



L.V. v. D.O.E.

03 Civ. 9917 (RJH)

Stipulation and Agreement of Settlement

Independent Auditor's Final Post Corrective Action

Fifty-First Quarterly Report

March 31, 2023

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I. Introduction

On December 12, 2003, Advocates for 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 (“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 27, 2008. On May 9, 2008, the DOE formally engaged Daylight to commence the independent audit.

The Stipulation 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”).

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



Guidehouse² issued the following reports in conjunction with the Injunctive Relief Subclass: (1) Gap Period Report (dated August 6, 2008); (2) First Quarterly Report (dated January 9, 2009); (3) Eighth Quarterly Report and First Benchmark Report (dated June 11, 2009); and (4) Post Corrective Action³ First Quarterly Report (dated April 9, 2010).⁴

Guidehouse issued reports in conjunction with the Injunctive Relief Subclass, including the Post Corrective Action (“PCA”) First Benchmark Report dated August 13, 2010, as well as reports for the PCA Third Quarter through the PCA Fiftieth Quarter. Guidehouse issued the final PCA quarterly reports during the time period of August 13, 2010 through January 13, 2023.

The current report focuses on Guidehouse’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 Fifty-First Quarterly Measurement Period (“PCA Fifty-First Quarter”) and includes Orders issued between January 11, 2022 through April 11, 2022 with Action Item final due dates between February 15, 2022 through May 16, 2022.

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

² On October 11, 2019, Guidehouse LLP completed its previously announced acquisition of Navigant. In the months ahead, we will be working to integrate the Guidehouse and Navigant businesses. In furtherance of this effort, we will refer to Navigant and Daylight as ‘Guidehouse’ for consistency purposes under the terms of this engagement. We will continue to perform according to the terms of the Engagement Letter, using the same personnel and methods and without changes to the schedule, price, or level of effort.

³ Pursuant to Section III.10.a. of the Stipulation, “If the DOE fails to meet the First Benchmark or Fifth 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.”

⁴ Pursuant to Sections I.1.r. and I.1.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.

II. Executive Summary and Statistical Overview

During the PCA Fifty-First Quarter, Guidehouse determined that the DOE Timely Implemented⁵ 5.8% of Service Orders;⁶ 5.2% of Service Action Items; 2.3% of Payment Orders;⁷ and 3.1% of Payment Action Items during this timeframe.

The following table summarizes the counted PCA Fifty-First Quarter Orders and Action Items by type of relief:

	Service Orders	Payment Orders	Service Action Items	Payment Action Items
Timely Implemented	164 (5.8%)	93 (2.3%)	329 (5.2%)	175 (3.1%)
Unimplemented⁸	2,646 (94.2%)	3,889 (97.7%)	5,986 (94.8%)	5,537 (96.9%)
Total	2,810	3,982	6,315	5,712

⁵ "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.

⁶ 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.

⁷ 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.

⁸ 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. Guidehouse 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.

In addition, Guidehouse determined that 33 Orders and 70 Action Items issued during the PCA Fifty-First Quarter were Uncounted.⁹ There were 1,842 Orders issued during the PCA Fifty-First Quarter that did not include Action Items, such as Orders of Dismissal and Orders where the parent's relief was denied.

Further, Guidehouse identified 241 Orders (comprising 378 Action Items) and 58 additional Action Items where the DOE was not required to implement the Action Items because they were beyond the scope of review. These Action Items were beyond our scope of review for multiple reasons, including but not limited to:

- Situations where the parent refused an ordered service;
- Implementation performed pursuant to a prior Order; and
- Payment was made in conjunction with a previously analyzed Action Item.¹⁰

⁹ Pursuant to Section I.1. II. of the Stipulation, Orders or Action Items are deemed "Uncounted Orders" or "Uncounted Action Items," respectively, when an Order or Action item could not be Timely Implemented because:

- i. It required the DOE to take action that would either violate applicable law or is factually impossible;
- ii. 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;
- iii. It required the provision of a DOE designated shortage area service which includes, inter alia, occupational, physical and speech therapy and where the DOE made a substantial showing that it offered the parent an appropriate substitute service within 35 calendar days of the issuance of the relevant Order or Action Item; and
- iv. The Order or Action item was timely appealed by the DOE.

¹⁰ A complete list of these Orders and Action Items will be provided to the Parties.

III. Implementation of Service Action Items by Category

Guidehouse reviewed the 6,315 counted Service Action Items and noted that the top three most frequently identified categories were Speech and Language Therapy (2,320 Action Items or 36.7%), followed by Occupational Therapy (1,615 Action Items or 25.6%) and Counseling (837 Action Items or 13.3%).

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 Assistive Technology Services (100.0%), followed by Reconvene Hearing or Meeting (98.3%) and Paraprofessional (97.9%).

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	2,320	36.7%	79	3.4%	2,241	96.6%
2	Occupational Therapy	1,615	25.6%	66	4.1%	1,549	95.9%
3	Counseling	837	13.3%	42	5.0%	795	95.0%
4	Physical Therapy	461	7.3%	23	5.0%	438	95.0%
5	Transportation	219	3.5%	101	46.1%	118	53.9%
6	Reconvene Hearing or Meeting	179	2.8%	3	1.7%	176	98.3%
7	CSE Evaluation	171	2.7%	4	2.3%	167	97.7%
8	Paraprofessional	143	2.3%	3	2.1%	140	97.9%
9	Assistive Technology Services	77	1.2%	0	0.0%	77	100.0%
10	Offer Placement	66	1.0%	3	4.5%	63	95.5%
	Remaining Categories with 62 or Less Action Items	227	3.6%	5	2.2%	222	97.8%
	TOTAL	6,315	100.0%	329	5.2%	5,986	94.8%

IV. Implementation of Payment Action Items by Category

Guidehouse reviewed the 5,712 counted Payment Action Items and noted 5,008 Action Items categorized as prospective payments and 704 Action Items categorized as reimbursements. The top three most frequently identified categories of prospective Payment Action Items were Special Education Teacher Support Services (2,409 Action Items or 48.1%), followed by SEIT Services (623 Action Items or 12.4%) and Tuition (563 Action Items or 11.2%).

The categories with the highest percentage of Unimplemented Action Items with respect to the total number of counted prospective Payment Action Items within the category were ABA (99.1%) and SEIT Services (98.6%), followed by Special Education Teacher Support Services (98.5%).

The following table sets forth the top eight prospective 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	Special Education Teacher Support Services	2,409	48.1%	37	1.5%	2,372	98.5%
2	SEIT Services	623	12.4%	9	1.4%	614	98.6%
3	Tuition	563	11.2%	37	6.6%	526	93.4%
4	Private Evaluations Ordered	352	7.0%	30	8.5%	322	91.5%
5	Compensatory Services	254	5.1%	7	2.8%	247	97.2%
6	Speech and Language Therapy	153	3.1%	4	2.6%	149	97.4%
7	Occupational Therapy	119	2.4%	2	1.7%	117	98.3%
8	ABA	111	2.2%	1	0.9%	110	99.1%
	Remaining Categories with 77 or Less Action Items	424	8.5%	11	2.6%	413	97.4%
	TOTAL	5,008	100%	138	2.8%	4,870	97.2%



The top three most frequently identified categories of reimbursement Action Items were Tuition (555 Action Items or 78.8%), followed by Transportation (52 Action Items or 7.4%) and Private Evaluations Ordered (19 Action Items or 2.7%).

The categories with the highest percentage of Unimplemented Action Items with respect to the total number of counted reimbursement Action Items within the category were Transportation (96.2%) and Private Evaluations Ordered (94.7%).

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

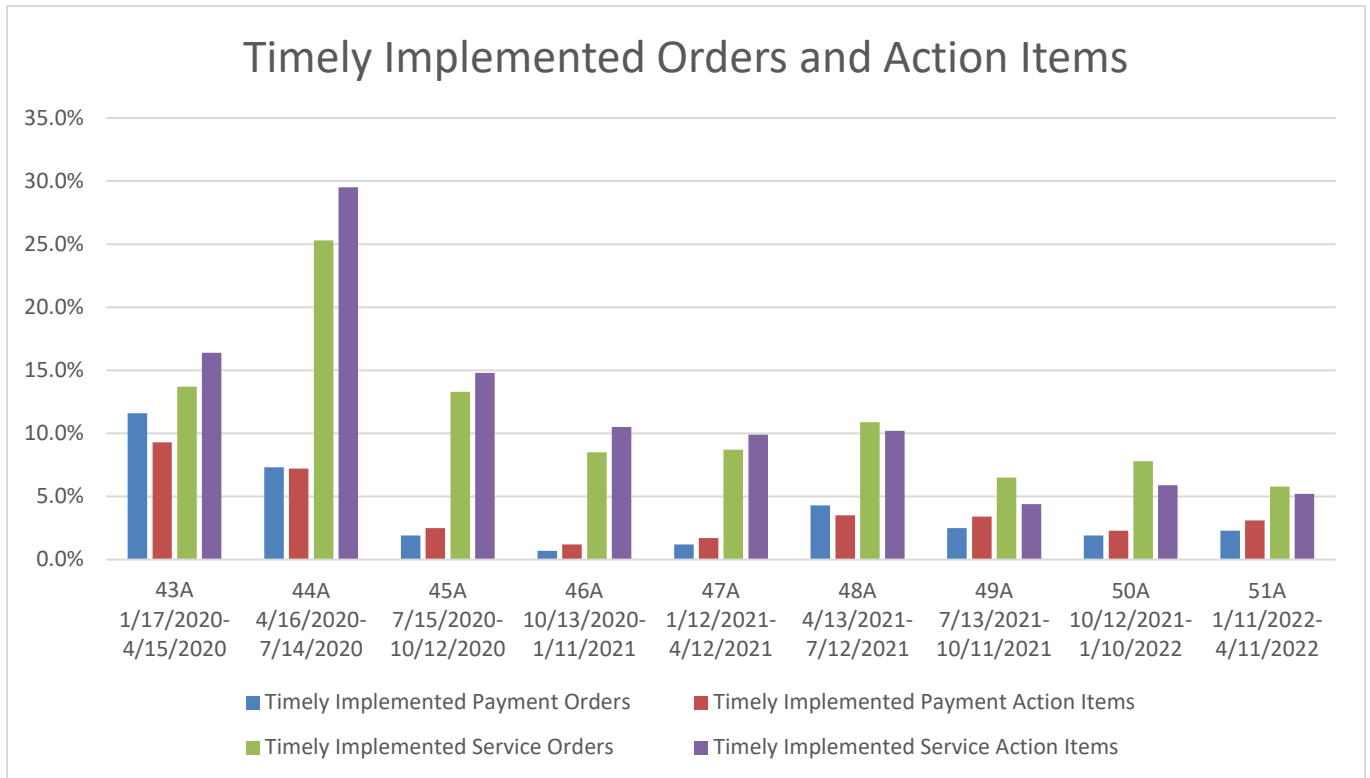
Action Item Category		Total Counted Payment Action Items	% Total Counted Payment Action Items	# Timely Implemented by Category	% Timely Implemented by Category	# Unimplemented by Category	% Unimplemented by Category
1	Tuition	555	78.8%	31	5.6%	524	94.4%
2	Transportation	52	7.4%	2	3.8%	50	96.2%
3	Private Evaluations Ordered	19	2.7%	1	5.3%	18	94.7%
	Remaining Categories with 13 or Less Action Items	78	11.1%	3	3.8%	75	96.2%
	TOTAL	704	100.0%	37	5.3%	667	94.7%

V. Comparison of Timely Implemented Orders and Action Items

Guidehouse identified a decrease in the percentage of Timely Implemented Orders and Timely Implemented Action Items in the PCA Fifty-First Quarter. Guidehouse analyzed the statistics from the final PCA Forty-Third through the PCA Fiftieth Quarterly Reports and determined that the DOE timely implemented, on average, 3.9% of Payment Orders, 3.9% of Payment Actions, 11.8% of Service Orders and 12.7% of Service Action Items. In the PCA Fifty-First Quarter, Guidehouse determined that the DOE timely implemented 2.3% of Payment Orders, 3.1% of Payment Action Items, 5.8% of Service Orders, and 5.2% of Service Action Items.

It is worth noting that the percentage of Timely Implemented Payment Orders and Timely Implemented Payment Action Items remain below 4% and Timely Implemented Service Orders and Timely Implemented Service Action Items remain below 6% in the final PCA Fifty-First Quarterly report. The table below and the graph on the following page depict the Timely Implemented percentages in the final reports from Q43A through Q51A.

Final Quarterly Reports	43A 1/17/2020- 4/15/2020	44A 4/16/2020- 7/14/2020	45A 7/15/2020- 10/12/2020	46A 10/13/2020- 1/11/2021	47A 1/12/2021- 4/12/2021	48A 4/13/2021- 7/12/2021	49A 7/13/2021- 10/11/2021	50A 10/12/2021- 1/10/2022	51A 1/11/2022- 4/11/2022
Timely Implemented Payment Orders	11.6%	7.3%	1.9%	0.7%	1.2%	4.3%	2.5%	1.9%	2.3%
Timely Implemented Payment Action Items	9.3%	7.2%	2.5%	1.2%	1.7%	3.5%	3.4%	2.3%	3.1%
Timely Implemented Service Orders	13.7%	25.3%	13.3%	8.5%	8.7%	10.9%	6.5%	7.8%	5.8%
Timely Implemented Service Action Items	16.4%	29.5%	14.8%	10.5%	9.9%	10.2%	4.4%	5.9%	5.2%



VI. Limitations

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

VII. Conclusion

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