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Monday  
August 3, 1998

REGULATIONS  
TITLE 17  
CHAPTER 101

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**Part IV**

**Department of  
Education**

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**Office of Special Education and  
Rehabilitative Services; Assistance to  
States for the Education of Individuals  
With Disabilities; Notice**

**DEPARTMENT OF EDUCATION****Office of Special Education and Rehabilitative Services; Assistance to States for the Education of Individuals With Disabilities**

**AGENCY:** Department of Education.

**ACTION:** Notice of written findings and decision and compliance agreement.

**SUMMARY:** Section 457 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234f, authorizes the Secretary to enter into Compliance Agreements with recipients that are failing to comply substantially with Federal program requirements. In order to enter into a Compliance Agreement, the Secretary must determine, in Written Findings and Decision, that the recipient cannot comply, until a future date, with the applicable program requirements, and that a Compliance Agreement is a viable means of bringing about such compliance. On March 10, 1998, the Secretary entered into a Compliance Agreement with the District of Columbia Public Schools (DCPS) and issued Written Findings and Decision on that matter. Under section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the Written Findings and Decision and Compliance Agreement are to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gregory R. Corr, U.S. Department of Education, Office of Special Education Programs, Mary E. Switzer Building, 600 Independence Avenue S.W., Washington D.C., 20202-2722. Telephone: (202) 205-9027. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202)260-5137.

Individual with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient "is failing to comply substantially with any requirement of law applicable" to the Federal program funds administered by this agency. Specifically, the Department is authorized to:

- (1) Withhold funds,
- (2) Obtain compliance through a cease and desist order,
- (3) Enter into a compliance agreement with the recipient, or,
- (4) Take any other action authorized by law, 20 U.S.C. 1234c(a)(1)-(4).

The Department's Office of Special Education Programs (OSEP) has been working with DCPS over a number of years to address its serious and on-going failure to comply with the requirements of Part B of the Individuals with Disabilities Education Act (IDEA). On February 4 and 5, 1997, OSEP—as part of its regular monitoring program—conducted public meetings at which parents, advocates, representatives of professional groups, and concerned members of the community provided testimony indicating that DCPS had failed to meet many of the requirements of Part B. The testimony indicated that several of the violations that had been identified in prior OSEP monitoring reports had not been corrected. On February 10, 1997, OSEP met with General Julius W. Becton, Jr., superintendent and chief executive officer for DCPS, and members of his staff to discuss OSEP's serious concerns with ongoing compliance issues in DCPS' special education programs. General Becton and his staff acknowledged that the District's special education programs did not comply with the requirements of Part B and informed OSEP that DCPS was developing a strategic plan to address these violations.

In a March 27, 1997 letter, General Becton informed OSEP that he believed that developing a compliance agreement would be an appropriate course of action which would be in the best interests of the children of the District of Columbia. The purpose of a Compliance Agreement "is to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). In order to enter into a Compliance Agreement with a recipient, the Secretary must determine that compliance until a future date is not genuinely feasible and that a Compliance Agreement is a viable means for bringing about such compliance.

On March 10, 1998, the Secretary issued Written Findings and Decision which held that compliance by DCPS with the Part B requirements to ensure that a free appropriate public education is made available to all eligible children and youth with disabilities was genuinely not feasible until a future date because of the "magnitude of the problem" and the "complex and long-term causes" underlying that problem, including an inadequate management system for its special education program. The Secretary also determined that the Compliance Agreement represents a viable means of bringing

about compliance because of the steps DCPS has already taken to address its noncompliance, its commitment of resources and the plans it has developed for further action. Moreover, the Agreement sets out a very specific schedule that DCPS must meet in coming into compliance with the Part B requirements. This schedule, coupled with specific data collection and reporting requirements, will allow the Department to monitor closely DCPS' progress in meeting the terms of the Compliance Agreement. The Secretary signed the Compliance Agreement on March 10, 1998. The superintendent and chief executive officer for DCPS, General Julius W. Becton, Jr. signed the Agreement on March 16, 1998.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the full text of the Secretary's Written Findings and Decision in the Matter of the Request of the District of Columbia Public Schools to Enter into a Compliance Agreement and the binding provisions of the Compliance Agreement are set forth in this publication. The Action Plan items mentioned in the introduction are not included in this Notice because they were included in the Compliance Agreement for informational purposes only, to demonstrate DCPS' commitment to coming into full compliance with IDEA, and are not binding on DCPS. OSEP will make copies of the Action Plan available to the public upon request.

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**Notes:** The official version of a document is the document published in the **Federal Register**.

(Authority: 20 U.S.C. 1234c and 1234f and 20 U.S.C. 1401, 1411-1420.)

Dated: July 28, 1998.

**Richard W. Riley,**  
*Secretary of Education.*

## **Text of the Secretary's Written Findings and Decision**

### **I. Introduction**

The United States Department of Education (the Department) has determined, pursuant to 20 U.S.C. §§ 1234c and 1234f, that the District of Columbia Public Schools (DCPS) failed to comply substantially with the requirements of Part B of the Individuals with Disabilities Education Act (Part B), 20 U.S.C. §§ 1401, 1411-1419, and that it is not feasible for DCPS to achieve full compliance immediately. The Department's Office of Special Education Programs (OSEP) has been working with DCPS over a number of years to address its serious and on-going failure to comply with the requirements of Part B. On February 4 and 5, 1997, OSEP—as part of its regular monitoring program—conducted public meetings at which parents, advocates, representatives of professional groups, and concerned members of the community provided testimony indicating that DCPS had failed to meet many of the requirements of Part B. The testimony indicated that several of the violations that had been identified in prior OSEP monitoring reports had not been corrected. On February 10, 1997, OSEP met with General Julius W. Becton, Jr., superintendent and chief executive officer for DCPS, and members of his staff to discuss OSEP's serious concerns with ongoing compliance issues in DCPS' special education programs. General Becton and his staff acknowledged that the District's special education programs did not comply with the requirements of Part B and informed OSEP that DCPS was developing a strategic plan to address these violations. In a March 27, 1997 letter, General Becton informed OSEP that he believed that developing a compliance agreement pursuant to 20 U.S.C. 1234f would be an appropriate course of action which would be in the best interests of the children of the District of Columbia.

The purpose of a Compliance Agreement is to bring a "recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). In accordance with the

requirements of 20 U.S.C. 1234f(b)(1), a public hearing was conducted in the District of Columbia by Department officials on June 18, 1997, at the Logan Administration Building. Witnesses representing DCPS, affected students and parents, and other concerned organizations testified at this hearing on the question of whether the Department should grant DCPS's request to enter into a Compliance Agreement. The Department has reviewed this testimony, the proposed Compliance Agreement, and other relevant materials.<sup>1</sup> On the basis of this evidence, the Department concludes, and hereby issues written findings in accordance with 20 U.S.C. § 1234f(b)(2), that DCPS has met its burden of establishing that:

(1) DCPS compliance with the Part B requirements to ensure that a free appropriate public education is made available to all eligible children and youth with disabilities in the District of Columbia is not feasible until a future date; and

(2) DCPS will be able to carry out the terms and conditions of the Compliance Agreement and come into full compliance with the Part B requirements within three years of the date of this decision.

During the effective period of the Compliance Agreement, which ends three years from the date of this decision, DCPS will be eligible to receive Part B funds as long as it complies with all the terms and conditions of the Agreement. Any failure by DCPS to meet these conditions will authorize the Department to consider the Compliance Agreement no longer in effect. Under such circumstances, the Department may take any enforcement action authorized by 20 U.S.C. § 1234c. At the end of the effective period of the Compliance Agreement, DCPS must be in full compliance with Part B in order to maintain its eligibility to receive funds under that program. 20 U.S.C. § 1234c.

### **II. Relevant Statutory and Regulatory Provisions**

#### *A. Part B of the Individuals With Disabilities Education Act*

Part B was passed in response to Congress' finding that a majority of children with disabilities in the United States "were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time

<sup>1</sup> A copy of the Compliance Agreement, which was prepared by DCPS in conjunction with representatives of this Department, is appended to this decision as Attachment A.

when they were old enough to drop out." H. Rep. No. 332, 94th Cong., 1st Sess. 2 (1975), quoted in *Board of Education v. Rowley*, 458 U.S. 176, 181 (1982).<sup>2</sup> Part B provides Federal financial assistance to those State educational agencies (SEAs) that demonstrate that they meet certain eligibility requirements, including having in effect a policy to ensure that "a free appropriate public education [FAPE] is available to all children with disabilities residing in the State between the ages of three and twenty-one \* \* \*" 20 U.S.C. § 1412(a)(1).<sup>3</sup> FAPE is defined as special education and related services that:

(a) Have been provided at public expense, under public supervision and direction, and without charge,

(b) Meet the standards of the State educational agency,

(c) Include an appropriate preschool, elementary, or secondary school education in the State involved, and

(d) Are provided in conformity with the individualized education program [IEP] required under section 614(d). [20 U.S.C. § 1401(8)]

A State also must ensure that the Part B requirements regarding evaluations, reevaluations, timeliness and implementation of due process hearing decisions, child find, and the provision of an education in the least restrictive environment are met. Part B requires DCPS to ensure that:

all children with disabilities residing in the [District of Columbia] \* \* \* including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services are identified,

<sup>2</sup> Part B was recently amended by the Individuals with Disabilities Education Act Amendments of 1997. (IDEA-97) This decision and the attached agreement include citations to the current statute as amended and the regulations currently in effect. On October 22, 1997, the Department published proposed regulations to implement IDEA-97. When these regulations are published in final, the agreement will be amended to reflect any necessary changes to the regulatory citations.

<sup>3</sup> Part B defines "child with a disability" to mean a child "with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities and who, by reason thereof, needs special education and related services." 20 U.S.C. § 1401(3)(A). Under sections 301(a)(1) and (a)(2)(H) of the Department of Education Organization Act (DEOA), 20 U.S.C. § 3441(a)(1) and (a)(2)(H), Congress transferred the administration of Part B from the Commissioner of Education to the Secretary of Education. Section 2078 of the DEOA, 20 U.S.C. § 3417, in turn delegates responsibility for Part B to the Assistant Secretary for Special Education and Rehabilitative Services.

located, and evaluated \* \* \* [20 U.S.C. § 1412(a)(3)(A)]

Moreover, a child with a disability cannot receive an initial special education placement until an evaluation has been performed in accordance with sections 614(a)(1), (b) and (c) of Part B.<sup>4</sup> All children with disabilities must be placed in the least restrictive environment appropriate to their individual needs, as required by section 612(a)(5)(A) of Part B and 34 CFR §§ 300.550–300.556. After initial evaluation and placement, children with disabilities must be reevaluated at least every three years in accordance with sections 614(a)(2), (b) and (c) of Part B.

As noted above, the provision of FAPE includes special education and related services. "Related services" is defined to mean:

transportation and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. [20 U.S.C. § 1401(22)]

The IEP for each child with a disability must specify the related services which are to be provided. 34 CFR § 300.346(a)(3). In order to meet its obligation to make FAPE available, DCPS must be able to identify, locate, and evaluate all children with disabilities who are in need of special education and related services, provide timely initial evaluations and reevaluations, place students in the least restrictive environment appropriate to their individual needs and provide the related services specified in each student's IEP.

DCPS must also ensure that its due process system, which is a critical component of Part B designed to protect the rights of children and their parents, meets the requirements of Part B. A final

<sup>4</sup>The current standard for conducting initial evaluations within a reasonable period of time in DCPS was established by the Federal district court's decree in *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866, 878–79 (D.D.C. 1972), which requires that a student who has been referred for a special education evaluation must be evaluated and placed within 50 days of referral. Under Part B at 20 U.S.C. § 1412(a)(11), States are required to ensure compliance with State standards for the implementation of programs for children with disabilities.

decision must be issued no later than 45 days after receipt of a request for a due process hearing as required by 34 CFR § 300.512. Independent hearing officer determinations must be implemented within the time frame prescribed by the hearing determination as required by sections 615 (f) and (i) of Part B.

#### *B. The General Education Provisions Act*

The General Education Provisions Act (GEPA) provides the Department with a number of options when it determines a recipient of Department funds is "failing to comply substantially with any requirements of law applicable to such funds." 20 U.S.C. § 1234c. In such cases, the Department is authorized to:

- (1) Withhold further payments under that program from the recipient,
- (2) Issue a complaint to compel compliance through a cease and desist order,
- (3) Enter into a compliance agreement with the recipient to bring it into compliance; and
- (4) Take any other action authorized by law. 20 U.S.C. § 1234c.

In addition, under section 616(a) of Part B, if a State fails to comply substantially with IDEA, the Department is authorized to withhold, in whole or in part, any further payments to the State under Part B or to refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

Under section 457 of GEPA, the Department may enter into a Compliance Agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. § 1234f. The purpose of a Compliance Agreement is "to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements." Before entering into a Compliance Agreement with a recipient, the Department must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. In that hearing, the recipient has the burden of persuading the Department that full compliance with the applicable requirements of law is not feasible until a future date and that a Compliance Agreement is a viable means for bringing about such compliance. 20 U.S.C. § 1234f(b)(1). If, on the basis of all the available evidence, the Secretary determines that compliance until a future date is genuinely not feasible and that a Compliance Agreement is a viable means for bringing about such

compliance, he is to make written findings to that effect and publish those findings, together with the substance of any Compliance Agreement, in the **Federal Register**. 20 U.S.C. § 1234f(b)(2).

A Compliance Agreement must set forth an expiration date, not later than 3 years from the date of the Secretary's written findings, by which time the recipient must be in full compliance with all program requirements. 20 U.S.C. § 1234f(c)(1). In addition, the Compliance Agreement must contain the terms and conditions with which the recipient must comply during the period that Agreement is in effect. 20 U.S.C. § 1234f(c)(2). If the recipient fails to comply with any of the terms and conditions of the Compliance Agreement, the Department may consider the Agreement no longer in effect and may take any of the compliance actions described previously. 20 U.S.C. § 1234f(d).

### **III. Analysis**

#### *A. Overview of Issues To Be Resolved in Determining Whether a Compliance Agreement Is Appropriate*

In deciding whether a Compliance Agreement between the Department and DCPS is appropriate, the Department must first determine whether compliance by DCPS with the Part B requirements concerning evaluations, reevaluations, related services, timeliness and implementation of due process decisions, child find and least restrictive environment is not feasible until a future date. 20 U.S.C. § 1234f(b). The second issue that must be resolved is whether DCPS will be able, within a period of up to three years, to come into compliance with the Part B requirements. Moreover, not only must DCPS come into full compliance by the end of the effective period of the Compliance Agreement, it must also make steady and measurable progress toward that objective while the compliance agreement is in effect. If such an outcome is not possible, then a Compliance Agreement between the Department and DCPS would not be appropriate.

#### *B. DCPS Has Failed To Comply Substantially With Part B*

OSEP has been working with DCPS over a number of years to address its serious and on-going failure to comply with the requirements of Part B. In a monitoring report issued on February 8, 1994, OSEP found that in several areas DCPS was not meeting its responsibility to ensure that its educational programs for children with disabilities were being

administered in a manner consistent with the requirements of Part B and its implementing regulations. OSEP found, among other things, that DCPS did not provide the related services specified on a student's IEP, place students in the least restrictive environment, conduct an evaluation every three years or issue due process decisions within the required 45 day timeline.

From March 1 through 6, 1995, OSEP conducted a follow-up review to determine the extent to which DCPS was making progress towards implementing selected corrective actions specified in the 1994 monitoring report. In a June 12, 1995 monitoring report, OSEP determined that significant problems remained with regard to least restrictive environment requirements and the provision of related services. OSEP also determined that DCPS continued to have significant problems with ensuring that students with disabilities are evaluated every three years. In response to this report, DCPS submitted a corrective action plan to ensure that these violations would be corrected.

On February 4 and 5, 1997, in preparation for a monitoring visit scheduled for the spring of 1997, OSEP conducted public meetings at which parents, advocates, and representatives of professional groups provided testimony indicating that DCPS has failed to meet many of the requirements of Part B. Many people testified that DCPS was continuing to have compliance problems in the same areas that had been identified in the February 8, 1994 and June 12, 1995 monitoring reports. On February 10, 1997, OSEP met with General Becton and members of his staff to discuss OSEP's serious concerns with DCPS' ongoing noncompliance with IDEA. There was substantial agreement between DCPS and OSEP regarding DCPS' current noncompliance with Part B and the need to develop a comprehensive corrective action plan. The Department agreed to consider the possibility of entering into a compliance agreement. In a March 27, 1997 letter, General Becton informed OSEP that he believed that developing a compliance agreement would be an appropriate course of action which is in the best interest of the children of the District of Columbia.

*C. The Noncompliance of DCPS With the Part B Requirements Identified in the Compliance Agreement Cannot Be Corrected Immediately.*

On June 18, 1997, pursuant to 20 U.S.C. 1234f(b)(1), the Department conducted a public hearing to determine whether a compliance agreement with

DCPS is appropriate to address system-wide problems in the provision of special education for students with disabilities residing in the District of Columbia. As at the February hearings, parents, advocates, service providers, and other interested parties testified that DCPS was continuing to have compliance problems in the same areas that had been identified in previous reports. Many commenters supported the Department entering into a compliance agreement with DCPS but urged the Department to make the agreement as specific as possible.

On January 26, 1998, DCPS reported that on January 5, 1998, 2,331 students who had been referred for a special education evaluation awaited completion of an initial assessment and placement for longer than 50 days. As of January 5, 1998, of the 655 hearing requests that had been received, a final decision had not been issued within 45 days of the request in 482 cases as required by 34 CFR § 300.512. As of January 5, 1998, 332 final decisions had not been fully implemented within the time frame prescribed by the hearing determination. These numbers are evidence of the magnitude of the problems faced by DCPS.

Through the monitoring process and the public hearing, the Department has learned that DCPS's difficulties in complying with the requirements of Part B are the outgrowth of a number of complex and long-term causes including an inadequate management system for its special education program. At the public hearing, DCPS itself identified inadequate management and several other reasons why compliance cannot be achieved until a future date. These reasons include poor information management systems, lack of staff training, inappropriate staff allocation and lack of appropriate programs.

All parties who testified at the public hearing, including DCPS, agreed that DCPS must implement an effective system of managing its special education program. The sheer magnitude of the problem faced by DCPS leads the Department to conclude that DCPS will not be able to come into compliance with the Part B requirements until a future date. This conclusion is consistent with the testimony of all of the witnesses at the public hearing.

*D. DCPS Can Meet the Terms and Conditions of a Compliance Agreement and Come Into Full Compliance With the Requirements of Part B Within Three Years*

The Chief Executive Officer, General Julius W. Becton, Jr., pledged to rebuild

the special education division of DCPS. Already, specific steps have been taken, or are in the process of being planned, to realize this goal. DCPS has developed a strategic plan designed to reorganize its special education division and address the Part B requirements for which DCPS is currently not in compliance. DCPS has budgeted a total increase in resources dedicated to special education of \$20 million for the 1998-99 school year.

DCPS's special education division is currently undergoing a reorganization and is planning to hire a team of three specialists to coordinate special education. In the fall of 1997, DCPS completed new position descriptions with performance expectations and standards for all staff designed to improve accountability and assure quality. In addition, DCPS has reallocated its staff to ensure more effective use of its current personnel. A Child Find Liaison has been assigned and a child find hotline has been established.

DCPS issued a request for proposals (RFP) in June 1997 for special education assessment services. DCPS is in the process of recruiting additional related service providers. DCPS has allocated additional resources to ensure that due process hearings can be conducted within the 45 day timeline. DCPS is planning to hire five additional administrative law judges to conduct due process hearings and four additional lawyers to represent DCPS at hearings. A mediation process to meet the requirement of section 615(e) of Part B is being developed.

DCPS is conducting additional staff development training so that they can serve students more inclusively at local schools. DCPS has expanded its early childhood program to serve an additional 40 preschool children and under the terms of the agreement must continue to expand its preschool programs. New programs have been developed for high school age students with learning disabilities and elementary school aged students who have emotional disturbance and DCPS' strategic plan includes continuing to build up its program capabilities. The steps DCPS has already taken, its commitment of resources, and the plans it has developed for further action, demonstrate that DCPS has the capacity to meet the terms and conditions of the Compliance Agreement.

Finally, the Compliance Agreement sets out a very specific schedule, that DCPS must meet during the next three years, for attaining compliance with the many requirements of Part B. Therefore, DCPS is committed not only to being in

full compliance with Part B within three years, but to meeting a stringent, but reasonable, schedule for reducing the number of children with disabilities in the District who have not received the evaluations, reevaluations, and related services to which they are entitled and for reducing the number of hearing decisions that have not been issued within the 45 day timeline and the number of decisions that have not been implemented. The Compliance Agreement also sets out data collection and reporting procedures that DCPS must follow. These provisions will allow the Department to ascertain promptly whether or not DCPS is meeting each of its commitments under the Compliance Agreement. The Compliance Agreement, because of the obligations it imposes on DCPS, will provide the Department with the information and authority it needs to protect the Part B rights of the District of Columbia's children.

The task of ensuring that all children with disabilities receive the rights and protections to which they are entitled under IDEA is difficult given the long-standing problems in DCPS' special education program. However, the Department has determined that with the commitment of the new leadership to meet the terms and conditions of this agreement, the process of improving special education services for all students with disabilities residing in the District of Columbia can begin immediately. For these reasons, the Department concludes that DCPS can meet all the terms and conditions of the Compliance Agreement and come into full compliance with Part B within three years.

#### IV. Conclusion

For the foregoing reasons, the Department finds the following: (1) That full compliance by DCPS with the requirements of Part B is not feasible until a future date, and (2) that DCPS can meet the terms and conditions of the attached Compliance Agreement and come into full compliance with the requirements of Part B within three years of the date of this decision. Therefore, the Department determines that it is appropriate for this agency to enter into a Compliance Agreement with DCPS. Under the terms of 20 U.S.C. § 1234f, that Compliance Agreement becomes effective on the date of this decision.

Dated: March 10, 1998.

**Richard W. Riley,**  
*Secretary of Education.*

**Text of the Binding Provisions of the Compliance Agreement—Compliance Agreement Under Part B of the Individuals With Disabilities Education Act Between the United States Department of Education and the District of Columbia Public Schools**  
**Introduction**

The Office of Special Education Programs of the United States Department of Education (OSEP) conducted public hearings during the week of February 3, 1997 regarding the District of Columbia Public Schools (DCPS') implementation of Part B of the Individuals with Disabilities Education Act (Part B of IDEA).<sup>1</sup> Those hearings, and input from representatives of DCPS, lead OSEP to raise the possibility of the development of a compliance agreement to bring DCPS into full compliance with applicable portions of the law as soon as feasible. In a letter dated March 27, 1997, General Julius Becton, Jr., DCPS' Chief Executive Officer, confirmed DCPS' interest in developing a compliance agreement, believing that the execution of such an agreement would be in the best interests of the children of the District of Columbia.

Pursuant to this Compliance Agreement under 20 U.S.C. § 1234f, DCPS must be in full compliance with the requirements of Part B no later than three years from the date of the Department's written findings, a copy of which is attached to, and incorporated by reference into, this Agreement. Specifically, DCPS must ensure and document that no later than three years after the effective date of this Agreement, the following compliance goals are achieved:

1. An initial evaluation that meets the requirements of sections 614(a)(1), (b), and (c) of Part B of IDEA is completed for all children with disabilities, and an appropriate placement is made within the maximum number of days

<sup>1</sup> This agreement references the regulations in effect on the date that this agreement took effect. On October 22, 1997, the Department published proposed regulations to implement the Individuals with Disabilities Education Act Amendments of 1997. When these regulations are published in final, the agreement will be amended to reflect any necessary changes to the regulatory citations. These amendments will not, however, alter the effective period of this agreement.

established by DCPS' policy, and a reevaluation that meets the requirements of sections 614(a)(2), (b), and (c) of Part B of IDEA, is completed for all children with disabilities no later than 36 months after the date on which the most recent previous evaluation or reevaluation was completed;

2. All children with disabilities receive the related services specified in their individualized education program as required by section 602(8) of Part B of IDEA and 34 CFR § 300.350;

3. A final decision is issued no later than 45 calendar days after the receipt of a request for a due process hearing as required by 34 CFR 300.512, except in cases where the requester voluntarily withdraws the request (e.g., in favor of mediation, because the issues motivating the request were addressed, and/or a settlement has been reached);

4. Independent hearing officer determinations are implemented within the time-frame prescribed by the hearing determination as required by sections 615(f) and (i) of Part B of IDEA;

5. A Child-Find system is established which identifies and locates all children with disabilities, including those transitioning from Part H programs, who are in need of special education and related services as required by section 612(a)(3) of Part B of IDEA;

6. All children with disabilities are placed in the least restrictive environment appropriate to their individual needs, as required by section 612(a)(5)(A) of Part B of IDEA and 34 CFR 300.550-300.556;

7. State complaint procedures which meet the requirements of 34 CFR 300.660-300.662 are implemented;

8. Beginning no later than age 16, and at a younger age, if determined appropriate, a statement of needed transition services is included in each student's individualized education plan (IEP) as required by 34 CFR 300.346(b) and if a purpose of the IEP meeting is consideration of transition services, that all required participants have been invited and participate as required by 34 CFR 300.344(c) and that a notice containing all required content is issued as required by 34 CFR 300.345(b)(2);

9. A State Advisory Panel is established which meets the requirements of section 612(a)(21) of Part B of IDEA;

10. Procedures that meet the requirements of section 615(b)(2) of Part B of IDEA are implemented to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State; and

11. Sufficient numbers of personnel are available to meet the needs of students with disabilities who are limited English proficient.

During the period that this Compliance Agreement is in effect, DCPS is eligible to receive Part B funds if it complies with the terms and conditions of this Agreement, including the provisions of Part B of IDEA, as amended by the IDEA Amendments of 1997 (IDEA-97) and other applicable Federal statutory and regulatory requirements.

Specifically, the Compliance Agreement sets forth commitments and timetables for DCPS to meet in coming into compliance with its Part B obligations. In addition, DCPS is required to submit documentation concerning its compliance with these goals and timetables. Any failure by DCPS to comply with the goals, timetables, documentation, or other provisions of the Compliance Agreement, including the reporting requirements, will authorize the Department to consider the agreement no longer in effect. Under such circumstances, the Department may take any action authorized by 20 U.S.C. § 1234c, including the withholding of Part B funds from DCPS. This Agreement will take effect on the day the Department issues its written findings of fact, pursuant to the requirements of 20 U.S.C. § 1234f, and will expire three years from that date.

The following pages of this compliance agreement address topic areas of DCPS' non-compliance, and include goals, verifiable outcomes, schedules for levels of compliance over the three year agreement, and DCPS' "Action Plan" for achieving compliance. Since several of the compliance goal areas are inter-related, some "Action Plan" items are duplicated between topic areas. Please note that "Action Plan" items for each goal are provided by DCPS for informational purposes only, to demonstrate DCPS' commitment to

coming into full compliance with IDEA. DCPS and the Department agree that "Action Plan" items (activities, time line/status, responsibility, milestone/verification, and special resources) shall not be construed to bind DCPS legally or otherwise. DCPS, however, is bound to comply with all other aspects of this Agreement.

#### *Topic 1.0: Initial Evaluations and Re-evaluations*

Current Status: DCPS' current policy, as set forth in the Mill's decree, is that a student who has been referred for a special education evaluation must be evaluated and placed within 50 days of the referral. On January 5, 1998, 2,331 students who had been referred for a special education evaluation awaited completion of an initial assessment and placement for longer than 50 days. Additionally, on March 31, 1998, 2,529 (data received March 31, 1998) students with disabilities will not have been re-evaluated for more than 36 months following their initial or most recent previous re-evaluation. Goals are:

##### Goal 1.0

(a) To ensure that an initial evaluation that meets the requirements of sections 614(a)(1), (b) and (c) of Part B of IDEA is completed for all children with disabilities and an appropriate placement is made within 50 days after the child is referred<sup>2</sup>; and,

(b) To ensure that a re-evaluation that meets the requirements of sections 614(a)(2), (b) and (c) of Part B of IDEA is completed for all children with disabilities no later than 36 months after the date on which the most recent previous evaluation or re-evaluation was completed.

DCPS will gather baseline data regarding the number of students (yy) for the re-evaluation goal, and provide that data to the Department by March 31, 1998 (data received March 31, 1998 and included in Table B, below).

#### Overall Measurable Outcomes and Verification for Goal 1.0 (a): Initial Evaluations

(a) Every week, DCPS will prepare an internal report which includes the name

<sup>2</sup> DCPS and the Department agree that if the time line for initial evaluation and placement is modified by the Court, the Compliance Agreement will be amended to incorporate the revised time line.

of each child referred for initial evaluation, and the number of calendar days since the referral, the status of that referral (complete or incomplete), and the component assessments remaining if the evaluation is incomplete and/or placement has not been made.

(b) DCPS shall make these internal reports available to OSEP if requested by that office.

(c) On a periodic basis, beginning with the period ending June 30, 1998, DCPS will submit to the Department—at the times and in the manner specified in Table A—a summary of the internal reports for the relevant reporting period. The summary will include:

- The number of children referred for initial evaluation, as of the start of the reporting period, whose initial evaluation and placement have not been completed within the required time period;
- The number of children referred for initial evaluations during the reporting period;
- The number of children for whom an initial evaluation and placement was completed during the reporting period;
- The number of referred children who did not receive an initial evaluation and placement within the required time period at the conclusion of the reporting period.

(d) Table A sets out, on a periodic basis, DCPS' commitment for incremental reduction to zero of the number of children waiting for initial evaluations and placements for longer than 50 days after referral. For children referred prior to January 5, 1998, this number will be reduced to zero by March 31, 1999. For children referred on or after January 5, 1998, this number will be reduced to zero by March 31, 2000. DCPS is obligated not only to meeting these final commitments to reduce the number of children awaiting timely initial evaluations and placements to zero, but also to meeting all of the periodic commitments for reducing that number set out in Table A.

(e) DCPS shall provide OSEP, by April 30, 1998, its policies and procedures for ensuring that evaluations and reevaluations are conducted in conformity with the evaluation procedures required in section 614(b) and (c) of Part B of IDEA.

TABLE A.—DCPS PERIODIC REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIMELINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (INITIAL EVALUATIONS AND PLACEMENTS)

Number of children awaiting completion of initial evaluation and placements for more than 50 days			
Date of reporting period	Referrals prior to 1/5/98	Referrals 1/5/98 and after	Date report submitted to department
1/5 to 6/30/98 .....	1,748	85% of referrals .....	7/15/98
7/1 to 9/30/98 .....	932	75% of referrals .....	10/15/98
10/1 to 12/31/98 .....	233	60% of referrals .....	1/15/99
1/1 to 3/31/99 .....	0	45% of referrals .....	4/15/99
4/1 to 6/30/99 .....	0	30% of referrals .....	7/15/99
7/1 to 9/30/99 .....	0	15% of referrals .....	10/15/99
10/1 to 12/31/99 .....	0	5% of referrals .....	1/15/00
1/1 to 3/31/00 .....	0	0 .....	4/15/00
4/1 to 6/30/00 .....	0	0 .....	7/15/00
7/1 to 9/30/00 .....	0	0 .....	10/15/00
10/1 to 12/31/00 .....	0	0 .....	1/15/01
1/1 to 3/31/01 .....	0	0 .....	4/15/01

Overall Measurable Outcomes and Verification for Goal 1.0 (b) Reevaluations

(a) Within the first week of each month, DCPS will prepare an internal report of the name of each child for whom an initial evaluation, or the most recent re-evaluation, was completed. Children for whom the initial evaluation or re-evaluation was completed more than 36 months prior will be highlighted in the report.

(b) Appended to the above report, DCPS will note which children from the previous month's report have been re-evaluated during that month, as well as those cases which are still pending.

(c) DCPS shall make these internal reports available to OSEP if requested by that office.

(d) Within fifteen (15) calendar days following the end of each reporting period commencing with the reporting period ending June 30, 1998, DCPS will submit to the Department a summary of the monthly reports for the period, including:

- The number of children who have not received re-evaluations within 36 months at the start of the reporting period;
- The number of children who, during the reporting period, have been identified as not receiving re-evaluations within 36 months;
- The number of students for whom a re-evaluation was completed during the reporting period;
- The number of students whose re-evaluation is still pending for more than

36 months at the end of the reporting period.

(e) Table B sets out, on a periodic basis, DCPS' commitment for incremental reduction to zero of the number of children who have not received timely re-evaluations. For children whose re-evaluations was due on or before January 5, 1998, this number will be reduced to zero by March 31, 1999. For children whose re-evaluations will be due after January 5, 1998, this number will be reduced to zero by March 31, 2000. DCPS is obligated not only to meeting these final commitments to reduce the number of children awaiting timely re-evaluations to zero, but also to meeting all of the periodic commitments for reducing that number set out in Table B.

TABLE B.—DCPS PERIODIC REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIMELINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (RE-EVALUATIONS)

Students awaiting re-evaluation more than 36 months after initial evaluation or last re-evaluation			
Date of reporting period	Re-evaluation due 1/5/98 or before	Re-evaluation due after 1/5/98	Date report submitted to department
1/5 to 6/30/98 .....	1,897 (data rec'd 3/31/98) .....	85% of Re-Evaluations due .....	7/15/98
7/1 to 9/30/98 .....	1,012 (data rec'd 3/31/98) .....	75% of Re-Evaluations due .....	10/15/98
10/1 to 12/31/98 .....	253 (data rec'd 3/31/98) .....	60% of Re-Evaluations due .....	1/15/99
1/1 to 3/31/99 .....	0 .....	45% of Re-Evaluations due .....	4/15/99
4/1 to 6/30/99 .....	0 .....	30% of Re-Evaluations due .....	7/15/99
7/1 to 9/30/99 .....	0 .....	15% of Re-Evaluations due .....	10/15/99
10/1 to 12/31/99 .....	0 .....	5% of Re-Evaluations due .....	1/15/00
1/1 to 3/31/00 .....	0 .....	0 .....	4/15/00
4/1 to 6/30/00 .....	0 .....	0 .....	7/15/00
7/1 to 9/30/00 .....	0 .....	0 .....	10/15/00
10/1 to 12/31/00 .....	0 .....	0 .....	1/15/01
1/1 to 3/31/01 .....	0 .....	0 .....	4/15/01

Topic 2.0: Related Services

Current Status: As of January 5, 1998, DCPS has not provided related service in accordance with students' IEP to

1,055 (data received March 31, 1998) students.

DCPS currently lacks a special education student information system, and consequently can not provide

adequate baseline data regarding the total number of students (zz) who do not receive all of the related services called for within their IEPs. DCPS will capture



this baseline data, and provide it to the Department of Education no later than March 31, 1998, using the following methods.

- DCPS' related service ("Intervention") staff members will, with assistance from school principals, identify the list of all students entitled to receive a related service, and record all of those students' names in a format which the Special Education Division provides (the format is included as Attachment P to this Compliance Agreement).

- Twice each month, intervention staff will record, on the provided format, the names of those students to whom they have provided service/therapy, the names of students who missed service/therapy due to absences, and the names of students (if any) who could not be scheduled to receive related service/therapy due to inadequate schedule/time.

- Each related service ("Intervention") staff member will total the number of such students who do not receive service/therapy due to inadequate schedule/time, and report the result to their Special Education Division supervisor. Each supervisor will summarize the reports for all intervention staff, and the Deputy Director for Service Delivery will summarize the data for DCPS as a whole.

- When a new student is placed in a school's special education program, that student shall be added to the list of students entitled to receive related services at that school, consistent with the services called for in the student's IEP. Similarly, when a student transfers, graduates or withdraws, the student's name shall be deleted from the list. Such additions and deletions shall be summarized in each report by each Intervention staff member.

The number of students who could not be scheduled to receive related service/therapy due to inadequate related service provider schedule/time shall be reported initially to the Department of Education, and shall form the source of data from which will be used for the reports described below.

An initial report of all students who are not receiving all related services specified within their IEPs will be made prior to March 31, 1998, and those students will make up the initial count of students shown as "zz" in Table C below.

Goal 2.0

To ensure that all children with disabilities receive the related services specified in their individual education program as required by section 602(8) of Part B of IDEA and 34 CFR 300.350.

Overall Measurable Outcomes and Verification for Goal 2.0 (Related Services)

(a) Within the first week of each month, DCPS will prepare an internal report for each type of related service with the following content:

i. Children, by name, whose IEPs call for a related service, but who are *not yet* assigned to the schedule of a specific DCPS provider of that service (a child whose IEP calls for two different related services, but who is not receiving either service, will appear separately on the reports for each of those related services). These children will be listed in order of the date on which their original or updated IEP calling for the service was signed.

ii. Children, by name, who, for whatever reason, have been removed from the schedule of a DCPS related service provider (for example, because of the resignation of the service provider, or because of the transfer of the student away from the school where that provider works, etc.), and who have not immediately been reassigned to the schedule of another service provider.

iii. Children, by name, who within the previous month have been assigned to the schedule of a specific DCPS service provider (and who consequently have been removed from the above listing of unassigned children).

iv. DCPS related service providers who are scheduled to serve children for fewer hours per week than is provided for by DCPS policy for that service, and who consequently may be available to serve additional children.

(b) DCPS shall make these internal reports available to OSEP if requested by that office.

(c) Within fifteen calendar days following the end of each reporting period, DCPS will provide to the Department a report with the following content:

i. The number of children who are not receiving all the related services specified in their IEP as of the start of the reporting period;

ii. The number of children identified during the reporting period as not receiving all the related services specified in their IEPs;

iii. The number of children that, during the reporting period, began receiving all the related services specified in their IEPs; and

iv. The number of children not receiving all related services specified in their IEPs at the end of the reporting period.

(d) Table C sets out, on a periodic basis, DCPS' commitment for incremental reduction to zero of the number of children not receiving all the related services specified in their IEPs. For the number of children who were determined eligible for special education prior to January 5, 1998, but not receiving all of the related services specified within their IEPs, this number will be reduced to zero by December 31, 1999. For the number of students who were determined eligible for special education on or after January 5, 1998, but not receiving all of the related services specified within their IEPs, this number will be reduced to zero by March 31, 2000. DCPS is obligated not only to meeting this final commitment to reduce the number of children not receiving required related services to zero, but also to meeting all of the periodic commitments for reducing the number set out in Table C.

(e) By April 30, 1998, DCPS must establish, and submit to OSEP for approval, a method to verify that those children who have been assigned to the schedule of a specific DCPS service provider are in fact receiving the required services.

TABLE C.—DCPS PERIODIC REPORTS TO THE DEPARTMENT REQUIRED LEVELS AND TIME LINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (RELATED SERVICES)

Date of reporting period	Number of children not receiving related services provided for in their IEP (students eligible prior to 1/5/98)	Number of children not receiving related services provided for in their IEP program (students eligible on or after 1/5/98)	Date report submitted to department
1/5 to 6/30/98 .....	950 (data rec'd 3/31/98) .....	95% of newly eligible students .....	7/15/98
7/1 to 9/30/98 .....	791 (data rec'd 3/31/98) .....	85% of newly eligible students .....	10/15/98
10/1 to 12/31/98 .....	580 (data rec'd 3/31/98) .....	70% of newly eligible students .....	1/15/99
1/1 to 3/31/99 .....	369 (data rec'd 3/31/98) .....	55% of newly eligible students .....	4/15/99
4/1 to 6/30/99 .....	211 (data rec'd 3/31/98) .....	40% of newly eligible students .....	7/15/99

TABLE C.—DCPS PERIODIC REPORTS TO THE DEPARTMENT REQUIRED LEVELS AND TIME LINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (RELATED SERVICES)—Continued

Date of reporting period	Number of children not receiving related services provided for in their IEP (students eligible prior to 1/5/98)	Number of children not receiving related services provided for in their IEP program (students eligible on or after 1/5/98)	Date report submitted to department
7/1 to 9/30/99 .....	106 (data rec'd 3/31/98) .....	25% of newly eligible students .....	10/15/99
10/1 to 12/31/99 .....	0 .....	10% of newly eligible students .....	1/15/00
1/1 to 3/31/00 .....	0 .....	0 .....	4/15/00
4/1 to 6/30/00 .....	0 .....	0 .....	7/15/00
7/1 to 9/30/00 .....	0 .....	0 .....	10/15/00
10/1 to 12/31/00 .....	0 .....	0 .....	1/15/01
1/1 to 3/31/01 .....	0 .....	0 .....	4/15/01

**Topic 3.0: Due Process Hearing Timeliness**

Current Status: For a significant portion of due process hearing requests received by DCPS on behalf of students with disabilities, a final decision is not issued within 45 days after receipt of the request. As of January 5, 1998, of the 655 hearing requests that had been received, a final decision had not been issued within 45 days of the request in 482 cases.

**Goal 3.0**

To ensure that a final decision is issued, not later than 45 calendar days after the receipt of a request for a due process hearing as required by 34 CFR 300.512, except in cases where the requester voluntarily withdraws the request (including, but not limited to, instances of withdrawal in favor of mediation, because the issues motivating the request were addressed, and/or where a settlement has been reached) and/or where a hearing officer grants a request for an extension by a party.

**Overall Measurable Outcomes and Verifications for Goal 3.0**

- (a) Within the first week of each month, DCPS will prepare an internal report with the following content:
  - i. Name of each child for whom a due process hearing has been requested, and the date that the request was received in writing.
  - ii. Name of each child for whom a due process hearing was held and a final decision was issued, and the date of the final decision.
  - iii. Name of each child for whom a request for a due process hearing was withdrawn, the date of the withdrawal, and a brief note as to disposition.
- (b) DCPS shall make these internal reports available to OSEP if requested by that office.
- (c) Within fifteen calendar days following the end of each reporting period, DCPS will prepare and submit a report to the Department which includes:
  - i. The number of pending hearing requests, as of the start of the reporting period, for which a final decision has not been issued within 45 days of the request;
  - ii. The number of pending hearing requests which, during the course of the reporting period, are added to the list of

- hearing requests for which a final decision has not been issued within 45 days of the request;
- iii. The number of final decisions issued during the reporting period for hearing requests that have been pending for more than 45 days;
- iv. The number of pending hearings requests, at the conclusion of the reporting period, for which a final decision has not been issued within 45 days of the request.
- (d) Table D sets out, on a periodic basis, DCPS' commitment for incremental reduction to zero of the number of due process hearing requests which have been pending for more than 45 days, which have not been withdrawn, and for which a final decision has not been issued. DCPS is committed to reducing this number to zero by December 31, 1998. DCPS is not only committed to meeting this final commitment, but also to meeting all of the periodic commitments for reducing that number set out in Table D.
- (e) DCPS must submit to the Department, by March 31, 1998, the mediation procedures that it has developed under Section VII.F of its Strategic Plan to meet the requirements of section 615(e) of Part B of IDEA.

TABLE D.—DCPS PERIODIC REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIME LINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (DUE PROCESS HEARING TIMELINESS)

Date of reporting period	Number of hearing requests which have been pending for 45 days or more, have not been withdrawn, and for which a final decision has not been issued	Date report submitted to department
1/5 to 6/30/98 .....	361	7/15/98
7/1 to 9/30/98 .....	217	10/15/98
10/1 to 12/31/98 .....	0	1/15/99
1/1 to 3/31/99 .....	0	4/15/99
4/1 to 6/30/99 .....	0	7/15/99
7/1 to 9/30/99 .....	0	10/15/99

TABLE D.—DCPS PERIODIC REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIME LINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (DUE PROCESS HEARING TIMELINESS)—Continued

Date of reporting period	Number of hearing requests which have been pending for 45 days or more, have not been withdrawn, and for which a final decision has not been issued	Date report submitted to department
10/1 to 12/31/99 .....	0	1/15/00
1/1 to 3/31/00 .....	0	4/15/00
4/1 to 6/30/00 .....	0	7/15/00
7/1 to 9/30/00 .....	0	10/15/00
10/1 to 12/31/00 .....	0	1/15/01
1/1 to 3/31/01 .....	0	4/15/01

**Objectives for Goal 3.0: Due Process Hearing Time Line**

3.1 Reduce the need for hearings by developing new programs, improving evaluations and improving related service delivery.

3.2 Reduce demand for hearing requests by establishing a new mediation process.

3.3 Increase accountability for hearing time lines by computerizing records and providing ongoing information to DCPS' Legal and Special Education Division.

**Topic 4.0: Hearing Determination Implementation**

Current Status: As of January 5, 1998, 332 student hearing determinations remained outstanding without having been fully implemented within the time frame set out by the hearing determination.

**Goal 4.0**

To ensure that independent hearing officer determinations are implemented within the time-frame prescribed by the hearing determination, or the different time-frame agreed to in writing by the parent or guardian and submitted to the hearing officer as required by sections 615 (f) and (i) of Part B of IDEA.

**Overall Measurable Outcomes and Verification for Goal 4.0**

(a) Within the first week of each month, DCPS will prepare an internal report:

i. Date each due process hearing decision was filed, and the case number.

ii. Type of hearing (e.g., denial, appropriateness, etc.).

iii. Actions required and Time lines set out by the determination.

iv. Date each action was completed, or a notation that the action remains incomplete. Actions which remain uncompleted beyond the date required within the order will be highlighted within the report.

v. Date the hearing order was fully implemented (i.e., all actions completed). Note that all hearing cases will continue to be reported until it has been reported that the hearing order was fully implemented.

vi. The number of cases in which a different time-frame is agreed to in writing by the parent or guardian and submitted to the hearing officer and DCPS' basis for requesting a different time-frame.

(b) DCPS shall make these internal reports available to OSEP if requested by that office.

(c) Within fifteen calendar days following the end of each reporting

period, DCPS will prepare and submit a report to the Department that includes:

i. The number of hearing officer determinations, as of the start of the reporting period, that have not been fully implemented;

ii. The number of hearing officer determinations which, during the course of the reporting period, are identified as not having been fully implemented;

iii. The number of hearing officer determinations which, during the course of the reporting period, have been fully implemented;

iv. The number of hearing officer determinations which, as of the conclusion of the reporting period, have not been fully implemented.

(d) Table E sets out, on a periodic basis, DCPS' commitment for incremental reduction to zero of the number of hearing officer determinations that have not been fully implemented consistent with the hearing decision. DCPS is committed to reducing this number to zero by December 31, 1998. DCPS is obligated not only to meeting this final commitment, but also to meeting all of the periodic commitments for reducing the numbers set out in Table E.

TABLE E.—DCPS PERIODIC REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIME LINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (HEARING DETERMINATION IMPLEMENTATION)

Date of reporting	Number of hearing officer determinations not fully implemented	Date report period submitted to department
1/5 to 6/30/98 .....	266	7/15/98
7/1 to 9/30/98 .....	199	10/15/98
10/1 to 12/31/98 .....	0	1/15/99
1/1 to 3/31/99 .....	0	4/15/99
4/1 to 6/30/99 .....	0	7/15/99

TABLE E.—DCPS PERIODIC REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIME LINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (HEARING DETERMINATION IMPLEMENTATION)—Continued

Date of reporting	Number of hearing officer determinations not fully implemented	Date report period submitted to department
7/1 to 9/30/99 .....	0	10/15/99
10/1 to 12/31/99 .....	0	1/15/00
1/1 to 3/31/00 .....	0	4/15/00
4/1 to 6/30/00 .....	0	7/15/00
7/1 to 9/30/00 .....	0	10/15/00
10/1 to 12/31/00 .....	0	1/15/01
1/1 to 3/31/01 .....	0	4/15/01

Objectives for Goal 4.0: Hearing Order Determination Implementation

4.1 Reduce the need for hearings (and thus the need for implementing hearing determinations) by developing new programs and initiatives and by implementing a mediation process.

4.2 Improve implementation of assessment-related hearing order determinations (HODs) by prioritizing evaluations, reorganizing staff and supervision, and establishing a central assessment scheduling/tracking method.

4.3 Increase accountability for implementing order determinations by computerizing tracking and by summarizing status in a monthly report.

Topic 5.0: Child Find

Current Status: DCPS is not complying with its obligation to identify and locate all children with disabilities residing in the District of Columbia, including children with disabilities attending private schools, regardless of severity of their disabilities, who are in need of special education and related services.

Goal 5.0

To establish a Child-Find system which successfully identifies and locates all children with disabilities, including those transitioning from Part H programs, who are in need of special education and related services as required by section 612(a)(3) of Part B of IDEA.

Overall Measurable Outcomes and Verification for Goal 5.0: Child Find

(a) Within fifteen calendar days following the end of each reporting period as set out in Table A above, DCPS will provide to the Department a report that includes:

i. A listing of the inquires received through DCPS' Child Find hotline, and a summary of the other contacts made by Child Find staff, including the Child Find Liaison, and the screening aides; and

ii. Data on the number of preschool students identified and served.

(b) DCPS shall submit a report to OSEP every six months, from the effective date of this Compliance Agreement, on the activities it has carried out during the reporting period to implement the objectives of Goal 5.0. The report must include:

(i) For the city wide screening event, identified in section III.C of the Strategic Plan, the number and location of screening sites, the kinds of screening tools that were used, and the number and ages of children screened; and

(ii) For the training provided under section VII.G of the Strategic Plan, the dates and locations of the training sessions, the number of participants, and curriculum for the training.

Please see Attachment Q for the District of Columbia's Policy and Procedure for transition form Part H to Part B programs, and form for recording child-find inquires.

Objective for Goal 5.0: Child Find

5.1 Build DCPS' network and capability for identifying children who may need special education services by:

a. Implementing the initiatives outlined in DCPS' State Plan for IDEA; and

b. Assigning a Child Find Liaison, Early Childhood Coordinator, Transition Facilitator and screening aides.

5.2 Increase school staff understanding of responsibilities and understanding of available resources for child find/outreach, screening and assessment procedures by developing and disseminating a concise flowchart and description.

5.3 Increase sensitivity and familiarity of instructional support staff regarding students with disabilities and their instructional needs through training.

5.4 Continue to expand early childhood program to serve additional preschool children.

5.5 Increase awareness of parents of all children over the age of 2.0 years who are enrolled in DHS Early Intervention Programs about their options and rights to receive services from DCPS under IDEA Part B.

5.6 Develop policies and procedures to ensure a smooth transition for those individuals participating in the early intervention program under Part H of the IDEA who will participate in preschool programs, including a method for ensuring that when a child turns three, an IEP or IFSP has been developed and implemented by the child's third birthday as required by section 612(a)(9) of Part B of IDEA.

Topic 6.0: Restrictiveness of Placements

Current Status: Currently, DCPS is not complying with its obligation to provide children with disabilities with the least restrictive placement appropriate to their individual needs. Specifically, Board of Education rules have been interpreted to require that the restrictiveness of a students' placement is determined by the number of hours of special education services required by the student. For example, a student who needs 32 hours of service each week is typically served only in a separate school.

Goal 6.0

To ensure that children with disabilities are placed in the least restrictive environment appropriate to their individual needs as required by section 612(a)(5)(A) of Part B of IDEA and 34 CFR 300.550-300.556 and that the restrictiveness of a student's placement (such as a self-contained class or a separate school placement) is not determined solely by the number of hours of service each week which is called for in the student's individualized education program.

### Overall Measurable Outcomes and Verification for Goal 6.0: Restrictiveness of Placements

(a) DCPS will provide the Department with a draft copy of its revised Board of Education Rules by no later than April 1, 1998 and its final rule by no later than June 30, 1998.

(b) DCPS will, on October 1 of each year of this agreement, identify for the Department schools which have been identified as inclusion initiative schools, and those which serve as local school "satellites" for program and services which had previously been offered in more restrictive, "city-wide" settings.

(c) DCPS will, on June 1 of each year of this agreement, provide the Department with a list of placements that are available and that represent each type of placement on the continuum as required by 34 CFR 300.551. DCPS must identify sufficient existing accessible locations to provide a continuum of appropriate placements for all children with disabilities. If DCPS is unable to identify sufficient existing accessible locations to provide a continuum, it must develop and submit a plan, on June 1, of each year of the agreement, to ensure accessible locations by September 1 for each type of placement on the continuum.

(d) DCPS will submit data on the number of students in each type of placement on the continuum on November 20, 1998, November 20, 1999, and November 20, 2000.

(e) DCPS will submit a report to OSEP every six months, from the effective date of this Compliance Agreement, on the activities it has carried out during the reporting period to implement Goal 6.0.

### Objectives for 6.0: Restrictiveness of Placements

6.1 Review and revise, if necessary, DCPS' continuum of services in accordance with applicable regulations

6.2 Increase schools' abilities to serve students in less restrictive setting by:

a. Implementing DCPS' inclusion initiative;

b. Developing and expanding "regional schools" abilities to serve high school age students with learning disabilities and elementary age students with emotional disturbance; and

c. Developing and expanding other programs to serve under-served students.

6.3 Increase school system personnel sensitivity to children with disabilities by providing broad training/exposure for all school system staff.

6.4 At IEP meetings, DCPS will review the appropriateness of each

student's placement and staff will be trained on the proper methods for determination of the least restrictive environment consistent with OSEP memorandum 95-9.

### Topic 7.0: State Complaint Procedures

Current Status: DCPS is not implementing its written procedures for receiving and resolving any complaint that DCPS or a public agency is violating Part B or its regulations within 60 days.

### Goal 7.0

To implement state complaint procedures for receiving and resolving any complaint that DCPS or a public agency is violating Part B or its regulations as required by 34 CFR 300.660-300.662.

### Overall Measurable Outcomes and Verification for Goal 7.0: State Complaint Procedures

(a) DCPS must submit verification of implementation of its state complaint procedures by March 31, 1998.

(b) DCPS must develop a plan to ensure that all parents and other interested individuals are informed regarding complaint management procedures. The plan must include how frequently parents and other individuals will be informed and the materials to be used. DCPS must submit the material to be used to inform parents and other interested individuals about its complaint management procedures by March 31, 1998.

(c) DCPS must submit quarterly reports to OSEP that include a copy of its complaint log verifying that complaints are resolved within 60 days except where there has been an extension due to an exceptional circumstance related to that complaint. For each complaint for which DCPS has determined that an exceptional circumstance exists, DCPS must submit to OSEP an explanation of the exceptional circumstance. Where DCPS finds that the allegations contained in a complaint are true, and that noncompliance with regard to an IDEA requirement exists, it must ensure that appropriate corrective action is taken in a timely manner. These quarterly reports are due on June 30, 1998, September 30, 1998, December 31, 1998 and March 31, 1999.

(d) On a quarterly basis, DCPS must submit to OSEP a sample of complaint files for review. OSEP will select the files to be reviewed based on the log of complaints submitted above. These files must be submitted on July 15, 1998, October 15, 1998, January 15, 1999 and April 15, 1999. DCPS is responsible for

ensuring that each file contains a written decision to the complainant that addresses each allegation in the complaint. DCPS must also maintain and make available for OSEP review documentation demonstrating that required corrective actions have been implemented in a timely manner.

### Topic 8.0: Transition

Current Status: DCPS is not complying with its obligation to ensure that no later than age 16, and at a younger age, if determined appropriate, a statement of needed transition services is included in each student's IEP and if the purpose of the IEP meeting is consideration of transition services that all required participants have been invited and participate and that a notice containing all required content is issued.

### Goal: 8.0

Beginning no later than age 16, and at a younger age, if determined appropriate, a statement of needed transition services is included in each student's IEP as required by 34 CFR 300.346(b) and if the purpose of the IEP meeting is consideration of transition services, that all required participants have been invited and participate as required by 34 CFR 300.344(c) and that a notice containing all required content is issued as required by 34 CFR 300.345(b)(2).<sup>3</sup>

### Overall Measurable Outcomes and Verification for Goal 8.0: Transition

(a) DCPS must develop effective procedures to ensure that (1) beginning at age 14, and younger if appropriate, a statement of transition service needs or beginning at age 16 (or younger, if determined appropriate by the IEP team) a statement of needed transition services is included in each student's IEP as required by section 614(d)(1)(A)(vii) of Part B of IDEA; (2) the student will be invited to the IEP meeting, and if the student does not attend, the student's preferences and interests will be considered; (3) an individual determination will be made as to participating agency(ies) likely to be responsible for providing or paying for transition services and a representative of each participating agency(ies) will be invited to the IEP meeting. If the agency representative does not attend, other steps will be taken to ensure the participation of the agency in the planning of any transition services; and (4) the notice utilized by public agencies

<sup>3</sup> Implementation of the procedure to include a statement of transition service needs beginning at age 14 is required for IEPs beginning July 1, 1998.

to inform parents and other individuals (e.g., students and participating agencies) contains all required content.

(b) DCPS must submit quarterly reports to OSEP describing the progress it has made in ensuring compliance with the Part B transition requirements. These quarterly reports must be submitted on June 30, 1998, September 30, 1998, December 31, 1998, and March 31, 1999.

(c) On a quarterly basis, DCPS must submit a sample of IEPs and accompanying notices for students age 16 and older. OSEP will select the IEPs to be reviewed. These IEPs must be submitted on July 15, 1998, October 15, 1998, January 15, 1999, and April 15, 1999.

#### *Topic 9.0: State Advisory Panel*

Current Status: DCPS has not established a State advisory panel which meets the requirements of section 612(a)(21) of Part B of IDEA.

#### Goal 9.0

Establish a State advisory panel which meets the requirements of section 612(a)(21) of Part B of IDEA.

#### Overall Measurable Outcomes and Verification for Goal 9.0: State Advisory Panel

(a) DCPS must establish a State Advisory Panel which meets the requirements of section 612(a)(21) of Part B of IDEA. DCPS must submit by May 1, 1998 documentation that a properly constituted Advisory Panel has been established and is meeting to carry out the duties described in 612(a)(21)(D). Please see Attachment T for a description of the membership and appointing authority for the State Advisory Panel.

#### *Topic 10.0: Surrogate Parent Procedures*

Current Status: DCPS is not implementing its procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State.

#### Goal 10.0

To implement procedures that meet the requirements of section 615(b)(2) of

Part B of IDEA to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State.

#### Overall Measurable Outcomes and Verification for Goal 10.0: Surrogate Parent Procedures

(a) DCPS must implement its procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of a individual (who is not an employee of the State education agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents. DCPS must submit verification of implementation of its surrogate parent procedures by May 1, 1998.

DCPS has engaged a contractor to recruit, train, and support surrogate parents. Please see Attachment U for DCPS' work plan for recruiting and training surrogate parents. As required, DCPS will have final procedures for assignment of surrogate parents, and will submit verification of their implementation by May 1, 1998.

#### *Topic 11.0: Provision of Special Education to Limited English Proficient Students*

Current Status: DCPS does not have sufficient numbers of personnel available to meet the needs of students with disabilities who are limited English proficient.

#### Goal 11.0

DCPS must ensure that sufficient numbers of personnel are available to meet the needs of limited English proficient students.

#### Overall Measurable Outcomes and Verification for Goal 11.0: Provision of Special Education to Limited English Proficient Students

(a) DCPS must ensure that sufficient numbers of personnel are available to meet the needs of students with disabilities who are limited English proficient (LEP). Such personnel must

include special education teachers, psychologists, related service providers, and other staff needed to provide special education and related services and to conduct evaluations and reevaluations for these students. By April 30, 1998, DCPS must submit a status report of its efforts to ensure sufficient numbers of staff to meet the needs of LEP students. To the extent that the report shows that DCPS does not have sufficient numbers of personnel, a plan to meet this goal must accompany the report. In the event that such a plan is necessary, the plan must be fully implemented no later than September 30, 1998.

#### *Other Conditions*

In addition to all of the terms and conditions set forth above, DCPS agrees that its continued eligibility to receive Part B funds is predicated upon compliance with statutory and regulatory requirements of that program, that have not been addressed by this Agreement, including the IDEA Amendments of 1997. If DCPS fails to comply with any of the terms and conditions of the Compliance Agreement, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including the withholding of funds or the issuance of a cease and desist order. 20 U.S.C. § 1234f(d).

For the District of Columbia Public Schools:

Dated: March 16, 1998.

General Julius W. Becton, Jr.,  
*Chief Executive Officer.*

For the United States Department of Education:

Dated: March 10, 1998.

Honorable Richard W. Riley,  
*Secretary of Education.*

Date this Compliance Agreement becomes effective (Date of Secretary Riley's Written Decision and Findings): March 10, 1998.

Expiration Date of this Agreement: March 10, 2001.

[FR Doc. 98-20655 Filed 7-31-98; 8:45 am]

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