus Educational Services identified hundreds of students in the course of its attempts to locate students for assessments who had moved to different DCPS schools or programs or alternatively had become "invisible" by virtue of transfers to a charter or non-public school, schools outside of the District of Columbia, incarceration, or dropping out. Since such students have not been transferred out of the most recently-attended DCPS school in Encore, all overdue HODs (and related assessments) for those students are attributed to the most-recently attended DCPS school. However, the special education staff members at the "most-recently attended school" do not consider these students part of their assigned, enrolled student body and

⁶ As discussed later in this report, this disconnection between the Encounter Tracker and Encore in accurately capturing and reporting the status of assessments has likely played a significant role in the waste of resources made available to DCPS through the *Blackman/Jones* Consent Decree (§50 & 51) for additional related services to catch-up with the backlog of overdue assessments. The Contractor, Columbus Educational Services LLC, reported that it had spent much of its time and resources from August to December 2006 working off an inaccurate list given to it by DCPS of assessments apparently needing to be done, only to discover that a substantial portion of the assessments had already been completed but were not recorded in Encore.

are either not aware of how to contact the students or consider such contact to fall outside their scope of responsibility.

Students who have transferred to charter schools or nonpublic schools essentially disappear from DCPS' radar, only to reappear, often with outstanding legal obligations, and services and assessments due per HOD/SAs. Alternatively, services or assessments may have been provided, but that information is not systematically transmitted to DCPS by the charter or nonpublic school. Charter and nonpublic schools believe the same is true in reverse. Thus, when a student arrives at a charter school, the school may not necessarily know of the existence of an outstanding HOD relating to the student (and its concomitant responsibility to implement the HOD) or even that the student has identified special education needs that must be addressed in conformity with an existing IEP. In a city where there is ongoing movement of students between charter schools and DCPS schools, students are easily “lost” as a result of the absence of District of Columbia provisions requiring some form of interface between charter school and DCPS student data systems as well as prompt communication as to outstanding HOD and special education legal obligations.

III. IMPEDIMENTS TO INCREASED HOD/SA IMPLEMENTATION AND THE REDUCTION OF THE HIGH VOLUME OF HOD/SAs

The Evaluation Team’s interim review revealed a range of major systemic impediments to the effort to raise the level of timely HOD/SA compliance. As discussed in Section II, student and HOD/SA data tracking systems play a critical role in the school district’s capacity to track the progress of schools’ implementation of students’ assessments, IEP meetings, IEP placements and

program requirements, HODs, and SAs. The absence of an efficient and accurate HOD and special education tracking management system leaves staff, extending from school special educators and principals to central office compliance specialists and top management, in a position where they cannot fully or properly assess major gaps in special education and HOD implementation. A host of other underlying causes, however, also adversely impact the school district's capacity to make significant or rapid progress in implementation of HODs and SAs on a timely basis. These factors include, among others: the widespread untimely implementation of basic special education requirements, educational programming and placement issues, limitations in the roles of compliance specialists and other special education support/compliance staff, organizational fragmentation, inconsistency in special education case management protocols, principals' disengagement from special education responsibilities, excessive case loads for nonpublic unit placement specialists, absence of coordination among all institutions educating DCPS students, and insufficient staff training.

A substantial number of relevant underlying causes for existing patterns of HOD/SA noncompliance fall outside the ambit of Evaluation Team's interim investigation and report which is based on the first five months of monitoring. For instance, this Interim Report does not attempt to review the adequacy of current educational programming or placement options for students with disabilities. It also does not attempt to review the full variety of placement, institutional coordination, and staffing vacancy issues identified in the affidavit of the former Executive Director of Special Education Reform, Mary Lee Phelps, filed on July 14, 2006 by Defendants in support of their request for Court approval of the Consent Decree. (Docket No. 1857) Similarly,

while the Evaluation Team recognizes that fee generating litigation⁷ in part drives the spiral of hearing requests and decisions that complicate and burden the District’s compliance efforts, a full analysis of this dynamic falls outside the ambit of the instant Report. However, the Team notes that increased DCPS success in management of compliance with basic IDEA legal requirements and HOD/SA specifications may, at very minimum, increase the school district’s capacity to defend itself in IDEA litigation.

FACTORS IMPEDING PROGRESS IN HOD/SA IMPLEMENTATION

A. Untimely Evaluations, Assessments, and IEPs Addressed by the Consent Decree Action Plan Performance Goals for June 30, 2007

During the course of Consent Decree negotiations⁸ and in the Consent Decree itself, DCPS identified untimely evaluations, assessments, and IEPs as a principle trigger of HOD requests and non-timely implementation of HOD/SAs. According to the Consent Decree, “[a]pproximately one-third of all hearing requests involve allegations of untimely assessments and IEPs.” (Consent Decree, §C., p. 9). For this reason, the *Blackman/Jones* Action Plan attached

⁷ Federal appropriations legislation in the District of Columbia has imposed a fee cap of \$4,000 per case in litigation under the “Individuals with Disabilities Education Act” (IDEA), 20 U.S.C. §§ 1400 et seq., whether such rights are invoked under IDEA or pursuant to 42 USC §1983. *Blackman v. District of Columbia*, 456 F.3d 167 (D.C. 2006); *Whatley v. District of Columbia*, 447 F.3d 814, (D.C. Cir. 2006). While this cap may have a particularly severe impact on the availability of counsel to handle complex federal court preliminary injunction cases on behalf of families with little to no financial resources, it seems not to have affected lawyers’ availability to handle administrative hearings in which simpler or narrow IDEA claims are involved.

⁸ See, *Due Process Trigger Points in the Special Education Referral and IEP Implementation Process* (April 8, 2005). As DCPS recognized in this analysis, late assessments “naturally result in IEP meetings being late... Schools do not recognize the importance of timelines since HODs often lead to nonpublic placement and compensatory education and [the] budget impact is absorbed by [the] Central Office.” Another contributing factor the school system identified was that required staff for assessments and IEP meetings were often limited in their availability.

as Exhibit “A” to the Consent Decree identified performance measure goals for timely assessments and IEPs, including: .

- Increase from 46% to 65-75% the percentage of all IEP assessments completed within prescribed timelines.
- Increase the percentage from 62% to 65-75% of IEPs that are current for students with disabilities.

While the specific performance measures referenced above from the Action Plan are not themselves enforceable terms of the Consent Decree, they represent predicate steps for the District’s achievement of the enforceable HOD implementation measures identified within the Decree. The District’s “trigger point” analysis of the causes for hearing requests and untimely HOD implementation was supported by the analysis of 183 HOD cases performed under Totenberg and Klemm’s supervision in May and June 2006. (See generally, Klemm Affidavit, Docket #1856.) In the sample of 183 HOD/SA cases contained in the Totenberg sample, a large portion of HOD cases were triggered by untimely assessments and IEP meetings. (Klemm Affidavit, Docket #1856. ¶¶11-13). The IEP meeting compliance rate for the sample was particularly low – 22%⁹ – perhaps because the cases in the sample all involved HOD/SA cases and many of the IEP meetings were required as a result of hearing officer decisions and settlement agreements. (Klemm Affidavit, ¶18).

Unfortunately, the Evaluation Team was not able to obtain from DCPS any form of report generated for the months after August 24, 2006 identifying the timely IEP assessment and IEP compliance rates on a system wide basis, despite the *Blackman/Jones* Action Plan identification

⁹ Twenty-three meetings were completed timely of the 102 total meetings which were completed or were past due to have been completed.

of such as key progress benchmarks. Despite multiple inquiries, the Team was not able to secure from DCPS system-wide assessment and IEP timeliness data. It appears, however, that some reports have been generated for the regions that identify IEP meetings and assessments on an individual student basis that are timely or late. Finally, the Evaluation Team notes that when it has sought to calculate compliance rates in the assessment and IEP areas, it has not been able to replicate (reach the level of) the compliance percentages that DCPS reported to the Court in its Action Plan.

The school district contracted with Columbus Educational Services, LLC (“Columbus”) to provide eight teams (with up to 46 qualified Special Education Professionals¹⁰) for the assessment of: children 3-5; children enrolled in nonpublic schools; and assessment of school based children with overdue assessments.¹¹ According to the *Blackman/Jones* Action Plan, in year one, the related service intervention teams would focus on completing and ensuring that all assessments are current.¹² Beyond providing assessment services for these identified groups of students, the purpose of this contractual arrangement was to permit current related service providers to focus on providing current assessments needed and to provide schools with an overall greater level of related services staff support. (See generally, *Blackman/Jones* Action Plan, Exhibit A to Consent Order, re Intervention Teams and Consent Decree. ¶51)

¹⁰ According to the Columbus contract and Section I.C. of the Action Plan, each team is to include a special education teacher, psychologist, speech language pathologist, master social worker, occupational therapist, and physical therapist. See also, Consent Decree, ¶51.

¹¹ These 46 related service providers were to constitute the largest block of the 70 intervention / compliance positions referenced in paragraph 51 of the Consent Decree and required under the Action Plan attached as Exhibit A to the Consent Decree. Columbus’ invoices indicate that at most, the contractor has billed for 26 employees, including two administrative personnel.

¹² DCPS has directed Columbus to work on assessments overdue as of June 2006 in this school year.

Columbus' work on behalf of the school district has been stymied by the same pervasive data inaccuracy and document disorganization that has undermined DCPS' operational capacity to implement HODs and assessments on a timely basis. Columbus communicated significant concerns to DCPS in a memorandum dated November 15, 2006 with regard to their assigned assessment workload being "highly inaccurate due to completed testing information not being reported in Encore" and alternatively, testing requests not being entered in Encore.¹³ Columbus again identified the major impediments to productive work posed by Encore inaccuracy in memoranda of December 5, 2006 and January 15, 2007. Compounding the data inaccuracies, Columbus did not have access to the STARS student enrollment system data to identify the current location of students and was provided with inconsistent open student assessment lists. Finally, Encore lists could not be generated for outstanding assessments for all nonpublic placement students and all charter School students. Starting in November, therefore, the Director of Nonpublic Placement began providing lists of students requiring assessments to Columbus identified by the nonpublic unit staff. However, review of existing documentation for students enrolled in a wide array of nonpublic schools will predictably be time consuming.¹⁴

Until January 2007, DCPS did not proactively manage its contract with Columbus so as to maximize the benefit it might obtain from its contractor's paid services and minimize the adverse

¹³ The Columbus memorandum of November 15, 2006 also listed as "ongoing issues previously reported" (1) closed schools/programs were listed in Encore; (2) DCPS entry of data for assigned students after Columbus had begun reviewing records in schools and central offices; (3) decreased use of Encore by DCPS employees or the inability to obtain information from providers in a fashion required by the Encore system; (4) cases remaining open due to information needed from independent providers. Its memorandum of December 5, 2006 called the Encore tracking system data "the most crucial and immediate barrier" to productive work.

¹⁴ Work with the Nonpublic Division was not treated as an immediate priority for the system until the last two months, although data suggests that a large volume of open HODs relate to nonpublic unit students.

impact of these basic data and document conditions of deficiency.¹⁵ As a result, Columbus' work to date has been inefficient and costly.¹⁶ Columbus' contractual related service providers spent the better part of the period from September – December reviewing student folders and central office documentation to determine the status of assessments, as assessment data had not been properly entered into the Encore over time and an additional summer “blitz” of assessment activity had been performed by DCPS without complete, corresponding data entries. In summary, these results were achieved:

- As reported in a Columbus memorandum dated January 15, 2007 based on its providers' school visits and folder reviews, as of December 31, 2006 approximately 68% of the assessments (2,204 of the 3,264) Columbus had been assigned to handle had in fact already been completed by DCPS or independent providers.¹⁷ Columbus points out that at very least, it has addressed the system's need for proper identification of which student assessments have in reality been performed.
- As of January 26, 2007 Columbus had performed 12 assessments associated with overdue *Blackman/Jones* cases. According to the Klemm Analysis Group's data review, 6 of these assessments were for students on the initial backlog. Columbus providers completed an additional 36 newly ordered, non-HOD related assessments at the DCPS Care Center according to Columbus' January 26, 2006 listing of completed assessments.

¹⁵ The current executive director of special education did not serve as the project manager for the Columbus contract until her appointment as *Blackman/Jones* project manager by the Superintendent in January 2007.

¹⁶ Columbus has charged over \$1 million to date for its services since July 2006.

¹⁷ Columbus' providers were initially given assignments based on Encore lists for the initial backlog (pre-March 2006) and a portion of the subsequent backlog (March – June 30, 2006).

- Finally, through its file review, Columbus had by December 31, 2006 identified a potential of 1,058 assessments which needed to be completed, including 522 from the initial backlog and 536 from the subsequent backlog through June 30, 2006. These numbers, however, are not necessarily hard and fast projections, as experience suggests that other data or documents are likely to surface that may show that some of these assessments are also complete and timely. That said, only 30 notices of intent to evaluate have been sent to parents as of this date in connection with the 1,058 assessments identified as incomplete.¹⁸

The Evaluation Team is not in the position at this juncture to validate Columbus' projection of the precise number of student assessments which remain open in the initial and subsequent backlog. As Columbus furnishes individual student assessment data this week and month, the Klemm Analysis Group will compare this data to other data now entered into Encore's multiple modules and fields to validate Columbus' findings.

This results thus far achieved by Columbus providers clearly are not what the parties had anticipated or desired. They reflect the extent to which the DCPS data system has thwarted effective service delivery and compliance efforts¹⁹ and the essential need for active, coordinated management of targeted resources needed to achieve compliance in the *Blackman/Jones* case. Positively, the Superintendent's designated *Blackman/Jones* project manager is now in the active

¹⁸ DCPS local schools initially delayed in sending out notices prepared or requested by Columbus. The contractor thereafter assumed responsibility for issuing the notices, but still apparently did not always receive clear instructions from school system providers as to which assessments DCPS would itself handle. However, January now has come and gone and few notices have been issued.

¹⁹ Regular DCPS related service providers in high schools similarly identified as one of their great challenges the task of identifying the location of students purportedly on their caseloads for purposes of scheduling assessments.

process of working with the Columbus project manager to address these issues and is actively reviewing what changes should be initiated in the scope and delivery of Columbus' services so as to make productive use of its contractual providers' services in the future.²⁰

B. Volume of HOD/SAs and Related Tracking Issues

The high volume of HOD/SAs is a reality that defines the context of compliance efforts at the school level as well as the critical need for a functional tracking system and consistent protocols for the management of cases. In a typical month, two to three hundred requests for hearings are filed. Repeat hearing requests involving the same student occur in approximately a third of the cases.

As DCPS itself has recognized in prior analyses, hearing requests are first made when assessments and IEP meetings are not handled on a timely basis. A second round of hearing requests often occur for the same student when the HOD/SA requiring assessments and an IEP meeting have not been implemented on a timely basis or alternatively, when the parent / guardian is not satisfied with the IEP meeting results or the manner in which the assessments or meeting were conducted. More requests for hearings and HOD/SAs occur thereafter when non-compliance with the terms of the HOD/SA reoccurs anew or again, issues or objections arise with respect to the assessments, placement, mode of IEP implementation, or placement.

Given the absence of an effective and accurate data tracking system, this volume of cases seriously complicates and confuses school special education coordinators' efforts to

²⁰ Under Consent Decree ¶51, DCPS remains obligated to consult with the Monitor prior to modifying the 70 intervention positions required under the Decree or alternatively, reallocating funds targeted for the 70 positions. Any fund reallocation must be consistent with the provisions and intent of the Decree. As of this date, available DCPS and Columbus data indicates instead that a total of 45 intervention staff members have been retained, including 26 Columbus employees and 19 DCPS employees.

systematically address outstanding issues that must be dealt with for each individual student. These efforts become even more muddled by their navigation of multiple hearing requests and decisions relating to the same student. Some of the coordinators clearly resigned themselves to the probability of multiple cases for the same student. In schools visited with any more than a minor volume of cases and/or special education students, the coordinators typically handled the cases without any overarching strategy or timeline.

Evaluation Team members observed during school visits that students in the eligibility stage of review – who have not yet been classified as eligible for special education services – were particularly apt to get lost in this process. This was true whether or not an HOD or SA had required further assessments for the student and an IEP eligibility determination meeting. These students' files are typically not maintained with all other special education students' folders. As these cases were not on any special education providers' current case load and the providers and school special education coordinator did not consider the Encore legal module a reliable basis for knowing what actions/services "really" were now due, these cases often appeared simply to drop off the radar of the coordinator and providers. As one compliance specialist explained, the drift that sets in amidst the volume of cases and referrals, "When matters are not pressing, the students' needs can get on the back burner and that leads to the complaint. Parents cannot get a response and so they file complaints. No one responds to you until the issue is made legal. Then once the weakness is exposed, some people take advantage of this."

C. Lack of Consistency in Management Procedures for Handling Special Education Student Folders, Hearing Requests, HOD/SAs, and other Special Education Transactions

The school special education coordinators and central office compliance specialists²¹ interviewed virtually universally expressed the view that they had not been provided with protocols and training establishing consistent, uniform, and clear guidance with respect to the management and handling of special education cases, data entry, student folders, hearing requests, hearing orders, and other relevant special education transactions. In the absence of such training and protocols, they said that coordinators (with a fair number of them new to the job this year) had to each learn their responsibilities on an ad-hoc basis “on the job.”²² They shared the view that this resulted in inefficiency, frustration, and inconsistent modes of handling cases and student folders.

Student special education folder disorganization compounds the student data system's inadequacies to make for a perfect storm of chaotic management conditions, given the overriding requirement for compliance with timelines in the special education and HOD/SA arena. A large number of student folders reviewed both during the course of the Evaluation Team's school visits and in the review of 183 cases in the “Totenberg sample” were not fully current and were disorganized.²³ They included poorly assembled, redundant paper and no master log or documentation that might yield a clear delineation of what or when services, assessments, and

²¹ A number of the specialists had previously served as school special education coordinators.

²² DCPS points out that it conducts a three hour monthly meeting with coordinators that includes training. However, the compliance specialists and coordinators interviewed consistently indicated that the training provided (whatever it consisted of) was insufficient to equip coordinators for the magnitude of the special education, document, data, and management issues handled.

²³ This was true particularly in schools with larger special education populations, but similarly disorganized files were also seen in small schools where special education teachers had worked in a coordinator capacity in the past in extra periods or after work.

IEP meetings had been conducted; the specific results of IEP meetings; and applicable HOD/SA requirements. Copies of applicable HOD/SAs or Encore summaries of HOD/SAs were inconsistently included in the files. In preparing the Totenberg sample for review, the review team found that a third of the HOD/SAs for the relevant narrow period of time under study were missing.

Similarly, the Evaluation Team found that some special education student folders could not be located or were maintained at a school where the student no longer attends and receives services. Therefore, the schools currently serving students do not possess a complete record on the student upon which to base provision and management of the student's services, and HOD/SAs as applicable.

Finally, the special education student folder filing system at some schools will take major interventions to return them to any form of meaningful and useful order. For instance, at Cardozo Senior High School, "inactive" student folders were stored by school personnel in a storage room over the years in chaotic order. Given the transience of the DC student population, it is probable that at least some students deemed "inactive" may in fact attend other DC supported schools or placements. However, as such students' folders would likely be lost in the bowels of the file room, the new placement school would have to start from scratch in assembling relevant documentation regarding the student. DCPS indicated in response to the draft Interim Report that it now has adopted an intervention process on behalf of schools with major folder management issues, to be implemented by special education supervisors assigned to the regional offices. As of this date, the Evaluation Team has not had an opportunity to see the results of any such

intervention efforts and documentation of the intervention process has not been supplied by DCPS.

D. The Impact of Organizational Fragmentation and Flawed Data Systems on Supplemental Special Education Compliance Staffing Measures

This section reviews some of the major compliance measures that DCPS has expanded to achieve the Decree’s goals and evaluates the impact on these compliance activities of organizational fragmentation and data system deficiencies. The evidence reviewed indicates that organizational hierarchy, fragmentation, and crossed lines of authority within DCPS in tandem with a wholly deficient data system to date have tended to nullify or diminish organizational accountability and efforts to deploy the expanded intervention staffing resources provided via the Consent Order.

1. Additional Allocation of High School Coordinators

The school system special education staffing plan in the 2006/07 FY allocated an additional second special education coordinator position to larger high schools to address the major compliance issues posed in high schools. According to Mary Lee Phelps’ Affidavit filed with the Court (Docket No. 1857), the increased staffing was targeted at senior high schools because these schools have the highest enrollment of students with disabilities, a “disproportionate number of overdue HOD/SAs, with significantly higher lengths of delay in implementation “in large part to inadequate staffing.” (§12-13, Affidavit of Mary Lee Phelps). The high caseloads in the high schools for special education coordinators (1:300 vs. 1:30 at the elementary school staffing plan level) and special transience and dropout issues affecting high

school students warranted the addition of a second coordinator. The Evaluation Team members personally observed the high volume of work handled by these coordinators. However, the Team's visits to high schools also confirmed that this staffing investment would not yield sufficient compliance and special education service progress if the data system, training, and organizational issues described in this report are not addressed. The coordinators interviewed reflected varying levels of skills and organization in the performance of their duties. Moreover, the major scope of disarray in high schools regarding the actual location of large numbers of special education students as well as the actual status of their HOD/SA cases make effective management and tracking an essential foundation for effective intervention or compliance work to proceed.

2. Special Education Compliance and Disposition Specialists and Their Work with School Special Education Coordinators

Consistent with the terms of the Consent Order (¶51) and its *Jones/Blackman* attached Action Plan (¶ III.C.), the school system hired an expanded team of Compliance and Disposition Specialists²⁴ to assist schools in the management and resolution of cases. While the central office Compliance Specialists have attempted to guide the coordinators in moving HOD/SAs forward

²⁴ According to the Director for Special Education Compliance, ten compliance specialists and seven disposition specialists are currently on staff. Compliance and disposition specialists often work as a team, with the disposition specialists in the latter half of October focusing more on handling location of "missing" students (who may have moved, dropped out, transferred to a charter school, etc.) and paper work relating to case closures. Most of the disposition specialists as of yet have not been assigned the settlement negotiation, resolution session, and school consultation functions described in the Action Plan at ¶III.C. The number of supplemental compliance and disposition specialists hired appears to be consistent with the requirements of the Action Plan provision incorporated into the Consent Decree, but cannot be fully confirmed without analyzing which positions were continuations of existing positions.

and in keeping track of the high volume of cases, their capacity to assist coordinators in creating viable management strategies for handling and prioritizing HOD/SA cases and regular special education responsibilities has remained limited. Each Compliance Specialist typically covers 20 - 30 schools in his/her region and has limited time in any given week to spend with the school coordinator on management issues. Compliance Specialists, however, typically will spend more time, e.g., a half to a full day per week, at high schools with larger case loads.

Compliance and Disposition Specialists face the identical limitations with Encore HOD/SA tracking and the status of student folders that confound the work of school based Special Education Coordinators, particularly at high schools and other schools with large volumes of HODs or special education students. As noted in Section II, they transfer their hand notes on Encore printouts from month to month regarding the status of completion of individual items on student HODs. They have no reliable, efficient method for oversight of the progress in implementation of HODs other than continual folder examination, personal communication, and systematic retention of records and notes regarding the status of cases.²⁵

Compliance and Disposition Specialists meet once per week with the Director of Dispute Resolution, Compliance & Policy Compliance (referenced herein as “Director of Compliance”²⁶).

²⁵ The compliance strategy described by one of the compliance/disposition specialist teams was fairly consistent, though more organized, with the approach taken by other teams. This team’s strategy has been to work school by school, starting with the schools with the largest caseloads. They find in general that there are a significant number of old HODs that require investigation. They give the coordinators a list of tasks that need to be done on each case. On their paper copy of the printout from Encore, they either circle or highlight the open items that need attention from the coordinator, to enable them to track closure of these items. However, they are not able to enter this information into Encore. When the next monthly list comes out, it does not reflect the work they have done and so they spend a considerable amount of time physically copying their notes and highlights onto the new paper copy from the previous monthly list. As they are not confident always as to what data will “take” in Encore, they also sometimes will maintain copies of documentation to verify both that the data had been entered and the evidentiary basis of the data entry. In performing these duties, they also must cope with a basic lack of supplies, ranging from pads, and manila folders to easy access to fax machines or scanners.

²⁶ The Director of Dispute Resolution, Compliance & Policy has a vacant Deputy Director position that is

The Director of Compliance Department has established an expected minimum HOD case closure norm of 10 cases per week and directed specialists to identify specific impediments to case closures, such as staffing vacancies.²⁷ Compliance Specialists have also been directed to refer to Disposition Specialists for further investigation all HOD/SAs cases involving students who Encore lists as attending the school covered by the specialist but who are not in fact enrolled at the school. Otherwise, Compliance Specialists have been given discretion to handle their case loads based upon their own professional judgment.

Each Compliance Specialist / Disposition Specialist team²⁸ sends in a weekly e-mail in his or her own format, identifying the specific cases closed or in the case of Disposition Specialists, “protocol” notice letters to parents/guardians regarding the closure of cases.²⁹ If less than ten cases have been closed, an explanation is typically provided. The Evaluation Team did not have time to conduct a systematic review of all individual cases closed, and systemic data was not available from which an analysis of the case closures could be made. However, the Team’s interviews and document review suggested that substantial numbers of the cases closed were ones where the specialists had been able to confirm that all actions required by HOD/SAs in fact had

listed under her supervision on the DCPS organizational Chart. She envisions this position as ultimately responsible for immediate supervision of compliance. Currently, she is performing all management jobs identified under the job title.

²⁷ For instance in the HOD of C.J., entered originally in the old SETS system, there was limited space to record requirements. Thus, not all of the order of the hearing officer would fit into the one line given. The second line on page 2 is a continuation of the order in the first line, rather than a separate action item. The action was completed, but because there was not a date for the second line, the case remained open. All that was needed to close this case was to add a date to the second line. In other cases, assessments actually performed or placements made were recorded and cases were closed.

²⁸ Some of the compliance specialists, however, work independently, without a disposition specialist.

²⁹ However, this electronic communication is not recorded in any systematic spreadsheet format or reconciled with the Encore legal module data.

already been performed or that only closing actions, such as payment of counsel or provision of compensatory services, were required.³⁰ Specialists gave estimates ranging from 33% to 80% in identifying the proportion of cases closed that only required the entry of data to enable their closure. These estimates are consistent with the Evaluation Team’s findings in reviewing Encore data.³¹

Central office Compliance Specialists work solely as support staff and exercise no direct authority with respect to the Special Education Coordinator, or any other school staff. The Compliance Specialists’ supervisor, the Director of Compliance, similarly has no supervisory authority to directly address coordinators’ handling of their job duties, but instead relies on her ability to “pass on information” to other management staff within the school system. The Director of Compliance reports to the Assistant Superintendent for Differentiated Instruction, not to the Executive Director for Special Education. School Special Education Coordinators report both to the school principal and to a Special Education Supervisor who in turn reports both to the Regional Assistant Superintendent and Executive Special Education Director. While the coordinators report to the principals, they generally are not trained by the principals. Coordinators receive their instruction as to protocols for management of their special education duties through the Special Education Directors in each region, rather than through the Compliance

³⁰ While the Evaluation Team conducted interviews with all disposition specialists, the Team did not have sufficient time or documentation available to confirm that disposition specialists followed the precise letter requirements of the case closure protocols agreed upon by the parties pursuant to ¶44 of the Consent Decree. While individual disposition specialists handled case closures based upon their own independent judgment, the Evaluation Team’s interviews and review of documentation indicated that most but not all specialists used the protocols as their guide for handling notice and case closures.

³¹ As noted earlier in Section II of this Report, of the 1,281 cases closed from the Initial Backlog, 693 (54.1%) were cases where the only activity required to close the case was data entry into Encore demonstrating that all tasks had been completed. A total of 588 (45.9%) required some professional work to be accomplished in addition to data entry to communicate that the work had been accomplished.

Specialists, the central office Director of Compliance, or the Principal. Each Regional Special Education Director reports to an Assistant Superintendent, who in turn reports to the Chief Accountability Officer, as opposed to the Chief Academic Officer (who oversees instructional programs from still another vantage point).

Neither the Special Education Coordinators nor the Compliance Specialists have any authority to address a wide array of significant issues arising at the school level that may cause non-compliance, e.g., class scheduling (executed by school staff) that is inconsistent with implementation of IEPs, staff attendance at IEP meetings, student instructional placement options, or handling of student records and attendance data. Principals report to Regional Assistant Superintendents and not directly to central office personnel. Principals in the secondary schools visited tended to assume minor responsibility for special education and instead, delegated responsibility to the coordinators and other special education staff members. However, this delegation (perhaps not unexpectedly) did not encompass the authority to address school wide or individual teacher or related service practices impacting compliance and programming.

Principals' handling of special education information and communications in the schools the Team visited reflected to varying degrees their engagement or disengagement from special education and responsibilities under the Consent Decree. For example, while the DCPS regional offices circulate reports of outstanding IEPs, assessments, re-evaluations to schools within the region, some principals did not necessarily share this information with their Special Education Coordinators or follow-up on the information. Other principals and Special Education Coordinators claimed never to have received a copy of the Encore list of students with overdue

HODs which was distributed at the start of the school year to all principals.³² Still other principals distributed these lists and simply fully delegated responsibility to their coordinators for dealing with the HOD overdue lists, without subsequent follow-up. In any event, in most schools, the listing contained substantial errors, with many students listed no longer at the school. Nevertheless, few principals appear to have flagged this problem for either regional or central office staff. In sum, while a few principals in schools visited evidenced real engagement with special education, the majority did not provide the organizational structure or consistent leadership which would facilitate or support the coordinators' and specialists' success in substantially improving the special education process and HOD/SA legal compliance.

Finally, the Evaluation Team notes that this organizational picture is further complicated by the separate related services chain of command. Related service providers servicing students on a school level report up to the supervisors of their related service discipline area in the central office, rather than to the principal. School-based Special Education Coordinators have no supervisory authority to direct a related service provider to initiate an assessment or services. We heard inconsistent reports about whether Special Education Coordinators had access or were aware that they had access to review the providers' Encounter Tracker records. In the event questions arise regarding the related service provider's performance of services or assessments, the coordinator must use whatever means at his/her disposal to go over the head of the provider to contact the provider's related service supervisor for assistance. Compliance Specialists similarly lack such authority with respect to related service providers. Their supervisor, the Director of

³² The Chief Officer for Accountability and central office special education staff affirm unequivocally that this communication and Encore listing were distributed to principals at the start of the school year.

Compliance, would follow-up on reported problems by in turn “passing on” appropriate information to supervisors or other management staff.

Without either an integrated management and authority structure or functional data system, the Evaluation Team observed that coordinators and compliance staff on the front lines of addressing compliance and special education issues at the school level ferreted out a strategy on their own for improving compliance – or failed to do so – and in the process, ran into a host of organizational impediments.

3. Nonpublic Division Intervention Measures

Significant compliance management problems were experienced in the Nonpublic Unit within Special Education in the 2005/06 school year in connection with the unit’s staff vacancy of 50% or higher and budget freezes. (¶7, Affidavit of Mary Lee Phelps, Docket #1567). According to the former Executive Director of Special Education Reform, “the impact of these vacancies has resulted in a decreased ability to provide case management for DCPS students enrolled in nonpublic programs, resulting in limited closures of HOD and SA as well as a reduced ability to update data for students in the nonpublic programs.” *Id.*

To address these Nonpublic Unit compliance issues that impact DCPS’ overall compliance rates due to volume of DCPS students referred to nonpublic placements³³, the *Blackman/Jones* Action Plan (¶I.D.) calls for the addition of one Intervention Team in the Nonpublic Division to address overdue assessments, similar to the Columbus intervention teams used for public schools. The Columbus contract executed in turn also provides for the use of Columbus team members for

³³ The Director of the Nonpublic Placement Unit stated that as of the end of the 2005/06 school year, 2,442 students were enrolled in nonpublic placements.

the assessment of nonpublic students. The *Jones/Blackman* Action Plan also reflects that three additional placement specialists had been hired “to reduce caseloads and enable nonpublic staff to attend IEP meetings at nonpublic programs,” with additional vacancies to be filled over the summer.”³⁴ Further, the Plan called for four additional Compliance Specialists “to focus on overdue HOD/SAs” to work with both local schools and the Nonpublic Unit staff. (¶III C).

The Evaluation Team’s interviews with the nonpublic specialists and the Nonpublic Unit Director indicate that this unit continues to experience serious staffing and capacity issues. Placement Specialists interviewed carried student case loads in the range of 220 to 240 students. They see the unit continuously falling behind in its performance of timely assessments, as Placement Specialists must focus on the influx of new student referrals. As an organizational matter, as soon as students are classified according to their HODs as nonpublic, the unit assumes responsibility for completing the assessments previously not performed at the public school as well as all other HOD directives. The unit has four psychologists and one speech and language provider. Thus, if hypothetically there are 100 HODs dealing with nonpublic assessment that direct that DCPS conduct a battery of assessments for each of these students, the unit has real limitations in its capacity to perform these assessments on a timely basis, while performing ongoing IEP related responsibilities, such as re-evaluations, much less return to the other backlog cases. Placement Specialists thus report that evaluations are backlogged in their caseloads for two years, and they do not have time, given the size of their caseload, to focus on closure of backlog cases. As a result, additional hearing requests occur and new HODs are entered, authorizing independent assessments and compensatory services. As a matter of budgetary policy, the school

³⁴ Prior to the re-staffing of the department in the end of the 2005/06 school year and the summer of 2006, 20 of the 32 positions within the unit’s organizational chart were vacant due to a budget freeze, according to the Nonpublic Placement Unit Director.

system has apparently declined this year to negotiate agreements with nonpublic schools to conduct assessments in its place. In light of the pressing need for additional assessment resources in this unit, it is most unfortunate that the Columbus team has not been able, for whatever variety of DCPS organizational and data reasons, to move more swiftly to address the unit's needs.

The Nonpublic Unit placement specialists are supposed to attend IEP meetings for all students on their caseloads, a goal which they see as virtually impossible due to the size of their case loads, the variety of placements entailed, and their responsibility for reviewing placement options for all referred students.³⁵ Their participation in such IEP meetings and attempts to address outstanding HODs are rendered more difficult by the deficiencies in the confidential student files they must rely upon. Sometimes they have difficulty finding student folders or older HODs, and in other cases, the file documentation is incomplete, as described earlier in this report. In these circumstances, they are then forced to rely on Encore data, whether or not it is complete or accurate.

The Evaluation Team observed a high level of staff frustration and demoralization resulting from these overall work circumstances that seemed destined to result in further staff vacancies.

E. Intervention Resources Provided Through the Consent Decree

The Consent Decree provided for the commitment of additional District of Columbia financial resources (\$5 million) to assist in supporting the compliance and implementation requirements and actions required by the Decree. (Consent Decree, ¶50). This commitment of

³⁵ One placement specialist recounted that when she is able to attend an IEP meeting at a nonpublic school, she often finds that she is the first DCPS staff member to have attended an IEP meeting for the student in several years.

resources, however, was not intended to limit DCPS' obligation to expend funds necessary to implement compliance. Id.

Pursuant to paragraph 51 of the Decree, Defendants are required to implement the provisions of the Action Plan (Exhibit A to the Consent Decree) for employment of an additional 70 intervention and related services personnel who would play a major role in improving compliance and conducting assessments. Paragraph 51 authorizes modification of these 70 positions or reallocation of funds for these positions, but only if changed circumstances warrant such a modification and the change or reallocation is consistent with the provisions of the intent of the decree. Finally, ¶51 requires Defendants to consult with the Monitor prior to any reallocation.³⁶

As of this date, available DCPS data for new positions charged to the *Blackman/Jones* cases indicates that a total of 26 new positions have been budgeted for *Blackman/Jones* compliance, of which 19 have been filled. A few of these positions differ from those identified on the Action Plan. In addition, Columbus Educational Services invoices indicates that as of January 15, 2007, it has retained 26 employees or contractors, whose positions are consistent with the related service and supervisory staffing positions identified in the Action Plan.³⁷ Columbus reports it has made an additional 6 job offers for 4 school psychologists and 1 physical therapist that are pending credentialing and acceptance.

While the Evaluation Team recognizes that DCPS budget documentation of positions may

³⁶ Paragraph 51 also contains provisions for how the Monitor's objections, if any, will be handled.

³⁷ Columbus' January 15, 2007 reports that it has employed one more social worker than can be verified through current invoices submitted, which if correct would bring its total staff to 27.

be incomplete as of this date,³⁸ it appears fair to conclude that far fewer than 70 additional intervention staffing positions have been filled to date. Given the confusion and disarray surrounding efforts to properly target the work of Columbus' related services staff, the Evaluation Team finds that the school district's apparent failure to fully staff to the 70 position total specified in Consent Decree ¶51 may have in reality prevented a waste of resources. Although the school district does have a clear need for additional related services and intervention personnel in certain capacities and is required to comply with ¶51, an effective plan for the deployment of additional personnel or other resources to support *Blackman/Jones* compliance is an essential predicate to the use of these resources.

F. Resolution Sessions

Section IV (B) of the Consent Decree addresses resolution sessions. Paragraph 33 states in summary:

... The Defendants shall conduct the RS [Resolution Session] in a way that is consistent with the objectives of IDEA '04. The Defendants shall use good faith efforts to reach a mutually acceptable settlement, consistent with the IDEA and its implementing regulations. The RS is not to be used as a means to delay a due process hearing.

Federal regulations provide that the purpose of the resolution meeting "is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint." 34 CFR §300.510(a)(2). IDEA '04 provides that due process hearings and timelines are extended for an additional 30 days to provide an opportunity for early resolution of the complaint. See generally, 20 U.S.C. §1415(f)(1)(B); 34 CFR §300.510 et seq.

³⁸ A DCPS Procurement Officer provided the Evaluation Team a Departmental Personnel Services Budget for FY 08. This budget does not reflect the work or plans of the newly appointed DCPS *Blackman/Jones* project manager,

The provisions of Section IV(B) in the Consent Decree identify specific procedures for schools to follow to ensure timely scheduling of resolution sessions, with provision of adequate notice to parents and their counsel. The section also provides for expedited scheduling of hearings in two ways: (1) where the parties both mutually waive a resolution session (§34c); and (2) when a resolution session has been unsuccessful, the Office of General counsel is obligated to forward the case to the Student Hearing Office as soon as it determines that further settlement discussions would not be productive (§38). Finally, paragraph 39 requires the Monitor to assess the resolution session process to determine if there are any systemic problems regarding scheduling or other implementation issues, and to issue a report of findings and recommendations by January 31, 2007. The parties both agreed that this assessment could be included within this instant Report, filed in February 2007.

In the initial evaluation process, the Monitor, with the assistance of the Evaluation Team, assessed the resolution session process through interviews, conducted at the school sites included in the initial sample, with principals and special-education coordinators; and with disposition specialists, compliance specialists, the Director of Compliance, discussions with members of the plaintiffs' bar who represent children in the special-education process, and a review of records of a sample of Disposition Resolution Committee meetings. Additionally, relevant information as to the processing of complaint resolution was gleaned from interviews with the Student Hearing Office, a supervising attorney in the Office of General Counsel, and review of Encore data.

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. Resolution sessions must be scheduled promptly with the parent and relevant members

of the IEP team who have specific knowledge of the facts identified in the due process complaint, and a representative of the public agency who has decision-making authority on behalf of that agency.

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. Part of the reason is an atmosphere of mistrust on both sides. DCPS representatives cite numerous and time-consuming problems in scheduling resolution sessions due to the unresponsiveness of parents and attorneys. Members of the plaintiffs' bar believe that DCPS' primary interest in scheduling these meetings is a hope that the parent will default, warranting dismissal of the complaint. 34 CFR §300.510(b)(5).

There are two types of resolution sessions held within DCPS. The first occurs at the DCPS Central office and deals with students in charter, private schools, the Care Center and non-attending students. DCPS is typically represented by one of two disposition specialists. Other than a parent and attorney, usually no one else is present. In rare instances, someone from the school may be available. The DCPS representatives typically do not have personal knowledge about the child or the facts of the case.

When the complaint is received by DCPS, the Director of Compliance solicits information from placement specialists and schools regarding the complaint. Usually, no response is received, and the only information available is that which has been entered in Encore. With this information, a week later, the Director of Compliance and her assistant determine what resolution

will be offered by the disposition specialists. Since there is little individualized information available at this point to the Director of Compliance, the authorization is formulaic – to agree to an evaluation if one is deemed necessary and to a future Multi-Disciplinary Team meeting. At the resolution session, the disposition specialists go over the complaint and typically offer the formulaic response. At this resolution session, DCPS is typically not willing to discuss placement, compensatory education or other issues which may have been the reason for the due process complaint. In the resolution session, partial resolutions are not possible. Unless all the issues are resolved, nothing is settled and the attorneys have to go to a hearing on all issues in the complaint. Not surprisingly, resolutions are infrequent.

The second type of dispute resolution takes place at the local level. Typically, the special education coordinator leads the meeting. These resolution sessions are like IEP meetings and tend to have more variability and the participation of individuals who are more familiar with the student and the facts of the case. However, as with the central office resolution sessions, the decision-making authority at the local level is circumscribed by the Director of Compliance. Cases often have a long history, sometimes spanning other schools and resolution of the cases may potentially entail budgetary consequences. School officials don't have the authority to resolve the issues they present unless they can manage the resolution within their own budgets. Given the high volume of monthly resolution sessions, central office staff members (including the new disposition specialists and attorneys) do not normally attend resolution sessions.

When cases do get settled, it is usually at the hearing or shortly before. Many DCPS staff members believe that resolution sessions are unsuccessful because attorneys are unwilling to settle cases prior to the hearing as a result of DCPS policy not to pay attorney's fees for earlier

settlements. They report that attorneys often accept the identical settlement proposal offered at the resolution meeting, with the exception that attorney's fees are provided or agreed upon at the point of hearing. While DCPS' attorney's fees policy may discourage early settlements at resolution sessions, public-interest attorneys also report difficulty in reaching settlements prior to hearings largely because they are unable to engage the attention of overworked DCPS attorneys to their cases until a hearing is imminent. They report that when DCPS attorneys are engaged in discussions at an earlier stage, successful settlements are achieved even in cases involving placements, compensatory education and independent evaluations.

DCPS attorneys report a variety of other obstacles to their prompt engagement in pre-hearing settlement discussions. First and foremost, there are too many daily resolution sessions for DCPS attorneys to cover while at the same time representing DCPS at hearings. Moreover, DCPS or the Office of General Counsel receives inconsistent prior notice that the student's attorney will participate at the resolution session. Indeed, DCPS attorneys do not even typically receive notice of the failure of resolution sessions from local schools during the 30 day resolution window.³⁹ For that reason, they simply automatically schedule the complaint folder for renewed activity on day 31 of the 75 day statutory period for complaint resolution/hearing/decision. After the 30 day resolution period closes, DCPS attorneys face substantial difficulties in obtaining complete documentation regarding the students at issue on a timely basis. With partial student records and incomplete resolution session minutes, DCPS counsel feel they are not in the position to discuss settlement promptly because they cannot assess cases based upon adequate school

³⁹ DCPS staff who conduct the charter and non-public school resolution sessions, however, do promptly notify OGC of the results of the sessions and provide complete resolution session minutes.

documentation and communication with school personnel.⁴⁰ Significantly, the DCPS supervising attorney for hearings stated that she had seen greater success in resolution sessions in which principals were engaged and where local schools were able to exercise authority to offer actual, substantive solutions, e.g., conversion of the resolution session into an IEP meeting or an agreement as to the provision of actual services.

Resolution sessions are not tracked in Encore and therefore, student confidential folders offer the primary source of evidence available relative to the timely scheduling of resolution meetings. However, the Team was presented with scant evidence of concerns on the part of plaintiffs' counsel or parents that resolution meetings were not scheduled or were scheduled on an untimely basis. On the other hand, consistent with the evidence reviewed above, plaintiffs' counsel voiced concerns that the thirty day resolution period ends up being a mere procedural waiting period requirement. The Student Hearing Office routinely stays the scheduling of hearings for the full thirty day period allocated for resolution sessions. The Student Hearing Office also reports it has not received any communications from the Office of General Counsel as to earlier scheduling of cases based upon the failure of resolution efforts or mutual waiver of resolution meetings. This is not surprising given the fact that the Office of General Counsel usually does not learn of the results of resolution sessions until day 31 or thereafter.

⁴⁰ Both schools and DCPS counsel voiced concerns about their inability to easily contact each other to discuss cases in advance.

IV. STATUS OF TIMELY IMPLEMENTATION OF TIMELINES FOR THE ISSUANCE OF HEARING DECISIONS

A. Consent Decree Compliance Requirement

The Consent Decree requires that Defendants ensure that 90% of requests for hearings are timely adjudicated by the issuance of a final HOD or settled. It further requires that no due process hearing requests be more than 90 days overdue. (§29). The Consent Decree recognizes that days specified in a postponement resulting from a parent's request for a hearing continuance or from a continuance granted for good cause will not be counted for purpose of determining whether the Defendants are in compliance. (§31b and d). Hearing requests that are voluntarily withdrawn by a parent will not be considered as outstanding requests when determining whether the Defendants are in compliance. (§31c). Finally, the Decree specifies a variety of other factors that may be considered in calculating the timeliness of hearings and HOD issuance. See generally, §31 and 32 of Consent Decree.

B. Compliance Data Issues and Hearing Case Tracking

1. Encore Data Issues

Until the 2005/06 school year, the Student Hearing Office relied on SETS and/or Encore as its automated data base for recording the status of hearing requests and decisions. The Hearing Office Administrator views the Encore data base as an unreliable source for the office's timely tracking of hearing requests and decisions as a result of the array of Encore deficiencies identified in Section II. The Special Education Department, not the Hearing Office, enters hearing decisions into the Encore data base. Any delay or error in the entry of a hearing decision impacts the school

system's ability to show timely issuance of decisions. A host of other data errors affect Encore's reliability for purposes of reliably showing timely HOD issuance, including:

1. If multiple hearing requests are consolidated, this does not show up in Encore.
2. Continuances are not always entered or timely entered into Encore, making appropriate calculation of continuance days impossible.
3. Over 100 hearing requests in Encore are reflected on dates after the date of the associated HOD.
4. It is not easy to systematically link each hearing request to its corresponding HOD or other significant event (i.e., a formal hearing where the timeline is waived) in Encore. Incomplete case numbers, inconsistent cross-population between hearing request case numbers and case outcomes, and lack of a systematic approach to data fields contribute to this problem.

In order to get a better idea of the actual rate of the timely issuance of HODs for hearing requests due to the data issues identified above, the Evaluation Team examined all hearing requests issued in the month of April 2006 as per Encore data and any documentation concerning these cases that was available in the Student Hearing Office to resolve questions left open by the Encore data. This review involved a painstaking review of individual student Encore entries as well as reconciliation of this information in a variety of cases with information obtained from the Student Hearing Office. For instance, 48 out of the original 253 Hearing Requests identified from April 06 as listed in Encore appeared to be overdue and outside of *Blackman* timelines. The Monitor sent this list of 48 hearing requests to the Student Hearing Office and requested further information on the cases as well as supporting documentation. The Student Hearing Office in turn provided documents indicating withdrawals, continuances, and other relevant information not

found in Encore. Even after this round of document review and Encore analysis, further detailed review of the circumstances of 18 of the 48 cases had to be performed, including review of issues such as whether various cases were subsumed within subsequently filed cases. The data and documentation for cases of students with multiple hearing requests in a close time frame were particularly confused and not always possible to sort out definitively. In sum, computation of the *Blackman* compliance rates for the month of April did not remotely resemble an "automatic" data report run.

The data ultimately developed, as indicated below, demonstrates compliance with respect to the 90% standard for issuance of timely issuance of hearing decisions but incomplete evidence at this time as to the number of cases that may exceed the 90 days overdue standard.

There were 253 HOD/SAs issued in connection with the April hearing requests, including:

- 186 decisions issued on time
- 2 dismissed within timelines
- 9 decisions confirmed to be issued late.
- 6 decisions where the question of timeliness could not be resolved based upon the review of available data and documentation.
- 50 cases withdrawn

Based upon this information, if the withdrawn cases are taken out from calculations, as Consent Decree paragraph 31c might suggest 92.6% of hearing cases could be verified in the sample month as timely. (Percentage verified as timely: $186 \text{ on time} + 2 \text{ dismissed on time} = 188/203 = 92.6\%$). The percentage that could not be verified as compliant or non-compliant was

3.0%, ($6/203 = 3.0\%$). 4.4% of the cases were verified as not timely. ($9/203=4.4\%$). If withdrawn cases are treated as timely, as another interpretation of Consent Decree paragraph 31c might suggest, the percentage of HODs verified as timely would be 94.1%. ($188+50= 238/253= 94.1\%$). The percentage that could not be verified as compliant or non compliant = $6/253 = 2.4\%$. The percentage that was verified as not timely would be 3.6%. ($9 \text{ confirmed late} + 1 \text{ late dismissal} = 9/253=3.6\%$).

As a sheer matter of mathematics, the majority of the HODs issued relating to April 2006 hearing requests would not as of this date have exceeded the 90 day time span specified in the *Blackman* standard (§29) because the HODs would not have passed the 90 day mark until 165 days after the initial hearing request was filed, at earliest. (The hearing would be required within 75 days, and ninety days would be counted from the 75th day, or the date of a later hearing decision resulting from a hearing postponed through a valid continuance, as identified under the Consent Order. Such continuance orders are frequently issued.) However, one case (No. 200600000931) from April 10, 2006 was identified as exceeding the 90 day standard.

In summary, this data confirms that DCPS has made vast strides of progress in issuing HODs on a timely basis in recent years, as represented in the introduction to the Consent Decree and may possibly be close to reaching required compliance levels. However, the Encore data base, even when supplemented by intensive review of available data and documentation for the sample month, did not permit a clean or simple demonstration of compliance with the 90% timeline compliance goal with no due process hearing requests more than over 90 days overdue.⁴¹ Appropriate measures may be initiated to modify the Hearing Office's own docket system, though, to address this.

⁴¹ Encore did not fully or properly record information on Resolution sessions either.

2. The Student Hearing Office's Own Tracking Measures

To address the Student Hearing Office's need for a case tracking process that provides a hearing scheduling system that ensures that cases are scheduled on a timely basis and don't fall through the cracks, given concerns regarding Encore's reliability, the Administrator has created several alternative, partially duplicative, processes for tracking the status and movement of hearing requests, including:

1. The office maintains one consolidated notebook reflecting in hard paper form hearing scheduling and continuances, with hand written notations as to additional scheduling transactions relating to the cases within the office. However, the volume of cases overall, and in particular, repeat cases for the same students, make such manual tracking of hearing schedules difficult. The consolidated notebook offers a very useful reference source for checking on cases, but does not provide a tracking or docketing system designed to ensure timely scheduling of hearings and timely issuance of decisions.

2. The office started its own spreadsheet during the 2005/06 school year for recording the scheduling of cases, with an automatic flag system to identify cases not scheduled or resolved by day 60 of the normal 75 day timeline. Unfortunately, due to staff medical related absences and other issues, for many months of decisions, the HOD data fields have been left incomplete as to continuances granted and the dates hearing officer decisions or settlements were issued. Many parts of the Hearing Outcome field are blank or partially complete. Accordingly, the data base cannot be relied upon to demonstrate compliance with *Blackman* timeline standards in place of Encore at this time.

3. The office uses various manual scheduling and tickler systems, with multiple individuals involved, to double check on the timely scheduling of hearings. Once hearings are conducted, hearing officers are expected to keep track of their timelines to ensure timely issuance of decisions. Hearing officers in turn stated that they did receive oral reminders at times from the Administrator regarding outstanding cases.

While the Student Hearing Officer Administrator has gone to great lengths to ensure timely scheduling of hearings, the Office ultimately is working on a patchwork of manual and flawed automated systems or data bases. Compared to the overall Encore data issues facing the school system, the scheduling and data and issues within the Student Hearing Office could be resolved without extraordinary effort and would likely result in an improved capacity both to support and demonstrate compliance. A docketing data base system, which systematically records, tracks, and flags hearing requests, continuances, and decisions could be easily created and maintained. Alternatively, modifications in Encore could be made consistent with these requirements.

The hearing officers interviewed recognized the benefit that would be attained from a docketing system that would allow them easily to identify all cases brought by the same student. Moreover, if HOD/SAs for each case were electronically maintained in the office's general data base for hearing officers, the prior history of litigation involving the student could be reviewed by hearing officers, as appropriate. Additionally, the decisions could be e-mailed to all relevant special education offices / personnel immediately upon their issuance by the hearing officer, or

posted on a secure website and made available to authorized users, thereby addressing staff complaints regarding the lag time in receipt of HODs that require immediate follow-up actions.⁴²

C. Other Student Hearing Office Issues

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. Staff in the Hearing Office appeared to be uninformed about planned transitions. 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 and will pose even greater difficulties when a larger number of hearing officers are selected in conjunction with the State Education Agency's RFP for new hearing officers. The State Education Agency Director indicates that all new hearing officers will be on board by March 1, 2007, but this timeline now appears overly optimistic. Meanwhile, the current hearing officers' contracts are being extended on a month to month basis.

⁴² The Hearing Office clearly has been running on a shoestring of resources, with neither funds for a scanner nor for payment for transcription services for several months prior to October 2006. The Evaluation Team recognizes that the Consent Decree contains a variety of other provisions relating to the operation of the Student Hearing Office. However, these issues fall outside the scope of the Evaluation Team's interim report.

V. OTHER SALIENT MONITORING ISSUES

A. DCPS Provision of Consent Decree Monitoring and Data Reports

The Consent Decree contains regular reporting requirements to assist the Evaluation Team, Monitor, Plaintiffs' Counsel, and the school system itself in monitoring implementation of the Consent Decree and addressing barriers to compliance. Although DCPS managers have been personally responsive to various requests made by the Evaluation Team, the school system has not to date been able to furnish any of the regular reports required by Consent Decree Section 6 (pages 59-61), with the exception of the list of students who Defendants identified as qualified to receive the compensatory services education catalogue pursuant to ¶120. The data presented in this Report has been run and analyzed by Klemm Analysis Group in connection with issuance of this Report and not as part of any regular reporting function. The school system's inability to issue the basic, regular reports required by the Decree or even to prepare and circulate a strategy that addresses how such reports may be issued in the future is therefore a major concern. Other reports, such as regular reporting on timely assessments and IEPs, also seem no longer to be generated on a routine basis, even though they are central to the District's capacity to self-monitor, institute remedial measures, and impose accountability.

B. Coordination and Management of Consent Decree

A variety of DCPS staff play critical roles in oversight of implementation of responsibilities and tasks under the Consent Decree. While DCPS' senior management staff members and the General Counsel should be commended for each attempting to shoulder

responsibility for some portion of activity under the Decree, the reality remains that senior management members have many competing responsibilities and cannot maintain a comprehensive operational grasp on the status of the Decree's implementation, measures that must be initiated to fulfill the Decree's requirements, or of the operational barriers that are impeding compliance. Oversight of the Decree will require constant communication, coordination, and integrated work on multiple fronts. In the absence of a senior manager whose leadership role was exclusively dedicated to serving as the leadership mastermind focused on tackling implementation of the Consent Decree with authority congruent with that responsibility, recurring major gaps in the school district's strategy and efforts to fulfill the Decree's requirements have occurred.

VI. INTERIM STEPS TAKEN SINCE DECEMBER 20, 2006 TO ASSIST DCPS TO MEET CONSENT DECREE DATA TRACKING NEEDS, TIMELINES, AND REQUIREMENTS

Subsequent to receipt of the Evaluation Team's draft Interim Report, on January 12, 2007 Superintendent Janey named Dr. Marla Oakes, Executive Director, as the Project Manager of the *Blackman/ Jones* compliance effort. A committee of top DCPS departmental staff managers and directors from Human Resources, Contracts and Procurement, Finance, Budget; Facilities, Information Technology, Accountability, Office of the General Counsel as well as the Chief of Staff were also appointed to serve as a coordinating resource to assist Dr. Oakes in the execution of an implementation plan. While continuing to perform her duties as Executive Director of Special Education, Dr. Oakes has intensively embraced both the challenges of developing and executing an implementation plan for *Blackman/Jones* and assessing the immediate status of

implementation needs, work and finances. She clearly is only in the most initial stages of this work.

DCPS also responded to the draft Interim Report by requesting the Klemm Analysis Group to perform a host of data consulting and implementation tasks. Klemm Analysis Group has assumed the responsibility to receive and review extractions from the Encore database; check the data for accuracy and prepare report formats through which the verified data can be utilized to generate reports on such issues as the status of the initial and subsequent backlogs, timely case closures, students needing IEPs or assessments, etc. The Superintendent and General Counsel have also asked Klemm Analysis Group to work with the Student Hearing Office to develop better methods of recording HODs to permit tracking of the implementation of the directives contained in such decisions. The State Education Agency's interest in this precise activity remains unclear.

Klemm Analysis Group staff began working with Dr. Oakes and her project management team to create interim data management processes, forms and procedures to assist DCPS on a transitional basis in tracking its progress in meeting the requirements of the Consent Decree. These processes are being executed external to ongoing processes with the design that they will be integrated into the major ongoing systems or those desired via future requests for proposals. The goal is that these systems demonstrate to DCPS staff procedures that are understandable, easy to implement and allow consistent reporting required to meet the demands of the Consent Decree as well as better management and accountability.

In particular, Klemm Analysis Group is leading a major effort to clean up data on each special education student, beginning with those involved in at least one HOD/SA, followed by all

remaining special education students. A separate server housed at Klemm Analysis Group is serving as a temporary repository of information regarding special education students known by Special Education Coordinators, Compliance Specialists, Disposition Specialists, Columbus professionals, and other DCPS staff. Specifically, since many of the HOD/SAs in the initial backlog involve students not actually attending the school identified in Encore as well as requiring the special “Encore Closer” program to close out the case, this will assist DCPS in improving its knowledge of the status of the initial backlog as well as the specific efforts required to meet the Consent Decree timelines and case closure requirements.

With the goal that HOD/SAs of 2007 not generate future HOD/SAs for the same student, Klemm Analysis Group staff are coordinating with the Student Hearing Office to integrate the actual order portion of each HOD/SA via a standardized format that can be downloaded into a tracking system to create these daily work orders to the appropriate DCPS staff. Orders from HOD/SAs will be processed on a daily basis so that “work orders” for assessments, placements, meetings, payments, etc. can be communicated to appropriate DCPS staff and thus executed quickly. During the time required to create this new system, information from daily HOD/SAs are being manually entered on a daily basis.

Klemm Analysis Group staff are also planning to work with the DCPS Chief Information Officer and Encore staff to “batch populate” cleaned data and other information from diverse sources into Encore. It will be particularly important for DCPS to develop programming ability to integrate information from Encounter Tracker automatically into Encore rather than requiring a second level of data entry. These tasks are challenging ones that DCPS will itself or through appropriate contractors have to undertake in the months ahead.

The Evaluation Team recognizes that Dr. Klemm's performance of these various functions for DCPS has implications for the independent evaluation function of the team. Nevertheless, we believe that Dr. Klemm's participation in this effort is currently a necessary step to assist DCPS to rapidly compensate for its present lack of internal capacity to track its progress in meeting the needs of students referred for special education services and to produce reliable reports required by the *Blackman/Jones* Consent Decree. The reliance on Klemm Analysis Group must be viewed as an interim stopgap measure while DCPS moves aggressively to develop its own internal capacity to meet its reporting obligations under the Consent Decree, as provided in Recommendation section C below, and especially Recommendation C(4) and(5). Even with the benefit of Klemm Analysis Group's direct technical assistance and provision of services, DCPS will be required to implement a host of activities to improve its tracking of HODS/SAs and to transform its technological capacity for accurate reporting and tracking. The assistance from Klemm Analysis Group does not absolve DCPS of accountability for meeting its ultimate legal responsibility to comply with these provisions of the Consent Decree.