



**THE DISTRICT SCHOOL IMPROVEMENT AND
ACCOUNTABILITY COUNCIL (SIAC)
AD HOC COMMITTEE – PROPOSED CONSENT DECREE (2012)**

**REPORT
TO THE BOARD OF EDUCATION
ON
PROPOSED CONSENT DECREE (2012)**

MARCH 29, 2013

Committee Members

Ad Hoc Committee – Proposed Consent Decree (2012)

The District School Improvement and Accountability Council

for

The Denver Public Schools

Sherry Eastlund, Community Person

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MEMORANDUM

TO: Members of the Board of Education, Denver Public Schools

FROM: Ad Hoc Committee – Proposed Consent Decree (2012)
District School Improvement & Accountability Council, DPS

RE: Proposed Consent Decree (2012) for the English Language Acquisition Program in the Denver Public Schools

DATE: March 29, 2013

The Ad Hoc Committee of the District School Improvement and Accountability Committee (DSIAC) reviewed the document known as the Consent Decree (2012) of the U.S. District Court, addressing the Denver Public Schools' English Language Acquisition Program submitted to the U.S. District Court by the Denver Public Schools, the Congress of Hispanic Educators, and the Plaintiff-Intervenor, United States of America. We also reviewed the existing 1999 Court Order, the monitor's reports from the period 1999 through 2005, available data on the achievement of English Language Learners (ELL's) in DPS, as well as documents provided to the Board of Education (BOE) on March 5, 2013.

This memorandum provides you our high-level assessment of the primary concerns we have with the Consent Decree (2012), which are summarized below. In addition, we have prepared a more detailed report which provides a broader discussion of our concerns.

Our **overriding** concern with the Consent Decree (2012) is that it **is not aligned with the intent of the 1999 Court Order**. The documents prepared by the Denver Public Schools' Department of English Language Acquisition and provided to the BOE on March 5, 2013, entitled, "Position Paper: Teaching English Learners (October 31, 2012)" and "From Compliance to Commitment: Program Guidelines for English Language Acquisition" (January 2013) reveal a fundamental shift in the approach to English language acquisition in DPS relative to the 1999 Court Order. These documents describe a "maintenance" approach that attempts to preserve the native language of English Language Learners (ELL's), rather than a "transitional" approach to English language proficiency. The prioritization of native language instruction over "sheltered" English and other transitional approaches is in direct contradiction to the intent of the 1999 Court Order, even though Denver Public Schools (DPS) represented to Judge Richard P. Matsch that the Consent Decree (2012) had the same intent as the current order. The "late exit" program described in the Program Guidelines, which allows a student to be taught in his/her native language throughout his/her entire academic career, is not allowable under the 1999 Court Order, which calls for a transition to the mainstream after, on average, three years of native language instruction. Moreover, this "late exit"

approach, cited by the “Program Guidelines” as best practice in English language acquisition, will not be offered to speakers of any language other than Spanish. If, indeed, the educators in DPS believe this to be the best approach, not offering it to *all* ELL’s is overtly discriminatory.

In addition, the community has not had an adequate opportunity to review and respond to this new position, which is a significant departure from current policy, practice, and federal order. We urge the BOE to defer its request for approval of the Consent Decree (2012) until a thorough vetting of this position by themselves and by the public has occurred.

Other significant concerns include:

- 1) We believe that the Consent Decree (2012) does not adequately reflect a plan that will be accepted and embraced by the families which it is designed to serve. It also does not emphasize the parental rights regarding the initial placement of a student in an ELA program or into a program which is taught in English with supported instruction (sheltered English program), versus the right to “opt out” of all ELA programs and have the student placed in a traditional program.
- 2) The Consent Decree (2012) does not outline a convincing strategy or a proven theory of action/best practices to properly implement, assess, and monitor the plan by Denver Public Schools’ staff in order to effectively deliver quality services to the students and their families with the goal of transitioning the ELL’s to the mainstream within an appropriate length of time, allowing students to graduate with or near their age group cohorts.
- 3) The Consent Decree (2012) does not identify an acceptable path for the recruitment, training and development, and the retention of qualified staff for the program, with regard to both teachers and principals.
- 4) The Board of Education (BOE) has not reviewed the Consent Decree (2012) sufficiently to know whether it will serve ELL’s in the Denver Public Schools fairly and effectively. The BOE also has not reached out to its constituents affected by the ELA program to determine whether they are in support of the program in either its current or proposed form.

STAKEHOLDER INPUT INTO PLAN DESIGN

In order to have the highest probability of a successful plan to educate English Language Learners (ELL’s), the design of the plan must include the input of the student/family stakeholders. We are concerned that the parents/guardians of ELL’s have not had an adequate opportunity to provide input regarding the Denver Public Schools’ revised position on the program, the location of the programs, the initial assessment of the student’s language abilities, the length of time spent by the student in said programs, and the definition of a successful transition of the ELL student to other ESL programs or possibly to a traditional program in accordance with the family’s desires.

We recommend that the proposed plan be presented to groups of representative student/family stakeholders in an open and public process with the intention of identifying problematic issues in the plan so that these issues can be resolved.

We have identified the following problems:

- 1) Most of our non-English speaking families have limited resources and prefer schools which are located within walking distance to their homes, particularly at the elementary school level. Ideally, ELA programs should be located in areas with the highest densities of ELL's. (We do recognize, however, that the number and locations of programs may be dictated by the resources of the district.)
- 2) Regardless of the student's first language, the level of a student's English language proficiency should be given the highest weight in any initial assessment of the student's need for an ELA program. (It is our belief that most ELL's benefit significantly from an earlier transition into an English-only classroom, therefore, the assessment of a student's ability to speak English should be a major component of the assessment. The screening questions used in the 1999 Court Order should continue to be used in this initial assessment.)
- 3) Parents'/guardians' desire to have the student placed in an ELA program or in a traditional program needs to be taken into consideration before the student is admitted to a particular program. Accurate and clear information - information which is based on data collected by the school district - needs to be provided to parents about the effectiveness and length of various ELA-Spanish or ESL programs.
- 4) The counseling needed to place the student in a suitable program should incorporate data-defined program outcomes, as well as anecdotal outcomes, used in conjunction with the initial student assessment to provide the student and the family with adequate information to make an informed choice about the ELL program desired.

PLAN IMPLEMENTATION, ASSESSMENTS & MONITORING

Based on our review of the court monitor's reports from August 1999, through January 2005, of the Denver Public Schools' English Acquisition Program (ELA) filed by Ernest R. House, we believe that the implementation of any ELA plan and the assessment of the results thereof, are critical to its success, its ongoing success, and whether and how the program may be improved and expanded. It is apparent from these reports that there are many obstacles to the successful implementation of an ELA plan, and to the adequate and proper assessment and monitoring of its results.

We recommend that the BOE review the court monitor's reports to inform its evaluation of the current plan and whether the plan can be successfully implemented and assessed. Our reference to assessments extends to both individual student assessments and overall plan assessments. Our recommendations are intended to aid

the BOE in identifying the parameters to guide the Denver Public Schools' staff in the implementation, assessment, and the monitoring of the progress of the program. At the same time the BOE should also consider defining the role of the independent monitor in assessing the same.

We have identified the following issues:

- 1) The ELA plan should not be designed with a “one size fits all” approach. At each level, i.e. primary (ECE-2), intermediate (3-5), middle, and high school, there are different factors which require that the plan be customized for that level of academic and social learning. (The monitor’s reports indicated that the implementation and assessment of the ELA programs were far more successful at the elementary school level, and that significant differences exist among the three programs in part due to the ages of the students and the demands placed upon them, both academically and socially, at the higher grade levels.)
- 2) The implementation of the programs was not consistent across schools, but this has improved over time. Improper initial assessments of students and placement into the incorrect programs complicated the implementations.
- 3) Resources are a key factor in the breadth and depth of the implementation of ELA programs. (The implementation, assessment, and monitoring of the plan should make best use of the limited resources that are available. The limited resources will dramatically define the design of and the ability to effectively implement and assess the plan.)
- 4) The initial assessment of a student’s language abilities should be efficient, accurate, and result in the proper placement of the student into a program. These assessments should be differentiated based on the age of the student and the program level, i.e. primary (ECE-2), intermediate (3-5), middle, or high school.
- 5) The plan should incorporate the initial assessment as the primary tool for proper placement, and this assessment should be done in a timely fashion and be evaluated shortly thereafter, so as to correct any improper placements quickly.
- 6) Ongoing assessments of the students should be administered on a regular basis and at points in time which are consistent with the completion of various learning objectives. Results of these assessments should be received on a timely basis and used to make adjustments to improve the student’s course of learning.
- 7) As a student nears the end of said learning objectives, these ongoing assessments should be used to determine an exit strategy for the student. This strategy should be explained to the student and his/her family, and should have the goal of returning the student to the traditional program at a point where he/she is considered proficient and at grade level.
- 8) The data provided by DPS to our committee was of such quantity that it lost all meaningful purpose. The data was inconsistent, hard to understand, not compiled methodically or in any organized fashion, making it nearly useless in assessing the program in any meaningful way. We question whether DPS is capturing and reporting accurate and useful data on both the student level and the program level. If data is to be used for assessment purposes, its collection and compilation needs

- to be defined as to how it will be gathered and reported, with the goal of providing **useful** information for the evaluation of the program.
- 9) Data gathering should include the following reports at each age level, i.e. primary (ECE-2), intermediate (3-5), middle, and high school:
 - a. Number of students exiting program satisfactorily after three years,
 - b. Number of students at each language level of English language acquisition,
 - c. Number of students at each *academic status* level for reading, writing, math, and science
 - d. All above reports should also be generated for ESL students
 - 10) DPS should have the integrity and systems in place to assess and monitor its ELA programs, as well as individual student outcomes. We also highly recommend that an independent monitor be appointed to oversee the implementation and assessment of the program, whereby annual or semi-annual reports to the BOE are provided

QUALITY OF STAFF

In reviewing the court monitor's reports identified above, we also ascertained that the quality of the teaching and administrative staffs in schools offering ELA-Spanish or ELA-English programs was crucial to the success of the program. We believe that the "qualification" of staff needs to be strict, and that there is reason to be concerned if a large proportion of the staff is "on track," as it may compromise the effort to provide a "fully-qualified" teacher in every classroom.

As noted in the previous section regarding implementation and assessment, we understand that resources may be a limiting factor in providing adequate numbers of qualified teachers and principals. However, we believe that the available resources need to be allocated while keeping in mind that the employment of "fully-qualified" and Colorado state-certified teachers remains of utmost importance.

We recommend that the BOE review the court monitor's reports to inform its evaluation of the plan's strategy to develop and retain qualified staff for all of its ELA and ESL programs. The current change in the Consent Decree (2012) to "on track" status from "fully-qualified" status should be carefully considered when evaluating the necessary level of staff quality. We also recommend that the BOE pay particular attention to the methods of training ELA and ESL staff and whether qualified staff is being retained at acceptable levels at its ELA and ESL schools.

We have identified the following issues:

- 1) Difficulty finding qualified personnel and, in particular, Spanish-speaking teachers, counselors, and administrators.
- 2) Rapid turnover in the teacher force.

- 3) Need for focus on retention of trained ELA-Spanish and ELA- English teachers.
- 4) Need to identify/quantify the number of necessary ELA- English teachers to meet the needs of Vietnamese, African, Russian, and Chinese students.
- 5) Too frequent reassignment of administrators, resulting in lost continuity in program development and assessment.
- 6) Lack of sufficient counselors in ELA schools, and especially, ELA-trained counselors.
- 7) Importance of the limited resources for this program in regard to the development and deployment of an adequate number of “fully-qualified” teachers. The allocation of resources needs to be considered in concert with the location of students geographically, students’ ages and abilities, numbers of ELL’s in a particular location or at a particular school, and in relation to implementation and assessment costs. All factors need to be weighed, with particular importance given to location of program, the initial student assessment, and the quality of the staff.

SUFFICIENT BOE REVIEW AND ASSESSMENT OF CONSENT DECREE (2012)

Based on our review of the letter presented by board members Andrea Merida, Arturo Jimenez, and Jeannie Kaplan to the District Court on January 24, 2013, and with regard to Judge Matsch’s assessment of the current state of the Consent Decree (2012) and his direction to the Superintendent and the Board of Education as stated on January 25, 2013, we have substantial concern that the Board of Education has not reviewed the Consent Decree (2012) sufficiently to be able to determine whether it will meet the needs of ELL’s in Denver Public Schools fairly and effectively, as mandated by the 1999 Court Order. Given that the BOE has not taken adequate time to review the plan presented by the Consent Decree (2012), we are reasonably certain that the BOE has not taken the time to share this plan with ELL’s and their families in order to determine whether there is substantial support in the community for this plan.

We recommend that the BOE review all documentation including and surrounding the proposed Consent Decree (2012) for the English Language Acquisition Program in the Denver Public Schools: the memorandum from the Congress of Hispanic Educators, the United States of America, and Denver School District No. 1; the 1999 Court Order; the Court Monitor reports from 1999 through 2005; the memorandum and amicus brief from the former board members; available data on the achievement of ELL’s in DPS; the documents, “Position Paper: Teaching English Learners (October 31, 2012) and “From Compliance to Commitment: Program Guidelines for English Language Acquisition” (January 2013), as well as our full report. After a thorough review of all materials, we propose that the Board of Education seek modifications to the Consent Decree (2012) and work with the plaintiffs and Denver Public Schools’ staff to find common ground.

We have identified the following issues:

- 1) Communication among all parties must be improved and the process of discussing this decree must be facilitated in way that is effective and time-sensitive.
- 2) Data relevant to the success of the ELA program since the 1999 Court Order needs to be provided by DPS and reviewed by the BOE.
- 3) Reports must be furnished to the BOE by DPS Administration identifying the number of ELL's at all age levels and where these students are geographically located.
- 4) Reports must be furnished to the BOE by DPS Administration identifying the number of ELA teachers who are "fully qualified" and "on track."
- 5) Reports must be furnished to the BOE by DPS Administration identifying the number of administrators who are qualified to be ELA program leaders.
- 6) Once the Consent Decree (2012) is modified, and then accepted and supported by all parties, it is the responsibility of the BOE to hold the Superintendent and his staff accountable for providing an ELA program that meets all aspects of the Consent Decree (2012), as modified by this process.

NOTES:

The Ad Hoc committee for the Proposed Consent Decree (2012) of the District School Improvement and Accountability Council notes that the District's singular focus on "choice" as the determining factor in a family's decision as to where to send its student, rather than the student's "geographical location," complicates the provision of substantial ELA programs at schools where these programs are in highest need.

When schools are uncertain as to whether they will have the numbers of students and the attending resources to provide the programs that are necessary, poor planning, insufficient implementation, and improper staffing result.

Additionally, transportation issues become a major factor for students of limited means in their ability to attend "choice" schools. Families of ELL's often are unable to find the resources to afford transportation, so are limited by geographic location. If the district does provide transportation, then limited resources are being used to transport students rather than to educate them.