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 FURTHER SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN OPPOSITION TO STATE DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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Date of Service: September 9, 2022

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PRELIMINARY STATEMENT

Defendants do not even attempt to dispute the sole material fact relevant to liability in this case: that they are failing to provide impartial hearing decisions within the IDEA's mandated 75-day timeframe in thousands of due process complaints filed by New York City families.[1] Defendants have not introduced any evidence to contradict or undermine Plaintiffs' analysis showing that at least 57.6 percent of cases open on or after May 1, 2020, and likely far more than that, were untimely as of January 2022 (Pls.' Br. 15–17, 20–23; Pls.' 56.1 ¶¶ 115–17), nor have they so much as asserted—even without evidence—that those figures are inaccurate. Because there is no material dispute of fact that Defendants are violating the IDEA's requirement to provide New York City schoolchildren with final decisions on due process complaints within the timeframes set forth in the IDEA and its implementing regulations, Plaintiffs' motion should be granted in full, and the State Defendants' motion should be denied in full.

In lieu of contesting the crucial fact that Defendants are not providing class members with impartial hearing decisions in compliance with federal law, Defendants raise a host of collateral points, none of which creates a genuine dispute of material fact relevant to Defendants' liability:

First, Defendants showcase their "intent," after the filing of this litigation, to have full-time hearing officers managed by OATH, rather than independent contractor hearing officers managed by the NYCIHO, handle the adjudication of all due process complaints in New York City at some undefined point in the future. Defendants assert that their plan renders Plaintiffs' claims non-justiciable and absolves Defendants of liability for their continuing failures to provide timely

[1] All defined terms have the meaning set forth in Plaintiffs' Memorandum of Law in Support of their Motion for Partial Summary Judgment.

hearing decisions to New York City families. The planned OATH transition is only the latest in a series of reforms that Defendants have "hoped" would "allow families to avoid delays and obtain relief on a more expedited basis"—many of which were admittedly "not as effective" as they had wanted, and none of which have brought Defendants into compliance. (State Br. 20, 40.) But Defendants may not avoid liability for their ongoing violations because they "hope" they might start to comply with the law years down the road. Right now, two-and-a-half years after this action was initiated, OATH is handling only a small fraction of all due process complaints filed in New York City. Per the most generous of Defendants' own representations, OATH has been assigned to adjudicate only approximately 884 complaints—and of those, has ***issued final decisions in only 61 cases***, while 512 were not otherwise resolved and remain pending—compared to, for example, the over fourteen thousand filed in the 2020–2021 school year alone. Whether those 884 cases are timely or not is entirely beside the point, because Defendants concede that the overwhelming majority of the thousands of pending due process complaints remain mired in the broken, legacy NYCIHO system.

Noticeably absent from Defendants' briefs is any argument that this case is moot. Such an argument would be frivolous, because the actual children who make up the class are having their rights to timely hearings systemically denied on an ongoing basis. Defendants' vague non-justiciability arguments about Plaintiffs' claims being "decidedly in the past" (City Br. 9), "stale" (State Br. 30), or "prudential[ly]" "unripe" (*id.* at 31–32) are simply tepid versions of the mootness argument that Defendants do not—and cannot—make, and should be rejected. The pending OATH transition is, at most, potentially relevant to the contours of the injunctive relief this Court should order ***after*** it grants Plaintiffs' motion on Defendants' liability.

Second, Defendants implicitly concede that the law is being violated, but each insists that it must be the other's fault. City Defendants assert that some parts of the hearing system are "outside [their] purview and beyond [their] control" (ignoring the parts of the hearing system that are within their control). (City Br. 13–16.) State Defendants, meanwhile, contend that they have satisfied their responsibilities under the IDEA by encouraging City Defendants to comply with their obligations under the IDEA (ignoring their own direct obligations). (State Br. 37–40.) This finger-pointing exercise merely underscores that, at bottom, all Defendants have collectively failed to bring the due process hearing system in New York City into compliance with the IDEA. As set forth in Plaintiffs' opening brief, all Defendants have legal, as well as practical, responsibility for the due process hearing system. (Pls.' Br. 25–33.) Joint liability is thus not only appropriate, but necessary to achieve an enduring remedy.

Finally, State Defendants erroneously recast Plaintiffs' claims against them as challenging State Defendants' failure to supervise ***the City Defendants'*** compliance with IDEA timelines. On that basis, State Defendants argue that Plaintiffs have invented an IDEA cause of action that does not exist and that State Defendants satisfied their supervisory responsibility by trying (albeit unsuccessfully) to coax City Defendants into delivering timely hearing decisions to class members. (State Br. 24–28, 32–40.) These arguments are legally incorrect and rely on a tortured mischaracterization of Plaintiffs' complaint. Plaintiffs' claims against State Defendants are based on their failures to comply with their ***own*** direct, and enforceable, obligations under the IDEA—not based on their (additional) failure to ensure that City Defendants follow the law. In other words, Plaintiffs had no need to invent a cause of action, because State Defendants are plainly liable under the one expressly created by the IDEA in 20 U.S.C. § 1415. Likewise, State Defendants' assertion that their "intent" to comply with the IDEA excuses them from liability

erroneously conflates the standard applicable to 42 U.S.C. § 1983 claims—for which neither Plaintiffs nor State Defendants now seek summary judgment—with the straightforward elements of Plaintiffs' direct IDEA claims, which impose no intent requirement at all.

Therefore, Plaintiffs' motion for partial summary judgment on their IDEA claim against all Defendants should be granted, and State Defendants' cross-motion should be denied.

ARGUMENT

I. DEFENDANTS' ASSERTED "INTENT" TO IMPROVE HEARING TIMELINESS IN THE FUTURE DOES NOT RELIEVE THEM OF LIABILITY FOR ONGOING IDEA VIOLATIONS.

A. Defendants Do Not Dispute That They Are Failing To Provide Class Members the Timely Hearing Decisions that the IDEA Requires.

Defendants' briefs are notable for what they do not include. Most prominently, Defendants do not dispute that they are systemically failing to deliver timely hearing decisions to class members as required by the IDEA. As shown in Plaintiffs' opening brief (*see* Pls.' Br. 13–17), Defendants' own data makes clear that, as of January 21, 2022, conservatively, at least ***57.6 percent*** of the more than 24,000 cases that were open on or after May 1, 2020 were either untimely closed or open and untimely.[2] (Pls.' 56.1 ¶¶ 115–17; Steinkamp Decl. ¶ 75, Ex. 3.3.) For cases closed during the 2020–2021 school year, the average case length was ***320 days***—over four times

[2] Plaintiffs calculated this figure by treating all so-called "waitlist extensions"—the extensions Defendants put in place to make cases that lingered on the waitlist past the compliance period before an IHO was assigned look timely—as invalid. (Pls.' Br. 11–13, 21–23 (demonstrating invalidity of waitlist extensions).) Neither Defendant disputes that "waitlist extensions" do not legally extend the compliance date. (*See* City Br. 15 ("City Defendants do not contend that the issuance of waitlist extensions . . . cures the delay and renders the case timely"); *see generally* State Br. (failing to defend or even address waitlist extensions); State 56.1 Counterstatement ¶¶ 43–52 (not disputing facts related to waitlist extensions).) Furthermore, many other types of extensions were also entered improperly—such as for excessively long periods, retroactively, in batches, or without adequate findings—and thus Defendants' true compliance rate is likely significantly lower still. (Pls.' Br. 16–17, 23.)

the IDEA-mandated deadline of 75 days, absent valid extensions. (Pls.' 56.1 ¶ 110; Steinkamp Decl. ¶ 67, Ex. 1.1.) Defendants do not question Plaintiffs' calculations or introduce any alternative data. Combing through Defendants' papers will reveal no assertion—even a conclusory one—that the due process hearing system is in fact delivering timely hearing decisions. This ends the inquiry.

Instead, Defendants focus exclusively on immaterial facts that have no bearing on their IDEA liability. Both Defendants point to the partial transition of the due process hearing system to OATH, which Defendants "plan" to implement fully (City Br. 5) with the "inten[t]" that this will "reduce delays" (State Br. 1), after "additional time" that is necessary because there is "still work to be done" (City Br. 13). But Defendants' hopes and dreams are irrelevant to their liability for the harm they are currently inflicting on the class. Critically, Defendants do not claim that OATH has brought Defendants into compliance with the IDEA. Nor could they, because OATH remains only a small component of a dysfunctional system through which Defendants fail to deliver to families timely hearings and, in turn, unlawfully delay students' much needed special education services.

Statistics related to the small proportion of cases that OATH has recently begun handling do not raise a material dispute of fact as to whether the system is currently delivering timely hearing decisions to all class members. Assuming Defendants' statistics are correct, as of July 22, 2022, OATH hearing officers had been assigned only 884 due process complaints—***and had issued final decisions in only 61 cases***—since March 2022 (and before that, none had been assigned at all). (Garcia Decl. ¶¶ 10–11.) For comparison, in the 2020–2021 school year, families in New York City filed 14,264 due process complaints—more than 16 times the total number of complaints that OATH has been able to take on so far, and more than 233 times the number of

complaints that OATH has decided. (*See* Pls.' 56.1 Counterstatement ¶ 101; Steinkamp Decl. Ex. 1.)[3]

Defendants' contention that the waitlist has been reduced "significantly" (City Br. 10), even if accurate, is equally irrelevant. The IDEA creates a right to a timely hearing ***decision***, not merely to a timely ***assignment*** of a hearing officer. Whether a family is denied a hearing decision within 75 days because the case was unassigned or because the case was assigned but left undecided, the violation is the same. Defendants do not (and cannot) claim that quicker assignment has led to timely delivery of hearing decisions. Accordingly, there is no material dispute of fact that Defendants are liable under the IDEA, and Plaintiffs' motion should be granted.

B. Defendants' Intent to Comply in the Future Does Not Render Plaintiffs' Claims Non-Justiciable.

Unable to assert that the OATH transition has brought them into compliance with the IDEA (it has not), Defendants argue instead that their hopes for future compliance render Plaintiffs' claims non-justiciable. (*See, e.g.*, City Br. 9–13 ("Plaintiffs' Motion Should Be Denied Based on Ongoing Improvements to the Administrative Due Process System"); State Br. 28–31 ("Plaintiffs' IDEA Claims are Based on Outdated Facts . . .").) Notably, Defendants do not claim

[3] As noted, Defendants do not even argue that more recent data would demonstrate materially better compliance, but they would have been barred from doing so in any event. If Defendants believed that "in some material respect" the data they produced earlier was "incomplete or incorrect," they had a duty to supplement or correct their response "in a timely manner," but they did not do so. Fed. R. Civ. P. 26(e). And, if Defendants had attempted to cite new data for the first time in their opposition without first producing it, the Court would have had to "preclude[]" it. *Rekor Sys., Inc.* v. *Loughlin*, 2022 WL 3020148, at *16 (S.D.N.Y. July 29, 2022). Similarly, City Defendants complain halfheartedly that "it would be unfair to grant summary judgment based on the conclusions of Plaintiffs' data analyst, when Defendants have not had an opportunity to depose him and test these conclusions" (City Br. 16), but despite having access to their own data, City Defendants presented no assessment of Mr. Steinkamp's calculations, nor have they even sought to depose Mr. Steinkamp.

this case is moot, because to do so would be frivolous.[4] What they raise instead are a host of more tepid justiciability arguments that, while not explicitly relying on mootness, should be rejected for the same reasons that this case is not moot.

1. Plaintiffs' Ongoing Harms Entitle Them to Injunctive Relief Notwithstanding Defendants' Intent to Someday Comply with the IDEA.

Defendants contend that Plaintiffs' claim for injunctive relief is not justiciable because the OATH transition—which started with a Memorandum of Agreement signed in December 2021, over eighteen months after this litigation was filed—is "intended" to improve the due process hearing system (State Br. 1, 29–30; City Br. 9–10), Defendants are in the process of "improving" the system (City Br. 11–12), and the "adjudication apparatus is being completely overhauled" (State Br. 29). These arguments are meritless because, irrespective of intentions, Plaintiffs continue to suffer ongoing harms.

As an initial matter, Defendants provide nothing more than hope that the OATH transition will, at some point in the future, bring the due process hearing system into compliance. Defendants provide no assurances as to when the OATH transition will be completed—State Defendants admit that the transition to OATH could "take a year or more" (State Br. 22)—nor offer any guarantee that the transition will ever be completed. (*See generally* State Br.; City Br.) And despite City Defendants' bland pronouncement that once OATH is "fully staffed," its "intent"

[4] Furthermore, even if Defendants were attempting to argue that Plaintiffs' claims are moot, it would be Defendants' burden to demonstrate that the alleged harms will not continue—a burden they plainly failed to meet, because they have not even claimed the harm to the class is resolved and have not introduced any evidence at all. *See Bais Yaakov of Spring Valley* v. *Educ. Testing Serv.*, 2021 WL 323262, at *4 (S.D.N.Y. Feb. 1, 2021) ("[A] defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.") (quoting *Friends of the Earth, Inc.* v. *Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 190 (2000)).

is that OATH will handle all newly filed due process complaints, and that OATH is committed to delivering timely decisions, they offer no evidence—such as affidavits, expert reports, or data modeling—even suggesting that a fully complete transition to OATH will be able to deliver timely hearing decisions to families, including those with cases already pending. (City Br. 10; *see also* Garcia Decl. ¶ 15.) Such promises would, of course, not be dispositive even if they had been offered. State Defendants admit, as they must, that their previous efforts to improve the system "were not as effective as [they] hoped" (State Br. 40), even while asserting that they should be absolved of liability for ongoing failures because they hope this latest effort will work better than its predecessors. This irony is lost on State Defendants, however, who cast the IDEA as a report card judging the efforts of bureaucracies to deliver on the rights promised by federal law, rather than a binding guarantee of timely hearing decisions for all families.

Significantly, newly produced evidence regarding the pace at which NYCDOE settles due process complaints casts further doubt on the likelihood that the OATH transition, without other substantial structural changes, will be able to deliver timely hearing decisions on a systemic basis. The "number of due process complaints that settle is extremely high." (Suriano Decl. ¶ 22.) When cases settle, they do not require an IHO to issue a hearing decision, thereby allowing the IHOs to focus their limited resources on handling disputed cases. But all cases, even those that ultimately settle, must proceed quickly enough to deliver a timely decision within IDEA timelines, in case the settlement is unsuccessful and a hearing is required. Data produced by City Defendants shows that, in the 2020–2021 school year, cases that City Defendants ultimately settled took an average of more than ***350 days*** to settle, including an average of more than 130 days for NYCDOE to even recommend cases for settlement. (Steinkamp Supp. Decl. ¶ 25, Exs. 1–3.) Absent structural changes to substantially accelerate this timeline, settlements will not effectively

eliminate undisputed cases from the impartial hearing pipeline, and those cases will continue to overwhelm the dockets of OATH IHOs just as they have burdened IHOs in the current system.

In addition to resting on unsupported speculation about the future, Defendants' justiciability arguments are also based on a fundamental mischaracterization of Plaintiffs' claims. Plaintiffs are not asking the Court to address the validity of any particular "system," as Defendants suggest. (*See, e.g.*, City Br. 12 ("the functionality of the administrative due process system" and the "likelihood of any future issues" are "subject to genuine dispute"); State Br. 29 ("It is undisputed that the former system, upon which Plaintiffs base their claims, is in the process of being phased out.").) Instead, Plaintiffs are challenging Defendants' undisputed failure to provide timely decisions to thousands of actual families with children who need special education services, in violation of each of those families' individual statutory rights—whether using the legacy impartial hearing system, OATH system, or a combination thereof. (*See, e.g.*, Am. Compl. ¶¶ 331, 337.) Plaintiffs have thus demonstrated "a likelihood of ongoing or future harm," *Gutierrez* v. *Lemonade, Inc.*, 2022 WL 3214852, at *5 (S.D.N.Y. Aug. 9, 2022), as required for the grant of an injunction, and it is a "reasonable inference" that Plaintiffs will continue to "suffer the injury complained of"—untimely hearings—"in the future," *Rapa* v. *City of New York*, 2015 WL 5671987, at *2 (S.D.N.Y. Sept. 25, 2015). (*See* Pls.' Br. 33–37.)

Defendants' cases addressing attacks on the legal structures of other systems, in which the harms the proposed injunctive relief would address had already been resolved, are thus inapposite.[5] In contrast to those cases, it is well-established that injunctive relief is appropriate to

[5] *See, e.g.*, *Fusari* v. *Steinberg*, 419 U.S. 379, 385–88 (1975) (declining to review a district court's decision regarding the constitutionality of a statutory scheme that had been significantly amended since the decision, and remanding for reconsideration by the district court in the first instance) (cited at State Br. 30–31); *Hosp. Ass'n of N.Y. State, Inc.* v. *Toia*, 577 F.2d 790, 798 (2d

remedy ongoing harm, even when changes are planned. In *Saba* v. *Cuomo*, 535 F. Supp. 3d 282 (S.D.N.Y. 2021), for example, the court let plaintiffs' claims for injunctive relief proceed, notwithstanding New York State's plan to modify the DMV's system to allow for a non-binary gender selection option on driver's license applications (as the plaintiffs were seeking), "for the straightforward reason that the Application has not already changed." *Id.* at 291. Similarly here, the transition to OATH is nowhere near complete, and it has not eradicated the harm being caused to thousands of students. The OATH transition may or may not be an "activit[y] the Court would ultimately mandate in a judgment for [p]laintiff"—a question the Court should consider later in this litigation—but even if it were, "that does not obviate [p]laintiff's entitlement to seek a court order granting such relief or strip the Court of its authority to grant it." *Id.* at 292. Plaintiffs' claims for injunctive relief thus remain justiciable.

2. Contrary to State Defendants' Assertions, the Prudential Ripeness Doctrine Does Not Bar Plaintiffs' Claims.

State Defendants raise a related, but similarly meritless, argument that this Court should decline to exercise jurisdiction over Plaintiffs' IDEA claims on "prudential ripeness" grounds. (State Br. 31–32.) The two-prong prudential ripeness inquiry requires a court to determine "whether the claim is fit for judicial resolution" and "whether and to what extent the parties will endure hardship if [a] decision is withheld." *In re MTBE Prods. Liab. Litig.*, 725 F.3d 65, 110 (2d Cir. 2013). The "fitness" prong focuses on whether the claims at issue are "contingent on future events or may never occur," while the "hardship" prong focuses on whether the claim

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Cir. 1978) (affirming district court's dismissal of claims that a reimbursement formula violated federal statutory requirements when the formula had been substantially revised) (cited at State Br. 29–30); *J.T.* v. *de Blasio*, 500 F. Supp. 3d 137, 190 (S.D.N.Y. 2020) (denying injunction seeking to open schools during COVID-19 pandemic because schools had opened) (cited at City Br. 11).

asserts the "mere possibility of future injury" as opposed to "some present detriment." *Simmonds* v. *INS*, 326 F.3d 351, 359–60 (2d Cir. 2003). State Defendants' argument fails on both prongs.

First, Plaintiffs' claims are thoroughly "fit" for judicial relief and are in no way "contingent" on anything—there are thousands of class members who are being denied, in real time, their right to timely hearing decisions. There is nothing "premature and speculative" (State Br. 31) about the Court concluding so based on undisputed evidence. And the State's point that it is too early to "fashion relief" (*id*. at 31–32), conflates the liability phase of this case with the remedies phase. The Second Circuit squarely rejected a similar argument in *MTBE*, 725 F.3d at 109, an action alleging contamination of New York City's municipal water system. The defendant there argued that the claims were prudentially unripe because the City had no means to actually deliver water from the contaminated site. *Id.* The Second Circuit disagreed, finding that, because the complaint asserted an injury based on previous contamination of the site, the defendant had erroneously "addresse[d] the scope of the *damages* flowing from the injury, not whether there [was] an injury at all." *Id.* at 110.

Second, the class stands to continue to suffer significant "hardship" if the Court were to withhold a decision on prudential ripeness grounds. *MTBE*, 725 F.3d at 110. Since at least 2014 (Pls.' 56.1 ¶¶ 54–58), Defendants have been on notice that the impartial hearing system did not comply with the IDEA, and this lawsuit was filed against them two-and-a-half years ago. Yet as of today, they still have not come into compliance, and as a result, Defendants are currently harming class members through extensive delays—a far cry from the "mere possibility of future injury." *Simmonds*, 326 F.3d at 360. Since Defendants have failed to establish either prong of the prudential ripeness test, this case plainly does not fall into the "narrow exception to the strong principle of mandatory exercise of jurisdiction." *Revitalizing Auto Cmtys. Env't Response Tr.* v.

Nat'l Grid USA, 10 F.4th 87, 102 (2d Cir. 2021). This Court should therefore exercise its "mandatory" jurisdiction and deny State Defendants' cross-motion.

II. DEFENDANTS' FINGER-POINTING ONLY HIGHLIGHTS THAT BOTH DEFENDANTS ARE JOINTLY LIABLE.

Because Defendants cannot and do not dispute that the New York City hearing system is woefully out of compliance with the timeliness requirements of the IDEA, each Defendant instead tries to dodge responsibility by blaming the other. (*See, e.g.*, City Br. 13–15; State Br. 37.) This bureaucratic blame game only underscores that, because Defendants are jointly responsible for the system both legally and practically, they are also jointly liable for its failures. (Pls.' Br. 25–33 (citing 20 U.S.C. § 1415(f); 34 C.F.R. §§ 300.33, 300.500, 300.515(a)).)

Specifically, City Defendants assert that they should not be held liable because they "have no authority or control" over certain aspects of the New York City impartial hearing system. (City Br. 13–15.) This is legally incorrect. LEAs like NYCDOE are liable for systemic noncompliance with IDEA requirements, even when that liability is shared with an SEA. *Jose P.* v. *Ambach*, 669 F.2d 865, 870–71 (2d Cir. 1982); *accord 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). It is also factually false. Even putting aside NYCDOE's underlying responsibility to meet "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), City Defendants directly and systemically contribute to the delays that ultimately violate that underlying requirement by failing to convene resolution sessions, clogging the hearing process by taking cases to hearings in which it presents no evidence, and delaying settlements of due process complaints, among other practices. (*See* Pls.' Br. 7–8, 25–27.)

Moreover, City Defendants provided discovery after Plaintiffs' opening brief was served that underscores how City Defendants' extensive delays in settling due process complaints

place insurmountable burdens on the impartial due process hearing system. *See supra* § I.B.1 (cases take nearly a calendar year to settle). City Defendants claim that their failures regarding resolution and settlement are irrelevant because they do not directly deprive families of timely hearing decisions. (City Br. 14–15.) But City Defendants ignore that these are hearing-related processes that they directly control and that are causing and contributing to the systemic delays in issuing timely hearing decisions.[6]

State Defendants, meanwhile, repeatedly and incorrectly characterize Plaintiffs' claims as challenging only NYCDOE's noncompliance. (*See, e.g.*, State Br. 37.) This ignores State Defendants' failure to satisfy their own obligations to "ensure" that the IDEA's timeliness requirements are met, 34 C.F.R. § 300.515(a), and also their failure to meet other specific, direct obligations (including certifying, training, and disciplining IHOs, establishing guidelines for IHO assignment and recusal, and others (*see* Pls.' Br. 8–9, 28–31)), thereby directly contributing to the denial of class members' rights to timely hearing decisions. Nor do State Defendants dispute that they have developed and systemically implemented unlawful waitlist extensions. (Pls.' Br. 28–32; *see generally* State Br.)

Crucially, where, like here, both the LEA and SEA are responsible for the system's timeliness, and neither the LEA nor the SEA can alone provide "complete relief," ***both*** are liable. *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), *vacated in part on separate grounds*, 465 F.3d 503 (2d Cir. 2006). *D.D.* expressly held that both

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[6] City Defendants correctly note that Plaintiffs' Amended Complaint does not allege a separate cause of action stemming from NYCDOE's (undisputed) violation of the IDEA's requirement to convene resolution sessions (City Br. 13–14), but that does not render the violation irrelevant. NYCDOE's failure to convene resolution sessions directly contributes to hearing delays and therefore is part of the systemic failures leading to City Defendants' unmet IDEA obligations.

NYCDOE and NYSED could be held liable for systemic violations of the IDEA where one entity alone could not provide "complete relief." *Id.* Yet NYCDOE fails to address *D.D.* at all, and NYSED relegates it to a footnote, arguing that because the procedural posture of *D.D.* was a motion to dismiss, it "has no bearing." (State Br. 35 n.12.) Not so. The commonsense legal principle—that where multiple Defendants are required to provide plaintiffs complete relief, they are both liable, *D.D.*, 2004 WL 633222, at *23—is directly applicable here. And the Defendants have not suggested, nor could they, that anything about the anticipated transition of hearing logistics to OATH alters the baseline, and non-delegable, legal obligations for delivering timely hearing decisions that the statute assigns to the SEA and LEA. In short, because Defendants are jointly responsible, they are jointly liable. *See id.*; *accord Jose P.*, 669 F.2d at 870–71 (where NYCDOE and NYSED were jointly responsible for systemic failures in New York City education system, injunction was appropriate against both).

III. PLAINTIFFS CHALLENGE STATE DEFENDANTS' DIRECT VIOLATIONS OF THE IDEA, NOT MERELY THEIR "SUPERVISION" OF CITY DEFENDANTS.

State Defendants mischaracterize Plaintiffs' claims against them as solely challenging violations of the State Defendants' ***supervisory*** responsibilities. (*See* State Br. 24–28, 32–40.) Attacking that straw man, State Defendants argue that Plaintiffs do not have an implied private right of action against State Defendants under Section 1412 of the IDEA, which imposes State Defendants' supervisory obligations, and that in any event, State Defendants have made efforts (albeit unsuccessful ones) to supervise City Defendants, which satisfy their Section 1412 supervisory obligations. (*Id.*) While State Defendants may enjoy the narrative that they are backstage supervisors working with errant performers, Plaintiffs did not bring the case that State Defendants describe.

First, Plaintiffs' claims are under Section 1415 of the IDEA—the provision that allows class members to enforce their individual rights to timely hearing decisions—which State Defendants concede provides a private right of action. (State Br. 24 ("[S]ection 1415(i)(2)(A) is the only express private right of action in the IDEA."); Am. Compl. ¶ 332.) *Second*, State Defendants' intentions and attempts to supervise NYCDOE are irrelevant to State Defendants' liability pursuant to Section 1415 for their own baseline failure to comply with their direct statutory obligations.

A. Plaintiffs Do Not Need to "Create" a Private Right of Action Against State Defendants Because Section 1415 of the IDEA Already Supplies One.

Plaintiffs' direct IDEA claim against State Defendants arises under Section 1415(i)(2)(A)—the very provision State Defendants concede "is the only express private right of action in the IDEA." (State Br. 24; *see* Am. Compl. ¶ 332 ("[T]he State Defendants have violated Plaintiffs' rights under 20 U.S.C. § 1415 and 34 C.F.R. § 300.515(a)."); Pls.' Br. 23–24 ("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.").) Plaintiffs have not, as State Defendants maintain, sued them under (or to enforce) Section 1412(a)(11), which requires NYSED to "ensur[e] that . . . the requirements of [the IDEA] are met" (although State Defendants are also violating that provision).

Section 1415(i)(2)(A) grants "aggrieved" "part[ies]" a cause of action in federal court to assert claims "with respect to" due process complaints—precisely the type of claims brought here. Specifically, Plaintiffs assert that State Defendants are responsible for violating the timely hearing decision requirement set forth in 20 U.S.C. § 1415(f)(1)(B)(ii) and 34 C.F.R. § 300.515, one of the many requirements the IDEA imposes "with respect to" due process complaints. As set forth in detail in Plaintiffs' opening brief, the Amended Complaint alleges, and

the undisputed evidence in support of Plaintiffs' motion establishes, that State Defendants are directly responsible for those violations.

Indeed, the Second Circuit has explicitly and repeatedly green-lighted claims against NYSED under Section 1415 for systemic IDEA violations in which the State is directly involved. *Heldman* v. *Sobol* expressly held that Section 1415 "confers on a parent of a disabled child the right to judicial relief for system-wide due process violations" against the State, after a painstaking examination of that cause of action. 962 F.2d 148, 151, 155–56 (2d Cir. 1992). Similarly, *Jose P.* explicitly found liability against the State because it "b[ore] a share of the responsibility" for the challenged systemic failures.[7] 669 F.2d at 871. *Engwiller* v. *Pine Plains Central School District* applied these same principles to a parent's claim against NYSED for violating the timely hearing requirement, granting summary judgment against NYSED "on the ground that [it] violated her and her daughter's due process rights under the IDEA." 110 F. Supp. 2d 236, 244 (S.D.N.Y. 2000).

State Defendants' argument that the private right of action in Section 1415 can only be asserted against LEAs has no basis in the statute and also ignores this binding precedent. Undeterred, State Defendants rely on cases that are wholly inapplicable. *County of Westchester* v.

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[7] State Defendants distinguish *Jose P.* because there, the State previously consented to entry of judgment, and so the court "assumed that the state defendants could be held liable under section 1412." (State Br. 28 n.10.) But Plaintiffs are not seeking to hold State Defendants liable under Section 1412, and *Jose P.* does not stand for some general presumption that State Defendants can only be held liable under the IDEA if they consent. *Jose P.* held that even if the State had not consented, the State could still "properly be found to have failed to meet" legal requirements. 669 F.2d 865 at 870–71. State Defendants further claim that *Dorian G.* v. *Sobol* supports their reading of *Jose P.* because there, the court used similar reasoning in "declin[ing] to apply" *Jose P.* (State Br. 28 n.10.) But *Dorian G.* said nothing about *Jose P.*'s applicability in cases alleging systemic failures for which State Defendants are directly responsible. 1994 WL 876707, at *3 (E.D.N.Y. Jan. 28, 1994) (holding New York State Commissioner of Education not liable under Section 1415 for failures related to individual child's education based solely on his supervisory role).

New York, for example, held only that ***counties***—unlike families—which had not been aggrieved by any rights violations with respect to due process complaints and thus could not invoke Section 1415, could not read in a new cause of action under other IDEA provisions. 286 F.3d 150, 152 (2d Cir. 2002); *see also Ventura De Paulino* v. *N.Y.C. Dep't of Educ.*, 2019 WL 2499204, at *2 n.4 (S.D.N.Y. May 31, 2019) (cited at State Br. 24) (dismissing plaintiff's claims against all defendants, and noting unremarkably, in dicta, that the State is not a proper defendant in "seeking judicial review of an administrative decision"). State Defendants also mistakenly rely on cases like *Y.D.*, which held only that the State's supervisory role is not *per se* sufficient to support a claim challenging violations solely within the control of the LEA—in that case, the contents of an individual child's IEP. *Y.D.* v. *New York City Dep't of Educ.*, 2016 WL 698139, at *5 (S.D.N.Y. Feb. 19, 2016). That exception merely proves the rule of SEA liability for widespread and structural violations in which the State is directly involved—as in *Heldman* and *Jose P.* That is precisely the type of challenge Plaintiffs bring here.

Because Plaintiffs can enforce Section 1415(f)(1)(B)(ii) against State Defendants under Section 1415's concededly "explicit private right of action" (State Br. 25), Plaintiffs have no need to imply a different private right of action under Section 1412.

B. State Defendants' Intent and Unsuccessful Efforts Are Irrelevant to Their Liability Under Section 1415.

State Defendants next argue that they should not be held liable because they have "[t]aken [e]fforts" to comply with their obligations under the IDEA—even though those efforts have, undisputedly, failed. (State Br. 37.) But NYSED's intent and unsuccessful attempts to improve the hearing system are both irrelevant. The operative inquiry for IDEA liability is ***whether*** Defendants violated the IDEA, not why they did so or how hard they tried not to.

As a threshold matter, the text of the IDEA's private right of action provision, 20 U.S.C. § 1415(i)(2)(A), is entirely silent regarding intent. And Section 1415, which NYSED asserts "rejects a strict liability" standard (State Br. 33), merely instructs courts to award appropriate relief. 20 U.S.C. § 1415(i)(2)(C)(iii) ("[T]he court . . . shall grant such relief as the court determines is appropriate."). That provision addresses remedies for IDEA violations; it has no bearing on liability. State Defendants' assertion that Plaintiffs must prove that State Defendants acted with "deliberate indifference" to succeed on their direct IDEA claim is incorrect as a matter of law. (State Br. 34.) State Defendants erroneously conflate the heightened requirements applicable to *Monell* claims brought under 42 U.S.C. § 1983 with the straightforward elements of the direct IDEA claims for which Plaintiffs now seek summary judgment. (*Id.* (citing *Reynolds* v. *Giuliani*, 506 F.3d 183, 193 (2d Cir. 2007)).) *Reynolds* was a Section 1983 case that had nothing to do with the IDEA, and *Monell* liability—including the deliberate indifference standard—is specific to Section 1983. *See Monell* v. *N.Y.C. Dep't of Soc. Servs.*, 436 U.S. 658, 694–95 (1978); *City of Canton, Ohio* v. *Harris*, 489 U.S. 378 (1989).

For the wholly distinct context of direct IDEA claims, by contrast, the standard is simply that Defendants "compl[y]" with the IDEA. *D.D. ex rel. V.D.* v. *N.Y.C. Bd. of Educ.*, 465 F.3d 503, 512 (2d Cir. 2006) (holding that "the IDEA does not simply require substantial compliance on the part of participating states; it requires compliance," without inquiry into defendants' intent). The relevant question for summary judgment is therefore simple: "whether the SED met [the timely hearing] obligation in the present case." *Engwiller*, 110 F. Supp. 2d at 248; *accord Cordero ex rel. Bates* v. *Pa. Dep't of Educ.*, 795 F. Supp. 1352, 1362–64 (M.D. Pa. 1992) (holding SEA liable for "pervasive" IDEA violations without inquiring into SEA's intent); *Corey H.* v. *Bd. of Educ. of Chi.*, 995 F. Supp. 900, 918 (N.D. Ill. 1998) (SEA was liable under

IDEA because it "ha[d] failed and continues to fail to ensure" compliance with IDEA, without examining intent).

Here, as the record makes clear, State Defendants have not met their obligations under the IDEA—families in New York City have been, and still are, systemically denied timely decisions on their due process complaints. *See supra* § I.A. Instead of disputing this, State Defendants' brief focuses at length on the (unsuccessful) steps they undertook to "bring the [NYC]DOE into compliance" with the IDEA, including holding "regular formal meetings" with NYCDOE, telling NYCDOE to "develop action plans," and seeking "data at numerous junctures" from NYCDOE. (State Br. 37–40; Pls.' 56.1 Counterstatement ¶¶ 1–87.) Because the statute permits State Defendants "flexibility" in meeting their oversight obligations, they contend, they cannot be held liable under the IDEA, even though their "efforts" to improve the system "were not as effective as [they] hoped." (State Br. 40; *see also id.* at 34.) This argument suffers from at least two fatal flaws.

First, Plaintiffs' claim against State Defendants is not that they are liable for City Defendants' failures. State Defendants are liable for their own failures. *See* 34 C.F.R. § 300.515(a) (SEA's obligation to "ensure" "[a] final decision is reached in the hearing" within mandated timeframe); *see also* 34 C.F.R. § 300.33. While State Defendants may have "flexibility" in how to comply with their obligations under the statute, that does not include the flexibility to fail. State Defendants' actions thus were necessarily "inadequate for the SED to live up to its affirmative duty to ensure a timely decision." *Engwiller*, 110 F. Supp. 2d at 249 (granting summary judgment to plaintiff).

Second, State Defendants' argument ignores that, in addition to failing to ensure timely due process decisions, the IDEA and state law assign to them specific other responsibilities

that are integral to meeting that requirement. These obligations include certifying and decertifying IHOs, N.Y. Educ. Law § 4404(1)(c); training, monitoring, and overseeing IHOs, *id.*; establishing IHO compensation rates, *id.*; and establishing procedural requirements for IHO case assignments, *id.*; 20 U.S.C. § 1415(a). (*See* Pls.' Br. 8–9, 28–32.) In other words, NYSED's role in delivering timely hearing decisions is far more than merely supervisory.

That is why the cases on which State Defendants rely do not support their argument—in fact, the cases highlight precisely what distinguishes this case from ones challenging pure supervisory failures. In *A.A.* v. *Board of Education, Central Islip Union Free School District*, 255 F. Supp. 2d 119 (E.D.N.Y. 2003), for instance, the plaintiffs claimed solely that NYSED failed to ensure that a school district complied with ***the district's*** requirements under the IDEA, not that, as here, NYSED had failed to comply with its ***own*** direct IDEA obligations. *Id.* at 123; *see also B.J.S.* v. *State Educ. Dep't/Univ. of N.Y.*, 699 F. Supp. 2d 586, 590–91 (W.D.N.Y. 2010) (claim based solely on oversight of school district's formulation of student's IEP); *Y.D.*, 2016 WL 698139, at *5 (same); *compare Engwiller*, 110 F. Supp. 2d at 246–49 (NYSED liable for direct failures to ensure timely hearing decision). Because Plaintiffs do not argue that State Defendants are liable based solely on their supervisory obligations, these cases are inapposite.

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 and deny State Defendants' motion for partial summary judgment.

Dated: September 9, 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.	CIVIL ACTION NO. 20-CV-705

SUPPLEMENTAL DECLARATION OF NEIL STEINKAMP

September 9, 2022

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

1. I am submitting this supplemental 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** to the Declaration of Neil Steinkamp dated May 26, 2022 ("Initial Declaration").

II. DOCUMENTS RELIED UPON

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

- JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).XLSX, assigned production number DOE_183514 ("Settlement Data");
- April 29, 2020 Letter from First Deputy Comptroller Alaina Gilligo to Chancellor Carranza, assigned production numbers State Def 634–35; and
- Discussions with Plaintiffs' Counsel.

I reserve the right to further supplement and/or amend my declaration to reflect results of analyses of information made available to me subsequent to the issuance of this supplemental 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 Supplemental Declaration summarizes observations made regarding additional data provided to Stout and analyses performed by Stout subsequent to the issuance of the Initial Declaration.

IV. BACKGROUND

A. Defendant Data Systems

6. Stout was provided additional data relating to the settlement of due process complaints ("DPCs" or "cases"). Per discussion with Plaintiffs' Counsel, the Settlement Data is

an export from the NYCDOE's internal settlement software used to internally track the progress on settlement of a case.

V. DATA OBSERVATIONS AND OTHER CONSIDERATIONS

A. Form of Production and Observations of IHS Data

7. The Settlement Data was provided to Stout in one Excel file with two tabs; "Completed Settlements" and "Field Information."[1] The "Field Information" tab provided a description of the fields reflected in the "Completed Settlements" tab, and the "Completed Settlements" tab contained the following fields:

a. Case Number
b. Date Filed/Submitted
c. Date Recommended for Settlement
d. Date Settlement Documents Received from the Parents
e. Date Agreement in Principle Reached
f. Date Settlement Authority Requested
g. Date Settlement Authority Granted
h. Date Signed Stipulation Received from Parent
i. Date Stipulation of Settlement Executed/Countersigned

8. The "Completed Settlements" tab contained 16,958 unique values in the Case Number field. Stout observed two formats for the values contained in the "Case Number" field: a six-digit number, representing 3,931 cases, and the letter "T" followed by a five-digit number, representing 13,027 cases. Per discussions with Plaintiffs' Counsel, the cases formatted as a six-digit number are reflected in the Impartial Hearing Reporting System ("IHRS") data, the data relied upon in the Initial Declaration.

[1] JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx

9. Stout identified 3,897 cases from the Settlement Data in the Cases Data, a data table from the IHRS, by matching the "Case Number" field in the Settlement Data to the "DIST_CASE_NUM" field in the Cases Data. The remaining 34 cases are not reflected in the Cases Data as they have a "Date Filed/Submitted" in 2022, whereas the latest "REQUEST_DATE" in the Cases Data is December 30, 2021.

10. Stout then compared the "Date Filed/Submitted" field in the Settlement Data to the "REQUEST_DATE" field in the Cases Data for the 3,897 cases. Both date fields reconciled, as depicted in **Table 1** below.

Table 1

Comparison of Select Data Points Between Settlement Data and IHRS Data

		Six-Digit Case Number			Date Filed/Submitted		
	School Year of DPC Filing	Settlement Data Cases	Reconciled Cases	% of Cases Matching	Settlement Data Cases	Reconciled Cases	% of Cases Matching
1	2017-18	1,270	1,270	100.0%	1,270	1,270	100.0%
2	2018-19	867	867	100.0%	867	867	100.0%
3	2019-20	823	823	100.0%	823	823	100.0%
4	2020-21	673	673	100.0%	673	673	100.0%
5	2021-22	298	264	88.6%	298	264	88.6%
6	**Total**	**3,931**	**3,897**	**99.1%**	**3,931**	**3,897**	**99.1%**

Source: Settlement Software Data (JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx, Data Extracted from IHRS ('State Def 3143.xls ("Cases" tab)).

11. As discussed in the Initial Declaration, Stout conducted analyses on cases filed in school years 2017-18 through 2020-21 because the IHRS data provided to Stout did not include data for the entirety of school years 2016–17 and 2021–22. As such, our analysis of Settlement Data is similarly based on cases filed in school years 2017-18 through 2020-21, representing 3,633 cases ("Reconciled Cases").

B. Case Closing Status

12. Using the Cases Data, Stout summarized the closing status of the Reconciled Cases, as presented in **Table 2.** The most frequent closing status, representing 3,351 cases (or 92.2%), was that of "Withdrawn."

13. Further, of the 241 cases identified as open in the Cases Data, 216 cases (or 89.6%) had settlement dates after January 21, 2022, the date on which the IHRS data was extracted from IHRS. In other words, settlements in these 216 cases occurred after the date on which the IHRS data was extracted.

Table 2

Closing Status of Reconciled Cases

	Closure Description	Number of Cases	% of Total
1	Withdrawn	3,351	92.2%
2	Open	241	6.6%
3	Dismissed	37	1.0%
4	Actual Decision	4	0.1%
5	**Total Reconciled Cases**	**3,633**	**100.0%**

Source: Settlement Software Data (JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx, Data Extracted from IHRS ('State Def 3143.xls ("Cases" tab)).

C. Data Entry Errors

14. Stout observed nine Reconciled Cases with dates that appeared erroneous, which are likely attributable to a data entry error. Stout adjusted such erroneous dates by reviewing the dates of the other settlement steps on a case-by-case basis. **Table 3** below reflects the adjustments made either due to the Settlement Data containing a date that had not yet occurred (*i.e.*, in the future), or the Settlement Data containing a date that is outside of the time period provided.

Table 3

Data Entry Errors

	Date Filed/ Submitted	Date Recommended for Settlement	Date Settlement Documents Received from the Parents	Date Settlement Authority Requested	Date Settlement Authority Granted	Date Agreement in Principle Reached	Date Signed Stipulation Received from Parent	Date Stipulation of Settlement Executed/ Countersigned
1 Settlement Data	9/26/2017	3/06/2018	3/07/2018	6/14/2015	6/25/2018	4/05/2018	5/09/2018	7/05/2018
Adjustment	9/26/2017	3/06/2018	3/07/2018	6/14/2018	6/25/2018	4/05/2018	5/09/2018	7/05/2018
2 Settlement Data	10/12/2017	12/14/2016	1/12/2018	7/24/2018	8/23/2018	2/16/2018	4/03/2018	8/23/2018
Adjustment	10/12/2017	12/14/2017	1/12/2018	7/24/2018	8/23/2018	2/16/2018	4/03/2018	8/23/2018
3 Settlement Data	4/06/2018	9/09/2016	3/30/2018	7/05/2018	7/17/2018	6/28/2018	7/23/2018	8/03/2018
Adjustment	4/06/2018	9/09/2018	3/30/2018	7/05/2018	7/17/2018	6/28/2018	7/23/2018	8/03/2018
4 Settlement Data	5/11/2018	12/21/2016	7/24/2018	11/29/2018	11/29/2018	7/24/2018	8/25/2018	1/28/2019
Adjustment	5/11/2018	12/21/2018	7/24/2018	11/29/2018	11/29/2018	7/24/2018	8/25/2018	1/28/2019
5 Settlement Data	6/18/2018	8/01/2018	8/08/2018	11/26/2018	1/28/2109	11/26/2018	9/14/2018	3/07/2019
Adjustment	6/18/2018	8/01/2018	8/08/2018	11/26/2018	1/28/2019	11/26/2018	9/14/2018	3/07/2019
6 Settlement Data	1/10/2018	9/13/2048	9/14/2018	null	null	9/17/2018	10/10/2018	1/04/2019
Adjustment	1/10/2018	9/13/2018	9/14/2018	null	null	9/17/2018	10/10/2018	1/04/2019
7 Settlement Data	5/23/2018	7/01/2016	10/04/2018	2/01/2019	3/18/2019	11/26/2018	12/19/2018	4/11/2019
Adjustment	5/23/2018	7/01/2018	10/04/2018	2/01/2019	3/18/2019	11/26/2018	12/19/2018	4/11/2019
8 Settlement Data	8/22/2018	9/21/2016	10/28/2016	10/15/2019	10/24/2019	10/10/2019	10/21/2019	12/23/2019
Adjustment	8/22/2018	9/21/2018	10/28/2018	10/15/2019	10/24/2019	10/10/2019	10/21/2019	12/23/2019
9 Settlement Data	12/16/2019	3/05/2002	4/06/2020	5/01/2020	5/14/2020	4/09/2020	7/09/2020	8/14/2020
Adjustment	12/16/2019	3/05/2020	4/06/2020	5/01/2020	5/14/2020	4/09/2020	7/09/2020	8/14/2020

Source: Settlement Software Data (JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx

D. Policy Change

15. On April 29, 2020, a letter ("Policy Letter") was sent from the First Deputy Comptroller of New York City to the Chancellor of the NYCDOE detailing a change to the settlement policy.[2] According to the letter, "[b]eginning immediately, for all cases in which settlement negotiations have not yet commenced, DOE will be required to request and obtain settlement authority from the Comptroller's Office prior to negotiating settlement."[3] Per discussions with Plaintiffs' Counsel, prior to the Policy Letter, typically authority was not requested or granted from the Comptroller's Office before negotiating settlement.

[2] 4.29.20. Letter from First Deputy Comptroller to Chancellor Carranza.pdf

[3] Ibid.

16. In order to account for this change, Stout categorized the Reconciled Cases into two buckets: Pre-Policy Cases and Post-Policy Cases. Pre-Policy Cases were analyzed with settlement steps in the following order:

1. Date Filed/Submitted
2. Date Recommended for Settlement
3. Date Settlement Documents Received from the Parents
4. **Date Agreement in Principle Reached**
5. **Date Settlement Authority Requested**
6. **Date Settlement Authority Granted**
7. Date Signed Stipulation Received from Parent
8. Date Stipulation of Settlement Executed/Countersigned

Whereas Post-Policy Cases were analyzed with settlement steps in the following order:

1. Date Filed/Submitted
2. Date Recommended for Settlement
3. Date Settlement Documents Received from the Parents
4. **Date Settlement Authority Requested**
5. **Date Settlement Authority Granted**
6. **Date Agreement in Principle Reached**
7. Date Signed Stipulation Received from Parent
8. Date Stipulation of Settlement Executed/Countersigned

17. Cases were categorized by Stout as either Pre-Policy or Post-Policy based on the "Date Recommended for Settlement" field. Cases with a "Date Recommended for Settlement" before April 29, 2020 were designated as Pre-Policy Cases, whereas cases with a "Date Recommended for Settlement" on or after April 29, 2020 were designated as Post-Policy Cases.

18. At the direction of Plaintiffs' Counsel, we used a "transition period" from April 29, 2020 through July 31, 2020 to allow the policy change to go into full effect. As such, any case with a "Date Recommended for Settlement" within the transition period that had the "Date Agreement in Principle Reached" before the "Date Settlement Authority Requested" was designated as a Pre-Policy Case. Alternatively, any case with a "Date Recommended for Settlement" within the transition period that had the "Date Agreement in Principle Reached"

after the "Date Settlement Authority Requested" was designated as a Post-Policy Case. See **Table 4** for a summary of these categorizations. When accounting for this transition period, four Reconciled Cases were categorized as a Pre-Policy Case even though the "Date Recommended for Settlement" occurred after April 29, 2020.

Table 4

Reconciled Cases
Pre-Policy and Post-Policy Categorizations

	Date Recommended for Settlement	Pre-Policy Cases: Number of Cases	Pre-Policy Cases: % of Total Cases	Post-Policy Cases: Number of Cases	Post-Policy Cases: % of Total Cases
1	Before April 29, 2020	2,555	99.8%	0	0.0%
2	Transition Period [1]	4	0.2%	182	16.9%
3	After July 31, 2020	0	0.0%	892	83.1%
4	**Total Reconciled Cases**	**2,559**	**100.0%**	**1,074**	**100.0%**

Source: Source: Settlement Software Data (JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx
[1] April 29, 2020 - July 31, 2020

E. Inverted Dates

19. Stout observed instances in which settlement steps occurred out of order (e.g., the "Date Settlement Documents Received from the Parents" occurred before the "Date Recommended for Settlement"), aside from the policy change. As evidenced in **Table 5** below, 1,816 Reconciled Cases had inverted dates. At the direction of Plaintiffs' Counsel, cases with inverted dates were excluded from Stout's analysis and as such, the 1,817 Reconciled Cases without inverted dates ("Relevant Cases") were the basis for Stout's analysis.

Table 5

Reconciled Cases with and without Inverted Dates

	Categorization	Number of Cases	Cases with Inverted Date	% of Total Cases	Cases without Inverted Date	% of Total Cases
1	Pre-Policy	2,559	1,640	64.1%	919	35.9%
2	Post-Policy	1,074	176	16.4%	898	83.6%
3	**Total Reconciled Cases**	**3,633**	**1,816**	**50.0%**	**1,817**	**50.0%**

Source: Settlement Software Data (JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx

VI. ANALYSIS

20. Stout was asked by Plaintiffs' Counsel to measure the following:

a. The time it takes to progress between each of the settlement steps, including the total, average, and median of the time required for each step; and

b. The time it takes to complete the settlement process overall.

A. Time Between Settlement Steps

21. Stout measured the time between settlement steps by calculating the number of days between each sequential step in the settlement process. As previously discussed, Pre-Policy Cases and Post-Policy cases were calculated separately given the change in settlement steps as implemented by the Policy Letter. Refer to **Exhibit 2** and **Exhibit 3** for a summary of these figures by school year, and **Charts 2.2 through 2.9** and **Charts 3.2 through 3.9** for the frequencies of the time required for each step.

22. Further, Stout observed instances in which the "Date Authority Requested" and/or "Date Authority Granted" fields were blank for 384 Relevant Cases.[4] The number of days from

[4] 320 Pre-Policy Relevant Cases and 64 Post-Policy Relevant Cases.

the preceding and subsequent settlement steps could not be calculated for these cases and are not reflected in the calculations that include those fields. As such, Stout measured the time between settlement steps for Pre-Policy Cases and Post-Policy Cases when the "Date Authority Requested" and "Date Authority Granted" fields contained a date. Refer to **Exhibit 2.1** and **Exhibit 3.1.**

B. Time to Complete Settlement Process

23. Stout measured the time to complete the settlement process by calculating the number of days between the "Date Filed/Submitted" and the "Date Stipulation of Settlement Executed/Undersigned." As these two fields represent the first and last settlement step, and therefore not impacted by the Policy Letter, separate calculations for Pre-Policy Cases and Post-Policy Cases were not necessary. Further, there were no instances in which the "Date Stipulation of Settlement Executed/Undersigned" occurred before the "Date Filed/Submitted" and as such, the 3,897 Reconciled Cases were the basis for this calculation.[5] Refer to **Exhibit 1** for a summary of these figures by school year, and **Charts 2.10** and **3.10** for the frequencies of the time to complete the settlement process.

24. Additional, refer to **Exhibit 1.1** for a summary of these figures based on Pre-Policy and Post-Policy categorizations.

CONCLUSION

25. In conclusion, Stout analyzed the Settlement Data for cases identified in the Cases Data for school years 2017-18 through 2020-21. Given the analyses performed based on the data produced to Stout, the following metrics were measured:

[5] Exhibit 1 also provides the time to complete the settlement process for Relevant Cases.

a. Relevant Cases had an average of 419 days and median of 383 days between "Date Filed/Submitted" to "Date Stipulation of Settlement Executed/Undersigned."[6]

b. Average and median days between specific steps are summarized in **Table 6** and **Table 7** below:

Table 6[7]

Metrics Calculated for Pre-Policy Relevant Cases				
Starting Date	**Ending Date**	**Average (Days)**	**Median (Days)**	
1. Date Filed/Submitted	2. Date Recommended for Settlement	133	105	
2. Date Recommended for Settlement	3. Date Settlement Documents Received from the Parents	53	21	
3. Date Settlement Documents Received from the Parents	4. Date Agreement in Principle Reached	91	51	
4. Date Agreement in Principle Reached	5. Date Settlement Authority Requested	65	36	[1]
5. Date Settlement Authority Requested	6. Date Settlement Authority Granted	17	10	[1]
6.Date Settlement Authority Granted	7. Date Signed Stipulation Received from Parent	44	23	[1]
7. Date Signed Stipulation Received from Parent	8. Date Stipulation of Settlement Executed/Undersigned	45	22	[2]

Source: Exhibit 2

[1] As noted in Exhibit 2, in some instances, the "Date Settlement Authority Requested" and "Date Settlement Authority Granted" fields are blank. Such cases were not included in the calculations that involved those fields, indicated in gray in this table.

[2] As indicated in Exhibit 2, in cases where the "Date Settlement Authority Requested" and "Date Settlement Authority Granted" were blank, there were an average of 76 days and a median of 54 days between the "Date Agreement in Principle Reached" and "Date Signed Stipulation Received from Parent."

[6] Refer to Exhibit 1.

[7] Refer to Exhibit 2 for additional detail, including the standard deviations for each step. Also refer to Exhibit 2.1 for equivalent calculations limited to Pre-Policy Relevant Cases for which those fields contained a date.

Table 7[8]

Metrics Calculated for Post-Policy Relevant Cases

Starting Date	Ending Date	Average (Days)	Median (Days)	
1. Date Filed/Submitted	2. Date Recommended for Settlement	203	182	
2. Date Recommended for Settlement	3. Date Settlement Documents Received from the Parents	48	23	
3. Date Settlement Documents Received from the Parents	4. Date Settlement Authority Requested	63	45	[1]
4. Date Settlement Authority Requested	5. Date Settlement Authority Granted	12	9	[1]
5. Date Settlement Authority Granted	6. Date Agreement in Principle Reached	25	11	[1]
6. Date Agreement in Principle Reached	7. Date Signed Stipulation Received from Parent	30	18	[2]
7. Date Signed Stipulation Received from Parent	8.Date Stipulation of Settlement Executed/Undersigned	29	15	

Source: Exhibit 3

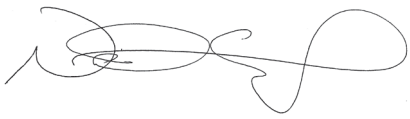
[1] As noted in Exhibit 3, in some instances, the "Date Settlement Authority Requested" and "Date Settlement Authority Granted" fields are blank. Such cases were not included in the calculations that involved those fields, indicated in gray in this table.

[2] As indicated in Exhibit 3, in cases where the "Date Settlement Authority Requested" and "Date Settlement Authority Granted" were blank, there were an average of 77 days and a median of 45 days between the "Date Signed Documents Received from the Parents" and "Date Agreement in Principle Reached."

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

Executed on: September 9, 2022

New York, New York



Neil Steinkamp
120 West 45th St.
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New York, NY 10036
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Email: nsteinkamp@stout.com

[8] Refer to Exhibit 3 for additional detail, including the standard deviations for each step. Also refer to Exhibit 3.1 for equivalent calculations limited to Pre-Policy Relevant Cases for which those fields contained a date.

J.S.M. et al. v. New York City Dept. of Education et al.
Days Elapsed between Case Filing and Stipulation Signed
Exhibit 1

		Reconciled Cases				Relevant Cases			
	School Year of DPC Filing	Number of Cases	Average	Median	Standard Deviation	Number of Cases	Average	Median	Standard Deviation
1	SY17-18	1,270	403	353	212	396	433	349	260
2	SY18-19	867	447	420	189	364	497	501	191
3	SY19-20	823	425	392	178	514	428	391	179
4	SY20-21	673	347	345	123	543	349	350	127
5	**Total**	**3,633**	**408**	**371**	**188**	**1,817**	**419**	**383**	**197**

Source: JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx

J.S.M. et al. v. New York City Dept. of Education et al.
Days Elapsed between Case Filing and Stipulation Signed
Exhibit 1.1

		Relevant Pre-Policy Cases [1]				Relevant Post-Policy Cases [1]			
	School Year of DPC Filing	Number of Cases	Average	Median	Standard Deviation	Number of Cases	Average	Median	Standard Deviation
1	SY17-18	395	430	348	253	1	1,659	1,659	n/a
2	SY18-19	324	470	463	175	40	718	704	173
3	SY19-20	200	367	331	164	314	467	434	178
4	SY20-21	n/a	n/a	n/a	n/a	543	349	350	127
5	**Total**	**919**	**430**	**382**	**213**	**898**	**408**	**383**	**177**

Source: JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx

[1] Pre-Policy and Post-Policy Cases are categorized based on the "Date Recommended for Settlement", not the "Date Filed/Submitted", and as such, there are Post-Policy Cases reflected in school years 2017-18 through 2019-20.

J.S.M. et al. v. New York City Dept. of Education et al.
Days Elapsed Between Settlement Steps (Relevant Pre-Policy Cases)
Exhibit 2

	School Year of DPC Filing	Number of Cases	Date Filed/Submitted to Date Recommended for Settlement			Date Recommended for Settlement to Date Settlement Documents Received from the Parents			Date Settlement Documents Received from the Parents to Date Agreement in Principle Reached			Date Agreement in Principle Reached to Date Settlement Authority Requested [1]		
			Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation
1	SY17-18	395	125	92	116	55	21	93	95	49	133	76	31	129
2	SY18-19	324	169	149	117	52	20	79	102	58	116	65	42	75
3	SY19-20	200	92	92	58	52	21	97	63	43	73	51	37	54
4	**Total**	**919**	**133**	**105**	**111**	**53**	**21**	**89**	**91**	**51**	**117**	**65**	**36**	**95**

Source: JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx

[1] In some instances, the "Date Settlement Authority Requested" and "Date Settlement Authority Granted" fields are blank. Such cases are not included in the calculations that involve those fields.

[2] In some instances, the "Date Settlement Authority Requested" and "Date Settlement Authority Granted" fields are blank. Only such cases are included in the calculations below.

J.S.M. et al. v. New York City Dept. of Education et al.
Days Elapsed Between Settlement Steps (Relevant Pre-Policy Cases)
Exhibit 2

			Date Settlement Authority Requested to Date Settlement Authority Granted [1]			Date Settlement Authority Granted to Date Signed Stipulation Received from Parent [1]			Date Agreement in Principle Reached to Date Signed Stipulation Received from Parent [2]			Date Signed Stipulation Received from Parent to Date Stipulation of Settlement Executed/Undersigned		
	School Year of DPC Filing	Number of Cases	Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation
1	SY17-18	395	22	14	38	40	22	74	73	49	75	46	22	68
2	SY18-19	324	15	9	31	41	22	58	79	61	85	40	21	51
3	SY19-20	200	12	9	14	52	31	64	87	58	96	49	28	67
4	**Total**	**919**	**17**	**10**	**31**	**44**	**23**	**66**	**76**	**54**	**81**	**45**	**22**	**62**

Source: JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx

[1] In some instances, the "Date Settlement Authority Requested" and "Date Settlement Authority Granted" fields are blank. Such cases are not included in the calculations that involve those fields.

[2] In some instances, the "Date Settlement Authority Requested" and "Date Settlement Authority Granted" fields are blank. Only such cases are included in the calculations below.

J.S.M. et al. v. New York City Dept. of Education et al.
Days Elapsed Between Settlement Steps (Relevant Pre-Policy Cases with Full Data)
Exhibit 2.1

	School Year of DPC Filing	Number of Cases	Date Filed/Submitted to Date Recommended for Settlement			Date Recommended for Settlement to Date Settlement Documents Received from the Parents			Date Settlement Documents Received from the Parents to Date Agreement in Principle Reached			Date Agreement in Principle Reached to Date Settlement Authority Requested		
			Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation
1	SY17-18	221	123	88	115	48	20	92	94	46	128	76	31	129
2	SY18-19	220	177	162	111	43	17	61	100	55	117	65	43	75
3	SY19-20	158	99	96	55	34	18	46	54	40	63	51	37	54
4	**Total**	**599**	**136**	**115**	**106**	**43**	**19**	**71**	**86**	**49**	**111**	**65**	**36**	**95**

Source: JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx

J.S.M. et al. v. New York City Dept. of Education et al.
Days Elapsed Between Settlement Steps (Relevant Pre-Policy Cases with Full Data)
Exhibit 2.1

			Date Settlement Authority Requested to Date Settlement Authority Granted			Date Settlement Authority Granted to Date Signed Stipulation Received from Parent			Date Signed Stipulation Received from Parent to Date Stipulation of Settlement Executed/Countersigned		
	School Year of DPC Filing	Number of Cases	Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation
1	SY17-18	221	22	14	38	40	22	74	33	16	52
2	SY18-19	220	15	9	31	41	22	58	34	15	48
3	SY19-20	158	12	9	14	52	31	64	50	25	72
4	**Total**	**599**	**17**	**10**	**31**	**44**	**23**	**66**	**38**	**17**	**57**

Source: JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx

J.S.M. et al. v. New York City Dept. of Education et al.
Days Elapsed Between Settlement Steps (Relevant Post-Policy Cases)
Exhibit 3

	School Year of DPC Filing	Number of Cases	Date Filed/Submitted to Date Recommended for Settlement			Date Recommended for Settlement to Date Settlement Documents Received from the Parents			Date Settlement Documents Received from the Parents to Date Settlement Authority Requested [1]			Date Settlement Authority Requested to Date Settlement Authority Granted [1]		
			Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation
1	SY17-18	1	1,510	1,510	n/a	44	44	n/a	40	40	n/a	3	3	n/a
2	SY18-19	40	534	517	111	37	21	44	62	34	68	19	8	45
3	SY19-20	314	248	232	142	43	21	64	71	50	71	12	8	16
4	SY20-21	543	150	140	112	52	24	69	59	43	55	12	9	10
5	**Total**	**898**	**203**	**182**	**156**	**48**	**23**	**67**	**63**	**45**	**62**	**12**	**9**	**15**

Source: JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx

[1] In some instances, the "Date Settlement Authority Requested" and "Date Settlement Authority Granted" fields are blank. Such cases are not included in the calculations that involve those fields.

[2] In some instances, the "Date Settlement Authority Requested" and "Date Settlement Authority Granted" fields are blank. Only such cases are included in the calculations below.

J.S.M. et al. v. New York City Dept. of Education et al.
Days Elapsed Between Settlement Steps (Relevant Post-Policy Cases)
Exhibit 3

			Date Settlement Authority Granted to Date Agreement in Principle Reached [1]			Date Settlement Documents Received from the Parents to Date Agreement in Principle Reached [2]			Date Agreement in Principle Reached to Date Signed Stipulation Received from Parent			Date Signed Stipulation Received from Parent to Date Stipulation of Settlement Executed/Countersigned		
	School Year of DPC Filing	Number of Cases	Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation
1	SY17-18	1	4	4	n/a	n/a	n/a	n/a	35	35	n/a	23	23	n/a
2	SY18-19	40	23	13	31	102	31	149	26	17	25	17	8	28
3	SY19-20	314	27	11	41	78	48	81	36	21	45	34	16	46
4	SY20-21	543	24	11	35	63	47	78	26	16	32	27	15	35
5	**Total**	**898**	**25**	**11**	**37**	**77**	**45**	**91**	**30**	**18**	**37**	**29**	**15**	**39**

Source: JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx

[1] In some instances, the "Date Settlement Authority Requested" and "Date Settlement Authority Granted" fields are blank. Such cases are not included in the calculations that involve those fields.

[2] In some instances, the "Date Settlement Authority Requested" and "Date Settlement Authority Granted" fields are blank. Only such cases are included in the calculations below.

J.S.M. et al. v. New York City Dept. of Education et al.
Days Elapsed Between Settlement Steps (Relevant Post Policy Cases with Full Data)
Exhibit 3.1

			Date Filed/Submitted to Date Recommended for Settlement			Date Recommended for Settlement to Date Settlement Documents Received from the Parents			Date Settlement Documents Received from the Parents to Date Agreement in Principle Reached			Date Agreement in Principle Reached to Date Settlement Authority Requested		
	School Year of DPC Filing	Number of Cases	Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation
1	SY17-18	1	1,510	1,510	n/a	44	44	n/a	40	40	n/a	3	3	n/a
2	SY18-19	31	533	502	121	29	4	41	62	34	68	19	8	45
3	SY19-20	277	251	235	141	39	21	53	71	50	71	12	8	16
4	SY20-21	525	150	141	111	51	23	68	59	43	55	12	9	10
5	**Total**	**834**	**199**	**181**	**153**	**46**	**22**	**63**	**63**	**45**	**62**	**12**	**9**	**15**

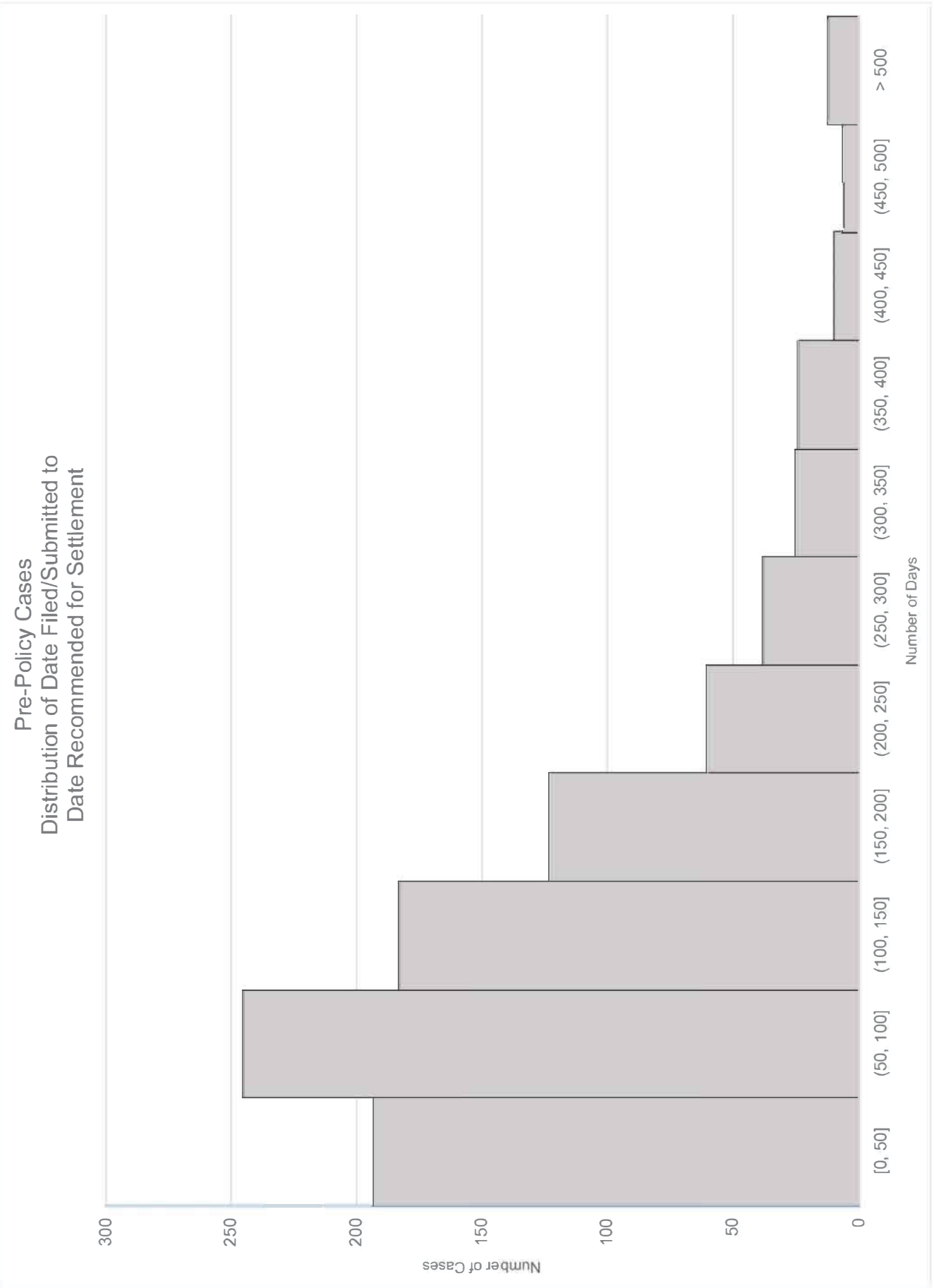
Source: JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx

J.S.M. et al. v. New York City Dept. of Education et al.
Days Elapsed Between Settlement Steps (Relevant Post Policy Cases with Full Data)
Exhibit 3.1

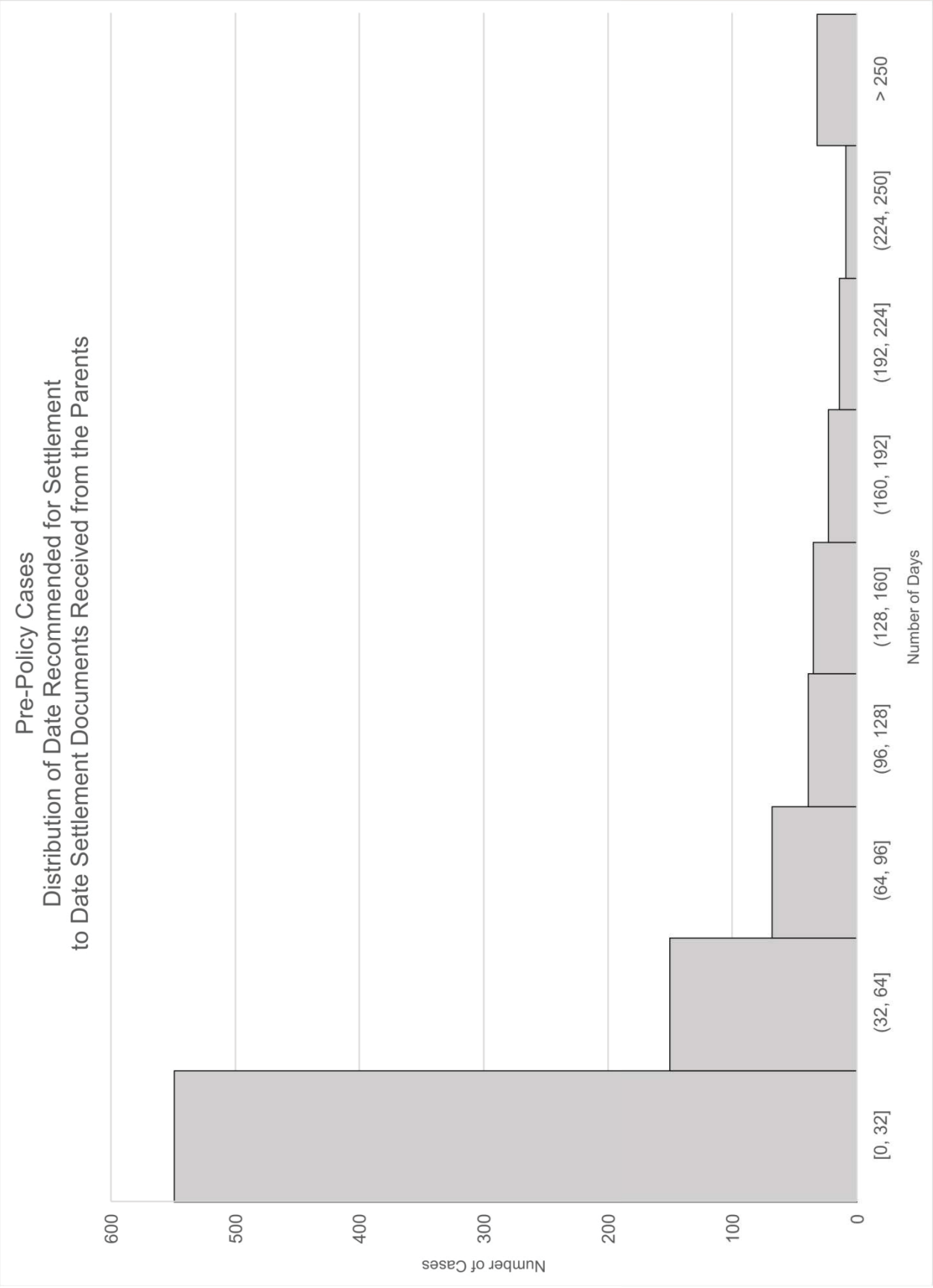
			Date Settlement Authority Requested to Date Settlement Authority Granted			Date Settlement Authority Granted to Date Signed Stipulation Received from Parent			Date Signed Stipulation Received from Parent to Date Stipulation of Settlement Executed/Countersigned		
	School Year of DPC Filing	Number of Cases	Average	Median	Standard Deviation	Average	Median	Standard Deviation	Average	Median	Standard Deviation
1	SY17-18	1	4	4	n/a	35	35	n/a	23	23	n/a
2	SY18-19	31	23	13	31	23	14	21	19	7	31
3	SY19-20	277	27	11	41	34	20	44	33	16	44
4	SY20-21	525	24	11	35	26	16	29	27	15	35
5	**Total**	**834**	**25**	**11**	**37**	**29**	**18**	**35**	**29**	**15**	**38**

Source: JSM Settlement Software Data further production - (# Legal 12838927_1)(1343981 KB).xlsx

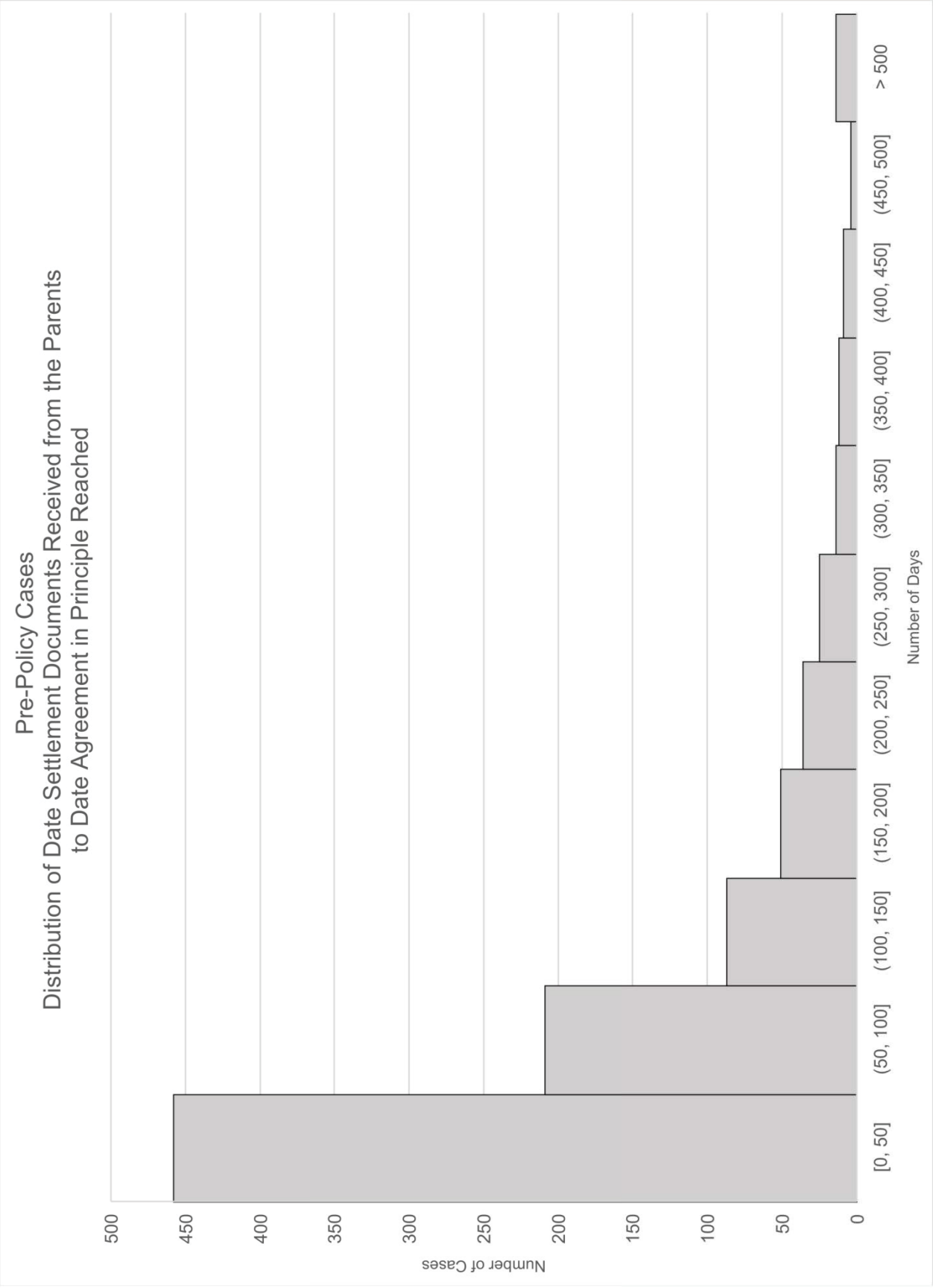
J.S.M. et al. v. New York City Dept. of Education et al.
Chart 2.2

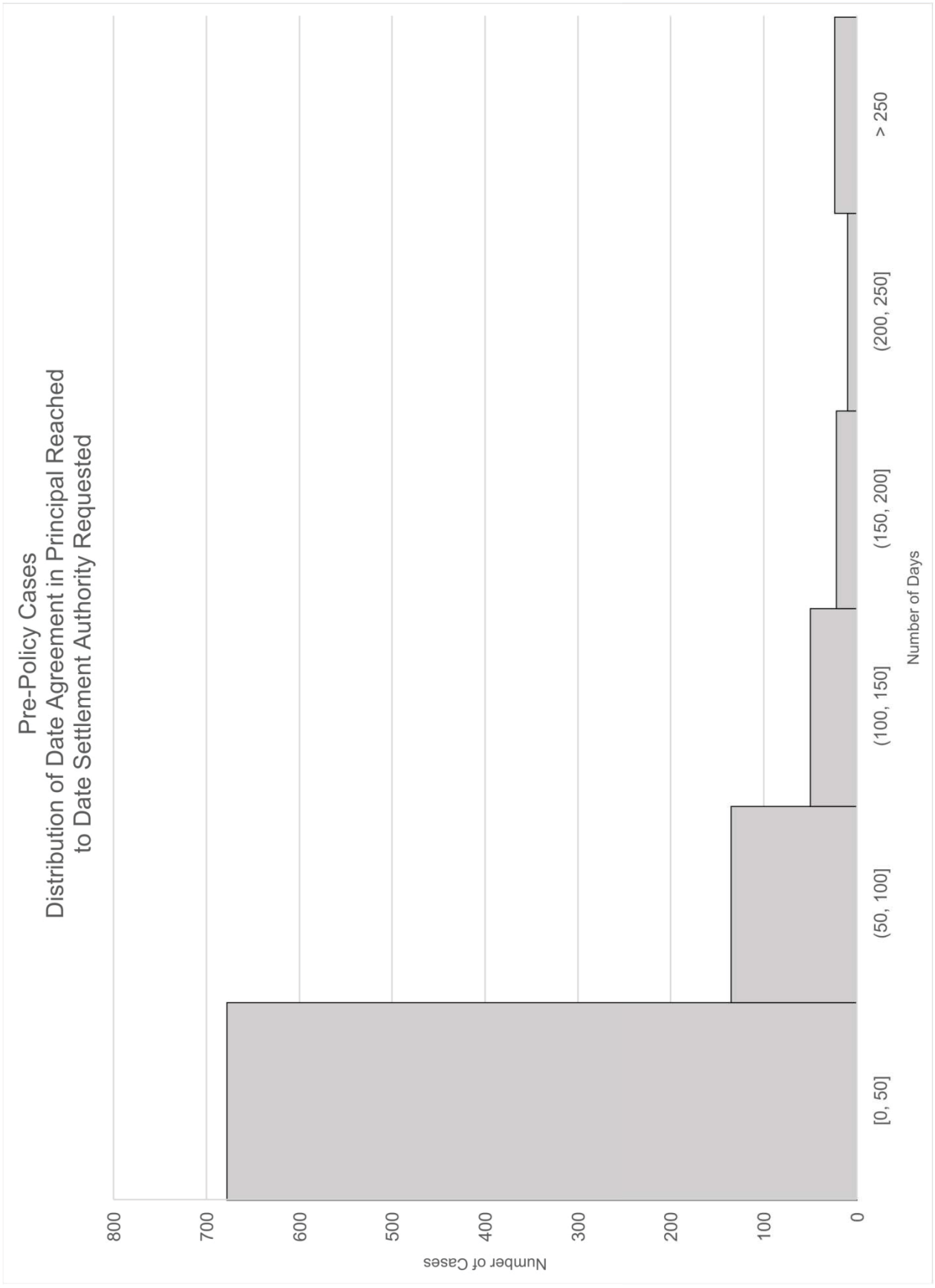


J.S.M. et al. v. New York City Dept. of Education et al.
Chart 2.3

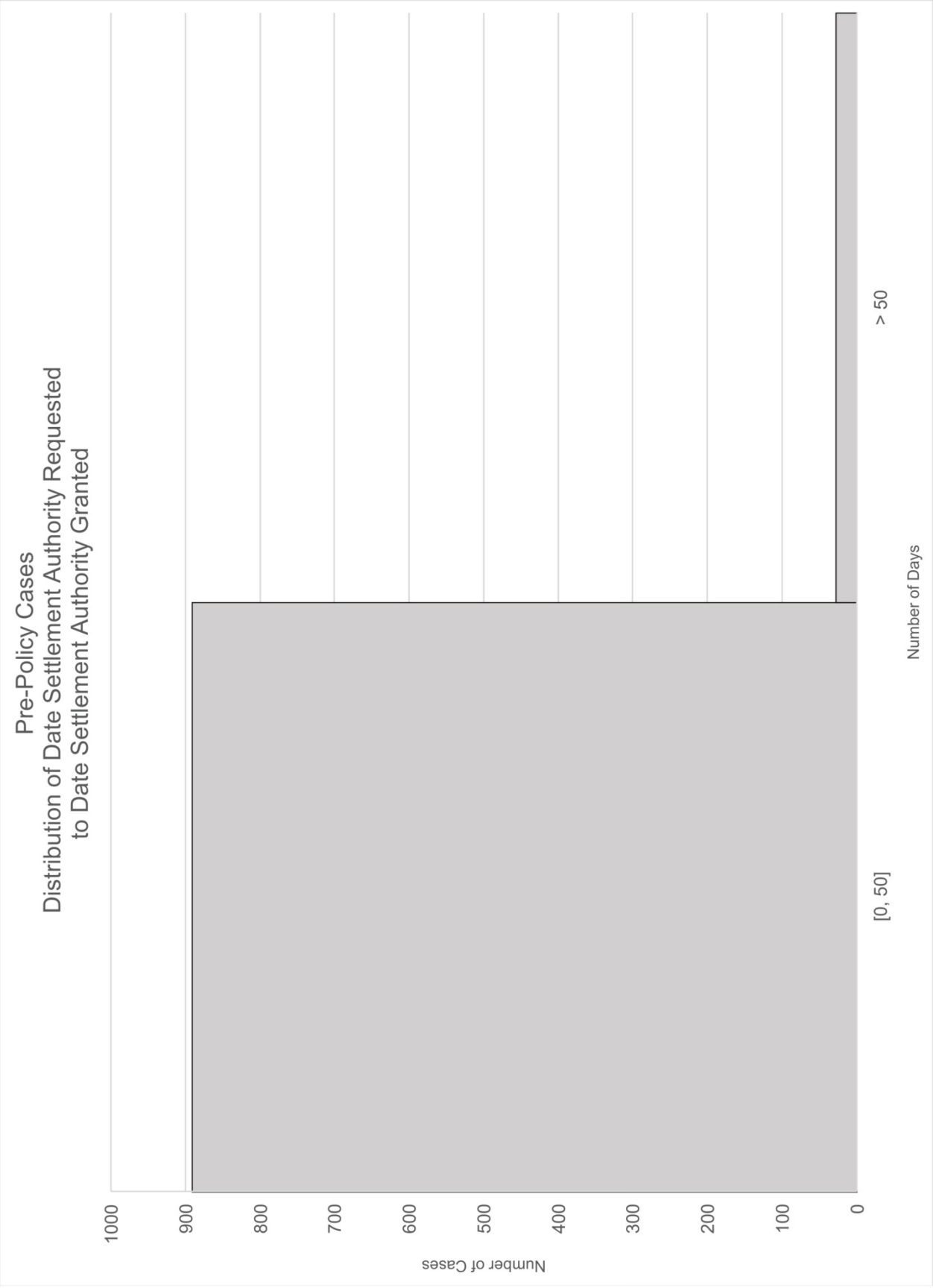


J.S.M. et al. v. New York City Dept. of Education et al.
Chart 2.4



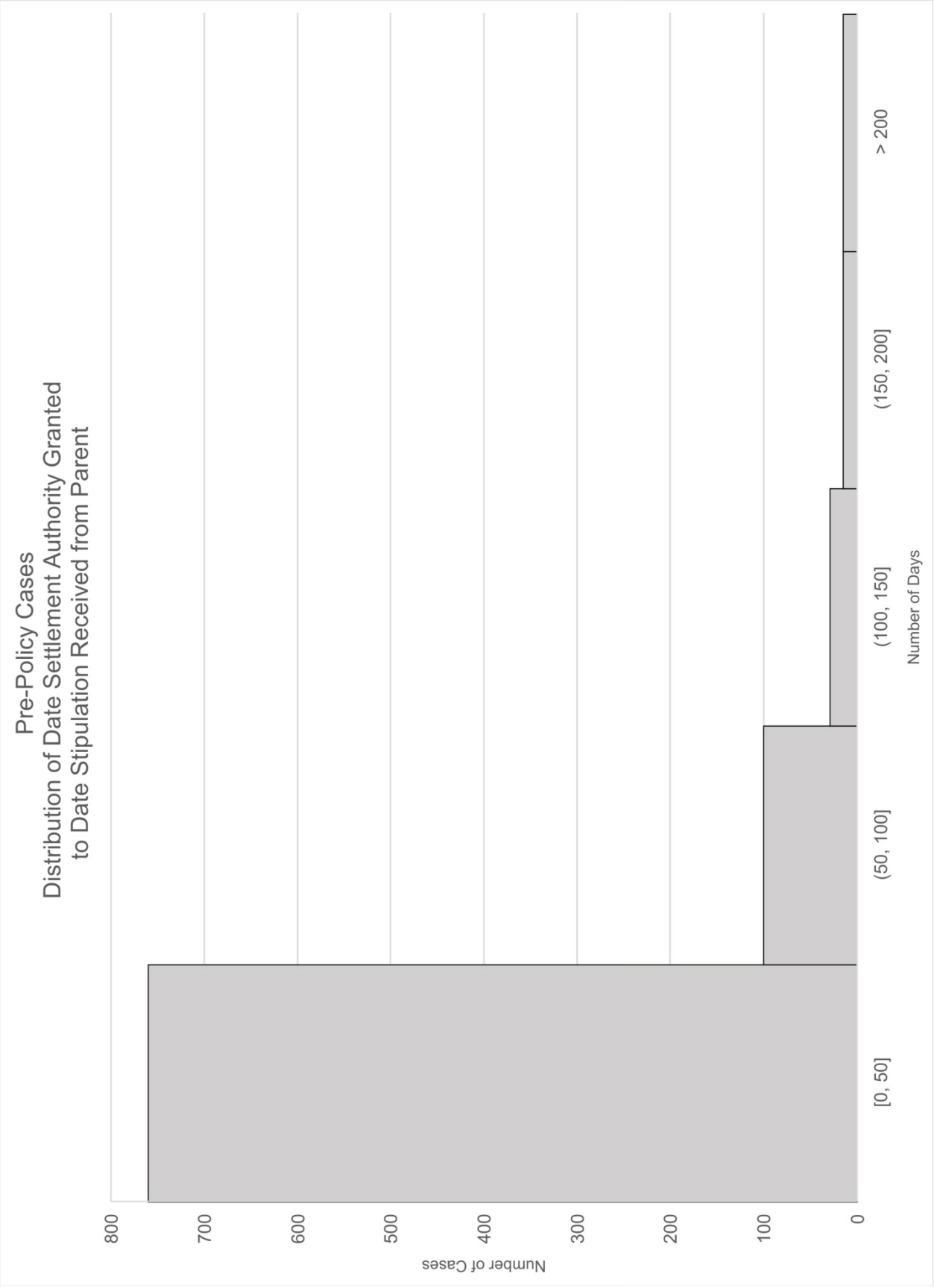


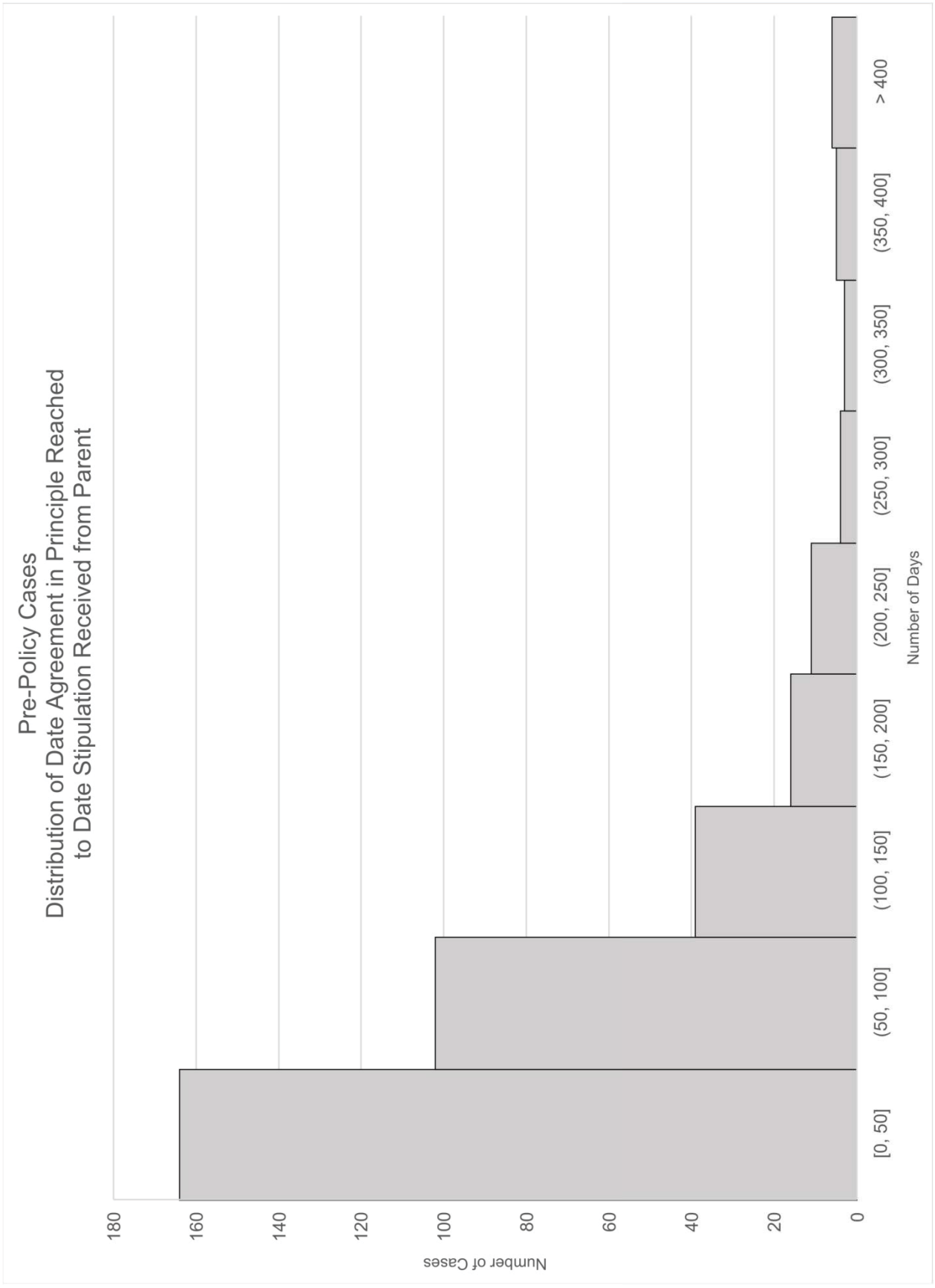
J.S.M. et al. v. New York City Dept. of Education et al.
Chart 2.5



J.S.M. et al. v. New York City Dept. of Education et al.
Chart 2.6

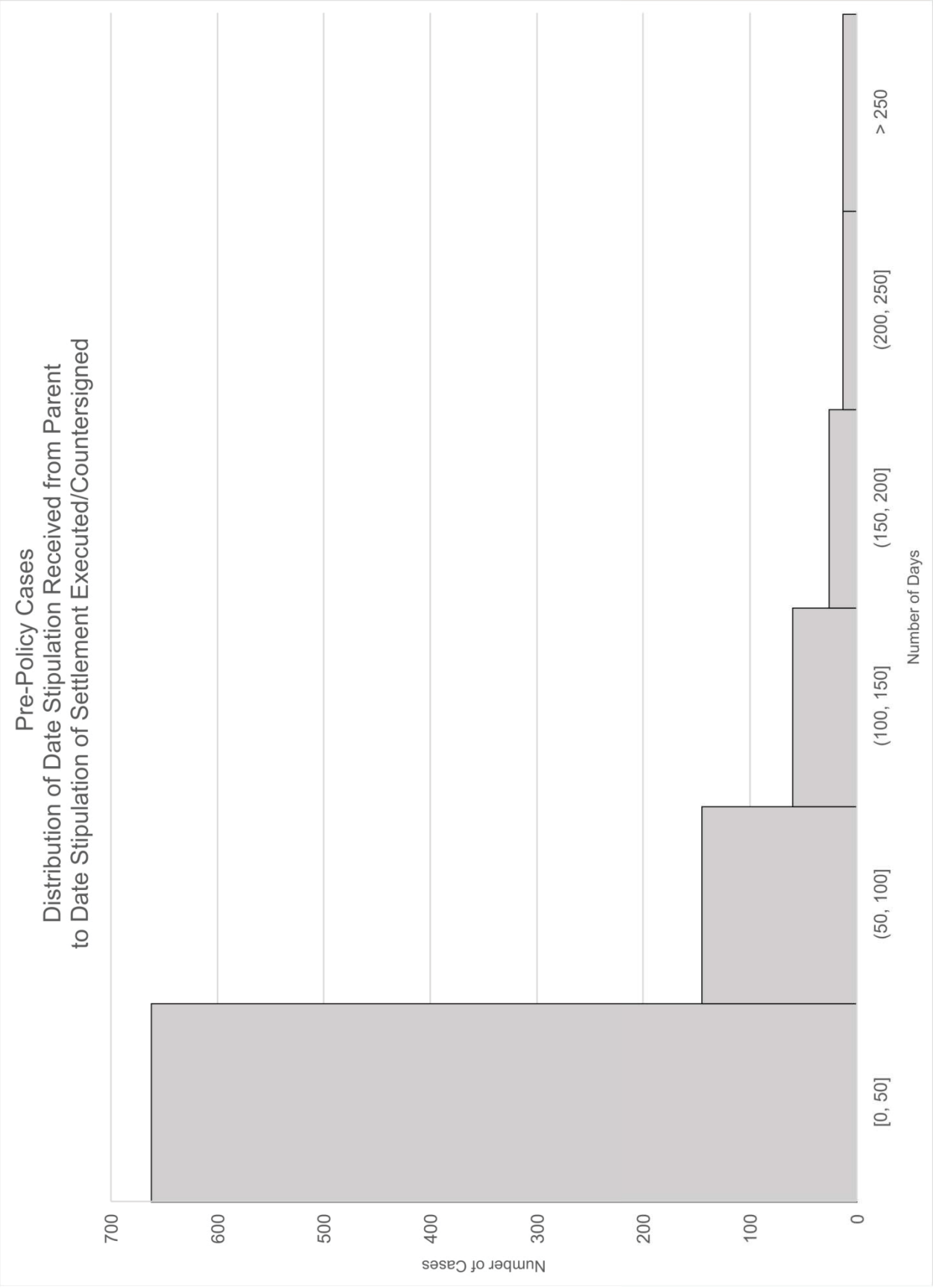
J.S.M. et al. v. New York City Dept. of Education et al.
Chart 2.7

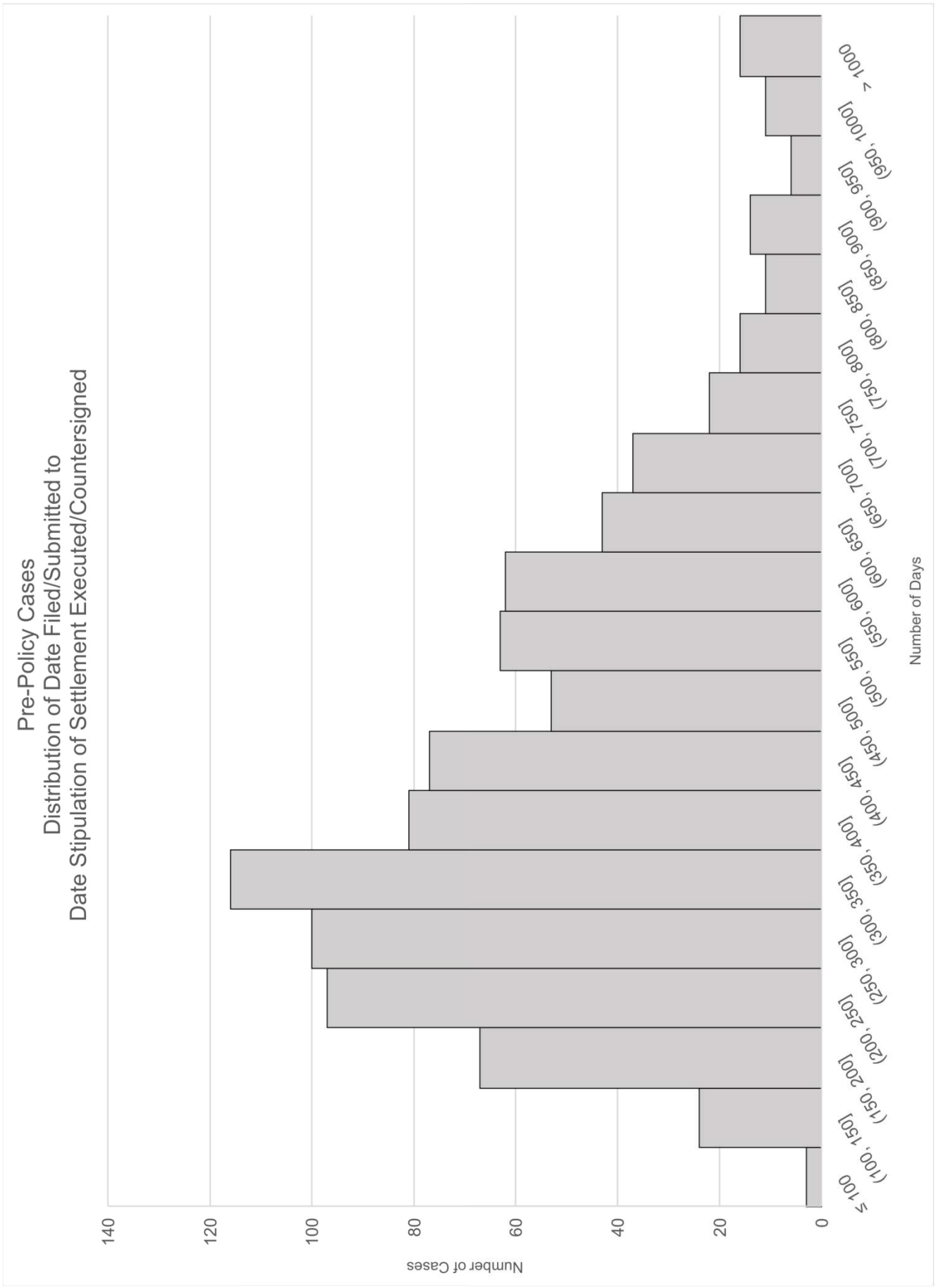




J.S.M. et al. v. New York City Dept. of Education et al.
Chart 2.8

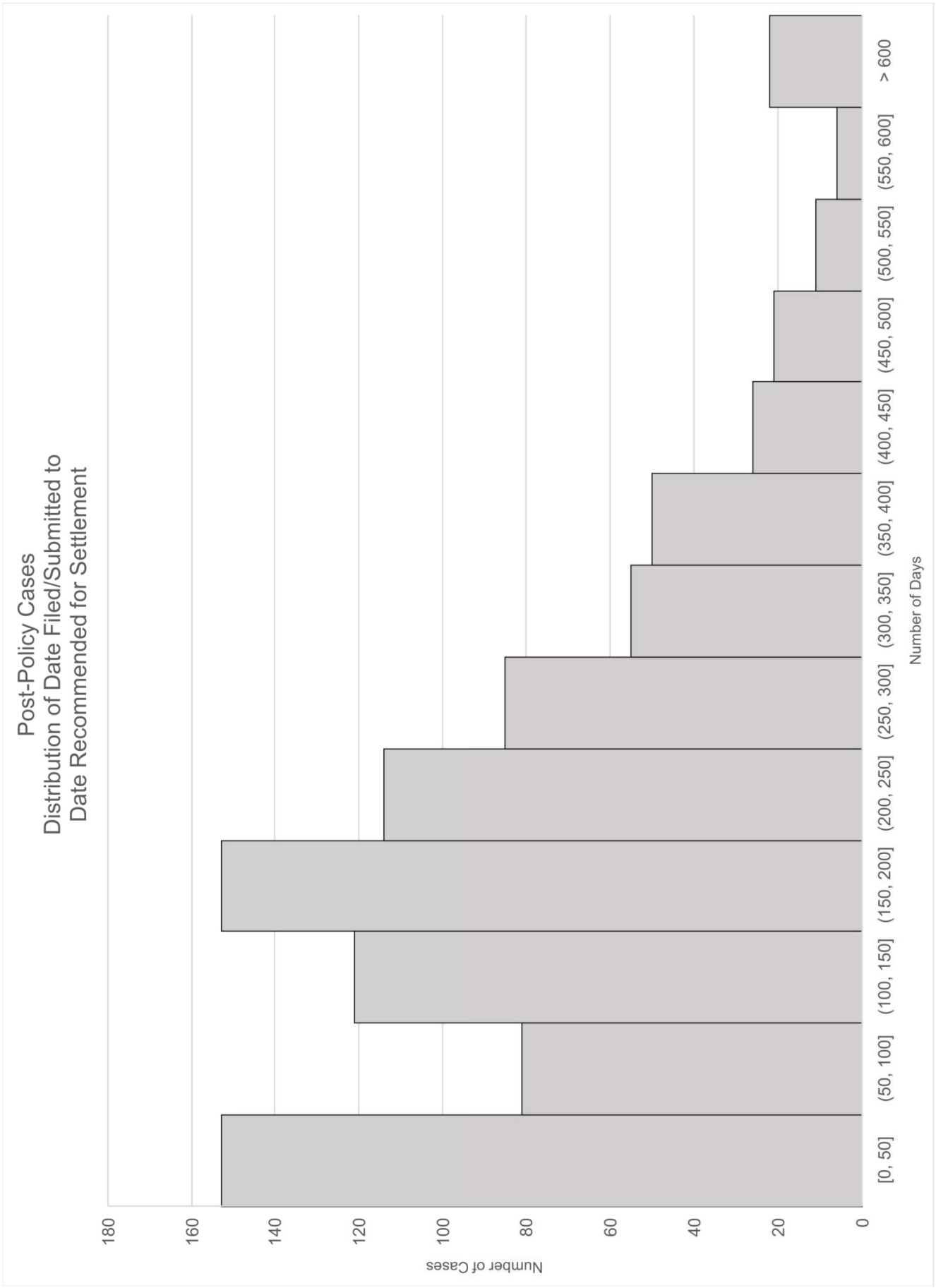
J.S.M. et al. v. New York City Dept. of Education et al.
Chart 2.9



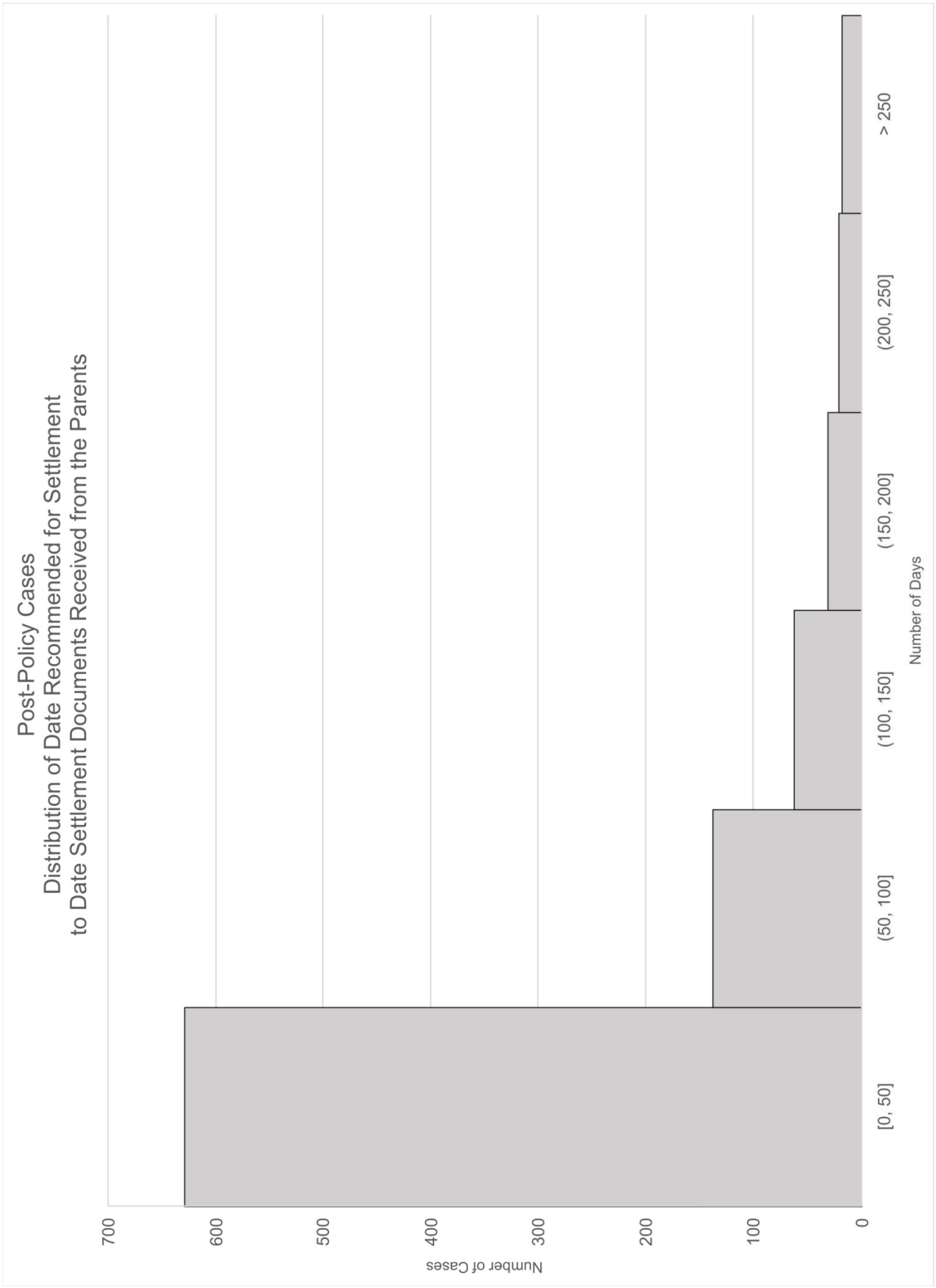


J.S.M. et al. v. New York City Dept. of Education et al.
Chart 2.10

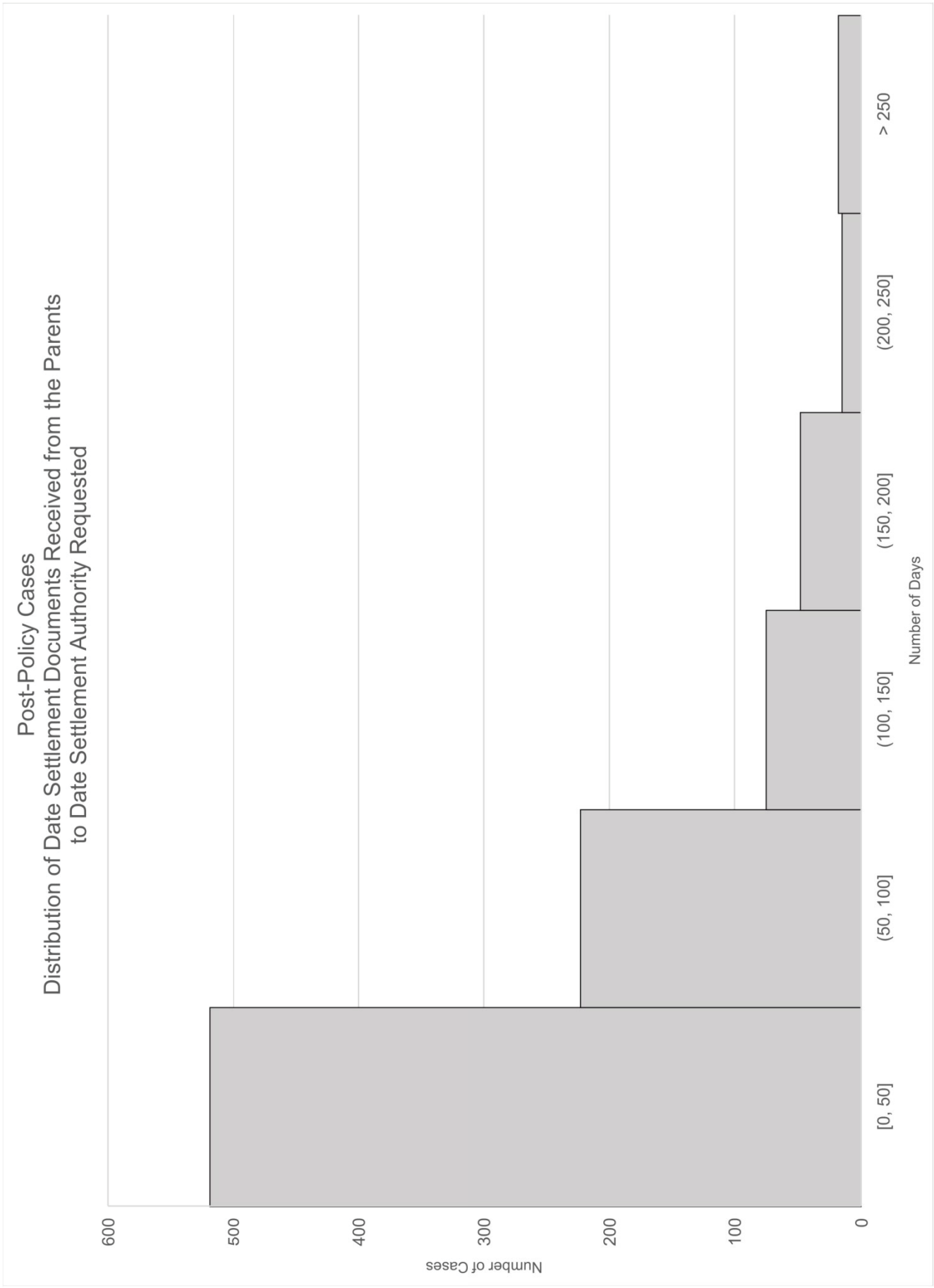
J.S.M. et al. v. New York City Dept. of Education et al.
Chart 3.2



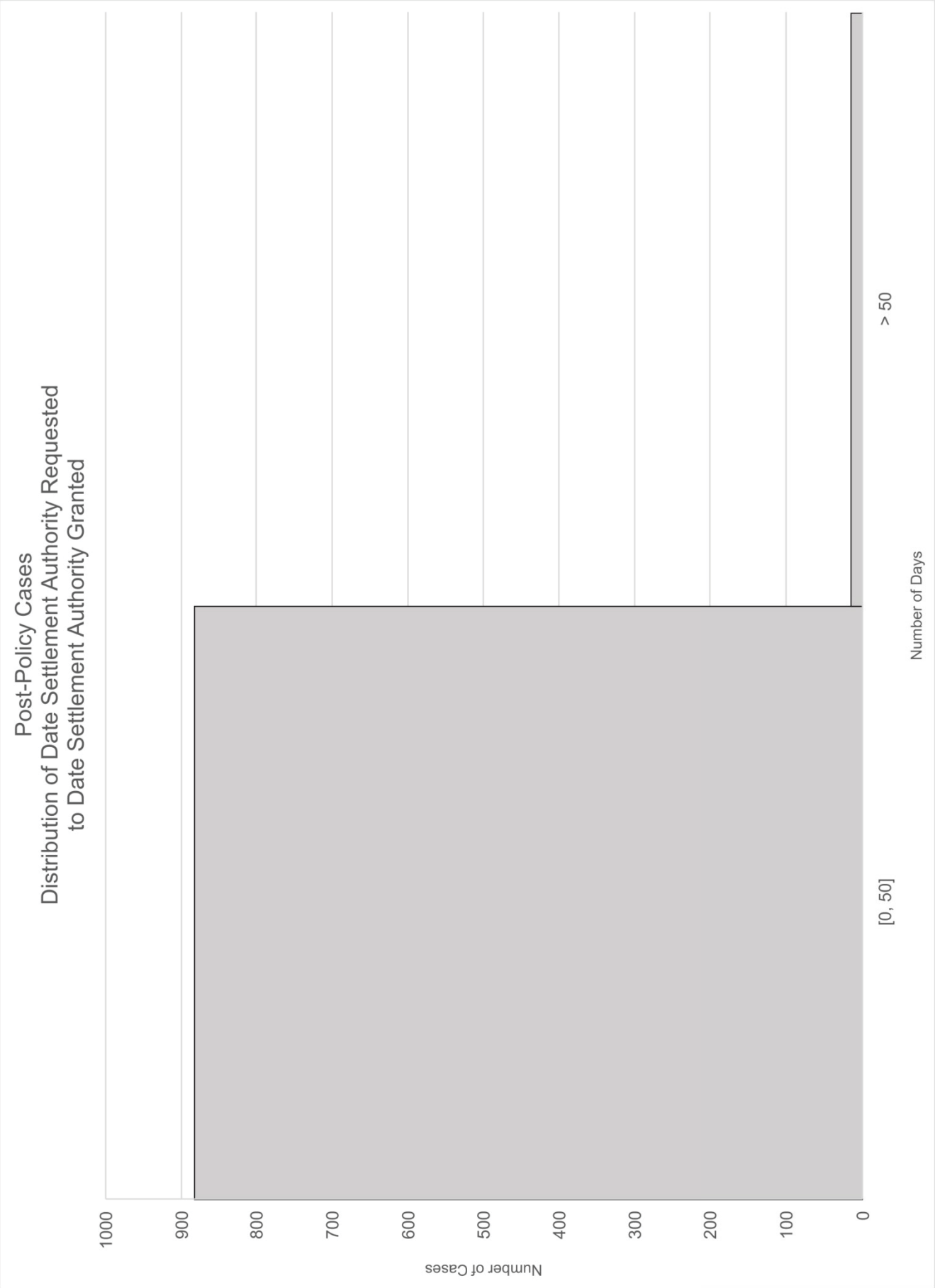
J.S.M. et al. v. New York City Dept. of Education et al.
Chart 3.3

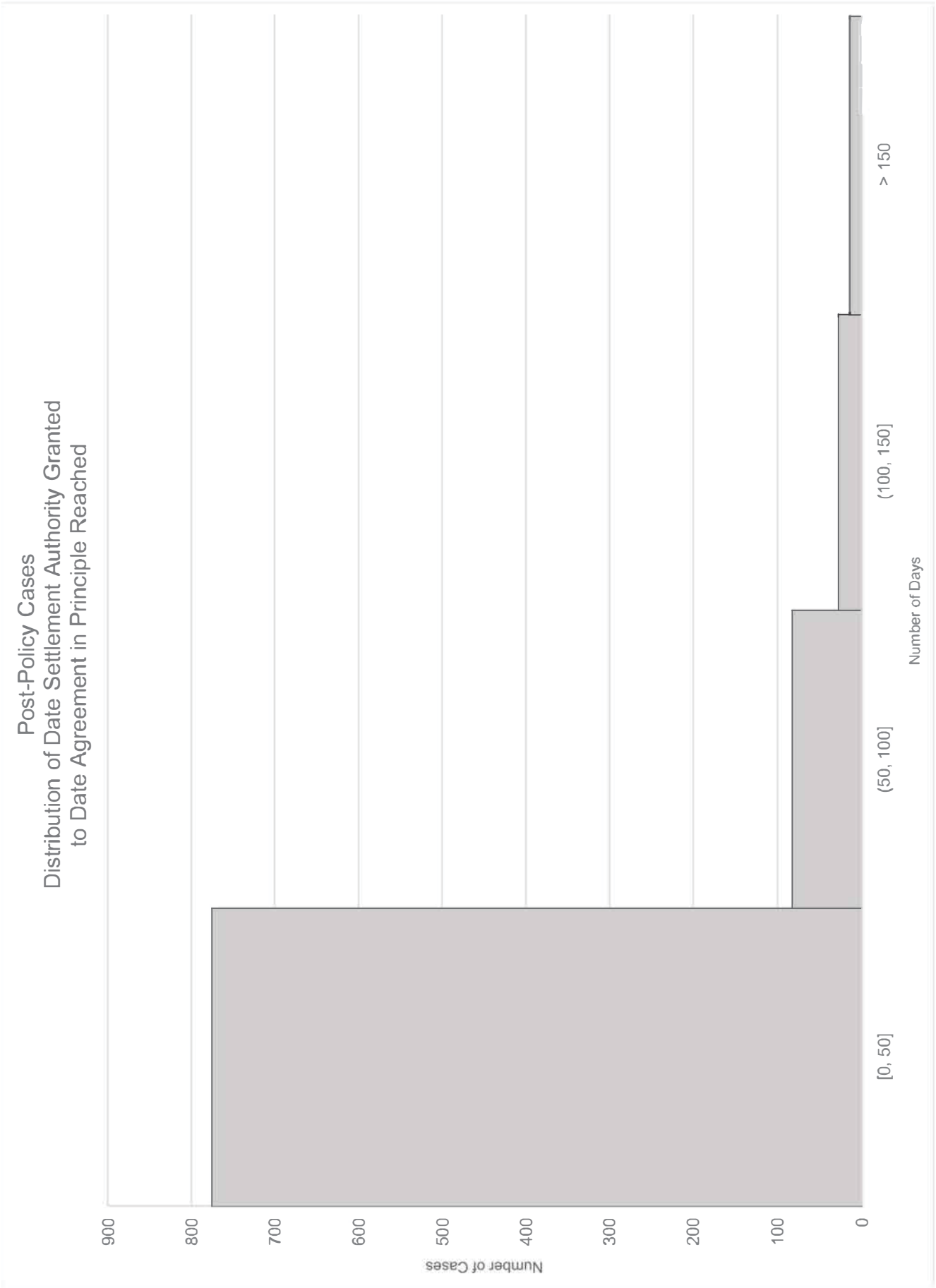


J.S.M. et al. v. New York City Dept. of Education et al.
Chart 3.4

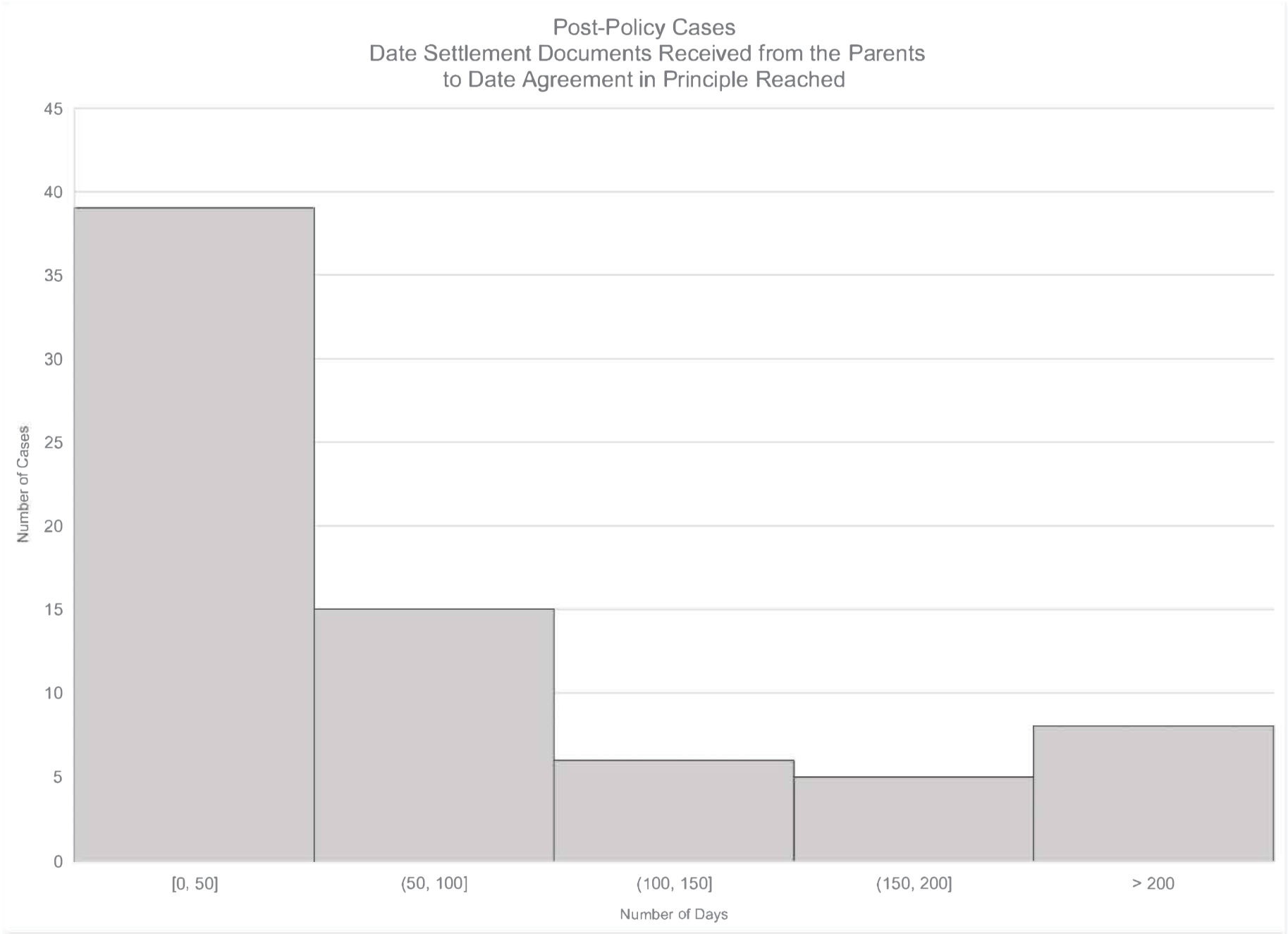


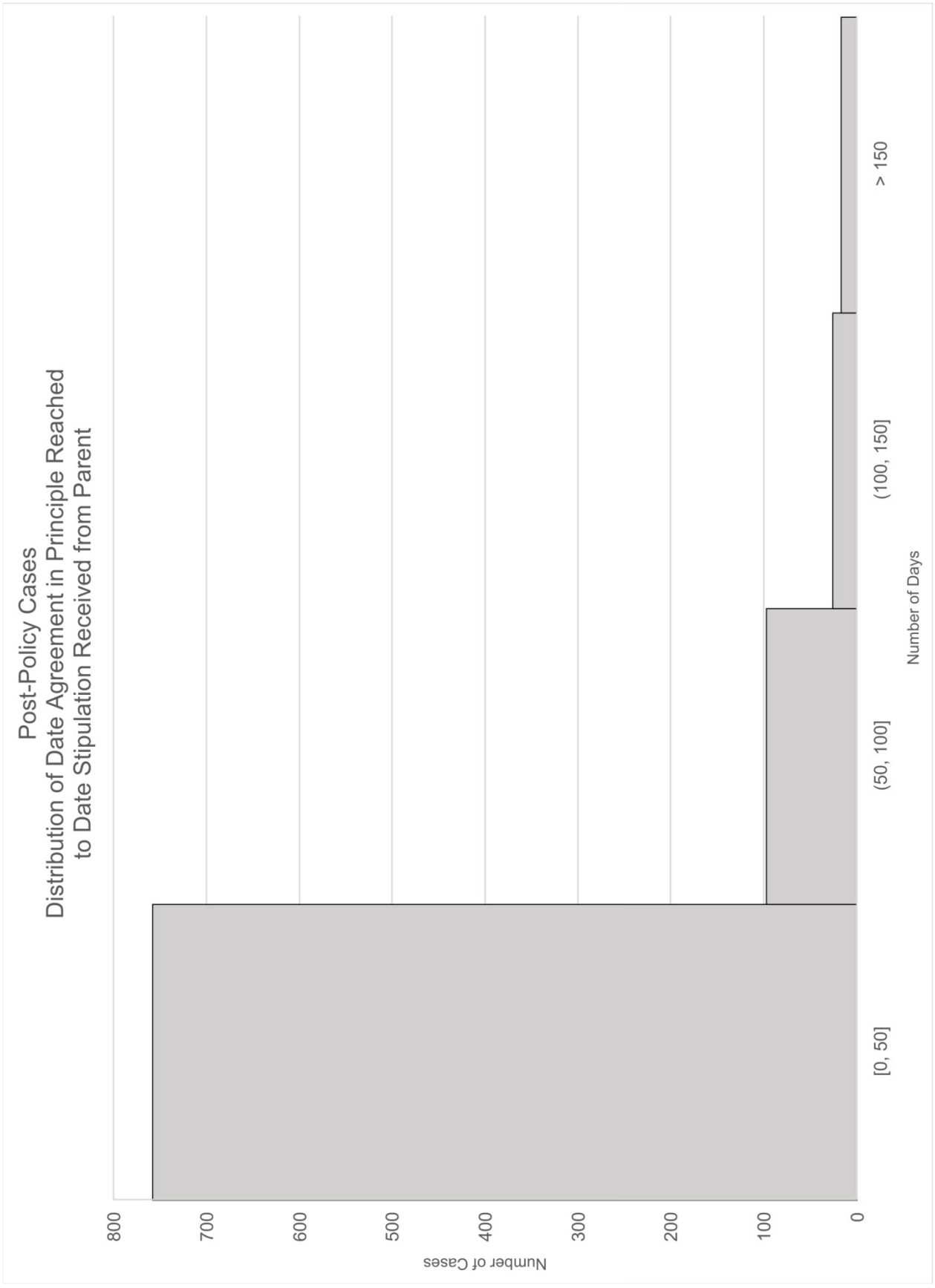
J.S.M. et al. v. New York City Dept. of Education et al.
Chart 3.5



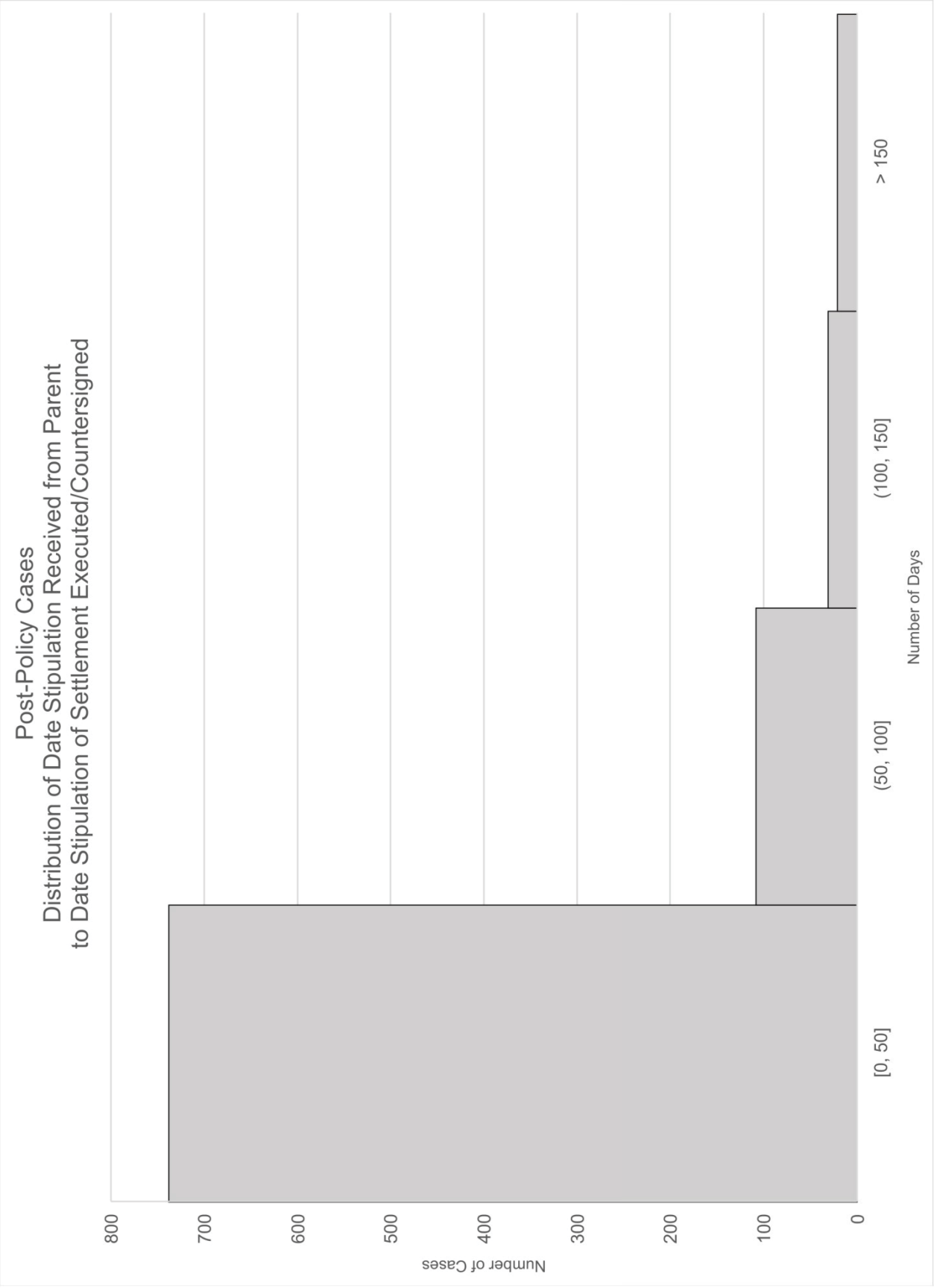


J.S.M. et al. v. New York City Dept. of Education et al.
Chart 3.6

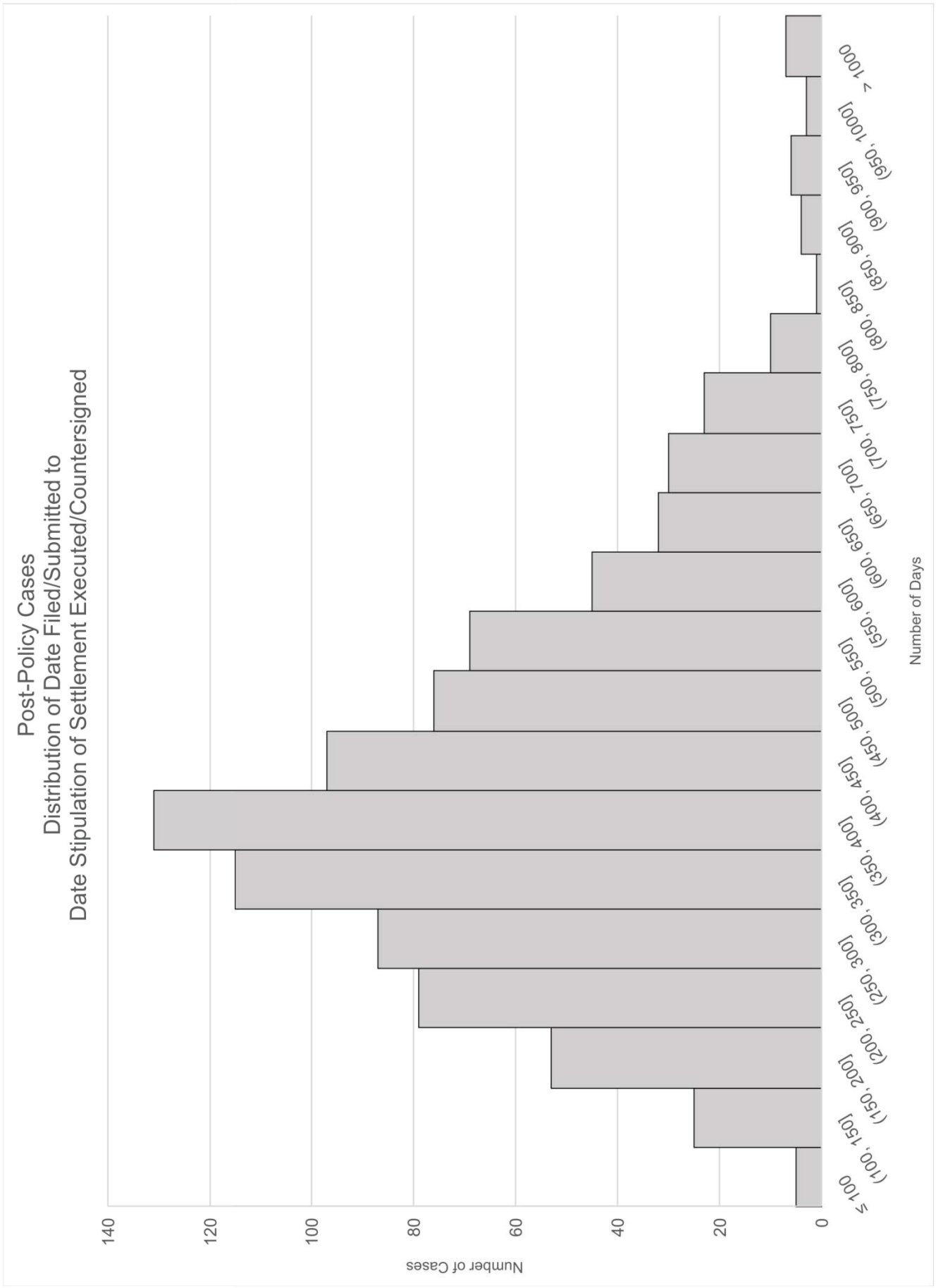




J.S.M. et al. v. New York City Dept. of Education et al.
Chart 3.8



J.S.M. et al. v. New York City Dept. of Education et al.
Chart 3.9



J.S.M. et al. v. New York City Dept. of Education et al.
Chart 3.10

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' REPLY TO CITY DEFENDANTS' RESPONSE TO 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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Co-Counsel for Plaintiffs

Date of Service: September 9, 2022

TABLE OF CONTENTS

Page

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

For the Court's convenience, Plaintiffs have reproduced each numbered paragraph of Plaintiffs' Local Rule 56.1 Statement, as well as City Defendants' Responses thereto, and have set out Plaintiffs' replies directly beneath them in bolded text. Where City Defendants do not dispute the facts asserted in Plaintiffs' Local Rule 56.1 Statement, Plaintiffs indicate "N/A" in the reply.

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.)

City Defendants' Response to Plaintiffs' Statement No. 1: Disputed, to the extent that the Department of Education must "arrange" for due process hearings to be "conducted," but it is per-diem, freelance hearing officers, as well as hearing officers employed by the New York City Office of Administrative Trials and Hearings, who conduct due process hearings in New York City. 8 N.Y.C.R.R. § 200.5(j)(3); see also Declaration of Noel R. Garcia, dated July 29, 2022, at ¶ 9; Declaration of Cheryl Williams, dated July 29, 2022 ("Williams Declaration") at ¶ 4-5. Notwithstanding these objections, City Defendants do not dispute that New York has a two-tier administrative due process system pursuant to the Individuals with Disabilities Education Act, and that decisions issued by impartial hearing officers can be appealed to the New York State Education Department's Office of State Review. N.Y. Educ. Law § 4404.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 1: City Defendants do not dispute the factual statement. City Defendants' assertion that the "Department of Education must 'arrange' for due process hearings to be 'conducted,' but it is per-diem, freelance hearing officers, as well as hearing officers employed by the New York City Office of Administrative Trials and Hearings, who conduct due process

hearings in New York City" is immaterial because Plaintiffs did not assert that LEAs are responsible for any tasks, such as "issu[ing]" "decisions," that are the responsibilities of IHOs. *See* Plaintiffs' Statement Nos. 5–15. The additional statements in City Defendants' Response to Plaintiffs' Statement No. 1 are thus immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 1 therefore must be deemed admitted.

City Defendants' contentions in response to Plaintiffs' Statement No. 1 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

City Defendants' Response to Plaintiffs' Statement No. 2: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 2: **N/A**

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

City Defendants' Response to Plaintiffs' Statement No. 3: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 3: **N/A**

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.)

City Defendants' Response to Plaintiffs' Statement No. 4: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 4: **N/A**

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.)

City Defendants' Response to Plaintiffs' Statement No. 5: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 5: **N/A**

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.)

City Defendants' Response to Plaintiffs' Statement No. 6: Disputed, to the extent that the Department of Education cannot "initiat[e] the appointment of an impartial hearing officer" when there are no impartial hearing officers willing or able to accept appointments. Williams Declaration at ¶¶ 19-24. Notwithstanding this objection, City Defendants admit that State regulations provides for the appointment of an impartial hearing officer no later than two business days after receipt of a due process complaint. 8 N.Y.C.R.R. § 200.5(j)(3).

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 6: City Defendants do not dispute the factual statement. As City Defendants admit in their Response to Plaintiffs' Statement No. 6, 8 N.Y.C.R.R. § 200.5(j)(3)(i)(a) requires that "[t]he rotational selection process" for the "appointment from the impartial hearing officer list" "must be initiated immediately, but not later than two business days after receipt by the school district of the due process complaint notice or mailing of the due process complaint notice to the parent." The additional statements in City Defendants' Response to Plaintiffs' Statement No. 6 regarding whether City Defendants are able to comply with this requirement, if true, are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 6 therefore must be deemed admitted.

7. NYCDOE, through the NYCIHO, 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.)

City Defendants' Response to Plaintiffs' Statement No. 7: Disputed, to the extent that the Department of Education is required to provide procedural safeguards notices to parents in the parent's native language, or by "other mode of communication used by the parent, unless it is clearly not feasible to do so." 8 N.Y.C.R.R. § 200.5(f)(2). Notwithstanding this objection, City Defendants admit that the Department must issue procedural safeguard notices at certain specified times, including after the filing of a due process complaint. 8 N.Y.C.R.R. § 200.5(f).

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 7: City Defendants do not dispute the factual statement. As City Defendants admit in their

Response to Plaintiffs' Statement No. 7, 8 N.Y.C.R.R. § 200.5(f)(2) requires that "[t]he school district must ensure that the procedural safeguards notice is provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so." The additional statements in City Defendants' Response to Plaintiffs' Statement No. 7 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 7 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 8: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 8: **N/A**

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.)

City Defendants' Response to Plaintiffs' Statement No. 9: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 9: **N/A**

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.)

City Defendants' Response to Plaintiffs' Statement No. 10: Disputed, to the extent that the factual assertion implies that the Department of Education must "offer the relief sought in the [due process complaint]" to fulfill its obligations in connection with resolution meetings. There is no such requirement in the law. See 20 U.S.C. § 1415(f)(1)(B); 8 N.Y.C.R.R. § 200.5(j)(2). Notwithstanding this objection, City Defendants admit that there are instances where the Department does not convene a resolution session within fifteen days of the filing of a due process complaint, and that at some resolution sessions, the Department does not "offer the relief sought in the [due process complaint]."

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 10:

City Defendants do not dispute the factual statement. The additional statements in City Defendants' Response to Plaintiffs' Statement No. 10, if true, are immaterial and do not preclude summary judgment. The IDEA and New York State regulations that City

Defendants cite in their Response to Plaintiffs' Statement No. 10 require that a representative of the LEA with "decisionmaking authority" attend a resolution session that the LEA must "convene." *See* 20 U.S.C. § 1415(f)(1)(B)(i); 8 N.Y.C.R.R. § 200.5(j)(2). City Defendants do not adduce any evidence, as required by Local Civil Rule 56.1(d), that representatives of NYCDOE do attend resolution sessions with this authority. Plaintiffs' Statement No. 10 therefore must be deemed admitted.

> 11. NYCDOE, through the NYCIHO, is responsible for scheduling impartial hearings and notifying the parties of the hearing. (Ex. 5 (DOE000090) at -105.)
>
> **City Defendants' Response to Plaintiffs' Statement No. 11:** Disputed, to the extent that hearing officers, not the Department of Education, schedule hearings. *See* Plaintiffs' Exhibit 5 at DOE000105. Notwithstanding this objection, City Defendants admit that the Department of Education notifies parties of scheduled hearings presided over by per-diem impartial hearing officers.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 11:

City Defendants do not dispute the factual statement that NYCDOE is responsible for notifying the parties of scheduled hearings, which must be deemed admitted. The additional statements in City Defendants' Response to Plaintiffs' Statement No. 11, if true, are immaterial and do not preclude summary judgment. Plaintiffs' Exhibit 5 states that an IHO "directs the [NYCIHO] for the scheduling of all hearings." (*See* Ex. 5 (DOE000090) at -105.) Plaintiffs' Statement No. 11 therefore must be deemed admitted.

> 12. NYCDOE, through the NYCIHO, 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.)
>
> **City Defendants' Response to Plaintiffs' Statement No. 12:** Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 12:

N/A

> 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.)

City Defendants' Response to Plaintiffs' Statement No. 13: Disputed, to the extent that the factual assertion includes conclusions that are not part of the cited portions of the supporting declaration. Notwithstanding this objection, City Defendants admit that there are due process hearings where the Department does not present its own witnesses, does not submit evidence, and/or concedes that the Department did not offer the student a free and appropriate public education.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 13:

City Defendants do not dispute the factual statement. City Defendants admit that at certain impartial hearings, NYCDOE "does not present its own witnesses, does not submit evidence, and/or concedes that the [NYCDOE] did not offer the student a free and appropriate public education." The additional statements in City Defendants' Response to Plaintiffs' Statement No. 13 are thus immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 13 therefore must be deemed admitted.

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

City Defendants' Response to Plaintiffs' Statement No. 14: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 14:

N/A

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

City Defendants' Response to Plaintiffs' Statement No. 15: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 15:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 16: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 16:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 16 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 16 therefore must be deemed admitted.

17. NYCDOE, through the NYCIHO, 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.)

City Defendants' Response to Plaintiffs' Statement No. 17: Disputed, to the extent that assertion characterizes the Impartial Hearing Office's obligation as anything more than the ministerial entry of data concerning extension issued by the impartial hearing officers. Williams Declaration at ¶¶ 3-4.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 17:

City Defendants do not dispute the factual statement. The additional statements in City Defendants' Response to Plaintiffs' Statement No. 17 consist of immaterial facts or legal arguments and do not preclude summary judgment. Plaintiffs' Statement No. 17 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 18: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 18:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 19: Disputed, to the extent the factual assertion states that the State Education Department "must ensure that each public agency in the state" meets obligations connected to the Individuals with Disabilities Education Act. Notwithstanding this objection, City Defendants admit that the State Education Department's oversight

obligations extend to local educational agencies in the State. 20 U.S.C. § 1412(a)(11).

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 19: **City Defendants do not dispute the factual statement, which is supported by admissible evidence, because they adduce no evidence that contradicts it. City Defendants do not adduce any evidence, as required by Local Civil Rule 56.1(d), that NYSED's "general supervisory responsibility and authority under [the] IDEA" does not extend to "each public agency" under the IDEA and its implementing regulations. *See* 34 C.F.R. § 300.500. Notably, State Defendants have not disputed Plaintiffs' Statement No. 19. *See* State Defs.' Resp. to Pls.' Rule 56.1 Stmt. No. 19. Plaintiffs' Statement No. 19 therefore must be deemed admitted.**

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

City Defendants' Response to Plaintiffs' Statement No. 20: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 20:

N/A

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).)

City Defendants' Response to Plaintiffs' Statement No. 21: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 21:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 22: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 22:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 23: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 23:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 23 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 23 therefore must be deemed admitted.

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

City Defendants' Response to Plaintiffs' Statement No. 24: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 24:

N/A

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

City Defendants' Response to Plaintiffs' Statement No. 25: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 25:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 26: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 26:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 27: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 27:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 28: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 28:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 29: Disputed, to the extent the factual assertion can be read to suggest that extensions are limited to thirty, or sixty, days in total. Notwithstanding this objection, City Defendants admit that each individual extension is limited to 30 days, which was then extended to 60 days, but that further 30 (or 60) day extensions can be lawfully granted. 8 N.Y.C.R.R. § 200.5(j)(5)(i).

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 29:

City Defendants do not dispute the factual statement, which is supported by admissible evidence, because they adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict it. City Defendants' additional statements are irrelevant and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 29 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 30: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 30:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 31: Not disputed that the declarant made the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 31:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 31 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 31 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 32: Not disputed that the declarant made the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 32:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 32 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 32 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 33: Not disputed that the declarant made the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 33:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 33 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 33 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 34: Not disputed that the declarant made the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 34:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 34 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 34 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 35: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 35:

N/A

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

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

City Defendants' Response to Plaintiffs' Statement No. 36: Disputed, to the extent that the Department of Education did check the availability of hearing officers prior to November 2019, albeit on a quarterly basis. Williams Declaration at ¶ 19.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 36:

City Defendants do not dispute the factual statement, which is supported by admissible evidence, because they adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict it. Ms. Williams's statement that "[u]ntil November 2019, the Impartial Hearing Office reached out to all per diem officers on a quarterly basis to obtain information on their availability to accept cases," Williams Decl. ¶ 19, is irrelevant and

does not contradict Exhibit 24's statement that the NYCIHO automatically appointed IHOs to hear a filed DPC without checking their availability for that appointment. Plaintiffs' Statement No. 36 therefore must be deemed admitted.

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).)

City Defendants' Response to Plaintiffs' Statement No. 37: Disputed, to the extent that it is not clear what is mean by "significant number" or "associated delays." Notwithstanding this objection, City Defendants admit that, before November 2019, impartial hearing officers recused themselves from due process hearings.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 37:

City Defendants do not dispute the factual statement, which is supported by admissible evidence, because they adduce no evidence, as required by Local Civil Rule 56.1(d), that contradicts it, and instead concede that "before November 2019, impartial hearing officers recused themselves from due process hearings." Plaintiffs' Statement No. 37 therefore must be deemed admitted.

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).)

City Defendants' Response to Plaintiffs' Statement No. 38: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 38:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 39: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 39:

N/A

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

City Defendants' Response to Plaintiffs' Statement No. 40: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 40:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 41: Disputed, to the extent that, as of July 28, 2022, the waitlist is now only 122 cases. Williams Declaration at ¶ 26. Notwithstanding this objection, City Defendants admit that in February 2021, there were more than 6000 cases on the waitlist referenced therein, and that an employee of the State Department of Education made the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 41:

City Defendants do not dispute the factual statement, which is supported by admissible evidence, because they adduce no evidence, as required by Local Civil Rule 56.1(d), that contradicts it. City Defendants' additional statements in response to Plaintiffs' Statement No. 41 are immaterial and, if true, do not preclude summary judgment. Plaintiffs' Statement No. 41 must therefore be deemed admitted.

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).)

City Defendants' Response to Plaintiffs' Statement No. 42: Disputed, to the extent that, as of July 28, 2022, the waitlist is now only 122 cases. Williams Declaration at ¶ 26. Notwithstanding this objection, City Defendants admit that in September 2021, there were more than 6200 cases on the waitlist referenced therein, and that a number of those cases had been waiting for the appointment of an impartial hearing officer for more than 75 days.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 42:

City Defendants do not dispute the factual statement, which is supported by admissible evidence, because they adduce no evidence, as required by Local Civil Rule 56.1(d), that contradicts it. City Defendants' additional statements in response to Plaintiffs'

Statement No. 42 are immaterial and, if true, do not preclude summary judgment. Plaintiffs' Statement No. 42 must therefore be deemed admitted.

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).)

City Defendants' Response to Plaintiffs' Statement No. 43: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 43:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 44: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 44:

N/A

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).)

City Defendants' Response to Plaintiffs' Statement No. 45: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 45:

N/A

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).)

City Defendants' Response to Plaintiffs' Statement No. 46: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 46:

N/A

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).)

City Defendants' Response to Plaintiffs' Statement No. 47: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 47:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 48: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 48:

N/A

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

City Defendants' Response to Plaintiffs' Statement No. 49: Disputed, to the extent that the waitlist extension does not artificially make untimely cases timely, but instead incentivizes impartial hearing officers to accept assignment of untimely cases by insuring that impartial officers are able to preside over and resolve cases on the waitlist without having to immediately extend the compliance date. Williams Declaration at ¶ 20. Notwithstanding this objection, City Defendants admit that the document cited therein contains an attachment titled "Tech workaround for bringing late case into compliance." Plaintiffs' Exhibit 14.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 49:

City Defendants do not dispute the factual statement, which is supported by admissible evidence, because they adduce no evidence, as required by Local Civil Rule 56.1(d), that contradicts it. The cited statements of Ms. Williams do not explain how the relevant data systems could treat a waitlist extension any differently from another extension of the compliance date, such that waitlist extensions would not "artificially make untimely cases timely." City Defendants concede that Exhibit 14 describes a waitlist extension as a "[t]ech workaround for bringing late case[s] into compliance." The additional statements in City Defendants' Response to Plaintiffs' Statement No. 49, if true, are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 49 therefore must be deemed admitted.

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).)

City Defendants' Response to Plaintiffs' Statement No. 50: Disputed, to the extent that the excerpt is misleading – the waitlist extension was meant only to eliminate the need to seek extensions upon assignment, not thereafter. *See* Williams Declaration at ¶ 20. Notwithstanding this objection, City Defendants admit that the document cited therein contains the quoted statement. Plaintiffs' Exhibit 23.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 50:

City Defendants do not dispute the factual statement. The additional statements in City Defendants' Response to Plaintiffs' Statement No. 50 consist of legal arguments and do not preclude summary judgment. Plaintiffs do not state that the waitlist extension eliminated the need to seek extensions after assignment of an IHO. *See* Plaintiffs' Statement Nos. 43–48. Plaintiffs' Statement No. 50 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 51: Disputed, to the extent that the waitlist extension was intended to insure that impartial officers are able to preside over and resolve cases on the waitlist. Williams Declaration at ¶ 20. Notwithstanding this objection, City Defendants admit that the document cited therein contains the quoted statement. Plaintiffs' Exhibit 14.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 51:

City Defendants do not dispute the factual statement, which is supported by admissible evidence, because they adduce no evidence, as required by Local Civil Rule 56.1(d), that contradicts it. City Defendants concede that Exhibit 14 states that waitlist extensions were a solution for IHOs "being appointed to cases that are already late due to the backlog." (Pls.' Ex. 14 (DOE_006469), at -471.) The additional statements in City Defendants' Response to Plaintiffs' Statement No. 51, if true, are immaterial and do not

preclude summary judgment. Plaintiffs' Statement No. 51 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 52: Disputed, to the extent that City Defendants do not agree that the waitlist extension violates the rights of any party to a due process complaint. Notwithstanding this objection, City Defendants admit that an employee of the State Education Department made the quoted statement. Plaintiffs' Exhibit 26.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 52: **City Defendants do not dispute the factual statement. The additional statements in City Defendants' Response to Plaintiffs' Statement No. 52 are immaterial and consist of legal arguments and do not preclude summary judgment. Plaintiffs' Statement No. 52 therefore must be deemed admitted.**

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.)

City Defendants' Response to Plaintiffs' Statement No. 53: Not disputed that an employee of the State Education Department made the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 53: **City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 53 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 53 therefore must be deemed admitted.**

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).)

City Defendants' Response to Plaintiffs' Statement No. 54: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 54:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 55: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 55:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 56: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 56:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 57: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 57:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 58: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 58:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 59: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 59:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 60: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 60:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 61: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 61:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 62: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 62:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 63: Disputed, to the extent that the document cited therein refers to cases with "extended timelines," not cases that are "out of compliance with" the Individuals with Disabilities Education Act, as Plaintiffs assert. Plaintiffs' Exhibit 3.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 63:

City Defendants do not dispute the factual statement, which is supported by admissible evidence, because they adduce no evidence, as required by Local Civil Rule 56.1(d), that contradicts it. Exhibit 3 cites the 75% figure under a heading titled "Findings of Noncompliance." (Pls.' Ex. 3 (STATE_DEF_ESI00000255) at -258.) Plaintiffs' Statement No. 63 therefore must be admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 64: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 64:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 65: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 65:

N/A

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).)

City Defendants' Response to Plaintiffs' Statement No. 66: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 66:

N/A

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).)

City Defendants' Response to Plaintiffs' Statement No. 67: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 67:

N/A

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.

City Defendants' Response to Plaintiffs' Statement No. 68: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 68:

N/A

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).)

City Defendants' Response to Plaintiffs' Statement No. 69: Not disputed that the document cited therein contains the quoted statement. *See* Plaintiffs' Exhibit 8.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 69:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 69 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 69 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 70: Disputed, to the extent that the Department of Education does not set maximum compensation for impartial hearing officers, to the extent that payments to impartial hearing officers are now processed promptly, and to the extent that there is no evidence that impartial hearing officers declined appointments because of compensation issues. N.Y. Educ. Law § 4404(1)(c); Williams Declaration at ¶ 28; *see also*

Plaintiffs' Exhibit 8. Notwithstanding this objection, City Defendants admit that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 70: **City Defendants do not dispute the factual statement. City Defendants concede that the NYSED Merced Report states that IHOs "declin[ed] appointments of cases" due to compensation issues. (*See* Pls.' Ex. 8 (State Def 240) at -278 (citing evidence relied on in support of that statement in the NYSED Merced Report).) City Defendants' statement that NYCDOE "does not set maximum compensation" for IHOs is irrelevant and immaterial, as Plaintiffs did not state that NYCDOE did so. *See* Plaintiffs' Statement No. 25. The additional statements in response to Plaintiffs' Statement No. 70 regarding current processing of IHO payments are likewise irrelevant and immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 70 therefore must be admitted.**

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.)

City Defendants' Response to Plaintiffs' Statement No. 71: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 71: **City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 71 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 71 therefore must be deemed admitted.**

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.)

City Defendants' Response to Plaintiffs' Statement No. 72: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 72: **City Defendants do not dispute the factual statement, and the additional statements in**

response to Plaintiffs' Statement No. 72 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 72 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 73: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 73:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 73 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 73 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 74: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 74:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 74 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 74 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 75: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 75:

City Defendants do not dispute the factual statement, and the additional statements in

response to Plaintiffs' Statement No. 75 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 75 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 76: Disputed, to the extent that the Department of Education does not extend timelines, with or without written orders, or have legal obligations in regards to timelines – the regulations apply to hearing officers. *See* 8 N.Y.C.R.R. § 200.5(j)(5)(i). Notwithstanding this objection, City Defendants admit that the document cited therein contains the quoted statement. *See* Plaintiffs' Exhibit 8.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 76:

City Defendants do not dispute the factual statement, and concede that the NYSED Merced Report concluded that "[p]revalent practice in New York City is to extend the timeline without a written order meeting the requirements of 8 N.Y.C.R.R. § 200.5(j)(5)." (Pls.' Ex. 8 (State Def 240) at -274.) The additional statements in response to Plaintiffs' Statement No. 76 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 76 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 77: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 77:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 78: Disputed, to the extent that the Department of Education does not appoint impartial hearing officers who are not available to take on the matter. Williams Declaration at ¶ 19. Notwithstanding this objection, City Defendants admit that previously, impartial hearing officers were assigned to cases rotationally, pursuant to the

regulations regardless of their availability, and that the document cited therein contains the quoted statement. *See id.*

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 78: **City Defendants do not dispute the factual statement. Ms. Williams's statement that "[u]ntil November 2019, the Impartial Hearing Office reached out to all per diem officers on a quarterly basis to obtain information on their availability to accept cases," Williams Decl. ¶ 19, is irrelevant and does not contradict the NYSED Merced Report's statement that NYCDOE "automatically appoint[ed] an IHO to a due process complaint without first confirming his/her availability." (Pls.' Ex. 8 (State Def 240) at -282.) City Defendants concede that at the time of the NYSED Merced Report, IHOs were assigned to cases rotationally regardless of their availability. Plaintiffs' Statement No. 78 therefore must be admitted.**

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).)

City Defendants' Response to Plaintiffs' Statement No. 79: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 79: **City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 79 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 79 therefore must be deemed admitted.**

III. Compliance Assurance Plan

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

City Defendants' Response to Plaintiffs' Statement No. 80: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 80:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 81: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 81:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 81 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 81 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 82: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 82:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 82 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 82 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 83: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 83:

City Defendants do not dispute the factual statement, and the additional statements in

response to Plaintiffs' Statement No. 83 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 83 therefore must be deemed admitted.

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).)

City Defendants' Response to Plaintiffs' Statement No. 84: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 84:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 85: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 85:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 86: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 86:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 87: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 87:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 88: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 88:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 89: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 89:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 89 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 89 therefore must be deemed admitted.

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).)

City Defendants' Response to Plaintiffs' Statement No. 90: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 90:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 91: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 91:

N/A

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

City Defendants' Response to Plaintiffs' Statement No. 92: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 92:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 93: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 93:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 93 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 93 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 94: Disputed, to the extent that the Department of Education does not proceed to hearing on enhanced rate cases or cases concerning independent education evaluations as a matter of practice, nor improperly place the burden on parents. Declaration of Mia Delane Gurley, dated July 29, 2022 ("Delane Gurley Declaration"), at ¶¶ 6, 8-9; *see also* Williams Declaration at ¶ 15. Notwithstanding these objections, City Defendants admit that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 94:

City Defendants do not dispute the factual statement, which is supported by admissible evidence, because they adduce no evidence, as required by Local Civil Rule 56.1(d), that

contradicts it. City Defendants concede that in May 2020, NYSED identified an NYCDOE practice of proceeding to hearings on enhanced rate cases and on independent educational evaluations. (Pls.' Ex. 22 (State Def 639) at -640 to -641.) The additional statements in City Defendants' response to Plaintiffs' Statement No. 94, if true, are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 94 therefore must be deemed admitted.

> 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.)
>
> **City Defendants' Response to Plaintiffs' Statement No. 95:** Disputed, to the extent that the Department of Education is attempting to resolve or mediate at least some cases concerning enhanced rate or independent education evaluations, and to the extent that the Department of Education cannot unilaterally prevent parents from proceeding to hearing. *See* Delane Gurley Declaration at ¶¶ 6, 8-9; *see also* Williams Declaration at ¶ 15. Notwithstanding these objections, City Defendants admit that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 95:

City Defendants do not dispute the factual statement, which is supported by admissible evidence, because they adduce no evidence, as required by Local Civil Rule 56.1(d), that contradicts it. City Defendants concede that in May 2020, NYSED directed NYCDOE to stop proceeding to hearing on enhanced rate cases and cases involving independent educational evaluations. (Pls.' Ex. 22 (State Def 639) at -640 to -641.) The additional statements in City Defendants' response to Plaintiffs' Statement No. 95, if true, are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 95 therefore must be deemed admitted.

> 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).)
>
> **City Defendants' Response to Plaintiffs' Statement No. 96:** Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 96:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 97: Disputed, to the extent that the cited document says that the Department of Education had not yet submitted "its plan to settle cases long awaiting settlement approval…" Plaintiffs' Exhibit 25.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 97:

City Defendants do not dispute the factual statement, which is supported by admissible evidence, because they adduce no evidence, as required by Local Civil Rule 56.1(d), that contradicts it. Exhibit 25 refers to City Defendants' "plans" to settle cases long awaiting settlement approval. (Pls.' Ex. 25 (STATE_DEF_ESI00065915) at -917.) Plaintiffs' Statement No. 97 therefore must be deemed admitted.

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).)

City Defendants' Response to Plaintiffs' Statement No. 98: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 98:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 99: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 99:

City Defendants do not dispute the factual statement, and the additional statements in

response to Plaintiffs' Statement No. 99 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 99 therefore must be deemed admitted.

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_ESI0001186) at -188.)

City Defendants' Response to Plaintiffs' Statement No. 100: Not disputed that the document cited therein contains the quoted statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 100:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 100 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 100 therefore must be deemed admitted.

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).)

City Defendants' Response to Plaintiffs' Statement No. 101: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 101:

N/A

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

City Defendants' Response to Plaintiffs' Statement No. 102: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 102:

N/A

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

City Defendants' Response to Plaintiffs' Statement No. 103: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 103:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 104: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 104:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 105: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 105:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 106: Not disputed that the factual assertion is consistent with the declarant's statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 106:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 106 are immaterial and do not preclude summary judgment. Plaintiffs' Statement No. 106 therefore must be deemed admitted.

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

City Defendants' Response to Plaintiffs' Statement No. 107: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 107:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 108: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 108:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 109: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 109:

N/A

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

City Defendants' Response to Plaintiffs' Statement No. 110: Not disputed that the factual assertion is consistent with the declarant's statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 110:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 110 are immaterial and do not preclude summary judgment. City Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 110 therefore must be deemed admitted.

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

City Defendants' Response to Plaintiffs' Statement No. 111: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 111:

N/A

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

City Defendants' Response to Plaintiffs' Statement No. 112: Not disputed that the factual assertion is consistent with the declarant's statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 112:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 112 are immaterial and do not preclude summary judgment. City Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 112 therefore must be deemed admitted.

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

City Defendants' Response to Plaintiffs' Statement No. 113: Not disputed that the factual assertion is consistent with the declarant's statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 113:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 113 are immaterial and do not preclude summary judgment. City Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 113 therefore must be deemed admitted.

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

City Defendants' Response to Plaintiffs' Statement No. 114: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 114:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 115: Not disputed that the factual assertion is consistent with the declarant's statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 115:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 115 are immaterial and do not preclude summary judgment. City Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 115 therefore must be deemed admitted.

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

City Defendants' Response to Plaintiffs' Statement No. 116: Not disputed that the factual assertion is consistent with the declarant's statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 116:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 116 are immaterial and do not preclude summary judgment. City Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 116 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 117: Not disputed that the factual assertion is consistent with the declarant's statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 117:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 117 are immaterial and do not preclude summary judgment. City Defendants adduce no evidence, as required by Local Civil Rule 56.1(d),

to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 117 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 118: Not disputed that the factual assertion is consistent with the declarant's statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 118:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 118 are immaterial and do not preclude summary judgment. City Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 118 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 119: Not disputed.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 119:

N/A

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.)

City Defendants' Response to Plaintiffs' Statement No. 120: Not disputed that the factual assertion is consistent with the declarant's statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 120:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 120 are immaterial and do not preclude summary judgment. City Defendants adduce no evidence, as required by Local Civil Rule 56.1(d),

to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 120 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 121: Not disputed that the factual assertion is consistent with the declarant's statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 121:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 121 are immaterial and do not preclude summary judgment. City Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 121 therefore must be deemed admitted.

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

City Defendants' Response to Plaintiffs' Statement No. 122: Not disputed that the factual assertion is consistent with the declarant's statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 122:

City Defendants do not dispute the factual statement, and the additional statements in response to Plaintiffs' Statement No. 122 are immaterial and do not preclude summary judgment. City Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 122 therefore must be deemed admitted.

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.)

City Defendants' Response to Plaintiffs' Statement No. 123: Not disputed that the factual assertion is consistent with the declarant's statement.

Plaintiffs' Reply to City Defendants' Response to Plaintiffs' Statement No. 123:

City Defendants do not dispute the factual statement, and the additional statements in

response to Plaintiffs' Statement No. 123 are immaterial and do not preclude summary judgment. City Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 123 therefore must be deemed admitted.

V. Named Plaintiffs

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B. A.S.

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K. W.W.

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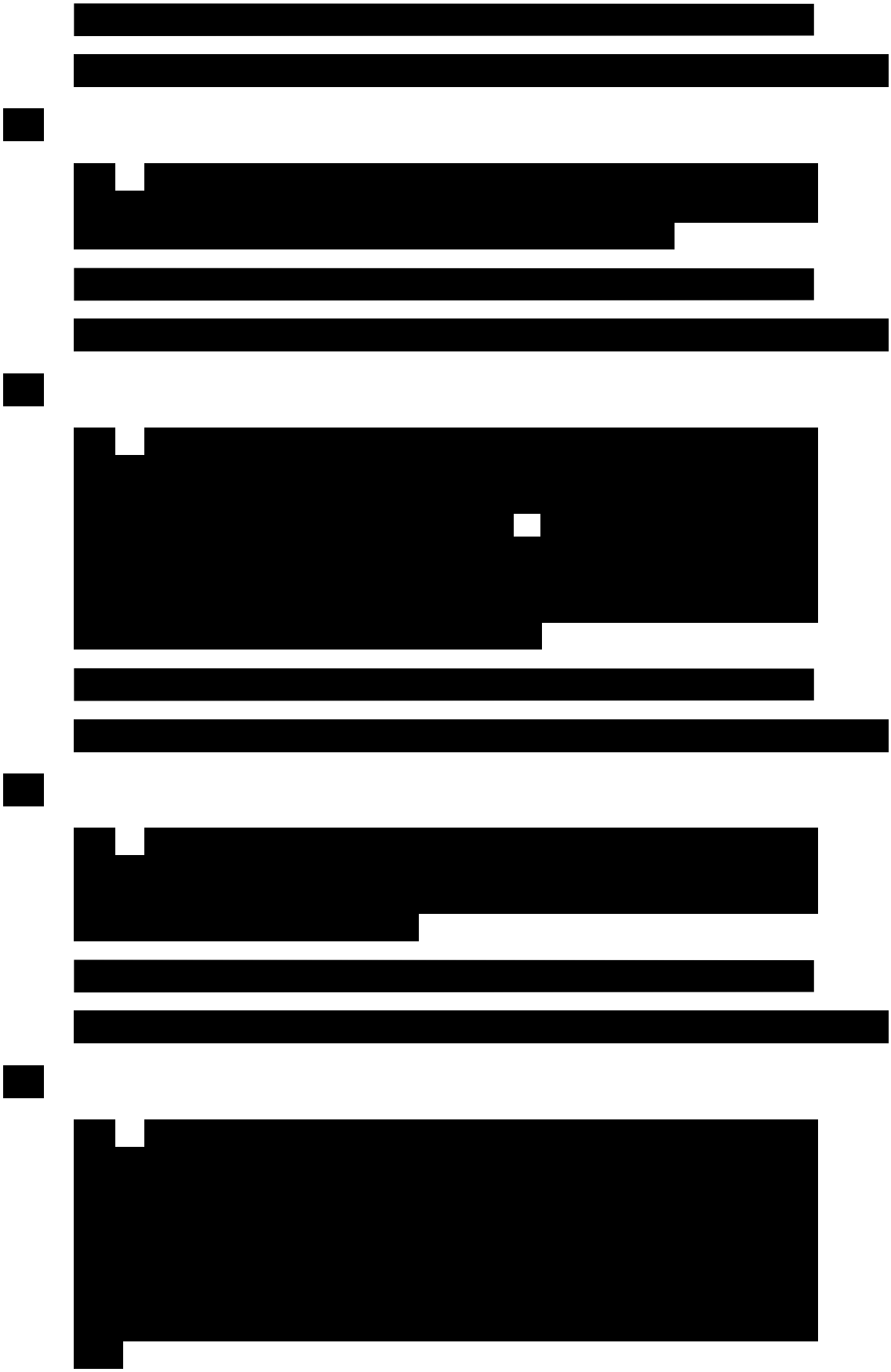

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L. **Consistent Issues in Named Plaintiff Cases**

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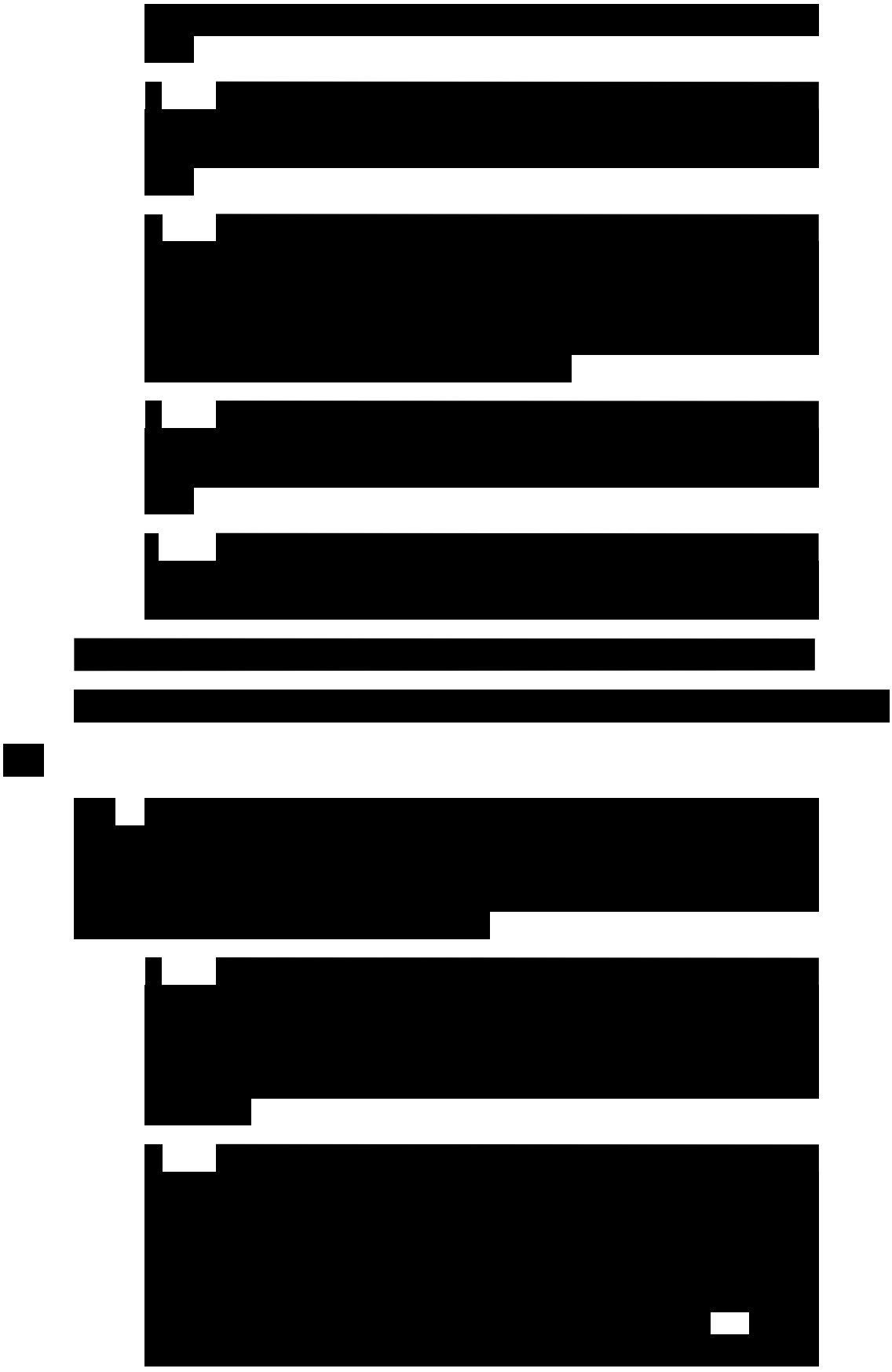

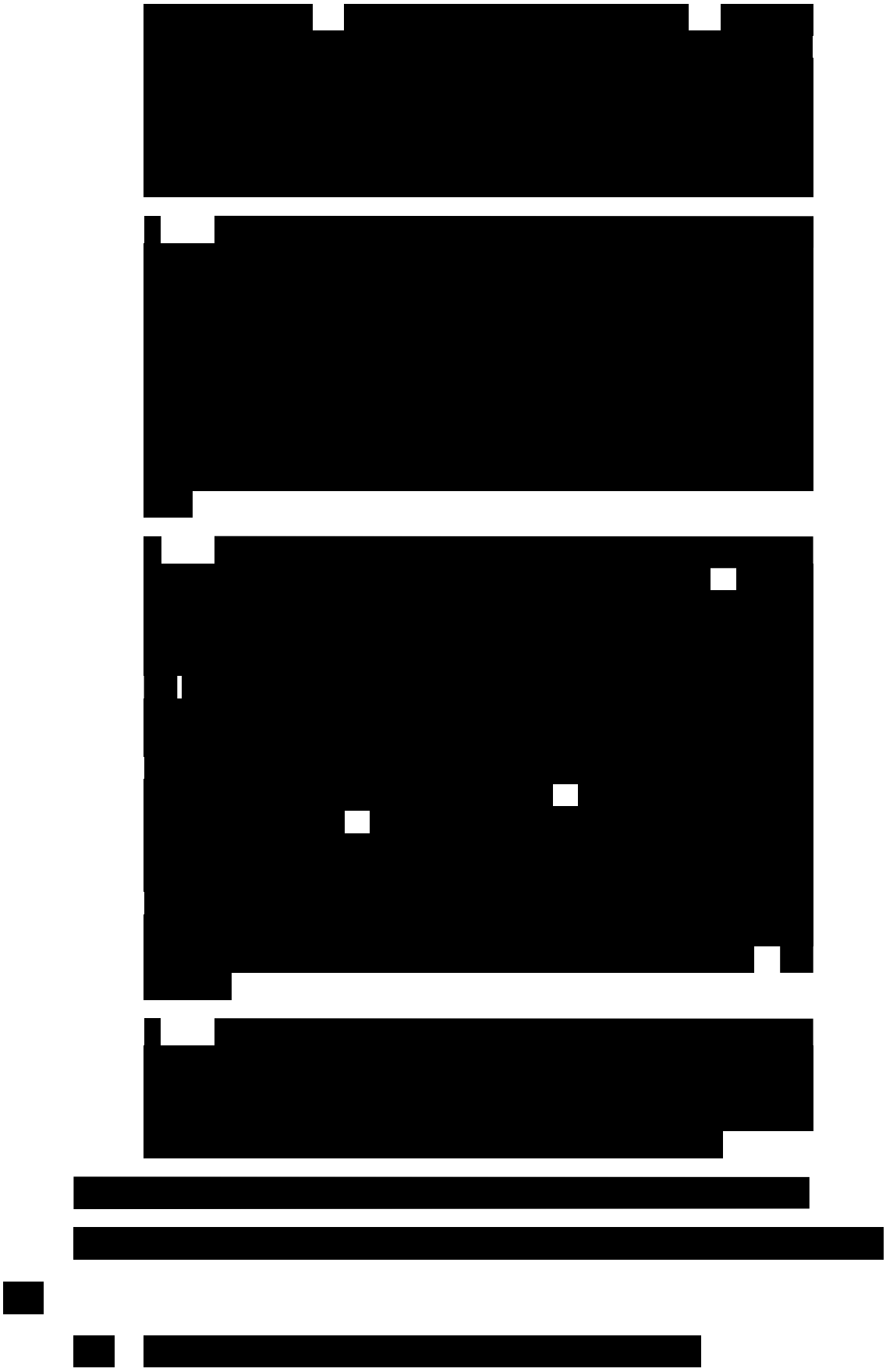

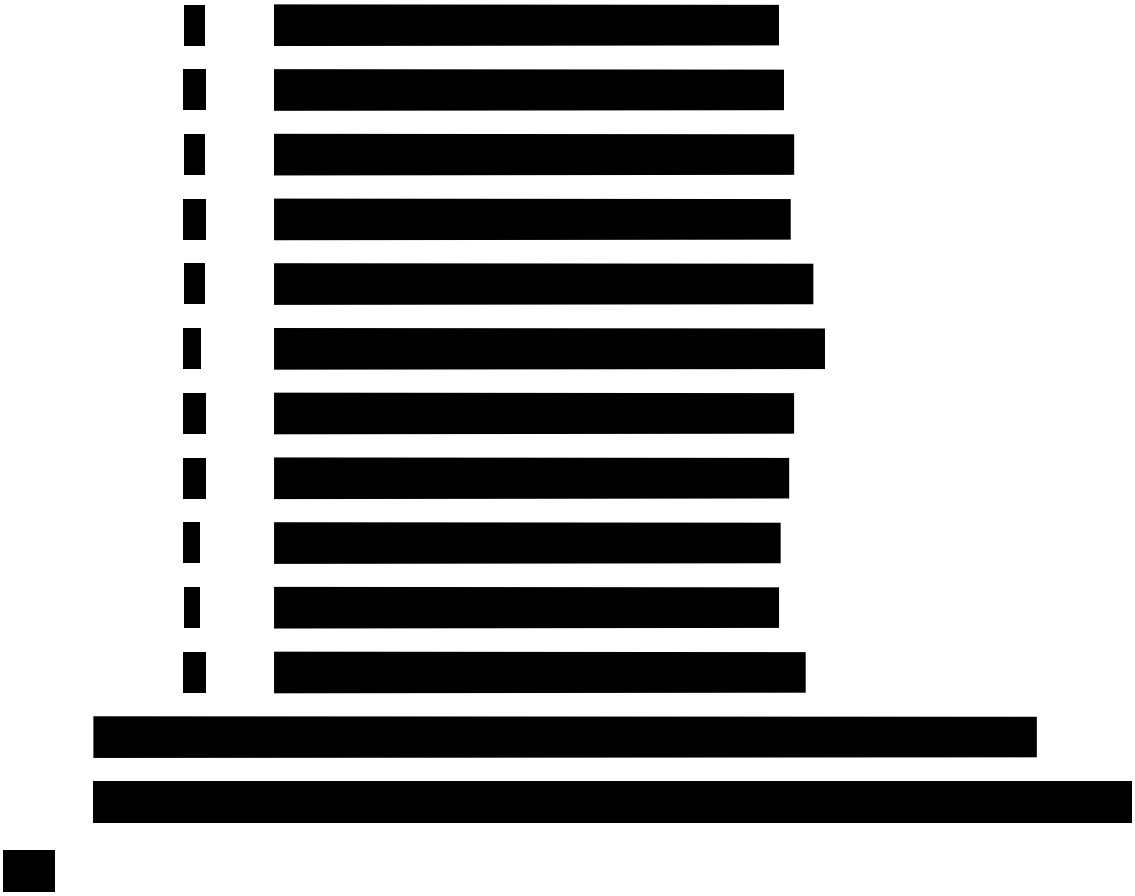

Dated: September 9, 2022

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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' REPLY TO STATE DEFENDANTS' RESPONSE TO 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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Date of Service: September 9, 2022

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

For the Court's convenience, Plaintiffs have reproduced each numbered paragraph of Plaintiffs' Local Rule 56.1 Statement, as well as State Defendants' Responses thereto, and have set out Plaintiffs' replies directly beneath them in bolded text. Where State Defendants do not dispute the facts asserted in Plaintiffs' Local Rule 56.1 Statement, Plaintiffs indicate "N/A" in the reply.

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.)

State Defendants' Response to Plaintiffs' Statement No. 1: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 1: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 2: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 2: **N/A**

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

State Defendants' Response to Plaintiffs' Statement No. 3: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 3: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 4: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 4: N/A

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.)

State Defendants' Response to Plaintiffs' Statement No. 5: The State Defendants do not dispute that Paragraph 5 is an accurate reflection of the cited document, but state that this is merely a summary of New York State regulations and laws that apply to the education of students with disabilities. Accordingly, State Defendants respectfully refer the Court to N.Y. Educ. Law § 200.j(3) for a full and complete description of its contents.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 5: State Defendants do not dispute the factual statement. Further, State Defendants' response refers to "N.Y. Educ. Law § 200.j(3)," which does not exist. Plaintiffs' Statement No. 5 therefore must be deemed admitted.

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.)

State Defendants' Response to Plaintiffs' Statement No. 6: The State Defendants do not dispute that Paragraph 6 is an accurate reflection of the cited document, but state that this is merely a summary of New York State regulations and laws that apply to the education of students with disabilities. Accordingly, State Defendants respectfully refer the Court to N.Y. Educ. Law § 200.5.j(3) for a full and complete description of its contents.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 6: State Defendants do not dispute the factual statement. Further, State Defendants' Response to Plaintiffs' Statement No. 6 refers to "N.Y. Educ. Law § 200.5.j(3)," which does not exist. Plaintiffs aver that 8 N.Y.C.R.R. § 200.5(j)(3)(i)(a) requires that "[t]he rotational selection

process" for the "appointment from the impartial hearing officer list" "must be initiated immediately, but not later than two business days after receipt by the school district of the due process complaint notice or mailing of the due process complaint notice to the parent," further supporting Plaintiffs' Statement No. 6. Plaintiffs' Statement No. 6 therefore must be deemed admitted.

7. NYCDOE, through the NYCIHO, 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.)

State Defendants' Response to Plaintiffs' Statement No. 7: The State Defendants do not dispute that Paragraph 7 is an accurate reflection of the cited document, but state that this is merely a summary of New York State regulations and laws that apply to the education of students with disabilities. Accordingly, State Defendants respectfully refer the Court to N.Y. Educ. Law § 200.5.f for a full and complete description of its contents.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 7: State Defendants do not dispute the factual statement. Further, State Defendants' Response to Plaintiffs' Statement No. 7 refers to "N.Y. Educ. Law § 200.5.f," which does not exist. Plaintiffs aver that 8 N.Y.C.R.R. § 200.5(f)(2) requires that "[t]he school district must ensure that the procedural safeguards notice is provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so," further supporting Plaintiffs' Statement No. 7. Plaintiffs' Statement No. 7 therefore must be deemed admitted.

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.)

State Defendants' Response to Plaintiffs' Statement No. 8: The State Defendants do not dispute that Paragraph 8 is an accurate reflection of the cited document, but state that this is merely a summary of New York State regulations and laws that apply to the education of students with disabilities. Accordingly, State Defendants respectfully refer the Court to N.Y. Educ. Law § 200.5.j(2) for a full and complete description of its contents.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 8: **State Defendants do not dispute the factual statement. Further, State Defendants' Response to Plaintiffs' Statement No. 8 refers to "N.Y. Educ. Law § 200.5.j(2)," which does not exist. Plaintiffs aver that 8 N.Y.C.R.R. § 200.5(j)(2) requires that "[p]rior to the opportunity for an impartial due process hearing . . . the school district shall, within 15 days of receiving the due process complaint notice from the parent, convene a meeting with the parents and the relevant member or members of the committee on special education, as determined by the school district and the parent, who have specific knowledge of the facts identified in the complaint, . . . where the parents of the student discuss their complaint and the facts that form the basis of the complaint, and the school district has the opportunity to resolve the complaint," further supporting Plaintiffs' Statement No. 8. Plaintiffs' Statement No. 8 therefore must be deemed admitted.**

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.)

State Defendants' Response to Plaintiffs' Statement No. 9: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 9: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 10: The State Defendants do not dispute that Paragraph 10 is an accurate reflection of the cited declaration, but state that it is immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 10: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 10 are immaterial and consist of legal**

arguments that do not preclude summary judgment. Plaintiffs' Statement No. 10 therefore must be deemed admitted.

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

State Defendants' Response to Plaintiffs' Statement No. 11: The State Defendants do not dispute that Paragraph 11 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. To the extent that the NYCDOE is ultimately responsible for the scheduling of impartial hearings and notifying the parties as the LEA, this statement is undisputed. However, the State Defendants dispute these assertions because for cases assigned to OATH, OATH is responsible for its adjudication system. *See* Suriano Decl.1 at ¶¶ 71, 76; Ex. X to the Suriano Decl. ("MOA").

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 11: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 11 consist of immaterial facts and legal arguments that do not preclude summary judgment. State Defendants do not dispute that NYCDOE, as the LEA, is ultimately responsible for the scheduling of impartial hearings and notifying the parties of the hearing. Plaintiffs' Statement No. 11 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 11 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

12. NYCDOE, through the NYCIHO, 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.)

State Defendants' Response to Plaintiffs' Statement No. 12: The State Defendants do not dispute that Paragraph 12 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. To the extent that the NYCDOE is ultimately responsible for maintaining a physical hearing space as the LEA, this statement is undisputed. However, to the extent that OATH is now hearing due

process complaints, the State Defendants dispute these assertions because for cases assigned to OATH, OATH is responsible for the adjudication system. *See* Suriano Decl. at ¶¶ 71, 76; MOA.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 12: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 12 consist of immaterial facts and legal arguments that do not preclude summary judgment. State Defendants do not dispute that NYCDOE, as the LEA, is ultimately responsible for maintaining a physical hearing space. Plaintiffs' Statement No. 12 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 12 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 13: The State Defendants do not dispute that Paragraph 13 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 13: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 13 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 13 therefore must be deemed admitted.

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

State Defendants' Response to Plaintiffs' Statement No. 14: The State Defendants object to the accuracy, materiality, and relevance of the assertions in

Paragraph 14 as they are vague as to the meaning of the terms "processing" and "delivering" and to the extent that they conflict with N.Y. Educ. Law § 200.5.j(5), which requires IHOs to mail their own decisions to the parties and submit the decision to the Office of Special Education of the State Education Department, the State Defendants respectfully refer the Court to that regulation for a full and complete description of its contents.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 14: State Defendants do not dispute the factual statement, which is supported by admissible evidence, because they adduce no evidence, as required by Local Civil Rule 56.1(d), that contradicts it. (*See* Pls.' Ex. 5 (DOE000090) at -107 ("The Office provides processing and delivery services to assist in the timely delivery of decisions issued by Hearing Officers.").) State Defendants' Response to Plaintiffs' Statement No. 14 refers to "N.Y. Educ. Law § 200.j(5)," which does not exist. Plaintiffs aver that 8 N.Y.C.R.R. § 200.5(j)(5) provides that an IHO "shall render a decision and mail a copy" of the decision "to the parents and to the board of education," and that "the impartial hearing officer shall submit the decision to the Office of Special Education of the State Education Department." Plaintiffs further aver that the NYCIHO "formats and distributes decisions on behalf of Hearing Officers." (Pls.' Ex. 5 (DOE000090) at -107.) Notably, City Defendants have not disputed Plaintiffs' Statement No. 14. *See* City Defs.' Resp. to Pls.' Rule 56.1 Stmt. No. 14. Plaintiffs' Statement No. 14 therefore must be deemed admitted.

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

State Defendants' Response to Plaintiffs' Statement No. 15: The State Defendants do not dispute that Paragraph 15 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. To the extent that per diem IHOs are hearing due process complaints, it is undisputed that the NYCDOE is responsible for paying them. However, the State Defendants dispute these assertions as to OATH IHOs because the City of New York is responsible for their payment. *See* Suriano Decl. at ¶ 71; MOA.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 15: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 15 consist of immaterial facts and legal arguments that do not preclude summary judgment. State Defendants do not dispute that NYCDOE, as the LEA, is responsible for paying IHOs. Plaintiffs' Statement No. 15 therefore must be deemed admitted.**

State Defendants' contentions in response to Plaintiffs' Statement No. 15 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 16: The State Defendants do not dispute that Paragraph 16 is an accurate reflection of the cited document dated December 2018, but dispute that this statement is currently accurate, material, or relevant as the IHO compensation policy was revised in 2021 and the City of New York is responsible for the payment of OATH IHOs. *See* Suriano Decl. at ¶ 71; MOA.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 16: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 16 consist of immaterial facts and legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 16 therefore must be deemed admitted.**

State Defendants' contentions in response to Plaintiffs' Statement No. 16 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

17. NYCDOE, through the NYCIHO, 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.)

State Defendants' Response to Plaintiffs' Statement No. 17: The State Defendants do not dispute that Paragraph 17 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 17: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 17 consist of immaterial facts and legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 17 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 17 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 18: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 18: N/A

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.)

State Defendants' Response to Plaintiffs' Statement No. 19: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 19: N/A

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

State Defendants' Response to Plaintiffs' Statement No. 20: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 20: **N/A**

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).)

State Defendants' Response to Plaintiffs' Statement No. 21: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 21: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 22: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 22: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 23: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 23: **N/A**

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

State Defendants' Response to Plaintiffs' Statement No. 24: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 24: **N/A**

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

State Defendants' Response to Plaintiffs' Statement No. 25: The State Defendants do not dispute that Paragraph 25 is an accurate reflection of the cited document, but state that this is merely a summary of New York State regulations and laws that apply to the education of students with disabilities and State Defendants respectfully refer the Court to N.Y. Educ. Law § 4404(1)(c), 8 NYCRR §§ 200.1(x), 200.2(b)(9), 200.2(e), 200.5(j)(3), and 200.21(a) for a full and complete description of their contents.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 25: **State Defendants do not dispute the factual statement. State Defendants' additional statements**

consist of legal arguments that do not preclude summary judgment. Plaintiffs aver that N.Y. Educ. Law § 4404(1)(c) provides that "[t]he commissioner shall establish maximum rates for the compensation of [IHOs] subject to the approval of the director of the division of the budget," further supporting Plaintiffs' Statement No. 25. ***See*** **8 N.Y.C.R.R. § 200.21(a) (IHOs "shall be compensated in 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"). Plaintiffs' Statement No. 25 therefore must be deemed admitted.**

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.)

State Defendants' Response to Plaintiffs' Statement No. 26: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 26: N/A

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.)

State Defendants' Response to Plaintiffs' Statement No. 27: The State Defendants do not dispute that Paragraph 27 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 27: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 27 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 27 therefore must be deemed admitted.

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.)

State Defendants' Response to Plaintiffs' Statement No. 28: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 28: N/A

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.)

State Defendants' Response to Plaintiffs' Statement No. 29: The State Defendants do not dispute that Paragraph 29 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 29: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 29 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 29 therefore must be deemed admitted.

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.)

State Defendants' Response to Plaintiffs' Statement No. 30: The State Defendants do not dispute that Paragraph 30 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 30: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 30 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 30 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 30 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 31: The State Defendants do not dispute that Paragraph 31 is an accurate reflection of the cited declaration, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 31: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 31 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 31 therefore must be deemed admitted.

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.)

State Defendants' Response to Plaintiffs' Statement No. 32: The State Defendants do not dispute that Paragraph 32 is an accurate reflection of the cited declaration, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 32: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 32 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 32 therefore must be deemed admitted.

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.)

State Defendants' Response to Plaintiffs' Statement No. 33: The State Defendants do not dispute that Paragraph 33 is an accurate reflection of the cited declaration, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 33: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 33 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 33 therefore must be deemed admitted.

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.)

State Defendants' Response to Plaintiffs' Statement No. 34: The State Defendants do not dispute that Paragraph 34 is an accurate reflection of the cited declaration, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 34: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 34 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 34 therefore must be deemed admitted.

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.)

State Defendants' Response to Plaintiffs' Statement No. 35: The State Defendants do not dispute that Paragraph 35 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 35: State Defendants do not dispute the factual statement, and State Defendants' additional

statements in response to Plaintiffs' Statement No. 35 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 35 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 35 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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

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

State Defendants' Response to Plaintiffs' Statement No. 36: The State Defendants do not dispute that Paragraph 35 [*sic*] is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 36: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 36 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 36 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 36 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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).)

State Defendants' Response to Plaintiffs' Statement No. 37: The State Defendants do not dispute that Paragraph 35 is an accurate reflection of the cited

document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 37: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 37 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 37 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 37 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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).)

State Defendants' Response to Plaintiffs' Statement No. 38: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 38: N/A

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.)

State Defendants' Response to Plaintiffs' Statement No. 39: The State Defendants do not dispute that Paragraph 35 [*sic*] is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 39: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 39 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 39 therefore must be deemed admitted.

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

State Defendants' Response to Plaintiffs' Statement No. 40: The State Defendants do not dispute that Paragraph 40 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 40: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 40 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 40 therefore must be deemed admitted.

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.)

State Defendants' Response to Plaintiffs' Statement No. 41: The State Defendants do not dispute that Paragraph 41 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. As of June 30, 2022, there were 290 cases on the waitlist. *See* Suriano Decl. at ¶ 80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 41: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 41 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 41 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 41 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment. While State Defendants' contentions regarding OATH are irrelevant and immaterial, Plaintiffs note that their contention that as of June 30, 2022, there were 290 cases on the waitlist, is inconsistent with

City Defendants' contention that "[b]y the end of June, 2022, there was no wait list – all complaints had been assigned to hearing officers." Williams Decl. ¶ 25.

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).)

State Defendants' Response to Plaintiffs' Statement No. 42: The State Defendants do not dispute that Paragraph 42 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. As of June 30, 2022, there were 290 cases on the waitlist. *See* Suriano Decl. at ¶ 80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 42: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 42 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 42 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 42 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment. While State Defendants' contentions regarding OATH are irrelevant and immaterial, Plaintiffs note that their contention that as of June 30, 2022, there were 290 cases on the waitlist, is inconsistent with City Defendants' contention that "[b]y the end of June, 2022, there was no wait list – all complaints had been assigned to hearing officers." Williams Decl. ¶ 25.

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).)

State Defendants' Response to Plaintiffs' Statement No. 43: The State Defendants do not dispute that Paragraph 43 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 43: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 43 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 43 therefore must be deemed admitted.**

> 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.)
>
> **State Defendants' Response to Plaintiffs' Statement No. 44:** The State Defendants do not dispute that Paragraph 44 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 44: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 44 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 44 therefore must be deemed admitted.**

> 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).)
>
> **State Defendants' Response to Plaintiffs' Statement No. 45:** The State Defendants do not dispute that Paragraph 45 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 45: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 45 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 45 therefore must be deemed admitted.**

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).)

State Defendants' Response to Plaintiffs' Statement No. 46: The State Defendants do not dispute that Paragraph 46 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 46: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 46 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 46 therefore must be deemed admitted.

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).)

State Defendants' Response to Plaintiffs' Statement No. 47: The State Defendants do not dispute that Paragraph 47 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 47: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 47 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 47 therefore must be deemed admitted.

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.)

State Defendants' Response to Plaintiffs' Statement No. 48: The State Defendants do not dispute that Paragraph 48 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 48: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 48 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 48 therefore must be deemed admitted.**

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

State Defendants' Response to Plaintiffs' Statement No. 49: The State Defendants do not dispute that Paragraph 49 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 49: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 49 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 49 therefore must be deemed admitted.**

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).)

State Defendants' Response to Plaintiffs' Statement No. 50: The State Defendants do not dispute that Paragraph 50 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 50: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 50 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 50 therefore must be deemed admitted.**

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.)

State Defendants' Response to Plaintiffs' Statement No. 51: The State Defendants do not dispute that Paragraph 51 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 51: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 51 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 51 therefore must be deemed admitted.

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.)

State Defendants' Response to Plaintiffs' Statement No. 52: The State Defendants do not dispute that Paragraph 52 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 52: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 52 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 52 therefore must be deemed admitted.

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.)

State Defendants' Response to Plaintiffs' Statement No. 53: The State Defendants do not dispute that Paragraph 53 is an accurate reflection to the extent that the cited document contains those quotations, but State Defendants dispute the characterization that the two separate, quoted sentences are reliant upon or related to one another. The document itself does not state that the standards need to be set "because" the extensions are not regulatory, and respectfully refer the Court to the

document for a complete and accurate statement of its contents. Further, these assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 53: **State Defendants do not dispute the factual statement that a NYSED employee wrote in the cited document that: "The Waitlist Extensions are not regulatory. We need to set standards as to when to utilize this SED Waitlist extension. Could be violating a parties' right to an expeditious hearing." The additional statements in State Defendants' Response to Statement No. 53 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 53 therefore must be deemed admitted.**

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).)

State Defendants' Response to Plaintiffs' Statement No. 54: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 54: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 55: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 55: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 56: The State Defendants do not dispute that Paragraph 56 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 56: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 56 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 56 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 56 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 57: The State Defendants do not dispute that Paragraph 57 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 57: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 57 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 57 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 57 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 58: The State Defendants do not dispute that Paragraph 58 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 58: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 58 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 58 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 58 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 59: The State Defendants do not dispute that Paragraph 59 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 59: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 59 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 59 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 59 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 60: The State Defendants do not dispute that Paragraph 60 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 60: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 60 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 60 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 60 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 61: The State Defendants do not dispute that Paragraph 61 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 61: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 61 are immaterial and consist of legal

arguments that do not preclude summary judgment. Plaintiffs' Statement No. 61 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 61 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

> 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.)
>
> **State Defendants' Response to Plaintiffs' Statement No. 62:** The State Defendants do not dispute that Paragraph 62 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 62: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 62 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 62 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 62 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

> 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.)
>
> **State Defendants' Response to Plaintiffs' Statement No. 63:** The State Defendants do not dispute that Paragraph 63 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 63: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 63 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 63 therefore must be deemed admitted.**

State Defendants' contentions in response to Plaintiffs' Statement No. 63 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 64: The State Defendants do not dispute that Paragraph 64 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 64: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 64 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 64 therefore must be deemed admitted.**

State Defendants' contentions in response to Plaintiffs' Statement No. 64 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 65: The State Defendants do not dispute that Paragraph 65 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 65: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 65 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 65 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 65 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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).)

State Defendants' Response to Plaintiffs' Statement No. 66: The State Defendants do not dispute that Paragraph 66 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 66: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 66 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 66 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 66 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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).)

State Defendants' Response to Plaintiffs' Statement No. 67: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 67: N/A

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.

State Defendants' Response to Plaintiffs' Statement No. 68: The State Defendants do not dispute that Paragraph 68 is an accurate reflection of the cited document, but state that the assertion is immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 68: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 68 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 68 therefore must be deemed admitted.

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).)

State Defendants' Response to Plaintiffs' Statement No. 69: The State Defendants do not dispute that Paragraph 69 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 69: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 69 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 69 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 69 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 70: The State Defendants do not dispute that Paragraph 70 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 70: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 70 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 70 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 70 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 71: The State Defendants do not dispute that Paragraph 71 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 71: State Defendants do not dispute the factual statement, and State Defendants' additional

statements in response to Plaintiffs' Statement No. 71 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 71 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 71 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 72: The State Defendants do not dispute that Paragraph 72 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 72: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 72 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 72 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 72 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 73: The State Defendants do not dispute that Paragraph 73 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 73: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 73 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 73 therefore must be deemed admitted.**

State Defendants' contentions in response to Plaintiffs' Statement No. 73 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 74: The State Defendants do not dispute that Paragraph 74 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 74: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 74 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 74 therefore must be deemed admitted.**

State Defendants' contentions in response to Plaintiffs' Statement No. 74 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 75: The State Defendants do not dispute that Paragraph 75 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 75: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 75 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 75 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 75 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 76: The State Defendants do not dispute that Paragraph 76 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 76: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 76 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 76 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 76 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 77: The State Defendants do not dispute that Paragraph 77 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 77: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 77 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 77 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 77 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 78: The State Defendants do not dispute that Paragraph 78 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 78: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 78 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 78 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 78 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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).)

State Defendants' Response to Plaintiffs' Statement No. 79: The State Defendants do not dispute that Paragraph 79 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 79: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 79 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 79 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 79 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

III. Compliance Assurance Plan

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

State Defendants' Response to Plaintiffs' Statement No. 80: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 80: N/A

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.)

State Defendants' Response to Plaintiffs' Statement No. 81: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 81: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 82: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 82: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 83: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 83: **N/A**

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).)

State Defendants' Response to Plaintiffs' Statement No. 84: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 84: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 85: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 85: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 86: The State Defendants do not dispute that Paragraph 86 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 86: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 86 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 86 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 86 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 87: The State Defendants do not dispute that Paragraph 87 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 87: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 87 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 87 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 87 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 88: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 88: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 89: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 89: **N/A**

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).)

State Defendants' Response to Plaintiffs' Statement No. 90: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 90: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 91: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 91: **N/A**

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

State Defendants' Response to Plaintiffs' Statement No. 92: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 92: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 93: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 93: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 94: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 94: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 95: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 95: **N/A**

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).)

State Defendants' Response to Plaintiffs' Statement No. 96: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 96: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 97: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 97: N/A

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).)

State Defendants' Response to Plaintiffs' Statement No. 98: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 98: N/A

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.)

State Defendants' Response to Plaintiffs' Statement No. 99: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 99: N/A

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_ESI0001186) at -188.)

State Defendants' Response to Plaintiffs' Statement No. 100: The State Defendants do not dispute that Paragraph 100 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, ignore the ongoing transition to OATH, and are an improper, inadmissible legal conclusion. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 100:

State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 100 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 100 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 100 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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).)

State Defendants' Response to Plaintiffs' Statement No. 101: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 101: **N/A**

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

State Defendants' Response to Plaintiffs' Statement No. 102: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 102: **N/A**

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

State Defendants' Response to Plaintiffs' Statement No. 103: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 103: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 104: The State Defendants do not dispute that Paragraph 104 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 104:

State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 104 are immaterial and consist of legal

arguments that do not preclude summary judgment. Plaintiffs' Statement No. 104 therefore must be deemed admitted.

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.)

State Defendants' Response to Plaintiffs' Statement No. 105: The State Defendants do not dispute that Paragraph 105 is an accurate reflection of the cited document, but state that the assertions are immaterial and irrelevant.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 105: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 105 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 105 therefore must be deemed admitted.**

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.)

State Defendants' Response to Plaintiffs' Statement No. 106: The State Defendants do not dispute that Paragraph 106 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 106: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 106 are immaterial and consist of legal arguments that do not preclude summary judgment. Plaintiffs' Statement No. 106 therefore must be deemed admitted.**

State Defendants' contentions in response to Plaintiffs' Statement No. 106 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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

State Defendants' Response to Plaintiffs' Statement No. 107: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 107: N/A

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.)

State Defendants' Response to Plaintiffs' Statement No. 108: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 108: N/A

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.)

State Defendants' Response to Plaintiffs' Statement No. 109: The State Defendants do not dispute that Paragraph 109 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 109:

State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 109 are immaterial and consist of legal arguments that do not preclude summary judgment. State Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 109 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 109 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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

State Defendants' Response to Plaintiffs' Statement No. 110: The State Defendants do not dispute that Paragraph 110 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 110: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 110 are immaterial and consist of legal arguments that do not preclude summary judgment. State Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 110 therefore must be deemed admitted.**

State Defendants' contentions in response to Plaintiffs' Statement No. 110 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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

State Defendants' Response to Plaintiffs' Statement No. 111: The State Defendants do not dispute that Paragraph 111 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 111: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 111 are immaterial and consist of legal arguments that do not preclude summary judgment. State Defendants adduce no evidence,**

as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 111 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 111 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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

State Defendants' Response to Plaintiffs' Statement No. 112: The State Defendants do not dispute that Paragraph 112 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 112:

State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 112 are immaterial and consist of legal arguments that do not preclude summary judgment. State Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 112 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 112 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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

State Defendants' Response to Plaintiffs' Statement No. 113: The State Defendants do not dispute that Paragraph 113 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 113: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 113 are immaterial and consist of legal arguments that do not preclude summary judgment. State Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 113 therefore must be deemed admitted.**

State Defendants' contentions in response to Plaintiffs' Statement No. 113 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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

State Defendants' Response to Plaintiffs' Statement No. 114: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 114: **N/A**

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.)

State Defendants' Response to Plaintiffs' Statement No. 115: The State Defendants do not dispute that Paragraph 115 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 115: **State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 115 are immaterial and consist of legal arguments that do not preclude summary judgment. State Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 115 therefore must be deemed admitted.**

State Defendants' contentions in response to Plaintiffs' Statement No. 115 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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

State Defendants' Response to Plaintiffs' Statement No. 116: The State Defendants do not dispute that Paragraph 116 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 116: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 116 are immaterial and consist of legal arguments that do not preclude summary judgment. State Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 116 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 116 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 117: The State Defendants do not dispute that Paragraph 117 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 117: State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 117 are immaterial and consist of legal

arguments that do not preclude summary judgment. State Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 117 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 117 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 118: The State Defendants do not dispute that Paragraph 118 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 118:

State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 118 are immaterial and consist of legal arguments that do not preclude summary judgment. State Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 118 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 118 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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.)

State Defendants' Response to Plaintiffs' Statement No. 119: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 119: N/A

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.)

State Defendants' Response to Plaintiffs' Statement No. 120: Undisputed.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 120: N/A

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.)

State Defendants' Response to Plaintiffs' Statement No. 121: The State Defendants do not dispute that Paragraph 121 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 121:

State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 121 are immaterial and consist of legal arguments that do not preclude summary judgment. State Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 121 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 121 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

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

State Defendants' Response to Plaintiffs' Statement No. 122: The State Defendants do not dispute that Paragraph 122 is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 122:

State Defendants do not dispute the factual statement, and State Defendants' additional

statements in response to Plaintiffs' Statement No. 122 are immaterial and consist of legal arguments that do not preclude summary judgment. State Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 122 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 122 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

> 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.)
>
> **State Defendants' Response to Plaintiffs' Statement No. 123:** The State Defendants do not dispute that Paragraph 122 [*sic*] is an accurate reflection of the cited document, but state that the assertions are immaterial, irrelevant, outdated, and ignore the ongoing transition to OATH. *See* Suriano Decl. at ¶¶ 71-80.

Plaintiffs' Reply to State Defendants' Response to Plaintiffs' Statement No. 123:

State Defendants do not dispute the factual statement, and State Defendants' additional statements in response to Plaintiffs' Statement No. 123 are immaterial and consist of legal arguments that do not preclude summary judgment. State Defendants adduce no evidence, as required by Local Civil Rule 56.1(d), to contradict Plaintiffs' calculations. Plaintiffs' Statement No. 123 therefore must be deemed admitted.

State Defendants' contentions in response to Plaintiffs' Statement No. 123 regarding OATH are irrelevant to the issue of any Defendant's liability under the IDEA and, regardless of their content or accuracy, do not preclude summary judgment.

V. Named Plaintiffs

A. A.N.

[redacted]

[redacted]

[redacted]

[redacted]

B. A.S.

[redacted]

[redacted]

[redacted]

C. B.M.

[redacted]

[redacted]

D. C.G.

[redacted]

[redacted]

E. J.S.M.

[redacted]

[redacted]

[redacted]

F. K.M.E.

[redacted]

[redacted]

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[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

G. P.W.

[redacted]

[redacted]

H. Q.T.

[redacted]

[redacted]

I. S.F.

[redacted]

[redacted]

J. S.S.

[redacted]

[redacted]

K. W.W.

[redacted]

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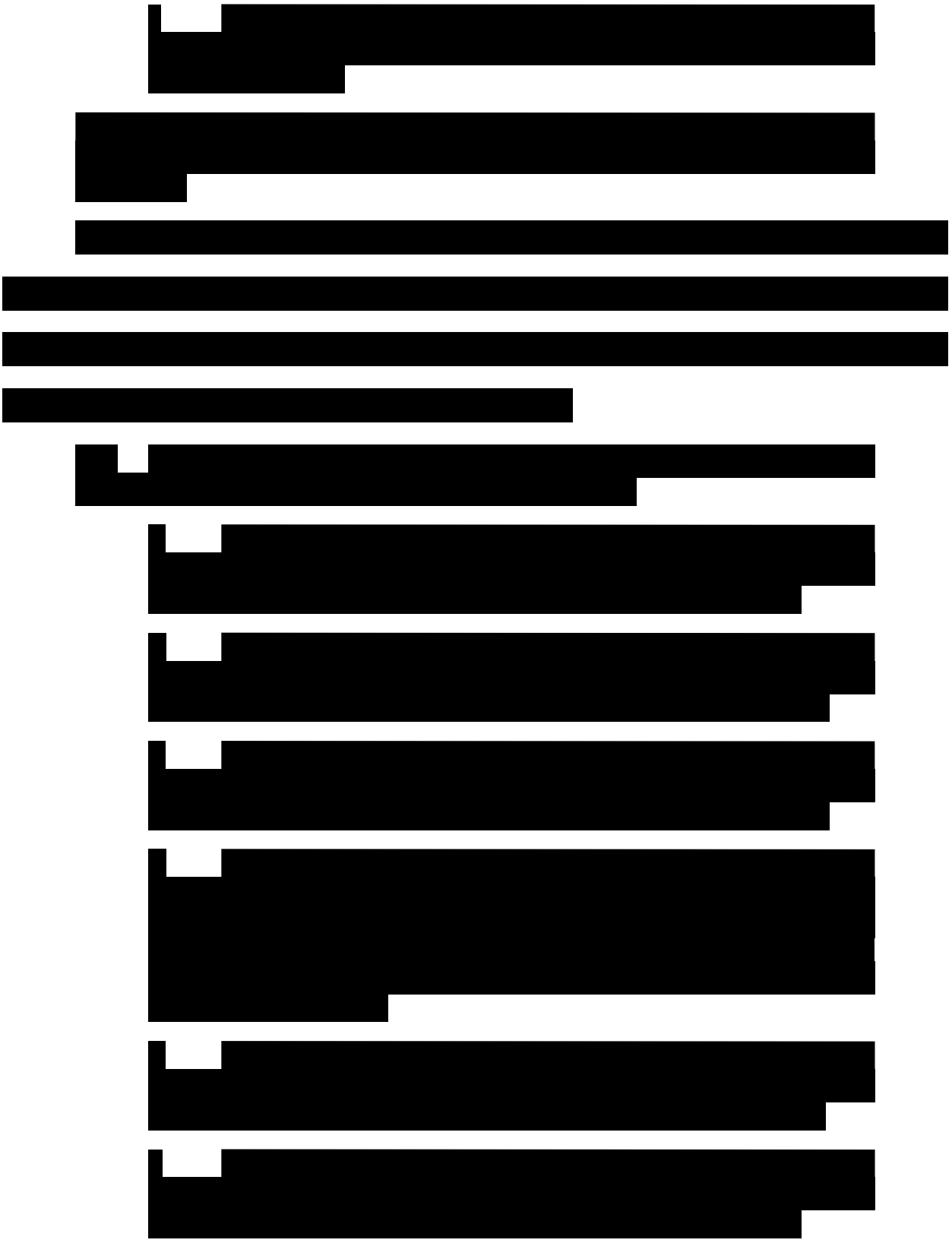
L. Consistent Issues in Named Plaintiff Cases

[redacted]



Dated: September 9, 2022

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