

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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JAMIE S, et al.

Plaintiffs,

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v.

MILWAUKEE BOARD OF SCHOOL DIRECTORS,  
MILWAUKEE PUBLIC SCHOOLS, and WILLIAM  
G. ANDREKOPOULOS, Superintendent Milwaukee  
Public Schools, in his official capacity, and the STATE  
OF WISCONSIN, DEPARTMENT OF PUBLIC  
INSTRUCTION and ELIZABETH BURMASTER,  
State Superintendent of Public Instruction, in her  
official capacity,

Case No. 01-C-0928

Defendants.

**JOINT STIPULATED STATEMENT OF FACTS**

**I. PLAINTIFF CLASS**

**A. Class Definition**

1. The plaintiff class was certified by this Court on November 14, 2003 and consists of: those students eligible for special services who are, have been or will be denied or delayed entry into the special education process which results in a properly constituted initial IEP meeting between the IEP team and the parents or guardians of the student.

**B. Named Plaintiffs**

2. Jamie S. - Mother Kena K. and Advocate Pat Patterson

a. In June 2001 Pat Patterson was contacted by the parent of Jamie S. At that time Jamie was attending Emerson Elementary and was aged 8 and in the second grade. Pat Patterson referred the child for an evaluation in June 2001. It was found then that Jamie's IQ

was 60. Jamie was found eligible for special education in 2001. Jamie has not lived in the Milwaukee Public Schools' attendance area since 2003.

3. Bryan E. – Mother Bridgette E.

a. Since at least 1999, Bryan has had issues with poor attendance. The school administrators and social workers have offered multiple interventions regarding attendance to Bryan and his mother. In 1998, the school offered interventions due to Bryan's lack of achievement in reading. In 1999-2000, Bryan was retained in the 6<sup>th</sup> grade at Bell Middle School. In 2001-2002, Bryan had over 22 absences and 10 suspensions in 7<sup>th</sup> grade and his grades were poor. His end of the year report cards indicated Bryan was not being promoted, but the next year he was placed in the 8<sup>th</sup> grade.

b. The school contacted Bridgette in writing twice during that same year to inform her of his absences. Bridgette requested a school with a later starting time because Bryan could not get up to go to school on time at Bell. The social worker and guidance counselor sent her the application for alternative schools on two separate occasions.

c. In 2002-2003, during the 8th grade Bryan's attendance and grades did not improve. Bryan was promoted to the 9<sup>th</sup> grade. In 2003-2004, at Marshall High School Bryan had 52 absences. At the beginning of the school year, Bryan went to special education classes by mistake because there was another child with the same name who was in Special Education. The duplicative name situation with two Bryan/Brian Edwards attending occurred for approximately ten (10) days. When it was straightened out Bryan went back to regular education classes.

d. Bridgette referred Bryan for a special education evaluation on December 17, 2003. On December 7, 2003 the school sent Bridgette a notice of receipt of referral and scheduled the initial IEP team meeting for February 26, 2004 at that time. On January 22, 2004

the diagnostic teacher called Bridgette to ask for consent for testing. Bridgette gave consent for the school to evaluate Bryan on January 26, 2004. Bridgette was sent the first invitation to the IEP team meeting on February 9, 2004. On February 17, 2004 Bridgette was sent a reminder letter for the initial IEP meeting and offer of alternative participation. On February 24, 2004 the diagnostic teacher followed up with a phone call as a reminder and to offer alternative means participation. The offer of alternative participation letter includes options to schedule the meeting at a different time, participation by telephone individually or as a conference call, receipt of draft prior to the meeting for review/input or conferences prior to or after the scheduled meeting. MPS held the first IEP meeting without Bryan or his mother, Bridgette present because Bridgette had just had surgery and was physically unable to get to school. The IEP team did find him eligible for special education. Bryan is currently enrolled at the Community High School and is making progress towards his IEP goals and is earning credits towards graduation.

4. Melanie V. – Mother Jane P. and Father Peter V.

a. Melanie attended Milwaukee School of the Languages for 6<sup>th</sup> grade in 2001-2002. Melanie failed the 6<sup>th</sup> grade that year. During the 2002-2003 school year Melanie repeated 6<sup>th</sup> grade. At the start of the 2003-2004 school year Melanie had progressively more behavior problems. On September 18, 2003, the school psychologist met with Melanie's parents to discuss academic and emotional concerns. A homework plan was implemented. It was agreed that Melanie would continue to receive school psychological services. The school remained in contact with Melanie's parents regarding her progress. On November 17, 2003 Melanie's parents and the Milwaukee Police Department (MPD) were called to school because

Melanie was engaging in self-injurious behaviors. MPD escorted her to the Milwaukee County Mental Health Complex.

b. The school remained in contact with Melanie's parents regarding interventions for Melanie. MPS had not evaluated Melanie for a special education disability at this time.

c. The school was informed of her medications for depression. Melanie was failing academically. The school contacted Melanie's parents and MPD on December 5, 2003, and Melanie was taken to the Mental Health Complex with the permission of Melanie's mother, because the school psychologist found that she had been cutting on her arms and made threats to kill others. When Melanie returned to school, no school staff contacted her parents about failing grades or absenteeism. The school contacted Melanie's parents about her psychiatric problems. Between December 5<sup>th</sup> and 17<sup>th</sup>, 2003 MPS did not refer Melanie for a special education evaluation.

d. On December 17, 2003, at the request of MPS, Melanie was transported to the county mental health center by the MPD for self-injurious behavior with a razor blade and glass, which occurred at school. Melanie's mother gave her permission for this removal and her father came to the school. At this time, Melanie was suspended for five days for possession of a weapon under school district policy prohibiting the possession of a weapon by any student on school grounds.

e. On January 5, 2004, the district held a conference where the facts of the incident were reviewed by staff and Melanie's parents. Prior to this meeting, MPS sent Melanie's parents paperwork for a Section 504 evaluation. At this meeting, Melanie's parents requested a special education evaluation. The IEP team meeting was held in January within the

90 day timeline and Melanie was found eligible for special education. MPS has continued to offer special education and related services that include social worker intervention, counseling and regular home contact. Melanie is on a reduced-day schedule, has regular psychological services at school, and is allowed to utilize other adaptive behavioral strategies. In addition to annual IEP reviews, there have been nine IEP meetings scheduled between August 2004 and March 2005, five of which were cancelled by Melanie's mother with little notice to the school, due to illness of Melanie and/or her mother.

5. Biagio R. – Mother Debra W.

a. On April 10, 2002 Biagio was referred for special education evaluation by his mother. The initial IEP team meeting was scheduled for May 23, 2002. The case was closed on May 20, 2002 due to lack of parental responsiveness in obtaining necessary pre-existing medical records. School staff attempted on no less than twenty-one separate occasions to contact Biagio's parents in order to obtain the necessary information.

b. In September 2003, according to Debra, Biagio's mother, he was aggressive with other kids, didn't listen to teachers and didn't want to participate in school activities. He was attending grade K4 at Corpus Christi parochial school. Because of these problems, his mother kept Biagio out of school for the next year K5 but Biagio's behavior was still bad at home. He was receiving in home therapy by Dr. Shellie Locke from September 2003 to May 2004. He was hospitalized for mental health treatment about one week in December 2003 and again in February 2004. He was given diagnosis of Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder, Intermittent Explosive Disorder and a Mood Disorder – Not Otherwise Specified (NOS). In April 2004, the Mood Disorder diagnosis was changed to Bi-polar Disorder. Biagio was given Resperidal. In March 2004, Biagio's doctor, Dr. Ferguson

recommended that Biagio go to Childynamics a special day treatment program for the treatment of behavioral and psychiatric disorders in children.

c. In January 2004, MPS was first notified by Biagio's mother about her concerns regarding his significant behavior in his non-MPS social work history. Up to and including this point, Biagio was not attending an MPS school/pre-school program. Biagio was attending a therapeutic, non-academic day treatment program at Childynamics. On January 29, 2004 Biagio's mother requested a special education evaluation. The Emerson staff met with him one time at Emerson School but never saw him in a classroom setting. Debra requested that they observe Biagio at Childynamics but they would not, saying they weren't allowed at Childynamics because it was against the law. The IEP meeting was held and Biagio was found ineligible for special education services because MPS staff did not adequately observe him during the brief observation time they had at the school for the testing.

d. A Special Education Leadership Liaison ("SELL") from MPS contacted Debra in June 2004 to state that MPS would like to re-visit the eligibility determination made during Biagio's evaluation. This SELL contacted Debra again in June, July and August 2004 to discuss revisiting the evaluation and setting up a school observation session. Debra declined this offer and asked instead to wait until Biagio started Emerson in the fall to determine whether another evaluation was necessary. Debra did not want Biagio evaluated outside of the school setting because previously MPS had not observed him inside of the classroom setting and had found him ineligible.

e. Biagio started at Emerson school in September 2004. He began by attending half of the school day at Emerson; and attended Childynamics the other half of the day for continued mental health treatment and behavior therapy. That same month, his mother

agreed to the SELL's request that the MPS evaluation team reconvene and consider additional information including the records from his K4 experience and medical records from his hospitalizations as well as current treatment records. On September 30, 2004 the entire IEP team convened at the home of Biagio and his family, including Biagio's Childynamics' therapist who participated by phone, to re-examine the previous evaluation results and new information. Debra agreed that more information was needed for the team to conduct a proper analysis. The team discussed what testing was needed, including observations by the psychologist and diagnostic teacher. The team decided that additional information was needed before evaluating Biagio for an emotional/behavioral disability. The team scheduled the next meeting for November 19, 2004.

f. The team met in November and Biagio's mother brought in more information about his various emotional/behavioral privately diagnosed disabilities. The team made eligibility determinations for Biagio for Other Health Impairment, Speech and Language, Occupational Therapy and Physical Therapy and an Emotional/Behavioral Disability at this meeting.

g. The team determined that Biagio did not qualify for special education services. The Wisconsin emotional behavioral disability eligibility criteria requires a student to have chronic, severe and frequent behavioral problems at school and in one other environment (in addition to other criteria) to qualify as a student with an emotional disability. The team determined that Biagio had serious behavior problems at home and in the Childynamics program (a therapeutic program), but not at school. Biagio's classroom teacher reported that he had two behavioral incidents thus far.

h. Biagio's mother was informed orally and in writing of her right to appeal the decision of the team and to seek resolution through administrative remedies available to her. On December 9, 2004 the school convened a Collaborative Support Team that included Biagio's parent, to review Biagio's progress in school and collaborate on any non-special education interventions or learning strategies that Biagio may benefit from at Emerson.

**C. Other potential class members**

6. Jyran J.

a. In 2000-2001, Jyran began having problems with his behavior and school work in 2<sup>nd</sup> grade at Lee Elementary School. He was retained in 2<sup>nd</sup> grade. His mother had him evaluated for federal Social Security Disability and he was found eligible to receive Social Security benefits. She informed the school that he was eligible for the Social Security benefits. No referral was made by school staff for special education at this time. Social Security disability evaluation process and eligibility criteria is wholly separate from special education evaluations and disability criteria, but can be considered during evaluations of children to determine if they meet special education eligibility criteria.

b. During the next two years, his family moved twice. He continued to have problems at 38<sup>th</sup> St. school, which was his neighborhood school at that time. His mother continued to be in frequent contact with the school staff. During 2001-2002, Jyran attended third grade at the 38<sup>th</sup> Street School and Bryant Elementary School and he was retained at the end of this year. During this year, he also had a Central Office hearing for a behavioral incident.

c. Jyran attended Phyllis Wheatley School in 2002-2003, as an 11 year old in third grade due to being retained. His mother placed him in Willowglen Day treatment at the advice of her son's private therapist. She made the request for getting Jyran evaluated for special education and placed in the right school. The referral was made on November 16, 2004.

d. On February 22<sup>nd</sup> the building coordinator made contact with Cynthia by telephone and the two agreed that Cynthia would come to school the next day to sign consent papers for MPS to evaluate Jyran. On February 23, 2005 Cynthia signed the consent forms.

e. The initial IEP meeting was held on May 5, 2005 and continued on May 12, 2005. Jyran was found eligible for special education services in the area of emotional/behavioral disability and specific learning disabilities. The team discussed Jyran's eligibility for compensatory services because of the delay in his evaluation and 5 days of suspension which exceeded the statutory limitations for a child with a disability. The team decided to make the compensatory services determination at a later team meeting.

f. On May 26, 2005, the team met to develop a Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP). In addition, the team discussed the issue of compensatory services. MPS staff determined that Jyran was owed a total of 57 days. Based on discussions between Jyran and his mother, and because of a planned trip to Alabama in July, they agreed to accept one-on-one tutoring for one hour each time, twice ore week for a total of 57 one hour tutoring sessions to start in fall 2005.

7. Shaquille J.

a. Shaquille attended the Head Start program at Clark Street school at age 4. Shaquille was enrolled in 5 year old kindergarten at Clark Street School the next year. Prior to admitting him, she met with the principal and the school nurse and informed them of his seizure disorder and the side effects of the medications he was on. She provided the school with a printout from the pharmacy about these side effects. Shaquille was retained in the second grade.

b. He was suspended many times resulting in a Central Office hearing. Shaquille's mother requested a special education evaluation on June 4, 2004. The request was

not followed up on until September 27, 2004 via a note sent home in Shaquille's backpack stating she needed to sign the authorization to evaluate. The IEP was held November 30, 2004 and he was found eligible.

c. Shaquille's mother filed a complaint regarding this issue with the Department of Public Instruction. The DPI found that MPS was out of compliance in complaint Case No. 04-043 for failing to timely evaluate Shaquille for special education. MPS offered Shaquille forty hours of compensatory services for the delay in Shaquille's evaluation process.

## **II. CHILD FIND**

### **A. Prevalence and Demographic Data**

8. Milwaukee has a population of approximately 600,000 people, 54% of whom are persons of color. Nearly 16% of households speak a language other than English in the home. Twenty percent of the population are children between the ages of 5 and 17. In addition, 36% of children who live with their family, live with a single mother as the head of the household. Almost one-third of the children live in a household with persons other than their family members as the head of household. Over half of the households earn less than \$35,000/year. Over 30% of all children in Milwaukee live below the poverty line. These demographics are not unusual for urban areas across our country. Mobility rates as high as 10,000 students per year and rising (ranging from 8.8 % to 11.7 % from elementary to high school), parent access, parent responsiveness, and high student needs are the reality within MPS.

9. On an annual basis, all school districts, including the MPS, submit data to the DPI regarding overall prevalence of students in special education, numbers of referrals, referral rate, and overall identification rate. This data is reviewed at least annually by both the MPS Division of Special Services ("DSS") and the DPI. As shown in the chart below, MPS data for the 1999-

2000, 2000-2001, 2001-2002, 2002-2003, and 2003-2004 school years shows that overall prevalence of MPS students in special education is roughly the same as for the overall State. Prevalence rate is the total number of children with disabilities divided by the total public and private school enrollment in grades pre-K through 12. Identification rate is the percentage of initial referrals resulting in an identification of a disability.

| <b>Prevalence of All Children in Special Education:</b> | <b>1999-2000</b> | <b>2000-2001</b> | <b>2001-2002</b> | <b>2002-2003</b> | <b>2003-2004</b> |
|---|------------------|------------------|------------------|------------------|------------------|
| MPS   | 12.75%           | 13.11%           | 13.01%           | 13.05%           | 13.07%           |
| State   | 11.76%           | 12.20%           | 12.39%           | 12.41%           | 12.56%           |
|   |                  |                  |                  |                  |                  |
| <b>Special Education Identification Rate:</b>           |                  |                  |                  |                  |                  |
| MPS   | 67.74%           | 60.57%           | 62.83%           | 70.6%            | 63.03%           |
| State   | 67.03%           | 65.89%           | 63.95%           | 65.34%           | 65.42%           |

**B. SOAP and SEP: Foundations of Oversight**

**i. School Education Plans (SEP)**

10. MPS requires each individual school to develop a School Educational Plan (SEP) that outlines how each school will be working towards increasing student achievement throughout the school year. The foundation of all school based planning and decision making is guided by the SEP. The SEP is developed at the building level by a team of individuals usually called the "Learning Team". The SEP is to be developed to incorporate the district's mission and teaching and learning targets which are aligned with state standards into a working document to guide the day-to-day activities of each school. School based administrators are trained and offered in-service opportunities on the development of the SEP throughout the school year. The SEP is intended to be a roadmap and a working document for each school to use during the school year to support their efforts in increasing student achievement. The ten sections of the

SEP guide the school's efforts in developing and implementing an effective educational plan. The development of the plan is supported by the central administration through the provision of workbooks, electronic support, and personal training seminars to ensure that schools have the tools available to them to develop a meaningful plan aimed at boosting the achievement of all students.

11. Each School Education Plan (SEP) is reviewed by a review committee that, at minimum, consist of an administrative specialist, a leadership coach, and a special education leadership liaison to determine if the following items specific to special education have been met in the plan:

- a. Description of service delivery model (e.g., continuum of services);
- b. Disaggregated special education test scores;
- c. Research-based specially designed instructional and behavioral strategies embedded in the plan that addresses students with special needs for the purpose of increasing academic and behavioral achievements;
- d. Demographic description of special education population;
- e. Representation of special education staff, parent, or student on the learning team;
- f. Professional development for special educators and general educators specific to the schools, special education, student population instructional needs (behavioral and academic);
- g. Evidence of utilization of related service staff such as psychologist, school social worker, and nurse;
- h. Disaggregated suspension, truancy, and attendance rates;
- i. Trainings, workshops, meetings to improve procedural compliance and other special education needs identified at the school level;
- j. Discipline plan that includes school-wide, classroom, and individualized positive behavioral interventions/supports;
- k. Include parent of students with special needs in the Family and Community Involvement Plan;

- l. Strategies are developed by the school to monitor procedural compliance in addition to the district compliance tools;
- m. Were all items at 94% accuracy or below addressed in the compliance needs assessment summary;
- n. Compliance implementation plan developed to address all items at 94% accuracy or below; and
- o. A variety of formative data sources are used (e.g., discipline day recorders, progress reports, report cards).

12. In the course of the SEP plan development, the learning team first collects and analyzes data to determine what their school's strengths and needs are. Following the data analysis, the team categorizes and prioritizes needs based on the assessment and chooses three to five areas where there is greatest need to focus on for the school year. Clear, measurable and sustainable goals are then developed to increase performance in the areas of greatest need which are supported by the implementation of specific strategies in those areas. Once the SEP is developed, it is submitted to the office of the Superintendent and a centrally located review team is assigned to conduct an onsite review of the SEP with the school based learning team. The purpose of the central office review is to provide support to the individual school in the areas identified as the greatest need by the school and to provide feedback on the plan to assist in its implementation. The entire SEP is then reviewed by the school-based learning team on a regular basis to evaluate the effectiveness of those strategies.

13. Each school is also required to embed strategies of increasing the achievement of students with disabilities in their SEP. The learning team is required to have at least one special education stakeholder representative to ensure that the SEP provides oversight of a clearly articulated philosophy and best practice approach to the provision of special education in a non-label driven service delivery model. This building level effort is supported by central services staff through the SELL position as well as other special education administrative staff. SELLS

and special education supervisors work with individual schools to develop service provision models that shift special education service delivery from program driven models to service delivery models based on individual student needs versus individual student labels.

ii. **Special Education Action and Oversight Plan (“SOAP”)**

14. DPI’s July 17, 2001 letter to MPS summarizing its 2000-2001 on-site monitoring findings observed that MPS needed an effective system of administrative accountability at the school building level in order to resolve the compliance issues DPI had found through on-site monitoring and its other oversight activities. The letter expressed DPI’s pleasure that MPS had agreed to develop and implement such a system by September 1, 2001. MPS did not develop and implement a system of administrative accountability at the school building level by September 1, 2001.

15. In October 2001, DPI entered into a consulting contract with Lee Greenwald, the former director of special education in the Madison Public Schools. Initially, Dr. Greenwald’s role was to serve as DPI’s chief negotiator in mediation efforts between the parties shortly after this lawsuit was filed.

16. Shortly after Dr. Greenwald was engaged by DPI, DPI expanded Dr. Greenwald’s role to assist MPS in creating a centralized system of special education accountability within MPS’s decentralized educational service delivery system.

17. In April, 2002, Dr. Greenwald completed a written plan for creating a centralized system of special education accountability within MPS’s decentralized service delivery model. The title of Dr. Greenwald’s plan is “Milwaukee Public Schools Special Education Oversight Action Plan.” The parties and witnesses in this case frequently refer to the plan by its initials -- “SOAP.”

18. DPI's 2001-2002 on-site monitoring of MPS in May, 2002, revealed that MPS had not corrected the implementation errors found in DPI's 2000 on-site monitoring, and had not corrected the implementation errors identified in the five Consolidated Corrective Action Plans (CCAPs) created in 2000 and 2001. CCAPs are corrective action plans centered around broadly-defined themes of placement, non-attendance, discipline, speech and language, and IEP services, identified in monitoring findings and IDEA complaint findings.

19. During the 2002-2003 and 2003-2004 school years, DPI did not conduct on-site monitoring of MPS using the methodology acknowledged by OSEP in its October 2000 monitoring report; i.e., a combination of student record reviews, staff and parent interviews, and policy reviews. Instead, DPI focused its oversight activities on assisting MPS to build the effective, centrally administered system of special education procedural oversight and accountability mechanisms within MPS, and the mechanisms to be implemented at each school building, that DPI had ordered in its June 18, 2002 monitoring report to MPS.

20. DPI required the Milwaukee Board of School Directors to adopt and implement the essential components of Dr. Greenwald's SOAP plan.

21. With minor modifications, Dr. Greenwald's SOAP plan was adopted by the Milwaukee Board of School Directors on June 27, 2002, with instructions to MPS administrators to implement SOAP as soon as possible.

22. In June of 2002, the Board adopted the Special Education Oversight Action Plan (SOAP) and implemented several other initiatives to improve the provision of special education services within the Milwaukee Public School system. The SOAP is a centralized special education accountability system that provides oversight and evaluation of the delivery of special education services in each school. This system is based on a centrally designed and locally

implemented self-assessment and continuous improvement monitoring process using each school's specific School Education Plan. Highlights of SOAP include provisions for: the appointment of a District Ombudsperson to receive special education complaints if required; the development and implementation of a parent dispute resolution process; increased opportunities for parental involvement and support for parents through the expansion of the centrally located Parent Information Center; greater accountability of building principals in the provision of special education services through an individual evaluation process; greater oversight and evaluation through the requirement that each school include a major special education component in its education plan; additional staff members to provide expertise and guidance to individual schools in special education; implementation of on-site self monitoring activities; and establishment of a Board-level committee on special education to monitor and assess the special education program for the district as a whole.

23. One of the essential features of SOAP is the establishment of direct lines of authority and accountability in the district's special education program. The Director of the DSS, currently Patricia Yahle, has been charged with the accountability for SOAP with the authority equal to the Director of Leadership Services, who provides comparable direction, support, and oversight of the District's general education program.

24. Under SOAP, the Director of DSS has the responsibility for oversight of the special education compliance and monitoring functions of MPS and supervises the special services administration, including the Special Education Leadership Liaisons (SELLs) established as part of the SOAP and the Special Education Coordinators. Although the original SOAP plan called for six SELLs, MPS and DPI was concerned that six was an insufficient number. Currently MPS employs nine SELLs. DPI provides funding support for the salaries

and fringe benefits of two SELL positions. The Special Education Coordinators have district-wide responsibilities, including Psychological Services, Speech and Language Services, and Allied Health; Social Work Services and Transition and Community Services; Non-Conventional Programs; Coordinator of Compliance Management Services, Equitable Education Opportunities Liaison for Students with Disabilities.

25. Each SELL works with approximately 20-26 schools. The SELLS work under the direction of the DSS director, and have the responsibility to ensure procedural compliance, appropriate resolution of parental disputes, and appropriate educational programming within an inclusive local school building. The SELL serves as a liaison between the schools and the district central office. Within the centralized special education accountability system, the SELLS have the authority, in coordination with the principal, to require a teacher or other staff member(s) to participate in appropriate meetings. The SELLS have additional district-wide responsibilities, including Child Find, compliance and management services, extended school year, Early Childhood Assessment Team, Wraparound Services, non-conventional programs, home and hospital program, Section 504, residential care centers, partnership schools with MPS, charter schools, and non-instrumentality charter programs.

26. At least one Special Education Supervisor is assigned to each school. Supervisors are assigned to more than one school. Each school has at least one Diagnostic Teacher. The Supervisors are supervised by the SELLS and are responsible for overseeing the compliance monitoring of the building—beginning with the receipt of referral, through diagnosis and evaluation, and IEP development and implementation. The Special Education Supervisors and building principals oversee the Diagnostic Teachers who have the responsibility for calling the parent and setting up the evaluations and the IEP meetings. The Supervisors are responsible to

work with building administration to ensure that the initial IEP meeting takes place in time to complete the evaluation and placement process within 90 days from the initial receipt of referral, and that evaluation data is entered into the MPS Special Services Information Management System.

27. Consistent with SOAP, nine DSS workgroups have been formed by the Director of DSS as a team approach to lead the efforts in the schools to achieve the goals of SOAP. Each work group is led by a SELL and composed of approximately 5-7 Special Education Supervisors and one special education parent liaison. Each work group member is encouraged in writing, at least twice a year, to submit comments and suggestions for improvement of workgroups or DSS operations.

28. SOAP makes each school principal accountable for the provision of special education services and for the implementation of program improvements in his/her school. Principals are evaluated by both the Director of Special Services and by the Director of Leadership Services.

29. In addition, the DSS Director, the other members of the DSS Administrative Team, the nine SELLS, and the five Special Education Coordinators are evaluated as to the performance of SOAP.

**iii. SOAP/SEP Interactivity**

30. Under SOAP, the building-based oversight and evaluation of the delivery of special education services takes place through the SEP. The SEP is developed each year by a school committee that represents the school's constituents. The content of the SEP is determined, generally, by self-assessment, by data based, outcome focused decision making, and by continuous improvement planning. The SEP addresses general education issues as well as

special education issues. Under SOAP, each SEP contains a self-assessment of the school's special education performance through a review of student outcome data, surveys of parents and staff, and classroom observations. The self-assessment must also contain a rigorous annual self-assessment of special education compliance, developed jointly between MPS and DPI. Under SOAP, the school's special education needs, identified through the self-assessment, must be addressed in the school's school improvement plan. In addition to the school's self-assessment, SOAP requires DPI to annually conduct activities to monitor and evaluate the efficacy of the special education component of the SEP, and to independently assess the district's procedural compliance with special education requirements.

31. SOAP requires that the special education component of each school's SEP be reviewed and approved by the Special Education Supervisor and SELL assigned to that school. Under SOAP, each school's assigned SELL is required to conduct a quarterly review of the school's progress on its school improvement goals using district and school performance data and special education compliance data. The SELLS are required to meet on a monthly basis with the Director of DSS and with the leadership specialist assigned to the SELL for the purpose of reporting on the status of special education and the SEP process in each building.

32. SOAP also requires MPS to link school and district budgets to the self-assessment and continuous improvement process. Under SOAP, MPS offered assurance that its budgets would support the implementation of SOAP in every building, and required that its schools' budgets provide for the needs identified in each school's SEP. To ensure that identified needs are properly budgeted, SOAP requires that the appropriate leadership specialist and SELL review each school's budget.

**C. MPS Child Find Policies**

33. According to MPS policy, all school administrators, teachers, psychologists, building coordinators, Special Education Leadership Liaisons (SELLs), health professionals, counselors, pupil services central office staff among others in MPS are responsible for meeting the district's Child Find obligations.

34. All MPS staff are trained, to some extent commensurate with their duties, in Child Find. This includes, but is not limited to, teachers, administrators, social workers, Head Start staff, literacy coaches, building coordinators, special education supervisors and leadership liaisons, secretaries, diagnostic teachers, psychologists, guidance counselors, speech pathologists, nurses and occupational and physical therapists. For example, in August 2004, all MPS building coordinators and special education supervisors were trained in Child Find. The special services administration and parent information specialists were trained in Child Find in September and October 2004. The building coordinators and supervisors in-serviced their respective building staff during the opening week of school on Child Find. It is MPS policy that attendance at each of the training sessions is mandatory.

35. Ultimate oversight responsibilities for Child Find rest with the Superintendent, currently William Andrekopolous, and School Board. The Chief of Pupil Services, currently Ada Rivera, is third behind the School Board and the Superintendent in ensuring that Milwaukee Public Schools meet their Child Find obligations. A majority of the oversight duties regarding Child Find activities have been delegated to the Director of Special Education, currently Patricia Yahle, and her office.

36. Because Child Find is an important responsibility, the MPS has assigned a SELL, Charlyn Pozza, to oversee district-wide Child Find activities, even though the responsibilities for referral and evaluation are with the schools.

37. MPS publishes handbooks which contain the district's policies and procedures relating to special education, and which contain the districts policies and procedures specifically relating to the responsibilities of IEP teams.

38. Each MPS school identifies a Building Coordinator who receives referrals for evaluation for possible special education support. There is mandatory training at the beginning of each school year and periodically for new Coordinators regarding the special education process and procedures. General and special education teachers also received Child Find training during the opening week of the 2004-05 school year.

39. MPS policy requires any licensed school staff member who reasonably believes a child has a disability to make a special education referral.

40. MPS policy requires every school staff member to accept initial special education referrals from parents or guardians.

41. The MPS Parent/Guardian Rights and Responsibilities Handbook is distributed to the parents and guardians of MPS students at the beginning of each school year, and is also provided to parents when their students enroll in the district during the school year.

42. The MPS Parent/Guardian Rights and Responsibilities Handbook details the rights of parents of children suspected of having special education needs—with the MPS Child Find telephone number.

43. MPS published Special Education Policies and Procedures manual in 2002. A draft of the publication was reviewed by staff from the DPI special education team prior to publication for the purpose of determining whether the policies and procedures complied with state and federal special education law. As published, the content of the 2002 manual was approved by DPI.

44. MPS published a revised version of the Special Education Policies and Procedures manual in February 2004. A draft of the publication was reviewed by staff from the DPI special education team prior to publication for the purpose of determining whether the policies and procedures complied with state and federal special education law. As published, the content of the February 2004 Special Education Policies and Procedures manual was approved by DPI.

45. MPS published a revision of the IEP Team Procedural Handbook in September 2004. A draft of the publication was reviewed by staff from the DPI special education team prior to publication for the purpose of determining whether the policies and procedures complied with state and federal special education law. As published, the content of the September 2004 IEP Team Procedural Handbook was approved by DPI.

46. MPS policy requires that when a parent requests a special education referral, the district must evaluate the student, develop an IEP for eligible students, and send the student's parent a notice of educational placement, within 90-days of the receipt of the referral.

47. MPS policy requires that any time a parent or other individual inquires, verbally or in writing, about a referral for special education services or expresses concern regarding a possible disability, the parent or individual must be provided with information about how to initiate a referral.

48. MPS policy requires that when the district receives correspondence from any person requesting an evaluation for a student and the correspondence does not state that the reason for the evaluation is a suspected disability, or does not identify the request as a special education referral, the district must determine if the correspondence is a special education

referral. This policy is documented in MPS' IEP Team Procedural Handbook, revised September 2004.

49. MPS policy requires that, in order to make a determination within a reasonable time after receipt of such correspondence, the district must inform the correspondent of their right to make a special education referral and how to make a written referral. This policy is documented in MPS' IEP Team Procedural Handbook, revised September 2004.

50. MPS policy requires that, in every case where it is unclear whether the person is requesting a special education referral, the district representative may not discourage, refuse or close out a referral for lack of perceived reasonable cause. This policy is documented in MPS' IEP Team Procedural Handbook, revised September 2004.

51. MPS policy assigns responsibility for processing initial referrals for special education to the building coordinator in each school.

52. MPS policy provides that parents and others are not required to use the district's forms when making a special education referral.

53. MPS policy requires that parents who need help making a written referral should first be directed to the building coordinator, but that if the building coordinator is unavailable, another staff member must be prepared to assist the parent. This policy is documented in MPS' IEP Team Procedural Handbook, revised September 2004.

54. MPS policy requires that parents be provided with written notice of their procedural rights at the time they are notified that a referral has been received. This policy is documented in MPS' IEP Team Procedural Handbook, revised September 2004.

55. MPS policy requires that parents be given the opportunity to participate in the review of existing data on the child, and in identifying what additional data, if any, are needed to

complete the evaluation. This policy is documented in MPS' IEP Team Procedural Handbook, revised September 2004.

56. MPS policy requires that parents be notified that a referral has been received, and that a signed consent to proceed be received before additional testing is administered. This policy is documented in MPS' IEP Team Procedural Handbook, revised September 2004.

57. MPS policy requires that IEP Team meetings include the following participants: one or more of the student's parents; at least one regular education teacher familiar with the student; at least one special education teacher; a qualified, knowledgeable representative of the local educational agency (LEA) with authority to commit the district's resources; and under some circumstances, other specified individuals. This policy is documented in MPS' IEP Team Procedural Handbook, revised September 2004.

58. MPS policy requires that diagnostic teachers follow and document a protocol of steps to ensure parent participation in IEP Team meetings, and specific actions to take when a parent does not participate in an IEP meeting after the protocol is followed. This policy is documented in MPS' IEP Team Procedural Handbook, revised September 2004.

59. MPS policies restrict requests for extensions of time beyond 90 days to complete the IEP Team process and determine placement to a specific set of reasons, require that the reasons be documented, require that the requests be approved by a supervisor, and limit the number of extension requests to two per case. This policy is documented in MPS' IEP Team Procedural Handbook, revised September 2004.

60. When a parent registers their child for school attendance in MPS, they also complete a form that asks whether their child has a disability.

61. MPS has district-wide screenings when students enter school (i.e., vision, hearing, pre-academic, social, and communication).

62. MPS sends information about special education forums to some community organizations for meetings that are held periodically throughout the year. MPS sends a packet of child find information to clinics and doctors' office upon request. The packet is available in English, Spanish and Hmong languages. The packet includes a referral form, school and district contact information and a booklet on the special education evaluation process, including a statement of parental rights.

**D. MPS Child Find Procedures**

63. Child Find information appears in the MPS calendar and Parent/Student Rights & Responsibilities and Discipline handbook which is mailed annually at the beginning of the school year to every MPS household with school age children and to all MPS schools.

64. At least two Parent Forums and between two and ten Community Resource Fairs are held during the school year. The MPS Special Education Task Force also holds monthly meetings that include administration, teacher, parent and community members.

65. Child Find information is provided in CESA Consortium Child Find Directory, which lists all the Child Finds in the state.

66. Child Find information is listed in the Community Information Data Base of the Milwaukee Public Library.

67. Child Find information is also found in the Archdiocese of Milwaukee Resource Manual.

68. Child Find in-service presentations are done for Public Health nurses, day care centers, (through MPS Early Childhood Assessment Team (ECAT), WIC centers, and community organizations which provide family/parent empowerment assistance. For example,

on September 14, 2004, a meeting was held with the representatives from various community based Head Start programs.

69. Child Find information is published annually in the December issue of MetroParent resource guide.

70. Various SELLS, special education supervisors and administrators are responsible for outreach and training to private and parochial schools. Dare Boling, an administrator, is the coordinator of non-conventional programs. She coordinates the provision of services for private and parochial schools with MPS. In conjunction with many MPS personnel and private/parochial school representatives, develops the MPS service plan for private and parochial school students in need of special education services. Ms. Boling also coordinates the IEP teams for special education students in court-ordered, residential and other non-traditional education settings. Peggy Holtman coordinates staff development training efforts for the non-traditional sites, which includes training on the referral and evaluation process.

71. The MPS Parent Center staff are located at Central Office in two locations. The parent center was expanded. The parent center staff answer calls and meet in-person with parents. Their role is to direct parents to the proper resource within MPS to have their issues resolved. Parent information specialists coordinate with parents to find the appropriate avenue for resolution. They are trained in Child Find and other special education issues. The parent center staff assist in the summer and district-wide three choice enrollment processes as well, which may be a parent's first contact with the district. The school application that the parent center staff assists the parents in filling out asks whether a child has special education needs.

72. MPS Parent Center staff are not given protocols or scripts regarding what questions to ask parents or others who call in regards to a child, nor are they told under what

circumstances they should tell a parent to seek a special education referral. If a parent requests a special education referral, it is MPS policy that the parent center processes that request.

73. The two Parent Information Specialists who were deposed described some of the situations in which they suggest parents may consider special education as follows. Georgette Rodriguez may suggest a referral for special education if there is a pattern of retentions or behavior concerns. Monica Lopez stated that if a child is being retained for a second time she suggested the child be evaluated for special education.

74. Rodriguez testified in her deposition that she had been contacted by parents, teachers and an assistant principal who told her that they had not been successful at getting special education referrals processed.

75. A secretary in the Parent Information Center, currently Donna Maras, receives referrals for special education at Central Office. Ms. Maras is housed in the MPS Parent Center, describes her Child Find duties as taking referrals from administrators, nurses, physicians, social service agencies and parents. During the school year she gets on average eight to ten referrals per week. In the summer time that number rises to fifteen to twenty because most school buildings are closed so parents come to central office to initiate referrals.

76. When Ms. Maras gets a referral, she fills out a referral form and then sends it to the child's school or if the child is not in school she sends it to the school closest to the home address. During the summer, the referral is sent to the summer special education team. She enters the referral into the district-wide Encore database. At this point, it is the responsibility of the building coordinator and special education supervisor at that particular school to begin the evaluation process. MPS policy is that the building coordinator and special education supervisor conduct follow-ups to ensure the 90 day time-line from referral to placement is met.

77. If a parent seems hesitant to make a special education referral Ms. Maras asks them if they want to do a screening instead. It is district policy that she fills out a screening form and sends it to the building coordinator who then contact the parents to set up an interview to discuss their child's issues and if appropriate, conduct an evaluation of their child by the appropriate professionals.

78. Two additional staff members receive and distribute special education referrals submitted to the Milwaukee Public School Support Center, a facility separate from the Central Office where the Parent Center is located. Plaintiffs requested copies of the complaint intake cards filled out by Parent Information Specialists in the MPS Parent Center located at MPS Central Office. They fill out blue cards for what they label as special education complaints and yellow cards for what they label as regular education complaints. The use of blue and yellow complaint cards was discontinued in the 2004-05 school year.

**E. Additional Child Find Practices for Specific Target Groups**

**i. MPS' Actions to Assist in Identifying Students Who May Have Disabilities Among Students With Behavioral Issues**

79. The 2004-2005 MPS district policy regarding disciplinary removal procedures, Duties of the Administrator Responsible for Discipline, requires MPS staff to consider, in situations where a student has been removed for more than ten days in a school year, whether the child should be suspected of having a disability. Paragraph 8 of the policy provides, "if the student does not have an IEP and is not in the referral process but has been removed more than 10 days, the student may be in need of consideration for a special education or Section 504 evaluations. In such cases, the staff will need to consult with the building coordinator or Special Services Supervisor/Administrator regarding possible 'Child Find' obligations under IDEA and Section 504."

80. The MPS central office provides periodic training for teachers on classroom behavioral management, accommodations, and modifications to assist nonpublic and private school teachers with learning strategies to deal with challenging behaviors. Outreach by the central office also takes the form of meetings with nonpublic and private agencies/programs regarding special education procedures. For example, during the 2004-05 school year, MPS provided four staff development opportunities at no cost to staff members of the Milwaukee-area non-public schools. One of these trainings was on Child Find Activities.

ii. **MPS' Actions to Assist in Identifying Students Who May Have Disabilities Among Children Birth –Three Years Old**

81. MPS has an Early Childhood Assessment Team (“ECAT”). The ECAT team is accountable for ensuring that evaluations are completed and IEPs are held in a timely manner prior to the child transitioning to MPS at age three. The ECAT team receives referrals from Head Start, Birth to 3 programs, hospitals, physicians, and parents. The ECAT team currently has two part-time and 1 full-time Special Education Supervisors and four Diagnostic Teachers. A centralized database manages data for children in birth to 3 (Part C) programs who are transferring into MPS to assist in evaluation and indicates whether the 90 day timeline is being met, or whether there is a valid extension for a child-related reason.

82. MPS’s data reflects that about 90 percent of the children referred to MPS from the birth to three agencies qualify for special education.

83. During the school year the Early Childhood Assessment Team (ECAT) gets about ten referrals from outside the Birth to Three network that come through Child Find at central office. During the summer months the ECAT gets about 30 cases through the Child Find at central office for referral.

84. ECAT gives out Head Start information resources as outreach at IEP meetings. MPS houses a Head Start program office at Central office under the direction of the office of pupil services that coordinates Head Start programs throughout the city.

85. ECAT gives developmental milestone charts that have the MPS and Birth to 3 referral phone numbers on them to day care centers when they go to the centers to do special education evaluations.

86. During the period of April 2004-May 2005, the MPS website had inaccurate information as to the age at which children can be referred for a special education evaluation at one location on the website, on one page titled "Special Education Kindergarten." This information has been corrected. The website also contained multiple places where the accurate information was posted, such as the Special Education Parent Information Pages.

**iii. MPS' Actions to Assist in Identifying Students Who May Have Disabilities Among Students with Attendance Issues**

87. Weekly truancy reports are generated by school and central office administrators, including principals, vice principals, and special services administrators. Each school is required to have a building Truancy Intervention Coordinator (i.e., social worker, psychologist, or another identified person) who is responsible to monitor these weekly reports, contact and meet with the parents, work with regular education teachers, and encourage students to attend school.

88. Jon VanSteckleman, a social worker, is assigned to the community truancy abatement project (the TABS program). Also, it is MPS policy that its social workers work in the community providing training and assessing individual student needs, with the goal of bringing the student back to school and determining what types of services may be needed, including possible referral to special education.

iv. **MPS' Actions to Assist in Identifying Students Who May Have Disabilities Among Students Characterized as "At-Risk"**

89. MPS has numerous programs and policies that target at risk students in the general education school population that may need special education or non-special education assistance in order to succeed at school.

90. MPS policy provides that teachers may bring concerns about students who are in danger of being retained to the school learning team, the collaborative support team, or problem solving team to determine what interventions might be needed, including possible referral to special education. It is MPS policy that the teacher or principal also holds conversations with the parents about the child's needs and possible retention.

v. **MPS' Actions to Assist in Identifying Students Who May Have Disabilities Among Students Homeless Youth**

91. MPS has two liaisons that work with the community to identify homeless children and to provide needed services. These liaisons work in the DSS and inform other DSS staff if they suspect that any homeless child may have a disability and be in need of special services. If so, a special education referral is initiated.

vi. **MPS' Actions to Assist in Identifying Students Who May Have Disabilities Among Students Adjudicated Youth**

92. MPS employs staff who work with the adjudicated youth programs.

93. It is MPS policy that MPS school psychologists also work with staff from the community mental health programs to provide information regarding the special education process, procedures, and services of the MPS.

vii. **MPS' Actions to Assist in Identifying Students Who May Have Disabilities Among those Student Who Drop Out**

94. The MPS's computerized Special Education Data Information System provides ongoing data regarding students who drop out of school for the school principals, Leadership

Specialists, Special Education Supervisors, and SELLS. It is MPS policy that schools are to monitor this data to determine trends and reasons for dropping out.

**F. Technology/Data Management**

95. MPS utilizes new technologies to improve tracking and accessibility of special education related information. For example, since 2001 MPS has been developing and is implementing a web-based data management systems known as the SSIMS/ Encore system. This system allows both building and district level staff to access a student's education records electronically at any time, including behavioral and academic records. This technological improvement will allow MPS staff to review records immediately when MPS students transfer intra-district. MPS expects the IEP viewing and development web-based option to be fully operational by October 2005. As a large urban district, MPS has a high mobility rate.

96. MPS tracks all IDEA complaints and parental special education concerns, as well as their resolutions, are tracked on the Parent Dispute Resolution System (PDRS). PDRS is a web-based database that allows convenient, real-time access at the district and building level of the processing and resolution of special education related complaints. PDRS was functional as of September 1, 2004. Per MPS policy, the use of PDRS, became mandatory as of January 1, 2004. Those complaints not logged in PDRS from September 1-December 31, 2003, were recorded on complaint cards at the Parent Center.

97. Compliance with the 90-day timeline for evaluating students for special education needs is tracked using the SSIMS/Encore system. It is MPS policy that special education supervisors generate and review reports from Encore weekly to determine what progress is being made on each referral and identify and resolve potential issues, should they occur.

98. Referrals for special education evaluation are tracked within the MPS Special Services Information Management System. It is MPS policy that Special Education Supervisors

work with building administration and are accountable for making sure that the Child Find process is actually being implemented — monitoring timelines and determining whether referrals are being submitted and processed in an appropriate way.

99. One of the elements of the Special Education Oversight Action Plan (“SOAP”) adopted by the MPS Board of Directors in June 2002 was the recognition that data management is an important component of any accountability system.

100. MPS is implementing a web-based computerized Special Services Information Management System—that begins with referral and goes through the entire special education process. The electronic Special Services Information Management System has two components—a database system called Encore, which is fully operational, and the web-based development of the IEP document system, which MPS expects to be fully operational in October 2005.

101. The Encore database system has been operational since August 1, 2003. It provides information such as demographic information about students with disabilities being served, evaluation timelines, numbers of certified staff, and school discipline actions, including suspensions and expulsions.

102. The web-based IEP document system is live, and provides authorized personnel to have access to the child’s IEP—with data that is inputted directly from the child’s referral by Building Coordinators and appropriate MPS staff who conduct assessments, send invitations to IEP meetings, document participation in the IEP meetings, and document the content of the IEP development and the IEP process. MPS expects the web-based IEP system to be fully operational in October 2005. In the meantime, MPS is still using a computer-based program to develop and document the IEP process and content.

103. With both the current IEP computer-based system and the Encore system, it is MPS policy that the Special Education Supervisor, Diagnostic Teachers(s), and SELLS identify when an evaluation is getting close to the 90-day timeline and work proactively to make sure timelines are met. An IEP meeting may be convened to determine if there was any harm caused by an exceeded timeline. It is MPS policy that follow-up for staff errors are dealt with during the staff evaluation process.

### **III. MONITORING AND COMPLIANCE**

#### **A. MPS Complaint Resolution Process**

104. One of the elements of the Special Education Oversight Action Plan (“SOAP”) adopted by the MPS Board of Directors in June 2002 with DPI’s direction was the creation of a Parental Dispute Resolution System.

105. It is MPS policy that each school principal is responsible for implementing and monitoring a dispute resolution process in their schools. Parents with a complaint may file an MPS complaint with their school principal. Parent complaints are promptly addressed and resolved at the school site, if possible. If a principal cannot resolve a complaint within five school days of the receipt of the written or verbal complaint, immediate intervention is requested from a SELL. The SELL must resolve the matter within five days of the request for intervention and may consult with the leadership specialist for that school, if necessary.

106. It is MPS policy that if the SELL determines that a violation of state or federal special education law has occurred, the SELL will consult with the Leadership Specialist, and the school principal will be directed to correct the violation.

107. The Director of the DSS, Patricia Yahle, monitors parent complaints on a regular basis. If she sees a number of complaints in a particular school, she contacts the SELL or the

Leadership Coach that works with the principal. It is MPS policy that these contacts lead to specific interventions by the principal as well as discussions with the DSS management team to be certain that there is sensitivity and attention to the complaint issues, location of these issues, and their resolution. As part of the monthly report to the Board of Directors on the implementation of the SOAP, the Chief of Pupil Services, Ada Rivera, presents a summary of the data in the school and Parent Service Center complaint logs, including the number of complaints, the issues, resolutions achieved, and actions to improve the dispute resolution system in any school.

108. It is MPS policy that a parent may also choose to file a complaint with the Parent Information Center. The District's Parent Information Center is currently staffed by nine Parent Information Specialists, who are charged with assisting parents in the resolution of their issues. Each of the Parent information Specialists works with 30-40 schools. DPI provides financial support to MPS for some Parent Information Center staffing.

109. It is MPS policy that parents are encouraged, but not required to make their complaint in writing. School principals maintain a log of each complaint at their school. The Parent Information Center also maintains a log of complaints received and referred on to the appropriate school for resolution.

110. School principals have ongoing access to information regarding the total number of complaints, complaint issues, and content regarding specific complaints within a recently-developed electronic Special Services Information Management System. The complaint is sent through PDRS to the principal when an IDEA and/or Parent Information Center complaint has been filed.

111. On June 27, 2002, in a companion resolution to the one that created SOAP, the MPS Board of Directors adopted Resolution (0203R-018), which provided for the appointment of an individual to be the District Exceptional Education Ombudsman—in the event that MPS receives complaints that cannot be resolved by the DSS.

112. It is MPS policy that parental complaints must be taken into account by each school, through the Parent and Community Involvement/Partnerships section of each school's SEP. Each school must describe and conduct twice yearly self-assessments of the dispute resolution process within the school. Monitoring of the dispute resolution process is carried out in the central office review of all SEPs.

113. The IDEA Complaints Manager (Equitable Education Opportunity Liaison), Richard Brigham, manages a web-based dispute resolution database that is integrated across IDEA complaints to DPI, mediations, and due process hearings. School principals and assistant principals also have access to the database through a password. This integrated data system also tracks informal complaints that are resolved before they become an IDEA complaint. Schools can access this data regularly in order to look across complaints, mediations, and due process issues in order to improve school programs. This integrated dispute resolution data can assist in following up formal complaints resolution, mediation agreements, and due process hearing decisions to determine whether child issues are being resolved.

114. Under Federal law, formal complaints can be filed with DPI, the state educational agency ("SEA"). When an IDEA complaint received by DPI is forwarded to MPS, the Coordinator of the Office of Complaints assigns a citywide Program Support Teacher to promptly gather documents and other information needed by the DPI to investigate the complaint. The SELL assists in the investigation, if necessary, to ensure prompt responses to the

complaint. A letter over the MPS Superintendent's signature is sent to the appropriate school principal directing him/her to cooperate in investigating and resolving the complaint. If the complaint is substantiated by the DPI, the citywide program support teacher assists the school in implementing the corrective action plan in a timely manner. The SELL may assist, if necessary, in assuring a timely response.

115. In addition to complaints resolution, mediation, and due process hearings as a way to resolve disputes, MPS is currently piloting facilitated IEPs as a less formal dispute resolution system and a way to resolve differences between parents and schools at the IEP level. MPS's goal is to intervene with concerns before they become a formal complaint.

**B. Development and Implementation of MPS Internal Auditing System**

116. On July 12, 2002, DPI sent a letter to the MPS Director of Special Services acknowledging the district's recent adoption of SOAP, offering MPS two additional special education team members to assist MPS with the implementation of SOAP, and directing MPS that the district's continuing procedural implementation errors identified in DPI's on-site monitoring and the issues in the CCAPs had to be among the first issues addressed by the special education oversight process in each school building. The letter advised MPS that DPI would be working with MPS staff during the month of August, 2002, to develop a strategic plan to implement SOAP, with an initial focus on the special education procedural oversight provisions of SOAP.

117. During the 2002-2003 school year, DPI focused its MPS oversight activities on building MPS' compliance capacity through the implementation of SOAP and the development of the MPS Internal Audit Action Plan, later renamed the MPS CIFM Action Plan. During that same school year DPI did not conduct on-site monitoring activities using the on-site monitoring model acknowledged by OSEP in its 2000 monitoring of DPI's oversight. Where DPI found any

compliance problems at this time, it ordered corrective action through the mechanism of IDEA complaint decisions and directives, and their modifications to the CCAPs.

118. On September 9, 2002, DPI and MPS agreed on a plan that focused MPS's implementation of SOAP on the correction of the implementation errors identified by DPI in its 2001-2002 school year on-site monitoring reports, and identified by DPI in the IDEA complaint CCAPs. These errors were not necessarily the same as the allegations in this lawsuit. The plan, entitled "Milwaukee Public Schools Internal Audit Action Plan," summarized the implementation errors to be corrected, described in detail the corrective activities MPS was obligated to perform, the date by which each corrective activity should be completed, the person or persons responsible for completing the activity, the documentation required as part of the activity, and the information that MPS was required to provide to demonstrate that the required corrective activity had corrected the identified errors.

119. Like the SOAP itself, the Internal Audit Action Plan contained two main components. One part of the Plan required each MPS school to address the implementation errors identified by DPI through the process of including compliance improvement in the school's SEP, trained self-assessment of the school's performance, and revision of the SEP based on the results of the school's self-assessment. The other part of the Plan required MPS to establish an ongoing system of internal audit that addresses the implementation errors found by DPI. The Plan required that the system be implemented first in a pilot group of schools, including the nine schools visited during DPI's 2001-2002 school year on-site monitoring, and then be implemented in every MPS school in the 2002-2003 school year. The Plan required the setting of compliance standards, the training of MPS staff to perform at the identified standards,

the training of special education supervisory personnel to reliably evaluate staff compliance with the standards, and a feedback mechanism to improve staff performance.

120. In the 2002-2003 school year, MPS used the IEP checklist system in 18 pilot schools. At the completion of the pilot, MPS did not provide DPI with a report on the assessment or the results.

121. The Internal Audit Action Plan was revised in January 2003 to include a total of eighteen schools in the initial phase of the district's accountability system. The Plan was revised again in March 2003 to reflect the completion of some of the Plan activities.

122. In November 2003, the plan was renamed "MPS Continuous Improvement and Focused Monitoring Action Plan" ("MPS CIFM Action Plan"), and was revised to reflect the completion of activities during the 2002-2003 school year and to add additional activities for the 2003-2004 school year. The format of the MPS CIFM Action Plan was also changed to specifically identify whether an activity had been completed, and to specify the target dates for DPI's verification of the efficacy of the required corrective activities.

123. The MPS CIFM Action Plan was revised again in February 2004, to reflect the completion of many of the additional activities required by the November 2003 revision.

124. During the 2003-2004 school year, the MPS CIFM Action Plan consisted of five parts: (1) A system for continuous training of staff using the MPS Special Education Record Review Checklist method that summarizes the procedural requirements of special education law that MPS had been erroneously implementing; (2) an annual point-in-time assessment in each school of the school's compliance with the checklist requirements; (3) an annual assessment about the systems and knowledgeable personnel in each school with respect to non-checklist compliance matters such as IEPs, discipline practices, and non-attendance policies; (4) actions

developed annually for each school and included in each school's School Education Plan, based on the results of the school's annual assessment; and (5) a district-wide support plan for the schools, developed after analyzing the data from the annual building assessments, to identify district-wide actions to support each school's effort to improve its compliance performance on the checklist and non-checklist items.

125. IEP checklist monitoring was implemented as a staff development activity for special education teachers and other IEP team members. This activity was ongoing throughout the 2003-2004 school year. Individual teachers received in-service training or staff development and then the Special Education Supervisors conducted checklist monitoring on their IEPs until they achieved three correct IEPs in a row. After that the Supervisors and/or other building administrators did intermittent checks of each person's completed IEPs, and the SELs reviewed the Supervisors' work.

126. Implementation of non-checklist requirements not readily assessed via IEP record review alone in a school, including IEP, Discipline, and Non-attendance were more operational in nature. Staff developments on the non-checklist items were provided throughout the school year. These compliance elements were monitored through interviews, and document reviews. At the end of calendar year 2003, each SEL held a conference with the Special Education Supervisor members of his/her team to survey and discuss the status of the non-checklist items. If problem areas were identified, the SEL and the supervisor conferred with the building principal to develop activities within 30 calendar days of the meeting. Another conference among these parties was held within 30 calendar days of initiating the activities. This plan was incorporated into Section 11 of the SEP in each school building.

127. DPI and the MPS mutually developed the forms, procedures, standards, and guidance to gather self-assessment data for the March 2004 point-in-time assessment in each MPS school. Data gathered through the March school self-assessment was based on a series of samples of student records or personnel, drawn using a published, random sampling table.

128. DPI provided MPS technical assistance in developing the tools for the assessment. This involved working with the SELs to compile a checklist to evaluate compliance with procedural requirements when checking a student's records. The checklist consisted of issues from past DPI monitoring and from the pre-existing Consolidated Corrective Action Plans (CCAPs).

129. The checklist contained all of the issues from the 2000, 2001 and 2002 on-site reviews that DPI found to be out of compliance.

130. The assessment also used non-checklist items to assess issues related to implementation and to gather more in-depth information.

131. The March 2004 self-assessment within each school was conducted by the Special Education Supervisor(s) assigned to the school, the school principal, the school building coordinator, and other school staff. Special Education Supervisors and building coordinators did the bulk of the assessments in the schools.

132. During the continuous portion of CIFM in 2003-2004, SELs reviewed actual IEPs and completed the checklist process. During the point-in-time portion of CIFM in March 2004, the SELs were not required to review IEPs for accuracy of the supervisor's reporting. Beginning in the 2004-2005 school year, MPS policy changed to require all SELs to check each underlying IEP to determine if the special education supervisor accurately recorded monitoring data.

133. In April 2004, MPS policy required each SELL to review the monitoring work of each of the Special Education Supervisors in the schools in his/her team. It was MPS policy that for each Special Education Supervisor, the SELL reviewed a random sample of the assessment instruments the Supervisor completed for one of the Supervisor's schools.

134. Although the SELLS reviewed some of the underlying student records during the 2003-2004 school year, the focus of SELLS' April 2004 review was whether the assessment methods for checklist and non-checklist items were being implemented appropriately by the Supervisors. It is MPS policy that if a SELL determined that a Special Education Supervisor did not follow the methods given for one or more of the items of the non-checklist elements relating to the still-open CCAPs (IEP, Discipline, Placement, and Nonattendance) or the methods for the checklist items, the SELL checked that particular item in all of the Special Education Supervisor's schools to determine whether the assessment plan's procedures and methods were followed.

135. Once the self-assessments were completed, the Special Education Supervisors and the SELLS scored each of the 62 checklist items measured by the school as requiring one of three levels for monitoring support—periodic review (95% or greater compliance), ongoing review (80-94% compliance), or intensive monitoring (below 80% compliance). Some schools were at different levels of support for different checklist items. This assigned level of support for each of the 62 compliance items was also used as a basis for planning district-wide professional development activities.

136. An average percentage of compliance of all checklist items combined was also assigned to each school and an overall level of required support was assigned to each school. This data was used to plan individual school oversight activities for Special Education

Supervisors and the SELs. In addition, this information was provided to the Departments of Administrative Accountability and Principal Leadership Support to assist in planning coaching support activities and evaluation oversight for administrative staff.

137. Each school principal received a summary of their individual rankings for all checklist and non-checklist items. In addition, the school rankings were compared to overall district-wide averages. This data was shared with the SELs and Special Education Supervisors to help them plan targeted staff development.

138. Following receipt of their school data, the principals were required to develop a plan, including goals and actions, to remediate or address any of the 62 checklist or non-checklist items that were measured below 95% compliance. Principals were not required to develop a remediation plan for compliance items assessed at 95% or higher compliance (“periodic review” level of support), even though the district goal is 100% compliance in all schools. This plan was incorporated into the Special Education Section of each school’s overall SEP. The SELs and the Special Education Supervisors conducted follow-up meetings with school principals and SEP representatives, as needed, for the purpose of amending or strengthening the special education component of the SEP.

139. In August 2004, DSS reported to the MPS Board of Directors the activities each school would be required to complete with respect to the compliance areas assessed at the school, depending on whether the compliance area was assessed as intensive monitoring (less than 80% compliance), ongoing support (80-94% compliance) or periodic review (95% or higher compliance).

140. On August 26, 2004 the Milwaukee Board of School directors directed the administration to adopt the following policy: For items assessed as requiring “intensive

monitoring,” MPS required the individual school’s SEP committee to review, revise and implement the SEP’s special education continuous improvement plan for each checklist and non-checklist item assessed to be at the “intensive monitoring” level, with the focus on improving the building’s performance. Special education providers and diagnostic teachers who would be returning to the building for the 2004-2005 school year were required to undergo review of their IEPs for all checklist items that were contained in their SEP; i.e., items for which compliance was less than 95%. Special education supervisors who determined that particular returning special education providers and diagnostic teachers required additional support applied the IEP checklist review procedure to those returning staff. Special education providers new to the building were required to undergo review of their IEP’s for all items of the IEP checklist procedure. The support plan further required SELLS to apply the activities required by the school’s SEP special education improvement plan by December 1, 2004, in anticipation of the March 2005 annual assessment.

141. On August 26, 2004 the Milwaukee Board of School directors directed the administration to adopt the following policy: For items assessed as requiring “ongoing support,” MPS required the school’s SEP committee, the special education providers, the diagnostic teachers, and the SELLS to conduct the same activities as they conducted for items assessed as “intensive monitoring.”

142. On August 26, 2004 the Milwaukee Board of School directors directed the administration to adopt the following policy: For items assessed as requiring “periodic review,” MPS allowed the school to not include the items in its SEP. For schools with new principals, MPS required the SELLS to complete the pre-measurement activities by December 1, 2004, including non-checklist items and the implementation of the school’s SEP Special Education

Continuous Improvement Plan. MPS required special education providers and diagnostic teachers returning to the building to use the record review checklist at least once per semester for compliance items at the “periodic review” level. MPS further required those returning personnel who made errors on periodic review checklist items to be subjected to continuous review until three consecutive IEPs are correct. Special education providers who are new to the building are required to undergo review of their IEPs for all items of the IEP checklist procedure. MPS required SELs to confer, no later than December 1, 2004, with the special education supervisor assigned to the building on all non-checklist items assessed at the periodic review level, and to confer with building principals if problem items are identified, and to complete activities to correct the problems within 30 days.

143. After the March 2004 assessment, DPI staff evaluated whether each SEL carried out his/her work consistent with the training DPI had provided the SELs, by reviewing the forms the SEL had completed for one of the SEL’s schools.

144. The results of the overall assessment indicate compliance concerns including the following findings. The following findings are not limited to the allegations in this lawsuit.

- a. Half of MPS schools (50.6%) merit ongoing oversight.
- b. 10.9% need intensive monitoring, including 25% of high schools and 28% of middle schools.
- c. 61.5% of MPS schools either merit intensive monitoring or ongoing oversight.

145. As measured by MPS standards, the MPS district as a whole is 90.05% compliant and merits ongoing oversight.

146. The MPS CIFM Action Plan was revised in September, 2004, to reflect activities completed during the 2003-2004 school year, and to include activities for the 2004-2005 school year.

147. As with the original MPS CIFM Action Plan and subsequent revisions, MPS was required to address IDEA requirements identified as “not implemented” during the DPI May 2000, May 2001 and May 2002 on-site compliance reviews, and was required to address the issues identified in the IDEA complaint CCAPs.

148. The September 2004 MPS CIFM Action Plan required MPS to conduct refresher training for the SELLS and for returning building-level reviewers, on the checklist and non-checklist requirements, the checklist system, and the support level requirements for noncompliance items. The September 2004 plan also required the SELLS to train new building level and other reviewers on these areas.

149. The September 2004 MPS CIFM Action Plan required MPS to evaluate the same specific checklist and non-checklist items as were in the original September 2002 Internal Audit System Action Plan in its March 2005 annual self-assessment.

150. The September 2004 MPS CIFM Action Plan required MPS to complete a building-level support plan for its buildings.

151. MPS has submitted, and DPI has approved a District-Level Support Plan which identifies MPS’s 2004-2005 numerical objectives in 14 specific compliance areas, identifies the specific activities MPS will engage in to reach its numerical objectives, and which identifies the criteria by which DPI will measure MPS’s success and identifies the March 2005 point-in-time self-assessment as the process by which MPS’s achievement will be evaluated.

152. For the March 2005 self-assessment, DPI required MPS to address the following items related to Child Find:

- a. “The child’s parent attended the meeting to determine whether the child is or continues to be a child with a disability or participated by other means, such as individual or conference telephone calls; or if the child’s parent did not attend or participate by other means in the meeting to determine

whether the child is a child with a disability, there is a record of attempts to arrange a mutually agreeable time and place.”

- b. “LEA representative attended the meeting(s) to determine whether the child is a child with a disability.”

153. With respect to the first item above – whether the parent attends or otherwise participates in initial and/or subsequent IEP team meetings – the 2004-2005 MPS Continuous Improvement Focused Monitoring District-Level Support Plan provides the following objective: “MPS will reach the periodic review level for 100% of the parent participation items.”

154. With respect to the second item above – whether the LEA representative attends initial and/or subsequent IEP team meetings – the 2004-2005 MPS Continuous Improvement Focused Monitoring District-Level Support Plan provides the following objectives: (1) “95% of all IEP’s (initial and reevaluations) developed between September 2004 and March 24, 2005, will include the participation of a regular education teacher and a representative of the local educational agency (LEA) in the review of data and determination of the possible need for additional testing;” and (2) “The District will achieve 99% LEA participation in all IEP team meetings.”

155. During fall 2004, DPI consultants Elliott Weiman and Janice Duff met with MPS employee Paul Pelzek to revise the annual building assessment for 2005 based upon recommendations from MPS supervisors and SELs and DPI staff’s experience with the 2004 MPS annual building assessment. Changes were made to procedures and the use of information technology was planned. DPI and MPS analysis of the 2004 annual building assessment identified a need for additional training related to discipline requirements. In January 2005, DPI consultants Janice Duff and Brent Odell trained MPS supervisors on annual building assessment items relating to discipline requirements. DPI consultants Janice Duff, Elliott Weiman, Brent Odell and Anita Castro participated in the February 2005 training of MPS supervisors regarding

the standards and procedures for the annual building assessment. Also in February 2005, DPI consultants Janice Duff and Elliott Weiman trained DPI consultants Lynn Boreson, Jack Marker, Brent Odell and Teresa Goodier to conduct oversight activities to assess the reliability of the MPS annual building assessment.

156. In March, 2005 DPI completed oversight activities to assess the reliability of the MPS annual building assessments. DPI reviewed individual student records, including IEP team records related to individual students, and interviewed special education supervisors and SELLS about their assessment activities.

157. In March, 2005 the DPI consultants trained in February assessed the reliability of the MPS annual building assessment. One school was selected for each of the nine SELLS. In the schools selected, DPI assessed each item in the MPS annual building assessment to determine whether the item was reliably assessed by the SELL and the special education supervisor. DPI staff selected student records from the sample of student records assessed by MPS. DPI staff reviewed these student records to determine whether DPI staff agreed with the MPS staff about compliance for each item in the annual building assessment. Non-checklist items in the annual building assessment are addressed through interview in addition to or in lieu of records reviewed. To assess items addressed through interviews, DPI staff interviewed the school's SELL and supervisor who conducted the interviews during the annual building assessment. DPI staff determined whether MPS staff obtained relevant information upon which to make a reliable conclusion and whether MPS staff correctly applied the standard for each item. When DPI staff found an item was not reliably assessed, DPI staff provided feedback and training as part of the on-sight activities. After completing on-sight activities in April 2005, DPI staff compiled for each SELL a list of items that may not have been reliably assessed. DPI staff

met with the SELLS as a group and individually in April 2005 to discuss the lists and train them on follow-up procedures. Two SELLS, Claudia Weaver and Jim Lawton assessed all items. Each remaining SELL was provided an individual list of items which they had not reliably assessed in the building visited by DPI. Each of those SELLS was instructed to reassess those items in the school's visited by DPI and to use the new score for those schools. Those SELLS were also trained and instructed to test the reliability of the items on each of their lists in all of their other schools. To test the reliability of those items, the SELL used the same procedure used by DPI to test the reliability of annual building assessments. If the SELL found that an item was not reliably assessed after testing, the SELL was instructed to reassess the item in the building and use the new score. Where the assessment process revealed an error, DPI ordered MPS to correct the error by July 1, 2005.

158. The MPS CIFM Action Plan was recently revised in April, 2005, to reflect the completion of many of the activities surrounding MPS's second district-wide, building-based assessment of each school's performance with respect to the checklist and non-checklist items; to reflect the completion of many of DPI's activities to assess the reliability of those assessments, such as the review of IEP team records related to individual students and interviews of special education supervisors and SELLS; and to identify additional activities that will occur.

**C. MPS Data Regarding Untimely Evaluations**

159. MPS provided WCA with two reports pertaining to Initial Referrals to Special Education with Placement occurring after the legally required 90 day time-line. The first report is dated with referral Dates 6/1/03-7/8/04. This is the most recent report of over-due evaluations received by WCA from MPS.

160. The first report mentioned in the previous finding, documents 114 IEP placement offer dates that were over the 90 day time-line. Past-due days range between 1 and 267 days. 58

children had evaluations that were overdue between 1 and 20 days. 44 children had IEP evaluations that were completed between 21-60 days past due. 5 children had evaluations that were completed more than 90 days over due. One child had an initial evaluation that was 267 days past due. No information is provided regarding the reason for the delay in initial evaluation. The average past due number of days was 30 days.

161. The second report is an older report of special education evaluations that are past the legally required 90 day time-line for completion. This report is dated 11/18/03. The period of the report is 8/23/95 through 6/30/03.

162. From page 6 through 43 of the report there were 978 past due initial evaluations for the report dates of 06/00 through 06/03. Overdue days ranged from 1 to 579. 68 children had their evaluations completed 100 or more days past due. Two children had initial evaluations that took 600 or more days to complete. The average days number of past due days is 37.

163. Additionally, in December 2004, the special education supervisory staff was trained again regarding timely evaluations and compensatory services at Central Office. The current MPS IEP Team Procedural Handbook reflects district policy and procedures regarding timely evaluations and compensatory education if those timelines are not met.

164. It is MPS policy that in order to ensure continued compliance with the evaluation timeline, special education supervisors generate IEP activity reports through SSIMS/Encore on a weekly basis. This report gives the supervisor information regarding all upcoming IEP activities in each building which allows them to monitor and comply with the 90-day timeline requirements. It is MPS policy that if an evaluation goes over the timeline without a valid extension, the supervisor must ensure that compensatory services are discussed at the initial IEP

team meeting if the student is found eligible for special education. It is MPS policy that SELLS also monitor this process.

**D. Specific IDEA Complaints**

165. DPI has ordered MPS to change its policies and procedures for special education referrals when they are found to be deficient; e.g., in 2001, when it directed MPS to eliminate policies that might have required MPS staff to take actions when making a referral that are not required in the law, and ordered MPS to clarify that when persons other than MPS staff request evaluations, the 90-day timeline begins at the time any MPS staff member receives the written request.

166. Part of DPI's oversight responsibility is to investigate and resolve special education complaints against school districts.

167. Copies of DPI's complaint investigation decisions from 1995 to the present time can be found on DPI's website, <http://www.dpi.state.wi.us/dpi/dlsea/een/complain.html>, except as noted on the web pages for each year's decisions.

168. Between January 1, 1995 and May 24, 2005, DPI has issued decisions in five cases where the issues related to initial referral, initial evaluation and the initial IEP Team meeting.

169. In Case No. 01-001, a parent signed the MPS written request for an extension of the 90-day timeline for completing an initial evaluation, but the district did not clarify her intentions in light of her not having checked one of the boxes on the form either consenting, or refusing to consent, to the extension. On February 19, 2001, DPI ordered MPS to submit a corrective action plan to ensure that the district evaluates children with a suspected disability in a timely manner. The case was closed on June 26, 2002, after DPI found acceptable progress in

addressing the directives in the complaint decision, after its review of MPS' corrective action documentation.

170. In Case No. 02-027, MPS convened an IEP team meeting with respect to a child who had previously been determined to be eligible for special education for the purposes of determining whether the child continued to be eligible for special education, developing an annual IEP, and other issues. The parents were present at the meeting. The case did not involve an initial referral, evaluation, or IEP team meeting. At the meeting, the child's mother requested an independent educational evaluation ("IEE"), but the district did not timely respond to the request. On May 15, 2002, DPI directed MPS to notify DPI about the corrective action it would be taking, and further directed MPS to revise its IEE policy to ensure that the district responds without unnecessary delay to a parent's request for an IEE, either by initiating a hearing to show its evaluation is appropriate or by ensuring that an IEE is provided at public expense. The case was closed on October 23, 2002, after DPI approved MPS's corrective action measures.

171. In Case No. 02-031, DPI concluded on July 17, 2002, that MPS did not respond timely to a private child welfare agency case manager's request for a special education initial evaluation of a child. The case involved a miscommunication between a case manager and a school psychologist. DPI ordered MPS to carry out a number of corrective actions including the provision of training, evaluation of a child in a timely manner and inclusion of an appropriate item in the Disability Digest on evaluation. This case was closed on November 18, 2002 following receipt of MPS documentation that the required activities had been completed.

172. In Case No. 02-045, the child's mother requested an IEE following the initial IEP meeting to determine the child's eligibility, develop an initial IEP, and determine an initial placement. MPS failed to respond to the parent's IEP request in a timely manner. The case

related to a parent request of MPS made after the initial IEP team meeting. On August 6, 2002, DPI directed MPS to engage in the same remedial activity with respect to IEE requests as it required in Case No. 02-027. The case was closed on October 23, 2002, after DPI approved MPS's corrective action measures.

173. In Case No. 04-43, DPI issued a decision on November 8, 2004, in which it determined that MPS failed to complete the evaluation of a child referred for evaluation within the 90-day timeline provided by state statute. As a part of the corrective action, MPS distributed a copy of the October 2004 revision of the "IEP Team Procedural Handbook" to all local education agency representatives, special education providers, school psychologists, building coordinators, special education leadership liaisons, special education supervisors, and student services program administrators no later than December 3, 2004, and to provide DPI with written assurances by that same date that all noted staff were informed about referral procedures and requirements. DPI closed the case on May 2, 2005, following receipt of MPS documentation that the activities which DPI had ordered, had been carried out.

**E. DPI On-Site Monitoring of MPS**

**i. DPI's On-Site Monitoring Of MPS, 1991 To 1997 Re-Authorization Of IDEA**

174. In 1991, the Department of Public Instruction ("DPI") established a three-year on-site review cycle to evaluate Wisconsin school districts' compliance with the special education procedural requirements of the Individuals with Disabilities Education Act ("IDEA") and state law.

175. In October 1993, the U.S. Office of Special Education Programs ("OSEP") conducted an on-site review of DPI's implementation of the IDEA. As a result of the review, in which OSEP found DPI to be out of compliance with its obligations to adequately monitor school districts' implementation of the IDEA, and before the second three-year review cycle

began, OSEP required DPI to redesign its procedures for onsite review of school districts.

Reviews of school districts were suspended during the redesign period.

**ii. DPI's on-site Monitoring of MPS, 1997-98 through 1999-2000 School Years.**

176. IDEA was re-authorized in the summer of 1997, before the beginning of the third year of DPI's new six-year on-site review schedule. Because of the numerous changes to special education law, DPI's six-year on-site review process was suspended and compliance review efforts were refocused to assist Wisconsin school districts to understand and implement the new provisions of IDEA.

177. During the 1997-98 school year, the DPI special education team provided state-wide in-services to Wisconsin school districts to familiarize themselves with the new law and to assist them to develop and implement an IDEA '97 self-assessment and implementation plan ("SAIP"). During the 1997-98 school year, school districts completed an assessment of their compliance with IDEA '97, and developed their plan to fully implement it.

178. During the summer of 1998, DPI disseminated to all school districts a model special education forms system to assist them in implementing special education procedures correctly and to efficiently document their procedural compliance. With the exception of one school building, MPS adopted DPI's model forms. DPI again reviewed MPS' forms in the summer of 2000, and told MPS that its forms would be adequate if MPS adopted DPI's June 2000 forms updates. DPI reviewed the forms from one MPS school, Milwaukee Education Center, in February 2001. DPI informed MPS that the school's forms failed to include prompts for many items on DPI's forms checklist, and that some of the prompts on the forms were not informative enough to adequately prompt the user.

179. During the fall of 1998, DPI staff conducted multipurpose statewide regional meetings concerning the refocused compliance review process. All school districts, including MPS, were required to attend the meetings. In preparation for the meetings, school districts were required to complete a SAIP progress report. Included in the reports were a description of the district's progress on each element in the SAIP, parental involvement and empowerment, staff development activities regarding IDEA and the SAIP process, and the results of DPI's required self-assessment of compliance with several of the new IDEA requirements through a review of student records. The meetings gave DPI the opportunity to provide technical assistance regarding the interpretation of state and federal law, and refinements to the SAIP process to correct the implementation errors found in the record reviews.

180. DPI found in the Spring of 1998 that 17% of MPS students with disabilities did not have a current IEP in effect. In addition, the evaluation logs MPS submitted to DPI showed that only 81.1% of evaluations during the 1997-98 school year had been timely completed.

181. Throughout the 1998-1999 school year, DPI required MPS to take corrective action with respect to these issues, and required MPS to regularly provide DPI with data that reflected the extent of MPS's compliance with the requirements to have current IEPs in effect and to timely complete student evaluations.

182. Between 1998 and 1999, DPI continued to receive complaints from individual students regarding MPS's duty to timely evaluate and MPS's duty to have current IEPs in effect.

183. On June 1, 1999, DPI notified MPS that 7.4% of MPS students did not have current IEPs recorded in the district database as of December 1, 1998 and that many of its evaluations were untimely. As a result, DPI notified MPS that the district would not receive \$604,206 of its IDEA funds. DPI further informed MPS that it would approve the use of IDEA

discretionary funds only to resolve outstanding compliance issues. DPI directed MPS to have a current IEP in effect for all children and to eliminate the evaluation backlog prior to the beginning of the 1999-2000 school year.

184. Also in June, 1999, DPI first consolidated its oversight of the corrective actions MPS had been ordered to take in response to substantiated IDEA complaints from individual students on the issue of timely evaluations. On June 28, 1999, DPI sent a letter to MPS, stating: “As you know, the department has five open complaints against MPS regarding timely evaluations (94-044, 98-050, 98-059, 99-009, 99-014). The department will consolidate its oversight of necessary corrective action in those complaints and close each of the complaints when MPS documents: (1) compliance with any child-specific directive(s) in the decision, and (2) compliance with the two relevant directives issued in Superintendent Benson’s letter of June 1, 1999.”

185. On July 7, 1999, DPI consolidated its oversight of the corrective actions MPS had been ordered to take in response to substantiated IDEA complaints from individual students on the issue of current IEPs. DPI’s letter stated: “As you know, the department has four open complaints against MPS regarding current IEPs in effect (97-045, 98-009, 98-049, 99-013). The department will consolidate its oversight of necessary corrective action in those complaints and will consider the relevant issue closed when MPS documents: (1) compliance with any child-specific directive(s) in the decision, and (2) compliance with the two relevant directives issued in Superintendent Benson’s letter of June 1, 1999.”

186. In August 1999, MPS provided DPI with data indicating that 99.7% of eligible students have current IEPs. Also in August 1999, DPI verified that a sample of students all had current IEPs. In September 1999, DPI informed MPS that the district had corrected the violation

of not having current IEPs in effect, and told MPS that it would continue to work with MPS to maintain its progress. In January 2000, DPI again verified that a sample of students had current IEPs. In May 2000 on-site monitoring, DPI found that 98.3% of students had current IEPs. In May 2001 on-site monitoring, DPI reviewed a larger sample of children, and concluded that 98.9% of students had current IEPs. In May 2002 on-site monitoring, DPI concluded that 99.61% of the reviewed sample of student records had current IEPs. In March 2004, data from MPS' annual building assessment indicated that 98.4% of students had current IEPs.

187. Since June 1999, DPI has also continued to follow up on MPS's duty to timely complete evaluations. In May 2000, DPI on-site monitoring revealed that 95.6% of MPS's sampled evaluations were completed timely. In July 2000, MPS evaluation logs submitted for DPI's review showed that 98.1% of evaluations initiated in January through March were completed timely. Although DPI informed MPS in July 2000 that the issue of timely evaluations was resolved, DPI has continued to require MPS to submit IEP team evaluation logs since the resolution of the issue.

188. The federal regulations implementing IDEA '97 were finalized in March 1999.

189. OSEP authorized DPI to continue its refocused on-site review process during the 1999-2000 school year. DPI conducted on-site reviews in 96 school districts, chosen to represent 50% of total public school enrollment. MPS was among the school districts chosen.

190. MPS and the other 95 districts performed a review of student records for the purpose of making a self-assessment of its compliance with IDEA requirements related to (a) parent participation in the individualized educational plan ("IEP") process; (b) participation in the general curriculum; (c) IEP team composition, duties and accountability; (d) teacher knowledge of their IEP responsibilities; and (e) transition requirements for 14 year olds.

191. DPI expanded its 1999-2000 review of MPS to include a review of IDEA violations found through DPI's IDEA complaint investigations in MPS. DPI reviewed MPS's (f) implementation of student IEPs, (g) the completeness of MPS evaluations and IEPs and the timeliness of MPS's notice to parents of their child's placement, and (h) the extent to which MPS students had IEPs in effect.

192. DPI conducted its 1999-2000 on-site review of MPS by visiting three elementary schools, three middle schools and three high schools. Ten student records were reviewed for each site. DPI reviewers evaluated the soundness of MPS's self-assessment of its IDEA 1997 compliance, and also interviewed parents, regular education teachers, special education teachers, the building principal and the special education supervisor for each site.

193. DPI's 1999-2000 on-site monitoring did not find implementation errors with respect to issues (f), (g), and (h), above, but did find implementation errors in six other areas:

- a. Parental participation in the review of existing evaluation data to determine the need for additional testing during initial evaluations and re-evaluations;
- b. Explanations in IEPs of the extent to which students will participate in the regular education environment and curriculum;
- c. Proper description in IEPs of students' present level of educational performance;
- d. Proper statements in IEPs of students age 14 and older of transition service needs;
- e. LEA representative participation in IEP meetings; and
- f. Proper annual goal progress reports for all students.

194. On October 26, 2000, DPI approved MPS's CAP regarding the 1999-2000 on-site review. DPI accepted MPS' written verification of its completion of all corrective activities by the summer of 2001.

195. As part of the 1999-2000 on-site review process, DPI also reviewed MPS's special education forms. DPI determined that, with the exception of some minor language changes that were not inconsistent with state or federal law, MPS had adopted DPI's sample forms, and that MPS's forms were adequate.

iii. **DPI's on-site monitoring of MPS compliance with the requirements of IDEA and state law, 2000-2001 school year.**

196. During the 2000-2001 school year, DPI conducted on-site reviews at MPS and 76 other school districts. DPI designed the process to focus on core areas in IDEA '97 that were most related to student outcomes, consistent with the emphasis in OSEP's Continuous Improvement Monitoring Process ("CIMP") which focused on federal, state and local resources on improved results for children with disabilities and their families.

197. The core areas selected for review included those reviewed in the prior year's review, and a review of other procedures related to: (a) annual goal statements; (b) behavior as a special factor; (c) discipline; (d) implementation of IEPs; (e) children in residential care centers; and (f) educational environment and prevalence rates.

198. DPI expanded its on-site review of MPS to include (g) MPS's progress in implementing corrective activities resulting from the 1990-2000 review; (h) MPS's progress in implementing corrective activities resulting from six IDEA complaint investigations concerning special education placements; (i) the efficacy of MPS's corrective actions concerning special education placement procedures and certain IEP team responsibilities of LEA representatives; (j) building leadership staff and special education supervisors' knowledge of the IDEA disciplinary requirements; and (k) the district's system for recording and tracking disciplinary removals of students.

199. As DPI did in 1999-2000, DPI reviewers reviewed records from three elementary, three middle and three high schools, and interviewed parents, teachers and administrators.

200. DPI's 2000-2001 on-site monitoring of MPS found implementation errors in six areas:

- a. documentation and notice of the review of existing data as part of initial and re-evaluations;
- b. IEP content including present levels of educational performance and annual goal statements, documentation of students' participation in statewide assessments, and statements of supplementary aids and services and program modifications and supports for school personnel;
- c. placement procedures;
- d. disciplinary removals of children for more than 10 days in a school year;
- e. informing teachers with IEP responsibilities of their specific responsibilities; and
- f. policies and procedures for accepting and processing special education referrals.

201. DPI required MPS (1) to complete the corrective activities in the district's 1999-2000 onsite review CAP and the CAPs related to IDEA complaints concerning placement; (2) to take action to ensure that all LEA representatives understand their IEP role and responsibilities; (3) to continue staff development activities concerning special education placement procedures and the disciplinary requirements; and (4) to develop a plan to ensure that the district's methods for documenting and tracking disciplinary removals of special education students from school for more than 10 days in a school year protects their rights to a free and appropriate public education ("FAPE").

202. DPI's July 17, 2001 letter to MPS summarizing its 2000-2001 on-site monitoring findings observed that MPS needed an effective centralized system of administrative accountability that reached down to the school building level in order to resolve the compliance

issues DPI had found through on-site monitoring and its other oversight activities. DPI stated that it was encouraged that MPS had agreed to develop and implement such a system by September 2001, and expressed its pleasure that the initial focus of the accountability system would be on the unresolved compliance issues DPI and MPS had been discussing.

203. One of DPI's findings in its 2000-2001 monitoring report specifically related to a MPS policy and procedure that could potentially delay the referral of a student suspected of being a child with a disability. The district's policies in effect at the time might have required district staff to take actions when making a referral that are not required in the law (*i.e.*, a reasonable cause determination). These actions might delay a referral by a staff member or interfere with the duty to make a referral. DPI instructed MPS that the district's policies and procedures must make clear that these actions may not delay the referral when the referring person reasonably believes the child is a child with a disability. While MPS's policies correctly explained the 90-day evaluation time limit requirement following referrals from parents and others, it did not clarify that the requirement also applies to referrals from district staff. DPI therefore directed MPS to add a clarification that any licensed school staff member who reasonably believes that a child has a disability is required to make a special education referral. In addition, DPI directed MPS to add new policy language clarifying that any physician, nurse, psychologist, social worker, or administrator of a social agency who reasonably believes that a child brought to him or her for services has a disability is required to refer the child to MPS. Moreover, DPI directed MPS to add policy language to clarify that when persons other than the school district staff make a written referral to the district, the receipt of the written referral by any MPS staff person marks the beginning of the 90-day timeline. MPS complied with DPI's directives.

204. DPI approved MPS's CAP regarding the 2000-2001 on-site monitoring findings and directives on October 9, 2001. In April 2002, DPI informed MPS that it needed only to demonstrate that the IEP Team Handbook Updates document was delivered to specified MPS personnel in order for DPI to verify that all activities required by the 2000-2001 onsite monitoring CAP were completed.

iv. **DPI's on-site monitoring of MPS compliance with the requirements of IDEA and state law, 2001-2002 school year.**

205. During the 2001-2002 school year, DPI conducted on-site reviews at MPS and 69 other school districts. DPI reviewers focused their review on three areas. First, the review team looked at the effectiveness of MPS's activities to correct the implementation errors identified in the 1999-2000 on-site monitoring report. Second, DPI reviewed the areas of procedural noncompliance identified as statewide noncompliance areas in OSEP's October 2000 report. Third, DPI reviewed the procedural compliance issues contained in the five MPS CCAPs.

206. DPI reviewers concluded that, although MPS was correctly implementing the requirements identified by OSEP as statewide compliance issues, MPS continued to make implementation errors with respect to the issues identified in the 2000 on-site monitoring report, and that MPS's activities to implement the CCAPs had not corrected the procedural errors the CCAPs were designed to correct.

207. With respect to the implementation errors identified in the 2000 on-site monitoring report, DPI ordered MPS to collaborate with DPI staff to develop a corrective action plan to ensure correct implementation of each requirement, including timeframes for implementation of the corrective activities, identification of persons responsible for implementation, documentation to verify completion of the corrective activity, and a description of how and when MPS will measure whether the corrective activities had the desired effect.

With respect to the procedural errors identified in the CCAPs, DPI ordered MPS to continue working through the CCAP process to correct the implementation errors.

208. In addition to the specific corrective activities ordered above, DPI ordered MPS to establish, by the beginning of the 2002-2003 school year, an effective, centrally administered system of special education procedural oversight and accountability mechanisms, with such mechanisms to be implemented at each school building.

**F. October 2000 Office of Special Education Programs' Evaluation of DPI's Compliance With Its Oversight Responsibilities**

209. During the weeks of November 2, 1998, and February 22, 1999, the Office of Special Education Programs ("OSEP") of the United States Department of Education conducted on-site visits in Wisconsin for the purpose of assessing the state's compliance with the requirements of IDEA '97. OSEP reviewed the state's compliance with both IDEA Part C (services for children aged birth through two) and IDEA Part B (services for children aged three through 21). OSEP issued a report detailing its findings and recommendations on October 18, 2000.

210. OSEP's review consisted of two phases. First, OSEP engaged in a planning process to gather information about the state's Part C and Part B programs, using the results of self-studies, surveys of system participants, formally organized steering committees, and public forums in locations around the state, including Milwaukee, focused on the core ideas of IDEA '97. Second, OSEP conducted on-site visits to selected school districts, including MPS, for the purpose of collecting data to address issues identified during the planning phase. For its Part C review, OSEP collected information from the review of children's records, interviewed state personnel county personnel and interviewed parents. For its Part B review, OSEP reviewed student records, and reviewed district policies and procedures relating to the focus issues. OSEP

also reviewed state policies, procedures and records, and interviewed DPI personnel, regarding the state's monitoring, complaint, mediation, due process and personnel development systems, technical assistance, and other issues.

211. OSEP's Part C review evaluated five broad areas for compliance with IDEA's requirements: (1) general supervision, (2) Child Find and public awareness, (3) early intervention services in natural environments, (4) family-centered system of services, and (5) early childhood transition.

212. OSEP found no areas of non-compliance with respect to statewide efforts to find children aged birth through three who may be in need of services, or with respect to public awareness of those early childhood services. OSEP found, however, that the Wisconsin Department of Health and Family Services ("DHFS"), the state's lead agency for Part C, did not ensure that in every county a transition planning conference was held at least 90 days before a child's third birthday for those children who might be eligible for Part B, or ensure that in every county a transition conference be convened for children who are not likely to be eligible for Part B services. some school districts.

213. MPS provides outreach to birth to three programs, Head Start programs, and other community early childhood programs regarding MPS referral procedures and special education programs and services. Data shows that about 90 percent of the children referred to MPS from the birth to three agencies qualify for special education.

214. MPS has an Early Childhood Assessment Team (ECAT) that makes certain that evaluations are completed and IEPs are developed in a timely manner prior to the child transitioning to MPS at age three. ECAT referrals are received from Head Start, Birth to 3 programs, hospitals, physicians, and parents. The ECAT has three Special Education Supervisors

and four Diagnostic Teachers. A centralized database helps to assure that children in birth to three (Part C) programs who are transferring into MPS are evaluated and that the 90-day timeline is being met, unless there is a valid extension for a child-related reason.

215. If a child is not found to be eligible for special education, MPS staff give information to the parent regarding a placement that the child may be going to and provide other suggestions to the parent regarding their child needs. This information is part of their permanent MPS Special Services Information Management System for future tracking, as needed, depending on the progress of the child.

216. OSEP's Part B review evaluated four broad areas for compliance with IDEA's requirements: (1) parent involvement, (2) free appropriate education in the least restrictive environment, (3) secondary transition, and (4) general supervision.

217. OSEP's October 2000 Report states that one of the purposes of IDEA '97 was to expand and promote opportunities for parents and school personnel to work in new partnerships at the state and local levels. Under IDEA '97, parents gained the right to participate in meetings with respect to the identification, evaluation and educational placement of their child, and the provision of a free appropriate education to their child. OSEP found two strengths in the area of parent participation; DPI's Wisconsin Statewide Parent-Educator Initiative ("WSPEI") to build parent-educator partnerships at the local school district level, and DPI's user-friendly web-site. OSEP encouraged school districts and DPI to support greater training for parents. OSEP found no areas of non-compliance with the parental involvement requirements of IDEA that it gathered information about – in Milwaukee or in any of the other districts visited.

218. During the planning phase of OSEP's review of DPI's general supervision, participants expressed concern regarding the timeliness of DPI's decisions on IDEA complaints,

and concern about DPI's effectiveness in ensuring the timely correction of non-compliance, especially in districts with longstanding histories of noncompliance. OSEP noted that the participants in the planning phase were particularly concerned about longstanding non-compliance in two of the large urban districts OSEP visited in February 1999. At that time, OSEP visited Madison, Milwaukee, Racine, Bloomer, Mount Horeb, and River Falls. MPS was one of the school districts about which planning participants had expressed concern.

219. OSEP's report summarized DPI's on-site and other annual monitoring during the years 1995 through 2000, and DPI's planned monitoring activities for the 2000-2001 school year. OSEP noted no areas of non-compliance regarding this aspect of DPI's oversight responsibilities.

220. OSEP found that DPI was not in compliance with IDEA's requirement that IDEA complaints be resolved within 60 calendar days.

221. DPI had acknowledged in 1998 that complaint decisions often were not issued within sixty days, and began to make improvements. From September 2000 to June 10, 2005, 77 IDEA complaints were filed against MPS. Two complaints were withdrawn. The issues in three other complaints were held in abeyance pending the outcome of due process hearings. Of the remaining 72 complaints, the decisions in all but number 01-067 were issued within 60 days. The decision in 01-067 was issued within 71 days. In that complaint, additional issues were raised after the complaint had been filed.

222. OSEP specifically addressed DPI's actions to ensure MPS's compliance with IDEA's requirements in its October 2000 report. The report summarized DPI's actions with respect to MPS's failure in 1998 to ensure that all students had current IEPs and MPS's failure to ensure that evaluations were completed within 90 days, including the withholding of funds, the

direction of funds specifically for improving compliance, and continuing reporting and verification requirements. OSEP encouraged DPI to continue to use financial and other sanctions, where necessary, to achieve improved results, and encouraged DPI to evaluate the effectiveness of the corrective activities it requires, and if necessary, to take more rigorous action to ensure timely correction of districts' non-compliance.

223. Except for DPI's failure to resolve IDEA complaints within sixty days, OSEP did not find any areas of non-compliance within Part B, the section of its report relating to DPI's general supervision responsibility.

**G. DPI's Oversight Of MPS' Compliance with IDEA and State Law Through the Development And Enforcement of Consolidated Corrective Action Plans**

224. During the years 1998 through 2001, DPI experienced a large rise in the number of IDEA complaints filed against MPS, alleging that MPS violated a student's rights under IDEA and state law. A summary of the numbers of substantiated complaint decisions from January 1995 through March 31, 2005, appears in the following chart:

| <b>IDEA complaints filed against MPS</b> |    |                                       |
|--|----|---------------------------------------|
| <b>Total cases filed</b>                 |    | <b>Cases where violation(s) found</b> |
| 1995                                     | 4  | 2                                     |
| 1996                                     | 8  | 2                                     |
| 1997                                     | 5  | 4                                     |
| 1998                                     | 19 | 16                                    |
| 1999                                     | 22 | 14                                    |
| 2000                                     | 18 | 13                                    |
| 2001                                     | 39 | 33                                    |
| 2002                                     | 12 | 9                                     |
| 2003                                     | 9  | 6                                     |
| 2004                                     | 9  | 9                                     |
| 2005<br>(through Case<br>05-004)         | 3  | 2                                     |

225. On June 8, 2000, DPI issued a decision in IDEA Complaint No. 00-10, finding that MPS violated IDEA's placement requirements. The directives to MPS noted that DPI had four open complaints where MPS was determined to have violated the law regarding how it selected the building in which services were to be delivered to children with disabilities. DPI informed MPS that it was consolidating its oversight of the corrective activities MPS would be required to complete with respect to this area. DPI's consolidated oversight regarding this issue came to be referred to by DPI and MPS as the "Placement Consolidated Corrective Action Plan (CCAP)."

226. On October 2, 2000, DPI informed MPS that it was consolidating its oversight of required corrective action in four open complaints where MPS had been directed to take steps to provide children with a free and appropriate public education within a reasonable amount of time after the district learns that a child with a disability is not attending school. DPI's consolidated oversight regarding this issue came to be referred to by DPI and MPS as the "Non-Attendance Consolidated Corrective Action Plan (CCAP)."

227. On October 11, 2000, DPI informed MPS that it was consolidating its oversight of required corrective action in five complaints where MPS was determined unlawfully failed to provide a free and appropriate public education by repeatedly suspending or excluding children with disabilities. DPI's consolidated oversight regarding this issue came to be referred to by DPI and MPS as the "Discipline Consolidated Corrective Action Plan (CCAP)."

228. On August 10, 2001, DPI informed MPS that it was consolidating its oversight of required corrective action in three open complaints involving speech and language issues. DPI's consolidated oversight regarding this issue came to be referred to by DPI and MPS as the "Speech and Language Consolidated Corrective Action Plan (CCAP)."

229. On October 3, 2001, DPI issued a decision in IDEA Complaint No. 01-058, finding that MPS failed to provide services to a student consistent with the requirements of the student's IEP. The decision notified MPS that DPI had seven open complaints regarding MPS's failure to provide services consistent with the IEPs, and notified MPS that DPI was consolidating its oversight of required corrective action in the seven open complaints. DPI's consolidated oversight regarding this issue area came to be referred to by DPI and MPS as the "IEP Consolidated Corrective Action Plan (CCAP)."

230. As DPI substantiated additional complaints on issues under the rubric of the five CCAPs, DPI added the complaint to the CCAP and imposed additional corrective actions that had to be performed by MPS to DPI's satisfaction in order to be closed.

231. By October 19, 2001, fourteen complaints had been incorporated into the Placement CCAP. Seven complaints had been incorporated into the Non-Attendance CCAP. Nine complaints had been incorporated into the Discipline CCAP. Three complaints had been incorporated into the Speech and Language CCAP. Seven open complaints were part of the IEP CCAP.

**H. DPI's Response to the Directives in the 2004 Re-Authorization of IDEA Regarding State Oversight of Local School Districts.**

232. Under IDEA, states, through their state educational agency ("SEA"), are obligated to ensure that all children with disabilities residing in the State, including children with disabilities attending private schools, regardless of severity of their disabilities, and who are in need of special education and related services are identified, located, and evaluated.

233. Under IDEA, the SEA is responsible for approving or disapproving applications by local educational agencies ("LEAs") for IDEA funds. Within the LEA application, the LEA must assure that it has effective policies and procedures consistent with state and federal legal

requirements of IDEA. Within the LEA application and approval process, if the SEA determines that the LEA or State agency is failing to maintain programs providing free appropriate public education to children with disabilities through implementation of its policies and procedures, corrective actions will need to be made by the LEA to assure compliance with IDEA.

234. Under IDEA, states must have procedures for resolving special education related complaints, including an independent on-site investigation of the allegations within the complaint. In addition, the complainant must be given opportunity to submit additional information, either orally or in writing, and all relevant information must be reviewed prior to making an independent determination of compliance.

235. In order to carry out its responsibilities under the IDEA, the SEA must monitor the LEA for compliance with IDEA requirements. If the SEA finds that the LEA is not following such requirements, the SEA must take steps to see that corrective action is taken. The SEA may reduce or not provide any further payments it would have made to the LEA until the SEA is satisfied that the LEA has come into compliance.

236. The 1997 Amendments of the IDEA and the implementing federal regulations for IDEA are silent on the prescribed type and frequency of procedures that an SEA is to use in assuring that the legal provisions are being met. However, each SEA is responsible for the adoption and use of proper methods to monitor public agencies responsible for carrying out special education programs.

237. Since at least 1993, DPI has received periodic guidance from the United States Department of Education Office of Special Education Programs (“OSEP”) about its special education oversight activities.

238. In October 2000, OSEP found no errors in DPI's method of ensuring the compliance of Wisconsin school districts with the requirements of IDEA and state special education law. Under that method, DPI made on-site visits to a subset of Wisconsin school districts each year, reviewed a sample of student records, interviewed staff, and reviewed the district's policies and procedures. The principal emphasis in DPI's on-site reviews was on the district's compliance with the procedural requirements of IDEA.

239. DPI completed the sixth year of monitoring under the OSEP-approved model in the 2002-2003 school year.

240. In 2000, OSEP began to focus its monitoring efforts on those requirements most closely related to improving results for children with disabilities and those States most in need of support to improve compliance and performance.

241. In 2003, OSEP moved from a Continuous Improvement Monitoring Process ("CIMP") to the Continuous Improvement and Focused Monitoring System ("CIFMS"), and made a commitment to states to provide technical assistance about that system.

242. In 2003, OSEP funded the National Center for Special Education Accountability Monitoring ("NCSEAM") to assist states in developing monitoring systems using a continuous improvement focused-monitoring approach. In implementing a focused-monitoring, continuous improvement system, it is assumed that the SEAs have limited resources for carrying out state monitoring efforts and, therefore, should strategically focus on some, but not all of the literally hundreds of legal requirements within monitoring systems. Implementation of such a system also assumes that SEAs and LEAs will make monitoring decisions based on data and information and will select school systems to be monitored based on selected outcomes that have been identified to be critical by the state's stakeholders.

243. Many states sought NCSEAM's assistance soon after it was created. Because the demand for NCSEAM's services exceeded its ability to effectively provide those services, several states, including Wisconsin, were put on a waiting list.

244. Although DPI did not have NCSEAM's guidance, it piloted a statewide CIFMS Monitoring System during the second semester of the 2003-2004 school year. The purpose of the new system is to achieve positive results for children with disabilities in Wisconsin while ensuring continued procedural compliance with state and federal laws and regulations. The pilots occurred in six school districts and focused on exiting, participation and performance on statewide assessment, disproportionality, and environment. Activities in the pilots included data analysis; parent, student, and staff focus groups, interviews, and surveys; policy reviews; and a self-assessment of procedural requirements. The purpose of the pilots was to test the new protocols. Feedback from participating districts was positive; districts appreciated the collaborative nature of the new system and the focus on improving student outcomes. The results of the pilots were shared with a CIFMS stakeholder group in May, 2004.

245. DPI entered into a partner relationship with NCSEAM in August 2004, for the purpose of getting NCSEAM's technical assistance with the development of DPI's CIFMS Monitoring System.

246. The Continuous Improvement Focused Monitoring Process articulated by NCSEAM is built around the following themes:

- a. Consensual, measurable priorities identified by stakeholders.
- b. Effective policies and procedures to guide and direct program planning and implementation.
- c. Data on program processes and results and use of these results to guide program improvement.

- d. Targeted training and technical assistance to remedy problems and improve teaching and learning.
- e. An effective and responsive dispute resolution system to resolve complaints and differences among school personnel, among school personnel and parents, and among schools and other agencies.
- f. Meaningful focused monitoring that measures selected compliance areas and outcomes.
- g. Corrective actions to remedy identified problems, incentives to support needed change, and sanctions to insure noncompliance will be corrected.

247. IDEA was reauthorized by the passage of H.R. 1350, the Individuals With Disabilities Education Improvement Act of 2004, in December, 2004.

248. The IDEA re-authorization has codified focused monitoring as the primary focus of both Federal and state monitoring activities. The Act requires those monitoring activities to primarily focus on:

- a. Improving educational results and functional outcomes for all children with disabilities; and
- b. Ensuring that IDEA program requirements are met, with particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

249. The IDEA re-authorization requires each state to monitor the local educational agencies located in the state using quantifiable indicators, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

- a. Provision of a free appropriate public education in the least restrictive environment;
- b. State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 602(34) and 637(a)(9); and
- c. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

250. Based on NCSEAM's guidance, DPI has expanded the membership and diversity of the statewide stakeholders group, and has expanded the scope of the subjects on which the group's input is being sought. DPI has involved stakeholders in the development and review of the new CIFMS system by holding meetings to seek stakeholder input. In November 2004, Dr. Alan Coulter and Dr. Sandy Schmitz, Director of Technical Assistance for NCSEAM facilitated a stakeholder meeting to identify priority areas for focused monitoring. After a review of statewide data, the stakeholders group selected graduation rates and 8<sup>th</sup> grade reading performance as focus areas for monitoring.

251. The twenty-two member statewide CIFMS stakeholders group includes attorney Jeffrey Spitzer-Resnick from the Wisconsin Coalition for Advocacy (lead counsel for the class in this lawsuit), MPS Director of Special Services Patricia Yahle, MPS Parent Information Specialist Georgette Rodriguez, and Jan Serak, from the Family Assistance Center for Education, Training and Support, Inc. ("FACETS"), a statewide parent advocacy group based in Milwaukee.

252. The stakeholders also determined a process for selecting districts for on-site monitoring was also outlined. The stakeholders determined that the state should divide the state into monitoring cohorts by enrollment size, and concluded that CIFMS monitoring should be done on the basis of seven enrollment-based cohorts, and an eighth cohort consisting of randomly selected districts. Because MPS's enrollment is approximately four times larger than the enrollment of Wisconsin's next-largest school district, the stakeholders concluded that MPS should be its own cohort. The effect of the stakeholders' decision means that MPS will be subject to statewide CIFMS on-site monitoring every year, beginning with the 2005-2006 school year.

253. On January 7, 2005, representatives of DPI and MPS had a telephone conference with Dr. Coulter to discuss how the state's focused monitoring would be done in MPS schools. DPI and MPS agreed to use the administrative accountability structure of the Special Education Oversight Accountability Plan ("SOAP"), through which MPS is divided into nine groups of schools, each overseen by a Special Education Leadership Liaison ("SELL"), as the within-MPS cohorts for implementing statewide CIFMS monitoring.

254. During the spring semester of the 2004-2005 school year, DPI has conducted pilot focused monitoring and data verification visits in volunteer districts. The pilots consist of data analysis activities with the district, focus forums, individual interviews, surveys, policy reviews, and individualized education program (IEP) record reviews. DPI staff has shared results with the district and has discussed strengths and possible areas for improvement. DPI also shared the results with NCSEAM and the stakeholders group.

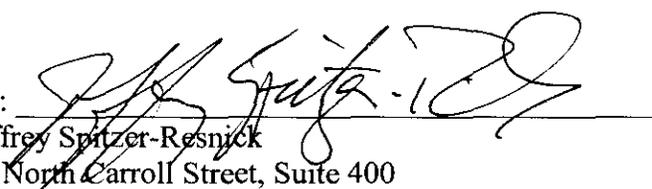
255. On May 3-4, 2005, the stakeholders group met with Dr. Coulter to provide stakeholders with an update on the development of Wisconsin's CIFMS System and to develop a plan for completing the Part B State Performance Plan (SPR) and Annual Performance Report (APR) required by IDEA 2004.

256. The stakeholders group is currently scheduled to meet with Dr. Coulter on three future dates. On July 19-20, 2005, the stakeholders will continue discussing the differing requirements of state and federal law and how to address those differences; and will get an update on the status of the application(s) for waiver. On October 20-21, 2005, and again on February 7-8, 2006, the stakeholders will receive an update in the statewide CIFMS monitoring system.

257. The statewide CIFMS System is separate and distinct from DPI's oversight of MPS's implementation of SOAP and the MPS CIFMS Action Plan. The statewide CIFMS System is designed to provide focused monitoring of all state school districts, specifically including MPS, with respect to the statewide graduation rates and 8<sup>th</sup> grade reading performance focus areas selected by the stakeholders group, in accordance with the focused monitoring requirements of IDEA 2004. SOAP is designed to create a centralized special education compliance accountability structure within MPS's decentralized, building-based educational services delivery model. The MPS CIFMS Action Plan is designed to improve MPS's compliance with the procedural requirement deficiencies identified in 2000-2002 monitoring reports and CCAPs, to create continuity between the procedural compliance focus of the state's previous oversight model and the student outcome focus of the new federally mandated continuous improvement focused monitoring model, and to create capacity within MPS to reliably perform the self-assessments required under the continuous improvement focused monitoring model, and to reliably implement district-wide change when necessary.

WISCONSIN COALITION FOR ADVOCACY, INC.

Dated this 23<sup>rd</sup> day of June, 2005.

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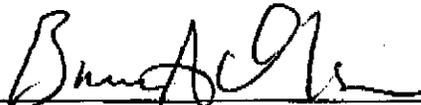
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