



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

03 Civ. 9917 (RJH)

Stipulation and Agreement of Settlement

**Independent Auditor's Post Corrective Action Fourth
Quarterly Report**

March 9, 2011



Table of Contents

I. Introduction..... 1

II. Executive Summary and Statistical Overview 4

III. Implementation of Service Action Items by Category 6

IV. Implementation of Payment Action Items by Category 7

V. Limitations 8

VI. Conclusion 8



Appendices

- A. List of Post Corrective Action Fourth Quarter Unimplemented Orders
- B. List of Post Corrective Action Fourth Quarter Timely Implemented Orders
- C. List of Post Corrective Action Fourth Quarter Uncounted Orders
- D. Post Corrective Action Fourth Quarter Orders Grouped with Related Action Items
- E. List of Post Corrective Action Fourth Quarter Unimplemented Action Items
- F. List of Post Corrective Action Fourth Quarter Timely Implemented Action Items
- G. List of Post Corrective Action Fourth Quarter Uncounted Action Items

I. Introduction

On December 12, 2003, 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 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.

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.



The following table is a summary of the final reports issued by Daylight in conjunction with the Injunctive Relief Subclass:²

Report Issued	Date Issued
Gap Period Report	August 6, 2008
First Quarterly Report	January 9, 2009
Second Quarterly Report	June 11, 2009
First Benchmark Report	June 11, 2009
Post Corrective Action ³ First Quarterly Report	April 9, 2010

Daylight was acquired by Navigant Consulting, Inc. (“Navigant”) after close of business on May 14, 2010. As part of the agreement between Daylight and Navigant, all work has continued to be performed by the same team of analysts, project managers and engagement leaders.

The following table is a summary of the final reports issued by Navigant in conjunction with the Injunctive Relief Subclass:

Report Issued	Date Issued
Post Corrective Action Second Quarterly Report	August 13, 2010
Post Corrective Action First Benchmark Report	August 13, 2010
Post Corrective Action Third Quarterly Report	December 3, 2010

² 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.

³ Pursuant to Section III.10.a. of the Stipulation, “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.”



The current report focuses on Navigant'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 fourth Quarterly Measurement Period ("PCA Fourth Quarter") and includes Orders issued between May 4, 2010 and August 3, 2010.

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

II. Executive Summary and Statistical Overview

During the PCA Fourth Quarter, Navigant determined that the DOE Timely Implemented⁴ 60.7% of Service Orders;⁵ 75.1% of Service Action Items; 52.3% of Payment Orders;⁶ and 51.8% of Payment Action Items during this timeframe.

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

	Service Orders	Payment Orders	Service Action Items	Payment Action Items
Timely Implemented	105 (60.7%)	67 (52.3%)	335 (75.1%)	100 (51.8%)
Unimplemented⁷	68 (39.3%)	61 (47.7%)	111 (24.9%)	93 (48.2%)
Total	173	128	446	193

⁴ “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.

⁵ 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.

⁶ 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.

⁷ 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. Navigant 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, Navigant determined that 54 Orders and 143 Action Items issued during the PCA Fourth Quarter were Uncounted.⁸ There were 111 Orders issued during the PCA Fourth Quarter that did not include Action Items, such as Orders of Dismissal and Orders where the parent's relief was denied.

Further, Navigant identified 12 Orders (comprising 20 Action Items) and 32 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.⁹

⁸ Pursuant to Section I.1. ll. 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.

⁹ A complete list of these Orders and Action Items will be provided to the Parties.

III. Implementation of Service Action Items by Category

Navigant reviewed the 446 counted Service Action Items and noted that the top three most frequently identified categories were Speech and Language Therapy (77 Action Items or 17.3%), followed by Occupational Therapy (64 Action Items or 14.3%) and Reconvene Hearing or Meeting (46 Action Items or 10.3%).

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 Correspondence (52.6%), followed by CSE Evaluation (40.0%) and Transportation (36.0%).

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	77	17.3%	67	87.0%	10	13.0%
2	Occupational Therapy	64	14.3%	53	82.8%	11	17.2%
3	Reconvene Hearing or Meeting	46	10.3%	35	76.1%	11	23.9%
4	Physical Therapy	40	9.0%	34	85.0%	6	15.0%
5	Offer Placement	38	8.5%	33	86.8%	5	13.2%
6	Transportation	25	5.6%	16	64.0%	9	36.0%
7	Counseling	21	4.7%	14	66.7%	8	33.3%
8	CSE Evaluation	20	4.5%	12	60.0%	7	40.0%
9	Correspondence	19	4.3%	9	47.4%	10	52.6%
10	Nickerson Letter	16	3.6%	14	87.5%	2	12.5%
	Remaining Categories with 10 or Less Action Items	80	17.9%	48	60.0%	32	40.0%
	TOTAL	446	100%	335	75.1%	111	24.9%

IV. Implementation of Payment Action Items by Category

Navigant reviewed the 193 counted Payment Action Items and noted that the top three most frequently identified categories were Tuition (63 Action Items or 32.6%), followed by ABA Services (35 Action Items or 18.1%) and Tutoring (22 Action Items or 11.4%).

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 ABA Services (68.6%), followed by Tutoring (63.6%) and SEIT Services (35.0%).

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	63	32.6%	43	68.3%	20	31.7%
2	ABA Services	35	18.1%	11	31.4%	24	68.6%
3	Tutoring	22	11.4%	8	36.4%	14	63.6%
4	SEIT Services	20	10.4%	13	65.0%	7	35.0%
5	Private Evaluations Ordered	12	6.2%	10	83.3%	2	16.7%
	Remaining Categories with 10 or Less Action Items	41	21.3%	15	36.6%	26	63.4%
	TOTAL	193	100%	100	51.8%	93	48.2%

V. Limitations

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

VI. Conclusion

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