

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

Stipulation and Agreement of Settlement

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

August 13, 2010

Table of Contents

| | |
|---|-----------|
| Preface | 4 |
| I. Introduction | 5 |
| A. Overview | 5 |
| B. Injunctive Relief Subclass | 6 |
| C. Compensatory Relief Subclass | 8 |
| II. Executive Summary | 9 |
| A. Order Summary | 11 |
| B. Action Item Summary | 13 |
| III. Daylight’s Methodology | 15 |
| A. Introduction | 15 |
| B. Overview of Daylight’s Methodology | 15 |
| C. Update Meetings with the Parties and GCG..... | 16 |
| IV. Detailed Findings and Observations..... | 17 |
| A. Breakdown of Unimplemented Payment Action Items | 17 |
| B. Implementation of Service Action Items by Category | 18 |
| C. Implementation of Payment Action Items by Category | 19 |
| V. Limitations | 21 |
| VI. Conclusion | 21 |

Appendices

- A. List of Orders and Action Items issued during Post Corrective Action Second Quarter that will be reported on during later reporting quarters
- B. List of Post Corrective Action Second Quarter Orders with at least one Unimplemented Action Item and at least one Action Item that will be reported on during a later reporting quarter.
- C. List of Post Corrective Action Second Quarter Unimplemented Orders
- D. List of Post Corrective Action Second Quarter Timely Implemented Orders
- E. List of Post Corrective Action Second Quarter Uncounted Orders
- F. Post Corrective Action Second Quarter Orders Grouped with Related Action Items
- G. List of Post Corrective Action Second Quarter Unimplemented Action Items
- H. List of Post Corrective Action Second Quarter Timely Implemented Action Items
- I. List of Post Corrective Action Second Quarter Uncounted Action Items

Preface

Daylight Forensic & Advisory LLC (“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 will continue to be performed by the current team of analysts and project managers. Moreover, Navigant performed a full conflicts check and did not identify any conflicting engagement work.

Daylight provided consent of assignment forms to the Advocates for the Children of New York (“AFC”), the New York City Department of Education (“Defendant” or “the DOE”) and Corporation Counsel of the City of New York on May 14, 2010. As of the date of this report, we have not received the signed consent of assignment forms. Both Parties provided consent orally.¹

The references to Daylight in this report refer to analysis conducted and reports submitted by Daylight prior to the acquisition by Navigant. In all future reports, Daylight will, for the most part, be referred to as Navigant.

¹ An Order authorizing Navigant to perform the duties of Independent Auditor pursuant to the terms of the Stipulation and Agreement of Settlement was sent to Judge Holwell on June 18, 2010. The Order was signed by Judge Holwell on June 24, 2010 and a copy of the signed Order was faxed to Navigant on June 28, 2010. Navigant sent a copy of the signed Order to the Parties via email on June 30, 2010.

I. Introduction

A. Overview

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 Class² (“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 was appointed as Independent Auditor on March 26, 2008. On May 9, 2008, the DOE formally engaged Daylight to commence the independent audit.

² Pursuant to Section I.1.f. of the Stipulation, “Class” is defined as the Compensatory Relief Subclass and the Injunctive Relief Subclass.

Daylight, in its capacity as Independent Auditor, has completed its review of Proof of Claims submitted by Authorized Claimants³ in connection with the Compensatory Relief Subclass.⁴ Daylight is in the process of assessing the DOE's implementation efforts in connection with the Injunctive Relief Subclass⁵ 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 "Gap Period"). 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).

³ 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.

⁴ 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.

⁵ 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.

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 Benchmark⁶ established in the Stipulation, in Section III. Injunctive Relief; paragraph 4.

As a result, the DOE was required to implement a Corrective Action Plan⁷ within three months of the issuance of Daylight's final First Benchmark Report.⁸

Daylight submitted its finalized Post Corrective Action First Quarterly Report on April 9, 2010. The draft Post Correction Action Second Quarterly and First Benchmark Reports were issued to the Parties on May 27, 2010. Daylight received comments from the Parties on July 14, 2010. The finalized version of the Post Corrective Action First Benchmark Report has been issued in conjunction with the present report. 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 second Quarterly Measurement Period ("PCA Second Quarter") and includes Orders issued between November 3, 2009 and January 31, 2010.

⁶ 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.

⁷ 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.

⁸ 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 following table is a summary of the final reports issued by Daylight in conjunction with the Injunctive Relief Subclass:

| 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 First Quarterly Report | April 9, 2010 |
| Post Corrective Action Second Quarterly Report | August 13, 2010 |
| Post Corrective Action First Benchmark Report | August 13, 2010 |

C. Compensatory Relief Subclass

Daylight has completed its review of Proof of Claims submitted by Authorized Claimants in connection with the Compensatory Relief Subclass. Accordingly, all dispositions have been issued for the claims. While there is no reporting requirement identified in the Stipulation related to the Compensatory Relief Subclass, Daylight can provide additional details as to the disposition of the Proof of Claims upon request. Daylight will continue to review approval requests for providers⁹ and requests for assistive technology in excess of \$3,000.00,¹⁰ pursuant to the terms of the Stipulation.

⁹ Pursuant to Section IV.34.e. of the Stipulation, “An Authorized Claimant may request approval from the Independent Auditor for the use of a voucher at providers who have not been approved. The Independent Auditor’s determination of such a request shall be conclusive and not subject to challenge.”

¹⁰ Pursuant to Section IV.34.a. of the Stipulation, “The amount for which an Authorized Claimant can use a voucher for assistive technology will be capped at \$3,000.00, unless the Authorized Claimant provides the Independent Auditor with information sufficient to establish a need for assistive technology, the cost of which exceeds \$3,000.00.”

II. Executive Summary

During the PCA Second Quarter, Daylight determined that the DOE Timely Implemented¹¹ 60.6% of the Total Orders and 70.9% of the Total Action Items reviewed.

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

| Type of Relief | Timely Implemented Orders | Timely Implemented Action Items |
|----------------|---------------------------|---------------------------------|
| Service | 62.8% | 76.5% |
| Payment | 58.0% | 61.0% |

Daylight measured implementation of the PCA Second Quarter Orders and Action Items based upon the requirements of the Stipulation. In particular, the DOE Timely Implemented 62.8% of Service Orders; 76.5% of Service Action Items; 58.0% of Payment Orders; and 61.0% of Payment Action Items during this timeframe.

Daylight reviewed a total of 443 Orders during the PCA 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 443 Orders issued during the PCA Second Quarter, there were:

- 326 Total Orders, including 669 Total Action Items identified during the PCA Second Quarter, subject to analysis in the present report;

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.

- Seven Orders comprising 17 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
- 97 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 13 Orders comprising 19 Action Items currently pending further action, which will be reported on during later reporting periods.¹³ Appendix A lists the 13 Orders issued during the PCA Second Quarter that will be reported on during later reporting quarters.

In addition, Daylight determined that 25 additional Action Items were beyond our scope of review and not assessed as Uncounted/counted or for Timely Implementation during the PCA Second 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 Second Quarter.

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

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.

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 Second Quarter. Of the 326 PCA Second Quarter Orders, 287 were counted Orders.

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

| Type of Relief | Unimplemented Orders | Timely Implemented Orders | Total Orders | Percentage Unimplemented | Percentage Timely Implemented |
|----------------|----------------------|---------------------------|--------------|--------------------------|-------------------------------|
| Service | 58 | 98 | 156 | 37.2% | 62.8% |
| Payment | 55 | 76 | 131 | 42.0% | 58.0% |
| Total | 113 | 174 | 287 | 39.4% | 60.6% |

Of the 287 counted Orders, 113 (39.4%) were Unimplemented and 174 (60.6%) were Timely Implemented. In particular, 156 of the 287 counted Orders were service-related¹⁵ and 131 were payment-related.¹⁶ Of the 156 counted service-related Orders, 58 were Unimplemented (37.2%) and 98 were Timely Implemented (62.8%). Of the 131 counted payment-related Orders, 55 were Unimplemented (42.0%) and 76 were Timely Implemented (58.0%).

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.

Of the 113 Orders determined to be Unimplemented, three Orders include at least one Action Item analyzed during the PCA Second Quarter and at least one Action Item which will be reported on during a later reporting quarter. A list of these three Orders is included as Appendix B.¹⁷

In addition, Daylight determined that 39 of the 326 PCA Second Quarter Orders were Uncounted as follows:

- Two Orders were timely appealed by the DOE;
- Six timely appealed Orders for which a settlement was reached prior to State Review Office determination;
- 28 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;
- One Order that required the DOE to take action that was factually impossible to implement in a timely manner; and
- Two Orders for which the DOE was required to provide a service designated as a shortage area and instead offered an appropriate substitute service.

Appendices C and D include lists by case number of the 287 Orders analyzed during the PCA Second Quarter that were Unimplemented and Timely Implemented, respectively. In addition, Appendix E lists the 39 Orders issued during the PCA Second Quarter that were Uncounted. Appendix F lists the 326 total PCA First Quarter Orders grouped with their respective Action Items.

¹⁷ Pursuant to an agreement between the Parties on 4/20/2010, "If any Action Item in an Order is Unimplemented, the Order will be reported as Unimplemented during the Benchmark period in which that action item was Unimplemented...In the first Quarter in which Daylight determines that an Order contains both (i) an Action Item due in that quarter that was Unimplemented and (ii) an Action Item due in a later quarter, Daylight will include that Order in a separate list of Orders appended to the Quarterly Report."

B. Action Item Summary

Daylight reviewed 669 Action Items determined to be within the scope of the PCA Second Quarter. Of the 669 PCA Second Quarter Action Items, 584 were counted Action Items.

The following table is a summary of the results of our assessment of the counted PCA 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 | 88 | 286 | 374 | 23.5% | 76.5% |
| Payment | 82 | 128 | 210 | 39.0% | 61.0% |
| Total | 170 | 414 | 584 | 29.1% | 70.9% |

Our analysis determined that 170 of the 584 counted Action Items were Unimplemented (29.1%) and 414 were Timely Implemented (70.9%). The 584 counted Action Items included 374 service-related and 210 payment-related Action Items. Of the 374 counted service-related Action Items, 88 were Unimplemented (23.5%) and 286 were Timely Implemented (76.5%). Of the 210 counted payment-related Action Items, 82 were Unimplemented (39.0%) and 128 were Timely Implemented (61.0%).

Of the 170 Unimplemented Action Items, 61 (35.9%) appear to have been implemented after the final due date. Daylight also determined that 17 of these were service-related and 44 were payment-related. We could not ascertain whether 109 (64.1%) of the 170 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 109 Action Items were comprised of 71 service-related items and 38 payment-related items.

In addition, Daylight determined that 85 of the 669 PCA Second Quarter Action Items were Uncounted as follows:

- Two Action Items was timely appealed by the DOE;
- Nine timely appealed Action Items for which settlements were reached prior to State Review Office determination;
- 49 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;
- 10 Action Items that required the DOE to take action that was factually impossible to implement in a timely manner; and
- 15 Action Items for which the DOE was required to provide a service designated as a shortage area and instead offered an appropriate substitute service.

Appendices G and H list the 584 Unimplemented and Timely Implemented PCA Second Quarter Action Items, respectively. In addition, Appendix I lists the 85 Action Items issued during the PCA Second Quarter that were Uncounted.

III. Daylight's Methodology

A. Introduction

Daylight's assessment of the Total Orders and Total Action Items for the PCA 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 and Second Quarterly Report presented an overview of the processes and protocols Daylight utilizes to analyze Action Items and Orders. Throughout the PCA Second 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 six update calls during the PCA Second Quarter.

In addition Daylight scheduled and attended walkthrough meetings at the Impartial Hearing Office ("IHO") on May 4, 2010 and at the Bureau of Non-Public School Payables ("NPSP") on May 14, 2010. Daylight met with representatives from both offices to discuss the procedures for processing reimbursement and prospective payment Action Items. Daylight reviewed a representative sample of payment files from both offices to reconcile the invoice received date listed in DAITS with the dates that the offices received the physical documentation. Daylight analyzed additional documentation in the payment files such as outreach letters and e-mails to the parent or the parent's attorney. Daylight's sample included approximately 15% of the PCA Second Quarter reimbursement Action Items at the IHO and approximately 20% of the PCA Second Quarter prospective payment Action Items at NPSP.

Based on our walkthrough at the IHO, Daylight will no longer rely on the Invoice Received Date populated in DAITS in its analysis of reimbursement Action Items. The Invoice Received Date is a system-generated field that does not accurately reflect the date that the IHO received invoices or other documentation necessary to process the payment. Going forward, Daylight will require documentation uploaded into DAITS to verify the date that the DOE received an invoice, when applicable. Our analysis of prospective payment Action Items remains consistent with the methodology presented in prior reports.

IV. Detailed Findings and Observations

A. Breakdown of Unimplemented Payment Action Items

Daylight performed an in-depth review of the 82 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 82 Unimplemented payment-related Action Items, 44 (53.7%) appear to have been implemented after the final due date. Daylight could not ascertain whether 38 (46.3%) of the 82 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 10 of the 44 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 44 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:

- 13 Action Items where the DOE made outreach attempts that contained insufficient information and were not considered valid;
- Three Action Items where the DOE did not make at least three outreach attempts;
- Seven Action Items where all of the outreach attempts were made on the same day;
- One Action Item where the DOE did not make any outreach attempts; and
- 10 Action Items where at least one of the outreach attempts was not made in a timely manner.

In five of the 38 payment-related Action Item cases that were not implemented, 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 33 of the 38 payment-related Action Item cases that were not implemented, 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:

- Nine Action Items 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;
- Six Action Items where all of the outreach attempts were made on the same day;
- Seven Action Items where the DOE did not make any outreach attempts; and
- Five Action Items where at least one of the outreach attempts was not made in a timely manner.

B. Implementation of Service Action Items by Category

Daylight reviewed the 374 counted Service Action Items and noted that the top three most frequently identified categories were Speech and Language Therapy (60 Action Items or 16.0%), followed by Occupational Therapy (45 Action Items or 12.0%) and Reconvene Hearing or Meeting (38 Action Items or 10.2%).

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 Paraprofessional (63.6%), and Transportation (40.0%).

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 | 60 | 16.0% | 50 | 83.3% | 10 | 16.7% |
| 2 | Occupational Therapy | 45 | 12.0% | 37 | 82.2% | 8 | 17.8% |
| 3 | Reconvene Hearing or Meeting | 38 | 10.2% | 28 | 73.7% | 10 | 26.3% |
| 4 | Offer Placement | 35 | 9.4% | 27 | 77.1% | 8 | 22.9% |
| 5 | CSE Evaluation | 35 | 9.4% | 26 | 74.3% | 9 | 25.7% |
| 6 | Physical Therapy | 22 | 5.9% | 19 | 86.4% | 3 | 13.6% |
| 7 | Transportation | 20 | 5.3% | 12 | 60.0% | 8 | 40.0% |
| 8 | Nickerson Letter | 19 | 5.1% | 17 | 89.5% | 2 | 10.5% |
| 9 | Counseling | 14 | 3.7% | 11 | 78.6% | 3 | 21.4% |
| 10 | Paraprofessional | 11 | 2.9% | 4 | 36.4% | 7 | 63.6% |
| | Remaining Categories with 10 or Less Action Items | 75 | 20.1% | 55 | 73.3% | 20 | 26.7% |
| | TOTAL | 374 | 100% | 286 | 76.5% | 88 | 23.5% |

C. Implementation of Payment Action Items by Category

Daylight reviewed the 210 counted Payment Action Items and noted that the top three most frequently identified categories were Tuition (85 Action Items or 40.5%), followed by ABA Services (28 Action Items or 13.3%) and SEIT services (21 Action Items or 10.0%).

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 (68.7%) and SEIT services (47.6%).

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 | 85 | 40.5% | 64 | 75.3% | 21 | 24.7% |
| 2 | ABA Services | 28 | 13.3% | 15 | 53.6% | 13 | 46.4% |
| 3 | SEIT Services | 21 | 10.0% | 11 | 52.4% | 10 | 47.6% |
| 4 | Tutoring | 16 | 7.6% | 5 | 31.3% | 11 | 68.7% |
| 5 | Speech and Language Therapy | 15 | 7.2% | 8 | 53.3% | 7 | 46.7% |
| | Remaining Categories with 8 or Less Action Items | 45 | 21.4% | 25 | 55.6% | 20 | 44.4% |
| | TOTAL | 210 | 100% | 128 | 61.0% | 82 | 39.0% |

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.