

# TERRIS, PRAVLIK & MILLIAN, LLP

A PUBLIC INTEREST LAW FIRM

1816 12th Street, NW, Suite 303  
Washington, DC 20009-4422  
(202) 682-2100  
(202) 289-6795 (fax)

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CAROLYN SMITH PRAVLIK  
KATHLEEN L. MILLIAN  
ZENIA SANCHEZ FUENTES  
PATRICK A. SHELDON  
TODD A. GLUCKMAN  
ALICIA C. ALCORN  
MICHAEL L. HUANG  
NICHOLAS SOARES  
STEPHANIE ANN MADISON  
SARAH A. ADAMS  
CLARE M. GARRISON\*  
\*NOT YET ADMITTED TO THE DC BAR  
BRUCE J. TERRIS (1933-2017)  
FOUNDING PARTNER

## HIGHLIGHTS OF THE DISTRICT OF COLUMBIA'S ANNUAL REPORT RELATED TO THE INJUNCTION IN *DL v. DISTRICT OF COLUMBIA*

The injunction in *DL v. District of Columbia*—the class action to improve Child Find for 3-5-year-olds in the District of Columbia—requires the District of Columbia defendants (OSSE, DCPS and the District generally) to file an annual report about their compliance with the injunction's numerical benchmarks and programmatic requirements. The most recent report, Defendants' August 30, 2019 Report on Numerical and Programmatic Requirements (the "August 2019 Report"), is available on the website for the plaintiffs' lead counsel, Terris, Pravlik & Millian, LLP ([www.tpmlaw.com/dl-v-district-of-columbia](http://www.tpmlaw.com/dl-v-district-of-columbia)).

This is a summary of the District's August 2019 Report. It was prepared by the attorneys representing the groups of children that sought and obtained the Court's order requiring the District to improve its special education system. It is intended to highlight several important elements of the District's August 2019 Report that may be difficult to understand for those not involved in this case. It is not intended to address every issue in August 2019 Report, but we are hopeful that it offers insight into the importance of the *DL* decision and the status of the District's efforts toward compliance.

We welcome your thoughts, comments, and questions. Our contact information is below.

### **Background**

This lawsuit was filed in 2005. It was brought to improve Child Find services for 3-5-year-olds—to make sure that the District timely provided needed special education services to all preschool-aged children in the District, which the District was overwhelmingly failing to do. The case was certified with four, in some cases overlapping, groups of 3-to-5-year-old children: (1) those who were not identified and served with needed special education and related services; (2) those who did not receive timely evaluations; (3) those who did not receive timely eligibility determinations; and (4) those who did not receive smooth and effective transitions from Part C Individuals with Disabilities Education Act (IDEA) services to Part B IDEA services at age 3.

The district court ruled in plaintiffs' favor in 2011, and again in 2016, finding systemic violations of the IDEA, the Rehabilitation Act (Section 504), and local laws. The district court issued an injunction requiring the District to improve its programs and to report on its efforts toward compliance. The injunction was affirmed by the court of appeals in 2017.

### **The Injunction's Three Benchmarks**

The District is not yet in compliance with any of the three benchmarks in the injunction.

**Benchmark 1 (subclass 1)—8.5% (pp. 2-5).**<sup>1</sup> The District is required to identify and serve all preschool-aged children in the District who are eligible for special education and related services. The district court set a corresponding benchmark, requiring the District to provide special education and related services to 8.5% of 3-to-5-year-old children in the District.<sup>2</sup> The Court described this benchmark as conservative. Thus, the District should not have great difficulty meeting the benchmark. For example, recent reports show that the percentage of 3-5-year-old students with IEPs in DCPS Head Start classes in Title I schools is around 15%.

In the August 2019 Report, the District claims that it served 7.3% of 3-to-5-year-olds between September 2018 and June 2019.<sup>3</sup> Although not sufficient to comply with the injunction and to serve the city's preschoolers, this is a substantial improvement since this case began. Around the time that this case began, despite its substantial need, the District served a lower percentage of preschool children than every state in the country. In 2007, for example, the District's percentage was 2.94% and the national average was 5.74%.

**Benchmark 2 (subclass 3)—95% (p. 2).** The District is required to provide timely eligibility determinations to 95% of 3-5-year-olds referred for assessment for potential special education needs. The District reports that it was at 89% for 2018-2019. Again, this is a substantial improvement from where the District began, but the District still needs to make additional headway to comply with the injunction and to serve the city's preschoolers adequately.

Prior to July 1, 2018, LEAs had 120 days to evaluate children and make eligibility determinations. D.C. law changed as of July 1, 2018. The new law gives each LEA 30 days from the date of referral<sup>4</sup> to use reasonable efforts to secure parental consent for the assessments, and 60 days from consent to complete the evaluation and make the eligibility determination. The

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<sup>1</sup> Page references in this document relate to the District's August 2019 Report, which is available at [www.tpmlaw.com/dl-v-district-of-columbia](http://www.tpmlaw.com/dl-v-district-of-columbia).

<sup>2</sup> Children receiving extended IFSP services after age 3 are counted toward this benchmark.

<sup>3</sup> As part of monitoring the District's compliance with the injunction, the parties have engaged in extensive discussions regarding the accuracy of the District's data and its methods for measuring compliance. The District refers to its methods for calculating its statistics related to compliance with the numeric benchmarks as Business Rules. These Business Rules are designed to enable staff in the data division of OSSE, who are not special educators or special education administrators, to determine compliance with deadlines or other events in a consistent manner. Plaintiffs continue to have concerns regarding the accuracy of the District's data, but it is nonetheless useful for discussion at this stage.

<sup>4</sup> For children under six, referrals for an evaluation may be made by parents, health care providers, teachers, childcare providers, and others.

District's data (August 2019 Report, p. 2) show, unsurprisingly, that the percentage of timely eligibility determinations fell with the new shorter time period. That change to the shorter time period also coincided with another change in DCPS's evaluation system for 3-5-year-olds—children enrolled in DCPS Pre-K classes at the time of referral for an evaluation are now assessed by each school rather than by Early Stages.

**Benchmark 3 (subclass 4)—95% (p. 3).** The District is required to provide smooth and effective transitions from Part C IDEA services to Part B IDEA services at age 3 to 95% of transitioning children. Most critically, the injunction requires that 95% of the children must receive their Part B special education services by their third birthday and any needed related services within 14 days of their third birthday. The District reports that it was at 87.10% compliance for 2018-2019. As with the other benchmarks, this is a substantial improvement from where the District began, but it still needs to make additional headway to comply with the injunction and to serve the city's preschoolers adequately.

In order to determine whether the children timely received their services, the District must track when the children begin receiving those services. While the District has for years used Service Trackers to determine when children first receive related services, it only just began, at the start of the 2019-2020 school year, to track when children first receive specialized instruction. Prior to 2019, the District simply assumed that children with an IEP begin to receive specialized instruction on the day they arrive at school. However, there are many circumstances when that assumption will not be correct. For example, with part-time specialized instruction, a child is likely to have either push-in or pull-out services, but such instruction would not automatically start as soon as the child attends school. Other delays could result from, for example, teacher shortages, staff absences, and excessive caseloads.

The injunction provides an additional 14-day window in order to begin related services. This takes into consideration the possibility that a young child might not attend school every day due to, for example, illness or a family crisis.

Note that for most children, their Individualized Education Plan (IEP) specifies the number of related service hours per month. However, to comply with the smooth and effective transition requirement and the injunction, the services must begin to be provided within 14 days of the child's third birthday.<sup>5</sup>

### **The District's Programmatic Efforts to Improve Compliance**

The District describes several programs and initiatives in the August 2019 Report that it has started in the last year. The pages of the August 2019 Report that discuss each program or initiative are referenced below. We are hopeful that these measures will bring the District closer to compliance.

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<sup>5</sup> Those services can only be provided if the parent has enrolled the child in school. Therefore, in *DL*, plaintiffs have agreed that the District can report a transition as smooth and effective if the specialized instruction is provided by enrollment and all related services are started within 14 days of enrollment.

**Hiring Clarence Sundram (p. 1).** The District engaged Clarence Sundram to act as a neutral working with both parties to help bring the District into compliance with the injunction. Mr. Sundram was the Court Monitor in the long-standing *Evans* and *Blackman-Jones* class actions in D.C. and was instrumental in bringing both of those cases to conclusion. Plaintiffs are working with the District and Mr. Sundram to address issues of concern regarding the District's compliance with the injunction.

**Systemwide Data Dashboard (p. 1).** The newest tool designed by OSSE to improve compliance is a systemwide data dashboard that will enable each school or LEA to see, in graphic format, its compliance with each of the benchmarks described above. The dashboard will also enable staff at the Central Office of DCPS or OSSE to determine which schools or LEAs are not meeting the benchmarks so that additional training and support can be provided in a targeted manner. The element of the dashboard related to the first benchmark went live at the start of the 2019-2020 school year. OSSE informs us that we can expect dashboards related to benchmarks two and three by spring 2020.

**Three-Tiered Structure for LEA Compliance Monitoring (p. 16).** OSSE has created a three-tiered structure for monitoring LEAs on compliance related to the injunction. Those LEAs in the bottom tier will receive more focused review and support from OSSE than the middle and upper tiers.

**Preschool Student Screening at DCPS Schools (p. 11).** DCPS is now requiring developmental screening for all preschool students enrolled in DCPS Pre-K 3 and Pre-K 4 classes within 45 days of the start of school or of the day on which the child first attends school. The District reports that, in the 2018-2019 school year, 97.3% of DCPS enrolled children were screened. The District also reports that Early Stages intended to make onsite visits to each DCPS school within the first few weeks of this school year to monitor screening and support implementation.

**Mandatory Preschool Developmental Screening in Selected Child Care Programs (p. 11).** The District reports that OSSE also requires the 45-day developmental screening for children enrolled in Pre-K Enhancement and Expansion programs at child care centers. The results of these screenings are reported to Strong Start or Early Stages with monitoring by the OSSE Division of Early Learning.

**Requiring LEAs to Record the Start of Specialized Instruction (p. 18).** As explained above, OSSE is now requiring each LEA to report the date that specialized instruction actually begins for each 3-5-year-old and to promptly enter it into SEDS. However, the District will not report based on this data in relation to the injunction benchmark until August 2021 in order to allow it to "better identify barriers and solutions for timely service delivery across DCPS and LEA charter schools." August 2019 Report, p. 18.

**Data Correction Efforts (p. 17).** The District reports that it is continuing its method of identifying and correcting data errors (through its unified data error (UDE) report). Plaintiffs are pleased that such a process exists, but they have nonetheless raised with the District substantial

data concerns, which the parties are addressing as part of plaintiffs' monitoring of compliance with the injunction.

**Improving/Expanding Collaborative Relationships with Referral Sources (pp. 7-8).**

The District reports that Early Stages is continuing to build collaborative relationships with sources that refer 3-to-5-year-old children with potential special education needs. It describes adding 30 new organizations to its list of primary referrers in recent months, including medical and mental health centers, child development centers, and community organizations. It also piloted a new approach in the last year in clinics in Wards 1 and 8 to reduce disengagement of families after a referral has been made. The new approach involves a referral checklist for physicians to use in discussing the Early Stages process with their clients and a reminder postcard that the physician can provide to the client that contains the Early Stages employee's direct contact information. Early Stages explains that these tools have resulted in doubling the referrals in the Ward 8 clinic and reducing disengagement rates from referrals from the two clinics from 60% to 16%.

**Training Opportunities (pp. 11, 16, 18).** OSSE and DCPS put on many trainings over the summer, including the Start of School Summit in June 2019, DCPS policy sessions with all school leaders and their teams regarding core special education requirements, DCPS training for principals regarding school-level and DCPS-level performance, guidance to LEAs related to the importance of analyzing a broad range of existing data including health records data from early childhood settings, sessions for teachers using the Ages and Stages Questionnaire (ASQ) screening tool (the primary screening tool for these children), trainings related to this work for Central Office and school-based staff, and trainings related to recording the date that children begin receiving specialized instruction. OSSE has also held monthly webinars addressing numerous related data issues.

**Efforts to Improve Coordination between Part C and Part B Programs (pp. 9-10, 16-17).** OSSE convened an Early Childhood Education Working Group focused on aligning Part C to Part B transition practices at all LEAs. OSSE and Early Stages have also provided in-depth trainings regarding transitions. OSSE has also described an additional working group including OSSE Part C and Part B leadership, the Division of Data, Assessment, and Research, and the Division of Teaching and Learning, which OSSE reports to have resulted in several of the programs and initiatives that are described here.

**Updated Early Stages Website (pp. 7-8, 15-16).** Early Stages updated its website ([www.earlystagesdc.org/](http://www.earlystagesdc.org/)) in April 2019. Among the described improvements are improvements in the mechanism for navigating the website, improvements to the website's functionality on mobile devices, and modification to the referral form, and dedicated pages for each of the primary languages spoken in the District.<sup>6</sup> The website includes a new Professional Development Brochure

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<sup>6</sup> DCPS subscribes to a translation service. Each language for which translation services are offered is listed on language cards which should be posted in schools and relevant DCPS offices. The 2007 version of the language cards do not include Amharic and Tigrinya (languages spoken in Ethiopia and Eritrea). The District has informed us that it is in the process of replacing those old cards with updated versions that include those languages. Please let us know if you are aware of the continued presence of the outdated language cards.

([www.earlystagesdc.org/page/professional-development-organizations](http://www.earlystagesdc.org/page/professional-development-organizations)) identifying training opportunities for primary referring agencies and parents. The brochure includes information about how to schedule a workshop at an LEA on topics such as “Addressing Challenging Behavior,” “Developmental Milestones for 3-5 Year Olds,” and “How to Administer the Ages and Stages Questionnaires.” OSSE also provides a Special Education Parent Information Brochure ([osse.dc.gov/service/parent-community-and-stakeholder-special-education-information](http://osse.dc.gov/service/parent-community-and-stakeholder-special-education-information)).

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Plaintiffs have used the District’s reports, publicly available information, information from local practitioners, and requests for documents and information from the District to monitor compliance with the injunction. Over the three years since the injunction issued, plaintiffs have raised with the District numerous concerns related to the District’s special education program operations and whether the data generated by the District accurately reflects the delivery of special education and related services to the plaintiff subclasses. While the District has made improvements, there is still substantial work to be done before the District is fully serving all preschool children requiring special education services. Plaintiffs continue to raise issues and work with the District in an effort to bring the District to sustained compliance with the injunction.

We are hopeful that this document has provided you with greater insight into the impact of the *DL* injunction and the status of the District’s efforts toward compliance. If you, your clients, colleagues, or advocates experience practices that are inconsistent with the material described here, or that you otherwise think should be brought to our attention, please do not hesitate to contact us. Reports from the community help improve our ability to monitor compliance and ensure that children timely receive needed special education and related services.

Please contact either Margy Kohn (202-544-1200, [Margaret.Kohn07@gmail.com](mailto:Margaret.Kohn07@gmail.com)) or Todd Gluckman (Terris, Pravlik & Millian, LLP, 202-204-8482, [tgluckman@tpmlaw.com](mailto:tgluckman@tpmlaw.com)) with any questions or issues.