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March 29, 2023

Hon. Loretta A. Preska
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007
By Email to Chambers

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

Dear Judge Preska:

I am submitting this letter and attached Recommendations Report pursuant to your Honor's May 14, 2021 Order (Docket No. 273), Section 3(a). Prior to submitting this report, I provided a draft of the report to the Parties in this matter and have subsequently made changes based on their feedback.

The recommendations that follow in this report represent a collaboration between me, my team and the Parties. Without Parties' input on the DOE business processes and their ideas for solutions, this report would not have been possible. We thank all the individuals we interviewed for their time and willingness to share their thoughts and ideas for improving how students impacted by this case are served.

Following a phase of discovery and findings, we continued to discuss with DOE staff members and Plaintiffs the potential options that might follow from our findings. We also continued to ask questions and improve our understanding of the complex business processes involved with implementing the hearing officers' orders. We conducted additional follow-up interviews, reviewed additional reports, reviewed design plans for the new data system, added more visuals to the report to convey key concepts, sought feedback from Parties, addressed and incorporated feedback from Parties, and produced this report in several formats.

I would like to take this opportunity to describe in narrative form a brief summary of our recommendations. Our report contains about 75 recommendations, but I will attempt to aggregate some major themes here as well as share some other points that I think are helpful for further context and consideration.

Parent Communications

The NYC Department of Education (DOE) must redefine how it interacts and communicates with parents, advocates, schools and providers in implementing orders from Hearing Officers. Those I spoke with consistently cited poor or total lack of communications about their case(s), especially during the periods it was delayed. The current systems and processes used for communicating with families entirely rely on email and a single point of contact for which they may receive more than 200 emails per day inquiring about the status of their cases. As you will see in Recommendation 1-NT, we are recommending DOE immediately implement a customer support function that proactively manages communications with parents, advocates, schools and providers. The current lack of transparency into any given case only serves to magnify the frustrations of the provider or school and the hardship of the family.

Processes and Data

Since 2007, the Parties have relied on the tracking of compliance through an independent auditor, as DOE was not required by the Stipulation to generate any operational or internal performance information to monitor itself in any way - and so, historically, they have not done so.

There is data from existing systems that is available now or could be captured with modifications to existing systems that would allow the Implementation Unit to make better decisions, answer questions and identify issues in their workflows. This would not replace the benchmarks outlined in the Stipulation. As I have outlined in recommendation 2-NT, DOE should immediately begin to collect, analyze and report on data from relevant LV data systems such as DAITS. The Implementation Unit might then be able to answer the questions:

- What is the current backlog of orders waiting to be unpacked - by type?
- How many over-payments have been made to schools?
- How many days does it take to reconvene an IEP meeting, once ordered?
- What is the current backlog of payment action items waiting to be authorized?
- How many days does a particular type of order take to unpack? To implement?

DOE's current approach to implementing orders echoes the business processes and tools of two decades ago; with components of handwritten forms, wet signatures, scanning, emails (lots of emails), lack of document management, and heavy (heavy) data entry simply copying text from one place to another. These outdated processes require more human staff time as the volume of cases increases. This is essentially the root cause of backlogs and delays.

DOE has done virtually nothing in recent years to build the tools necessary to coordinate services and payments. Though DOE has recently taken some significant steps to modernize their systems and have contracted with an outside vendor to design and implement a new solution, at the time of this writing, I do not have confidence that a new end-to-end solution will be implemented any time soon. Therefore, DOE must immediately consider concurrent pathways to implementing new tools including dedicating resources to improving current systems (i.e., DAITS) and implementing commercially available off the

shelf (COTS) solutions that can manage specific implementation processes (electronic invoices, customer relationship management solutions, case management solutions, etc.).

Hiring and People

We recognize that the DOE contends that some of our recommendations with respect to staffing are out of my scope of authority and I fully understand their collective bargaining and salary disparities concerns, however, something different needs to be done. Simply put, kids are not getting services because there are not enough qualified staff to support this work, and the regular means of attracting and retaining staff has not worked.

Independent Auditor and Stipulation

The scope of my authority limits me from offering any formal recommendations with respect to the current Stipulation between the parties. However, I believe it is important to share some observations from what I have learned while developing the findings and recommendations. The particulars of what counts as “implemented” have been the subject of much discussion and dispute between the Independent Auditor and the Parties since 2007. As of the writing of this letter, the rules that outline how the independent auditor conducts their audits contain 106 rules (more than 10,000 words) are just not organized in any discernible fashion. Further, there is not even agreement between the Parties on these rules.

Rather than focusing on the most important outcomes-based metrics, (*Did the student get the service? Did the parents get reimbursed? Did the provider get paid?*), the focus for more than a decade has been on what constitutes “timely” and “substantial attempts.” From what I have observed, there may be no way to accurately measure the order as being timely without tracking all of the context and data around a given scenario (order). I acknowledge that defining new measures based on outcomes is not simple. However, what is in place now does nothing to diagnose and improve the performance of the Implementation Unit. If the Parties cannot agree on clear rules around metrics understood by all, the measurement of compliance will continue on its trajectory into obsolescence.

For further context, since 2007 the Independent Auditor has billed DOE more than \$25 million. As indicated in their most recent invoice to DOE, the Independent Auditor dedicates twelve full time resources, at a cost that routinely exceed \$300,000 per month, to perform virtually the same steps that Implementation Unit does. The Independent Auditor’s most recent report (fiftieth since their appointment) totals more than 10,000 pages and reports that 94% of the cases they examined have not been implemented in a timely way. At the time of this writing, DOE has a backlog of about 3,000 cases waiting to be unpacked, largely because they do not have the staff to do so.

I believe a better way to manage and report on the Implementation Unit’s progress implementing orders could be:

1. Directed by the Court, develop initial key performance indicators to monitor progress, answer questions, and inform decisions.

2. DOE should develop analytics capabilities (see recommendations 2-NT and FI-NT) to begin self-reporting on progress implementing orders
3. The Implementation Unit should regularly report these performance indicators to the Parties and the Special Master.
4. Retain the services of an auditor to conduct periodic audits (i.e., quarterly) which includes sampling of data reported on by DOE to validate the accuracy of their data, not unpacking of every single case.

Governance and Management of This Effort

The base of our recommendations is that DOE should design and adopt a more data-driven and family-centered approach to LV implementations. This problem cannot be resolved in the near-term, but there are immediate steps that can be taken. We suggest Parties characterize the overall initiative as DOE's *Due Process Modernization* effort.

We recommend the effort be led by a Steering Team of DOE Executives to track progress of ongoing work and projects, (Recommendation 9-NT). Process owners, project managers and the Special Master would regularly report status, identify risks, etc. The Steering Team's purpose would also be to help project teams resolve issues and overcome barriers to change.

The modernization effort itself, (which could extend further into due process), would entail a series of projects intended to execute on the recommendations in this report. Projects will be loosely grouped into categories of people, process and technology. They will be staggered in a logical sequence of near and long-term due dates. Process owners and/or project managers will be assigned to each project. An example of a project is to explore and deploy a better solution to paper invoices submitted by providers, (Recommendations A7-NT), which could both save countless hours of data entry and result in timelier payments to the providers. The project would be assigned resources and kicked off in alignment with the rest of the efforts. The project owner would report progress and the Steering Team would provide guidance to accomplish the goal.

Resources and staff from DOE should be prepared to engage in improvement efforts, think creatively, dedicate time and support related efforts. Participation by the appropriate DOE subject matter experts will be crucial to the work. Intentional efforts must be made by DOE to identify staff that can support the day-to-day work of this modernization effort. This can be elaborated upon and discussed further at a later date.

It has been an honor to serve the Court in this matter and I look forward to moving into the next phase of this matter, assessing and reporting on recommendations ordered by the Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Irwin', with a long horizontal flourish extending to the right.

David Irwin
Co-Founder
Thru Consulting LLC

Attachment

CC: Jeff Dantowitz, Esq.
Rebecca Shore, Esq.
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