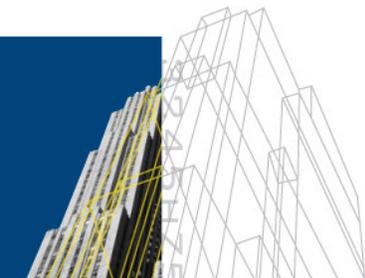


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I. Introduction

A. Overview

On December 12, 2003, Advocates for the Children of New York (“AFC”) and Milbank, Tweed, Hadley & McCloy LLP (“Milbank”) filed a class action, *L.V. v. D.O.E.* 03 Civ. 9917 (RJH). The class was comprised of parents of special needs children who alleged that while they had obtained a favorable order from an Impartial Hearing Officer against the New York City Department of Education (“Defendant” or “the DOE”) or stipulation of settlement placed on the record at an impartial hearing with the DOE, the DOE failed to obtain full and timely implementation of such order or settlement.

On December 11, 2007, the Corporation Counsel of the City of New York on behalf of the DOE and AFC and Milbank on behalf of Lead Plaintiffs and Class¹ (“Plaintiffs”), referred to collectively herein as (“the Parties”), signed a Stipulation and Agreement of Settlement (“Stipulation”) in connection with *L.V. v. D.O.E.* 03 Civ. 9917 (RJH). Pursuant to the terms of the Stipulation, Daylight Forensic & Advisory LLC (“Daylight”) was appointed as Independent Auditor on March 26, 2008. On May 9, 2008, the DOE formally engaged Daylight to commence the independent audit.

Daylight, in its capacity as Independent Auditor, is in the process of finalizing our review of Proof of Claims submitted by Authorized Claimants² in connection with the Compensatory Relief Subclass³ as well as the DOE’s

¹ Pursuant to Section I,1.f of the Stipulation, “Class” is defined as the Compensatory Relief Subclass and the Injunctive Relief Subclass.

² Pursuant to Section I,1.c of the Stipulation, “Authorized Claimant” is defined as a Class Member who submits a timely and valid Proof of Claim form to the Claims Administrator, as described more fully in Paragraphs 27-29 of the Stipulation.

³ Pursuant to Section I,1.j of the Stipulation, “Compensatory Relief Subclass” is defined as the class of all persons who, on or after December 13, 2000 and on or before January 31, 2008, (1) have obtained a favorable Order by an Impartial Hearing Officer against the DOE or stipulation of settlement placed on the record at an impartial hearing with the DOE and (2) failed to obtain full and timely implementation of such Order or settlement.

implementation efforts in connection with the Injunctive Relief Subclass⁴ Orders.

The terms defined in Section I. Definitions of the Stipulation apply to the present report.

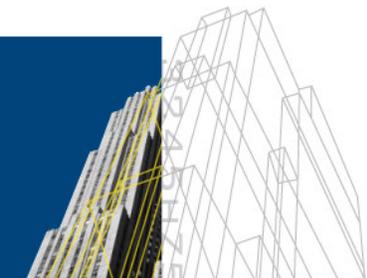
B. Injunctive Relief Subclass

On August 6, 2008, Daylight submitted its report related to Orders issued between February 1, 2008, and before the Effective Date of June 1, 2008. The Stipulation also requires the Independent Auditor to generate reports concerning the DOE's implementation of Orders and Action Items for all Quarterly Measurement Periods (each a "Quarterly Report") and Benchmark Measurement Periods (each a "Benchmark Report") beginning on the Effective Date of June 1, 2008, until the prospective relief provisions of the Stipulation cease to be in force (Section III. Injunctive Relief; paragraph 16, and point 17, Rights Retained by Injunctive Relief).

Daylight submitted its finalized First Quarterly Report on January 9, 2009. The finalized versions of Daylight's Second Quarterly Report and First Benchmark Report were issued on June 11, 2009. The First Benchmark Report included an aggregate analysis of the implementation results from the First Quarter and Second Quarter and determined that the DOE did not meet the First Benchmark⁵ established in the Stipulation, in Section III. Injunctive Relief; paragraph 4.

⁴ Pursuant to Section I,1.r and h of the Stipulation, "Injunctive Relief Subclass" is defined as the class of all persons who, on or subsequent to the Commencement Date of December 12, 2003, (1) obtain or obtained a favorable Order by an Impartial Hearing Officer against the DOE or stipulation of settlement placed on the record at an impartial hearing with the DOE and (2) fail or failed to obtain full and timely implementation of such Order or settlement.

⁵ The DOE must Timely Implement 75% of Action Items or Orders to be in compliance with the six month First Benchmark. If the DOE Timely Implements 75% or more of Action Items within the First Benchmark Measurement Period, it must also Timely Implement 70% or more of Orders within the First Benchmark Measurement Period to be deemed in compliance, or vice versa.



As a result, the DOE was required to implement a Corrective Action Plan⁶ within three months of the issuance of Daylight’s final First Benchmark Report.⁷

The current report focuses on Daylight’s review of Injunctive Relief Subclass Orders and summarizes our analysis of the Total Orders and Total Action Items that were part of the post corrective action first Quarterly Measurement Period (“PCA First Quarter”) and includes Orders issued between September 8, 2009 and November 2, 2009.

During the period of time between the end of the Second Quarter and the beginning of the PCA First Quarter (“Gap II Period”)⁸, Daylight continued to analyze Orders and Action Items to assess timely implementation. The Gap II implementation statistics are not part of the analysis of the DOE’s efforts to meet any of the Benchmarks set forth in the Stipulation. Instead, Daylight continued the independent audit during the Gap II Period to report to the Parties on Orders determined to be Unimplemented⁹ during this time period. Pursuant to the Stipulation, the DOE is required to send Non-Implementation Notices¹⁰ to any Injunctive Relief Subclass members whose Orders are determined to be Unimplemented.

⁶ Pursuant to Section I.1.k. of the Stipulation, “Corrective Action Plan” is defined as a plan devised by Defendants to address their past failure to implement Orders fully and timely and to increase the full and timely implementation of Orders following implementation of the Corrective Action Plan.

⁷ Pursuant to Stipulation Section III.10.a., “If the DOE fails to meet the First Benchmark or Second Benchmark at the required date...the DOE must, within three months of issuance of the final Benchmark Report notifying the parties of the missed benchmark, formulate and implement a Corrective Action Plan designed to correct the problems that caused the DOE to miss the benchmark at issue.

⁸ The Gap II Period analysis includes Orders issued between October 27, 2008 and September 7, 2009.

⁹ Pursuant to Section I.1. mm of the Stipulation, “Unimplemented” or “Unimplemented Order” is defined as an Order or Action Item that is found by the Independent Auditor to have not been Timely Implemented. Daylight assessed Action Items as Unimplemented when 1) there was no indication that implementation occurred or 2) the analysis determined that implementation occurred after the due date. Orders were deemed Unimplemented when one or more of the Action Items associated with the Order was determined to be Unimplemented.

¹⁰ Pursuant to Stipulation Section I.1.s., “Non-Implementation Notice” is defined as the notice to be sent to parents following the Effective Date if the Independent Auditor determines that a particular Order is Unimplemented.



Appendix A includes an overview of the results of Daylight's analysis during the Gap II Period.

C. Compensatory Relief Subclass

Daylight's work related to the Compensatory Relief Subclass has been an ongoing process, occurring concurrently with the Injunctive Relief Subclass analysis. While there is no reporting requirement identified in the Stipulation related to the Compensatory Relief Subclass, Daylight can provide additional details as to our disposition of the Proof of Claims upon request.

II. Executive Summary

During the PCA First Quarter, Daylight determined that the DOE Timely Implemented¹¹ 71.2% of the Total Orders and 79.9% of the Total Action Items reviewed.

Daylight measured implementation of the PCA First Quarter Orders and Action Items based upon the requirements of the Stipulation. In particular, the DOE Timely Implemented 74.1% of Service Orders; 85.4% of Service Action Items; 67.4% of Payment Orders; and 65.0% of Payment Action Items during this timeframe.

The following table is a summary of the percentage of Timely Implemented PCA First Quarter Orders and Action Items by type of relief:

Type of Relief	Timely Implemented Orders	Timely Implemented Action Items
Service	74.1%	85.4%
Payment	67.4%	65.0%

Daylight reviewed a total of 446 Orders during the PCA First Quarter. Specifically, Daylight determined which Orders and related Action Items were in scope for the present report or reportable in future reporting periods. In particular, Daylight determined that of the 446 Orders issued during the PCA First Quarter, there were:

- 355 Total Orders, including 781 Total Action Items identified during the PCA First Quarter, subject to analysis in the present report;
- Seven Orders comprising 12 Action Items¹² where Daylight determined that the DOE was not required to implement any of the Action Items because they were beyond the scope of our review. These Orders and Action Items have been retained in our case management system; and

¹¹ “Timely Implemented” is defined as an Order or Action Item that was implemented within the length of time specified in the Order or, if no such time is specified in the Order, within 35 days of issuance (of the Order itself or of the Order containing the Action Item), except that particular Orders or Action Items will also be considered to have been timely implemented for measurement purposes pursuant to the additional requirements included in Section I,1.ii of the Stipulation.

¹² A complete list of these Orders and their respective Action Items will be provided to the Parties.

- 74 Orders that did not include Action Items, such as Orders of Dismissal and Orders where the parent’s request for relief was denied. These Orders have been retained in our case management system.

Daylight also identified 10 Orders comprising 22 Action Items currently pending further action, which will be reported on during later reporting periods.¹³ Appendix B lists the 10 Orders issued during the PCA First Quarter that will be reported on during later reporting quarters.

In addition, Daylight determined that 15 additional Action Items were beyond our scope of review and not assessed as Uncounted/counted or for Timely Implementation during the PCA First Quarter. These Action Items were beyond our scope for multiple reasons, including but not limited to: Action Items for which the parent refused an ordered service, Action Items that were implemented pursuant to a prior Order, or where a required payment was made in conjunction with a previously analyzed Action Item.¹⁴

The following sections include a summary of our analysis at the Order and Action Item levels for the PCA First Quarter.

A. Order Summary

Based on the methodology outlined in Section III, below, Daylight reviewed those Orders determined to be within the scope of the PCA First Quarter. Of the 355 PCA First Quarter Orders, 302 were counted Orders. There were 53 Uncounted Orders as follows:

- Four Orders were timely appealed by the DOE;
- One timely appealed Order for which a settlement was reached prior to State Review Office determination;
- 42 Orders for which the DOE had made a substantial showing of attempts to reach the parent and attempts to obtain compliance with the parent’s obligations under the Order;

¹³ These Orders contain at least one Action Item with either a due date during a later reporting quarter or with an Indeterminate due date.

¹⁴ A complete list of these Action Items will be provided to the Parties.

- One Order that required the DOE to take action that was factually impossible to implement in a timely manner; and
- Five Orders for which the DOE was required to provide a service designated as a shortage area and instead offered an appropriate substitute service.

Of the 302 counted Orders, 87 (28.8%) were Unimplemented and 215 (71.2%) were Timely Implemented. In particular, 170 of the 302 counted Orders were service-related¹⁵ and 132 were payment-related.¹⁶ Of the 170 counted service-related Orders, 44 were Unimplemented (25.9%) and 126 were Timely Implemented (74.1%). Of the 132 counted payment-related Orders, 43 were Unimplemented (32.6%) and 89 were Timely Implemented (67.4%).

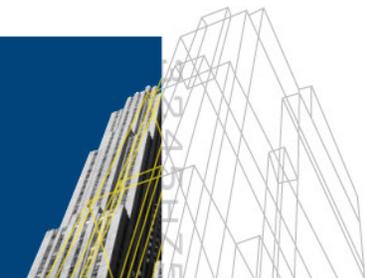
The following table is a summary of the results of our assessment of PCA First Quarter Orders by type of relief:

Type of Relief	Unimplemented Orders	Timely Implemented Orders	Total Orders	Percentage Unimplemented	Percentage Timely Implemented
Service	44	126	170	25.9%	74.1%
Payment	43	89	132	32.6%	67.4%
Total	87	215	302	28.8%	71.2%

Appendices C and D include lists by case number of the 302 Orders analyzed during the PCA First Quarter that were Unimplemented and Timely Implemented, respectively. In addition, Appendix E lists the 53 Orders issued during the PCA First Quarter that were Uncounted. Appendix F lists the 355 total PCA First Quarter Orders grouped with their respective Action Items.

¹⁵ Pursuant to Section I,1.dd of the Stipulation, “Service Order” is defined as an Order, or all Action Items within an Order that requires the DOE to take any action other than make a payment directly to a parent, private service provider, or private school.

¹⁶ Pursuant to Section I,1.v of the Stipulation, “Payment Order” is defined as an Order, or all Action Items within an Order, requiring the DOE to make a direct payment to a parent, private service provider, or private school.



B. Action Item Summary

Daylight reviewed 781 Action Items determined to be within the scope of the PCA First Quarter. Of the 781 PCA First Quarter Action Items, 651 were counted Action Items. In addition, Daylight determined that 130 Action Items were Uncounted as follows:

- Six Action Items were timely appealed by the DOE;
- Two timely appealed Action Items for which settlements were reached prior to State Review Office determination;
- 97 Action Items for which the DOE had made a substantial showing of attempts to reach the parent and attempts to obtain compliance with the parent's obligations under the Order;
- Five Action Items that required the DOE to take action that was factually impossible to implement in a timely manner; and
- 20 Action Items for which the DOE was required to provide a service designated as a shortage area and instead offered an appropriate substitute service.

Our analysis determined that 131 of the 651 counted Action Items were Unimplemented (20.1%) and 520 were Timely Implemented (79.9%). The 651 counted Action Items included 474 service-related and 177 payment-related Action Items. Of the 474 counted service-related Action Items, 69 were Unimplemented (14.6%) and 405 were Timely Implemented (85.4%). Of the 177 counted payment-related Action Items, 62 were Unimplemented (35.0%) and 115 were Timely Implemented (65.0%).

The following table is a summary of the results of our assessment of the counted PCA First Quarter Action Items by type of relief:

Type of Relief	Unimplemented Action Items	Timely Implemented Action Items	Total Action Items	Percentage Unimplemented	Percentage Timely Implemented
Service	69	405	474	14.6%	85.4%
Payment	62	115	177	35.0%	65.0%
Total	131	520	651	20.1%	79.9%

Of the 131 Unimplemented Action Items, 53 (40.5%) appear to have been implemented after the final due date. Daylight also determined that 15 of these were service-related and 38 were payment-related. We could not ascertain whether 78 (59.5%) of the 131 Unimplemented Action Items were ever implemented or implemented at a later date because there was insufficient information in the record to make such a determination at the time Daylight performed its analyses. These 78 Action Items were comprised of 54 service-related items and 24 payment-related items.

Appendices G and H list the 651 Unimplemented and Timely Implemented PCA First Quarter Action Items, respectively. In addition, Appendix I lists the 130 Action Items issued during the PCA First Quarter that were Uncounted.

III. Daylight's Methodology

A. Introduction

Daylight's assessment of the Total Orders and Total Action Items for the PCA First Quarter was performed based on requirements established in the Stipulation, documentation provided by the DOE or made accessible to Daylight via access to the DOE technology systems, and regular update calls with the Parties.

B. Overview of Daylight's Methodology

Daylight met individually and jointly with the Parties to discuss and clarify its responsibilities pursuant to specific provisions of the Stipulation, held meetings with DOE personnel to understand their processes and protocols, performed walkthroughs and limited testing of certain DOE processes, and obtained access to the DOE technology systems to gather supporting documentation regarding the implementation of Action Items prior to commencing our Injunctive Relief Subclass analysis. Moreover, several meetings were focused on customizing Daylight's case management platform and reporting capabilities.

Section III of the Independent Auditor's First Quarterly Report and Second Quarterly Report presented an overview of the processes and protocols Daylight utilizes to analyze Action Items and Orders. Throughout the PCA First Quarter, Daylight continued to analyze Orders and Action Items consistent with its methodology presented in these reports.

C. Update Meetings with the Parties and GCG

Daylight updates the Parties on the status of its review and discusses documentation and data requests, as well as selected aspects of its methodology and process through regularly scheduled bi-weekly conference calls from Daylight's office. Participants on these calls include Daylight personnel, the Parties and representatives from the Garden City Group, the Claims Administrator for the Compensatory Relief task. There were four update calls during the PCA First Quarter. In addition, on October 27, 2009, Daylight and the Parties met in person to discuss various aspects of the methodology used to analyze Orders and Action Items for Timely Implementation and to walk through a sampling of cases. Daylight also met with the Parties separately on March 18, 2010 to walk through their comments to the draft version of this report.

IV. Detailed Findings and Observations

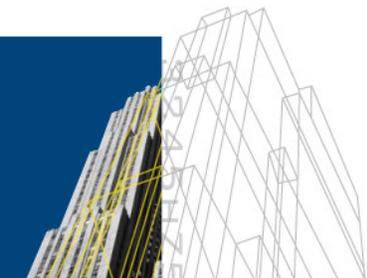
A. Breakdown of Unimplemented Payment Action Items

Daylight performed an in-depth review of the 62 Unimplemented payment-related Action Items to compile the bases for Daylight's assessments indicating the Action Items were not implemented in a timely manner. Of the 62 Unimplemented payment-related Action Items, 38 (61.3%) appear to have been implemented after the final due date. Daylight could not ascertain whether 24 (38.7%) of the 62 Unimplemented payment-related Action Items were ever implemented or implemented at a later date because there was insufficient information in the record to make such a determination at the time Daylight performed its analyses.

In four of the 38 payment-related Action Item cases that were implemented after the final due date, the DOE had all of the necessary documentation prior to the final due date, but did not process the payments in a timely manner.

Daylight's analysis determined that in 34 of the 38 payment-related Action Item cases that were implemented after the final due date, the DOE did not make a substantial showing of attempts to reach the parent to obtain compliance with the parent's obligations under the Order, as follows:

- One Action Item where the DOE made outreach attempts that contained insufficient information and were not considered valid;
- Six Action Items where the DOE did not make at least three outreach attempts;
- 18 Action Items where all of the outreach attempts were sent on the same day;
- Two Action Item where the DOE did not make any outreach attempts; and
- Seven Action Items where at least one of the outreach attempts was sent after the final due date.



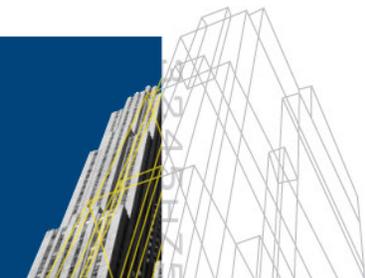
In the 24 payment-related Action Item cases that were not implemented, Daylight’s analysis determined that the DOE did not make a substantial showing of attempts to reach the parent to obtain compliance with the parent’s obligations under the Order, as follows:

- Eight Action Items where the DOE made outreach attempts that contained insufficient information and were not considered valid;
- Four Action Items where the DOE did not make at least three outreach attempts;
- Two Action Items where all of the outreach attempts were sent on the same day;
- Seven Action Items where the DOE did not make any outreach attempts; and
- Three Action Items where at least one of the outreach attempts was sent after the final due date.

B. Implementation of Service Action Items by Category

Daylight reviewed the 474 counted Service Action Items and noted that the top three most frequently identified categories were Speech and Language Therapy (110 Action Items or 23.2%), followed by Occupational Therapy (101 Action Items or 21.3%) and Physical Therapy (56 Action Items or 11.8%).

The categories with the highest percentage of Unimplemented Action Items with respect to the total number of counted Service Action Items within the category were CSE Evaluation (50.0%), and Reconvene Hearing or Meeting (30.4%).



The following table sets forth the top 10 Service Action Item categories based on the number of counted Action Items:

Action Item Category		Total Counted Service Action Items	% Total Counted Service Action Items	# Timely Implemented by Category	% Timely Implemented by Category	# Unimplemented by Category	% Unimplemented by Category
1	Speech and Language Therapy	110	23.2%	101	91.8%	9	8.2%
2	Occupational Therapy	101	21.3%	94	93.1%	7	6.9%
3	Physical Therapy	56	11.8%	50	89.3%	6	10.7%
4	Offer Placement	40	8.4%	33	82.5%	7	17.5%
5	Counseling	34	7.2%	29	85.3%	5	14.7%
6	Reconvene Hearing or Meeting	23	4.9%	16	69.6%	7	30.4%
7	Transportation	19	4.0%	16	84.2%	3	15.8%
8	Nickerson Letter	16	3.4%	16	100.0%	0	N/A
9	Correspondence	13	2.7%	11	84.6%	2	15.4%
10	CSE Evaluation	12	2.5%	6	50.0%	6	50.0%
	Remaining Categories with 10 or Less Action Items	50	10.6%	33	66.0%	17	34.0%
	TOTAL	474	100%	405	85.4	69	14.6%

C. Implementation of Payment Action Items by Category

Daylight reviewed the 177 counted Payment Action Items and noted that the top three most frequently identified categories were Tuition (54 Action Items or 30.5%), followed by SEIT (39 Action Items or 22.0%) and ABA Services (29 Action Items or 16.4%).

The categories with the highest percentage of Unimplemented Action Items with respect to the total number of counted Payment Action Items within the category were Tutoring (71.4%) and SEIT (38.5%).

The following table sets forth the top five Payment Action Item categories based on the number of counted Action Items:

Action Item Category		Total Counted Payment Action Items	% Total Counted Payment Action Items	# Timely Implemented by Category	% Timely Implemented by Category	# Unimplemented by Category	% Unimplemented by Category
1	Tuition	54	30.5%	45	83.3%	9	16.7%
2	SEIT	39	22.0%	24	61.5%	15	38.5%
3	ABA Services	29	16.4%	23	79.3%	6	20.7%
4	Special Ed. Teacher Support Services (SETSS)	14	7.9%	10	71.4%	4	28.6%
5	Tutoring	14	7.9%	4	28.6%	10	71.4%
	Remaining Categories with 7 or Less Action Items	27	15.3%	9	33.3%	18	66.7%
	TOTAL	177	100%	115	65.0%	62	35.0%

V. Limitations

The conclusions, observations and assessments detailed in this report are based on Daylight’s methodology and the procedures performed. Had Daylight performed additional procedures or testing, it is possible that our conclusions, observations and assessments could be different. Daylight also relied on information provided by the DOE and AFC during the course of its work.

VI. Conclusion

Daylight has continued with its analysis of the Injunctive Relief Subclass Orders and Action Items relating to subsequent reporting periods.