

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

<p>D.L., <i>et al.</i>,</p> <p style="padding-left: 40px;">Plaintiffs,</p> <p style="padding-left: 40px;">v.</p> <p>DISTRICT OF COLUMBIA, <i>et al.</i>,</p> <p style="padding-left: 40px;">Defendants.</p>	<p style="text-align: center;">Civil Action No. 05-1437 (RCL)</p>
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**SUPPLEMENTAL MEMORANDUM REGARDING
DEFENDANTS' AUGUST 31, 2017 REPORT**

On August 31, 2017, defendants submitted their Report on Numerical and Programmatic Requirements [588-1] (August Report). With respect to the numerical requirement for plaintiffs' subclass 4, the August Report indicated that the percentage of IDEA Part C graduates who were found eligible for IDEA Part B services and received a "smooth and effective" transition as defined by the Court's May 18, 2016 Order [521], was 33.3% for FFY 2015, and 31% for FFY 2016. The August Report also advised of defendants' intent to produce a supplemental analysis of these results within 60 days. Notice [583] at 1.

Beginning in early September, defendants convened a working group of key representatives from OSSE and DCPS to undertake this supplemental analysis.¹

¹ The representatives included, among others, Dr. Amy Maisterra, Assistant Superintendent, OSSE Division of Systems and Supports (K-12); Darrell Ashton, Assistant Superintendent, OSSE Division of Data, Assessment, and Research; Dr. Laura Maurizi, Director of Research, Analysis, and Reporting, OSSE Division of Data, Assessment, and Research; and Sean Compagnucci, Executive Director, DCPS Early Stages.

Using the FFY 2016 data, the group first worked to identify potential root causes of defendants' performance on the subclass 4 requirement; then, wherever a root cause was determined, the group considered programmatic or other actions for correcting performance for future reporting periods. The following explains the results of this process to date.

ANALYSIS

According to the data underlying the August Report, during FFY 2016, 100 children qualified for transition from Part C to Part B. Of these, 31 received "smooth and effective" transitions as that term is defined by the Court's May 18, 2016 Order; 69 did not. Further analysis of these children's circumstances revealed three categories of cases resulting in findings of untimeliness: (1) delay in development of finalized IEPs after transfer from DCPS to another District LEA; (2) insufficient evidence of a location assignment; and (3) insufficient evidence that all related services were delivered. These are addressed separately below.

I. Delay In Receipt Of Finalized IEP When Transferring Out Of DCPS

A Part C to Part B transition is not effective without a finalized IEP. May 18, 2016 Or. at ¶ 3.b. ("A transition shall be considered 'smooth and effective' if ... the child is provided an IEP listing the services that are to be provided and both the type of placement and a specific location for services by the child's third birthday"). During FFY 2016, six children who qualified for transition did not have finalized IEPs by their third birthdays. A review of these children's records indicated that, after the child was referred to Early Stages for transition, the parent communicated an intent

to enroll the child in a charter LEA.² When this occurs, the receiving charter LEA, not DCPS, is responsible for finalizing the child’s IEP. And, in each of these cases arising in FFY 2016, the child’s IEP was not finalized until after the third birthday, with an average delay of 31 days.

Based on this finding, defendants are considering additional safeguards to ensure timely IEP development for this subset of transition children. This may include enhanced communication between the child’s Part C dedicated service coordinator, Early Stages staff, and OSSE’s Part B 619 coordinator to support targeted outreach to the charter LEA and the parent after a parent declares an intent to enroll in an LEA other than DCPS. Defendants will confer with plaintiffs regarding this issue and provide an update regarding any programmatic changes in their February 28, 2018 Programmatic Report.

II. Insufficient Evidence Of Location Assignment

According to the Court’s May 18, 2016 Order, a Part C to Part B transition is “smooth and effective” only if the child is provided a “specific location for services.” May 18, 2016 Or. at ¶ 3.b. For children who undergo the transition process at Early Stages, this is evidenced by a notice of location of services issued to the parent in conjunction with the finalized IEP. During FFY 2016, 14 transition children had no such notice in their files; however, in 12 of these instances, the child’s parent

² One additional student attended a private school after being referred to Early Stages. This child should have been excluded from the transition data set—not counted as untimely—because the parent effectively “opted out” of District Part B services. Defendants intend to confer with plaintiffs regarding an adjustment to their business rules that would account for this negation event in future reporting.

communicated to Early Stages staff an intent to enroll in a DCPS lottery seat (five students), a charter LEA (six students), or a private school (one student).³ As a result, these children had specific locations where they would receive Part B services but were nevertheless counted as untimely in the August Report due to insufficient documentation.

To address this issue for future reporting, defendants are considering ways to document parental intent so that the District is not penalized for instances in which a parent is making a choice to enroll elsewhere (*i.e.*, other than in a seat accessible only through Early Stages). This may include Early Stages staff issuing prior written notices to parents which memorialize their choice and explain that DCPS is available to serve the child if circumstances change. It will also require a corresponding modification of defendants' business rule for calculating the subclass 4 numerical requirement. Defendants will confer with plaintiffs regarding these options and provide an update regarding any programmatic changes in their February 28, 2018 Programmatic Report.

III. Lack Of Evidence Regarding Delivery Of Related Services

During FFY 2016, the most common cause of an untimely Part C to Part B transition was a lack of evidence that related services had been delivered as required by the May 18, 2016 Order. According to the Order, a transition is "smooth and effective" only if "all related services [in a child's IEP] begin within 14 days of the

³ All children whose parents declared an intent to accept a DCPS lottery seat or enroll in a charter LEA in fact enrolled in a DCPS school or charter LEA by their third birthday or at the start of school following their third birthday.

child's third birthday," or for children with summer birthdays, "within 14 days of the first day of school after summer." May 18, 2016 Or. at ¶ 3.c. Of the 100 children that should have been afforded a "smooth and effective" transition in FFY 2016, 59 children's records did not have documentation that all prescribed related services were delivered within this 14-day window. This could be due to either a lack of actual service delivery or a failure by the LEA to document the delivery of services. To address these core issues, defendants are preparing revised mandatory training for LEAs regarding appropriate documentation of service delivery as well as initiating work group meetings with DCPS and other LEAs to discuss possible root causes of service delivery delays. The February 28, 2018 Programmatic Report will provide an update regarding these programmatic changes.

Additionally, close analysis of the FFY 2016 cases involving findings of untimeliness caused by service delivery issues revealed four specific scenarios warranting further attention: Related services prescribed monthly that were not documented as delivered within 14 days; summer transition students experiencing delays in documented related service delivery at the start of the school year; delays in related service delivery not attributable to the LEA; and issues with original versus amended IEPs. These are addressed separately below.

A. Related Services Prescribed On A Monthly Basis Not Delivered Within 14 Days

As explained, the Court's May 18, 2016 Order requires delivery of all related services within a 14-day window; however, related services are often prescribed in an IEP on a monthly, not weekly or daily, basis. During FFY 2016, this was true for 57

of the 59 children whose transitions were not considered “smooth and effective,” wholly or partially, because of a failure to timely deliver related services. Of these 57 children, 18 received all related services prescribed in the IEP within the first month (30 days) after the third birthday or first day of school. That is, for these students, the LEA provided all the related services under the IEP, at the frequency prescribed in the IEP; it is thus unclear whether this should be considered a “disruption in services,” resulting in a finding that the transition was not “smooth and effective.” Defendants are likely to seek clarification regarding this issue after discussing it with plaintiffs’ counsel.

B. Summer Transition Students Experiencing Delays In Related Service Delivery At The Start Of The School Year

A review of the FFY 2016 data indicated that 23 of the 59 children whose transitions were not considered “smooth and effective” because of a failure to deliver timely related services had summer birthdays. LEAs face unique challenges at the start of the school year; going forward, defendants are committed to ensuring that these challenges do not distract from timely related service delivery for transition students. This may require defendants to conduct scheduled outreach to LEAs with summer transition students enrolling in the fall to aid LEAs and service providers with service delivery planning. Additionally, defendants will raise this issue at future work group meetings with DCPS and other LEAs (discussed above) in an effort to development systemic solutions to root causes of delay. Defendants will confer with plaintiffs regarding these options and provide an update regarding any programmatic changes in their February 28, 2018 Programmatic Report.

C. Delays In Related Service Delivery Resulting From Circumstances Not Attributable To The LEA

Further review of the data underlying the August Report revealed several scenarios involving delays in related service delivery that are not directly attributable to the LEA. For example, ten students postponed their enrollment for a period of more than 14 days after the third birthday, and 11 others had finalized IEPs but never enrolled during the 2016-17 school year.⁴ In seven other cases, service delivery was delayed due to attendance-related issues, such as prolonged absence or school closure on the scheduled service day. And in one instance, the child's file indicates that the LEA simply could not reach the parent to schedule the provision of services. In these cases, timely related service delivery (*i.e.*, within the 14-day window) was made difficult or impossible for reasons not within the LEA's control. Defendants intend to confer with plaintiffs regarding adjustments to their business rules to account for these scenarios in future reporting.

D. Related Services Delivered Under Amended IEP

The data underlying the August Report also included several instances where a child's IEP was amended around the time of the third birthday. For three of these children, the amended IEP was in place prior to the third birthday, and services under the amended IEP were delivered within the 14-day window. These children should have been counted as timely for purposes of the August Report; defendants

⁴ Of the ten students who enrolled after their third birthdays, seven received all related services prescribed in the IEP within 14 days of enrollment, and nine received all prescribed services within 30 days of enrollment.

intend to confer with plaintiffs regarding an adjustment to their business rules that would account for this nuance. Two other children received amended IEPs within the first month after their third birthday, but related services were not timely delivered under either the original or amended IEP. Defendants are still considering possible programmatic changes to address this finding and will provide an update in the February 28, 2018 Programmatic Report.

CONCLUSION

Defendants are in receipt of an October 12, 2017 correspondence from plaintiffs addressing numerous issues, including several that relate to the statistics in this filing. The correspondence covers 29 single-spaced pages and is currently under careful review. Defendants intend to respond to plaintiffs' correspondence, consistent with the letter and spirit of the Court's May 18, 2016 Order, and will likewise confer with plaintiffs' counsel prior to implementing the corrective actions outlined above.

DATED: October 31, 2017

Respectfully Submitted,

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