

**United States District Court
Office of the Court Monitor**

Emma C., et al., v. Delaine Eastin, et al. (No. C96-4179 TEH)

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Mark A. Mlawer
Court Monitor

MEMO

TO: California Department of Education
(Mary Hudler, Christine Pittman, Ruby Smith)

FROM: Mark A. Mlawer

DATE: September 22, 2008

RE: Directive: Compensatory Services

Background

As you know, the Court, in its 12/20/08 *Order Re: Directives and CDE Technical Assistance, Oversight and Monitoring Regarding Ravenswood's Delivery of Services and Related Issues*, directed Defendant CDE to determine the amount of all service deprivations suffered by Ravenswood students with disabilities from the beginning of the 2007-08 school year to 12/31/07. Moreover, CDE was further ordered to "determine the extent to which current District service providers" could deliver compensatory services (if at all), "contract with a sufficient number of providers to ensure the timely delivery of compensatory education" to these students, supervise and oversee the process of notifying parents of offers of compensatory education, and then "ensure the timely, full and competent delivery of the compensatory services" (*Order* at 6-7).

At the Status Conference on 7/30/08 CDE and the District reported that compensatory services had begun for some students on or about 6/15. It is the Monitor's understanding from recent discussions with District and CDE staff that only approximately 25% of eligible students have thus far received any compensatory services, and that no students have had their compensatory education completed. These discussions also indicated that no services at all have been delivered for the past six or seven weeks.

Further, these discussions revealed an apparent attempt on the part of CDE to shift the clear responsibilities placed upon it by the Court for compensatory education during the relevant period of time to the District.¹ An e-mail received from CDE on 9/19 confirms this view. A two-page document is attached to the e-mail (see Appendix). In the very first paragraph of this

¹ The District's responsibilities for compensatory education under the *Order* are limited to 1) notifying parents with offers of compensatory education ("with supervision and oversight from CDE"), and 2) using the District's current system of tracking compensatory education (at 6-7).

document CDE misconstrues the Court's *Order* in its assertion that the Court "directed the district" to provide compensatory education. In paragraph three CDE announces "the district's commitment" to deliver compensatory services, and throughout the following paragraphs CDE systematically attempts to shift the responsibilities assigned to it by the Court to the District, including determining the extent to which District staff can deliver compensatory services, communicating with TES weekly to determine the availability of TES providers, and ensuring the provision of compensatory education through monitoring student attendance at compensatory education sessions.

If allowed to stand, CDE's attempt to assign its responsibilities under the *Order* to the District would be fatal to what the Monitor understands to be the central intention of this aspect of the Court's *Order*, that the District focus on implementing fully and effectively the remedy in this case going forward (the RSIP²), without unnecessary distractions in the form of simultaneously attempting to set right the effects of its prior egregious noncompliance. It should be obvious at this juncture in the *Emma C.* litigation that this approach is in the long-term interests of *both* Defendants, as CDE's fate is dependent, in part, on the District's success in implementing the RSIP.

Directive

For the foregoing reasons, and pursuant to the authority granted to the Court Monitor by the Court's 12/20/07 *Order* (at 4-5), the Monitor issues the following Directive to Defendant CDE.

- 1) By 10/1/08 CDE will provide data to the Court Monitor, Plaintiffs' Counsel, and the District indicating:
 - a) the number and percentage of eligible students whose parents were contacted with an offer of compensatory education;
 - b) the number and percentage of parents contacted who accepted the offer;
 - c) the number and percentage of eligible students whose compensatory services have started;
 - d) the number and percentage of eligible students whose compensatory services have been completed;
 - e) the number of providers contracted with by CDE to provide compensatory services; and
 - f) the extent to which, if any, District providers can deliver compensatory education in addition to their regular service delivery responsibilities.

- 2) By 10/1/08 CDE will provide to the Court Monitor, Plaintiffs' Counsel, and the District a spreadsheet indicating, for each eligible student:

² While the RSIP contains compensatory education provisions, the Court's judgment was that the extent of the violations during the period of time in question would cause the remedy of those violations to overwhelm the District's ability to implement the forward-looking requirements of the RSIP.

- a) the date on which the parent was contacted with an offer of compensatory education;
- b) the date of the parental response to the offer, and the response (Y/N/Disagree with offer);
- c) the date compensatory services began;
- d) if applicable, the date compensatory services were completed;
- e) if the services have not begun, the projected date of initiation;
- f) if the services have not been completed, the projected date of completion; and
- g) a “next steps” column, in which CDE will indicate the next step to be taken for each student.

3) By 10/3/08, CDE will provide to the Court Monitor, Plaintiffs’ Counsel, and the District a plan indicating the steps it will take, person/people responsible, and timeline for each step in order to implement the Compensatory Services section of the Court’s 12/20/07 *Order* fully, effectively, and in a timely manner.

* * *

After the Court has had an opportunity to review CDE’s response to this directive it will inform the Parties of the next steps on this issue.

c: Maria De La Vega
Adam Escoto
Linda Lee

Appendix--CDE 9/19/08 Document

Compensatory Education Services Agreement

Adam and Linda, this is a follow up to our meeting on Thursday and Friday, September 11-12, 2008 regarding the provision of Compensatory Services. As you are aware, the December 20, 2007 court order directed the district to provide compensatory services to students who were identified as eligible to receive the services from the beginning the 2007-08 school year through December 31, 2007. You reported to the court that the district had provided compensatory services to approximately 90 students from June 2008 to July 30, 2008. There still remains a large number of students to be served.

During our meeting we all agreed that the district needs to be more pro-active in maximizing the provision of compensatory services to students deemed eligible to receive it. CDE also reminded you that Monica Perez has been identified to the court and named in court documents, as the person responsible for managing the compensatory services in the district. It is important that she not only continue in this role, but increase her involvement in the management and tracking of these services. As promised, I am sending a summary of the compensatory education plan we discussed during that meeting.

The following is the district's commitment to delivering compensatory services to the RCSD's students during the 2008-09 fall semester.

By Monday, September 15, 2008, Linda Lee, Special Education Director (Linda) will send out e-mails to all RCSD special education staff disciplines, including the IEP Coordinators (IEPCs), asking for their interest in working overtime to provide compensatory services after school, on Saturdays, and in their spare time, during school hours. Linda will also send out invitations to outlying district Special Education Directors for special education staff and related service providers who may be interested in earning additional money to provide compensatory education services to RCSD students during their spare time.

Linda will call TES and inform them that the district Special Education office will be available beginning Saturday, September 20, 2008 to provide Compensatory services to students. RCSD understands that TES has three providers ready to provide services at this time.

RCSD will communicate weekly with TES to determine other TES providers' availability. When available, they will be brought on to provide compensatory education services to other students.

The district will develop a letter to send to parents, of eligible students, regarding the provision of compensatory services this fall and offering an equitable remedy, based on the parents' decision, for services (minutes) that exceed the routine hours in a school year. CDE agreed to draft this letter which the district could

then modify and finalize. CDE will send this draft letter to the district by Wednesday, September 17, 2008.

Linda will contact the district's lawyer to ask about the legalities of offering parents, if they will accept equitable remedies (prior to sending the above letter out).

RCSD will provide three two hour sessions of compensatory services in the district office on Saturdays, beginning September 20, 2008. The sessions will be 9:00 – 11:00; 11:30 – 1:30; and 2:00 – 4:00. The goal is to serve a minimum of 75 students during the Saturday sessions.

Linda will work with the detention school administrators to allow compensatory services to be expanded to the students serving detention on Saturdays.

RCSD will provide one after school session of compensatory services on Mondays, Tuesdays, and Thursdays and two after school sessions on Wednesdays. These sessions will begin no later than Monday, September 22, 2008.

Linda will provide each IEPC with a list of students eligible to receive compensatory education services at their respective schools. The IEPCs will be responsible for working with the school site administrators, teachers, and related service providers to ensure that parents are sending and the students are attending their agreed upon compensatory education sessions. This oversight will be monitored during the regularly scheduled meetings between the Special Education director and the IEPCs.

Linda will survey the floater Para Educators to determine if any are available to provide compensatory services during the regular school hours. Para Educators assigned to the Special Education program who do not have a permanent assignment can be utilized to provide compensatory services to eligible students in the class room.

CDE has offered to provide Technical Assistance where needed to ensure that compensatory services are offered to more students this fall. CDE has agreed to devote one week day, while in the district, to compensatory education service. CDE will facilitate weekly meetings with TES and RCSD staff to monitor the provision of compensatory service in the district.