

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

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<b>DL, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Case No. 05-1437 (RCL)</b>
	)	
<b>DISTRICT OF COLUMBIA, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
_____	)	

**ORDER**

Upon consideration of arguments, testimony, and other evidence presented at the November 12-16, 2015 trial of this matter and the entire record in this case, and for the reasons stated in the accompanying Memorandum Opinion filed this date, the Court hereby extends the holding of its June 10, 2015 Memorandum Opinion, *DL v. District of Columbia*, 109 F. Supp. 3d 12 (D.D.C. 2015), to the period April 7, 2011 to November 12, 2015 (the first day of trial) and declares that:

1. with respect to Subclass 1, defendants failed to ensure that preschool-age children with disabilities in the District are identified, located, and evaluated for the purposes of offering special education and related services, in violation of 20 U.S.C. § 1412(a)(3)(A) and 5 D.C. Mun. Regs. §§ 3002.1(d), 3002.3(a). In doing so, defendants failed to ensure that a FAPE is available to preschool-age children with disabilities in the District in violation of 20 U.S.C. § 1412(a)(1)(A) and 5 D.C. Mun. Regs. §§ 3001.1, 3002.1(a);

2. with respect to Subclass 3, defendants failed to ensure that preschool-age children with disabilities in the District receive an eligibility determination within 120 days of referral in violation of 20 U.S.C. § 1414(a)(1)(C), 20 U.S.C. § 1414(b)(4), 34 C.F.R. § 300.306(a), and D.C. Code § 38-2561.2(a);
3. with respect to Subclass 4, defendants failed to have in effect policies and procedures to ensure that children receive a smooth and effective transition from Part C to Part B services in violation of 20 U.S.C. § 1412(a)(9), 34 C.F.R. § 300.124, and 34 C.F.R. § 300.101(b).

The Court further declares that defendants violated section 504 of the Rehabilitation Act until March 22, 2010 as to each of the four individual subclasses.<sup>1</sup> The Court finds that the District demonstrated bad faith and gross misjudgment with regard to its Child Find and FAPE obligations; its obligation to provide timely initial evaluations for special education and related services; its obligation to provide timely eligibility determinations for special education and related services; and its obligation to provide smooth and effective transitions from Part C to Part B services.

In addition to the declaratory relief stated above, the Court permanently enjoins defendants from further violations of the IDEA's requirements to identify, locate, and evaluate preschool-age children; perform a timely eligibility determination with 120 days of referral; and ensure children receive a smooth and effective transition from Part C to Part B. The Court directs the following corrective actions:

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<sup>1</sup> Although the Court granted defendants' motion [417] for summary judgments on all of the second plaintiff subclass's claims under the IDEA and D.C. law after April 6, 2011 [445], the second subclass's claims under the Rehabilitation Act for the period prior to March 22, 2010 were litigated at trial. As discussed in this order, the second subclass prevailed on these claims.

**A. NUMERICAL REQUIREMENTS**

**a. Subclass 1**

1. The District shall ensure that at least 8.5% of children between the ages of three and five years old, inclusive (hereafter, “preschool children”), who reside in or are wards of the District, are enrolled in special education and related services under Part B or extended Part C services.

- a. Until 8.5% is reached, the District shall increase the percentage of preschool children in the District enrolled in Part B or extended Part C services by 0.5% in the first full year, starting on the first of the next month after the date of this Order, and an additional 0.5% in each subsequent year.
- b. A child shall be considered “enrolled” on the date that he or she began receiving all of the special education and related services identified in his or her IEP or, if receiving extended Part C services, all of the services identified in his or her IFSP, including the required educational component. The District shall record and track when children first receive each service (including special education and related services) required pursuant to an IEP or extended IFSP.
- c. The District’s enrollment percentage shall be calculated by dividing the number of preschool children enrolled by the number of preschool children in the District, as reported in the most recent annual census estimate prepared by the U.S. Census Bureau’s Population Estimates Program, except in the years for which the decennial census results are issued, in which case the enrollment percentage should be calculated by dividing the number of preschool children enrolled by the decennial census results.

**b. Subclass 3**

2. The District shall ensure that at least 95% of all preschool children referred for Part B services receive a timely eligibility determination.

- a. Until 95% is reached, the District shall increase the percentage of preschool children referred for Part B services who receive a timely eligibility determination by 10% in the first full year, starting on the first of the next month after the date of this Order, and an additional 5% in each subsequent year.
- b. An eligibility determination shall be considered timely if it is completed within the period then-prescribed by federal and local law. According to District law that is currently applicable, the District has 120 days from the date of referral to make an eligibility determination.
- c. “Date of referral” is defined as the date on which the District receives a written or oral request for assessment of a preschool child. That referral may be made by a parent or a non-parent such as a pediatrician or an LEA employee.
- d. The District shall revise its parental delay policy so that it uses common sense and fairness to determine when any delay should be attributed to the LEA and when any delay should be attributed to the parent, consistent with 34 C.F.R. § 300.301(d)(1). The revised rules shall account for both delays by the LEA in attempting to contact the parent and in parental responsiveness, all of which should be documented.

**c. Subclass 4**

3. The District shall ensure that at least 95% of all Part C graduates that are found eligible for Part B receive a smooth and effective transition by their third birthdays.

- a. Until 95% is reached, the District shall increase the percentage of smooth and effective transitions by 10% in the first full year, starting on the first of the month following the date of this Order, and an additional 5% in each subsequent year.
- b. A transition shall be considered “smooth and effective” if (1) the transition begins no less than 90 days prior to the child’s third birthday; (2) the child is provided with 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; (3) there is no disruption in services between Part C and Part B services (that is, all special education and related services in the child’s IEP must commence by the child’s third birthday); and (4) Part B personnel are involved in the transition process.
- c. The District may report that there was no disruption in services as long as (1) all of the child’s special education services begin on the child’s third birthday or, if that is a weekend or holiday, on the first school day after the child’s third birthday (which, in the case of a child whose birthday falls during the summer and qualifies for Extended School Year (“ESY”) services, will be ESY services), and (2) all related services should begin within 14 days of the child’s third birthday (unless that period is within the summer and the child does not qualify for related services as part of his or her ESY services, in which case within 14 days of the first day of school after the summer). The District shall record and track when children first receive each service (including special education and related services) required pursuant to an IEP.

- d. The District shall revise its parental delay policy as described in paragraphs 157-161, 270, 302 of the accompanying Memorandum Opinion & Findings of Fact and Conclusions of Law.

**B. PROGRAMMATIC REQUIREMENTS**

4. The District shall maintain and regularly update a list of primary referral sources, including physicians, hospitals, and other health providers; day care centers, child care centers, and early childhood programs; District departments and agencies; community and civic organizations; and advocacy organizations. The District shall also develop a system to track frequency of contacts with the referral sources to ensure that outreach occurs on a regular basis.

5. The District shall develop and publish printed materials targeted to parents and guardians that inform them of the preschool special education and related services available from District of Columbia Public Schools (“DCPS”), the benefits and cost-free nature of these services, and how to obtain the services. These materials shall be written at an appropriate reading level and be translated into the primary languages spoken in the District. These materials shall be distributed to all primary referral sources (e.g., medical professionals and child care staff), public and public charter schools, public libraries, Income Maintenance Administration Service Centers, public recreation facilities, and other locations designed to reach as many parents or guardians of preschool children who may be eligible for special education and related services as possible.

6. The District shall develop, publish, and distribute tailored printed materials targeted at primary referral sources to inform them of the preschool special education and related services available from DCPS, the benefits and cost-free nature of these services, and how to make a referral. These materials shall be used in conjunction with regular contacts with primary referral sources to increase the usefulness of the materials.

7. The District shall ensure that Early Stages outreach staff (e.g., the Child Find Field Coordinators) contact primary referral sources or a staff member in the primary referral source's office who are instrumental in making referrals at least once a month until a referral relationship is established and then every three months thereafter. The initial meeting shall be face-to-face whenever possible when pursuing referrals from new referral sources and then less frequently thereafter, using the method of contact preferred by the referral sources (e.g., e-mail, texting, or telephone calls).

8. The District shall accept both oral and written referrals at the start of the eligibility determination process, make multiple attempts using different forms of communication (e.g., telephone, postal mail, and e-mail) to contact the parent or guardian of a referred child, and, upon obtaining consent of the parent or guardian, provide feedback to the referral source regarding the outcome of the referral in a timely manner.

9. The District shall assign each family served by Early Stages a single staff member to act as its "case manager" throughout the screening, evaluation, eligibility determination, and IEP process to ensure that families have the necessary information to understand the purposes and functions of all aspects of the Early Stages process and procedures.

10. The District shall maintain a central location that: accepts formal and informal referrals; conducts initial meetings, screenings, assessments, eligibility determinations, IEP development, and offers of placement; and permits parents to register their child with DCPS.

11. The District shall regularly assess the need for and, as necessary, open additional satellite sites to perform the same functions in other wards or use a mobile evaluation unit that is able to perform these functions at multiple locations throughout the District as more children are located who may be in need of preschool special education.

12. The District shall conduct regular screenings of preschool-age children in each ward of the District, and especially in wards in which children experience multiple risk factors.

13. The District shall use existing data (e.g., medical records and reports of prior assessments) at the time of referrals to the extent possible, especially for children from Part C to Part B services, to eliminate unnecessary and duplicative screenings and assessments for eligibility determination purposes.

14. The District shall accept all children exiting Part C who have identified disabilities or significant developmental delays as presumptively eligible for Part B in order to ensure that they do not experience a disruption in services. Presumptively eligible for preschool education means that the information available at the time of the referral of a child—when he or she is nearly three years old and is about to transition from Part C to Part B—shall be presumed to be sufficient to make a decision about the child's eligibility for Part B special education services, unless indicated otherwise by the Part B IEP Team. The Part B IEP Team may find, after reviewing the information available at the time of the referral of the child, that additional data is needed in order to make an eligibility determination. If the Part B IEP Team finds that additional data is needed in order to make an eligibility determination, the child may not begin receiving Part B services prior to an evaluation to determine the child's eligibility for such services. In all cases, including where the existing data are sufficient and where the Part B IEP Team determines that additional data are needed, defendants shall ensure that the Part B eligibility determination is completed prior to the child's third birthday, so that children eligible for Part B special education and related services experience no disruption in the receipt of services.



15. The District shall maintain a reliable data-sharing system between Part C and Part B to ensure that Early Stages receives an ongoing monthly report of all children who will be aging out of Part C within the following six months in order to ensure timely transition meetings.

16. The District shall maintain a reliable database system for tracking children through the Child Find process: from referral to eligibility determination and, if eligible, IEP development, placement, and provision of identified services.

17. The District shall maintain a reliable system for tracking the number and type of placements available for preschool special education and related services throughout the year and expanding the number and types of placement as needed.

18. The District shall develop and apply consistent operational definitions for each of the numeric benchmarks.

19. The District shall understand and ensure that its staff understand the purpose of the benchmarks and the IDEA requirements so that it can comply with them.

20. The District shall improve its data collection policies so that reporting can be accurate.

21. The District shall collect the necessary data to indicate when all services begin, including special education and related services.

### **C. MODIFICATION OF THE INJUNCTION**

22. The numerical requirements for the percentage of preschool children enrolled in Part B set forth above may only be modified by order of the Court upon a showing that 8.5% does not accurately reflect the number of preschool children who reside in the District, including children who are homeless or are wards of the District, that the District should expect to enroll through an effective Child Find system.

23. The programmatic requirements set forth in paragraphs above may be modified by order of the Court. In order to obtain modification by order of the Court, the District must show that another action, to be substituted for the requirement that the District wishes to modify, would be at least as effective.

#### **D. REPORTING**

24. Every year, the District shall provide an annual report to plaintiffs and the Court regarding its compliance with the numerical requirements set forth in paragraphs 1-3 above. With regard to the enrollment percentage, the District shall provide the percentage for each month of the prior year, the numerator and denominator for each of those months, and the monthly spreadsheets from which those results are calculated, with any child-identifying information redacted. With regard to the eligibility determination and transition statistics, the District shall provide the data over that year and the District's spreadsheets which show the calculations that yielded those statistics, with any child identifying information redacted.

25. Every six months, the District shall provide reports to plaintiffs and the Court regarding their compliance with the programmatic requirements set forth in paragraphs 4-21 above.

26. For purposes of these reporting requirements, and the termination provisions below, months and years shall be calculated as follows: the first month and year shall start on the first of the next month following the date of the Court's order and subsequent months and years shall start on the anniversary of the first month following the date of the Court's Order. Reports shall be filed within 30 days after the expiration of the period to which the report relates.

27. This order shall remain in effect until the District has demonstrated sustained compliance with the numerical requirements set forth in paragraphs 1-3 above (8.5% of preschool

children enrolled in special education and related services, 95% of preschool children receive timely eligibility determinations, and 95% of children receive smooth and effective transitions). The period of sustained compliance shall begin after the District, during a single year (“the baseline year”), meets or exceeds all three numerical requirements. Following the baseline year, the District may show sustained compliance:

a. In two years if, in the year following the baseline year (Year 1), the District increases the percentage of preschool children enrolled in Part B to at least 9.5% and meets or exceeds the other two numerical requirements and, in the subsequent year (Year 2), the District increases the percentage of preschool children enrolled in Part B to at least 10.5% and meets or exceeds the other two numerical requirements; or

b. In three years if, in the three years immediately following the baseline year (Years 1, 2, and 3), the District meets or exceeds all three numerical requirements.

28. If the District fails to meet any of the numerical requirements in Years 1, 2, or 3, the District must establish a new baseline year of compliance before being able to show sustained compliance.

29. The programmatic requirements set forth in paragraphs 4-21 above shall not terminate until the numerical requirements set forth in paragraphs 1-3 above are satisfied.

30. Plaintiffs have prevailed on both IDEA and Rehabilitation Act claims. Pursuant to 20 U.S.C. § 1415(i)(3)(B)(i)(I) (IDEA) and 20 U.S.C. § 794a(b) (Rehabilitation Act), the District shall pay plaintiffs’ reasonable attorneys’ fees and related nontaxable expenses associated with litigating this suit.

31. Pursuant to Federal Rule of Civil Procedure 54(d)(2), plaintiffs' claim for attorneys' fees and related nontaxable expenses must be made by a motion and submitted to this Court no later than 14 days, herein, or in accordance with a timeframe set in a separate court order.

**IT IS SO ORDERED** this 18<sup>th</sup> day of May, 2016.



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Royce C. Lamberth  
United States District Judge