

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

J.S.M., *et al.*,

Plaintiffs,

v.

NEW YORK CITY DEPARTMENT OF
EDUCATION, *et al.*,

Defendants.

Case No. 20-cv-705-EK-RLM

ORAL ARGUMENT REQUESTED

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

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PRELIMINARY STATEMENT

For years, Defendants’¹ combined mismanagement of New York City’s special education impartial due process hearing system has caused egregious and unlawful delays that have denied thousands of New York City students, including the Named Plaintiffs, a free appropriate public education (“FAPE”) every year. Under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*, all children have a right to a FAPE. If the family of a child with disabilities believes that the child is not receiving appropriate special education services, the family has the right to file a so-called due process complaint (“DPC” or “complaint”), and have that complaint decided quickly, within 75 days. Although the IDEA and New York law permit extensions meeting specific requirements, the timeline for adjudication is intentionally brief, because the longer the procedural delay a student faces in obtaining necessary services, the further behind the student may fall in her education.

Defendants are responsible for ensuring that these complaints are timely decided, and there is no genuine dispute of material fact that Defendants are catastrophically failing to do so. Multiple studies over the years, as well as Defendants’ own oversight, have alerted Defendants that the impartial hearing system in New York City systemically fails to deliver timely hearings. According to Defendants’ own data for school years 2017–2018 through 2020–2021, rather than each complaint taking no more than the two-and-half months that the IDEA permits, complaints in New York City, on average, took *nearly a full school year* to be adjudicated. In fact, even allowing for every assumption about the validity of recorded deadline extensions in favor of

¹ Defendants are the New York City Department of Education (“NYCDOE”), the Chancellor of the NYCDOE (together with NYCDOE, “City Defendants”), the New York State Education Department (“NYSED”), and the New York State Commissioner of Education (together with NYSED, “State Defendants”).

Defendants, *approximately 40 percent* of the thousands of cases filed each year are not completed within the federally mandated timelines. But that number is too generous, because many extensions are legally deficient. Although state and federal law provide specific requirements for permissible extensions of the 75-day deadline—including that extensions must be made “at the request of either party,” be limited in length, be considered in light of the “impact of the delay on the child’s educational interest,” and be properly documented in the record—many extensions fail to meet these basic requirements. As a result, Defendants’ true compliance rate is far worse.

Both City and State Defendants are liable for the failures in this system. As public agencies, both NYCDOE and NYSED are directly liable under federal law for failing to ensure that decisions are timely issued. But their failures violate other requirements as well. NYSED has the legal obligation to ensure that NYCDOE complies with the IDEA generally and adheres to DPC timelines specifically, neither of which NYCDOE is doing. Federal and state law also assign both NYCDOE and NYSED responsibilities related to specific aspects of the impartial hearing system that they are failing to meet, contributing to the delays. For instance, NYSED is responsible for certifying and overseeing IHOs, which it fails to do adequately. And NYCDOE is responsible for convening resolution sessions with families within 15 days of a complaint’s filing—a critical process that can drastically reduce the number of complaints requiring adjudication—which it consistently fails to do. Because *both* agencies are failing to meet their responsibilities under federal and state law, and *both* will need to take corrective measures to bring the system into compliance, *both* are liable for the unlawful delays challenged in this lawsuit.

Defendants’ systemic failures to provide timely hearings and decisions constitute *per se* denials of a FAPE to the class of affected students. *See Blackman v. District of Columbia*, 277 F. Supp. 2d 71, 79 (D.D.C. 2003) (a sufficiently egregious delay “can itself constitute the

denial of a [FAPE]”). In practical terms, these delays have real impacts on students’ educations: Every day in this procedural quagmire subjects children and families to the stress and uncertainty of not knowing whether they will receive necessary special education services. In many cases, children are forced to go without these services—including, for example, the tailored reading instruction needed by Named Plaintiff J.S.M., the counseling needed by Named Plaintiff A.N., the tutoring needed by Named Plaintiff Q.T., or the autism therapy needed by Named Plaintiffs S.S. and A.S.—for months or even an entire school year or more.

Because there is no triable issue of fact as to whether Defendants, in violation of the IDEA’s requirements, have failed to maintain an impartial hearing system that consistently delivers timely decisions on families’ DPCs, the Court should grant summary judgment in favor of Plaintiffs on Defendants’ direct liability under the IDEA.

BACKGROUND

A. Federal Legal Framework

1. The Individuals with Disabilities Education Act

The IDEA provides children with disabilities the right to a FAPE that “emphasizes special education and related services designed to meet their unique needs.” *Engwiller v. Pine Plains Cent. Sch. Dist.*, 110 F. Supp. 2d 236, 240 (S.D.N.Y. 2000) (quoting 20 U.S.C. § 1400(d)). The IDEA establishes detailed substantive and procedural requirements “to ensure that the[se] rights of children with disabilities and parents of such children are protected, and to assist states and their agencies in working toward those ends.” *Id.*

A student with a disability is entitled to an individualized education program (“IEP”), which includes a detailed written statement of the child’s present levels of academic achievement and the specific services designed to make progress on annual goals that “enable the child to be involved in and make progress in the general education curriculum.” 20 U.S.C.

§§ 1412(a)(4); 1414(d)(1)(A)(i). Under the IDEA, school districts—called local educational agencies (“LEAs”)—must develop IEPs and ensure that students with disabilities receive the educational support and services the IEPs mandate. *See* 20 U.S.C. §§ 1401(19), 1414(d)(2)(A). And the state educational agency (“SEA”), as a condition of receiving federal funding, is responsible for ensuring that LEAs provide each eligible child an adequate IEP, that LEAs “meet the educational standards” mandated by the IDEA, and that “the requirements of [the IDEA] are met” throughout the State. *See* 20 U.S.C. §§ 1401(32), 1412(a)(1)(A), (a)(4), (a)(11)(A); 1414(d)(2)(A).

2. The Impartial Hearing Timeline

The IDEA entitles children with disabilities and their parents to challenge the adequacy and appropriateness of the special education services offered to children. *See* 20 U.S.C. § 1415(f). Specifically, if the family of a child with a disability believes the child is not receiving a FAPE, the family has the right to file a DPC seeking an appropriate educational program. 20 U.S.C. § 1415(b)(6)–(7); 34 C.F.R. § 300.507(a). Filing a DPC entitles a family to an “impartial due process hearing” conducted by either the LEA or the SEA, depending on the state. 20 U.S.C. § 1415(f)(1)(A). These hearings are conducted before neutral adjudicators known as impartial hearing officers (“IHOs”). *See id.* § 1415(f)(3)(A).

Once a DPC is filed, a 30-day “resolution period” begins. The LEA must convene a meeting with the parent, the student’s educators, and someone with “decision-making authority” on behalf of the school district within 15 days of receiving notice of the complaint. 34 C.F.R. § 300.510(a); *see also* 20 U.S.C. § 1415(f)(1)(B). The purpose of this resolution meeting is to provide the parent and the LEA the opportunity to resolve the dispute without requiring adjudication by an IHO. 34 C.F.R. § 300.510(a)(2). Alternatively, the parent and the LEA may both agree to waive the resolution meeting and proceed directly to a hearing. *Id.* § 300.510(c). If

the local agency has not resolved the DPC within 30 days of receipt, and if the parties have not waived the resolution meeting, then the “applicable timelines” governing an impartial hearing begin, and the case should promptly proceed to a hearing before an IHO. 20 U.S.C. § 1415(f)(1)(B)(ii); *see also* 34 C.F.R. §§ 300.510(b)–(c), 300.515(a). These “applicable timelines” require that the SEA and LEA, as public agencies, “ensure that not later than 45 days after the expiration of the 30 day period” set aside for resolution, or the date of the parties’ waiver, “(1) [a] final decision is reached in the hearing; and (2) [a] copy of the decision is mailed to each of the parties.” 34 C.F.R. §§ 300.33, 300.515(a).

In other words, the IDEA prescribes a *maximum* of 75 days between the filing of a DPC and final decision. This brevity is intentional, as Congress recognized that students with disabilities should not “be left indefinitely in an administrative limbo.” *Engwiller*, 110 F. Supp. 2d at 240. An IHO may grant specific extensions of time beyond this 75-day period, but only “at the request of either party.” 34 C.F.R. § 300.515(c). New York imposes other conditions on such extensions as well. *See infra* Background § B.

Additionally, the IDEA’s “stay-put” or “pendency” provision entitles a child who has filed a DPC to remain in his or her “then-current educational placement”—that is, the same, or otherwise last agreed upon, placement and services in place at the time the DPC was filed—while the DPC is pending. 20 U.S.C. § 1415(j); 34 C.F.R. § 300.518. Under the IDEA, pendency is automatic. *Id.*; *see also* 8 N.Y.C.R.R. § 200.5(m).

B. New York City’s Impartial Hearing System

In New York City, families file DPCs with the New York City Impartial Hearing Office (“NYCIHO”), an office within NYCDOE which administers these hearings. (56.1 ¶¶ 3–

4.)² New York State has a “two-tier” impartial hearing system, meaning that impartial hearings are initially conducted at the local level by the LEA—here, NYCDOE—and then any appeals go before the SEA—here, NYSED. *See* 20 U.S.C. § 1415(g); N.Y. Educ. Law § 4404(1). (*See also* 56.1 ¶¶ 1–2, 18.)

In this two-tier structure, both NYCDOE and NYSED are responsible for ensuring compliance with IDEA hearing decision timelines, including the requirement that “not later than 45 days after the expiration of the [30-day resolution period] . . . [a] final decision is reached in the hearing.” 34 C.F.R. § 300.515(a).³ Any extensions of this period must meet specific criteria under state and federal law. Critically, an IHO may “not solicit extension requests or grant extensions on his or her own behalf or unilaterally issue extensions for any reason,” and may grant only one extension at a time. 8 N.Y.C.R.R. § 200.5(j)(5)(i). New York State regulations further require the IHO, after receiving an extension request from a party, *see* 34 C.F.R. § 300.515(c), to “fully consider[] the cumulative impact” of four factors: (1) the impact of the delay on the child’s educational interest; (2) the parties’ opportunities to fairly present their cases; (3) the adverse consequences that may be suffered by a party as a result of delay; and (4) whether a party’s action has been a cause of delay. 8 N.Y.C.R.R. §§ 200.5(j)(5)(i), (ii). And IHOs must “set forth the facts

² On December 1, 2021, Defendants executed a Memorandum of Agreement with the New York City Office of Administrative Trials and Hearings (“OATH”), under which the parties agreed to “transfer . . . the handling of the impartial hearing system to OATH.” *E.F. et al. v. Adams, et al.*, 21-cv-11150, ECF No. 40-1 (S.D.N.Y. Feb. 2, 2022). Defendants have stated that OATH began assigning some cases in March 2022. *E.F.*, 21-cv-11150, ECF No. 56 at 2 (S.D.N.Y. Mar. 29, 2022). Because the OATH system was not in place during the time period for which Defendants produced data on hearing timeliness, *see infra* at 13, Plaintiffs address only the hearing system in place during the time period for which Defendants did produce data.

³ In New York, for preschool-age children, regulations provide that an IHO decision must be rendered “not later than 30 days” after the end of the resolution period. 8 N.Y.C.R.R. § 200.16(h)(9).

relied upon for each extension granted [which] shall become part of the record.” *Id.* § 200.5(j)(5)(iv). In New York State, each extension to the compliance deadline was limited to 30 days until April 7, 2020, after which it has been limited to 60 days. *Id.* § 200.5(j)(5)(i).⁴

Within this two-tier impartial hearing system, NYCDOE is responsible for the following:

- **Appoint IHOs:** NYCDOE must “appoint an [IHO] to review [a] due process complaint notice . . . [and] to preside over an impartial due process hearing and make a determination within such period of time as the [State] commissioner by regulation shall determine[.]” N.Y. Educ. Law § 4404(1)(a).⁵ (*See also* 56.1 ¶ 6.)
- **Manage Due Process Complaints:** NYCDOE is responsible for receiving complaints and ensuring that the IHO “rotational selection process [is] initiated immediately, but not later than two business days after receipt” of the DPC. 8 N.Y.C.R.R. § 200.5(j)(3)(i)(a)(1). (*See also* 56.1 ¶ 5.)
- **Conduct Hearings:** Hearings “must be conducted by” NYCDOE, 34 C.F.R. § 300.511(b), because NYSED has delegated this responsibility to LEAs. N.Y. Educ. Law § 4404(1); 8 N.Y.C.R.R. § 200.5(j). NYCDOE is also responsible for maintaining physical space for hearings. (56.1 ¶¶ 11–12, 14–15.)
- **Convene Resolution Sessions:** NYCDOE must convene a resolution session “within 15 days of receiving the [DPC],” which “shall include a representative of the school district who has decision-making authority on behalf of the school district [where] the school district has the opportunity to resolve the complaint.” 8 N.Y.C.R.R. § 200.5(j)(2)(i); *see also* 34 C.F.R. § 300.510(a).⁶ (*See also* 56.1 ¶¶ 8–9.)

⁴ The Commissioner of Education passed an emergency regulation changing the maximum extension date of 30 days to 60 days during the COVID-19 pandemic, effective April 7, 2020. (56.1 ¶ 29.)

⁵ *See also* 8 N.Y.C.R.R. §§ 200.5(j)(3), (3)(ii) (“Upon receipt of the . . . due process complaint notice,” the LEA “shall arrange for an impartial due process hearing” and “shall immediately appoint an [IHO] to conduct the hearing.”); 8 N.Y.C.R.R. § 200.2(b)(8) (The LEA “shall adopt written policy that establishes administrative practices and procedures: . . . for the selection and board appointment of an [IHO] . . .”).

⁶ *See also* 20 U.S.C. § 1415(f)(1)(B)(i) (“Prior to the opportunity for an impartial due process hearing . . . the [LEA] shall convene a meeting . . . (I) within 15 days of receiving notice of the parents’ complaint; (II) which shall include a representative of the agency who has decisionmaking

- **Establish and Maintain Procedures:** NYCDOE must “establish and maintain procedures . . . to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a [FAPE].” 20 U.S.C. § 1415(a). These include procedures to ensure “[a]n opportunity for any party to present a complaint.” *Id.* § 1415(b)(6). In addition, NYCDOE must provide full explanation of the procedural safeguards, written in the native language of the parents, if feasible. *Id.* § 1415(d)(2). (*See also* 56.1 ¶ 7.)

NYSED bears responsibility for other aspects of the impartial hearing system:

- **Certify, Train, and Oversee IHOs:** NYSED must ensure that IHOs are “certified,” “establish a department training program” that IHOs must complete to become certified, and “establish[] procedures for the suspension or revocation of [IHO] certification.” N.Y. Educ. Law § 4404(1)(c); 8 N.Y.C.R.R. § 200.1(x)(4).⁷ (*See also* 56.1 ¶¶ 20–22, 24.)
- **Set IHO Compensation:** NYSED “establish[es] maximum rates for the compensation of” IHOs. N.Y. Educ. Law § 4404(1)(c).⁸ (*See also* 56.1 ¶ 25.)
- **Establish Guidelines for Assignment and Recusal of IHOs:** NYSED must prescribe “a rotation selection process” for the appointment of IHOs to due process cases. N.Y. Educ. Law § 4404(1)(c). NYSED also instructs IHOs regarding appropriate recusals. (*See* 56.1 ¶ 38.)
- **Create Impartial Hearing Procedures:** NYSED must “adopt regulations prescribing the state complaint procedures pursuant to [federal regulations],” including regarding “remedies for denial of appropriate services.” N.Y. Educ. Law § 4403(19); 8 N.Y.C.R.R. § 200.5. (*See also* 56.1 ¶ 26.)
- **Maintain Procedural Safeguards:** As a condition of receiving federal funding, NYSED must “establish and maintain procedures . . . to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to

authority on behalf of such agency” where “the [LEA] is provided the opportunity to resolve the complaint”).

⁷ *See also* 8 N.Y.C.R.R. § 200.1(x)(4) (IHOs must be “certified by the [State] commissioner” and must “complete a training program” conducted by the NYSED); 8 N.Y.C.R.R. §§ 200.21(b)(1)–(5) (the State “commissioner shall provide for review” of complaints against IHOs, and the “commissioner . . . shall revoke or suspend the certification of” IHOs or impose other disciplinary measures).

⁸ *See also* 8 N.Y.C.R.R. §§ 200.21(a) (NYSED sets IHO compensation as “an amount not to exceed the applicable rate prescribed in a schedule of maximum rates approved by the director of the Division of the Budget”).

the provision of a [FAPE.]” 20 U.S.C. § 1415(a); *see also* 20 U.S.C. § 1412(a)(6). (*See also* 56.1 ¶ 19.)

- **Ensure that IDEA Requirements Are Met:** NYSED is responsible for “ensuring that (i) the requirements of [the IDEA] are met; (ii) all educational programs for children with disabilities in the State, including all such programs administered by any . . . local agency (I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and (II) meet the educational standards of the State educational agency[.]” 20 U.S.C. § 1412(a)(11)(A). (*See also* 56.1 ¶ 19.)

In addition to these discrete requirements, both NYCDOE and NYSED are responsible for ensuring that hearing decisions are timely. 34 C.F.R. § 300.515(a); *id.* § 300.33.

C. New York City’s Impartial Hearing System Has Long Been Plagued by Delays

Despite NYCDOE and NYSED’s responsibility to meet the IDEA’s unambiguous deadlines, New York City has systemically failed to comply with them for years.

1. The 2014 Two-Tier Study

In 2014—*over eight years ago*—State Defendants published a study that NYSED commissioned (the “Two-Tier Study”) regarding reforms to the impartial hearing system. (56.1 ¶ 54.) The Two-Tier Study noted that because so many New York State DPCs were filed in New York City, “New York’s hearing system is predominantly influenced by the operation of the system in New York City.” (56.1 ¶ 57.) Moreover, the Two-Tier Study determined, based on a review of data from 2004–2005 through 2011–2012, that “New York State has been unable to attain 100% or even substantial compliance with timely adjudicated hearings” (56.1 ¶ 56), and that “the overall operation of the conduct of the New York State special education hearing system is in need of substantial restructuring to be an efficient and timely system consistent with standard, and ideally, best legal practices” (56.1 ¶ 58).

2. The 2016 OSEP Review

In September 2016, the U.S. Department of Education’s Office of Special Education Programs (“OSEP”) released a New York Monitoring and Support Visit Summary and Next Steps (“2016 OSEP Review”). (56.1 ¶¶ 59–61.) The 2016 OSEP Review concluded that “above 75% of fully adjudicated hearings” for 2012–2015 had “extended timelines,” and that “the State does not have procedures in place to ensure that [IHOs] are granting extensions consistent with” applicable law. (56.1 ¶¶ 62–63.) OSEP also found that, “[b]ased on the review of documents, analysis of data, and interviews with State and local personnel, . . . the State does not have procedures in place to ensure that [IHOs] . . . are issuing due process hearing decisions within the 45-day timeline required by [the IDEA].” (56.1 ¶¶ 64–65.)

3. The 2019 NYSED Merced Report

In 2018, NYSED hired Deusdedi Merced, Esq., a special education consultant, to conduct an independent review of the New York City impartial hearing system “with NYSED’s full authority.” (56.1 ¶ 66.) This investigation resulted in a 2019 report containing the results of this investigation (the “NYSED Merced Report”), which NYSED later published on its website. (56.1 ¶¶ 67–68.) The NYSED Merced Report concluded that “[t]he average number of days a case is open in New York State,” which the Report found to be 225 days in the 2018–2019 school year, “far exceeds the abbreviated timeline established in the IDEA,” and the number of DPCs in New York City in particular “raises valid questions of the school district’s ability to offer [FAPE] to its students with disabilities.” (56.1 ¶ 69.) The NYSED Merced Report also found that “[it] is more likely than not that New York City has a greater number of untimely cases than reported and that the incidence of IHOs unilaterally extending timelines or soliciting extensions from parties is considerable.” (56.1 ¶ 73.) The NYSED Merced Report concluded that “substantial deficiencies in the policies, procedures and practices specific to special education impartial hearings in New

York City . . . present[] a threat to due process” and “render an already fragile hearing system vulnerable to imminent failure and, ultimately, collapse.” (56.1 ¶ 71.) NYSED staff commended Mr. Merced on his Report, noting, “I especially like how you identified current practices that violate IDEA [and] delay due process to the parties.” (56.1 ¶ 79.)

4. The 2019 Compliance Assurance Plan

Following the NYSED Merced Report’s finding of “substantial deficiencies” in the impartial hearing system, in May 2019, NYSED issued a Compliance Assurance Plan (“CAP”) to NYCDOE regarding the egregious delays in New York City impartial hearings. (56.1 ¶ 80.) Relying on the results of the NYSED Merced Report, the CAP concluded that “NYCDOE ha[d] been identified as not meeting the requirements of IDEA,” including IDEA’s “requirements to ensure proper procedural safeguards to students and parents” such as impartial hearing timelines. (56.1 ¶¶ 81–83.) In its response to the CAP, NYCDOE admitted that parents “are experiencing major delays,” but stated that this was “due to a shortage in NYSED-certified hearing officers available to hear cases and other issues.” (56.1 ¶ 86.)

5. The “Waitlist” and “Waitlist Extension”

Before November 2019, all DPCs were automatically assigned to IHOs on a rotation list after filing, but, following that initial assignment, extensive IHO recusals on the basis of unavailability often led to delays in hearings. (56.1 ¶¶ 36–37.) In November 2019, NYSED required that the NYC IHO change the IHO appointment policy so that “only IHOs who are available and able to accept cases will be assigned to a case, thereby substantially reducing the number of recusals,” and IHOs could recuse themselves only in severely curtailed circumstances. (56.1 ¶ 38.) On November 19, 2019, in light of this revised assignment system, NYCDOE implemented a “waitlist” of complaints not yet assigned to IHOs. (56.1 ¶ 39.) Cases on the waitlist are not assigned an IHO until one is available. (56.1 ¶ 40.)

As of February 5, 2021, the waitlist had grown to “over 6000 cases,” and an NYSED employee expressed to NYCDOE employees that the waitlist “may overwhelm the revised offer/appointment process, resulting in failure, perhaps even collapse, of the system.” (56.1 ¶ 41.) As of September 8, 2021, the waitlist had 6,297 DPCs—at least 62 percent of which had been waiting for over 75 days without an IHO appointment. (56.1 ¶ 42.) Any cases that remain without an appointed IHO for more than 75 days are out of compliance with legally mandated IDEA deadlines. *See* 34 C.F.R. § 300.515(a). This was the case, for example, for nearly all of the Named Plaintiffs, whose DPCs were either not assigned to an IHO when the deadline passed, or were assigned to an IHO who recused, such that no IHO was assigned when the deadline passed. (56.1 ¶¶ 176(a)–(j).)

In early May 2020, NYCDOE and NYSED jointly implemented a “waitlist extension” in their data systems for cases receiving an IHO appointment off the waitlist. (56.1 ¶ 43.) Defendants’ computer systems track the “Current Compliance Date” of a case—the date by which a decision must be issued to be consistent with legal timelines (56.1 ¶ 108), *i.e.*, 75 days from filing, along with any additional time due to IHO-granted extensions or other factors. *See infra* Background § D. When cases remained on the waitlist, and were therefore unassigned to an IHO, for longer than 75 days, the original compliance dates often passed without an IHO being assigned. (56.1 ¶ 51.) Cases therefore became untimely by passing their compliance dates before an IHO was even assigned. (*Id.*) The new waitlist extension was an “extension[] granted by SED to cases in which an IHO is appointed from the waitlist” so that an IHO “is not appointed to a case

that is already past compliance.” (56.1 ¶ 45.) Specifically, NYSED “authorized” the NYCIHO “to adjust the compliance date to 45 days after the date of [the IHO’s] appointment.” (56.1 ¶ 46.)⁹

NYSED described the waitlist extension as a “[t]ech workaround for bringing late cases into compliance” (56.1 ¶ 49) that also “negates the need to seek extensions from the parties, whose cases have already been delayed and reduces the amount of effort required to bring the case into compliance in [Defendants’ systems]” (56.1 ¶ 50). This change explicitly sought to address the problem that “IHOs are being appointed to cases that are *already late due to the backlog*.” (56.1 ¶ 51 (emphasis added).) Indeed, for the six Named Plaintiffs whose DPCs were assigned to IHOs after the waitlist extension was implemented, NYSED-granted extensions of up to 139 days were entered immediately following assignment. (56.1 ¶¶ 177(a)–(f).) These extensions—which, as the IHO in Named Plaintiff S.F.’s case observed, “the state has done . . . on their own” (56.1 ¶ 177(d))—falsely create the illusion that the cases comply with federal timelines. As an NYSED employee admitted, this “SED Waitlist extension” “[c]ould be violating a parties’ [sic] right to *an expeditious hearing*.” (56.1 ¶ 52 (emphasis added).)

D. Defendants’ Own Data Reflects Extensive Delays

Data collected by NYCDOE and maintained by NYSED reflect that cases are not being closed within the IDEA-mandated timelines in New York City.¹⁰ NYSED produced DPC-tracking data for cases filed between January 3, 2017 and December 30, 2021.¹¹ (56.1 ¶ 104.)

⁹ For cases involving preschool students, the adjustment is 30 days after the date of appointment. (56.1 ¶ 47.)

¹⁰ A full description of the relevant data fields and the calculations set forth herein is contained in the Declaration of Neil Steinkamp (“Steinkamp Decl.”).

¹¹ Data produced by NYSED contains the entirety of the 2017–2018, 2018–2019, 2019–2020, and 2020–2021 school years, but provides only partial data for the 2016–2017 and 2021–2022 school years. (56.1 ¶¶ 104–05.) The data analysis is limited to DPCs filed between July 1, 2017 and June 30, 2021, which either (i) remained open as of January 21, 2022, the date the data was

NYSED produced this data from the Impartial Hearing Reporting System (“IHRS”), which is updated regularly to incorporate data entered by NYCDOE into the NYCDOE-maintained Impartial Hearing System (“IHS”) and then transferred to NYSED. (56.1 ¶¶ 101–04.) NYSED utilizes data maintained in IHRS to monitor compliance with the IDEA’s impartial hearing deadlines. (56.1 ¶ 101.) IHRS contains a field that directly tracks the compliance date, incorporating timeline-impacting factors such as case extensions, resolution period waivers, or amendments to the DPC (the “Current Compliance Date”). (56.1 ¶¶ 107–08.)

1. Even Accepting All Documented Extensions, 38 Percent of Cases in New York City Are Out of Compliance with IDEA Timelines.

NYSED’s data shows that the average length of time between DPC filing and case closure for Relevant Cases was **284 days**. (56.1 ¶ 109.) For Relevant Cases closed during the 2020–2021 school year, the average case length was **320 days**. (56.1 ¶ 110.) In other words, the average case length in New York City got **longer** between July 1, 2017 and June 30, 2021, surpassing **four times** the 75-day timeline mandated by the IDEA. For example, Named Plaintiffs A.S., K.M.E., P.W., and Q.T. all waited well over a year for their decisions—up to 654 days. (56.1 ¶¶ 179(b), 179(f)–(h).) In fact, Named Plaintiff Q.T. waited 511 days for compensatory tutoring—relief that, at the impartial hearing, NYCDOE **agreed** he needed. (56.1 ¶¶ 162–63, 179(h).)

NYSED’s data further reveals that approximately 38 percent of Relevant Cases are resolved **after** the Current Compliance Date—a date that includes all recorded extensions. (56.1 ¶ 112.) On average, these cases were 69 days beyond the Current Compliance Date when they

extracted from IHRS, or (ii) were closed by actual decision, settlement, or withdrawal (“Relevant Cases”). (56.1 ¶¶ 105–06.)

were closed. (56.1 ¶ 113.) This figure assumes that all extensions of the compliance date are valid—an assumption that is unfounded in many, if not most, cases. *See infra* Background § D.2.

2. Excluding Invalid Waitlist Extensions, Nearly 60 Percent of Cases in New York City Are Out of Compliance with IDEA Timelines.

IHRS tracks which extensions are “waitlist extensions” (56.1 ¶ 114)—extensions which, as discussed below at § I.B, categorically violate the IDEA and New York regulations. If this single category of “waitlist extensions” is excluded, *i.e.*, is not treated as a legally valid extension of the Current Compliance Date, ***nearly 60 percent*** of Relevant Cases open on or after May 1, 2020, when Defendants implemented the waitlist extension (“Waitlist Extension Relevant Cases”), were untimely—even assuming that every other extension was a legally valid one. (56.1 ¶ 117.) Since May 1, 2020, ***10,028*** waitlist extensions have been entered in such cases, for an average of ***202 days*** each. (56.1 ¶¶ 115–16.)

Even this analysis does not reflect the legal invalidity of many other extensions. In an internal document prepared in May 2020, NYCDOE employees documented the “failure” on the part of IHOs “to conform practices to requirements of NYS regulations,” including a “[g]eneral lack of understanding of regulations” on extension timelines and a practice of “[u]nilateral submission of extensions without requests from parties.” (56.1 ¶ 30.) The NYSED Merced Report also concluded that “the validity of reported timeliness in New York City cannot be assumed.” (56.1 ¶ 72.) The Report characterized the number of extensions issued in New York State as “exceptionally high,” with New York City accounting for the overwhelming majority of them, and found them to reflect “systemic deficiencies” in the New York City impartial hearing system. (56.1 ¶¶ 74–75.) The NYSED Merced Report also found that IHOs persistently failed to document extensions on the record as required by State regulations, and that the “[p]revalent practice in New York City is to extend the timeline without a written order meeting the requirements” of New York

law. (56.1 ¶ 76.) And the Report described incidences of IHOs “unilaterally extending timelines” or “soliciting extensions from the parties,” despite clear regulatory prohibitions on these practices. (56.1 ¶ 77.)

The experiences of practitioners and the Named Plaintiffs further illustrate this problem. Despite the fact that New York law prohibits IHOs from soliciting extensions, 8 N.Y.C.R.R. § 200.5(j)(5)(i), IHOs often seek extensions, including during hearings. The IHO in Named Plaintiff J.S.M.’s case, for example, noted at one status conference that “we are going to need to address the compliance date,” which had already passed (56.1 ¶ 178(c)), and the IHO in Named Plaintiff A.N.’s case asked, “[I]s anybody requesting an extension of the compliance date?” (56.1 ¶ 127). As one practitioner observed, “IHOs solicit extension requests from the parties, for example, by asking, ‘do I have an application for an extension?’” (56.1 ¶ 31.) Indeed, NYSED’s training materials even suggest that IHOs may solicit extensions, explaining that if “it becomes clear that the 45-day timeline cannot be met, . . . the hearing officer can explore with the parties whether either party (or both) desire(s) an extension of the 45-day timeline, provided that any of the mandated factors noted above do not outweigh the need for an extension.” (56.1 ¶ 35.) Further, as a practical matter, litigants face other pressures to extend the case compliance date. Attorneys may feel “that refusing to seek an extension of the Compliance Date might displease the IHO that would continue to preside over [their] client’s DPC, risking adverse consequences to the client’s case.” (56.1 ¶ 32.)

IHOs also regularly enter multiple extensions on the same day, in violation of the requirements that only one extension be entered at a time, 8 NYCRR § 200.5(j)(5)(i), and frequently issue them retroactively. In 4,405 Relevant Cases, IHOs granted multiple extensions simultaneously. (56.1 ¶ 122.) And in 22,072 Relevant Cases—54.2 percent—IHOs entered

extensions retroactively, *i.e.*, after the then-applicable Current Compliance Date had already passed. (56.1 ¶ 121.) In Named Plaintiff P.W.’s case, for example, the IHO entered a total of *fifteen* extensions, in batches of three, four, and eight retroactive extensions at a time—putting the final compliance deadline on record in his case 442 days beyond the original one. (56.1 ¶ 178(d).) Similarly, months after the original compliance date in Named Plaintiff J.S.M.’s case, the IHO simultaneously issued three consecutive retroactive 60-day extensions (56.1 ¶ 178(c)); Named Plaintiff Q.T.’s IHO issued four simultaneous retroactive extensions (56.1 ¶ 178(e)); and Named Plaintiff C.G.’s IHO did the same—purportedly to “bring the case up-to-date” (56.1 ¶ 178(b)). By the time C.G. finally had a hearing, the compliance date had again passed, and the IHO solicited further extension requests from the parties on the record, which he also issued retroactively. (56.1 ¶ 178(b)); *see also* (56.1 ¶ 33 (“I have also observed, on one or more occasion, that extensions have been entered that were not requested by either party, that multiple extensions were entered at one time, and that extensions were entered retroactively.”).) And not all IHOs consider the factors required by New York regulations. (*See* 56.1 ¶ 34.)

E. Defendants’ Delays Harm Families.

The delays in the impartial hearing system not only harm families by violating their procedural right to a timely hearing, they deny all families, regardless of means, stability and certainty in their children’s special education programs. Delays also have very real consequences on students’ ability to access a FAPE. When these delayed cases are ultimately decided, they overwhelmingly go in the families’ favor: Among Relevant Cases that received an actual decision, the IHO ruled in the child’s favor on all issues **78 percent of the time**. (56.1 ¶ 120.) When including decisions granting at least some of the relief requested by the student, this figure rises to **89 percent** of Relevant Cases. (*Id.*) Indeed, IHOs ultimately found in favor of every Named Plaintiff whose complaint went to hearing. (56.1 ¶¶ 144, 155, 163, 165, 168.)

While some families have pendency in the relief sought in their DPC, many families do not. For those families, extensive due process delays deprive students of services to which they are ultimately found entitled and which they need to access their education. Named Plaintiff S.S., for example, filed a DPC seeking home-based behavioral therapy for autism, but by the time an IHO agreed with her—211 days after she filed—the entire school year had passed without her receiving the services. (56.1 ¶¶ 166–68, 179(j).) Similarly, Named Plaintiffs W.W. and Q.T. sought neuropsychological evaluations to determine appropriate special education services, which their families could not afford to obtain while their DPCs were pending. (56.1 ¶¶ 159, 169.) During Named Plaintiff W.W.’s case delays, she was receiving no special education services at all, and her lawyer’s pleas that NYC IHO appoint an IHO so that she could get the evaluation immediately went unheeded. (56.1 ¶¶ 170–71.) Named Plaintiff Q.T. was in the same situation. By the time Q.T.’s claim for compensatory tutoring went to a hearing—at which NYCDOE did not even contest that he was entitled to those services—his DPC had been pending over 500 days. (56.1 ¶ 162, 179(h).)¹²

Harms can be particularly egregious when families require immediate IHO intervention to order urgent interim relief. Named Plaintiff A.S., for example, was receiving only one hour of home instruction per day after his DPC was filed, but his lawyer’s urgent request for a hearing “as soon as possible” was ignored. (56.1 ¶¶ 133–35.) He went without that relief for *ten more months*. (56.1 ¶ 136.) Named Plaintiff K.M.E., likewise, had to wait over a year and a

¹² Plaintiffs A.N., A.S., B.M., J.S.M., K.M.E., and P.W. also did not have pendency (and Plaintiff S.F. was unable to get an IHO to order pendency), and were thus deprived of services they needed—including counseling for A.N., specialized reading and math instruction for J.S.M., a non-public school placement for J.S.M. and S.F., independent evaluations for A.N., A.S., and K.M.E., autism therapy for B.M., tutoring for B.M. and K.M.E., and supplemental classroom supports for S.F.—while their DPCs were delayed, causing harm to each of them. (56.1 ¶¶ 124–25, 131–33, 138–39, 145–46, 149–50, 156–57, 164.)

half for an IHO to order a new IEP as interim relief—only to have NYCDOE fight to limit her eventual compensatory relief to services that would get her up to the grade level she was in *two years earlier, when she filed*. (56.1 ¶¶ 149, 152–53.) The IHO awarded the full services, but only after her DPC was pending for *654 days*. (56.1 ¶ 155, 179(f).)

F. Procedural History

Plaintiffs initiated this lawsuit in February 2020 (ECF No. 1), and filed the Amended Complaint in March 2020 (ECF No. 21). Defendants answered without moving to dismiss (ECF Nos. 31, 32), and stipulated to class certification (ECF Nos. 24, 25). On June 18, 2020, this Court certified a class consisting of “[i]ndividuals who file or have filed due process complaints, and the children on whose behalf due process complaints are filed, when the due process complaints are unresolved and the decisions on such complaints have not been timely provided under applicable federal and New York State law.” (ECF No. 33.)

Plaintiffs’ Amended Complaint alleged five causes of action: (1) claims against State Defendants under the IDEA or 42 U.S.C. § 1983; (2) claims against City Defendants under the IDEA or § 1983; (3) claims against City Defendants under New York Education Law § 4401 *et seq.*; (4) claims against all Defendants under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a); and (5) claims against all Defendants under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.* (ECF No. 21 at ¶¶ 329–63). Plaintiffs now move for partial summary judgment only as to the Named Plaintiffs’ and the Class’s claims against City and State Defendants under the IDEA.¹³

¹³ Plaintiffs are not currently seeking summary judgment as to any of their other claims, including their § 1983 claims, but expressly reserve their right to do so. *See* Mar. 9, 2022 Hearing Tr. (ECF No. 108) at 19:24–20:3 (“[I]f you’re worried that you only get one bite at a summary judgment apple, don’t worry about that,” because the Court may, in its discretion, “decide that we’re going to litigate one issue now and other liability issues later”).

LEGAL STANDARD

Summary judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact.” Fed. R. Civ. P. 56(a). To defeat summary judgment, “the nonmoving party must come forward with specific facts showing that there is a *genuine issue for trial*”; “[c]onclusory allegations, conjecture, and speculation . . . are insufficient,” as is “[t]he mere existence of a scintilla of evidence’ supporting the non-movant’s case.” *Niagara Mohawk Power Corp. v. Jones Chem. Inc.*, 315 F.3d 171, 175 (2d Cir. 2003) (citations omitted) (emphasis in original).

ARGUMENT

I. THERE ARE NO TRIABLE ISSUES AS TO WHETHER DEFENDANTS ARE DIRECTLY VIOLATING THE IDEA.

There can be no genuine dispute that Defendants have failed to comply with their responsibility under the IDEA to ensure that DPCs in New York City are adjudicated within statutory and regulatory timeframes. This systemic noncompliance with the 75-day requirement is itself sufficient to establish that all Defendants are liable for direct IDEA violations.

A. Defendants’ Own Data Demonstrates That They Are Out of Compliance with the IDEA.

Defendants are indisputably violating the IDEA’s mandate that all students receive a final decision on their DPC within 75 days of the date of filing. 20 U.S.C. § 1415(f)(1)(B)(ii); *see also* 34 C.F.R. §§ 300.510(b)–(c), 300.515(a). As explained above, the *average* Relevant Case took **284 days** from filing to closure; and that average was **320 days**—more than **four times** the 75-day timeline mandated by the IDEA—for Relevant Cases that closed during the 2020–2021 school year. *See supra* at 14; (56.1 ¶¶ 109–10.) Over 3,000 Relevant Cases filed in that school year still remained open and outstanding as of January 21, 2022. (56.1 ¶ 111.) Even assuming (incorrectly) that every entered extension is valid, nearly **38 percent** of Relevant Cases did not

reach final decision within the IDEA’s mandated timelines. (56.1 ¶ 112.) And setting aside categorically invalid waitlist extensions, *nearly 60 percent* of Relevant Cases cases that were open on or after May 1, 2020 were untimely. (56.1 ¶¶ 115, 117.)

Under any measure of systemic “compliance,” Defendants fail. But the failure is particularly egregious because their obligation to deliver timely hearing decisions applies independently to *each and every DPC*. “[T]he right to a [FAPE] is afforded to each disabled child as an individual.” *D.D. ex rel. V.D. v. N.Y.C. Bd. of Educ.*, 465 F.3d 503, 511 (2d Cir. 2006). Accordingly, the Second Circuit has held that the IDEA’s requirement to provide a FAPE to all eligible children “does not simply require *substantial compliance* on the part of participating states; it requires *compliance*.” *Id.* at 512 (emphasis added). The timely disposition of some DPCs therefore does not relieve Defendants of liability for the delays in others: “Had a single eligible student brought an action claiming that a systemic failure had deprived him of his right to a [FAPE], [the defendants] could not defeat his claim by establishing that they provide such access to a substantial number of students.” *Id.* In other words, if Defendants deliver anything short of 100 percent compliance with the IDEA’s mandate, the due process system is violating federal law. *See Blackman v. District of Columbia*, 97-cv-1629 (PLF) (D.D.C. June 3, 1998), Dkt. No. 81 at 13, 21 (granting summary judgment to plaintiffs in Washington, D.C. on nearly identical IDEA claims where data showed that a final decision had not been issued within the statutory timeline in 482 out of 655 hearing requests, over 73.5 percent of cases).

B. Defendants’ Invalid Extensions Conceal Further Noncompliance.

Defendants’ 38 percent noncompliance rate under their own metrics is far more than enough to establish that Defendants are violating the IDEA. In reality, however, their noncompliance is drastically worse, because that figure relies on the faulty assumption that all recorded extensions are valid. The only way to lawfully extend the 75-day deadline is for an IHO

to enter an extension that meets stringent legal requirements, including that a party to the proceeding—not the IHO or NYSED—asked for the extension, 34 C.F.R. § 300.515(c); that the IHO considered enumerated factors including the impact on the child; and that both the extension order and “the facts relied upon” in granting it are made “part of the record.” *See* 8 N.Y.C.R.R. § 200.5(j)(5)(i)-(iv).

Many extensions that Defendants use to extend the Current Compliance Dates recorded in their data systems are, in fact, legally invalid. *First*, and most straightforwardly, since May 2020, Defendants have expressly authorized the use of a categorically improper and invalid “waitlist extension” for DPCs not promptly assigned to IHOs. (56.1 ¶ 43.) The record establishes that the City Defendants and State Defendants collaboratively developed and implemented this category of extensions to “adjust the compliance date” for “waitlisted cases which are already late upon appointment” of an IHO. (56.1 ¶ 44.) This “waitlist extension” blatantly violates the requirements of the IDEA and implementing federal and state regulations because it (i) is not entered by an IHO; (ii) is not based on a party request; and (iii) is entered without consideration of all enumerated factors. 34 C.F.R. § 300.515; 8 N.Y.C.R.R. § 200.5(j)(5)(ii); (*see* 56.1 ¶¶ 36–53). Indeed, a NYSED employee recognized not long after the waitlist extension’s rollout that it “[c]ould be violating a parties’ [*sic*] right to an expeditious hearing.” (56.1 ¶ 52 (emphasis added).)¹⁴

Since the waitlist extension was implemented, Defendants have heavily relied on it to make unlawfully delinquent DPCs look timely. Defendants granted waitlist extensions in more

¹⁴ Defendants’ development of the waitlist extension appears independently to have violated state administrative procedure law, since it was done outside the state rulemaking process, *see* N.Y. A.P.A. Law § 202. (56.1 ¶ 53 (“The Waitlist Extensions are not regulatory.”).) Even if it had been done through lawful rulemaking, however, it would have violated federal law and thus would still be invalid.

than **10,000** Waitlist Extension Relevant Cases between May 2020 and January 2022. (56.1 ¶ 115.) The length of time for these waitlist extensions averaged **202 days**—well more than twice the maximum 75-day requirement of the IDEA. (56.1 ¶ 116.) Excluding just this single category of facially unlawful extensions, but continuing to assume that every other extension was legally valid, nearly **60 percent** of Waitlist Extension Relevant Cases were either untimely closed or remained open and untimely as of the date the data was extracted from IHRS. (56.1 ¶ 117.)

Second, there is substantial evidence that IHOs follow legally deficient practices in entering many other types of extensions. For example, in 22,072 Relevant Cases—54.2 percent—IHOs entered extensions retroactively, *i.e.*, after the then-applicable Current Compliance Date had already passed. (56.1 ¶ 121.) Similarly, in 4,405 DPCs, IHOs granted multiple extensions simultaneously, in direct violation of state law. 8 N.Y.C.R.R. § 200.5(j)(5)(i) (“Not more than one extension at a time may be granted.”); (56.1 ¶ 122). And IHOs regularly solicit extension requests, in direct violation of the same state law. 8 N.Y.C.R.R. § 200.5(j)(5)(i) (“The impartial hearing officer shall not solicit extension requests.”); *see supra* at 15–16. Furthermore, as discussed *supra* Background § D.2, the NYSED Merced Report, NYCDOE’s internal reviews, and the experiences of Named Plaintiffs and practitioners all corroborate that IHS and IHRS extension data cannot be presumed accurate. As a result, many extensions that appear, from the data, to be legally valid were in fact unlawfully entered and thus invalid—leaving Defendants’ true compliance rate even lower than it appears.

C. Defendants Are Liable Directly Under the IDEA.

Plaintiffs and the Class bring their claims for Defendants’ systemic noncompliance with the IDEA’s timely hearing decision requirement directly under that statute’s cause of action, which provides that “[a]ny party aggrieved by the findings and decision made” under the impartial hearing system “shall have the right to bring a civil action with respect to the complaint presented

pursuant to this section . . . in a district court of the United States.” 20 U.S.C. § 1415(i)(2)(A). That cause of action extends to violations of procedural rights, including those brought on a systemic basis. As the Second Circuit has explained, § 1415 “confers on a parent of a disabled child the right to judicial relief for system-wide due process violations” of the IDEA’s “procedural safeguards.” *Heldman ex rel. T.H. v. Sobol*, 962 F.2d 148, 150–51 (2d Cir. 1992).¹⁵

In *Engwiller*, for example, a court in this Circuit granted summary judgment to the plaintiff after NYSED failed to ensure that the IHO assigned to her case decided it in a timely manner. 110 F. Supp. 2d at 248. In finding NYSED liable for the denial of the plaintiff’s “due process right to a prompt decision under the IDEA,” *Engwiller* recognized that the “detailed procedural provisions lie at the heart of the statute” and “take on particular importance with respect to the issuance of timely administrative decisions.” *Id.* at 247 (internal quotation omitted). The court explained that untimely hearing decisions directly contravene “Congress’s intent that children not be left indefinitely in an administrative limbo while adults maneuver over the aspect of their lives that would, in large measure, dictate their ability to function in a complex world.” *Id.* at 240. Similarly, in *Evans v. Board of Education of Rhinebeck Central School District*, the court granted declaratory relief to the plaintiff on her IDEA claim where the evidence established,

¹⁵ Furthermore, Plaintiffs are excused from exhausting administrative remedies. Although a party alleging procedural violations of the IDEA must ordinarily satisfy an exhaustion requirement before bringing suit in federal court, “[t]he exhaustion requirement is excused when exhaustion would be futile because the administrative procedures do not provide an adequate remedy.” *Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240, 249 (2d Cir. 2008). The Second Circuit recognizes that this futility exception specifically covers claims, like those here, that include “allegations of systemic violations.” *J.S. ex rel. N.S. v. Attica Cent. Schs.*, 386 F.3d 107, 113–15 (2d Cir. 2004) (affirming that plaintiffs were excused from administrative exhaustion when alleging “systemic problems” including school district’s “failure to perform legally required responsibilities in a timely manner”); *see also Engwiller*, 110 F. Supp. 2d at 245 (excusing exhaustion requirement for challenge to New York’s “enforcement mechanism for ensuring timely adjudication of IEP challenges”).

inter alia, that “the [school district] did not convene an impartial hearing within 45 days of [plaintiff’s] request,” concluding that the plaintiff’s child “was not given the educational opportunity that the procedural requirements of the IDEA were intended to protect.” 930 F. Supp. 83, 98 (S.D.N.Y. 1996).

Because the data makes clear that there is no genuine dispute regarding the failure of Defendants to satisfy their responsibility to ensure Plaintiffs’ “due process right to a prompt decision under the IDEA,” *Engwiller*, 110 F. Supp. 2d at 247, this Court should grant Plaintiffs’ motion for summary judgment on their IDEA claims.

II. THERE ARE NO TRIABLE ISSUES AS TO THE JOINT LIABILITY OF ALL DEFENDANTS FOR THESE DIRECT VIOLATIONS.

Throughout this litigation, neither City nor State Defendants have meaningfully disputed that the New York City impartial hearing system is woefully out of compliance with the timeliness requirements of the IDEA. Instead, each Defendant has attempted to dodge responsibility by blaming the other for the system’s noncompliance. (*See* ECF Nos. 99, 100.) But the IDEA and its implementing regulations impose the responsibility to promptly resolve DPCs jointly on both City and State Defendants, and make clear that all Defendants are thus jointly responsible for the system’s failure.

A. The City Defendants Are Liable for the IDEA Violations.

As an LEA, NYCDOE is directly responsible for the New York City impartial hearing system and is liable for systemic IDEA violations. Most critically, in a two-tier system like New York’s, the IDEA and its implementing regulations both place the obligation to conduct impartial hearings in the first instance, and abide by all relevant timelines, on the LEA—NYCDOE. Specifically, this “public agency must ensure that not later than 45 days after the expiration of the 30 day [resolution] period under § 300.510(b), or the adjusted time periods

described in § 300.510(c) . . . A final decision is reached in the hearing[.]” 34 C.F.R. § 300.515(a). Likewise, the statute provides that in two-tier systems, the “impartial due process hearing . . . shall be conducted by . . . the [LEA],” and that process must abide by “all of the applicable timelines for a due process hearing.” 20 U.S.C. § 1415(f)(1)(A), (B)(ii); *see also* N.Y. Educ. Law § 4404(1)(a) (requiring LEA to “appoint an [IHO] . . . to preside over an impartial due process hearing and make a determination within such period of time as the [State] commissioner by regulation shall determine”). Because hearing decisions are systemically untimely, as discussed *supra* § I, and the IDEA places the responsibility to timely deliver hearing decisions on NYCDOE, NYCDOE is violating the statute. As a legal matter, this ends the inquiry.

Yet NYCDOE is also failing to fulfill other responsibilities related to the impartial hearing system that federal and state law assign to it and that are necessary to enable timely decisions. (*See supra* at 7–8.) For example, NYCDOE fails to timely appoint IHOs to cases, meaning that cases are untimely before an IHO is even assigned.¹⁶ NYCDOE has historically failed to timely compensate IHOs, leading to IHOs taking fewer cases and reducing the total number of IHOs available to take DPCs.¹⁷ And crucially, NYCDOE fails to convene resolution sessions in the vast majority of cases. According to Defendants’ data, in 34,727 (or 85 percent of) Relevant Cases, the resolution period ended because the 30 days had simply elapsed without

¹⁶ (*See* 56.1 ¶ 41 (as of February 2021, NYCDOE had failed to appoint IHOs to a “growing waitlist of over 6000 cases”); *id.* ¶ 44 (discussing “concerns of NYC hearing officers at being appointed to waitlisted cases which are already late upon appointment”); *id.* ¶ 51 (“IHOs are being appointed to cases that are already late due to the backlog.”).)

¹⁷ (*See* 56.1 ¶ 70 (the DOE has failed to promptly and adequately compensate hearing officers, resulting in IHOs “taking themselves off rotation, declining appointments of cases, or seeking other work, leaving an insufficient number of IHOs” to timely manage new DPCs); *see also id.* ¶ 16 (“Payments are not made to the IHOs for months at a time every year because NYC did not properly budget due process costs.”).)

NYCDOE convening a resolution session. (*See* 56.1 ¶ 123.) Named Plaintiffs B.M., K.M.E., S.F., and Q.T., for example, were among the students for whom NYCDOE did not convene any resolution session. (56.1 ¶ 175.) Where NYCDOE does convene resolution sessions, its representatives at those sessions have often lacked authority to offer the relief sought. (56.1 ¶ 10.) As a result of NYCDOE’s widespread failures on this front, many cases that could be resolved, thereby reducing the total number of cases that require a hearing before an IHO, remain in the hearing process unnecessarily.

NYCDOE also engages in other practices that have the effect of “unjustifiably clog[ging] the due process system with cases that lack any defense” (56.1 ¶ 94)—such as taking cases to hearing and then failing to put on any witnesses or evidence, as NYCDOE did for Named Plaintiffs C.G., K.M.E., and Q.T and an unknowable number of others. (56.1 ¶¶ 143, 154, 161–62; *see also* 56.1 ¶ 13.) And NYCDOE regularly delays or prevents settlement of DPCs.¹⁸ As NYSED has repeatedly observed, these practices all but ensure that available IHO resources are insufficient to timely decide all cases.¹⁹

Despite their straightforward statutory and regulatory obligations, City Defendants have suggested that they are not liable for noncompliance of the impartial hearing system because State Defendants control some parts of it. (*See* ECF No. 109.) But the fact that City Defendants

¹⁸ (*See, e.g.*, 56.1 ¶ 97 (NYCDOE has failed “to settle cases long awaiting settlement approval”).)

¹⁹ (*See, e.g.*, 56.1 ¶ 85 (maintaining that NYCDOE representatives at due process hearings do not have full authority to settle parents’ claims); *id.* ¶ 91 (asserting that NYCDOE refuses to resolve certain disputes at resolution sessions, including those involving “non-approved private school tuition” and “assessments and services at rates that exceed those typically necessary to procure the assessment/service”); *id.* ¶ 95 (instructing NYCDOE to stop “proceeding to hearing on certain cases such as ‘enhanced rate’ cases,” which concern providers’ rates, and “cases involving independent educational evaluations”).)

and State Defendants are both responsible for aspects of the New York City impartial hearing system does not relieve the City Defendants of their own liability. Courts routinely hold LEAs like NYCDOE liable for systemic noncompliance with IDEA requirements. In *Jose P. v. Ambach*, for example, the Second Circuit upheld an injunction against both NYCDOE and NYSED, based on NYCDOE’s failure to provide students the required FAPE and NYSED’s “failure to . . . ensure compliance” with that requirement. 669 F.2d 865, 870–71 (2d Cir. 1982); *see also Doe ex rel. Gonzalez v. Maher*, 793 F.2d 1470, 1492 (9th Cir. 1986), *aff’d sub nom. Honig v. Doe*, 484 U.S. 305 (1988) (affirming LEA liability for failure to provide FAPE where state policy also “contributed to the violation of the plaintiffs’ rights”).

B. The State Defendants Are Liable for the IDEA Violations.

State Defendants are also directly responsible for the New York City impartial hearing system, and thus are likewise liable for its categorical failures. The IDEA and its implementing regulations make NYSED responsible for ensuring compliance with the hearing decision timeline, both as a general matter—“[t]he [SEA] is responsible for ensuring that . . . the requirements of [the IDEA] are met,” 20 U.S.C. § 1412(a)(11)(A)—and also specifically as to procedural protections like due process rights, *see* 20 U.S.C. §1412(a)(6) (State must ensure “procedural safeguards”); 34 C.F.R. § 300.500 (same). And NYSED, like NYCDOE, is a “public agency” that is directly responsible for “ensur[ing] that not later than 45 days after the expiration of the 30 day [resolution] period under § 300.510(b), or the adjusted time periods described in § 300.510(c)(1),” “[a] final decision is reached in the hearing[.]” 34 C.F.R. § 300.515; *see also* 34 CFR § 300.33 (defining “public agency” to include LEA and SEA). As a result of these provisions, “the statute obliges the State to see that IHOs comply with the 45-day rule.” *Engwiller*, 110 F. Supp. 2d at 248 (granting judgment to plaintiff where NYSED failed to ensure that DPC decision was issued within IDEA timeline). State Defendants have failed to comply with these

obligations, both directly through their own actions and inactions, and indirectly by failing to ensure NYCDOE’s own compliance.

Federal and state statutes and regulations further assign specific responsibilities to NYSED for many aspects of the impartial hearing system, including certifying and decertifying IHOs, N.Y. Educ. Law § 4404(1)(c); training, monitoring, and overseeing IHOs, *id.* § 4404(1)(c); establishing IHO compensation rates, *id.* § 4404(1)(c); and establishing procedural requirements for IHO case assignments, 20 U.S.C. § 1415(a). (*See supra* at 8–9.)

One major cause of the backlog in New York City due process hearings is the inadequate number of available IHOs—the direct responsibility of NYSED, because IHOs must be certified and trained by NYSED. 8 N.Y.C.R.R. § 200.1(x)(4). According to NYCDOE, there were only nine hearing officers “in rotation” (that is, available to accept assignments) to hear the 9,000 due process cases filed in the 2018–2019 school year. (56.1 ¶ 87.) This enormous complaint-to-IHO ratio straightforwardly demonstrates that NYSED failed to certify and train a sufficient number of IHOs to hear the significant volume of DPCs filed in New York City. NYSED is also responsible for setting recusal and appointment policies that govern IHOs. *See, e.g.*, 8 N.Y.C.R.R. §§ 200.2(e), 200.5(j)(3). (*See also* 56.1 ¶ 38.) As NYSED’s Merced Report concluded, the practice of automatically appointing unavailable IHOs led to a high number of recusals in New York City, which historically contributed to substantial delays in adjudicating cases. (56.1 ¶ 78.) Although NYSED eventually revised its appointment policies to limit recusals, *see supra* Background § C.5, this was after thousands of students had suffered from the delays—and the new policy did not ameliorate the delays in any event. (*See supra* Background § D.)

For those IHOs who have been certified, NYSED has also failed to discipline IHOs who do not meet the mandated deadlines, allowing and exacerbating the structural delays. *See*

N.Y. Educ. Law § 4404(1)(c). Although unilateral or otherwise improper extensions increase the number of cases decided outside of the 75-day timeframe, NYSED has failed to adequately address this conduct through IHO training or by disciplining IHOs. (*See supra* § I; 56.1 ¶¶ 73–75.) In fact, NYSED has admitted that the impartial hearing system in New York City is so overburdened that NYSED *cannot* appropriately discipline IHOs. In 2017, “NYSED contemplated revoking the certification of 2 IHOs but both were from NYC and the system could not handle the strain of reassigning all of their pending cases,” “*so only one IHO was revoked.*” (56.1 ¶ 23 (emphasis added).) And, even worse than permitting improper extensions by IHOs, NYSED actively collaborated in developing and implementing the blatantly unlawful “waitlist extension,” calling it a “[t]ech workaround” to purportedly “bring[] late case[s] into compliance.” (56.1 ¶ 49.) This effort masked the system’s noncompliance instead of remedying it.

At bottom, State Defendants have fundamentally failed in their oversight obligations because they have not brought the New York City impartial hearing system into compliance with the IDEA’s impartial hearing requirements. For years, State Defendants have been aware of the egregious delays in New York City’s impartial hearing system. (56.1 ¶ 27 (recognizing in 2018 “[c]lass action lawsuit (parents not getting timely hearing)” as “possible consequence[] if changes aren’t made”); 56.1 ¶¶ 80–81 (issuance of CAP in 2019); *see supra* at 9–11).) The 2014 Two-Tier Study noted this noncompliance, and the 2016 OSEP Review specifically confirmed that NYSED’s inadequate supervision played a role in these delays, stating that NYSED did “not have procedures in place to ensure that [IHOs]” issued timely decisions. (56.1 ¶ 64.) Three years later, NYSED’s Merced Report concluded that the “systemic deficiencies” “require[d] immediate intervention”—from NYSED. (56.1 ¶ 75.) And although

NYSED issued the CAP in 2019, since that time, delays have only gotten worse, not better. (*See* 56.1 ¶ 118.)

Numerous courts have found SEAs, like State Defendants, directly and indirectly contributed to noncompliance within their states liable under the IDEA. For example, *Bates ex rel. Cordero v. Pennsylvania Department of Education* held a state agency liable to a class of schoolchildren for systemic failures to make timely private school placements, notwithstanding that the first-line responsibility to do so fell on individual school districts. 795 F. Supp. 1352, 1362–64 (M.D. Pa. 1992). The court rejected the state’s argument that it had “done all that is required” under the IDEA because the delays harming children were “attributable to the actions of the individual districts,” instead finding that delays resulted from the agency’s “design of the system itself,” compounded by its “lack of centralized supervision” and “absence of procedures” for guaranteeing timely placements. *Id.* at 1356, 1362–64. Similarly, by implementing the waitlist extension policy, for example, NYSED compounded delays through the “design of the system itself” and “lack of monitoring.” *Bates*, 795 F. Supp. at 1362.

Likewise, in *Corey H. v. Board of Education of City of Chicago*, the Illinois State Board of Education was liable for failing to educate students with disabilities in the least restrictive environment. 995 F. Supp. 900 (N.D. Ill. 1998). The *Corey H.* court rejected the state’s “repeated[], and incorrect[]” claim “that its responsibility is limited to providing ‘general supervision’ to the local school districts so that it need not follow through to ensure that the necessary procedures have been implemented.” 995 F. Supp. at 912. Citing a history of noncompliant state policies, failure to monitor LEA compliance, and inadequate training, funding, and teacher certification practices, among other factors, the court found meritless the state’s position that it could not be held liable for the LEA’s pervasive failures to comply with the

mandate. *Id.* at 910–12. Here, what little supervision NYSED has provided, for instance via the CAP, has likewise not meaningfully reduced delays and is not sufficient to fulfill NYSED’s obligation to “follow through to ensure that the necessary procedures have been implemented,” *Corey H.*, 995 F. Supp. at 912. Like the *Corey H.* defendant, NYSED’s own conduct, including “inadequate training,” insufficient IHO certifications, and failure to oversee IHOs, has directly contributed to NYCDOE’s noncompliance with the IDEA’s timeliness requirements and has “failed in its responsibility to ensure that children with disabilities . . . are educated in [accordance with the IDEA].” *Corey H.*, 995 F. Supp. at 909, 911.

The obligations imposed on the SEAs of states that receive IDEA funds are not toothless recommendations, but rather enforceable guarantees of children’s rights under the IDEA. State Defendants have failed to meet those requirements and are therefore liable for these systemic failures.

C. The City and State Defendants Are Jointly Liable for the IDEA Violations.

Courts routinely endorse the unremarkable proposition that where the SEA and LEA are both failing to meet their IDEA obligations, they are jointly liable under the IDEA, and the same result is warranted here. In *Jose P.*, the Second Circuit upheld an injunction against both NYCDOE and NYSED based on NYCDOE’s failure to provide students the required FAPE and NYSED’s “failure to . . . ensure compliance” with that requirement. 669 F.2d at 870–71. And *Corey H.* found that a local district’s egregious violations of the IDEA’s mandate to educate children in the least restrictive environment also led to state liability, since the state had “clear statutory obligations to ensure compliance by the City.” 995 F. Supp. at 911. Where both parties’ actions contribute to systemic noncompliance, or where a “gap in state policy contribute[s] to the violation of the plaintiffs’ rights by the” LEA, joint liability is appropriate. *Doe ex rel. Gonzalez*, 793 F.2d at 1492 (finding state and local educational agencies liable for disciplinary system that

violated IDEA where “the state’s disciplinary procedures . . . were not adequate to protect the rights of” children with disabilities).

Here, the data unambiguously demonstrates that, on a systemic level, neither NYSED nor NYCDOE has ensured compliance with the requirement that “not later than 45 days after the expiration of the [resolution period] . . . [a] final decision is reached in the hearing.” 34 C.F.R. § 300.515(a). Throughout this litigation, both City and State Defendants’ principal defense to IDEA liability is that the impartial hearing system’s noncompliance is the responsibility of the other Defendant. (*See* ECF No. 100 at 3; ECF No. 99 at 4). This finger-pointing is incorrect as a matter of law: Where both the LEA and SEA are responsible for the system’s timeliness, and neither the LEA nor the SEA can alone provide “complete relief,” the straightforward answer is to hold *both* liable. *See D.D. ex rel. V.D. v. N.Y.C. Bd. of Educ.*, 2004 WL 633222, at *23 (E.D.N.Y. Mar. 30, 2004) (explaining that NYCDOE and NYSED may both be liable for systemic IDEA violations where single defendant cannot provide “complete relief”), *vacated in part on separate grounds*, 465 F.3d 503 (2d Cir. 2006).

Because both Defendants are responsible for certain parts of the entire system, *see supra* §§ II.A–B, and both Defendants share the legal obligation to ensure that impartial hearing decisions are timely issued, both Defendants must be held responsible for the violations, ensuring that the IDEA’s vulnerable beneficiaries are not consigned to suffer perpetual unlawful delays.

III. THERE ARE NO TRIABLE ISSUES AS TO WHETHER PLAINTIFFS ARE HARMED BY THE DELAYS IN THE IMPARTIAL HEARING SYSTEM.

All class members have been, and continue to be, harmed by the unlawful delays in the impartial hearing system. To sustain a direct IDEA claim, the procedural violation must have “(I) impeded the child’s right to a [FAPE]; (II) significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a [FAPE] to the parents’

child; or (III) caused a deprivation of educational benefits.” 20 U.S.C. § 1415(f)(3)(E)(ii). The Defendants’ blatant noncompliance with the IDEA’s 75-day deadline has injured the class as a matter of law.

Numerous courts have found that egregious failure to timely adjudicate a complaint constitutes a *per se* harm. “[The] failure to provide a *timely* due process hearing to plaintiffs is not an unimportant or technical violation of the procedural safeguards provided for in the IDEA. Rather, it is the denial of a fundamental component of the due process protections afforded by the statute.” *Blackman*, 277 F. Supp. 2d at 78. One court in this District described the harm to students from procedural delays as “obvious,” noting that “[t]he procedural requirements of the IDEA were put in place for a particular purpose, and that purpose was to ensure that disabled students were provided a [FAPE]. Inordinate delays in the decision making process deprive those students of the rights provided to them.” *Schmelzer ex rel. Schmelzer v. New York*, 363 F. Supp. 2d 453, 459 (E.D.N.Y. 2003). As the *Engwiller* court explained, “the brevity of the 45-day requirement indicates Congress’s intent that children not be left indefinitely in an administrative limbo.” 110 F. Supp. 2d at 240.

As a result, egregious delay “can itself constitute the denial of a [FAPE].” *Blackman*, 277 F. Supp. 2d. at 79; *see also Schmelzer*, 363 F. Supp. 2d at 459 (inordinate delays “cause [affected] students to suffer irreparable harm”). As the *Blackman* court explained:

Where there is a denial of a free appropriate education because no hearing has been held and no determination has been issued . . . there results a *per se* harm to the student Indeed, each day a child is denied a free appropriate education by such procedural dereliction of a school system he or she is harmed yet again. . . . The failure of the District to comply with its statutory obligations . . . can have a devastating impact on a child’s well-being. . . . [T]o a young, growing person, time is critical. While a month in the life of an adult may be insignificant, at the rate at which a child develops and changes . . . a few months can make a wor[l]d of difference in the life of that child.

Blackman, 277 F. Supp. 2d. at 79–80 (citations omitted). The *Blackman* court thus held that “a *per se* harm results from . . . the failure to provide a timely due process hearing,” and, as a result, plaintiffs were “reliev[ed] . . . from any burden to articulate an additional, particularized harm.” *Id.* at 80. Other courts have expressly adopted this “*Blackman* rule.” *Dep’t of Educ. v. T.G. ex rel. Cheryl G.*, 2011 WL 816808, at *9 (D. Haw. Feb. 28, 2011). Given “the primacy that due process hearings have in ensuring both parents’ and students’ substantive rights under the IDEA . . . where an educational agency has outright denied a student a timely due process hearing, the student has been deprived of a FAPE and need not show prejudice in order to demonstrate injury.” *Id.* (a lengthy delay “is not a harmless error; it violates the parents’ basic rights and results in a *per se* harm to the student”); *see also Evans*, 930 F. Supp. at 98, 102.

As outlined above, the average case length over the last four school years in New York City is 284 days, leaving children in “administrative limbo” for approximately an entire school year; in the most recent complete school year, the average case length worsened to more than *four times* the mandated duration. (56.1 ¶¶ 109–10.) NYSED has admitted that these delays constitute a *per se* denial of FAPE, explaining to NYCDOE that “the delays for an IHO appointment are so lengthy that parents are being denied FAPE.” (56.1 ¶ 100 (citing *Blackman*, 277 F. Supp. 2d. 71).) Indeed, 8 N.Y.C.R.R. § 200.5 recognizes that delays cause *per se* harms, providing that if an IHO “is not appointed within one hundred ninety six days from receipt by the district of a [DPC],” the district may “be deemed to have denied the student a [FAPE] by virtue of the delay in the appointment of an [IHO]. This finding is binding and shall not be subject to appeal to a State review officer of the [NYSED].” 8 N.Y.C.R.R. §§ 200.5(j)(3)(i)(a)(2), 200.5(o)(2). In light of the egregious class-wide delays, this Court should likewise conclude that members of the class have experienced a *per se* harm that has denied them the FAPE to which they are entitled.

Even though as a legal matter Plaintiffs do not need to establish that Class Members suffered particularized injury, as a practical matter, these students and families have experienced multiple types of harm from these delays. In each and every unlawfully delayed DPC, the delay has the inexorable effect of extending a family's uncertainty about an issue that could not be more critical: whether, and when, their child will be able to achieve a meaningful education.

In addition, in almost nine out of ten DPCs in New York City that reach a final IHO decision, the family is ultimately awarded some or all of the relief they are seeking—meaning that the delayed ruling finds the services or placement offered by the NYCDOE to have been inadequate to support the child's education. (*See supra* Background § E.) While some children can continue to receive services or placements that they were previously offered by DOE or awarded by an IHO in a prior school year through the IDEA's "stay-put" or "pendency" provision, that relief is not available in many circumstances—including, for example, where a DPC seeks educational services or placement for the first time, or seeks new or different educational services or placement than the child received in the past, or seeks an educational evaluation to determine a student's needs. *See* 20 U.S.C. § 1415(j); 34 C.F.R. § 300.518 (providing that during the pendency of the due process proceeding "the child involved in the complaint must remain in his or her current educational placement"). This puts New York City families in an impossible position: For the many families who cannot afford to pay out-of-pocket for additional services while awaiting reimbursement from NYCDOE, children risk direct losses of educational opportunities during the unlawful periods in which their DPCs are delayed. *See Evans*, 930 F. Supp. at 93–94 (a "loss of educational opportunity" constitutes a denial of FAPE). Indeed, the harm suffered by multiple

Named Plaintiffs while they waited for hearing decisions, described *supra* Background § E, demonstrates the steep human cost of these egregious delays.

CONCLUSION

Because there is no triable issue of fact as to whether the City and State Defendants are directly violating the IDEA's requirement that due process complaints be resolved within 75 days of filing, absent valid extensions, and because Defendants share joint liability for such failure, this Court should grant summary judgment to Plaintiffs on their claims for direct violations of the IDEA.

Dated: May 26, 2022

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

J.S.M., *et al.*,

Plaintiffs,

v.

NEW YORK CITY DEPARTMENT OF
EDUCATION, *et al.*,

Defendants.

Case No. 20-cv-705-EK-RLM

**PLAINTIFFS' LOCAL CIVIL RULE 56.1 STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED**

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In accordance with Local Civil Rule 56.1, Plaintiffs in the above-captioned action respectfully submit, in support of their Motion for Partial Summary Judgment, this statement of material facts as to which there is no genuine issue to be tried.

I. The Impartial Due Process Hearing System in New York City

1. New York State has a “two-tier” impartial hearing system under the Individuals with Disabilities Education Act (“IDEA”), meaning that impartial hearings are initially conducted at the local level by the local educational agency (“LEA”) and then the state educational agency (“SEA”) determines appeals. (Ex. 2 (DOE000001) at -003.)

A. The New York City Department of Education

2. Defendant New York City Department of Education (“NYCDOE”) is the LEA within the meaning of the IDEA for the City of New York. (Ex. 5 (DOE000090) at -098); Ex. 9 (State Def 147) at -149.)

3. The New York City Impartial Hearing Office (“NYCIHO”) is an office within NYCDOE. (Ex. 5 (DOE000090) at -093.)

4. In New York City, students (or school districts) file due process complaints (“DPCs” or “complaints”) with NYCIHO by hand-delivery, mail, e-mail, or fax. (Ex. 5 (DOE000090) at -100.)

5. NYCDOE, through the NYCIHO, is responsible for processing complaints “immediately, but no later than two business days after receipt of the” complaint. (Ex. 5 (DOE000090) at -100.)

6. NYCDOE, through the NYCIHO, is responsible for initiating the appointment of an impartial hearing officer (“IHO”) “immediately, but no later than two business days after receipt of the” complaint. (Ex. 5 (DOE000090) at -100, -101.)

7. NYCDOE, through the NYCISO, is responsible for providing a procedural safeguards notice to all parents after the filing of a DPC, in the native language of the parent, if possible. (Ex. 5 (DOE000090) at -104, -105.)

8. NYCDOE is responsible for scheduling and holding a resolution session “within 15 calendar days of receipt” of a DPC. (Ex. 13 (DOE_007527) at -532.)

9. An NYCDOE representative “who has specific knowledge of the allegations contained in the due process complaint” and decision-making authority must attend the resolution session. (Ex. 13 (DOE_007527) at -536.)

10. According to one practitioner, NYCDOE often fails to convene resolution sessions and, “on many of the occasions when NYCDOE has convened resolution sessions, the representatives appearing on behalf of the NYCDOE at the resolution sessions represented . . . that they did not have authority to offer the relief sought in the DPC.” (Silverblatt Decl. ¶¶ 15–19.)

11. NYCDOE, through the NYCISO, is responsible for scheduling impartial hearings and notifying the parties of the hearing. (Ex. 5 (DOE000090) at -105.)

12. NYCDOE, through the NYCISO, is responsible for maintaining physical hearing space, which it does at its offices at 131 Livingston Street in Brooklyn, New York. (Ex. 5 (DOE000090) at -095.)

13. At least one practitioner has observed that in many impartial hearings, NYCDOE representatives do not put on any witnesses or submit any evidence to challenge the families’ assertions that their children were denied a FAPE, or conceded at the hearing that the children were denied a FAPE, leading to inefficiencies and delays. (Silverblatt Decl. ¶¶ 20–23.)

14. NYCDOE, through the NYCISO, is responsible for processing and delivering decisions issued by IHOs. (Ex. 5 (DOE000090) at -107.)

15. NYCDOE, through the NYCISO, is responsible for paying IHOs in accordance with the IHO compensation policy. (Ex. 5 (DOE000090) at -109.)

16. In December 2018, NYSED noted that “[p]ayments are not made to the IHOs for months at a time every year because NYC did not properly budget due process costs.” (Ex. 6 (STATE_DEF_ESI00000014) at 42.)

17. NYCDOE, through the NYCISO, is responsible for documenting extensions of the time for rendering a decision that are granted by an IHO, as well as the new date to issue a decision after the extension is entered. (Ex. 5 (DOE000090) at -106; Ex. 18 (State Def 1216) at -217.)

B. The New York State Education Department

18. Defendant New York State Education Department (“NYSED”) is the SEA within the meaning of the IDEA for the State of New York. (Ex. 9 (State Def 147) at -149; Ex. 2 (DOE000001) at -003.)

19. NYSED has “general supervisory responsibility and authority under [the] IDEA” to ensure that each public agency in the state “establishes, maintains, and implements procedural safeguards that meet the requirements of” the IDEA implementing regulations. (Ex. 9 (State Def 147) at -166.)

20. NYSED is responsible for certifying IHOs. (Ex. 6 (STATE_DEF_ESI00000014) at 19.)

21. NYSED provides training for IHOs throughout the State of New York through a contract with Special Education Solutions, LLC. (Ex. 6 (STATE_DEF_ESI00000014) at 18; Ex. 30 (STATE_DEF_ESI00009812).)

22. NYSED has the authority to suspend or revoke an IHO’s certification. (Ex. 6 (STATE_DEF_ESI00000014) at 21; Ex. 17 (STATE_DEF_ESI00011397) at -426.)

23. In 2017, when “contemplat[ing] revoking the certification of 2 IHOs,” NYSED concluded that “both were from NYC and the system could not handle the strain of reassigning all of their pending cases so only one IHO was revoked.” (Ex. 6 (STATE_DEF_ESI00000014) at 42.)

24. Parties to an impartial hearing may file with NYSED a complaint against the IHO. (Ex. 5 (DOE000090) at -118.)

25. New York State “[e]stablishes maximum rates for compensation of IHOs.” (Ex. 17 (STATE_DEF_ESI00011397) at -407.)

26. NYSED provides guidance to NYCDOE regarding compliance with the timeliness requirements of the state regulations that NYSED has adopted. (Ex. 1 (DOE_013638) at -656.)

27. In December 2018, NYSED noted “possible consequences if changes aren’t made” to the New York City impartial hearing system, including “[c]lass action lawsuit (parents not getting timely hearings)” and “[c]ourt monitor may be appointed as in Schmeltzer.” (Ex. 6 (STATE_DEF_ESI00000014), at 43.)

C. Extensions of the IDEA Impartial Hearing Timeline

28. In New York State, IHOs are responsible for managing the timeline of a case to ensure a decision is rendered consistent with statutory timelines. (Ex. 31 (STATE_DEF_ESI00069681) at -683); Ex. 18 (State Def 1216) at -217.)

29. In New York State, each extension to the compliance deadline was limited to 30 days until April 7, 2020. Pursuant to an emergency regulation passed by the Commissioner of Education during the COVID-19 pandemic, the maximum extension length increased from 30 days to 60 days on April 7, 2020. (Ex. 19.)

30. In an internal document prepared in May 2020, NYCDOE employees documented the “failure” on the part of IHOs “to conform practices to requirements of NYS

regulations,” including a “[g]eneral lack of understanding of regulations” on extension timelines and a practice of “[u]nilateral submission of extensions without requests from parties.” (Ex. 21 (DOE_006380) at -382.)

31. At least one practitioner has observed that “IHOs solicit extension requests from the parties, for example, by asking, ‘do I have an application for an extension?’” (Silverblatt Decl. ¶ 10.)

32. At least one practitioner has observed that he has “felt that refusing to seek an extension of the Compliance Date might displease the IHO that would continue to preside over my client’s DPC, risking adverse consequences to the client’s case.” (Silverblatt Decl. ¶ 12.)

33. At least one practitioner has “observed, on one or more occasion, that extensions have been entered that were not requested by either party, that multiple extensions were entered at one time, and that extensions were entered retroactively.” (Silverblatt Decl. ¶ 13.)

34. At least one practitioner has observed that some IHOs do not ask the parties about “the factors that New York regulations direct IHOs to consider when granting extensions,” “instead granting an extension solely on the basis of the request itself.” (Silverblatt Decl. ¶ 14.)

35. NYSED training materials from March 2020 explain that if “it becomes clear that the 45-day timeline cannot be met, . . . the hearing officer can explore with the parties whether either party (or both) desire(s) an extension of the 45-day timeline, provided that any of the mandated factors noted above do not outweigh the need for an extension.” (Ex. 18 (State Def 1216) at -225.)

D. New York City’s Waitlist and the Waitlist Extension

36. Before November 2019, when a DPC was filed, the NYC IHO “automatically appointed any IHO on the rotation list, without checking their availability.” (Ex. 24 (STATE_DEF_ESI00011456) at -457.)

37. Before November 2019, there were a significant number of recusals on the basis of unavailability and associated delays in hearings in New York City. (Ex. 24 (STATE_DEF_ESI00011456) at -457); *see also* Ex. 12 (STATE_DEF_ESI00009487); Ex. 11 (STATE_DEF_ESI00011331).)

38. In November 2019, NYSED required that the NYCIHO change the IHO appointment policy so that “only IHOs who are available and able to accept cases will be assigned to a case, thereby substantially reducing the number of recusals,” and limited the circumstances under which an IHO was permitted to recuse. (Ex. 24 (STATE_DEF_ESI00011456) at -457; *see also* Ex. 12 (STATE_DEF_ESI00009487); Ex. 11 (STATE_DEF_ESI00011331).)

39. On November 19, 2019, in light of this revised assignment system, NYCDOE implemented a “waitlist” of complaints not yet assigned to IHOs. (Ex. 27 (DOE_007235) at -235; Ex. 24 (STATE_DEF_ESI00011456) at -457.)

40. Cases on the waitlist are not assigned an IHO until one is available. (Ex. 29 (DOE_016577) at -578.)

41. As of February 5, 2021, the waitlist had grown to “over 6000 cases,” and an NYSED employee expressed to NYCDOE employees that the waitlist “may overwhelm the revised offer/appointment process, resulting in failure, perhaps even collapse, of the system.” (Ex. 29 (DOE_016577) at -578.)

42. As of September 8, 2021, the waitlist of cases had grown to 6,297—at least 62 percent of which had been waiting for an IHO appointment for over 75 days. (Ex. 35 (STATE_DEF_ESI00047218).)

43. In early May 2020, NYCDOE and NYSED jointly implemented a “waitlist extension” for cases receiving an IHO appointment off the waitlist. (Ex. 23 (STATE_DEF_ESI00066460); Ex. 32 (STATE_DEF_ESI00031731).)

44. The waitlist extension was implemented to “adjust the compliance date” “[i]n response to the concerns of NYC hearing officers at being appointed to waitlisted cases which are already late upon appointment.” (Ex. 16 (DOE_006616) at -617.)

45. A waitlist extension is an “extension[] granted by SED to cases in which an IHO is appointed from the waitlist” so that an IHO “is not appointed to a case that is already past compliance.” (Ex. 32 (STATE_DEF_ESI00031731).)

46. Specifically, “[f]or cases that involve school-age students (CSE),” NYSED “authorized” the NYCIHO “to adjust the compliance date to 45 days after the date of [the IHO’s] appointment.” (Ex. 23 (STATE_DEF_ESI00066460).)

47. Similarly, “[f]or cases that involve preschool students,” NYSED “authorized” NYCIHO “to adjust the compliance date to 30 days after the date of [the IHO’s] appointment.” (Ex. 23 (STATE_DEF_ESI00066460).)

48. A granted waitlist extension is recorded in NYSED’s Impartial Hearing Reporting System data system (“IHRS”) with the code “WAITLISTED CASE – NEW APPOINTMENT.” (Ex. 16 (DOE_006616) at -617; Ex. 36 (State Def 1) at -10.)

49. NYSED described the waitlist extension as a “[t]ech workaround for bringing late case[s] into compliance.” (Ex. 14 (DOE_006469) at -469.)

50. NYSED explained to IHOs in announcing the waitlist extension to them that this extension “negates the need to seek extensions from the parties, whose cases have already been delayed and reduces the amount of effort required to bring the case into compliance in [the NYCDOE and NYSED data systems].” (Ex. 23 (STATE_DEF_ESI00066460).)

51. This change sought to address the problem that “IHOs are being appointed to cases that are already late due to the backlog.” (Ex. 14 (DOE_006469) at -471.)

52. In meeting notes from an August 20, 2020 meeting, a NYSED employee wrote that the “SED Waitlist extension” “[c]ould be violating a parties’ right to an expeditious hearing.” (Ex. 26 (STATE_DEF_ESI00070041) at -042.)

53. In meeting notes from an August 20, 2020 meeting, a NYSED employee wrote that “[w]e need to set standards as to when to utilize this SED Waitlist extension” because “[t]he Waitlist Extensions are not regulatory.” (Ex. 26 (STATE_DEF_ESI00070041) at -042.)

II. Reviews of the New York City Impartial Hearing System

A. The 2014 Two-Tier Study

54. NYSED commissioned a study by Gail ImObersteg, Esq. regarding reforms to the impartial hearing system that was published in December 2014 (the “Two-Tier Study”). (Ex. 2 (DOE000001).)

55. The Two-Tier Study examined whether NYSED should abandon New York’s “two-tier” due process hearing system in favor of a “one-tier” system where all due process hearings would be managed by the State. (Ex. 2 (DOE000001) at -022 to -023.)

56. Based on a review of data from 2004–2005 through 2011–2012, the Two-Tier Study concluded that “New York State has been unable to attain 100% or even substantial compliance with timely adjudicated hearings” during the period studied. (Ex. 2 (DOE000001) at -006.)

57. The Two-Tier Study found that in 2012–2013, approximately 92% of DPCs in New York State were filed in New York City and “[a]s such, New York’s hearing system is predominantly influenced by the operation of the system in New York City.” (Ex. 2 (DOE000001) at -011.)

58. The Two-Tier Study also concluded that “the overall operation of the conduct of the New York State special education hearing system is in need of substantial restructuring

to be an efficient and timely system consistent with standard, and ideally, best legal practices.”
(Ex. 2 (DOE000001) at -017.)

B. The 2016 OSEP Review

59. In 2016, the U.S. Department of Education’s Office of Special Education Programs (“OSEP”) conducted an audit of the timeliness of New York’s due process hearing decisions. (Ex. 3 (STATE_DEF_ESI00000255) at -255; (Ex. 6 (STATE_DEF_ESI00000014) at 26.)

60. OSEP identified New York as a State with at least 75 percent of decisions after fully adjudicated hearings issued within an extended timeline for the reporting periods of 2012–2013 and 2013–2014. (Ex. 3 (STATE_DEF_ESI00000255) at -255; (Ex. 6 (STATE_DEF_ESI00000014) at 26.)

61. In September 2016, OSEP publicly issued its report of this audit, New York Monitoring and Support Visit Summary and Next Steps (“2016 OSEP Review”). (Ex. 3 (STATE_DEF_ESI00000255) at -255.)

62. The 2016 OSEP Review thus concluded that “above 75% of fully adjudicated hearings” for the 2012–2015 reporting years had “extended timelines,” and that “the State does not have procedures in place to ensure that [IHOs] are granting extensions consistent with” applicable law. (Ex. 3 (STATE_DEF_ESI00000255) at -258.)

63. The 2016 OSEP Review thus concluded that more than 75% of New York State’s fully adjudicated DPCs were out of compliance with the IDEA. (Ex. 3 (STATE_DEF_ESI00000255) at -258.)

64. The 2016 OSEP Review found that “[b]ased on the review of documents, analysis of data, and interviews with State and local personnel, . . . the State does not have procedures in place to ensure that independent hearing officers . . . are issuing due process

hearing decisions within the 45-day timeline required by [the IDEA].” (Ex. 3 (STATE_DEF_ESI00000255) at -259.)

65. The 2016 OSEP Review concluded that New York State does not have procedures in place to ensure that DPCs are resolved in the timeline permitted under the IDEA. (Ex. 3 (STATE_DEF_ESI00000255) at -259.)

C. The 2019 NYSED Merced Report

66. In 2018, NYSED hired Deusdedi Merced, Esq. to conduct an independent review of the New York City impartial hearing system with NYSED’s “full authority.” (Ex. 8 (State Def 240) at -246; Ex. 4 (STATE_DEF_ESI_00008950).)

67. Mr. Merced’s findings are set forth in his *External Review of the New York City Impartial Hearing Office* dated February 22, 2019 (“NYSED Merced Report”). (Ex. 8 (State Def 240).)

68. NYSED later published the Merced Report on its website. See Jan. 7, 2020 Memorandum from Kimberly Young Wilkins, att. D, <https://www.regents.nysed.gov/common/regents/files/120p12d3.pdf>.

69. The NYSED Merced Report concluded that “[t]he average number of days a case is open in New York State,” which the Report found to be 225 days in the 2018–2019 school year, “far exceeds the abbreviated timeline established in the IDEA,” and the number of DPCs in New York City in particular “raises valid questions of the school district’s ability to offer [FAPE] to its students with disabilities.” (Ex. 8 (State Def 240) at -257 to -258).)

70. The NYSED Merced Report found that a partial cause of delays was that NYCDOE failed to promptly and adequately compensate IHOs, resulting in IHOs “taking themselves off rotation, declining appointments of cases, or seeking other work, leaving an insufficient number of IHOs” compared to the volume of cases. (Ex. 8 (State Def 240) at -278 to -279.)

71. The NYSED Merced Report concluded that the “substantial deficiencies in the policies, procedures and practices specific to special education impartial hearings in New York City . . . present[] a threat to due process” and “render an already fragile hearing system vulnerable to imminent failure and, ultimately, collapse.” (Ex. 8 (State Def 240) at -261.)

72. The NYSED Merced Report concluded that “[t]he validity of reported timeliness in New York City cannot be assumed.” (Ex. 8 (State Def 240) at -274.)

73. The NYSED Merced Report additionally found that “[i]t is more likely than not that New York City has a greater number of untimely cases than reported and that the incidence of IHOs unilaterally extending timelines or soliciting extensions from parties is considerable.” (Ex. 8 (State Def 240) at -282 to -283.)

74. The NYSED Merced Report characterized the number of extensions issued in New York State as “exceptionally high,” with New York City accounting for the overwhelming majority of those extensions. (Ex. 8 (State Def 240) at -255 to -256.)

75. The NYSED Merced Report described the high number of extensions as reflective of “systemic deficiencies” in the impartial hearing system in New York City, which were “symptomatic of an unhealthy hearing system that requires immediate intervention.” (Ex. 8 (State Def 240) at -259.)

76. The NYSED Merced Report found that NYCDOE failed to meet the basic legal requirements surrounding extensions, including that the “[p]revalent practice in New York City is to extend the timeline without a written order meeting the requirements” of the relevant New York State regulations. (Ex. 8 (State Def 240) at -274.)

77. The NYSED Merced Report described incidences of IHOs “unilaterally extending timelines” or “soliciting extensions from the parties.” (Ex. 8 (State Def 240) at -275.)

78. The NYSED Merced Report also concluded that NYCDOE’s “practice of automatically appointing an IHO to a due process complaint without first confirming his/her availability,” contributed to hearing delays. (Ex. 8 (State Def 240) at -282.)

79. The Supervisor of the Due Process Unit at NYSED wrote to Mr. Merced after reading the NYSED Merced Report, “You did an excellent job in your review and in the report. I especially like how you identified current practices that violate IDEA, delay due process to the parties, delay services to students, increase litigation costs to parents, etc.” (Ex. 7 (STATE_DEF_ESI00000920).)

III. Compliance Assurance Plan

80. In May 2019, NYSED issued a Compliance Assurance Plan (the “CAP”) to NYCDOE. (See Ex. 9 (State Def 147).)

81. NYSED issued the CAP to NYCDOE because, according to NYSED, “NYCDOE ha[d] been identified as not meeting the requirements of IDEA,” including the IDEA’s “requirements to ensure proper procedural safeguards to students and parents” such as impartial hearing timelines. (Ex. 9 (State Def 147) at -149, -150.)

82. Under Section III of the CAP, NYCDOE was required to “provide to NYSED a corrective action plan to correct its failure to provide students with disabilities and their parents all the rights and procedural safeguards required by federal and State law and regulations” by June 17, 2019. (Ex. 9 (State Def 147) at -170.)

83. The CAP required that the NYCDOE corrective action plan include steps to “[e]nsure IHO availability before appointment,” “[e]nsure uncontested pendency matters are not brought before IHOs,” and “[e]nsure that staff representing NYCDOE at due process hearings are authorized to enter into settlement or may do so subject to approval, which approval will take no longer than 30 days after request for approval, which request will be made

no later than 5 days after agreement has been reached,” among other requirements. (Ex. 9 (State Def 147) at -170 to -171.)

84. On June 17, 2019, Karin Goldmark, NYCDOE Deputy Chancellor of School Planning & Development, sent a letter to NYSED Assistant Commissioner Christopher Suriano in response to the CAP. (Ex. 10 (STATE_DEF_ESI00042284).)

85. This June 17 letter stated that NYCDOE “understand[s] that NYSED would like for NYCDOE to reduce unnecessary hearings by authorizing staff to enter into settlements at impartial hearings” and maintaining that “NYCDOE cannot authorize its staff to enter into monetary settlements of due process complaints at impartial hearing.” (Ex. 10 (STATE_DEF_ESI00042284) at -286.)

86. Additionally, the June 17 letter stated that parents “are experiencing major delays due to a shortage in NYSED-certified hearing officers available to hear cases and other issues.” (Ex. 10 (STATE_DEF_ESI00042284) at -285.)

87. The letter identified “an urgent need to address [the IHO] shortage,” given that, “[a]s of Friday, June 14, 2019, there were nine impartial hearing officers in rotation with over 9,000 due process claims filed for school year 2018-2019.” (Ex. 10 (STATE_DEF_ESI00042284) at -285.)

88. On March 3, 2020, NYSED Assistant Commissioner Christopher Suriano sent a letter to Deputy Chancellor Goldmark identifying issues that NYSED required NYCDOE to address as part of the CAP. (Ex. 15 (STATE_DEF_ESI00009195) at -195.)

89. The requirements set forth by Assistant Commissioner Suriano in his March 3 letter included the requirement that NYCDOE submit a plan “as to how it will increase the use of resolution meetings, which must also include an explanation on who conducts the resolution meeting on behalf of the NYCDOE and the extent and details of their authority to settle matters, both monetary and non-monetary.” (Ex. 15 (STATE_DEF_ESI00009195) at -196.)

90. On April 24, 2020, Josh Morgenstern, on behalf of the NYCDOE Special Education Office, sent a letter to Assistant Commissioner Suriano responding to his March 3, 2020 letter. (Ex. 20 (State Def 626).)

91. Mr. Morgenstern stated that “NYCDOE staff responsible for resolutions have the authority to enter into resolution agreements regarding certain . . . matters,” but “[t]he following items cannot be agreed upon through resolution: non-approved private school tuition; assessments and services at rates that exceed those typically necessary to procure the assessment/service; issues with broad legal or policy implications; attorneys’ fees.” (Ex. 20 (State Def 626) at -627.)

92. On May 27, 2020, John D’Agati, on behalf of NYSED, sent a letter to Deputy Chancellor Goldmark. (Ex. 22 (State Def 639).)

93. Mr. D’Agati stated that “[c]ases involving a particular student and issues such as classification, evaluation, elements of an IEP or IESP, public or private educational placements (approved or not), charter schools and special education, Carter reimbursement disputes, service delivery and IEP or IESP implementation disputes and attorney fees are all proper subjects of the resolution process and an individual with decision making authority to bind the district . . . should be present at a resolution meeting[.]” (Ex. 22 (State Def 639) at -641.)

94. The May 27, 2020 letter additionally identifies other NYCDOE actions that the letter indicated impede compliance with the IDEA’s timing requirements for impartial hearings, including the NYCDOE practice of proceeding to hearings on enhanced rate cases and on independent educational evaluations, which “unjustifiably clogs the due process system with cases that lack any defense” and “improperly places the burden on the parent.” (Ex. 22 (State Def 639) at -640 to -641.)

95. The May 27, 2020 letter directed NYCDOE to stop “proceeding to hearing on certain cases such as ‘enhanced rate’ cases” and “cases involving independent educational evaluations.” (Ex. 22 (State Def 639) at -640.)

96. On June 26, 2020, Louise DeCandia, on behalf of NYSED, sent a letter to Judy Nathan, Executive Deputy Counsel at NYCDOE. (Ex. 25 (STATE_DEF_ESI00065915).)

97. Ms. DeCandia stated that NYCDOE had failed to provide “its plans to settle cases long awaiting settlement approval,” including cases settled in the 2018–2019 school year awaiting finalization. (Ex. 25 (STATE_DEF_ESI00065915) at -917.)

98. On January 7, 2021, Assistant Commissioner Suriano sent a letter to Deputy Chancellor Goldmark to follow up on John D’Agati’s May 27, 2020 letter. (Ex. 28 (STATE_DEF_ESI00011186).)

99. The January 7, 2021, letter stated that “[t]he current data indicates that changes to your processes were not implemented to address this matter” and thus “NYCDOE is now being directed to implement these changes and any other changes proposed by the NYCDOE and approved by NYSED, to immediately reduce the number of open due process cases.” (Ex. 28 (STATE_DEF_ESI00011186) at -186.)

100. The January 7, 2021 letter also stated that “the delays for an IHO appointment are so lengthy that parents are being denied FAPE.” (Ex. 28 (STATE_DEF_ESI00011186) at -188.)

IV. Data Maintained by Defendants Shows the Impartial Hearing System in New York City Fails to Comply with the IDEA’s Timelines

A. State and City Data Systems

101. NYSED maintains the IHRS data system to track case compliance data. (*See* Ex. 33 (NYSED Response to Plaintiffs’ Interrogatory No. 3) (stating that the Impartial Hearing Reporting System “receives [data] from school districts”); Ex. 36 (State Def 1) (spreadsheets containing data tracking information for IHRS).)

102. NYCDOE maintains the IHS data system to track case compliance data. (*See* Ex. 34 (NYCDOE Response to Plaintiffs’ Interrogatory No. 4).)

103. NYSED receives regular transfers of case data from IHS. (*See* Ex. 33 (NYSED Response to Plaintiffs’ Interrogatory No. 3).)

104. NYSED produced data from IHRS showing the status of DPCs filed between January 3, 2017 and December 30, 2021 as of January 21, 2022, the date the data was extracted from IHRS. (Steinkamp Decl. ¶¶ 20b n.15, 39.)

105. The full school years captured in the data that NYSED produced include 2017–2018 through 2020–2021, or July 1, 2017 through June 30, 2021. (Steinkamp Decl. ¶ 21.)

106. Stout’s analysis focused on cases that were (i) filed during the four full school years captured in the data that NYSED produced; and (ii) either remained open as of January 21, 2022, the date the data was extracted from IHRS, or were closed due to an actual decision, settlement, or were withdrawn (“Relevant Cases”). (Steinkamp Decl. ¶¶ 39–41.)

107. Certain fields in IHRS directly track the compliance dates required by the IDEA. (Steinkamp Decl. ¶ 29.)

108. The “CURR_COMP_DATE” field in the “Cases” table of IHRS tracks the NYSED-calculated deadline for when a case is due to be completed based on other timeline-impacting factors, such as the entry of extensions, resolution period waivers, or amendments to the DPC (“Current Compliance Date”). (Steinkamp Decl. ¶ 29c.)

B. Conclusions from Defendants’ Data

109. The Relevant Cases took an average of 284 days to complete, and untimely closed DPCs took an average of over 300 days to complete. (Steinkamp Decl. ¶¶ 66-67.)

110. For Relevant Cases closed during the 2020–2021 school year, the average case length was 320 days. (Steinkamp Decl. ¶ 67.)

111. Of DPCs filed in the 2020–2021 school year, 3,113 remained outstanding as of January 21, 2022. (Steinkamp Decl. ¶ 44.)

112. If every recorded extension was valid, approximately 38 percent of Relevant Cases were closed after the Current Compliance Date. (Steinkamp Decl. ¶ 43.)

113. On average, these cases were 69 days beyond the Current Compliance Date when they were closed. (Steinkamp Decl. ¶ 45.)

114. IHRS tracks which extensions are “waitlist extensions.” (Steinkamp Decl. ¶¶ 46–47.)

115. A total of 10,028 waitlist extensions were entered for Relevant Cases that were open on or after May 1, 2020 (“Waitlist Extension Relevant Cases”). (Steinkamp Decl. ¶ 58.)

116. Those 10,028 waitlist extensions averaged 202 days each. (Steinkamp Decl. ¶ 59.)

117. If waitlist extensions are removed, *i.e.*, if the compliance date is recalculated without extending the deadline for the waitlist extension, then 57.6 percent of Waitlist Extension Relevant Cases were either untimely closed or remained open and untimely. (Steinkamp Decl. ¶ 60.)

118. Similarly, if waitlist extensions are removed, the percentage of DPCs closed untimely has increased every year since the 2017-2018 school year. (Steinkamp Decl. Ex. 2.4.)

119. NYSED’s data contains data tables for CASE_ISSUE_DATA and ISSUE_DECISIONS, which track, among other things, whether issues were determined in the parents’ favor. (Steinkamp Decl. ¶¶ 23, 30.)

120. In 78 percent of the Relevant Cases that went to an actual decision, the IHO resolved all issues fully in the parents’ favor, and the IHO resolved an additional 11 percent of Relevant Cases at least partially in the parents’ favor. (Steinkamp Decl. ¶ 70.)

121. In 22,072 Relevant Cases, at least one extension was granted retroactively, comprising 54.2% of all Relevant Cases, and 65.2% of the Relevant Cases with at least one extension. (Steinkamp Decl. ¶¶ 62, 75.)

122. In 4,405 Relevant Cases, or 10.8% of all Relevant Cases, more than one extension was granted simultaneously. (Steinkamp Decl. ¶¶ 64, 75.)

123. For 34,727, or 85.2% of, Relevant Cases, the resolution period ended because it elapsed after 30 days without any resolution meeting being held. (Steinkamp Decl. ¶¶ 73–75.)

V. Named Plaintiffs

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Dated: May 26, 2022

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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J.S.M., <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	CIVIL ACTION NO. 20-CV-705
NEW YORK CITY DEPARTMENT OF	:	
EDUCATION, <i>et al.</i> ,	:	
	:	
Defendants.	:	
-----X		

DECLARATION OF NEIL STEINKAMP

May 26, 2022

I, Neil Steinkamp, make this declaration under the authority of 28 U.S.C. § 1746.

1. I am submitting this declaration in support of Plaintiffs’ motion for partial summary judgment.

2. This declaration is made on my own personal knowledge, unless otherwise stated below.

I. BACKGROUND AND QUALIFICATIONS

3. I am a Managing Director at Stout Risius Ross, LLC (“Stout”), a global financial advisory firm. I lead Stout’s Transformative Change practice as well as its Pro Bono practice. A copy of my detailed CV can be found at **Appendix A**.

II. DOCUMENTS RELIED UPON

4. In developing my opinions in this matter, my staff and I reviewed and/or relied upon the following information:

- Documents produced by the New York State Education Department (“NYSED”);

- Documents produced by the New York City Department of Education (“NYCDOE”);
- Data extracted from the Impartial Hearing Reporting System (“IHRS Data”);
- Data extracted from the Impartial Hearing System (“IHS Data”);
- Discussions with Plaintiffs’ Counsel; and
- Publicly available information.

A complete listing of documents reviewed by me and/or those under my direction is attached as **Appendix B**. I reserve the right to supplement and/or amend my declaration to reflect results of analyses of information made available to me subsequent to the issuance of this declaration.

III. INTRODUCTION

5. Stout was retained by Plaintiffs’ counsel the New York Legal Assistance Group to analyze data maintained by Defendants NYSED and NYCDOE relating to administrative proceedings of students with disabilities enrolled in New York City public schools. The following declaration summarizes observations made regarding the data provided to Stout and analyses performed by Stout.

IV. BACKGROUND

A. Statutory Scheme and Framework for Analysis

6. Plaintiffs’ counsel provided the following overview of relevant special education law prior to Stout beginning its analysis.

7. The Individuals with Disabilities Education Act (“IDEA”) provides federal funds to assist states in educating students with disabilities by providing every eligible child with a “free appropriate public education.”¹ The IDEA requires each State to have a designated educational

¹ Am. Compl., Dkt. 21 ¶ 30.

agency that is primarily responsible for ensuring that IDEA requirements are met throughout the State.²

8. The IDEA provides that parents and legal guardians of children with disabilities have the right to challenge the adequacy and appropriateness of the special education services offered to their children by filing a due process complaint (“DPC” or “case”).³

9. DPCs are processed and resolved by the New York City Impartial Hearing Office through certified employees called impartial hearing officers (“IHO” or “IHOs”). Once the Impartial Hearing Office appoints an IHO to a case, the IHO conducts pre-hearing activities and is ultimately charged with holding a hearing and issuing a written decision within deadlines mandated by law.⁴

10. The IDEA’s deadlines include a 30-day resolution period that is triggered once a due process complaint is filed.⁵ That resolution period can be shortened in some circumstances, including if both parties agree to waive it.⁶ If a resolution is not reached by the end of this 30-day period, the matter proceeds to an impartial hearing.⁷

11. Counsel instructed Stout that in every case, a hearing must be held and a decision issued within 45 days of the close of the resolution period, with only two exceptions. First, a party may file an amended DPC, which restarts the entire timeline, including the resolution period. Second, an IHO may grant extensions of the deadline. Although there is no limit on the number of extensions that may be granted, extensions may only be for a specified maximum

² *Id.* ¶ 33.

³ *Id.* ¶ 2.

⁴ *Id.* ¶¶ 45–46.

⁵ *Id.* ¶ 48.

⁶ *Id.* ¶ 53 & n.6.

⁷ *Id.* ¶ 49.

number of days. An extension “is a specific additional period of time beyond the regulatory timeline for the impartial hearing decision due date” and usually, “may move the compliance date by a maximum of 30 days into the future.”⁸ On April 4, 2020, in response to the COVID-19 pandemic, the State passed emergency regulations allowing extensions of up to 60 days.⁹

B. Defendant Data Systems

12. The IHRS is maintained by NYSED to track case compliance data.

13. The IHS is maintained by NYCDOE to track case compliance data.

14. Section 200.5(j)(3)(xvi) of the Regulations of the Commissioner of Education, Parts 200 and 201, require reporting of “information relating to the impartial hearing process including, but not limited to the request for initiation and completion of each impartial hearing. Data required for impartial hearings must be submitted electronically through the [IHRS].”¹⁰

15. IHRS is a “web-based data collection system” and “is a ‘real time’ system . . . used to monitor New York State’s due process system to ensure that impartial hearings are completed within the time periods required by federal and state law and regulation.”¹¹

16. Stout was retained to analyze data maintained by NYSED and NYCDOE. Below are certain observations made during our review of the data extracted from IHS and IHRS and provided to Stout.

⁸ *Impartial Hearing Reporting System, Extensions*, N.Y. State Educ. Dep’t., <https://pd.nysed.gov/spcedhelp/ihrs/4FExtensions.html#WhatIsAnExtension> (last visited May 18, 2022).

⁹ (State Def 1730.)

¹⁰ *Impartial Hearing Reporting System*, N.Y. State Educ. Dep’t., <https://www.p12.nysed.gov/specialed/dueprocess/IHRS.htm> (last visited May 18, 2022).

¹¹ *Id.*

V. DATA OBSERVATIONS AND OTHER CONSIDERATIONS

A. Form of Production and Observations of IHS Data

17. Data extracted from IHRS was produced to Plaintiffs in one Excel file with data presented across multiple worksheets. Each worksheet contained data related to specific aspects of the due process proceeding, including case numbers, recusals, extensions, assignments, mediations, hearings, resolution meetings, and other information (collectively, “data tables” or “tables”).¹²

18. These data tables were linked to one another either directly by a CASE_ID (“Case ID” or “Case Number”) or indirectly through comparing unique codes reflected in fields¹³ that appeared in multiple tables, such as ASGN_ID, EXDA_ID, etc. This meant it was possible to identify data within each table that pertained to the same DPC.

19. The data extracted from IHS was produced to Plaintiffs in nine Excel files with data presented across multiple worksheets containing similar data tables as IHRS, but with different data table names and field names. Unlike the IHRS data tables, not all of the IHS data tables produced to Plaintiffs appeared to have direct or indirect linkage to one another. For example, the IHS_Case_Extended table does not contain a case number field but does reflect a field called ExtensionID. However, this is the only data table produced to Plaintiffs with an ExtensionID field and as such, Stout was unable to compare unique codes across data tables to link all produced information to a particular DPC.

20. Given the limitations of the data produced to Plaintiffs that was extracted from IHS, our analyses were performed using data extracted from IHRS.

¹² (State Def 3143.xls)

¹³ A “field” reflects a column in a data table or Excel file.

- a. We were informed by counsel that the IHRS Data is derived directly from the IHS Data as it is maintained by the City, with the exception of certain fields calculated within IHRS, and that the IHRS Data is updated daily via a file transfer from the City to the State of relevant IHS Data. We also reviewed a table produced by NYSED demonstrating which IHS Data fields were imported into which IHRS Data fields.¹⁴ A comparison of select data points between the IHS Data and IHRS Data was performed to confirm the accuracy and reliability of the IHRS Data.
- b. In **Table 1** below, Stout identified certain discrepancies between the two data sets. For example, there are more cases in the IHS Data than the IHRS Data for overlapping time periods.¹⁵ However, in 99% of cases, the IHRS Data DATE_CREATED and REQUEST_DATE fields matched the Date Created and RequestDate fields in the IHS Data.^{16,17}

¹⁴ (State Def 2840 – State Def 2844.)

¹⁵ The data extracted from IHS covered cases filed between February 1, 2017 and January 4, 2022, whereas the data extracted from IHRS covered cases filed between January 3, 2017 and December 30, 2021.

¹⁶ A comparison of data points between the IHS Data and IHRS Data was performed based on the IHRS “Cases” data table containing a field called “DIST_CASE_NUM” (“district case number”). The district case number is reflected in the IHS Data as “CaseNo.”

¹⁷ A reconciliation of case closure dates could not be performed as the closure date was not produced in the IHS Data.

Table 1

Comparison of Select Data Points Between Data Extracted from IHS and IHRS										
	City Data [1]						State Data [2]			
	From Date	To Date	Data Field	Total Count	Matching Count	% of Total Count	Data Field	Total Count	Matching Count	% of Total Count
1 Number of Cases	02/01/17	01/04/22	OpenedDate	58,045	57,476	99.02%	Date_Created	57,477	57,476	100.00%
2 Open/Create Dates	02/01/17	01/04/22	OpenedDate	58,045	57,476	99.02%	Date_Created	57,477	57,476	100.00%
3 Number of Cases	02/01/17	12/30/21	RequestDate	58,383	57,443	98.39%	Request_Date	57,444	57,443	100.00%
4 Request Dates	02/01/17	12/30/21	RequestDate	58,383	57,441	98.39%	Request_Date	57,444	57,441	99.99%

[1] IHS-tables5.xlsx ("IHS_Case_Opened" tab)
 [2] State Def 3143.xls ("Cases" tab)

B. Partial School Years

21. The IHRS data did not include data for the entirety of school years 2016–17 and 2021–22, as evidenced in **Table 2**. As such, we conducted our analysis using only cases filed in school years 2017–18 through 2020–21, the school years for which complete data was provided. Within this data, a “school year” runs from July 1 of the first year to June 30 of the following year:

Table 2

Request Dates by School Year of DPC Filing			
School Year of DPC Filing		From Date	To Date
1	2016-17	01/03/17	06/30/17
2	2017-18	07/01/17	06/30/18
3	2018-19	07/01/18	06/30/19
4	2019-20	07/01/19	06/30/20
5	2020-21	07/01/20	06/30/21
6	2021-22	07/01/21	12/30/21

Source: State Def 3143.xls ("Cases" tab)

C. Relevant Data Fields

22. Stout's analysis of the IHRS data relied on several data fields. Our understanding of the function of each of the relevant data fields is summarized below.

23. Our analysis relied on several IHRS data tables:

- a. AMENDMENTS ("Amendment Data") reflects information associated with each amended DPC;
- b. ASSIGNMENTS ("Assignment Data") reflects information associated with IHO assignments to DPCs;
- c. CASES and CASE_CLOSURE_TYPES ("Cases Data") reflect summary information about each DPC;
- d. CASE_ISSUE_DATA and ISSUE_DECISIONS ("Case Issues Data") reflect information related to different categories of issues associated with the allegations in each DPC;
- e. CONSOLIDATIONS ("Consolidations Data") reflects information about which filed DPCs were consolidated into previously-filed DPCs;
- f. EXTENSION_DATA and EXTENSION_REASONS ("Extension Data") reflect information associated with each requested extension;
- g. RECUSAL_DATA ("Recusal Data") reflects information related to recusals of IHOs from DPCs;
- h. RESOLUTION_MEETINGS ("Resolution Meeting Data") reflects information about scheduled resolution meetings; and
- i. RESOLUTION_PERIODS and RESOLUTION_RESULTS ("Resolution Data") reflects information about the resolution period for each filed DPC.

24. Within each of the above data tables, our analysis relied on specific fields, summarized below.

25. The Case ID field appears in all of the above data tables except for the Recusal Data and Resolution Meeting Data, which allowed us to directly link information in each of those data tables to a specific Case ID.

26. The ASGN_ID field appears in both the Assignments and Recusal Data, which allowed us to link the Recusal Data to specific entries in the Assignments Data. We were then able, through the Assignments Data, to link the Recusal Data to a unique Case ID.

27. Similarly, the REPE_ID field appears in both the Resolution Data and the Resolution Meeting Data, which allowed us to link the Resolution Meeting Data to specific entries in the Resolution Data. We were then able, through the Resolution Data, to link the Resolution Meeting Data to a unique Case ID.

28. For each amended DPC, the Amendment Data includes the date the DPC was amended, AMENDED_DATE (“Amendment Date”). We understand from counsel that when an amended DPC is filed, the compliance timeline for the DPC restarts.¹⁸

29. In the Cases Data, five fields were relevant:

- a. REQUEST_DATE (“Request Date”) is the date the DPC was originally filed;
- b. ORIG_COMP_DATE (“Original Compliance Date”) is a static value calculated as 75 days after the date the DPC is filed for cases associated with school-age

¹⁸ See 8 N.Y.C.R.R. § 200.5(i)(7)(ii) (“The applicable timelines for an impartial due process hearing, including the timelines for the resolution process shall recommence at the time the party files an amended due process complaint notice.”).

children, or 60 days after the date the DPC is filed for cases associated with preschool-age children;¹⁹

- c. CURR_COMP_DATE (“Current Compliance Date”) is a dynamic value that reflects changes to the applicable compliance date based on changes to the resolution time period (*i.e.*, if the parties choose to waive part of the resolution period), granted extensions, or amendments to the DPCs;
- d. CASE_CLOSED_DATE (“Case Closure Date”) is the date the case was closed; and
- e. CACL_CODE (“Case Closure Reason”) is the reason the case was closed. The entries in this field are numbers that correspond to the DESCRIPTIONS field in the CASE_CLOSURE_TYPES table.

30. The Case Issues Data contains the ISDE_CODE field (“Issue Decisions”), which states, for each issue in a case on which an IHO decides, the outcome of the IHO’s decision with respect to that issue. Multiple issues may be associated with a single Case ID. The entries in this field are numbers that correspond to the DESCRIPTIONS field in the ISSUE_DECISIONS table.

31. For each newly-filed DPC that is ultimately consolidated into a pending DPC, the Consolidations Data includes two relevant fields:

¹⁹ We understand that where a case is identified as associated with a Committee on Special Education, (“CSE”), the case is filed on behalf of a school-age child, and where a case is associated with a Committee on Preschool Special Education (“CPSE”), the case is filed on behalf of a preschool-age child. NYSED, *Procedural Safeguards Notice* (July 2017), <https://www.schools.nyc.gov/docs/default-source/default-document-library/procedural-safeguards-notice-english>. This information is reflected in the CASE_TYPE field in the Cases Data. We further understand that the Original Compliance Date is shorter for cases filed on behalf of preschool children because New York law requires those cases to be decided within 30 days of the expiration of the resolution period, rather than the full 45 days that is typically required. *Id.*; see also 8 N.Y.C.R.R. § 200.16(i)(9) (for preschool age children, “[i]mpartial due process hearings shall be conducted in accordance with section 200.5(j) of this Part, provided that the decision of the impartial hearing officer shall be rendered . . . not later than 30 days after the time period pursuant to section 200.5(j)(5) of this Part.”).

- a. CONS_DATE (“Consolidation Date”) is the date that the new DPC is consolidated into the previously-filed DPC;²⁰ and
- b. CONS_CASE (“Consolidated Case ID”) is the Case ID that was assigned to the new DPC when it was filed, which is no longer used after the new DPC is consolidated into the previously-filed DPC.

32. In the Extension Data, seven data fields were relevant in our analyses:

- a. EXTENSION_REQUESTED_DATE (“Extension Request Date”) is the date the extension was requested;
- b. EXTENSION_DECISION_DATE (“Extension Decision Date”) is the date the extension was either granted or denied;
- c. GRANTED (“Extension Decision”), which includes only Y or N entries, shows whether the requested extension was granted (Y) or not (N);
- d. NEW DECISION DATE (“New Decision Date”) is the updated compliance deadline as a result of a granted extension. The New Decision Date becomes the Current Compliance Date with each newly granted extension;
- e. PREV_COMP_DATE (“Previous Compliance Date”) is the Current Compliance Date of the case at the time the extension was requested. If the compliance date was not altered by an amended DPC or waiver of part of the resolution period, the Previous Compliance Date for the first requested extension should match the Original Compliance Date for that DPC;

²⁰ A new DPC that is consolidated is distinct from an amendment to a previously existing DPC that is amended. We understand from counsel that for a DPC that is consolidated into a previously-filed DPC, the “timeline for issuance of a decision in the earliest pending due process complaint shall apply.” 8 N.Y.C.R.R. § 200.5(j)(3)(ii)(a)(5).

- f. EXRE_CODE (“Extension Reason”) is the reason the extension was requested. The entries in this field are numbers that correspond to the DESCRIPTIONS field in the EXTENSION_REASONS table; and
- g. DELETED (“Deleted”) signifies if an extension has been deleted from IHRS as an “incorrect extension that is entered and saved can be deleted and re-entered by submitting a data change request.”²¹

33. In the Resolution Data, three fields were relevant:

- a. RES_COMP_DATE (“Resolution Compliance Date”) is a static value that is 30 days from the date the DPC was filed;
- b. RES_END_DATE (“Resolution End Date”) is the date the resolution period ended, which is equivalent to the Resolution Compliance Date unless the resolution period ended earlier due to the case ending, an amended DPC being filed, or the parties agreeing to waive all or part of the resolution period; and
- c. RERES_CODE (“Resolution Period Result”) is the reason the resolution period ended. The entries in this field are numbers that correspond to the DESCRIPTIONS field in the RESOLUTION_RESULTS table.

34. In the Resolution Meeting Data, there is a HELD field, which includes “Y” or “N” entries and shows whether the scheduled resolution meeting was held (Y) or not (N).²²

D. Adjustments for Weekends and Holidays

35. Some of the Original Compliance Dates, Current Compliance Dates, Previous Compliance Dates and New Decision Dates fell on a holiday or weekend.

²¹ *Extensions, supra* note 8.

²² There are 28 cases in the Resolution Meeting Data in which the HELD field is blank. We are unaware as to why this field was left blank and have excluded these cases from our analyses.

36. Per NYSED’s website, “decision dates falling on a weekend or holiday will be adjusted to the next business day by IHRS per general Construction Law.”²³ However, this adjustment was not applied uniformly in either the Cases Data or the Extension Data as evidenced in **Table 3** and **Table 4** below. Specifically, 39.3% of Original Compliance Dates, 29.9% of Current Compliance Dates, 40.7% of Previous Compliance Dates, and 30.8% of New Decision Dates were recorded in the IHRS data as falling on a weekend or holiday, without being adjusted to the following business day.²⁴

Table 3

Number of Cases with Compliance Dates Falling on a Holiday and/or Weekend										
School Year of DPC Filing	Cases Requested	Original Compliance Date				Current Compliance Date				
		Weekend	% of Cases Requested	Holiday [1]	% of Cases Requested	Weekend	% of Cases Requested	Holiday [1]	% of Cases Requested	
1 2017-18	7,144	-	-	-	-	801	11.2%	78	1.1%	
2 2018-19	9,694	3,825	39.5%	240	2.5%	2,825	29.1%	198	2.0%	
3 2019-20	10,798	5,438	50.4%	201	1.9%	3,228	29.9%	286	2.6%	
4 2020-21	14,264	6,517	45.7%	225	1.6%	4,768	33.4%	343	2.4%	
5 Total Cases	41,900	15,780	37.7%	666	1.6%	11,622	27.7%	905	2.2%	

Source: IHRS Data (Cases Data)
 [1] The weekend leading up to a holiday is reflected in the holiday figures above.

²³ *Extensions, supra* note 8.

²⁴ Plaintiffs’ counsel informed us that, per discussions with Counsel for NYSED, the State has stopped adjusting compliance dates for weekends and holidays. However, NYSED’s counsel did not know that date.

Table 4

Number of Cases with Compliance Dates Falling on a Holiday and/or Weekend										
School Year of DPC Filing	Cases Requested In Extension Data	Previous Compliance Date				New Decision Date				
		Weekend	% of Cases Requested	Holiday [1]	% of Cases Requested	Weekend	% of Cases Requested	Holiday [1]	% of Cases Requested	
1	2017-18	6,095	119	2.0%	51	0.8%	1,685	27.6%	337	5.5%
2	2018-19	8,284	3,436	41.5%	581	7.0%	1,983	23.9%	418	5.0%
3	2019-20	9,487	4,283	45.1%	603	6.4%	2,385	25.1%	499	5.3%
4	2020-21	10,526	4,454	42.3%	466	4.4%	2,572	24.4%	701	6.7%
5	Total Cases	34,392	12,292	35.7%	1,701	4.9%	8,625	25.1%	1,955	5.7%

Source: IHRS Data (Extension Data)
 [1] The weekend leading up to a holiday is reflected in the holiday figures above.

37. Stout’s analyses adjusted compliance dates falling on a holiday or weekend to the next business day (e.g., “Adjusted Original Compliance Date,” “Adjusted Current Compliance Date,” etc.).²⁵ As a result, use of the Adjusted dates leads to longer compliance deadlines than shown in the IHRS Data.

VI. ANALYSIS

38. Stout was asked to measure the following:
- a. The number of untimely cases, as defined below;
 - b. The number of cases that would be untimely if specific types of extensions were considered invalid;
 - c. The number of extensions granted retroactively or simultaneously within the same case;
 - d. The length of time from case initiation to case closure;
 - e. The success rate of parents and families after a hearing; and

²⁵ Holidays were obtained from the New York State calendar of legal holidays for state employees. *See Attendance and Leave Benefits*, N.Y. State Dep’t of Civil Serv., https://www.cs.ny.gov/attendance_leave/ (last visited May 18, 2022).

- f. The number of cases in which the resolution period ended due to 30 days elapsing and no resolution meeting was held.

A. Number of Timely and Untimely Closures

39. As a first step, Stout used the Request Date (the date the DPC was filed) to quantify the number of cases that were filed in school years 2017–18 through 2020–21. As previously mentioned, the data extracted from IHRS and provided to Stout contained partial data for school years 2016–17 and 2021–22 and as such were excluded in the analyses performed. A total of 41,900 cases were filed between July 1, 2017 through June 30, 2021, as reflected in **Table 5** below.

40. Stout limited the analyses of closed cases to cases with a recorded Case Closure Reason of ACTUAL DECISION, SETTLEMENT, or WITHDRAWN.²⁶ If the Case Closure Reason was blank, the case was considered to be “open” as of January 21, 2022, which was the date on which data was extracted from IHRS (“Extraction Date”).

41. Narrowing the 41,900 population to cases that were open or closed due to one of the three reasons listed above resulted in a total relevant population of 40,721 cases (“Relevant Cases”) as seen in **Table 5** below.

42. Next, Stout quantified how many of the 41,900 cases were closed “timely”, closed “untimely”, open and “timely”, and open and “untimely.” A case was considered timely if it closed on or before the Adjusted Current Compliance Date, or if the case was open as of the Extraction Date and the Adjusted Current Compliance Date had not passed. By contrast, a case

²⁶ Per discussions with Counsel, a case is generally considered withdrawn “with prejudice” if the case is settled, whereas cases withdrawn “without prejudice” were generally withdrawn for a procedural or other reason. However, there is no distinction between cases “withdrawn with prejudice” and cases “withdrawn without prejudice” in the IHRS Data; therefore, all withdrawn cases have been included in the analysis.

was considered untimely where the case was closed after the Adjusted Current Compliance Date, or was open as of the Extraction Date and the Adjusted Current Compliance Date had passed.

43. Stout quantified the number of timely or untimely cases by comparing the Case Closure Date to the Adjusted Current Compliance Date. As evidenced in **Table 5** below, 23,127 Relevant Cases (or 62.3% of closed Relevant Cases) closed timely and 14,003 Relevant Cases (or 37.7% of closed Relevant Cases) closed untimely. Further, as of the Extraction Date, 2,249 Relevant Cases (or 62.6% of open Relevant Cases) remained open and timely and 1,342 Relevant Cases (or 37.4% of open Relevant Cases) remained open and untimely.

Table 5

Timeliness and Untimeliness of Open and Closed Cases by School Year of DPC Filing																						
School Year of DPC Filing	Cases Requested	A		B = A/E		C		D = C/E		F		G = F/J		H		I = H/J		E		J		Total Open + Closed Cases
		Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Timely Open Cases	% of Total Open Cases	Untimely Open Cases	% of Total Open Cases	Total Closures	Total Open Cases											
1	2017-18	7,144	5,410	79.0%	1,440	21.0%	5	20.0%	20	80.0%	6,850	25	6,875									
2	2018-19	9,694	5,076	54.7%	4,196	45.3%	30	38.5%	48	61.5%	9,272	78	9,350									
3	2019-20	10,798	5,768	57.0%	4,353	43.0%	186	49.6%	189	50.4%	10,121	375	10,496									
4	2020-21	14,264	6,873	63.1%	4,014	36.9%	2,028	65.1%	1,085	34.9%	10,887	3,113	14,000									
5	Total Cases	41,900	23,127	62.3%	14,003	37.7%	2,249	62.6%	1,342	37.4%	37,130	3,591	40,721									

Source: Exhibit 1

44. As demonstrated in the table above, of the 7,144 cases filed in the 2017–18 school year, 20 Relevant Cases remained open and untimely as of the Extraction Date, approximately three years after being requested. In addition, 3,113 cases filed in 2020-21 school year remained outstanding as of the Extraction Date. Refer to **Exhibit 1** for greater detail.

45. Furthermore, untimely and closed Relevant Cases closed 69 days on average beyond the Current Compliance Date. Refer to **Exhibit 1.3** for greater detail.

B. Timeliness of Relevant Cases Excluding Certain Extensions

46. Stout performed additional analyses measuring the timeliness and untimeliness of Relevant Cases by including or excluding specific extensions.

47. The possible Extension Reasons reflected in the IHRS Data include:

Extension Reason 1: Obtain Independent Educational Eval.;

Extension Reason 2: Extensive Testimony/Issues;

Extension Reason 3: Obtain Representation;

Extension Reason 4: Availability of Witnesses;

Extension Reason 5: Other;

Extension Reason 6: SRO Requirement;

Extension Reason 7: Settlement Negotiation;

Extension Reason 8: Settlement Approval; and

Extension Reason 9: Waitlisted Case-New Appointment (“Waitlist Extension”).

48. At the direction of Counsel, Stout analyzed the timeliness or untimeliness of Relevant Cases by excluding, both individually and collectively, the following categories of “potentially invalid” extensions:

a. Settlement Negotiations

b. Other²⁷

c. Waitlist Extension

d. Settlement Approval

49. The data shows that some extensions were granted for more than 60 days, which is beyond the maximum period allowed by state regulations. Of the 206,549 granted²⁸ extensions

²⁷ The “Other” option reflects a free form text field, the contents of which was not produced in the IHRS data. *Extensions, supra* note 8.

²⁸ The Extension Data contains a “DELETED” field which signifies if an extension has been deleted from IHRS as an “incorrect extension that is entered and saved can be deleted and re-entered by submitting a data change request.” *Id.* Our analyses exclude deleted extensions.

associated with Relevant Cases, 10,063 extensions (or 4.9%) were granted for more than 60 days.²⁹

50. For the purpose of analyzing the effect of potentially “invalid” extensions on compliance, Stout computed a “Recalculated Current Compliance Date” for Relevant Cases. As further explained below, Stout determined the Recalculated Current Compliance Date by adding together quantified extension periods—either 30 or 60 days—for each “valid” extension. Stout then added the sum of those extensions to the “Resolution Period Compliance Date,” which is the earliest Resolution End Date plus 30 days for CPSE cases or 45 days for CSE cases.³⁰ In other words, Stout calculated what the Current Compliance Date would have been without the “invalid” extensions by adding the maximum possible lengths of every other extension to the compliance deadline implied by the close of the resolution period.

51. At the request of Counsel, in order to determine the Recalculated Current Compliance Date, Stout started with the Resolution Period Compliance Date. To confirm the accuracy and reliability of the Resolution Period Compliance Date field, Stout compared the earliest Resolution Period Compliance Date to the earliest Previous Compliance Date (*i.e.*, the Previous Compliance Date associated with the first granted extension), on a case-by-case basis. This validation comparison could be performed on only the 33,809 (or 83% of) Relevant Cases with both a Resolution End Date and granted extensions. Of those 33,809 cases, the validation comparison confirmed that 33,001 cases (or 97.6%) had the same initial Resolution Period Compliance Date and initial Previous Compliance Date.

²⁹ The extension period includes the time between the Previous Compliance Date and New Decision Date, without adjusting for weekends and holidays.

³⁰ Forty-nine Relevant Cases did not appear in the Resolution Data, and so did not have an associated Resolution End Date. For these 49 cases, Stout used the Original Compliance Date, plus 30 or 45 days, as the Resolution Period Compliance Date.

52. For cases with amended DPCs, Stout counted the number of amendments associated with the case and added 75 days per amendment to the Resolution Period Compliance Date. Stout added this adjustment before determining the extension period per extension, as discussed below. This adjustment results in more extensions to be treated as a 60-day extension, and therefore more cases to appear timely.

53. Recalculated Current Compliance Dates were determined by adding up the extension periods for all “valid” extensions reflected in the Extension Data. The extension period for each extension was either 30 or 60 days, depending on whether the Recalculated Current Compliance Date as of the date the extension was applied fell before or on or after April 4, 2020 (when the State enacted emergency regulations permitting 60-day extensions due to the COVID-19 pandemic). The Recalculated Current Compliance date was then adjusted for weekends and holidays.

54. This process treats all extensions as either 30-day extensions (if the Recalculated Current Compliance Date is before April 4, 2020), or 60-day extensions (if the Recalculated Current Compliance Date is on or after April 4, 2020), regardless of whether the extension was granted for less than or more than 30 or 60 days, respectively. As previously mentioned, 10,063 extensions associated with Relevant Cases were granted for more than 60 days, which is beyond the maximum period allowed by state regulations. This calculation also does not consider the order in which valid or invalid extensions were granted in the Extension Data.

55. An example of this methodology is reflected below in **Table 6**, which treats “Other” as an invalid extension.

Table 6

Recalculated Current Compliance Date Example Case Number: 502911			
Resolution End Date:		02/21/17	[1]
Resolution Compliance Period Date:		04/07/17	[2]
Number of Amendments:		2	[1]
Resolution Compliance Period Date + Amendments:		09/04/17	A
Case Closure Date:		09/18/17	
Recalculated Current Compliance Date			
Extension Reason	Valid Extension	Extension Period (Days)	Recalculated Current Compliance Date
1 Other			
2 Extensive Testimony/Issues	x	30 B	10/04/17 C = A + B
3 Extensive Testimony/Issues	x	30 D	11/03/17 E = B + C
Source: IHRS Data (Extension and Resolution Periods tabs)			
[1] As this case has been amended two times, it is reflected in the Resolution Periods table three times. The Resolution End Date above reflects the first, or oldest, resolution end date which is then adjusted for the two amendments by adding 75 days per amendment to the compliance date.			
[2] This case is a CSE case and as such, 45 days is added to the Resolution End Date.			

56. In **Table 6**, Case 502911 is considered a timely closure under this analysis, because it closed on September 18, 2017, with a Recalculated Current Compliance Date of November 3, 2017. Refer to **Exhibits 2** through **2.5** for greater detail.

C. Calculations Excluding Waitlist Extensions

57. Counsel requested specific analyses on Waitlist Extensions, including the number of Waitlist Extensions entered, the number of days a Waitlist Extension typically extended a Current Case Compliance Date, and the number of timely and untimely cases if all Waitlist Extensions were considered invalid. For these analyses, Counsel requested that Stout include only Relevant Cases that were open on or after May 1, 2020, the approximate date when the Waitlist Extensions were first implemented, and either remained open as of the Extraction Date or were closed by actual decision, settlement, or withdrawn (“Waitlist Extension Relevant Cases”).

58. Stout used the Extension Data to identify the number of total Waitlist Extensions per school year and in the aggregate. **Table 7** shows that since the function was implemented on or about May 1, 2020, a total of 10,028 Waitlist Extensions have been granted for Waitlist Extension Relevant Cases. This accounts for 8.1% of total extensions for Waitlist Extension Relevant Cases, and 20.5% of total extensions for Waitlist Extension Relevant Cases in the 2020–21 school year. Refer to **Exhibit 3.1** for greater detail.

Table 7

Extensions Associated to Waitlist Extension Relevant Cases as a Percentage of Total Extensions				
		A	B	C = A / B
		Waitlist	Total	%
School Year of DPC Filing		Extensions	Extensions	of Total
		[1]	[1]	Extensions
1	2017-18	-	5,403	n/a
2	2018-19	9	24,122	0.0%
3	2019-20	2,629	58,857	4.5%
4	2020-21	7,390	35,992	20.5%
5 Total Extensions		10,028	124,374	8.1%

Source: Exhibit 3.1

[1] Represents cases that were open as of May 1, 2020 and were open or closed by actual decision, settlement, or withdrawn as of January 21, 2022, the data in which data was produced from IHRS.

[2] The dates above reflect the date in which the DPC was filed, not the date the extension was granted. For example, nine cases that were requested in school year 2018-19 received waitlist extensions.

59. Stout also calculated the difference between the Previous Compliance Date and New Decision Date for each granted Waitlist Extension. **Table 8** shows that the average length of a Waitlist Extension is 202 days for Waitlist Extension Relevant Cases, and 227 days for Waitlist Extension Relevant Cases filed during the 2020-21 school year. Refer to **Exhibit 3.1** for greater detail.

Table 8

Length of Waitlist Extensions Associated to Waitlist Extension Relevant Cases				
	School Year of DPC Filing	Waitlist Extensions	Average Length of Waitlist Extensions [Days]	Median Length of Waitlist Extensions [Days]
1	2017-18	-	n/a	n/a
2	2018-19	9	506	550
3	2019-20	2,629	128	129
4	2020-21	7,390	227	266
5	Total	10,028	202	156

Source: Exhibit 3.1
 [1] The dates above reflect the date in which the DPC was filed, not the date the extension was granted. For example, nine cases that were requested in school year 2018-19 received waitlist extensions.

60. Using the Recalculated Current Compliance Date, and excluding only Waitlist Extensions, Stout calculated how many Waitlist Extension Relevant Cases were open and untimely, open and timely, closed and untimely, and closed and timely. As demonstrated in **Table 9**, if Waitlist Extensions are excluded, then 11,543 Waitlist Extension Relevant Cases, or 55.8%, closed untimely, and 2,451 Waitlist Extension Relevant Cases, or 68.3%, were open and untimely. In sum, if Waitlist Extensions are excluded as invalid, 13,994 Waitlist Extension Relevant Cases, or 57.6%, were either closed untimely or open and untimely as of the Extraction Date. Refer to **Exhibit 3.3** for greater detail.

Table 9

Timeliness of Waitlist Extension Relevant Cases by School Year Assuming Waitlist Extensions are Invalid																		
School Year of DPC Filing	Waitlist Extension Relevant Cases	A		B = A / E		C		D = C / E		F		G = F / J		H	I = H / J	E	J	Total Open + Closed Cases
		Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Timely Open Cases	% of Total Open Cases	Untimely Open Cases	% of Total Open Cases	Total Closures	Total Open Cases							
1	2017-18	182	107	68.2%	50	31.8%	22	88.0%	3	12.0%	157	25	182					
2	2018-19	1,470	964	69.3%	428	30.7%	72	92.3%	6	7.7%	1,392	78	1,470					
3	2019-20	8,631	4,597	55.7%	3,659	44.3%	296	78.9%	79	21.1%	8,256	375	8,631					
4	2020-21	14,000	3,481	32.0%	7,406	68.0%	750	24.1%	2,363	75.9%	10,887	3,113	14,000					
5	Total Cases	24,283	9,149	44.2%	11,543	55.8%	1,140	31.7%	2,451	68.3%	20,692	3,591	24,283					

Source: Exhibit 3.3

D. Granted Extensions

61. Stout calculated the number of extensions granted (i) retroactively and/or (ii) simultaneously in the same Relevant Case. First, to calculate the number of extensions granted retroactively, Stout calculated the number of Relevant Cases in which the Extension Decision was to grant the extension, and the Extension Decision Date occurred after the Previous Compliance Date.

62. As **Table 10** demonstrates, 22,072 Relevant Cases had 57,774 extensions retroactively applied. Of Relevant Cases with granted extensions, 65.2% had an Extension Decision Date after the Previous Compliance Date.

Table 10

Cases with Retroactive Extensions as a Percentage of Total Cases with Extensions						
School Year of DPC Filing	A Retroactive Extensions	B Total Extensions	C = A / B % of Total Extensions	D Cases with Retroactive Extensions	E Total Cases with Extensions	F = D / E % of Total Cases with Extensions
1 2017-18	8,229	42,964	19.2%	2,502	5,951	42.0%
2 2018-19	16,754	65,145	25.7%	4,353	8,107	53.7%
3 2019-20	18,198	62,448	29.1%	6,276	9,342	67.2%
4 2020-21	14,593	35,992	40.5%	8,941	10,429	85.7%
5 Total	57,774	206,549	28.0%	22,072	33,829	65.2%

Source: IHRS Data (Extension Data)
 [1] Represents instances in which the Extension Decision Date is after Previous Compliance Date.

63. Next, to calculate the number of extensions granted simultaneously in the same Relevant Case, Stout calculated the number of Relevant Cases in which more than one Extension Decision to grant the extension was made on the same Extension Decision Date.

64. As **Table 11** demonstrates, a total of 4,405 Relevant Cases with extensions, or 13.0% of Relevant Cases with granted extensions, had more than one extension granted on the same day.

Table 11

Cases with Simultaneous Extensions as a Percentage of Total Cases with Extensions			
School Year of DPC Filing	A Cases with Simultaneous Extensions	B Total Cases with Extensions	C = A / B % of Total Cases with Extensions
1 2017-18	430	8,107	5.3%
2 2018-19	1,511	10,429	14.5%
3 2019-20	1,905	9,342	20.4%
4 2020-21	559	5,951	9.4%
5 Total Cases	4,405	33,829	13.0%
Source: IHRS Data (Extension Data)			

E. Case Lengths

65. Stout analyzed the Cases Data to measure the length of each of the Relevant Cases. Stout calculated the number of days a case was pending by calculating the number of days between the Request Date and the Case Closure Date.

66. Stout then aggregated the data and calculated the average number of days Relevant Cases remained outstanding per school year and in the aggregate. On average, Relevant Cases remained outstanding for 284 days. This is shown in **Table 12**.

67. Relevant Cases that were ultimately untimely closed remained outstanding for an average of 316 days. For Relevant Cases closed during the 2020-21 school year, the average case length was 320 days. Refer to **Exhibit 1.1** for greater detail.

Table 12

Length Between Request Date and Case Closure Date			
School Year of DPC Filing	Closed Cases	Average Length (Days)	Median Length (Days)
1 2017-18	6,850	254	220
2 2018-19	9,272	293	269
3 2019-20	10,121	303	300
4 2020-21	10,887	278	306
5 Total	37,130	284	288

Source: Exhibit 1.1

F. Parent Success Rates at Hearing

68. Stout analyzed the outcomes of issues in Relevant Cases to determine how frequently the IHOs’ decisions supported the parent or family using the Case Issues Data. The possible Issue Decision descriptions reflected in the IHRS Data include:

- Issue Decision 1. Support Parent;
- Issue Decision 2. Support School District;
- Issue Decision 3. Independent Decision;
- Issue Decision 4. Stipulation/Agreement;
- Issue Decision 5. Remand to Committee;
- Issue Decision 6. Dismissed;
- Issue Decision 7. Withdrawn;
- Issue Decision 8. Support, in Part, School District and Parent;
- Issue Decision 9. Not an Issue;
- Issue Decision 10. Issue Changed Due to Further Clarification; and
- Issue Decision 11. Settled in Resolution Session.

69. First, Stout narrowed Relevant Cases to cases with the Case Closure Type of “actual decision” resulting in 11,233 cases, as shown in **Table 13** below. Next, Stout determined how many of these cases were exclusively or partially assigned to Issue Decision 1 or Issue Decision 8.³¹ A case may be assigned to multiple case issues with differing Issue Decisions. As such, Stout determined how many of the 11,233 cases had case issues all assigned to Issue Decision 1 (reflected as “Fully Supporting Parent” in **Table 13**). Further, Stout determined how many of the 11,233 cases had case issues assigned to either 1) Issue Decision 1 and another Issue Decision or 2) Issue Decision 8 or Issue Decision 8 and another Issue Decision (reflected as “Partially Supporting Parent” in **Table 13**).

70. Stout calculated that 78.0% of Relevant Cases that reached an actual decision had issues that were all assigned Issue Decision 1, meaning that the IHO decision supported the parent on every case issue. Further 11.4% of Relevant Cases that reached an actual decision had issues that were assigned to a combination of Issue Decision 1 and another Issue Decision or Issue Decision 8, meaning the IHO decision at least partially supported the parent. In total, therefore, in 10,044, or 89.4% of, the 11,233 Relevant Cases that reached an actual decision, the IHO’s decision at least partially supported the parent on at least one issue in the case. This is shown in **Table 13**. Refer to **Exhibit 4.2** for greater detail.

³¹ We are informed by Counsel that some cases with Issue Decision 5, “Remand to Committee,” would properly be considered to have been in favor of the parent or family. However, because it is impossible to make that determination based solely on the Issue Decision code, we excluded those cases from this analysis. As a result, the percentage of cases Stout calculated to be in favor of the parent or family is under-inclusive.

Table 13

Full or Partial Support of Parents in Closed Cases by Actual Decision								
School Year of DPC Filing	A Cases Closed by Actual Decision	B Cases Fully Supporting Parent	C = B / A % of Cases Closed by Actual Decision	D Cases Partially Supporting Parent	E = D / A % of Cases Closed by Actual Decision	F Other [1]	G = F / A % of Cases Closed by Actual Decision	
1 2017-18	1,926	1,531	79.5%	223	11.6%	172	8.9%	
2 2018-19	3,498	2,726	77.9%	390	11.1%	382	10.9%	
3 2019-20	3,784	3,040	80.3%	417	11.0%	327	8.6%	
4 2020-21	2,025	1,467	72.4%	250	12.3%	308	15.2%	
5 Total Cases	11,233	8,764	78.0%	1,280	11.4%	1,189	10.6%	

Source: Exhibit 4.2

[1] Instances in which a decision does not fully or partially support the parent.

G. Resolution Sessions

71. Stout analyzed the Resolution Data for Relevant Cases to determine how frequently the resolution period elapsed without a resolution meeting being held.

72. The possible Resolution Period Results include:

- Resolution Period Result 1. Waived by Both Parties – Entire Period;
- Resolution Period Result 2. Written Settlement Agreement;
- Resolution Period Result 3. Proceed to Impartial Hearing – Resolution Period Elapsed;
- Resolution Period Result 4. Request Withdrawn;
- Resolution Period Result 5. Partial Agreement – Proceed to Hearing;
- Resolution Period Result 6. Waived by Both Parties – Remainder of Period;
- Resolution Period Result 7. Proceed to Impartial Hearing at Parent Request;
- Resolution Period Result 8. Proceed to Expedited Hearing – 15 Days Elapsed;
- Resolution Period Result 9. Continue Mediation – Hearing Timeline on Hold;
- Resolution Period Result 10. Amended; and

Resolution Period Result 11. Consolidated.

73. First, Stout calculated how many Relevant Cases proceeded to an impartial hearing because the resolution period elapsed, *i.e.*, the number of cases associated with Resolution Period Result 3. Next, Stout used the Resolution Meeting Data to determine how many resolution meetings were held for those cases associated with Resolution Period Result 3.

74. Stout calculated that the resolution period elapsed without a resolution meeting being held in 34,727 Relevant Cases, or 85.3% of Relevant Cases. Refer to **Exhibit 5** for greater detail.

CONCLUSION

75. In conclusion, Stout reviewed data extracted from the IHS and IHRS and analyzed the data extracted from the IHRS. Given the analyses performed based on the data produced to Stout, the following metrics were measured:

- a. Assuming all extensions are valid, 14,003 cases, or 37.7% of Relevant Cases, were untimely closed;³²
- b. Assuming only Waitlist Extensions were invalid, 13,994, or 57.6%, of Waitlist Extension Relevant Cases were untimely closed or remain open and untimely;³³
- c. In 22,072 Relevant Cases, at least one extension was granted retroactively, comprising 54.2% of all Relevant Cases, and 65.2% of Relevant Cases with at least one granted extension;³⁴
- d. In 4,405 Relevant Cases, or 10.8% of all Relevant Cases, more than one extension was granted simultaneously;³⁵

³² Refer to Exhibit 1.

³³ Refer to Exhibit 3.3.

³⁴ Refer to Table 10.

³⁵ Refer to Table 11.

- e. On average, Relevant Cases lasted for 284 days;³⁶
- f. When IHOs entered decisions in Relevant Cases, the IHO found in favor of the parent on the issues in the case 78.0% of the time, and partially in favor of the parent an addition 11.4% of the time;³⁷
- g. For 34,727, or 85.3% of, Relevant Cases, the resolution period ended because it elapsed after 30 days without any resolution meeting being held.³⁸

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 26, 2022

New York, New York

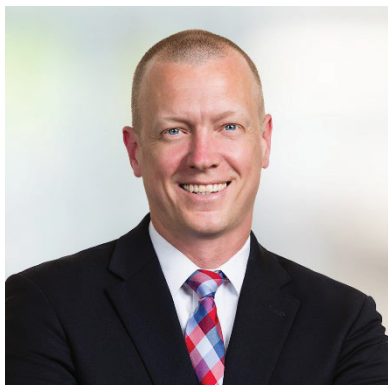


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³⁶ Refer to Exhibit 1.1.

³⁷ Refer to Exhibit 4.2.

³⁸ Refer to Exhibit 5.



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Neil Steinkamp is a well-recognized expert and consultant on a broad range of strategic, organizational, and financial issues to government, business, court and community leaders and their advisors. He has nearly 20 years of experience covering many industries and matter types. Clients seek Neil for his comprehensive understanding of: transformative change strategies; complex structured and unstructured data analysis and assessment; multi-stakeholder collaboration and coordination; the development of pathways to compliance and iterative change strategies; financial and fiscal impact analyses; and other complex topics. He has worked extensively to help resolve sophisticated problems involving large-scale industry and social issues.

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Neil has provided testimony in a variety of venues, including bench and jury trials and domestic and international arbitration. He has also assisted parties in numerous complex resolutions involving settlement negotiations, mediation, and facilitation.

He also leads Stout's Pro Bono practice. In this capacity, Neil has served a wide range of individuals and organizations through the application of financial, economic, strategic, and data analysis concepts that benefit low-income individuals and underserved communities.

Awards, Recognitions, and Community Engagement

- Pro Bono Innovator - Legal Aid Society of New York City (2014)
- Denis Berger Corporate Leader Award - Brooklyn Legal Services Corporation A (2017)
- Extraordinary Service Recognition - Philadelphia Bar Association, Civil Gideon and Access to Justice Task Force (2018)
- Commitment to Justice Award - Her Justice (2021)
- Outstanding Partner Award – Public Justice Center (2021)
- Pro Bono Publico Award - Legal Aid Society of New York City (2021)
- Chair of the Housing Rights Sub-Committee of the American Bar Association's Litigation Section Civil Rights Committee (2021)

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Testimony Experience

Saginaw Chippewa Indian Tribe of Michigan and Its Welfare Benefit Plan v. Blue Cross Blue Shield of Michigan
United States District Court Eastern District of Michigan (2017)

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- "Fraud and Forensic Services in the Accounting Profession – An Overview," Guest Lecturer, Walsh College Master of Accountancy Program, Fall 2008
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J.S.M. et al. v. New York City Dept. of Education et al.
Documents Relied Upon
Appendix B

Beginning Bates	Ending Bates
DOE 012425	DOE 012427
DOE 013267	DOE 013274
DOE 013276	DOE 013279
DOE 013282	DOE 013284
DOE 013376	DOE 013400
DOE 013840	DOE 013844
DOE 013914	DOE 013916
DOE 013919	DOE 013921
DOE 016568	DOE 016570
DOE 016577	DOE 016581
DOE 016852	DOE 016855
DOE 017417	DOE 017428
DOE 018036	DOE 018038
DOE 018055	DOE 018057
DOE 020128	DOE 020129
DOE 020131	DOE 020131
DOE 020569	DOE 020570
DOE 020815	DOE 020817
DOE 020850	DOE 020851
DOE 020989	DOE 020992
DOE 021030	DOE 021033
DOE 021258	DOE 021263
DOE 5753	DOE 5757
DOE 6398	DOE 6399
DOE 6422	DOE 6423
DOE 6469	DOE 6469
DOE 6471	DOE 6473
DOE 6568	DOE 6569
DOE 6616	DOE 6617
DOE 7930	DOE 7931
DOE_000074	DOE_000078
DOE_000090	DOE_000124
DOE_000128	DOE 000141
DOE_000147	DOE_000147
DOE_000150	DOE_000150
DOE_000277	DOE_000280
DOE_000316	DOE_000316
DOE_001121	DOE_001122
DOE_001787	DOE_001789
DOE_001934	DOE_001935
DOE_002576	DOE_002578
DOE_002888	DOE_002889
DOE_002969	DOE_002970
DOE_004840	DOE_004842
DOE_004992	DOE_004992
DOE_005161	DOE_005161
DOE_017207	DOE_017209
DOE_018089	DOE_018090
DOE_018496	DOE_018507
State Def 1	State Def 15

**J.S.M. et al. v. New York City Dept. of Education et al.
Documents Relied Upon
Appendix B**

Beginning Bates Cont.	Ending Bates Cont.
State Def 12	State Def 14
State Def 1333	State Def 1335
State Def 1357	State Def 1440
State Def 1728	State Def 1739
State Def 2840	State Def 2844
State Def 409	State Def 451
State Def 611	State Def 612
State Def 647	State Def 649
State Def 702	State Def 705
State Def 766	State Def 2834
STATE DEF ESI 00010459	STATE DEF ESI 00010460
STATE DEF ESI 00011017	STATE DEF ESI 00011022
STATE DEF ESI00009578	STATE DEF ESI00009580
STATE DEF ESI00009729	STATE DEF ESI00009732
STATE DEF ESI00010453	STATE DEF ESI00010456
STATE DEF ESI00010858	STATE DEF ESI00010859
STATE DEF ESI00010876	STATE DEF ESI00010877
STATE DEF ESI00010917	STATE DEF ESI00010917
STATE_DEF_ESI00000909	STATE_DEF_ESI00000909

Other Documents

J.S.M. v. NYCDOE, et al. - February 11, 2022 Letter to Plaintiffs.pdf
Copy of FTP File Format_IHS - (# Legal 12186948_1)(50389 KB).XLSX
Data Request to City.msg
IHS Data Request.xlsx
Data Request to State.msg
IHRS Data Request.xlsx
J.S.M - SED Responses to M&C Questions.pdf
RCM_CM Active Cases_01052022.xlsx
Request Not Uploaded_01042022.xlsx
Transcripts Due_01042022.xlsx
Example - DPC confirmation email.pdf
Sample Extension Order.docx
JSM IESP Data (002).pdf

Data Tables

Data extracted from Impartial Hearing System
Data extracted from Impartial Hearing Reporting System

Legal Proceedings

Amended Class Action Complaint for Declaratory and Injunctive Relief, filed March 20, 2020

Publicly Available Information

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J.S.M. et al. v. New York City Dept. of Education et al.
Timeliness of Cases by School Year of DPC Filing
Exhibit 1

	School Year of DPC Filing	Cases Requested	SY17-18						
			[1]		[1]		[2]	[2]	
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases
1	SY17-18	7,144	3,064	87.69%	430	12.31%	3,494	3,444	48
2	SY18-19	9,694							
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	3,064	87.69%	430	12.31%	3,494	3,444	48

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing
Exhibit 1

		SY18-19							
		[1]		[1]		[2]		[2]	
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	7,144	2,112	74.95%	706	25.05%	2,818	556	27
2	SY18-19	9,694	2,447	66.49%	1,233	33.51%	3,680	5,515	293
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	4,559	70.16%	1,939	29.84%	6,498	6,071	320

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing
Exhibit 1

		SY19-20							
		[1]		[1]		[2]		[2]	
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	7,144	186	44.50%	232	55.50%	418	137	15
2	SY18-19	9,694	2,143	46.74%	2,442	53.26%	4,585	954	142
3	SY19-20	10,798	1,835	60.28%	1,209	39.72%	3,044	6,902	660
4	SY20-21	14,264							
5	Total Cases	41,900	4,164	51.75%	3,883	48.25%	8,047	7,993	817

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing
Exhibit 1

		SY20-21							
		[1]		[1]		[2]		[2]	
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	7,144	37	37.37%	62	62.63%	99	46	4
2	SY18-19	9,694	431	47.00%	486	53.00%	917	161	15
3	SY19-20	10,798	3,508	54.03%	2,985	45.97%	6,493	898	71
4	SY20-21	14,264	1,946	57.18%	1,457	42.82%	3,403	8,806	1,870
5	Total Cases	41,900	5,922	54.27%	4,990	45.73%	10,912	9,911	1,960

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing
Exhibit 1

		SY21-22							
		[1]		[1]		[3]		[3]	
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	7,144	11	52.38%	10	47.62%	21	5	20
2	SY18-19	9,694	55	61.11%	35	38.89%	90	30	48
3	SY19-20	10,798	425	72.77%	159	27.23%	584	186	189
4	SY20-21	14,264	4,927	65.83%	2,557	34.17%	7,484	2,028	1,085
5	Total Cases	41,900	5,418	66.24%	2,761	33.76%	8,179	2,249	1,342

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing
Exhibit 1

	School Year of DPC Filing	Cases Requested	Total				Total Closures	[3] Timely Open Cases	[3] Untimely Open Cases
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures			
1	SY17-18	7,144	5,410	78.98%	1,440	21.02%	6,850	5	20
2	SY18-19	9,694	5,076	54.75%	4,196	45.25%	9,272	30	48
3	SY19-20	10,798	5,768	56.99%	4,353	43.01%	10,121	186	189
4	SY20-21	14,264	6,873	63.13%	4,014	36.87%	10,887	2,028	1,085
5	Total Cases	41,900	23,127	62.29%	14,003	37.71%	37,130	2,249	1,342

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

J.S.M. et al. v. New York City Dept. of Education et al.
Length Between Request Date and Case Closure by School Year of DPC Filing
Exhibit 1.1

			SY17-18								
			Timely Closures [1]			Untimely Closures [1]			Total		
School Year of DPC Filing	Cases Requested		Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days
1	SY17-18	7,144	3,064	148	143	430	191	187	3,494	153	149
2	SY18-19	9,694									
3	SY19-20	10,798									
4	SY20-21	14,264									
5	Total Cases	41,900	3,064	148	143	430	191	187	3,494	153	149

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases that were requested in previous school years that closed in school year '21-22.

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Length Between Request Date and Case Closure by School Year of DPC Filing
Exhibit 1.1

		SY18-19									
		Timely Closures [1]			Untimely Closures [1]			Total			
School Year of DPC Filing	Cases Requested	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	
1	SY17-18	7,144	2,112	275	293	706	342	336.5	2,818	291	303
2	SY18-19	9,694	2,447	140	127	1,233	194	195	3,680	158	153
3	SY19-20	10,798									
4	SY20-21	14,264									
5	Total Cases	41,900	4,559	203	195	1,939	248	231	6,498	216	210

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases that were requested in previous school years that closed in school year '21-22.

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Length Between Request Date and Case Closure by School Year of DPC Filing
Exhibit 1.1

		SY19-20									
		Timely Closures [1]			Untimely Closures [1]			Total			
School Year of DPC Filing	Cases Requested	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	
1	SY17-18	7,144	186	593	583.5	232	632	630	418	615	602
2	SY18-19	9,694	2,143	310	312	2,442	328	326	4,585	320	322
3	SY19-20	10,798	1,835	164	177	1,209	191	189	3,044	175	181
4	SY20-21	14,264									
5	Total Cases	41,900	4,164	258	253	3,883	304	288	8,047	280	273

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases that were requested in previous school years that closed in school year '21-22.

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Length Between Request Date and Case Closure by School Year of DPC Filing
Exhibit 1.1

		SY20-21									
		Timely Closures [1]			Untimely Closures [1]			Total			
School Year of DPC Filing	Cases Requested	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	
1	SY17-18	7,144	37	979	970	62	1,045	1062	99	1,020	1013
2	SY18-19	9,694	431	622	612	486	646	637.5	917	635	630
3	SY19-20	10,798	3,508	319	314	2,985	357	343	6,493	336	327
4	SY20-21	14,264	1,946	159	161	1,457	216	226	3,403	184	192
5	Total Cases	41,900	5,922	292	294	4,990	353	314	10,912	320	302

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases that were requested in previous school years that closed in school year '21-22.

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Length Between Request Date and Case Closure by School Year of DPC Filing
Exhibit 1.1

		SY21-22 [2]									
		Timely Closures [1]			Untimely Closures [1]			Total			
School Year of DPC Filing	Cases Requested	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	
1	SY17-18	7,144	11	1,320	1303	10	1,427	1431.5	21	1,371	1412
2	SY18-19	9,694	55	962	967	35	1,027	1036	90	988	1004
3	SY19-20	10,798	425	601	608	159	592	580	584	598	595.5
4	SY20-21	14,264	4,927	330	346	2,557	303	313	7,484	321	336
5	Total Cases	41,900	5,418	360	354	2,761	332	316	8,179	350	343

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.
Length Between Request Date and Case Closure by School Year of DPC Filing
Exhibit 1.1

School Year of DPC Filing	Cases Requested	Total									
		Timely Closures [1]			Untimely Closures [1]			Total			
		Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	
1	SY17-18	7,144	5,410	221	197	1,440	381	319	6,850	254	220
2	SY18-19	9,694	5,076	262	236	4,196	332	298	9,272	293	269
3	SY19-20	10,798	5,768	290	292	4,353	319	310	10,121	303	300
4	SY20-21	14,264	6,873	282	320	4,014	271	295	10,887	278	306
5	Total Cases	41,900	23,127	265	273	14,003	316	299	37,130	284	288

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.
Length Between Request Date and Final IHO Assignment by School Year of DPC Filing
Exhibit 1.2

			SY17-18								
			Timely Closures [1]			Untimely Closures [1]			Total		
School Year of DPC Filing	Cases Requested		Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days
1	SY17-18	7,144	3,063	11	3	430	15	6	3,493	11	3
2	SY18-19	9,694									
3	SY19-20	10,798									
4	SY20-21	14,264									
5	Total Cases	41,900	3,063	11	3	430	15	6	3,493	11	3

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases that were requested in previous school years that closed in school year '21-22.
- [3] Two cases, case 506793 and 540159, are reflected in the Assignments Data but to Recused or Rescinded ("REAP_CODE") assignments. For this, the total number of cases closed above differs from the 37,130 cases closed.

J.S.M. et al. v. New York City Dept. of Education et al.
Length Between Request Date and Final IHO Assignment by School Year of DPC Filing
Exhibit 1.2

		SY18-19									
		Timely Closures [1]			Untimely Closures [1]			Total			
School Year of DPC Filing	Cases Requested	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	
1	SY17-18	7,144	2,112	14	2	706	16	2	2,818	14	2
2	SY18-19	9,694	2,447	10	3	1,233	16	3	3,680	12	3
3	SY19-20	10,798									
4	SY20-21	14,264									
5	Total Cases	41,900	4,559	12	3	1,939	16	3	6,498	13	3

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases that were requested in previous school years that closed in school year '21-22.
- [3] Two cases, case 506793 and 540159, are reflected in the Assignments Data but to Recused or Rescinded ("REAP_CODE") assignments. For this, the total number of cases closed above differs from the 37,130 cases closed.

J.S.M. et al. v. New York City Dept. of Education et al.
Length Between Request Date and Final IHO Assignment by School Year of DPC Filing
Exhibit 1.2

		SY19-20									
		Timely Closures [1]			Untimely Closures [1]			Total			
School Year of DPC Filing	Cases Requested	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	
1	SY17-18	7,144	186	62	1	232	66	1	418	64	1
2	SY18-19	9,694	2,143	26	3	2,442	31	3	4,585	29	3
3	SY19-20	10,798	1,835	31	6	1,209	22	6	3,044	28	6
4	SY20-21	14,264									
5	Total Cases	41,900	4,164	30	4	3,883	31	4	8,047	30	4

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases that were requested in previous school years that closed in school year '21-22.
- [3] Two cases, case 506793 and 540159, are reflected in the Assignments Data but to Recused or Rescinded ("REAP_CODE") assignments. For this, the total number of cases closed above differs from the 37,130 cases closed.

J.S.M. et al. v. New York City Dept. of Education et al.
Length Between Request Date and Final IHO Assignment by School Year of DPC Filing
Exhibit 1.2

		SY20-21									
		Timely Closures [1]			Untimely Closures [1]			Total			
School Year of DPC Filing	Cases Requested	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	
1	SY17-18	7,144	37	48	1	62	63	1	99	57	1
2	SY18-19	9,694	431	51	3	486	54	4	917	53	3
3	SY19-20	10,798	3,508	80	23	2,985	62	11	6,493	71	13
4	SY20-21	14,264	1,945	70	16	1,457	46	16	3,402	60	16
5	Total Cases	41,900	5,921	74	14	4,990	56	13	10,911	66	13

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases that were requested in previous school years that closed in school year '21-22.
- [3] Two cases, case 506793 and 540159, are reflected in the Assignments Data but to Recused or Rescinded ("REAP_CODE") assignments. For this, the total number of cases closed above differs from the 37,130 cases closed.

J.S.M. et al. v. New York City Dept. of Education et al.
Length Between Request Date and Final IHO Assignment by School Year of DPC Filing
Exhibit 1.2

		SY21-22 [2]									
		Timely Closures [1]			Untimely Closures [1]			Total			
School Year of DPC Filing	Cases Requested	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	
1	SY17-18	7,144	11	51	1	10	29	0.5	21	41	1
2	SY18-19	9,694	55	56	4	35	29	3	90	46	4
3	SY19-20	10,798	425	82	69	159	84	119	584	83	69.5
4	SY20-21	14,264	4,927	214	292	2,557	44	15	7,484	156	124.5
5	Total Cases	41,900	5,418	202	232	2,761	46	15	8,179	149	112

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases that were requested in previous school years that closed in school year '21-22.
- [3] Two cases, case 506793 and 540159, are reflected in the Assignments Data but to Recused or Rescinded ("REAP_CODE") assignments. For this, the total number of cases closed above differs from the 37,130 cases closed.

J.S.M. et al. v. New York City Dept. of Education et al.
Length Between Request Date and Final IHO Assignment by School Year of DPC Filing
Exhibit 1.2

School Year of DPC Filing	Cases Requested	Total									
		Timely Closures [1]			Untimely Closures [1]			Total [3]			
		Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	
1	SY17-18	7,144	5,409	14	2	1,440	26	3	6,849	17	2
2	SY18-19	9,694	5,076	21	3	4,196	29	3	9,272	25	3
3	SY19-20	10,798	5,768	64	9	4,353	52	8	10,121	59	8
4	SY20-21	14,264	6,872	173	166	4,014	45	15	10,886	126	28
5	Total Cases	41,900	23,125	75	8	14,003	40	7	37,128	62	7

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases that were requested in previous school years that closed in school year '21-22.
- [3] Two cases, case 506793 and 540159, are reflected in the Assignments Data but to Recused or Rescinded ("REAP_CODE") assignments. For this, the total number of cases closed above differs from the 37,130 cases closed.

J.S.M. et al. v. New York City Dept. of Education et al.
Number of Days of Untimeliness for Closed Cases by School Year of DPC Filing
Exhibit 1.3

Number of Untimely Case Closures [1]

Number of Days Untimely		SY17-18	SY18-19	SY19-20	SY20-21	Total	Number of Days Untimely		SY17-18	SY18-19	SY19-20	SY20-21	Total
1	1	122	186	173	126	607	34	34	5	35	26	15	81
2	2	68	158	117	61	404	35	35	19	41	51	18	129
3	3	70	98	91	61	320	36	36	13	39	61	18	131
4	4	75	116	94	50	335	37	37	13	36	30	24	103
5	5	51	80	63	29	223	38	38	11	38	28	11	88
6	6	70	87	63	28	248	39	39	7	26	32	11	76
7	7	87	113	105	45	350	40	40	5	21	27	16	69
8	8	68	130	85	38	321	41	41	3	24	30	11	68
9	9	32	116	72	24	244	42	42	9	44	42	31	126
10	10	38	105	50	22	215	43	43	8	33	31	13	85
11	11	30	86	53	33	202	44	44	9	36	35	7	87
12	12	32	56	46	10	144	45	45	7	35	36	14	92
13	13	33	76	42	21	172	46	46	2	25	28	10	65
14	14	34	97	75	28	234	47	47	-	19	11	4	34
15	15	31	107	70	29	237	48	48	4	22	21	16	63
16	16	25	78	50	16	169	49	49	8	32	46	22	108
17	17	24	67	61	23	175	50	50	5	17	39	18	79
18	18	17	73	46	18	154	51	51	9	25	27	14	75
19	19	17	41	23	20	101	52	52	6	22	24	18	70
20	20	20	65	52	13	150	53	53	3	12	19	10	44
21	21	25	74	72	33	204	54	54	8	10	22	7	47
22	22	22	73	57	26	178	55	55	6	25	29	14	74
23	23	11	52	49	32	144	56	56	5	36	49	20	110
24	24	13	48	53	30	144	57	57	5	23	42	25	95
25	25	12	53	48	24	137	58	58	3	21	34	11	69
26	26	11	33	40	16	100	59	59	2	27	24	13	66
27	27	12	43	52	18	125	60	60	5	24	27	6	62
28	28	13	65	52	23	153	61	61	2	19	16	6	43
29	29	16	76	65	27	184	62	62	4	17	22	5	48
30	30	8	54	45	27	134	63	63	5	21	25	22	73
31	31	9	55	50	24	138	64	64	6	17	26	4	53
32	32	8	37	54	21	120	65	65	4	17	18	21	60
33	33	5	24	21	11	61	66	66	1	12	8	9	30

J.S.M. et al. v. New York City Dept. of Education et al.
Number of Days of Untimeliness for Closed Cases by School Year of DPC Filing
Exhibit 1.3

Number of Untimely Case Closures [1]

	Number of Days Untimely					Total		Number of Days Untimely					Total
	SY17-18	SY18-19	SY19-20	SY20-21				SY17-18	SY18-19	SY19-20	SY20-21		
67	67	3	10	13	8	34	100	100	-	8	12	12	32
68	68	6	8	14	5	33	101	101	1	5	10	8	24
69	69	3	16	19	7	45	102	102	-	5	12	6	23
70	70	4	26	23	17	70	103	103	1	5	4	6	16
71	71	2	22	28	4	56	104	104	1	1	10	6	18
72	72	1	14	13	17	45	105	105	1	9	15	10	35
73	73	3	15	17	8	43	106	106	-	6	9	7	22
74	74	5	10	21	7	43	107	107	4	8	16	9	37
75	75	-	18	9	6	33	108	108	1	9	8	9	27
76	76	3	16	10	15	44	109	109	1	5	10	5	21
77	77	3	19	24	28	74	110	110	-	4	5	1	10
78	78	3	15	19	14	51	111	111	1	7	11	7	26
79	79	1	10	17	13	41	112	112	1	6	16	7	30
80	80	3	11	21	9	44	113	113	2	6	6	10	24
81	81	2	5	16	9	32	114	114	3	9	7	8	27
82	82	1	13	17	10	41	115	115	-	6	15	11	32
83	83	1	8	19	4	32	116	116	2	6	5	5	18
84	84	2	16	25	13	56	117	117	-	4	9	-	13
85	85	1	15	20	12	48	118	118	1	4	7	7	19
86	86	1	7	15	13	36	119	119	-	4	15	6	25
87	87	2	13	17	7	39	120	120	-	2	15	11	28
88	88	1	10	13	6	30	121	121	1	5	11	9	26
89	89	-	7	9	2	18	122	122	-	4	9	8	21
90	90	2	6	13	7	28	123	123	1	2	8	7	18
91	91	2	8	12	14	36	124	124	-	7	7	4	18
92	92	3	7	14	12	36	125	125	1	3	5	3	12
93	93	1	5	16	12	34	126	126	1	7	10	10	28
94	94	1	4	14	4	23	127	127	1	3	7	11	22
95	95	2	3	11	10	26	128	128	2	4	12	6	24
96	96	1	5	5	5	16	129	129	-	-	4	8	12
97	97	1	7	5	7	20	130	130	-	5	10	3	18
98	98	3	5	22	12	42	131	131	-	2	4	3	9
99	99	1	8	8	14	31	132	132	-	4	6	5	15

J.S.M. et al. v. New York City Dept. of Education et al.
Number of Days of Untimeliness for Closed Cases by School Year of DPC Filing
Exhibit 1.3

Number of Untimely Case Closures [1]

	Number of Days Untimely					Total		Number of Days Untimely					Total
	SY17-18	SY18-19	SY19-20	SY20-21				SY17-18	SY18-19	SY19-20	SY20-21		
133	133	2	3	9	14	28	166	166	-	1	4	4	9
134	134	-	7	7	10	24	167	167	1	4	12	3	20
135	135	-	2	11	6	19	168	168	1	5	7	6	19
136	136	1	3	8	9	21	169	169	-	2	6	7	15
137	137	2	4	9	5	20	170	170	1	3	5	5	14
138	138	1	4	8	4	17	171	171	-	3	5	4	12
139	139	1	3	5	3	12	172	172	-	-	3	9	12
140	140	2	5	12	7	26	173	173	-	3	1	2	6
141	141	-	7	8	5	20	174	174	-	-	4	3	7
142	142	-	5	6	7	18	175	175	-	1	4	4	9
143	143	-	-	6	8	14	176	176	-	-	4	9	13
144	144	-	-	4	1	5	177	177	-	3	5	5	13
145	145	5	-	6	1	12	178	178	1	3	4	2	10
146	146	-	3	6	3	12	179	179	-	-	3	2	5
147	147	-	1	11	9	21	180	180	-	1	2	2	5
148	148	1	7	8	4	20	181	181	-	-	3	4	7
149	149	-	1	5	6	12	182	182	-	1	7	8	16
150	150	2	4	7	8	21	183	183	-	3	2	6	11
151	151	-	1	4	4	9	184	184	-	1	2	18	21
152	152	-	5	4	2	11	185	185	-	-	3	5	8
153	153	2	4	6	6	18	186	186	-	1	2	3	6
154	154	2	1	5	11	19	187	187	-	1	3	-	4
155	155	1	6	9	6	22	188	188	-	1	4	6	11
156	156	-	4	10	10	24	189	189	-	2	2	9	13
157	157	-	3	8	8	19	190	190	-	-	2	13	15
158	158	-	4	2	4	10	191	191	-	-	4	23	27
159	159	1	1	4	4	10	192	192	1	2	1	7	11
160	160	1	4	7	8	20	193	193	-	-	-	5	5
161	161	-	-	9	6	15	194	194	-	-	2	1	3
162	162	-	4	4	7	15	195	195	-	1	1	3	5
163	163	-	3	14	5	22	196	196	-	1	2	13	16
164	164	-	4	2	7	13	197	197	-	1	3	9	13
165	165	-	1	5	1	7	198	198	-	-	2	14	16

J.S.M. et al. v. New York City Dept. of Education et al.
Number of Days of Untimeliness for Closed Cases by School Year of DPC Filing
Exhibit 1.3

Number of Untimely Case Closures [1]

	Number of Days Untimely					Total		Number of Days Untimely					Total
	SY17-18	SY18-19	SY19-20	SY20-21				SY17-18	SY18-19	SY19-20	SY20-21		
199	199	-	-	2	3	5	232	232	-	1	-	50	51
200	200	-	1	-	1	2	233	233	-	-	1	17	18
201	201	-	2	1	1	4	234	234	-	-	-	18	18
202	202	-	-	2	2	4	235	235	-	-	-	8	8
203	203	-	2	-	10	12	236	236	-	-	-	3	3
204	204	-	1	1	12	14	237	237	-	-	1	10	11
205	205	-	1	9	12	22	238	238	-	1	2	52	55
206	206	-	1	-	9	10	239	239	-	-	-	25	25
207	207	-	2	-	4	6	240	240	-	1	1	34	36
208	208	1	1	-	1	3	241	241	-	1	3	11	15
209	209	-	-	1	4	5	242	242	1	-	1	3	5
210	210	-	3	1	14	18	243	243	-	-	2	4	6
211	211	-	1	4	10	15	244	244	-	-	-	14	14
212	212	-	1	1	22	24	245	245	-	-	1	10	11
213	213	-	1	-	6	7	246	246	-	1	2	21	24
214	214	-	-	2	6	8	247	247	-	-	4	28	32
215	215	-	-	1	-	1	248	248	-	-	1	6	7
216	216	-	-	2	6	8	249	249	-	1	2	1	4
217	217	-	1	5	25	31	250	250	-	-	-	2	2
218	218	-	-	1	13	14	251	251	-	-	-	5	5
219	219	-	-	1	243	244	252	252	-	1	2	21	24
220	220	1	1	-	33	35	253	253	-	-	2	19	21
221	221	-	-	1	29	30	254	254	-	-	1	15	16
222	222	-	1	2	5	8	255	255	-	-	1	10	11
223	223	-	2	1	5	8	256	256	-	-	2	1	3
224	224	-	-	6	22	28	257	258	-	-	2	5	7
225	225	-	-	1	44	45	258	259	-	-	-	12	12
226	226	-	-	1	54	55	259	260	-	-	2	12	14
227	227	-	-	-	26	26	260	261	-	-	1	26	27
228	228	-	1	-	22	23	261	262	-	-	-	11	11
229	229	-	1	-	1	2	262	263	-	1	-	6	7
230	230	-	-	-	9	9	263	264	-	-	-	1	1
231	231	-	1	2	30	33	264	265	-	-	1	9	10

J.S.M. et al. v. New York City Dept. of Education et al.
Number of Days of Untimeliness for Closed Cases by School Year of DPC Filing
Exhibit 1.3

Number of Untimely Case Closures [1]

	Number of Days Untimely	SY17-18	SY18-19	SY19-20	SY20-21	Total
265	266	-	-	-	23	23
266	267	-	-	1	18	19
267	268	-	-	-	10	10
268	269	-	-	-	11	11
269	270	-	-	-	4	4
270	271	-	-	-	2	2
271	272	-	-	1	9	10
272	273	-	-	2	22	24
273	274	-	-	-	27	27
274	275	-	1	1	12	14
275	276	-	-	-	10	10
276	278	-	-	-	1	1
277	279	-	2	-	11	13
278	280	-	-	1	33	34
279	281	-	-	-	41	41
280	282	-	-	-	1	1
281	283	-	-	-	2	2
282	284	-	-	-	1	1
283	285	-	-	-	1	1
284	286	-	1	-	3	4
285	287	-	-	-	25	25
286	288	-	1	1	33	35
287	289	-	-	-	4	4
288	290	-	-	1	22	23
289	291	-	-	-	33	33
290	292	-	-	-	3	3
291	293	-	-	1	9	10
292	294	-	-	-	13	13
293	295	-	1	-	18	19
294	296	-	1	-	12	13
295	297	-	1	-	3	4
296	302	-	-	1	-	1
297	304	-	-	1	-	1

	Number of Days Untimely	SY17-18	SY18-19	SY19-20	SY20-21	Total
298	308	-	-	2	-	2
299	309	1	-	-	-	1
300	314	-	-	1	-	1
301	315	-	1	-	-	1
302	318	-	1	-	-	1
303	321	-	1	-	-	1
304	322	-	-	1	-	1
305	335	-	1	-	-	1
306	343	-	-	1	-	1
307	346	-	1	-	-	1
308	362	1	-	1	-	2
309	363	-	1	-	-	1
310	365	-	-	1	-	1
311	366	-	-	1	-	1
312	371	-	-	1	-	1
313	376	-	-	1	-	1
314	378	-	-	1	-	1
315	417	-	-	1	-	1
316	647	-	-	1	-	-

Total Cases **1,440** **4,196** **4,353** **4,014** **14,003**

Untimeliness Statistics (Days)

Median:	12	23	36	128	35
Average:	24	38	54	135	69

Source: State Def 3143.xlsx

[1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases that were closed by an actual decision, settled, or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.

J.S.M. et al. v. New York City Dept. of Education et al.
Timeliness of Cases by School Year of DPC Filing (Recalculated Current Compliance Dates)
Exhibit 2

	School Year of DPC Filing	Cases Requested	SY17-18						
			[1]		[1]		[2]		
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases
1	SY17-18	7,144	2,970	85.00%	524	15.00%	3,494	3,441	51
2	SY18-19	9,694							
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	2,970	85.00%	524	15.00%	3,494	3,441	51

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Recalculated Current Compliance Dates)
Exhibit 2

		SY18-19							
		[1]		[1]		[2]		[2]	
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	7,144	2,052	72.82%	766	27.18%	2,818	554	29
2	SY18-19	9,694	2,528	68.70%	1,152	31.30%	3,680	5,519	289
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	4,580	70.48%	1,918	29.52%	6,498	6,073	318

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Recalculated Current Compliance Dates)

Exhibit 2

	School Year of DPC Filing	Cases Requested	SY19-20						
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures	Total Closures	[2] Timely Open Cases	[2] Untimely Open Cases
1	SY17-18	7,144	205	49.04%	213	50.96%	418	137	15
2	SY18-19	9,694	2,342	51.08%	2,243	48.92%	4,585	945	151
3	SY19-20	10,798	1,809	59.43%	1,235	40.57%	3,044	6,380	1,182
4	SY20-21	14,264							
5	Total Cases	41,900	4,356	54.13%	3,691	45.87%	8,047	7,462	1,348

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Recalculated Current Compliance Dates)

Exhibit 2

	School Year of DPC Filing	Cases Requested	SY20-21						
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures	Total Closures	[2] Timely Open Cases	[2] Untimely Open Cases
1	SY17-18	7,144	64	64.65%	35	35.35%	99	46	4
2	SY18-19	9,694	651	70.99%	266	29.01%	917	167	9
3	SY19-20	10,798	3,668	56.49%	2,825	43.51%	6,493	889	80
4	SY20-21	14,264	1,667	48.99%	1,736	51.01%	3,403	5,624	5,052
5	Total Cases	41,900	6,050	55.44%	4,862	44.56%	10,912	6,726	5,145

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Recalculated Current Compliance Dates)

Exhibit 2

		SY21-22							
		[1]		[1]		[3]		[3]	
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	7,144	18	85.71%	3	14.29%	21	22	3
2	SY18-19	9,694	78	86.67%	12	13.33%	90	72	6
3	SY19-20	10,798	452	77.40%	132	22.60%	584	305	70
4	SY20-21	14,264	2,283	30.51%	5,201	69.49%	7,484	828	2,285
5	Total Cases	41,900	2,831	34.61%	5,348	65.39%	8,179	1,227	2,364

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Recalculated Current Compliance Dates)

Exhibit 2

	School Year of DPC Filing	Cases Requested	Total				Total Closures	[3] Timely Open Cases	[3] Untimely Open Cases
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures			
1	SY17-18	7,144	5,309	77.50%	1,541	22.50%	6,850	22	3
2	SY18-19	9,694	5,599	60.39%	3,673	39.61%	9,272	72	6
3	SY19-20	10,798	5,929	58.58%	4,192	41.42%	10,121	305	70
4	SY20-21	14,264	3,950	36.28%	6,937	63.72%	10,887	828	2,285
5	Total Cases	41,900	20,787	55.98%	16,343	44.02%	37,130	1,227	2,364

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming All Potentially Invalid Extensions are Invalid)
Exhibit 2.1

	School Year of DPC Filing	Cases Requested	SY17-18						
			[1]		[1]		Total Closures	[2] Timely Open Cases	[2] Untimely Open Cases
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures		
1	SY17-18	7,144	1,222	34.97%	2,272	65.03%	3,494	1,889	1,603
2	SY18-19	9,694							
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	1,222	34.97%	2,272	65.03%	3,494	1,889	1,603

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

J.S.M. et al. v. New York City Dept. of Education et al.
Timeliness of Cases by School Year of DPC Filing (Assuming All Potentially Invalid Extensions are Invalid)
Exhibit 2.1

	School Year of DPC Filing	Cases Requested	SY18-19						
			[1]		[1]		[2]		
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases
1	SY17-18	7,144	458	16.25%	2,360	83.75%	2,818	211	372
2	SY18-19	9,694	1,140	30.98%	2,540	69.02%	3,680	2,941	2,867
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	1,598	24.59%	4,900	75.41%	6,498	3,152	3,239

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming All Potentially Invalid Extensions are Invalid)

Exhibit 2.1

		SY19-20							
		[1]		[1]		[2]		[2]	
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	7,144	37	8.85%	381	91.15%	418	55	97
2	SY18-19	9,694	429	9.36%	4,156	90.64%	4,585	273	823
3	SY19-20	10,798	726	23.85%	2,318	76.15%	3,044	2,951	4,611
4	SY20-21	14,264							
5	Total Cases	41,900	1,192	14.81%	6,855	85.19%	8,047	3,279	5,531

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming All Potentially Invalid Extensions are Invalid)

Exhibit 2.1

		SY20-21							
		[1]		[1]				[2]	[2]
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures		Timely Open Cases	Untimely Open Cases
1	SY17-18	7,144	13	13.13%	86	86.87%	99	34	16
2	SY18-19	9,694	116	12.65%	801	87.35%	917	92	84
3	SY19-20	10,798	1,001	15.42%	5,492	84.58%	6,493	316	653
4	SY20-21	14,264	897	26.36%	2,506	73.64%	3,403	2,200	8,476
5	Total Cases	41,900	2,027	18.58%	8,885	81.42%	10,912	2,642	9,229

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

J.S.M. et al. v. New York City Dept. of Education et al.

Timeliness of Cases by School Year of DPC Filing (Assuming All Potentially Invalid Extensions are Invalid)

Exhibit 2.1

	School Year of DPC Filing	Cases Requested	SY21-22				Total Closures	[3] Timely Open Cases	[3] Untimely Open Cases
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures			
1	SY17-18	7,144	14	66.67%	7	33.33%	21	14	11
2	SY18-19	9,694	43	47.78%	47	52.22%	90	40	38
3	SY19-20	10,798	131	22.43%	453	77.57%	584	131	244
4	SY20-21	14,264	528	7.06%	6,956	92.94%	7,484	164	2,949
5	Total Cases	41,900	716	8.75%	7,463	91.25%	8,179	349	3,242

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming All Potentially Invalid Extensions are Invalid)

Exhibit 2.1

	School Year of DPC Filing	Cases Requested	Total				Total Closures	[3] Timely Open Cases	[3] Untimely Open Cases
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures			
1	SY17-18	7,144	1,744	25.46%	5,106	74.54%	6,850	14	11
2	SY18-19	9,694	1,728	18.64%	7,544	81.36%	9,272	40	38
3	SY19-20	10,798	1,858	18.36%	8,263	81.64%	10,121	131	244
4	SY20-21	14,264	1,425	13.09%	9,462	86.91%	10,887	164	2,949
5	Total Cases	41,900	6,755	18.19%	30,375	81.81%	37,130	349	3,242

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming Settlement Negotiation Extensions are Invalid)
Exhibit 2.2

	School Year of DPC Filing	Cases Requested	SY17-18						
			[1]		[1]		Total Closures	[2] Timely Open Cases	[2] Untimely Open Cases
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures		
1	SY17-18	7,144	2,829	80.97%	665	19.03%	3,494	2,716	776
2	SY18-19	9,694							
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	2,829	80.97%	665	19.03%	3,494	2,716	776

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming Settlement Negotiation Extensions are Invalid)
Exhibit 2.2

		SY18-19							
		[1]		[1]				[2]	[2]
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	7,144	854	30.31%	1,964	69.69%	2,818	290	293
2	SY18-19	9,694	1,604	43.59%	2,076	56.41%	3,680	3,774	2,034
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	2,458	37.83%	4,040	62.17%	6,498	4,064	2,327

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming Settlement Negotiation Extensions are Invalid)
Exhibit 2.2

	School Year of DPC Filing	Cases Requested	SY19-20						
			[1]		[1]		[2]		
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases
1	SY17-18	7,144	65	15.55%	353	84.45%	418	67	85
2	SY18-19	9,694	808	17.62%	3,777	82.38%	4,585	399	697
3	SY19-20	10,798	1,116	36.66%	1,928	63.34%	3,044	4,398	3,164
4	SY20-21	14,264							
5	Total Cases	41,900	1,989	24.72%	6,058	75.28%	8,047	4,864	3,946

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming Settlement Negotiation Extensions are Invalid)
Exhibit 2.2

		SY20-21							
		[1]		[1]				[2]	[2]
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures		Timely Open Cases	Untimely Open Cases
1	SY17-18	7,144	18	18.18%	81	81.82%	99	34	16
2	SY18-19	9,694	220	23.99%	697	76.01%	917	97	79
3	SY19-20	10,798	1,757	27.06%	4,736	72.94%	6,493	501	468
4	SY20-21	14,264	1,317	38.70%	2,086	61.30%	3,403	4,510	6,166
5	Total Cases	41,900	3,312	30.35%	7,600	69.65%	10,912	5,142	6,729

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming Settlement Negotiation Extensions are Invalid)
Exhibit 2.2

	School Year of DPC Filing	Cases Requested	SY21-22				Total Closures	[3] Timely Open Cases	[3] Untimely Open Cases
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures			
1	SY17-18	7,144	15	71.43%	6	28.57%	21	15	10
2	SY18-19	9,694	44	48.89%	46	51.11%	90	43	35
3	SY19-20	10,798	221	37.84%	363	62.16%	584	171	204
4	SY20-21	14,264	1,414	18.89%	6,070	81.11%	7,484	465	2,648
5	Total Cases	41,900	1,694	20.71%	6,485	79.29%	8,179	694	2,897

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

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- [2] Represents cases open at the end of the school year (June 30th).
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Timeliness of Cases by School Year of DPC Filing (Assuming Settlement Negotiation Extensions are Invalid)
Exhibit 2.2

	School Year of DPC Filing	Cases Requested	Total				Total Closures	[3] Timely Open Cases	[3] Untimely Open Cases
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures			
1	SY17-18	7,144	3,781	55.20%	3,069	44.80%	6,850	15	10
2	SY18-19	9,694	2,676	28.86%	6,596	71.14%	9,272	43	35
3	SY19-20	10,798	3,094	30.57%	7,027	69.43%	10,121	171	204
4	SY20-21	14,264	2,731	25.08%	8,156	74.92%	10,887	465	2,648
5	Total Cases	41,900	12,282	33.08%	24,848	66.92%	37,130	694	2,897

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

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- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming Other Extensions are Invalid)
Exhibit 2.3

	School Year of DPC Filing	Cases Requested	SY17-18						
			[1]		[1]		Total	[2]	[2]
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Closures	Timely Open Cases	Untimely Open Cases
1	SY17-18	7,144	1,239	35.46%	2,255	64.54%	3,494	2,386	1,106
2	SY18-19	9,694							
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	1,239	35.46%	2,255	64.54%	3,494	2,386	1,106

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

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- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming Other Extensions are Invalid)

Exhibit 2.3

		SY18-19							
		[1]		[1]				[2]	[2]
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures		Timely Open Cases	Untimely Open Cases
1	SY17-18	7,144	683	24.24%	2,135	75.76%	2,818	416	167
2	SY18-19	9,694	1,645	44.70%	2,035	55.30%	3,680	4,568	1,240
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	2,328	35.83%	4,170	64.17%	6,498	4,984	1,407

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming Other Extensions are Invalid)

Exhibit 2.3

	School Year of DPC Filing	Cases Requested	SY19-20						
			[1]		[1]		[2]		
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases
1	SY17-18	7,144	81	19.38%	337	80.62%	418	94	58
2	SY18-19	9,694	1,275	27.81%	3,310	72.19%	4,585	682	414
3	SY19-20	10,798	1,154	37.91%	1,890	62.09%	3,044	5,133	2,429
4	SY20-21	14,264							
5	Total Cases	41,900	2,510	31.19%	5,537	68.81%	8,047	5,909	2,901

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

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- [2] Represents cases open at the end of the school year (June 30th).
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Timeliness of Cases by School Year of DPC Filing (Assuming Other Extensions are Invalid)

Exhibit 2.3

		SY20-21							
		[1]		[1]		[2]		[2]	
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	7,144	28	28.28%	71	71.72%	99	36	14
2	SY18-19	9,694	340	37.08%	577	62.92%	917	130	46
3	SY19-20	10,798	2,262	34.84%	4,231	65.16%	6,493	643	326
4	SY20-21	14,264	1,328	39.02%	2,075	60.98%	3,403	4,331	6,345
5	Total Cases	41,900	3,958	36.27%	6,954	63.73%	10,912	5,140	6,731

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

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- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming Other Extensions are Invalid)

Exhibit 2.3

	School Year of DPC Filing	Cases Requested	SY21-22				Total Closures	[3] Timely Open Cases	[3] Untimely Open Cases
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures			
1	SY17-18	7,144	14	66.67%	7	33.33%	21	17	8
2	SY18-19	9,694	55	61.11%	35	38.89%	90	54	24
3	SY19-20	10,798	280	47.95%	304	52.05%	584	197	178
4	SY20-21	14,264	1,302	17.40%	6,182	82.60%	7,484	407	2,706
5	Total Cases	41,900	1,651	20.19%	6,528	79.81%	8,179	675	2,916

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming Other Extensions are Invalid)

Exhibit 2.3

	School Year of DPC Filing	Cases Requested	Total				Timely Open Cases	Untimely Open Cases	
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures			
1	SY17-18	7,144	2,045	29.85%	4,805	70.15%	6,850	17	8
2	SY18-19	9,694	3,315	35.75%	5,957	64.25%	9,272	54	24
3	SY19-20	10,798	3,696	36.52%	6,425	63.48%	10,121	197	178
4	SY20-21	14,264	2,630	24.16%	8,257	75.84%	10,887	407	2,706
5	Total Cases	41,900	11,686	31.47%	25,444	68.53%	37,130	675	2,916

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming Waitlist Extensions are Invalid)

Exhibit 2.4

	School Year of DPC Filing	Cases Requested	SY17-18						
			[1]		[1]		[2]	[2]	
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases
1	SY17-18	7,144	2,970	85.00%	524	15.00%	3,494	3,441	51
2	SY18-19	9,694							
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	2,970	85.00%	524	15.00%	3,494	3,441	51

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Cases by School Year of DPC Filing (Assuming Waitlist Extensions are Invalid)

Exhibit 2.4

	School Year of DPC Filing	Cases Requested	SY18-19					[2] Timely Open Cases	[2] Untimely Open Cases
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures	[1] Total Closures		
1	SY17-18	7,144	2,052	72.82%	766	27.18%	2,818	554	29
2	SY18-19	9,694	2,528	68.70%	1,152	31.30%	3,680	5,519	289
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	4,580	70.48%	1,918	29.52%	6,498	6,073	318

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
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J.S.M. et al. v. New York City Dept. of Education et al.
Timeliness of Cases by School Year of DPC Filing (Assuming Waitlist Extensions are Invalid)
Exhibit 2.4

		SY19-20							
		[1]		[1]		[2]		[2]	
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	7,144	205	49.04%	213	50.96%	418	137	15
2	SY18-19	9,694	2,342	51.08%	2,243	48.92%	4,585	945	151
3	SY19-20	10,798	1,806	59.64%	1,238	40.67%	3,044	5,990	1,572
4	SY20-21	14,264							
5	Total Cases	41,900	4,353	54.09%	3,694	45.91%	8,047	7,072	1,738

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
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J.S.M. et al. v. New York City Dept. of Education et al.

Timeliness of Cases by School Year of DPC Filing (Assuming Waitlist Extensions are Invalid)

Exhibit 2.4

		SY20-21							
		[1]		[1]		[2]		[2]	
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	7,144	64	64.65%	35	35.35%	99	46	4
2	SY18-19	9,694	651	70.99%	266	29.01%	917	167	9
3	SY19-20	10,798	3,459	53.27%	3,034	46.73%	6,493	845	124
4	SY20-21	14,264	1,442	42.37%	1,961	57.63%	3,403	4,583	6,093
5	Total Cases	41,900	5,616	51.47%	5,296	48.53%	10,912	5,641	6,230

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

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- [2] Represents cases open at the end of the school year (June 30th).
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J.S.M. et al. v. New York City Dept. of Education et al.

Timeliness of Cases by School Year of DPC Filing (Assuming Waitlist Extensions are Invalid)

Exhibit 2.4

	School Year of DPC Filing	Cases Requested	SY21-22				Total Closures	[3] Timely Open Cases	[3] Untimely Open Cases
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures			
1	SY17-18	7,144	18	85.71%	3	14.29%	21	22	3
2	SY18-19	9,694	78	86.67%	12	13.33%	90	72	6
3	SY19-20	10,798	423	72.43%	161	27.57%	584	296	79
4	SY20-21	14,264	2,039	27.24%	5,445	72.76%	7,484	750	2,363
5	Total Cases	41,900	2,558	31.28%	5,621	68.72%	8,179	1,140	2,451

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
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J.S.M. et al. v. New York City Dept. of Education et al.

Timeliness of Cases by School Year of DPC Filing (Assuming Waitlist Extensions are Invalid)

Exhibit 2.4

	School Year of DPC Filing	Cases Requested	Total				Total Closures	[3] Timely Open Cases	[3] Untimely Open Cases
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures			
1	SY17-18	7,144	5,309	77.50%	1,541	22.50%	6,850	22	3
2	SY18-19	9,694	5,599	60.39%	3,673	39.61%	9,272	72	6
3	SY19-20	10,798	5,688	56.20%	4,433	43.80%	10,121	296	79
4	SY20-21	14,264	3,481	31.97%	7,406	68.03%	10,887	750	2,363
5	Total Cases	41,900	20,077	54.07%	17,053	45.93%	37,130	1,140	2,451

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

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- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

J.S.M. et al. v. New York City Dept. of Education et al.

Timeliness of Cases by School Year of DPC Filing (Assuming Settlement Approval Extensions are Invalid)

Exhibit 2.5

	School Year of DPC Filing	Cases Requested	SY17-18						
			[1]		[1]		Total	[2]	[2]
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Closures	Timely Open Cases	Untimely Open Cases
1	SY17-18	7,144	2,969	84.97%	525	15.03%	3,494	3,438	54
2	SY18-19	9,694							
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	2,969	84.97%	525	15.03%	3,494	3,438	54

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

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- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

J.S.M. et al. v. New York City Dept. of Education et al.**Timeliness of Cases by School Year of DPC Filing (Assuming Settlement Approval Extensions are Invalid)
Exhibit 2.5**

	School Year of DPC Filing	Cases Requested	SY18-19					[2] Timely Open Cases	[2] Untimely Open Cases
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures	[1] Total Closures		
1	SY17-18	7,144	2,040	72.39%	778	27.61%	2,818	553	30
2	SY18-19	9,694	2,523	68.56%	1,157	31.44%	3,680	5,512	296
3	SY19-20	10,798							
4	SY20-21	14,264							
5	Total Cases	41,900	4,563	70.22%	1,935	29.78%	6,498	6,065	326

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

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J.S.M. et al. v. New York City Dept. of Education et al.
Timeliness of Cases by School Year of DPC Filing (Assuming Settlement Approval Extensions are Invalid)
Exhibit 2.5

		SY19-20							
		[1]		[1]		[2]		[2]	
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	7,144	200	47.85%	218	52.15%	418	137	15
2	SY18-19	9,694	2,318	50.56%	2,267	49.44%	4,585	944	152
3	SY19-20	10,798	1,804	59.26%	1,240	40.74%	3,044	6,378	1,184
4	SY20-21	14,264							
5	Total Cases	41,900	4,322	53.71%	3,725	46.29%	8,047	7,459	1,351

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

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J.S.M. et al. v. New York City Dept. of Education et al.
Timeliness of Cases by School Year of DPC Filing (Assuming Settlement Approval Extensions are Invalid)
Exhibit 2.5

		SY20-21							
		[1]		[1]		[2]		[2]	
School Year of DPC Filing	Cases Requested	Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	7,144	63	63.64%	36	36.36%	99	44	6
2	SY18-19	9,694	648	70.67%	269	29.33%	917	167	9
3	SY19-20	10,798	3,657	56.32%	2,836	43.68%	6,493	889	80
4	SY20-21	14,264	1,667	48.99%	1,736	51.01%	3,403	5,624	5,052
5	Total Cases	41,900	6,035	55.31%	4,877	44.69%	10,912	6,724	5,147

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

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J.S.M. et al. v. New York City Dept. of Education et al.

Timeliness of Cases by School Year of DPC Filing (Assuming Settlement Approval Extensions are Invalid)

Exhibit 2.5

	School Year of DPC Filing	Cases Requested	SY21-22						[3] Timely Open Cases	[3] Untimely Open Cases
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures	[1] Total Closures	[1] Total Closures		
1	SY17-18	7,144	17	80.95%	4	19.05%	21	21	4	
2	SY18-19	9,694	78	86.67%	12	13.33%	90	72	6	
3	SY19-20	10,798	451	77.23%	133	22.77%	584	305	70	
4	SY20-21	14,264	2,283	30.51%	5,201	69.49%	7,484	828	2,285	
5	Total Cases	41,900	2,829	34.59%	5,350	65.41%	8,179	1,226	2,365	

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

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J.S.M. et al. v. New York City Dept. of Education et al.

Timeliness of Cases by School Year of DPC Filing (Assuming Settlement Approval Extensions are Invalid)

Exhibit 2.5

	School Year of DPC Filing	Cases Requested	Total						[3] Timely Open Cases	[3] Untimely Open Cases
			[1] Timely Closures	[1] % of Total Closures	[1] Untimely Closures	[1] % of Total Closures	[1] Total Closures	[1] Total Closures		
1	SY17-18	7,144	5,289	77.21%	1,561	22.79%	6,850	21	4	
2	SY18-19	9,694	5,567	60.04%	3,705	39.96%	9,272	72	6	
3	SY19-20	10,798	5,912	58.41%	4,209	41.59%	10,121	305	70	
4	SY20-21	14,264	3,950	36.28%	6,937	63.72%	10,887	828	2,285	
5	Total Cases	41,900	20,718	55.80%	16,412	44.20%	37,130	1,226	2,365	

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

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J.S.M. et al. v. New York City Dept. of Education et al.
Count of Extensions by Extension Reason and Decision Date School Year
Exhibit 3

Extension Reason	Extension Decision Date					Total	% of Total
	SY17-18	SY18-19	SY19-20	SY20-21	SY21-22 [1]		
1 Settlement Negotiation	1,833	20,924	26,561	14,339	3,940	67,597	32.73%
2 Availability Of Witnesses	7,989	15,878	19,889	11,018	3,438	58,212	28.18%
3 Other [2]	13,731	10,345	14,412	10,315	6,260	55,063	26.66%
4 Extensive Testimony/Issues	824	1,793	5,820	4,265	949	13,651	6.61%
5 Waitlisted Case-New Appointment [3]	-	-	787	4,517	4,724	10,028	4.86%
6 Obtain Independent Education Eval.	125	495	473	456	147	1,696	0.82%
7 Settlement Approval	18	46	103	10	3	180	0.09%
8 Obtain Representation	28	37	12	15	-	92	0.04%
9 SRO Requirement	1	5	7	12	5	30	0.01%
10 Total Extensions	24,549	49,523	68,064	44,947	19,466	206,549	100.00%

Source: State Def 3143.xlsx

[1] Represents cases that were requested in previous school years and received an extension in the '21-22 school year.

[2] "Other" reflects a free form text field. Refer to <https://pd.nysed.gov/specedhelp/ihrs/4FExtensions.html#WhatIsAnExtension>

[3] Per discussions with Counsel, May 1, 2020 is the approximate date in which waitlist extensions were first implemented.

**J.S.M. et al. v. New York City Dept. of Education et al.
 Waitlist Extension Metrics by School Year of DPC Filing
 Exhibit 3.1**

		SY17-18							
		Waitlist Extensions [1]	Total Extensions [2]	% of Total Extensions	Length of Waitlist Extensions		Length of Untimeliness Before Extension [3]		
School Year of DPC Filing	Cases Requested				Median Days	Average Days	Median Days	Average Days	
1	SY17-18	-	509	n/a	n/a	n/a	n/a	n/a	
2	SY18-19								
3	SY19-20								
4	SY20-21								
5	Total	-	509	n/a	n/a	n/a	n/a	n/a	

Source: State Def 3143.xlsx

- [1] Per discussions with Counsel, May 1, 2020 is the approximate date in which waitlist extensions were first implemented.
- [2] Represents extensions for cases that were still open on or after May 1, 2020 (Waitlist Extension Relevant Cases).
- [3] The length of untimeliness is the difference between the adjusted original compliance date and new decision date associated to Waitlist Extensions as Waitlist Extensions were typically the first extension received starting May 2020. However, 32 cases received a non-waitlist extension prior to receiving a waitlist extension and as such, the length of untimeliness is the difference between the previous compliance date and new decision date.

**J.S.M. et al. v. New York City Dept. of Education et al.
 Waitlist Extension Metrics by School Year of DPC Filing
 Exhibit 3.1**

		SY18-19							
		Waitlist Extensions [1]	Total Extensions [2]	% of Total Extensions	Length of Waitlist Extensions		Length of Untimeliness Before Extension [3]		
School Year of DPC Filing	Cases Requested				Median Days	Average Days	Median Days	Average Days	
1	SY17-18	-	2,045	n/a	n/a	n/a	n/a	n/a	
2	SY18-19	-	4,842	n/a	n/a	n/a	n/a	n/a	
3	SY19-20								
4	SY20-21								
5	Total	-	6,887	n/a	n/a	n/a	n/a	n/a	

Source: State Def 3143.xlsx

- [1] Per discussions with Counsel, May 1, 2020 is the approximate date in which waitlist extensions were first implemented.
- [2] Represents extensions for cases that were still open on or after May 1, 2020 (Waitlist Extension Relevant Cases).
- [3] The length of untimeliness is the difference between the adjusted original compliance date and new decision date associated to Waitlist Extensions as Waitlist Extensions were typically the first extension received starting May 2020. However, 32 cases received a non-waitlist extension prior to receiving a waitlist extension and as such, the length of untimeliness is the difference between the previous compliance date and new decision date.

**J.S.M. et al. v. New York City Dept. of Education et al.
 Waitlist Extension Metrics by School Year of DPC Filing
 Exhibit 3.1**

		SY19-20							
		Waitlist Extensions [1]	Total Extensions [2]	% of Total Extensions	Length of Waitlist Extensions		Length of Untimeliness Before Extension [3]		
School Year of DPC Filing	Cases Requested				Median Days	Average Days	Median Days	Average Days	
1	SY17-18	-	1,948	0.00%	n/a	n/a	n/a	n/a	
2	SY18-19	-	14,931	0.00%	n/a	n/a	n/a	n/a	
3	SY19-20	787	35,692	2.20%	137	137	92	92	
4	SY20-21								
5	Total	787	52,571	1.50%	137	137	92	92	

Source: State Def 3143.xlsx

- [1] Per discussions with Counsel, May 1, 2020 is the approximate date in which waitlist extensions were first implemented.
- [2] Represents extensions for cases that were still open on or after May 1, 2020 (Waitlist Extension Relevant Cases).
- [3] The length of untimeliness is the difference between the adjusted original compliance date and new decision date associated to Waitlist Extensions as Waitlist Extensions were typically the first extension received starting May 2020. However, 32 cases received a non-waitlist extension prior to receiving a waitlist extension and as such, the length of untimeliness is the difference between the previous compliance date and new decision date.

J.S.M. et al. v. New York City Dept. of Education et al.
Waitlist Extension Metrics by School Year of DPC Filing
Exhibit 3.1

		SY20-21							
					Length of Waitlist Extensions		Length of Untimeliness Before Extension [3]		
School Year of DPC Filing	Cases Requested	Waitlist Extensions	Total Extensions [2]	% of Total Extensions	Median Days	Average Days	Median Days	Average Days	
1	SY17-18	7,144	-	731	0.00%	n/a	n/a	n/a	n/a
2	SY18-19	9,694	9	3,803	0.24%	550	506	505	461
3	SY19-20	10,798	1,840	20,416	9.01%	121	124	76	79
4	SY20-21	14,264	2,668	19,991	13.35%	132	141	87	96
5	Total	41,900	4,517	44,941	10.05%	125	135	80	90

Source: State Def 3143.xlsx

- [1] Per discussions with Counsel, May 1, 2020 is the approximate date in which waitlist extensions were first implemented.
- [2] Represents extensions for cases that were still open on or after May 1, 2020 (Waitlist Extension Relevant Cases).
- [3] The length of untimeliness is the difference between the adjusted original compliance date and new decision date associated to Waitlist Extensions as Waitlist Extensions were typically the first extension received starting May 2020. However, 32 cases received a non-waitlist extension prior to receiving a waitlist extension and as such, the length of untimeliness is the difference between the previous compliance date and new decision date.

**J.S.M. et al. v. New York City Dept. of Education et al.
 Waitlist Extension Metrics by School Year of DPC Filing
 Exhibit 3.1**

		SY21-22							
					Length of Waitlist Extensions		Length of Untimeliness Before Extension [3]		
School Year of DPC Filing	Cases Requested	Waitlist Extensions	Total Extensions [2]	% of Total Extensions	Median Days	Average Days	Median Days	Average Days	
1	SY17-18	7,144	-	170	0.00%	n/a	n/a	n/a	n/a
2	SY18-19	9,694	-	546	0.00%	n/a	n/a	n/a	n/a
3	SY19-20	10,798	2	2,749	0.07%	281	281	236	236
4	SY20-21	14,264	4,722	16,001	29.51%	297	276	252	231
5	Total	41,900	4,724	19,466	24.27%	297	276	252	231

Source: State Def 3143.xlsx

- [1] Per discussions with Counsel, May 1, 2020 is the approximate date in which waitlist extensions were first implemented.
- [2] Represents extensions for cases that were still open on or after May 1, 2020 (Waitlist Extension Relevant Cases).
- [3] The length of untimeliness is the difference between the adjusted original compliance date and new decision date associated to Waitlist Extensions as Waitlist Extensions were typically the first extension received starting May 2020. However, 32 cases received a non-waitlist extension prior to receiving a waitlist extension and as such, the length of untimeliness is the difference between the previous compliance date and new decision date.

J.S.M. et al. v. New York City Dept. of Education et al.
Waitlist Extension Metrics by School Year of DPC Filing
Exhibit 3.1

	School Year of DPC Filing	Cases Requested	Total						
			Waitlist Extensions	Total Extensions [2]	% of Total Extensions	Length of Waitlist Extensions		Length of Untimeliness Before Extension [3]	
						Median Days	Average Days	Median Days	Average Days
1	SY17-18	7,144	-	5,403	0.00%	n/a	n/a	n/a	n/a
2	SY18-19	9,694	9	24,122	0.04%	550	506	505	461
3	SY19-20	10,798	2,629	58,857	4.47%	129	128	84	83
4	SY20-21	14,264	7,390	35,992	20.53%	266	227	221	182
5	Total	41,900	10,028	124,374	8.06%	156	202	112	157

Source: State Def 3143.xlsx

- [1] Per discussions with Counsel, May 1, 2020 is the approximate date in which waitlist extensions were first implemented.
- [2] Represents extensions for cases that were still open on or after May 1, 2020 (Waitlist Extension Relevant Cases).
- [3] The length of untimeliness is the difference between the adjusted original compliance date and new decision date associated to Waitlist Extensions as Waitlist Extensions were typically the first extension received starting May 2020. However, 32 cases received a non-waitlist extension prior to receiving a waitlist extension and as such, the length of untimeliness is the difference between the previous compliance date and new decision date.

J.S.M. et al. v. New York City Dept. of Education et al.
Timeliness of Waitlist Extension Relevant Cases by School Year of DPC Filing
Exhibit 3.2

	School Year of DPC Filing	Waitlist Extension Relevant Cases	SY19-20						
			[1]		[1]		[2]	[2]	
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases
1	SY17-18	182	25	67.57%	12	32.43%	37	137	15
2	SY18-19	1,470	203	52.73%	182	47.27%	385	954	142
3	SY19-20	8,631	761	64.55%	418	35.45%	1,179	6,902	660
4	SY20-21	14,000							
5	Total Cases	24,283	989	61.77%	612	38.23%	1,601	7,993	817

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the Stout-adjusted current compliance date is before January 21, 2022.

J.S.M. et al. v. New York City Dept. of Education et al.
Timeliness of Waitlist Extension Relevant Cases by School Year of DPC Filing
Exhibit 3.2

	School Year of DPC Filing	Waitlist Extension Relevant Cases	SY20-21						
			[1]		[1]		[2]	[2]	
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases
1	SY17-18	182	37	37.37%	62	62.63%	99	46	4
2	SY18-19	1,470	431	47.00%	486	53.00%	917	161	15
3	SY19-20	8,631	3,508	54.03%	2,985	45.97%	6,493	898	71
4	SY20-21	14,000	1,946	57.18%	1,457	42.82%	3,403	8,806	1,870
5	Total Cases	24,283	5,922	54.27%	4,990	45.73%	10,912	9,911	1,960

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the Stout-adjusted current compliance date is before January 21, 2022.

J.S.M. et al. v. New York City Dept. of Education et al.
Timeliness of Waitlist Extension Relevant Cases by School Year of DPC Filing
Exhibit 3.2

	School Year of DPC Filing	Waitlist Extension Relevant Cases	SY21-22					Timely Open Cases	Untimely Open Cases
			[1]	[1]	[1]	[1]	[3]		
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures		
1	SY17-18	182	11	52.38%	10	47.62%	21	5	20
2	SY18-19	1,470	55	61.11%	35	38.89%	90	30	48
3	SY19-20	8,631	425	72.77%	159	27.23%	584	186	189
4	SY20-21	14,000	4,927	65.83%	2,557	34.17%	7,484	2,028	1,085
5	Total Cases	24,283	5,418	66.24%	2,761	33.76%	8,179	2,249	1,342

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the Stout-adjusted current compliance date is before January 21, 2022.

J.S.M. et al. v. New York City Dept. of Education et al.
Timeliness of Waitlist Extension Relevant Cases by School Year of DPC Filing
Exhibit 3.2

	School Year of DPC Filing	Waitlist Extension Relevant Cases	Total				Timely Open Cases	Untimely Open Cases	
			[1]	[1]	[3]	[3]			
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures		
1	SY17-18	182	73	46.50%	84	53.50%	157	5	20
2	SY18-19	1,470	689	49.50%	703	50.50%	1,392	30	48
3	SY19-20	8,631	4,694	56.86%	3,562	43.14%	8,256	186	189
4	SY20-21	14,000	6,873	63.13%	4,014	36.87%	10,887	2,028	1,085
5	Total Cases	24,283	12,329	59.58%	8,363	40.42%	20,692	2,249	1,342

Source: State Def 3143.xlsx

- [1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the Stout-adjusted current compliance date is before January 21, 2022.

J.S.M. et al. v. New York City Dept. of Education et al.

Timeliness of Waitlist Extension Relevant Cases by School Year of DPC Filing (Assuming Waitlist Extensions are Invalid)
Exhibit 3.3

School Year of DPC Filing	Waitlist Extension Relevant Cases	SY19-20							
		[1]		[1]		[2]		[2]	
		Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases	
1	SY17-18	182	25	67.57%	12	32.43%	37	137	15
2	SY18-19	1,470	235	61.04%	150	38.96%	385	945	151
3	SY19-20	8,631	715	60.64%	464	39.36%	1,179	5,990	1,572
4	SY20-21	14,000							
5	Total Cases	24,283	975	60.90%	626	39.10%	1,601	7,072	1,738

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

J.S.M. et al. v. New York City Dept. of Education et al.

Timeliness of Waitlist Extension Relevant Cases by School Year of DPC Filing (Assuming Waitlist Extensions are Invalid)
Exhibit 3.3

	School Year of DPC Filing	Waitlist Extension Relevant Cases	SY20-21						
			[1]		[1]		[2]	[2]	
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases
1	SY17-18	182	64	64.65%	35	35.35%	99	46	4
2	SY18-19	1,470	651	70.99%	266	29.01%	917	167	9
3	SY19-20	8,631	3,459	53.27%	3,034	46.73%	6,493	845	124
4	SY20-21	14,000	1,442	42.37%	1,961	57.63%	3,403	4,583	6,093
5	Total Cases	24,283	5,616	51.47%	5,296	48.53%	10,912	5,641	6,230

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

J.S.M. et al. v. New York City Dept. of Education et al.

Timeliness of Waitlist Extension Relevant Cases by School Year of DPC Filing (Assuming Waitlist Extensions are Invalid)
Exhibit 3.3

School Year of DPC Filing	Waitlist Extension Relevant Cases	SY21-22								
		[1]		[1]		[3]		[3]		
		Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases		
1	SY17-18	182		18	85.71%	3	14.29%	21	22	3
2	SY18-19	1,470		78	86.67%	12	13.33%	90	72	6
3	SY19-20	8,631		423	72.43%	161	27.57%	584	296	79
4	SY20-21	14,000		2,039	27.24%	5,445	72.76%	7,484	750	2,363
5	Total Cases	24,283		2,558	31.28%	5,621	68.72%	8,179	1,140	2,451

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

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Timeliness of Waitlist Extension Relevant Cases by School Year of DPC Filing (Assuming Waitlist Extensions are Invalid)
Exhibit 3.3

	School Year of DPC Filing	Waitlist Extension Relevant Cases	Total						
			[1]	[1]	[1]	[3]	[3]		
			Timely Closures	% of Total Closures	Untimely Closures	% of Total Closures	Total Closures	Timely Open Cases	Untimely Open Cases
1	SY17-18	182	107	68.15%	50	31.85%	157	22	3
2	SY18-19	1,470	964	69.25%	428	30.75%	1,392	72	6
3	SY19-20	8,631	4,597	55.68%	3,659	44.32%	8,256	296	79
4	SY20-21	14,000	3,481	31.97%	7,406	68.03%	10,887	750	2,363
5	Total Cases	24,283	9,149	44.22%	11,543	55.78%	20,692	1,140	2,451

Source: State Def 3143.xlsx; Stout computed a Recalculated Current Compliance Date for cases with "valid" extensions by 1) identifying the earliest Resolution End Date, 2) adding 30 days (CPSE) or 45 days (CSE) depending on the case type ("Resolution Compliance Period Date"), 3) adding 75 days per case amendment, 4) adding the quantified extension period associated to valid extensions by 30 or 60 days depending on the date of the Previous Recalculated Current Compliance Date and 5) adjusting for holidays or weekends. This process treats extensions as 30-day extensions if the Recalculated Current Compliance Date is before April 4, 2020. Additionally, extensions are treated as 60-day extensions if the Recalculated Current Compliance Date is on or after April 4, 2020.

- [1] Case closures are considered timely when the closure date is on or before the Recalculated Current Compliance Date. The figures above reflect cases closed by an actual decision, settled or withdrawn. In other words, the data above does not reflect cases that were dismissed, consolidated, etc.
- [2] Represents cases open at the end of the school year (June 30th).
- [3] Represents cases that are open as of January 21, 2022, the date in which data was produced from the IHRS. A case is open and untimely if the adjusted current compliance date is before January 21, 2022.

J.S.M. et al. v. New York City Dept. of Education et al.
 Cases Closed by Closure Type by School Year of DPC Filing
 Exhibit 4

		SY17-18														
		A			B			C			D = A + B + C					
School Year of DPC Filing	Cases Requested	Actual Decision	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Settled	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Withdrawn	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Insufficient Request	Dismissed	Consolidated	Total Closures		
1	SY17-18	7,144	882	25.24%	24.15%	106	3.03%	2.90%	2,506	71.72%	68.62%	3,494	6	42	110	3,652
2	SY18-19	9,694														
3	SY19-20	10,798														
4	SY20-21	14,264														
5	Total Cases	41,900	882	25.24%	24.15%	106	3.03%	2.90%	2,506	71.72%	68.62%	3,494	6	42	110	3,652

Source: State Def 3143.xlsx

[1] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.
 Cases Closed by Closure Type by School Year of DPC Filing
 Exhibit 4

		SY18-19														
School Year of DPC Filing	Cases Requested	A			B			C			D = A + B + C					
		Actual Decision	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Settled	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Withdrawn	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Actual Decision, Settled, & Withdrawn	Insufficient Request	Dismissed	Consolidated	Total Closures	
1	SY17-18	7,144	847	30.06%	29.12%	6	0.21%	0.21%	1,965	69.73%	67.55%	2,818	1	73	17	2,909
2	SY18-19	9,694	1,476	40.11%	37.98%	101	2.74%	2.60%	2,103	57.15%	54.12%	3,680	5	92	109	3,886
3	SY19-20	10,798														
4	SY20-21	14,264														
5	Total Cases	41,900	2,323	35.75%	34.19%	107	1.65%	1.57%	4,068	62.60%	59.87%	6,498	6	165	126	6,795

Source: State Def 3143.xlsx

[1] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.
 Cases Closed by Closure Type by School Year of DPC Filing
 Exhibit 4

		SY19-20														
School Year of DPC Filing	Cases Requested	A			B			C			D = A + B + C					
		Actual Decision	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Settled	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Withdrawn	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Actual Decision, Settled, & Withdrawn	Insufficient Request	Dismissed	Consolidated	Total Closures	
1	SY17-18	7,144	156	37.32%	36.19%	-	0.00%	0.00%	262	62.68%	60.79%	418	-	13	-	431
2	SY18-19	9,694	1,648	35.94%	34.97%	3	0.07%	0.06%	2,934	63.99%	62.27%	4,585	-	105	22	4,712
3	SY19-20	10,798	1,300	42.71%	40.17%	92	3.02%	2.84%	1,652	54.27%	51.05%	3,044	-	57	135	3,236
4	SY20-21	14,264														
5	Total Cases	41,900	3,104	38.57%	37.04%	95	1.18%	1.13%	4,848	60.25%	57.86%	8,047	-	175	157	8,379

Source: State Def 3143.xlsx

[1] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.
 Cases Closed by Closure Type by School Year of DPC Filing
 Exhibit 4

		SY20-21														
		A			B			C			D = A + B + C					
School Year of DPC Filing	Cases Requested	Actual Decision	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Settled	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Withdrawn	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Withdrawn	Insufficient Request	Dismissed	Consolidated	Total Closures	
1	SY17-18	7,144	38	38.38%	37.25%	-	0.00%	0.00%	61	61.62%	59.80%	99	-	3	-	102
2	SY18-19	9,694	335	36.53%	36.41%	-	0.00%	0.00%	582	63.47%	63.26%	917	-	3	-	920
3	SY19-20	10,798	2,252	34.68%	34.16%	9	0.14%	0.14%	4,232	65.18%	64.19%	6,493	-	78	22	6,593
4	SY20-21	14,264	863	25.36%	24.05%	80	2.35%	2.23%	2,460	72.29%	68.56%	3,403	-	19	166	3,588
5	Total Cases	41,900	3,488	31.96%	31.13%	89	0.82%	0.79%	7,335	67.22%	65.47%	10,912	-	103	188	11,203

Source: State Def 3143.xlsx

[1] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.
 Cases Closed by Closure Type by School Year of DPC Filing
 Exhibit 4

		SY21-22 [1]														
		A			B			C			D = A + B + C					
School Year of DPC Filing	Cases Requested	Actual Decision	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Settled	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Withdrawn	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Withdrawn	Insufficient Request	Dismissed	Consolidated	Total Closures	
1	SY17-18	7,144	3	14.29%	12.00%	-	0.00%	0.00%	18	85.71%	72.00%	21	-	4	-	25
2	SY18-19	9,694	39	43.33%	39.80%	-	0.00%	0.00%	51	56.67%	52.04%	90	-	8	-	98
3	SY19-20	10,798	232	39.73%	39.06%	-	0.00%	0.00%	352	60.27%	59.26%	584	-	10	-	594
4	SY20-21	14,264	1,162	15.53%	15.36%	8	0.11%	0.11%	6,314	84.37%	83.49%	7,484	1	54	24	7,563
5	Total Cases	41,900	1,436	17.56%	17.34%	8	0.10%	0.10%	6,735	82.35%	81.34%	8,179	1	76	24	8,280

Source: State Def 3143.xlsx

[1] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.
 Cases Closed by Closure Type by School Year of DPC Filing
 Exhibit 4

School Year of DPC Filing	Cases Requested	Total														
		A			B			C			D = A + B + C					
		Actual Decision	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Settled	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Withdrawn	Withdrawn	% of Actual Decision, Settled, & Withdrawn	% of Total Closures	Withdrawn	Insufficient Request	Dismissed	Consolidated	Total Closures
1 SY17-18	7,144	1,926	28.12%	27.05%	112	1.64%	1.57%	4,812	70.25%	67.59%	6,850	7	135	127	7,119	
2 SY18-19	9,694	3,498	37.73%	36.38%	104	1.12%	1.08%	5,670	61.15%	58.96%	9,272	5	208	131	9,616	
3 SY19-20	10,798	3,784	37.39%	36.30%	101	1.00%	0.97%	6,236	61.61%	59.83%	10,121	-	145	157	10,423	
4 SY20-21	14,264	2,025	18.60%	18.16%	88	0.81%	0.79%	8,774	80.59%	78.68%	10,887	1	73	190	11,151	
5 Total Cases	41,900	11,233	30.25%	29.32%	405	1.09%	1.06%	25,492	68.66%	66.54%	37,130	13	561	605	38,309	

Source: State Def 3143.xlsx

[1] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.
Length Between Request Date and Case Closure for Settled Cases by School Year of DPC Filing
Exhibit 4.1

			SY17-18								
			Timely Closures [1]			Untimely Closures [1]			Total		
School Year of DPC Filing	Cases Requested		Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days
1	SY17-18	7,144	106	21	21	-	n/a	n/a	106	21	21
2	SY18-19	9,694									
3	SY19-20	10,798									
4	SY20-21	14,264									
5	Total	41,900	106	21	21	-	n/a	n/a	106	21	21

Source: State Def 3143.xlsx

[1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date.

[2] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.
Length Between Request Date and Case Closure for Settled Cases by School Year of DPC Filing
Exhibit 4.1

		SY18-19									
		Timely Closures [1]			Untimely Closures [1]			Total			
School Year of DPC Filing	Cases Requested	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	
1	SY17-18	7,144	6	19	16	-	n/a	n/a	6	19	16
2	SY18-19	9,694	101	19	19	-	n/a	n/a	101	19	19
3	SY19-20	10,798									
4	SY20-21	14,264									
5 Total		41,900	107	19	19	-	n/a	n/a	107	19	19

Source: State Def 3143.xlsx

[1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date.

[2] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.
Length Between Request Date and Case Closure for Settled Cases by School Year of DPC Filing
Exhibit 4.1

			SY19-20								
			Timely Closures [1]			Untimely Closures [1]			Total		
School Year of DPC Filing	Cases Requested		Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days
1	SY17-18	7,144	-	n/a	n/a	-	n/a	n/a	-	n/a	n/a
2	SY18-19	9,694	3	28	28	-	n/a	n/a	3	28	28
3	SY19-20	10,798	92	19	20	-	n/a	n/a	92	19	20
4	SY20-21	14,264									
5	Total	41,900	95	19	20	-	n/a	n/a	95	19	20

Source: State Def 3143.xlsx

[1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date.

[2] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.

Length Between Request Date and Case Closure for Settled Cases by School Year of DPC Filing

Exhibit 4.1

		SY20-21									
		Timely Closures [1]			Untimely Closures [1]			Total			
School Year of DPC Filing	Cases Requested	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	
1	SY17-18	7,144	-	n/a	n/a	-	n/a	n/a	-	n/a	n/a
2	SY18-19	9,694	-	n/a	n/a	-	n/a	n/a	-	n/a	n/a
3	SY19-20	10,798	9	16	16	-	n/a	n/a	9	16	16
4	SY20-21	14,264	80	40	24	-	n/a	n/a	80	40	24
5	Total	41,900	89	37	24	-	n/a	n/a	89	37	24

Source: State Def 3143.xlsx

[1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date.

[2] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.

Length Between Request Date and Case Closure for Settled Cases by School Year of DPC Filing

Exhibit 4.1

School Year of DPC Filing		Cases Requested	SY21-22 [2]								
			Timely Closures [1]			Untimely Closures [1]			Total		
			Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days
1	SY17-18	7,144	-	n/a	n/a	-	n/a	n/a	-	n/a	n/a
2	SY18-19	9,694	-	n/a	n/a	-	n/a	n/a	-	n/a	n/a
3	SY19-20	10,798	-	n/a	n/a	-	n/a	n/a	-	n/a	n/a
4	SY20-21	14,264	8	153	144	-	n/a	n/a	8	153	144
5	Total	41,900	8	153	144	-	n/a	n/a	8	153	144

Source: State Def 3143.xlsx

[1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date.

[2] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.

Length Between Request Date and Case Closure for Settled Cases by School Year of DPC Filing

Exhibit 4.1

School Year of DPC Filing	Cases Requested	Total									
		Timely Closures [1]			Untimely Closures [1]			Total			
		Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	
1	SY17-18	7,144	112	21	21	-	n/a	n/a	112	21	21
2	SY18-19	9,694	104	20	20	-	n/a	n/a	104	20	20
3	SY19-20	10,798	101	19	20	-	n/a	n/a	101	19	20
4	SY20-21	14,264	88	50	24	-	n/a	n/a	88	50	24
5	Total	41,900	405	26	21	-	n/a	n/a	405	26	21

Source: State Def 3143.xlsx

[1] Case closures are considered timely when the closure date is on or before the adjusted current compliance date.

[2] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.

Full or Partial Support of Parents in Cases Closed by Actual Decision by School Year of DPC Filing

Exhibit 4.2

School Year of DPC Filing	Cases Requested	SY17-18						SY18-19						
		Fully Supporting Parent [1]	% of Total Closures	Partially Supporting Parent [1]	% of Total Closures	Other [2]	Total Closures	Fully Supporting Parent [1]	% of Total Closures	Partially Supporting Parent [1]	% of Total Closures	Other [2]	Total Closures	
1	SY17-18	7,144	677	76.76%	122	13.83%	83	882	684	80.76%	84	9.92%	79	847
2	SY18-19	9,694							1,087	73.64%	191	12.94%	198	1,476
3	SY19-20	10,798												
4	SY20-21	14,264												
5	Total Cases	41,900	677	76.76%	122	13.83%	83	882	1,771	76.24%	275	11.84%	277	2,323

Source: State Def 3143.xlsx

[1] More than one case issue can be assigned to each case. As such, when all case issues were assigned Issue Decision 1, or "support parent", the case is reflected in the "Fully Supporting Parent" field. Further, if one case issue is fully supporting the parent but another case issue is not, the case is reflected in the "Partially Supporting Parent" field.

[2] Instances in which a decision does not fully or partially support the parent.

[3] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.

Full or Partial Support of Parents in Cases Closed by Actual Decision by School Year of DPC Filing

Exhibit 4.2

School Year of DPC Filing	Cases Requested	SY19-20						SY20-21						
		Fully Supporting Parent [1]	% of Total Closures	Partially Supporting Parent [1]	% of Total Closures	Other [2]	Total Closures	Fully Supporting Parent [1]	% of Total Closures	Partially Supporting Parent [1]	% of Total Closures	Other [2]	Total Closures	
1	SY17-18	7,144	130	83.33%	16	10.26%	10	156	37	97.37%	1	2.63%	-	38
2	SY18-19	9,694	1,328	80.58%	163	9.89%	157	1,648	276	82.39%	33	9.85%	26	335
3	SY19-20	10,798	1,090	83.85%	130	10.00%	80	1,300	1,771	78.64%	263	11.68%	218	2,252
4	SY20-21	14,264							658	76.25%	95	11.01%	110	863
5	Total Cases	41,900	2,548	82.09%	309	9.95%	247	3,104	2,742	78.61%	392	11.24%	354	3,488

Source: State Def 3143.xlsx

[1] More than one case issue can be assigned to each case. As such, when all case issues were assigned Issue Decision 1, or "support parent", the case is reflected in the "Fully Supporting Parent" field. Further, if one case issue is fully supporting the parent but another case issue is not, the case is reflected in the "Partially Supporting Parent" field.

[2] Instances in which a decision does not fully or partially support the parent.

[3] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.

Full or Partial Support of Parents in Cases Closed by Actual Decision by School Year of DPC Filing
Exhibit 4.2

School Year of DPC Filing	Cases Requested	SY21-22 [3]						Total						
		Fully Supporting Parent [1]	% of Total Closures	Partially Supporting Parent [1]	% of Total Closures	Other [2]	Total Closures	Fully Supporting Parent [1]	% of Total Closures	Partially Supporting Parent [1]	% of Total Closures	Other [2]	Total Closures	
1	SY17-18	7,144	3	100.00%	-	0.00%	-	3	1,531	79.49%	223	11.58%	172	1,926
2	SY18-19	9,694	35	89.74%	3	7.69%	1	39	2,726	77.93%	390	11.15%	382	3,498
3	SY19-20	10,798	179	77.16%	24	10.34%	29	232	3,040	80.34%	417	11.02%	327	3,784
4	SY20-21	14,264	809	69.62%	155	13.34%	198	1,162	1,467	72.44%	250	12.35%	308	2,025
5	Total Cases	41,900	1,026	71.45%	182	12.67%	228	1,436	8,764	78.02%	1,280	11.39%	1,189	11,233

Source: State Def 3143.xlsx

[1] More than one case issue can be assigned to each case. As such, when all case issues were assigned Issue Decision 1, or "support parent", the case is reflected in the "Fully Supporting Parent" field. Further, if one case issue is fully supporting the parent but another case issue is not, the case is reflected in the "Partially Supporting Parent" field.

[2] Instances in which a decision does not fully or partially support the parent.

[3] Represents cases that were requested in previous school years that closed in school year '21-22.

J.S.M. et al. v. New York City Dept. of Education et al.
Cases with Elapsed Resolution Period
Exhibit 5

			A	B	C = A / B
	School Year of DPC Filing	Cases with Elapsed Resolution Period (Meeting Held)	Cases with Elapsed Resolution Period (No Meeting Held)	Cases with Elapsed Resolution Period [1]	% of Cases with Elapsed Resolution Period
1	SY17-18	202	4,987	5,189	96.11%
2	SY18-19	272	7,934	8,206	96.69%
3	SY19-20	232	8,836	9,068	97.44%
4	SY20-21	402	12,970	13,372	96.99%
5	Total Cases	1,108	34,727	35,835	96.91%

Source: State Def 3143.xlsx

[1] Represents cases with a RERES_CODE of 3 ("PROCEED TO IMPARTIAL HEARING - RESOLUTION PERIOD ELAPSED).

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

J.S.M., *et al.*,

Plaintiffs,

v.

NEW YORK CITY DEPARTMENT OF
EDUCATION, *et al.*,

Defendants.

Case No. 20-cv-705-EK-RLM

**DECLARATION OF TODD
SILVERBLATT IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

I, Todd Silverblatt, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am an attorney duly admitted to practice in the State of New York and the United States District Court for the Eastern District of New York. I am employed by Mobilization for Justice (“MFJ”) as a Supervising Attorney. I supervise seven attorneys in the special education practice in addition to handling my own cases.

2. MFJ is a not-for-profit legal services organization that provides a wide range of free legal services to low-income New Yorkers.

3. Prior to my organization’s merger with Mobilization for Justice in 2018, I was the Executive Director of Partnership for Children’s Rights for 20 years.

4. I have represented families in special education due process proceedings brought under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*, in New York City for approximately 23 years. As part of this representation, I regularly interview clients, draft and file due process complaints (“DPCs” or “complaints”), participate in resolution meetings, appear at hearings and pre-hearing conferences before Impartial Hearing Officers (“IHOs”),

submit written documents to IHOs, engage in settlement negotiations, and engage in other activities associated with litigating DPCs.

5. Since 1999, I have represented more than 1,000 families and children with disabilities and have supervised attorneys who have represented in excess of 10,000 families.

6. In addition, MFJ represented Named Plaintiffs S.F. and A.N. in connection with their DPCs described in the Amended Complaint in this action.

7. Through my work, I am familiar with the IDEA due process complaint impartial hearing system in New York City as managed by the New York City Impartial Hearing Office (“NYCIHO”), an office within the New York City Department of Education (“NYCDOE”). This declaration is based on my personal experience representing, and supervising others who have represented, families in the New York City due process complaint impartial hearing system. Unless otherwise specified, my observations below are based on representations from the 2017–2018 school year to the present.

Extensions

8. In the DPC proceedings in which I have represented families, I have observed that IHOs overseeing these proceedings routinely enter extensions of the “Compliance Date,” that is, the date by which a DPC decision must be issued in order to comply with the timelines in the IDEA.

9. On many occasions during the DPC proceedings in which I have represented families, I have requested an extension of the Compliance Date, or agreed to NYCDOE’s requests to extend the Compliance Date, when such extensions were in my clients’ interests. For example, I have regularly requested such extensions when necessary to ensure adequate time for an independent evaluation of the child’s special education needs.

10. On other occasions, however, extensions have not been in my clients' interests. For example, on occasion, the NYCDOE representatives have failed to appear at hearings or have appeared but stated they were not ready to proceed with the hearing. In those circumstances, I have observed IHOs solicit extension requests from the parties, for example, by asking, "do I have an application for an extension?"

11. On other occasions, I have requested prompt hearings on my clients' DPCs (either at the outset of the case or following the completion of an independent evaluation) but the assigned IHO has proposed hearing dates several months in the future because of the IHO's availability.

12. On the occasions described *supra* ¶¶ 10–11, I have felt that refusing to seek an extension of the Compliance Date might displease the IHO that would continue to preside over my client's DPC, risking adverse consequences to the client's case.

13. I have also observed, on one or more occasions, that extensions have been entered that were not requested by either party, that multiple extensions were entered at one time, and that extensions were entered retroactively.

14. I have observed that IHOs have followed various practices with respect to considering the factors that New York regulations direct IHOs to consider when granting extensions. Some IHOs have specifically asked the parties about each factor. Other IHOs have not, instead granting an extension solely on the basis of the request itself.

Resolution Sessions

15. In the due process proceedings in which I represent families, NYCDOE has failed to convene resolution sessions as required by the IDEA in the vast majority of cases.

16. In the due process proceedings in which I have represented families, on many of the occasions when NYCDOE has convened resolution sessions, the representatives appearing on

behalf of NYCDOE at the resolution sessions represented to me that they did not have authority to offer the relief sought in the DPC.

17. For example, I have represented clients in many proceedings in which their DPCs sought deferral to the Central Based Support Team for referral to a nonpublic school, which is relief that is available under the IDEA when the public school system is unable to provide the child a free appropriate public education (“FAPE”). The NYCDOE representatives at the resolution sessions convened in such cases have represented to me that they did not have authority to offer that relief.

18. I have also represented clients in many proceedings in which their DPCs sought private school tuition. For years, my experience was that NYCDOE would schedule resolution sessions in those cases but then invite the parent to waive the resolution session, because NYCDOE’s position was that it had no authority to offer private school tuition at resolution sessions. In more recent years, my experience has been that NYCDOE has simply failed to schedule resolution sessions in cases seeking such relief. In the twenty-three years I have been representing families in DPC proceedings, NYCDOE has never offered to pay private school tuition in order to resolve a DPC during a resolution session.

19. As another example, I have attended many resolution sessions seeking independent evaluations or services like Special Education Teach Support Service, occupational therapy, and similar special education services. Many of the NYCDOE representatives at those resolution sessions represented to me that they did not have authority to offer the rates sought for those evaluations and services.

Impartial Hearings

20. I have represented many families in impartial hearings concerning the merits of a DPC before IHOs. These impartial hearings are intended to resolve the substantive allegations in a DPC, such as whether the child was denied a FAPE and the relief to which the child is entitled.

21. In many due process proceedings in which I have represented families, the NYCDOE representatives who appeared at the impartial hearings did not put on any witnesses or submit any evidence to challenge the families' assertions that their children were denied a FAPE, or conceded at the impartial hearing that the children were denied a FAPE.

22. In each such case, the NYCDOE had failed to offer, approve, or otherwise complete a settlement that would have provided the same relief the family obtained after a hearing. Had NYCDOE done so, there would not have been a need for a hearing.

23. In some other due process proceedings in which I have represented families, no representative for NYCDOE has appeared at the impartial hearing. In my experience, in most such cases, the IHO has deferred the hearing to a later date, causing additional delays.

Harm to Families Experiencing Delays

24. In my experience representing families in due process proceedings, delays in resolving DPCs have harmed families.

25. I have represented many families whose children were not receiving the services, placements, or evaluations sought in their DPC while that DPC was pending. In general, these families' children did not receive those services, placements, or evaluations because the families did not have pendency in the relief sought, and/or their children were not unilaterally placed at a private school, and/or they could not afford to pay out-of-pocket for the services, placements, or evaluations.

26. MFJ only represents clients who meet certain income criteria. As a result, all of my clients that I represent in due process proceedings have low income and face considerable financial pressure. Many of these families I have represented were unable to pay out of pocket for services or placements they sought through DPCs until those DPCs were decided or settled.

27. As a result, these families' children did not receive services, placements, or evaluations sought in the DPCs while the DPCs were pending. Many of these families experienced delays while attempting to resolve their DPCs, during which their children continued to not receive services, placements, or evaluations. On many occasions, these families reported that their children experienced significant learning loss, psychological difficulties, and other adverse consequences as a result of not receiving those services, placements, or evaluations.

28. For example, I have represented families who filed DPCs seeking independent neuropsychological evaluations of their children, in order to determine what special education programs their children needed to receive a FAPE. While those families' DPCs were pending, they were unable to obtain those evaluations. As a result, they were not able to determine what special education programs their children needed to receive a FAPE.

29. As another example, I have represented families who filed DPCs seeking special education services for the first time, because their children had not previously been identified as requiring such services. While those families' DPCs were pending, including during extensive delays in resolving the DPCs, their children did not receive any special education services.

30. As another example, I have represented families who filed DPCs seeking additional special education services their children had not received previously. While those families' DPCs were pending, including during extensive delays in resolving the DPCs, their children did not receive those special education services.

31. A number of families I have represented have expressed frustration in connection with delays in their pending DPCs. By definition, all such families experienced uncertainty with regard to their children's special education during such delays. Some families also reported significant anger, stress and/or anxiety in connection with such delays.

32. As a matter of practice, I have advised all of my clients that the New York City impartial hearing system suffers from extensive delays and that DPCs are extremely unlikely to be adjudicated within the legally mandated timeframes. As a result, these families have experienced distrust in this system and have conditioned themselves to accept these delays without any reasonable expectation of timely hearing decisions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 25, 2022
New York, New York

Todd Silverblatt

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