

December 1, 2023

VIA ECF

Hon. Loretta A. Preska
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: LV, et al. v. New York City Dept. of Educ., et al., No. 03 Civ. 9917

Dear Judge Preska:

As per your Order issued on July 19, 2023, today I am filing the first program monitoring report on DOE's progress towards its obligations. As you know, this report is to be filed every 120 days following the issuance of the Order.

I shared a copy of a draft of the report with the parties last week and gathered their comments and feedback. After considering all feedback, adjusting where warranted, attached is the final report, pending any questions or suggestions from Your Honor.

As you will see on the last page of the report I have included a schedule for delivering the subsequent reports in 2024.

Happy holidays!

Yours sincerely,



David Irwin
Thru Consulting LLC

cc: Jeff Dantowitz, Esq.
Jasper Perkins, Esq.
Rebecca Shore, Esq.
Elizabeth Vladick, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Special Master Program Monitoring

December 1, 2023

LV, et al.,

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF
EDUCATION, et al.,

Defendants.

Prepared for

Loretta A. Preska

Senior United States District Judge

In 2007, the parties settled a class action lawsuit, resulting in a settlement which developed a governing document, the Stipulation, to measure compliance moving forward. The parties agreed to the Stipulation and an Independent Auditor has been in the role of measuring compliance.

When a special education hearing is held, an Impartial Hearing Officer overseeing the case can issue the decision that a service be provided or payment be made on behalf of the student. The NYC DOE then has 35 days to implement the order (unless otherwise specified), whether by making a payment and/or arranging the necessary service(s) for the student.

The DOE created an office, termed the Implementation Unit (IU), to manage the process by which these payments are authorized and services are arranged.

Obligation #39

Every 120 days from the date of this Order [7/19/2023], the Special Master will file a report with the Court on the DOE's progress in implementing the obligations that have come due in the prior 120 days pursuant to this Order (the "Obligations").

Each such report shall set forth (i) the Special Master's analysis as to whether each Obligation has been fulfilled; (ii) for any Obligation that the Special Master has concluded has been fulfilled, a detailed explanation of the basis for such conclusion; (iii) for any Obligation that has not been fulfilled, the impediments to fulfilling such Obligation, the measures necessary to overcome such impediments, and the timeframe for fulfilling the Obligation; (iv) for any Obligation that has not been fulfilled, a summary of the DOE's efforts to consult with Plaintiffs, the Special Master, or other relevant entities in order to fulfill the Obligation, or an explanation of good cause why no such consultation was held; (v) the next steps to be taken to fulfill the Obligations; and (vi) any additional recommendations of steps the DOE must take to meet the Stipulation's benchmarks, including but not limited to those identified as future recommendations in the Special Master's March 29, 2023 report. The DOE should provide all reasonable assistance to the Special Master in preparing this report, and Plaintiffs will be permitted to provide feedback.

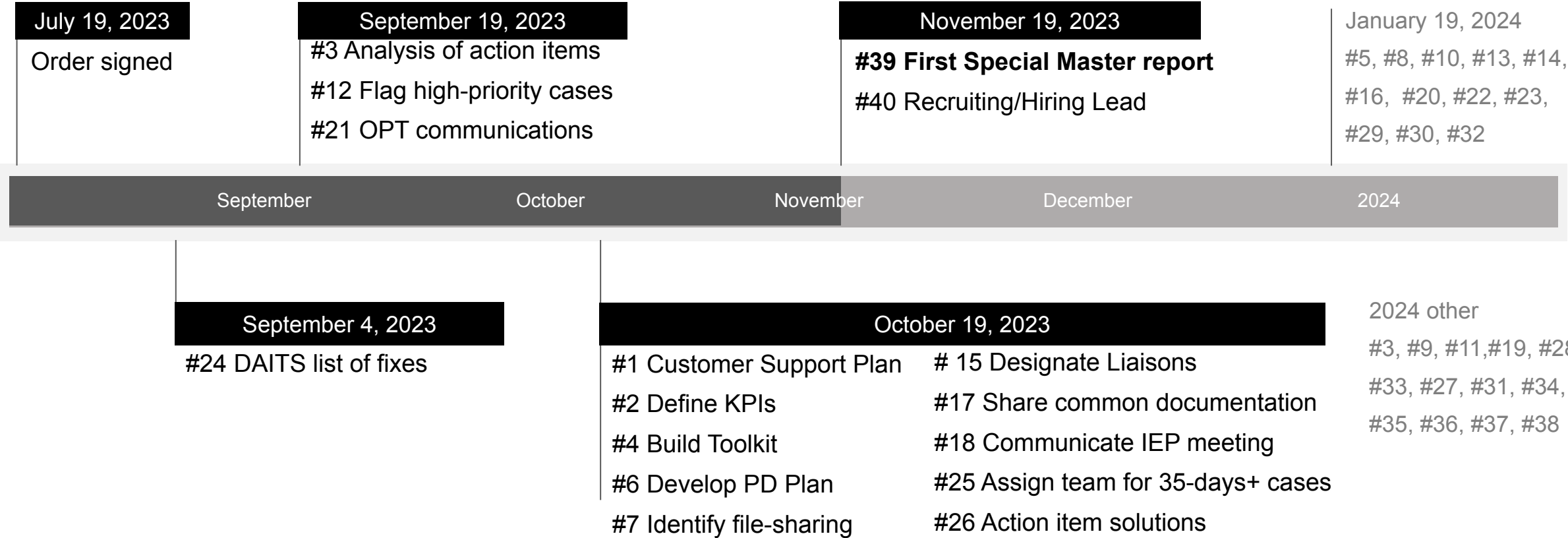
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Executive Summary

Timeline of Obligations through 2023

The following timeline outlines the sequence of obligations due to the Court.



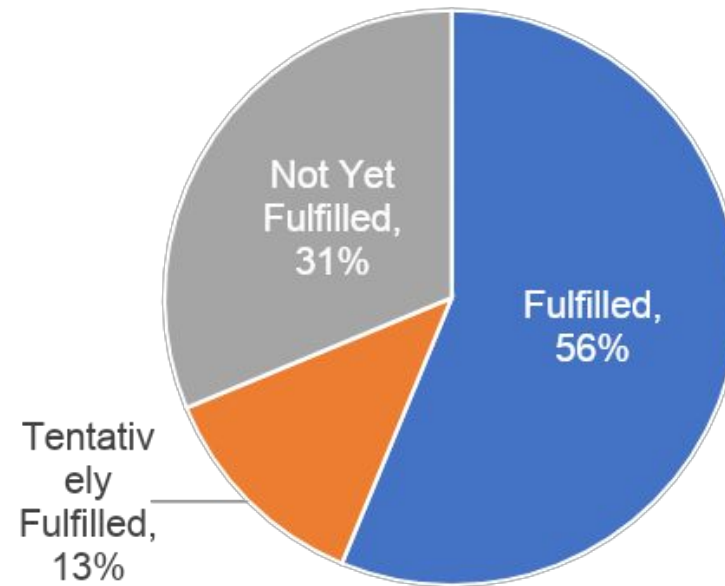
Progress Snapshot

The below represents the count of obligations that were due by 11/19/2023, and their current status.

Work is underway on most obligations that are due by 11/19/2023 and many for those due 1/19/2023, as well. All those 'Not fulfilled' are currently in process. 'Tentatively Fulfilled' indicates there are additional monitoring activities to perform.

Obligations Due By 11/19/2024

| | |
|-----------------------|---|
| Fulfilled | 9 |
| Tentatively Fulfilled | 2 |
| Not Yet Fulfilled | 5 |



My opinion is that most of obligations due 11/19 and not currently fulfilled will be fulfilled by the end of 2023. This is a snapshot of current status as of 11/22/2023.

Key Takeaways

- The DOE and Plaintiffs have both been active participants in this process of program monitoring and have made themselves available for my data gathering efforts, regularly.
- The DOE is in process at various stages of fulfilling all obligations due by 11/19/2023. Though five of the obligations are still not fulfilled, the DOE has shown a *significant* commitment and effort to complete them.
- Of those obligations ‘not fulfilled’ or ‘tentatively fulfilled’ (previous page), a combination of high-level factors contributes, such as (a) ongoing reviews of work products and feedback loops, (b) lack of funds to initiate, (c) other responsibilities competing for IU staff time, and/or (d) pivoting the expectations of a deliverable to adapt to ongoing work
- Details for each obligation not yet fulfilled and progress being made to complete them is explained in the “Obligations Not Yet Fulfilled” section that follows.

Key Takeaways (continued)

- The biggest issue facing the fulfillment of the obligations is where new personnel and technologies are needed by DOE to improve the timeliness of implementations, (about a third of all obligations), and the fact that new funds have still not been attained for this work. The spirit of Your Honor's Order issuing the 40 obligations is that DOE must undertake new, more modernized strategies. By definition, new roles and tools typically require funds. The DOE's funding request, however, is following the City's budgeting process, which is currently hamstrung by the City's current spending and hiring freeze. Timeline for approval and funding is unclear, but I expect no earlier than Q2 2024, and therefore, of the obligations due in January 2024 (10), at least half will not be fulfilled on time.
- DOE is in process of redesigning, documenting and communicating new and updated procedures and processes. The next steps will be to effectuate those new processes with personnel and tools, as well, (see above).

Special Master Recommendations

- Until funds are secured, all Parties, the Court, NYSED, NYC OMB, City Council and the Mayor must make all attempts outside traditional channels to identify near-term/interim emergency funding to initiate the work of the obligations requiring resources. Each day that passes, *thousands* of our most vulnerable children are not getting services they need when more steps could be taken.
- DOE must identify capacity for the Implementation Unit (IU) experts to participate in upcoming process redesign efforts of administering due process. *Current staff are overwhelmed with competing priorities.*
- Many improvements and optimizations of new processes will rest on the success of the new Impartial Hearing Management System (IHMS) and Special Education Data Management System (SEDMS). DOE should identify a dedicated executive-level Lead in OGC/due process to lead the product management and eventual roll-out of IHMS. OGC and DIIT should also consult with applications development experts to formally assess the IHMS from a in-depth technical perspective to identify strengths and risks.

Risks and Issues

Definitions for this report

A risk is a problem that might occur if action is not taken.

An issue is a problem that is impacting stakeholders right now.

Issues being monitored as of 11/19/2023

Current Issues

| ID | Issue | Status | Owner | Update | Due Date |
|-----|--|--------|----------------------------------|--|------------|
| i-1 | The Impartial Hearing Management System (IHMS) deployment faces delays in launching next Summer (2024). | Active | Scott Strickland, DOE CIO | IHMS functional requirements (BRDs) are still in process. DIIT to assess scope and funding to complete development of IHMS (scope deployment plan) and report back in early November what modules of functionality could be delivered by July, 2024. | Early Nov. |
| i-2 | DOE OGC staff are overburdened with other competing priorities. | Active | Liz Vladeck, DOE General Counsel | OGC IU staff are addressing technology needs, the LV obligations, and the day-to-day business, concurrently. Efforts to increase staffing are being addressed by onboarding consultants and requesting “new needs” in the annual budget. | TBD |
| i-3 | DAITS, the Implementation Unit’s system of record, is increasingly deteriorating in its performance, (regular outages) | Active | Scott Strickland, DOE CIO | TBD | 1/19/24 |

Risks being monitored as of 11/19/2023

Current Risks

| ID | Risk | Status | Owner | Update | Due Date |
|-----|--|--------|---|--|----------|
| r-1 | Obligations requiring new resources have not been funded. | Active | Liz Vladeck, DOE General Counsel | “New needs” are being developed and will be submitted to OMB per the annual City budgeting process. This will result in necessary funding being awarded after the due dates of respective obligations. | TBD |
| r-2 | IHMS systems integrations plans are unclear to stakeholders. | Active | Scott Strickland, DOE CIO | Upcoming technical deliverables may address and add clarity. Example: IHMS and SEDMS will need to share data bidirectionally, such as the processing of service-related action items | TBD |
| r-3 | User Research firm has rolled off the IHMS project. | Active | Scott Strickland, DOE CIO | Vendor rolled off the IHMS engagement at the end of September. | TBD |

Risks being monitored as of 11/19/2023 (cont'd)

Current Risks

| ID | Risk | Status | Owner | Update | Due Date |
|-----|---|---------|----------------------------------|---|----------|
| r-4 | Lack of clarity in IHMS technical approach and future ownership. | Pending | Scott Strickland, DOE CIO | There is confusion around technical plans and the transition of IHMS ownership from IBM to DIIT in the future. DIIT has not shared technical documentation produced by IBM on the Sharepoint site used by stakeholders. | TBD |
| r-5 | No IHMS Implementation plan (i.e., training, communications, change management) | Pending | Liz Vladeck, DOE General Counsel | TBD | TBD |

Obligations Fulfilled

Obligations Fulfilled

| Obl.# | Obligation | Due Date | Rationale |
|-------|---|-----------|--|
| 24(a) | <p>(a) Within 45 days of the date of this Order, the Special Master and DOE will inventory all functional issues of DAITS that impede the hearing order implementation workflow, including but not limited to system crashes, system outages, and system timeouts, and prioritize enhancements.</p> <p>(b) Within six months of the date of this Order, the DOE will develop, test, and release the DAITS enhancements;</p> | 9/4/2023 | In August, Implementation Unit (IU) staff developed an initial list of enhancements needed to DAITS (.xls), which was then prioritized by the IU as critical or nice to have. DOE and SM discussed the contents and finalized the list; (IBM responded with how IHMS will address the needs). Once signed off, DOE DIIT has since used the list to begin estimating the level of effort to deliver the fixes and is gathering more detailed requirements. |
| 3 | Within two months of the date of this Order, the Special Master will identify by type of Action Item the key pain points around the implementation of payment orders and service orders. | 9/19/2023 | Using the list of all possible action item types (e.g., tuition reimbursement, PT), the DOE documented the key issues in the process of implementation (.xls), respectively. The DOE also supplied a general sense of the volume and level of effort to implement each action item type. I held discussions with IU to understand the pain points and added my assessment of the root causes. Plaintiffs provided their feedback on the analysis,(several points of feedback will be addressed by obligation #26). |

Obligations Fulfilled (continued)

| Obl.# | Obligation | Due Date | Rationale |
|-------|--|------------|---|
| 21 | Within two months of the date of this Order, the DOE will formalize, designate, and confirm a liaison role in OPT, with an escalation path, to coordinate the implementation of transportation orders between the Implementation Unit, OPT, and OSH as applicable. The DOE will improve communications and track implementation of impartial hearing orders requiring transportation and provide monthly status updates to parents on the implementation of such orders, except where DOE is not in compliance with a transportation | 9/19/2023 | The DOE produced a “chart” (.doc) of Implementation Liaisons for OPT and OSH with escalation points, coordination protocols between offices, and procedures for implementing transportation orders. I reviewed the document and provided feedback, as did Plaintiffs, and DOE incorporated the comments into a new version which was finalized, (but will be updated in the future, as applicable). |
| 1 | Within three months of the date of this Order, the DOE will develop a customer support plan, including people and tools, for the Implementation Unit to address questions from parents and providers, routing Tier II questions to Implementation Unit Implementation Managers; | 10/19/2023 | I provided a template (.doc) of a customer support plan to DOE incorporating standard elements of such a plan (cross-industry) in outline form. DOE then developed a draft Customer Support Plan (.doc) from the template, detailing intended audience groups, outline of a support hotline and its objectives, training for hotline staff, and metrics to evaluate the effectiveness of the program going forward. I provided feedback which DOE incorporated into a final version. (The subsequent obligation is #14.) Plaintiffs currently have this document, however are awaiting the appendices items (which are other obligations that have not yet been fulfilled) to provide feedback. |

Obligations Fulfilled (continued)

| Obl.# | Obligation | Due Date | Rationale |
|-------|---|------------|---|
| 2 | Within three months of the date of this Order, the Special Master and DOE will identify the Key Performance Indicators (“KPIs”) for monitoring the internal administrative workflows of the Implementation Unit. KPIs will be presented to the Plaintiffs for feedback. | 10/19/2023 | DOE developed a list in table form (.xls) of metrics that could inform the day-to-day performance and decision-making of the Implementation Unit, (i.e., KPIs). I reviewed the file and suggested a number of additional attributes to characterize the KPI, which was incorporated. The list has also been reviewed by Plaintiffs who made suggestions of additional metrics. The DOE should now be developing more detailed requirements (e.g., calculation formulas, suggested by Plaintiffs) to gather the data and report on the respective metrics. (The subsequent obligation is #28.) |
| 18 | Within three months of the date of this Order, the DOE Implementation Unit will develop and communicate a clear procedure to inform schools and CSEs that an IEP meeting has been ordered and to ensure that the IEP was updated pursuant to that order; | 10/19/2023 | DOE submitted a draft of a procedures document, “Protocols for Communicating Orders for IEP Meetings,” for which I provided suggestions to improve the contents of the document, to be more clear, expand in areas, etc. DOE addressed the feedback and provided an updated version of the protocol document, which I accepted. |

Obligations Fulfilled (continued)

| Obl.# | Obligation | Due Date | Rationale |
|-------|--|------------|---|
| 6 | Within three months of the date of this Order, the DOE will formalize an approach to sustaining knowledge of implementation processes, to enable experienced staff to onboard, train and mentor more junior staff; | 10/19/2023 | My team shared a template of a professional learning plan deliverable in advance of the work. The DOE developed a <i>Professional Learning Plan</i> and submitted it in late October, which I reviewed and provided feedback, and eventually I accepted. The plan includes, among other things, |
| 15 | Within three months of the date of this Order, the DOE will formally designate Implementation Liaisons in all Districts and relevant Central offices (e.g., OPT, OSH, OSE) to act as points-of-contact in their respective areas for Implementation Managers to facilitate the arrangement of the ordered service(s). The DOE will also establish an escalation process when an Implementation Liaison is unavailable or unable to resolve a particular issue, with the escalation role being in an executive role within the respective DOE office; | 10/19/2023 | DOE developed an <i>Implementation Liaison Directory and Escalation Protocol</i> document (.pdf), which designates Implementation Liaisons for all relevant DOE offices and districts, and defines a protocol when that office does not address the order in a timely manner (i.e. escalation protocol). I provided feedback, as did Plaintiffs, which DOE addressed. An updated version of the protocol document was submitted back to me, reviewed, and I accepted. |

Obligations Tentatively Fulfilled

Obligations Tentatively Fulfilled

| Obl.# | Obligation | Due Date | Rationale |
|-------|---|------------|---|
| 4 | Within three months of the date of this Order, the DOE will build and maintain a toolkit of existing assistive technology, schools, programs, and services that the DOE can Timely Implement (as defined in the Stipulation) any Action Items for provision of assistive technology; | 10/19/2023 | The DOE compiled a spreadsheet of assistive technology (AT) products from those that are readily available for DOE to quickly identify or procure for the student (“Timely Implement”). I reviewed the various categories and asked that DOE document how it will maintain the toolkit going forward, which DOE did. There is an open question as to the component of the obligation addressing “schools, programs, and services.” |
| 25 | Within three months of the date of this Order, the DOE will assign an additional team of Implementation Unit Staff to expedite the implementation of any hearing order that is more than 35 days past the date of the hearing order. This team will continue its work until such time as orders are consistently being implemented within the implementation deadlines; | 10/19/2023 | The DOE documented a “Backlog Triage Plan” (.doc) to describe the procedures the additional team will perform in expediting orders 35+ days old. The plan includes documentation of a workflow, staffing plan, operational plan, data reporting and dependencies. Dependencies include resources/funding for the additional team, and as per other notes in this report, the budget is pending request to OMB at the time of this writing. That is why I have tentatively accepted this obligation, with the agreement that we continue to monitor the identification of the team members and launch of the process. At the time of this writing, DOE has not launched the process. |

Obligations Not Yet Fulfilled

Obligations Not Yet Fulfilled

| Obl.# | Obligation | Orig.Due Date | Impediments and Measures to Overcome | Efforts to Consult with Plaintiffs or SM |
|--|---|---------------|---|---|
| 12 | (a) Within two months of the date of this Order, the Implementation Unit will assign resources to flag incoming orders deemed high priority, as the DOE and Plaintiffs agree upon the term “high-priority.” The Implementation Unit will triage and route orders accordingly. The DOE should consult and obtain feedback from Plaintiffs on what orders should be deemed “high priority.” Should the DOE and Plaintiffs fail to agree on what orders should be deemed “high priority,” the Special Master will advise the Parties and/or raise the issue with the Court for determination | 9/19/2023 | - Review and feedback cycle still ongoing. The DOE and Plaintiffs are discussing the term “high-priority” – next steps: Plaintiffs to provide input on latest DOE proposal. | - The Parties and myself have had several discussions regarding the definition and the other documentation DOE developed. |
| Steps to be Taken | | | Special Master Recommendations | Timeframe to resolve |
| <ul style="list-style-type: none"> - Awaiting new version of High Priority Triage Plan - Parties to agree on definition of “high priority” - DOE to identify team to expedite high-priority cases - Engage OATH and NYSED on the process | | | - DOE should begin to focus on identifying the team and preparing to launch the process | - November 2023 |

Obligations Not Yet Fulfilled

| Obl.# | Obligation | Orig.Due Date | Impediments and Measures to Overcome | Efforts to Consult with Plaintiffs or SM |
|--|--|---------------|---|---|
| 7 | Within three months of the date of this Order, the DOE will identify a file-sharing process and tool to improve transparency of all documentation presented as evidence at the hearing so that all pertinent documents can be continually accessed by the Implementation Unit; | 10/19/2023 | - Awaiting update to the Document Management Plan per the feedback I provided. DOE working on next draft. Further discussions may be necessary to clarify expectations of the Plan. | - DOE, Plaintiffs and I held discussions on the intended outputs #7 and #17 and their relationship. - DOE submitted a draft which I have reviewed. |
| Steps to be Taken | | | Special Master Recommendations | Timeframe to resolve |
| - DOE to provide updated draft of Document Management Plan | | | - SM to discuss with Parties and clarify expectations for related obligations, i.e., #7, #17, #31, #34 | December, 2023 |

Obligations Not Yet Fulfilled

| Obl.# | Obligation | Orig.Due Date | Impediments and Measures to Overcome | Efforts to Consult with Plaintiffs or SM |
|---|--|--|--|---|
| 17 | Within three months of the date of this Order, the DOE will share common documentation among the internal DOE units that are involved in addressing due process complaints and the implementation of impartial hearing orders, and such other units as the Special Master may determine; | 10/19/2023 | - I believe this obligation is redundant with #31. Plaintiffs disagree. We are currently in discussions as this relates to #7. | - Both parties have been involved in discussions on expectations, as per update on #7 (slide 23) - Plaintiffs' position is that evidence is often admitted and later requested again of the parents. |
| Steps to be Taken | | Special Master Recommendations | | |
| <ul style="list-style-type: none"> - Further discussion among Parties around the future processes - Determine if #17 and #31 obligations are redundant and whether the timeframe for #17 is realistic | | Decision on combining #17 and #31: November, 2023 | | |
| | | Timeframe to resolve | | |
| | | #31 and #17 should be combined and delivered next July. I believe Plaintiffs' position can be realized through obligation #31 and is a more realistic timeframe. | | |

Obligations Not Yet Fulfilled

| Obl.# | Obligation | Orig.Due Date | Impediments and Measures to Overcome | Efforts to Consult with Plaintiffs or SM |
|--|--|--|---|--|
| 26 | Within three months of the date of this Order, the Special Master and the DOE will identify the types of action items that require the greatest levels of effort to process as well as those most likely to contribute to the backlog of hearing order implementation. Based on the analysis, the DOE will develop solutions to remove the causes for the backlog attributable to the DOE; | 10/19/2023 | - The DOE was able to identify 60+ pain points in obligation #3, and drafted corresponding potential solutions. The themes included staff, process, and communications. | - The DOE and I have met on numerous occasions to discuss pain points and potential solutions. - Plaintiffs provided feedback and suggested further investigation of pain points' root cause. |
| Steps to be Taken | | Special Master Recommendations | | Timeframe to resolve |
| <ul style="list-style-type: none"> - DOE to update project plans per feedback I provided - DOE to identify and provide specific orders/cases (5) for my team and I to investigate root causes (process analysis) - Thru will review the orders; and then identify and request sources of data for the analysis, (interviews, documentation, etc.) | | <ul style="list-style-type: none"> - I asked the DOE to shift course and envision/plan three projects to alleviate pain points now. - Further investigation of pain points using for 5 specific cases/action items | | <ul style="list-style-type: none"> - This work is ongoing. - December, 2023 |

Obligations Not Yet Fulfilled

| Obl.# | Obligation | Orig.Due Date | Impediments and Measures to Overcome | Efforts to Consult with Plaintiffs or SM |
|--|--|---------------|--|--|
| 40 | Within four months, the DOE will identify a part-time resource (50%) focused on recruiting and hiring staff for the Implementation Unit. | 11/19/2023 | <ul style="list-style-type: none"> - DOE is requesting funding for the position - DOE has not yet submitted a draft of the job description | <ul style="list-style-type: none"> - Plaintiffs and I have not had substantive discussions with DOE on this obligation. |
| Steps to be Taken | | | Special Master Recommendations | Timeframe to resolve |
| <ul style="list-style-type: none"> - DOE to draft job description for part-time hiring position - DOE to request funding via NYC/OMB new-needs process | | | <ul style="list-style-type: none"> - DOE should search for and identify an interim, internal candidate, potentially from another office in DOE, who could fulfill the role part-time. | TBD (additional discussions needed) |

Future Schedule of These Reports

| Report # | Draft Submitted to Parties | Parties' Feedback Due (If Any) | Report Submitted to the Court |
|----------|----------------------------|--------------------------------|-------------------------------|
| 2 | 3/12/2023 | 3/15/2024 | 3/19/2024 |
| 3 | 7/12/2023 | 7/16/2024 | 7/19/2024 |
| 4 | 11/12/2023 | 11/15/2024 | 11/19/2024 |

Contact

David Irwin
Special Master to the Court (LV vs DOE)
david@thru.co
(646) 489-7078