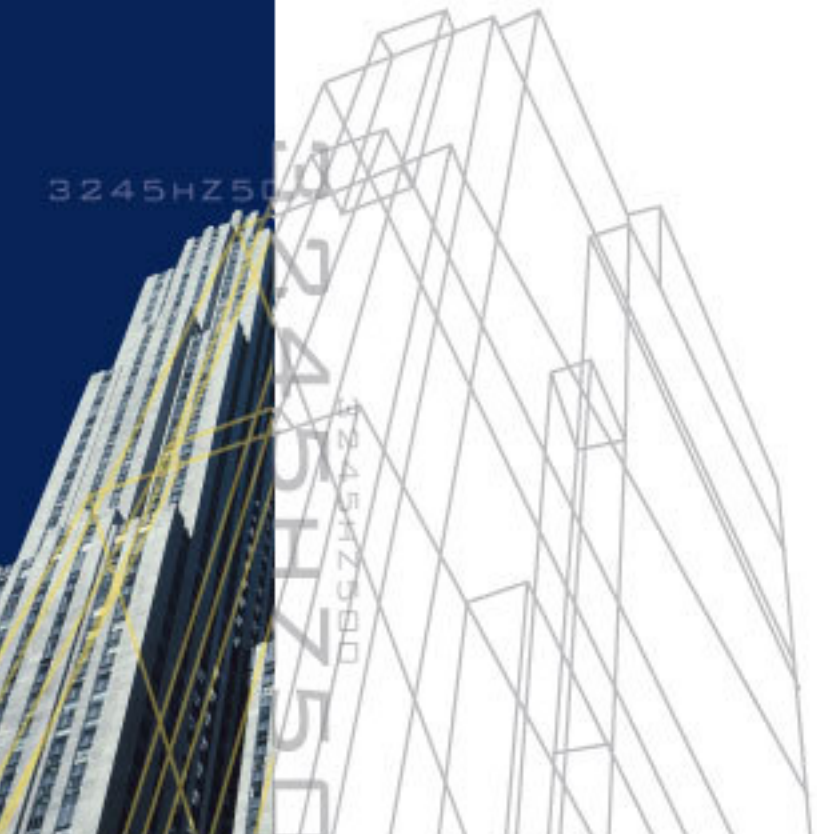


**L.V. v. D.O.E.
03 Civ. 9917 (RJH)**

Stipulation and Agreement of Settlement

**Independent Auditor's Second Quarterly
Report**

June 11, 2009



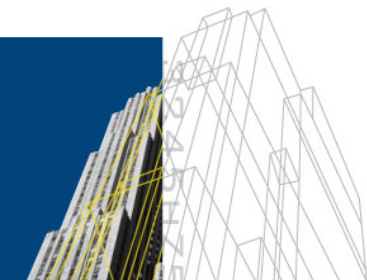
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I. Introduction

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.

This 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 second Quarterly Measurement Period (“Second Quarter”).

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

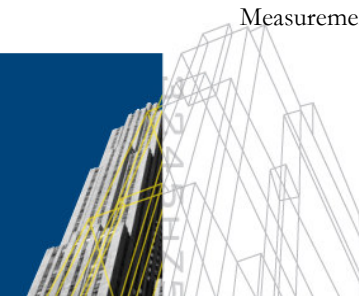
B. Injunctive Relief Subclass

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. Our draft Second Quarterly and First Benchmark Reports were issued to the Parties on February 5, 2009. Daylight received comments from the Parties on these reports on March 27, 2009. The finalized version of the First Benchmark Report was issued in conjunction with the present report. The First Benchmark Report includes an aggregate analysis of implementation results from the First Quarter and Second Quarter and documents whether the First Benchmark⁵ established in the Stipulation, in Section III. Injunctive Relief; paragraph 4, has been met.

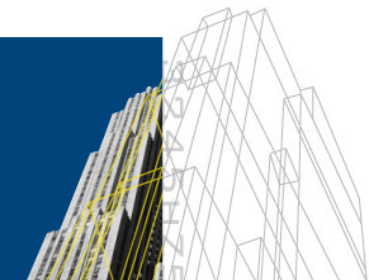
⁴ Pursuant to Section I,1.r and h of the Stipulation, “Injunctive Relief Subclass” is defined as the class of all persons who, on or subsequent to the Commencement Date of December 12, 2003, (1) obtain or obtained a favorable Order by an Impartial Hearing Officer against the DOE or stipulation of settlement 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.



C. Compensatory Relief Subclass

Daylight’s work related to the Compensatory Relief Subclass is an ongoing process and is 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 Second Quarter, Daylight determined that the DOE Timely Implemented⁶ 53.0% of the Total Orders and 65.0% of the Total Action Items reviewed.

Daylight measured implementation of the Second Quarter Orders and Action Items based upon the requirements of the Stipulation. In particular, the DOE Timely Implemented 71.3% of Service Orders; 79.3% of Service Action Items; 30.8% of Payment Orders; and 32.5% of Payment Action Items during this timeframe.

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

Type of Relief	Timely Implemented Orders	Timely Implemented Action Items
Service	71.3%	79.3%
Payment	30.8%	32.5%

Daylight reviewed a total of 663 Orders during the Second 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 663 Orders issued during the Second Quarter, there were:

- 543⁷ Total Orders, including 1,158 Total Action Items identified during the Second Quarter, subject to analysis in the present report;
- 23 Order cases comprising 47 Action Items currently pending further action, which will be reported on during later reporting periods;

⁶ “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.

⁷ Daylight’s draft Second Quarterly Report included its analysis of 542 Orders. Order 117306 dated 10/8/2008 was issued and analyzed during the Second Quarter, but was inadvertently excluded from the draft version of the Independent Auditor’s Second Quarterly Report.

- 10 Orders comprising 18 Action Items 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
- 87 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.

In addition, Daylight identified 26 conditional Action Items for which the conditional events did not occur. The aforementioned 26 Action Items were closed and not assessed as Uncounted⁸/counted or for Timely Implementation.

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

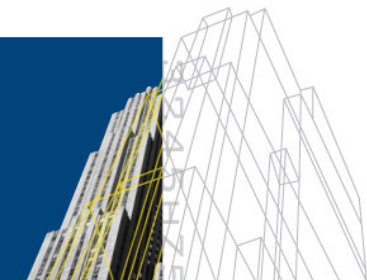
A. Order Summary

Based on the methodology outlined in Section III, below, Daylight reviewed those Orders determined to be within the scope of the Second Quarter. Of the 543 Second Quarter Orders, 438 were counted Orders. There were 105 Uncounted Orders as follows:

- 14 Orders were timely appealed by the DOE;
- 4 timely appealed Orders for which settlements were reached prior to State Review Office (“SRO”) determination;
- 73 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; and

⁸ 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



- 14 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 438 counted Orders, 206 (47.0%) were Unimplemented⁹ and 232 (53.0%) were Timely Implemented. In particular, 240 of the 438 counted Orders were service-related¹⁰ and 198 were payment-related.¹¹ Of the 240 counted service-related Orders, 69 were Unimplemented (28.7%) and 171 were Timely Implemented (71.3%). Of the 198 counted payment-related Orders, 137 were Unimplemented (69.2%) and 61 were Timely Implemented (30.8%).

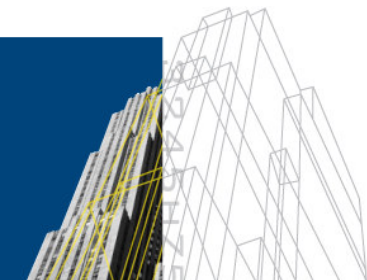
The following table is a summary of the results of our assessment of Second Quarter Orders by type of relief:

Type of Relief	Unimplemented Orders	Timely Implemented Orders	Total Orders	Percentage Unimplemented	Percentage Timely Implemented
Service	69	171	240	28.7 %	71.3%
Payment	137	61	198	69.2%	30.8 %
Total	206	232	438	47.0%	53.0 %

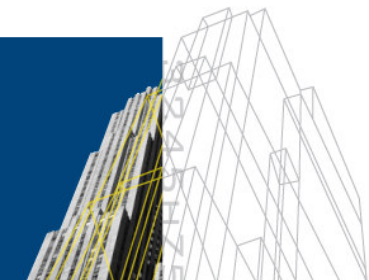
⁹ Pursuant to Section I,1. mm of the Stipulation, “Unimplemented” or “Unimplemented Order” is defined as an Order or Action Item that is found by the Independent Auditor to have not been Timely Implemented. Daylight assessed Action Items as Unimplemented when 1) there was no indication that implementation 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 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.

¹¹ 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.



Appendices A and B include lists by case number of the 438 Orders analyzed during the Second Quarter that were Unimplemented and Timely Implemented, respectively. In addition, Appendix C lists the 105 Orders issued during the Second Quarter that were Uncounted. Appendix D lists the 543 total Second Quarter Orders grouped with their respective Action Items.



B. Action Item Summary

Daylight reviewed 1,158 Action Items determined to be within the scope of the Second Quarter. Of the 1,158 Second Quarter Action Items, 905 were counted Action Items. In addition, Daylight determined that 253 Action Items were Uncounted as follows:

- 18 Action Items were timely appealed by the DOE;
- 5 timely appealed Action Items for which settlements were reached prior to SRO determination;
- 162 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;
- 13 Action Items that required the DOE to take action that was factually impossible to implement in a timely manner; and
- 55 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 317 of the 905 counted Action Items were Unimplemented (35.0%) and 588 were Timely Implemented (65.0%). The 905 counted Action Items included 628 service-related and 277 payment-related Action Items. Of the 628 counted service-related Action Items, 130 were Unimplemented (20.7%) and 498 were Timely Implemented (79.3%). Of the 277 counted payment-related Action Items, 187 were Unimplemented (67.5%) and 90 were Timely Implemented (32.5%).

The following table is a summary of the results of our assessment of the counted Second 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	130	498	628	20.7%	79.3%
Payment	187	90	277	67.5%	32.5%
Total	317	588	905	35.0%	65.0%

Of the 317 Unimplemented Action Items, 175 (55.2%) appear to have been implemented after the final due date. Daylight also determined that 64 of these were service-related and 111 were payment-related. We could not ascertain whether 142 (44.8%) of the 317 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 142 Action Items were comprised of 66 service-related items and 76 payment-related items.

Appendices E and F list the 905 Unimplemented and Timely Implemented Second Quarter Action Items, respectively. In addition, Appendix G lists the 253 Action Items issued during the Second Quarter that were Uncounted.

III. Daylight’s Methodology

A. Introduction

Daylight’s assessment of the Total Orders and Total Action Items for the Second 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.

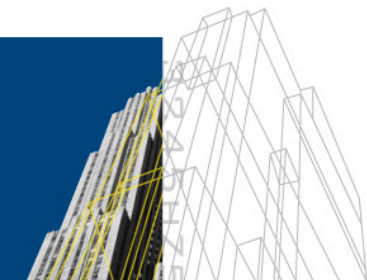
B. Overview of Daylight’s Methodology

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 presented an overview of the processes and protocols Daylight utilizes to analyze Action Items and Orders. Throughout the Second Quarter, Daylight continued to analyze Orders and Action Items consistent with its review during the First Quarter except as discussed in Section III.E., below.

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 approximately eight update calls scheduled during the Second Quarter.



D. Special Education Legal Experts

Pursuant to the Stipulation¹², Daylight has retained the law firm Donoghue, Thomas, Auslander & Drohan LLP (“DTAD”) as our special education legal expert to assist with the analysis of the DOE’s Order and Action Item implementation efforts. Daylight sent Requests for Proposals (“RFPs”) on April 13, 2009 to six law firms with special education expertise and subsequently selected DTAD after reviewing their response and meeting with Larry Thomas, Jim Drohan, and Dan Petigrow. Daylight formally retained the firm on May 12, 2009 and met with them on May 18, 2009 to discuss matters raised in the Parties’ comments to the Second Quarterly and First Benchmark Reports. Matters that Daylight discussed with DTAD include, but are not limited to, parent appeals, the constitution of a substantively and procedurally valid IEP, and the length of a child’s school year as it relates to the provision of services ordered at an impartial hearing.

E. Special Matters

Daylight updated its methodology relating to the analysis of Orders and Action Items for the Second Quarter based upon discussions with and feedback from the Parties, a review of the Parties’ comments to the Second Quarterly Report and DTAD. The methodology updates include:

1. Parent Appeals

The Stipulation is silent as to whether cases in which the parent appealed to the SRO are in Daylight’s purview. Upon further review Daylight has determined that parent-appealed Orders and related Action Items will be addressed on a case by case basis as follows:

¹² Section II.12.c. of the Stipulation reads: “The Independent Auditor appointed by the Court may retain a firm and/or individual with special education experience to assist in fulfilling the Independent Auditor’s obligations hereunder. . .In addition, each report by the Independent Auditor shall disclose the names and affiliations of all individuals who participated or assisted in the preparation of such report.”

a. Notice of Intention to Seek Review

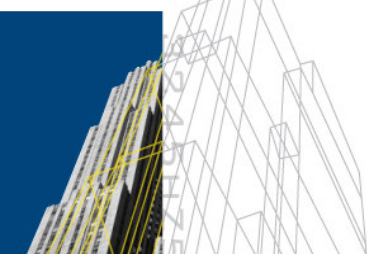
Where the parent files a Notice of Intention to Seek Review without articulating the specific Action Items being appealed, the DOE is required to reinstate the child’s pendency placement and services. Daylight has determined that in these instances, the items included in the Order are beyond the scope of its review.¹³ Likewise, once pendency is invoked, the issue of whether pendency is properly implemented is outside Daylight’s scope. Consequently, Daylight will close these Orders and Action Items and retain them in our case management system for reconciliation purposes only.

Daylight has also encountered circumstances where the parent files a Notice of Intention to Seek Review and the DOE has agreed to specific relief at the impartial hearing. In such circumstances, Daylight reviews only those Action Items that were agreed upon at the hearing for Timely Implementation. The remaining items are addressed as articulated above.

b. Specific Notice With Petition

In the course of its review, Daylight has identified instances where the parent filed a Notice With Petition that specifically addressed the parts of the Order being appealed. The items being appealed are addressed consistent with Section III, E.1.a., above. The remaining un-appealed Action Items are assessed as counted or Uncounted and are analyzed for Timely Implementation.

¹³ Pursuant to Section I.1.b. of the Stipulation, “Action Item” is defined as “a specific identifiable action in an Order that, as determined by the Independent Auditor, requires implementation by the DOE.”



2. Substantive and Procedural Validity of an Individualized Education Program (“IEP”)

Daylight has determined that it is not within its scope to analyze the substantive or procedural appropriateness of an IEP where the Order requires the Committee on Special Education (“CSE”) to reconvene and develop a new IEP.

If the CSE meeting occurred and a new IEP was issued within the time frame specified in the Order or within the default 35 days, this Action Item is analyzed as Timely Implemented. Daylight’s Timely Implementation analysis does not address the procedural validity or appropriateness of the recommendations as the parent retains the right to challenge the IEP on these grounds.

In other instances where the Order requires certain participants at an IEP meeting (e.g. school psychologist, speech teacher) or requires the new IEP to include specific recommendations (e.g., 12:1:1 placement, physical therapy 3x60 1:1), Daylight’s protocol remains unchanged. Daylight’s analysis of these Action Items continues to require documentation to prove that the specific item was implemented (e.g. list of attendees at the CSE meeting includes school psychologist, new placement recommendation on IEP document is 12:1:1).¹⁴

¹⁴ Daylight’s analysis regarding specifically ordered elements of a CSE meeting or IEP has remained consistent throughout our review. This paragraph is included to differentiate these Action Items from those simply directing remand to the CSE.

IV. Detailed Findings and Observations

A. Implementation of Action Items by Category

Daylight reviewed the 905 counted Action Items and noted that the top three most frequently identified categories were Speech and Language Therapy (143 Action Items or 15.8%), followed by Occupational Therapy (115 Action Items or 12.7%) and Tuition (86 Action Items or 9.5%).

The categories with the highest percentage of Unimplemented Action Items with respect to the total number of counted Action Items within the category were SEIT (83.6%), Tutoring (78.9%) and ABA Services (71.8%).

The following table sets forth the top 16 Action Item categories based on the number of counted Action Items:

Action Item Category		Total Counted Action Items	% Total Counted Action Items	# Timely Implemented by Category	% Timely Implemented by Category	# Unimplemented by Category	% Unimplemented by Category
1	Speech and Language Therapy	143	15.8%	108	75.5%	35	24.5%
2	Occupational Therapy	115	12.7%	91	79.1%	24	20.9%
3	Tuition	86	9.5%	45	52.3%	41	47.7%
4	Physical Therapy	65	7.2%	53	81.5%	12	18.5%
5	SEIT	61	6.7%	10	16.4%	51	83.6%
6	Reconvene Hearing or Meeting	44	4.9%	31	70.5%	13	29.5%
7	ABA Services	39	4.3%	11	28.2%	28	71.8%
8	Transportation	36	4.0%	23	63.9%	13	36.1%
9	Offer Placement	35	3.9%	28	80.0%	7	20.0%
10	Counseling	29	3.2%	22	75.9%	7	24.1%
11	Private Evaluations	27	3.0%	19	70.4%	8	29.6%
12	Nickerson Letter	25	2.8%	20	80.0%	5	20.0%
13	Special Ed. Teacher Support Services (SETSS)	23	2.5%	12	52.2%	11	47.8%
14	Reinstate/Remain in Pendency Placement	20	2.2%	18	90.0%	2	10.0%
15	Tutoring	19	2.1%	4	21.1%	15	78.9%
16	Paraprofessional	19	2.1%	14	73.7%	5	26.3%
	Remaining Categories with Less than 19 Action Items each	119	13.1%	79	66.4%	40	33.6%
	TOTAL	905	100%	588	65.0%	317	35.0%

B. Implementation Statistics by Borough

Daylight analyzed the 905 total counted Action Items to determine which Boroughs had the highest percentage of Unimplemented and Timely Implemented Action Items. The Bronx and Brooklyn had the highest percentages of Unimplemented Action Items, with 39.6% and 35.3%, respectively, while Manhattan had the highest percentage of Timely Implemented Action Items with 67.5%.

The following table identifies the number of Action Items by Borough, listed by the percentage of Unimplemented Action Items:

Borough	Total Counted Action Items	Timely Implemented Action Items	% Timely Implemented	Unimplemented Action Items	% Unimplemented	Unimplemented - Completed After Final Due Date	Unimplemented – No Record of Implementation
Bronx	182	110	60.4%	72	39.6%	46	26
Brooklyn	102	66	64.7%	36	35.3%	20	16
Staten Island	265	172	64.9%	93	35.1%	43	50
Queens	107	72	67.3%	35	32.7%	13	22
Manhattan	249	168	67.5%	81	32.5%	53	28
TOTAL	905	588	65.0%	317	35.0%	175	142

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.