

LEGISLATIVE REPORT

SUBJECT: Compliance Assessment – Felix v. Lingle
Consent Decree

REFERENCE: HB 200, HD1, SD1, CD1, State
Budget, Section 48, Act (2003
Legislature)

ACTION REQUESTED: Report on Continued Assessment of the
Department’s Efforts towards Maintaining
Compliance with the Felix Consent Decree

As requested in HB 200, HD1, SD1, CD1, State Budget, Section 48, this report presents findings of a continued assessment of the Department of Education’s efforts towards meeting and maintaining compliance with the Felix v. Lingle Consent Decree and associated federal statutes. The report is organized into the following three sections:

- I. Background
- II. Assessment of the Department’s efforts to meet and maintain compliance with the Felix v. Lingle Consent Decree and associated federal statutes; and
- III. Assessment of resources, organizational, and statutory changes necessary to maintain compliance with the Felix v. Lingle Consent Decree and associated federal statutes.

I. Background

LEGAL MANDATES

The intent of the *Felix Consent Decree*, and associated federal mandates, is to assure meaningful access and benefit from those programs and support services offered by the Department through HRS302A. Thus, the provision of supports and services to students as required by the *Felix Consent Decree* and associated federal statutes is done within the context of public education. Therefore, an assessment of the Department’s efforts and required resources to meet these requirements must be done in recognition of the need for adequate and productive use of resources to achieve those system wide educational goals, typically termed “regular education”, adopted by the Hawaii State Board of Education.

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On May 4, 1993, the Governor, Superintendent of Education, and Director of Health were sued in U.S. District Court for failing to provide educational and mental health services to students in need of such services to benefit from their education. The federal court approved a settlement agreement, the *Felix Consent Decree*, on October 25, 1994. The decree specified that educational and mental health supports and services, programs, and placements be developed, in accordance with federal law, as the needs of the Plaintiff

Class require. Additional requirements were added in the August 3, 2000 Revision to the *Felix v. Cayetano Consent Decree* following a contempt finding.

On September 7, 2001 the Court ordered revised timelines for benchmarks issued on August 2, 2000. There were essentially two important dates November 1, 2001 and March 31, 2002. All infrastructure and initial performance benchmarks were to be met by the November deadline. March 31, 2002 was the final date for the completion of any other benchmarks and performance goals.

On September 10, 2002, the court found the State of Hawaii in substantial compliance with the revised decree. Monitoring for a period of at least 18 months was set as a means to verify that improvements in service delivery infrastructure and practice are sustained. The “sustainability period” is over December 31, 2003. A court appearance is anticipated during March 2004 in which a determination regarding the future of the *Felix Consent Decree* will be forthcoming.

Associated Federal Statutes

The two most immediately relevant federal statutes are the **Individuals with Disabilities Education Act (IDEA)** and the **Rehabilitation Act of 1973, Section 504 (Section 504)**. These statutes provide guidance to Departmental activities that provide educational and related services to support students with disabilities achieve educational goals. These regulations are codified in Hawaii Administrative Rules (HAR) Chapter 53 and Chapter 56, respectively.

The Office of Special Education and Rehabilitative Services (OSERS), United States Department of Education assessed the Department’s compliance with IDEA. The review, conducted in October 2000 and February 2001, found areas of strengths and noncompliance with federal statutes. On October 29, 2002 the Department submitted a corrective action plan to OSERS designed to rectify the problems identified in the review.

Two additional federal education statutes were enacted after the *Felix Consent Decree* was accepted. These statutes, **New Century Public Charter Schools** and **No Child Left Behind** provide further regulation regarding the governance, funding, staffing, and assessment of academic progress of all students, including students with disabilities. While these statutes have not directly influenced the initial requirements of the *Felix Consent Decree* the fact that they are federal mandates that influence the provision of educational programs offered through the Department they nonetheless impact the provision of services to students with disabilities currently.

ORGANIZATIONAL RESPONSE

The Department’s organizational response to the requirements of the *Felix Consent Decree* is to provide sufficient resources and organizational support to existing offices, branches, and sections within the Department already tasked with meeting those associated federal mandates, IDEA and Section 504. As a result, responsibility for meeting these requirements rests within all offices and most branches and sections of the Department. For example, supplying sufficient numbers of qualified staff is a function of

the Office of Human Resources while the maintenance of an Integrated Special Education Database System (ISPED) is a responsibility of the Office of Information Technology Services. The Office of Curriculum, Instruction and Student Support (OCISS) is tasked with providing procedures, practices, and technical assistance to those supervising or providing direct educational and related services to students that meet the requirements of the *Felix Consent Decree* and other associated federal mandates.

The OCISS, Student Support Branch, Comprehensive Student Support Services System (CSSS) (EDN 150) provides a continuum of supports and services made available to all students to enable them to benefit from the education programs provided by their schools. This continuum ranges from minor adaptations in the general education classroom to formal and informal accommodations, special education interventions, and supports and services extended by one or more external agencies. The supports and formality of the service delivery process match the severity, complexity, and frequency of each child's needs. Specific program categories were originally established in response to the 1999 legislative initiative. The existing EDN 150 categories were expanded to include the program items and priorities established by the August 3, 2000 Revision to the *Felix v. Cayetano Consent Decree*. Attachment A, EDN 150: *Felix Consent Decree* and Associated Federal Mandate Programs, provides a listing of those programs.

Specific to the *Felix Consent Decree*, the Department's plan to meet and sustain compliance is integrated into a system wide student support system necessary to assure success for all students. The CSSS is the foundation on which DOE, and collaborative DOH, activities are based. Listed below are key Department activities with direct impact on compliance with the *Felix Consent Decree*.

School-Based Behavioral Health The Department's movement into School Based Behavioral Health (SBBH) provides an array of behavioral and mental health services in an educational setting. This approach is validated as a best practice that is effective in addressing student behavioral needs and moves to achieve nationally recognized goals identified in the Surgeon General's Report on Child Mental Health and the SAMSHA sponsored UCLA Center for Mental Health in Schools. In addition the SBBH policies and procedures meet the legal requirements of federal and state statutes, the Individuals with Disabilities Education Act (IDEA), The Rehabilitation Act of 1973, Section 504, the Americans Disabilities Act, and the *Felix Consent Decree*. It was authorized by the passage of Act 91, Section 22, Session Laws, 2001.

Autism Spectrum Disorder (ASD) On July 1, 2002 the Department assumed operational responsibility for the provision of educationally related services to students with ASD. Details regarding the provision of these services is available in the Department's Report on Comprehensive Assessment of the Department of Education's efforts towards Adequately Servicing Students with Autism Spectrum Disorder as required under ACT 200, H.B. NO. 200, H.D. 1, S.D. 1, C.D. 1, Part III, Section 49. Further details regarding the identified DOE needs for funding, positions, organizational schemes, facilities and equipment are contained in this report.

Integrated Special Education Database System (ISPED) A fully functioning information management system (ISPED) that provides assistance to program managers and administrators tasked with meeting the needs of students with disabilities is an expectation contained in the *Felix Consent Decree*. The system provides access to student program information to those individuals providing direct services and aggregate program information to administrators at all levels regarding resource needs and system performance.

II. Assessment of Department of Education (DOE) efforts to meet and maintain compliance with *Felix Consent Decree* and associated federal statutes

ASSESSMENTS

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The September 10, 2002 finding of “substantial compliance” by the federal court placed the primary burden of monitoring the Department’s efforts to maintain compliance in the *Felix Consent Decree* on the Department’s of Education and Health. The Court Monitor maintained the capacity to conduct additional verification studies. A quarterly report format based upon the Department’s Continuous Integrated Monitoring Improvement Process (CIMIP) is the manner in which infrastructure and performance monitoring information is transmitted by the Department to the court.

This report presents the information necessary to verify the maintenance of the infrastructure developed and the procedures implemented to achieve substantial compliance with the *Felix Consent Decree*. There are eleven (11) infrastructure measurements that address staffing, funding, contracting, and information management. Additionally, there are fifteen (15) performance measures indicating the degree to which the delivery of programs and supports to students in need of such services meets compliance with the *Felix Consent Decree* and associated federal mandates. This report format reflects the commitment of the Department to the use of continuous performance monitoring to maintain and improve the delivery of educational and related services as required in the *Felix Consent Decree* and associated federal statutes.

In addition to the regular quarterly reports occasional special studies are conducted to address specific concerns related to the *Felix Consent Decree* not covered in the quarterly reports. These special studies provide important supplemental information regarding compliance with statutorily mandated programs.

An independent study by the Felix Court Monitor was conducted during November 2003. This study based upon the Service Testing model used previously investigated system performance related to secondary school students and students with Autism Spectrum Disorder in 8 complexes.

Associated federal statutes

The Office of Special Education Programs (OSEP) monitors the Department’s compliance with IDEA. An Executive Summary of findings for the most recent OSEP

visit is contained in the Department's Compliance Assessment – Felix v. Cayetano Consent Decree submitted to the Legislature December 2002 pursuant to the HB1800, HD1, SD1, CD1, State Budget, Section 51.1, Act 177 (2002 Legislature).

The Office of Civil Rights (OCR) investigates complaints regarding alleged violations of Section 504. Upon a finding of a procedural violation corrective actions must be taken.

There are two assessments regarding the Department's efforts related to NCLB. First, a yearly performance report is submitted during December to the U.S. DOE. Secondly, State Budget – NCLB Act 200, HB200, HD1, CD1, Part III, Section 43 requires a comprehensive yearly assessment of the DOE's efforts towards meeting and maintaining compliance with the NCLB Act of 2001. This assessment provides information related to the identified needs of funding, positions, organizational schemes, facilities, and equipment for compliance.

As Public Charter Schools are not under the supervision of the Department, there is limited assessment related to *Felix Consent Decree* and associated federal statutes. In fact, there are no *Felix Consent Decree* assessments. Assessment is limited to the associated federal statutes.

FINDINGS

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The Department continues to maintain and improve the infrastructure developed to provide a system of supports to students in need of educational and related services to benefit from their educational opportunities. Over the past 18 months five (5) quarterly reports have been issued. The final report is due to the court on January 31, 2004. Three (3) special studies have been conducted.

These reports and studies reveal that over the last 18 months the Department has sustained or improved on infrastructure and performance measurements beyond the level present at the finding of "substantial compliance." At this time all complexes have passed an externally conducted service testing and at least one internal monitoring review addressing the adequacy of system performance. The performance assessments utilize case based reviews to determine the degree to which the Department has complied with the requirements of the *Felix Consent Decree* and associated federal statutes. The quarterly reports can be accessed on line at <http://www.hawaii.gov/doh/camhd/>.

Three (3) special studies have been conducted to answer specific questions raised regarding compliance with the *Felix Consent Decree*. These studies addressed SBBH staffing, requests for due process hearings, and possible indicators of inadequate program availability. The findings in each of these reports provide evidence of continued system performance. Regarding SBBH; even though the recruitment and retention of qualified SBBH staff through civil service has progressed slower than the Department desired, proactive management of resources by district level staff maintained supports and services to students. The investigation into the number and reasons for requests for due

process hearings revealed a wide variety of reasons, many of which were due to matters beyond the Department's responsibility and which were consistent with national studies. Finally, there was no pattern found among suspensions and off school placements for students with disabilities to suggest that there was an inadequate array of supports and services to assist these students access and benefit from their educational opportunities. The summaries of these special studies are available in the quarterly reports.

The independent review by the Court Monitor is currently being conducted. A report is expected in December 2003.

Associated federal statutes

The Special Education Section (SES) continues to work with OSEP regarding improvements to the delivery of services under IDEA. There was an OSEP visit in October 2003 during which the SES presented evidence of program improvement and compliance with federal mandates. A follow up report is expected within six (6) months.

Over the last 36 months, there have been five (5) disability discrimination complaints (Sec. 504) filed with OCR in the last 36 months. Four have been resolved without a formal finding of violation by OCR, and one is under investigation. The four cases were resolved by entering into Agreements to Resolve (ATR). All four ATRs have been fully implemented and OCR closed the cases.

The Department's plan to address the provisions of NCLB is one of only 5 plans currently accepted by the U. S. Department of Education. The plan is available at <http://doe.k12.hi.us/nclb/index.htm>. The Department's first performance report will be submitted to USDOE in December 2003. The Comprehensive Yearly Assessment of the DOE's Efforts towards Meeting and Maintaining Compliance with the NCLB Act of 2001 as required by Act 200, HB200, HD1, CD1, Part III, Section 43, State Budget – NCLB will be submitted to the Legislature.

During the past year the Special Education Section has investigated one (1) complaint regarding the provision of special education and related services as a New Century Charter School. Additionally, over the 18 months five (5) requests for administrative hearings related to the provision of special education and related services were requested by parents of students with a disability.

III. Assessment of resources, organizational, and statutory changes necessary to maintain compliance with the Felix v. Lingle Consent Decree and associated federal statutes

As stated previously, the provision of supports and services to students with disabilities as required in the *Felix Consent Decree* and associated federal statutes is done within the context of the Department's structure to deliver regular education and meet associated federal mandates. The resources necessary to maintain compliance are dependent upon the degree to which regular education programs have adequate resources, effective organization, and statutory support. For example; the intensity and frequency of SBBH

services in support of a student's behavior support plan may be drastically less if the student attends regular education classes that are small and taught by a highly qualified teacher than if it same student is in a large class taught by an inexperienced teacher with minimal instructional material.

RESOURCES

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At this time the Department's needs with regards to positions and funding to maintain the necessary system infrastructure and performance are contained in Attachment A: EDN 150: *Felix Consent Decree* and Associated Federal Mandate Programs. The total amount is \$284,037,140. No additional amount beyond FY04 is requested for FY05 although appropriate flexibility for resource utilization is requested to enable adjustments based on fluctuating need. Accordingly, if certain funding becomes necessary, we may request an emergency appropriation in FY04 or FY05 through the Executive Branch.

Associated federal statutes

Resources necessary to meet NCLB are contained in the Department's report Comprehensive Yearly Assessment of the DOE's Efforts towards Meeting and Maintaining Compliance with the NCLB Act of 2001 as required by Act 200, HB200, HD1, CD1, Part III, Section 43, State Budget – NCLB.

ORGANIZATIONAL CHANGES

No organizational changes are necessary to meet either the *Felix Consent Decree* or associated federal statutes.

STATUTORY CHANGES

No statutory changes are necessary to meet either the *Felix Consent Decree* or associated federal statutes.