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D.C. to Ask Judge to Dismiss Special Education Court Order

By Bill Turque
Washington Post Staff Writer
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Citing improved performance and a recent Supreme Court ruling, the District soon will ask a federal judge to dismiss a 2006 court order that requires it to provide timely assistance to a backlog of families seeking special education services from public and public charter schools.

The District's intention is included in a memorandum filed Monday in U.S. District Court by D.C. Attorney General Peter Nickles. It says the city will ask U.S. District Judge Paul L. Friedman to dismiss the consent decree imposed as part of the settlement of a class-action lawsuit, *Blackman v. District of Columbia*.

The District serves about 11,000 students with special needs. Parents denied special education programs for their children by school officials can seek a hearing at which they can appeal the decision.

The decree ordered the District to wipe out a backlog of more than 1,000 decisions by hearing officers that had yet to be implemented, which delayed placement of students in programs. It also requires that 80 percent of the decisions reached after July 1, 2008, be executed in timely fashion.

The latest District figures place its timeliness rate at 60 percent for the one-year period ending June 30. Ira Burnim, attorney for the Blackman plaintiffs, said Tuesday that is unacceptable.

"By their own numbers, they are grossly violating the law," he said.

Nickles, who said he probably will file the motion this fall, acknowledged in an interview that the District has not met the requirements of the decree. But he said the city's performance has improved dramatically and that it is in "substantial compliance."

The District contends that an overzealous plaintiff's bar caused the backlog. Plaintiffs say the District has been ineffective in placing special needs children.

Nickles also is basing his argument on the recent U.S. Supreme Court decision that Arizona did not have to increase funding to English Language Learner programs because changes in the school district made them unnecessary. The changes included the effect of another ELL program, improved general education funding and passage of the No Child Left Behind Act.

Nickles also has used the Horne case in recent motions to extract the District from federal oversight of its mental health care and foster care systems. Nickles said the District has demonstrated that it can handle these functions alone.

"We are not perfect, but we are doing more and more every day," he said.

Burnim contends that Nickles is misreading Horne and calls his planned motion an "aggressive, in your face" legal strategy that is part of a broader effort to roll back the ability of federal courts to remedy social injustices.

"Peter Nickles and [Mayor] Adrian Fenty have just put themselves in the camp of the southern segregationists," he said likening them to officials who fought to blunt the effects of the 1954 *Brown v. Board of Education* ruling.

"That's absolutely outrageous," Nickles said.

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