UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M.G. and V.M., on behalf of themselves individually and as next friends on behalf of their child, Y.T.; M.W., on behalf of herself individually and as next friend on behalf of her son, E.H.; A.D., on behalf of herself individually and as next friend on behalf of her son, D.D.; N.S., on behalf of himself individually and as next friend on behalf of his child, K.S.; E.H. 1, on behalf of herself individually and as next friend on behalf of her child, E.H. 2; E.E.G., on behalf of herself individually and as next friend on behalf of her son, Y.A.; A.G., on behalf of herself individually and as next friend on behalf of her sons, S.B. and K.B., Individually and on Behalf of Others Similarly Situated, Plaintiffs, vs. NEW YORK CITY DEPARTMENT OF EDUCATION; NEW YORK CITY BOARD OF EDUCATION; CARMEN FARIÑA, in her official capacity as Chancellor of the New York City School District; NEW YORK STATE EDUCATION DEPARTMENT, COMMISSIONER JOHN B. KING, in his official capacity as Commissioner of the New York State Education Department, Defendants.	Civ. No. 1:13-cv-04639-SAS FOURTH AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. This complaint is being filed by parents of children with autism spectrum disorders ("ASD" or "autism") on behalf of themselves and their children ("Plaintiffs") pursuant to the Individuals with Disabilities Education Improvement Act (the "IDEA"), 20 U.S.C. §1400, *et seq.*; the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution; 42 U.S.C. §1983; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 ("Section 504"); the New York State Constitution; New York State Education Law §§3202, 3203, 4401, *et seq*. (the "New York State Education Laws"); and the regulations promulgated thereunder.

2. Plaintiffs claim that the New York City Defendants (the "City Defendants") and the New York State Defendants (the "State Defendants") (together, the "Defendants") collectively, as well as individually, employ blanket practices, policies, and procedures and systemically fail to comply with federal and state law with respect to the provision of Autism Services (as defined below).

3. Plaintiffs claim that, despite the fast-growing numbers of school-age children with ASD in New York City, Defendants have failed to ensure that these children receive appropriate special education services to address their needs.

4. Moreover, Plaintiffs claim that the State Defendants have improperly adopted a blanket policy for students approved for, or attending, state-approved non-public programs that limits the services Plaintiffs may receive without regard to their individual needs.

5. Further, Plaintiffs claim that Defendants have failed to provide a legally adequate due process system to address complaints from parents of children with disabilities.

6. After the Complaint and First Amended Complaint were filed, the Court issued three injunctions, one each on behalf of three Plaintiffs with ASD (Y.T., D.D. and E.H.), all of whom required emergency relief. The Court also issued a ruling on a motion to dismiss, filed by

the City Defendants, finding that certain individual and systemic claims were excused from the requirement of exhaustion of administrative remedies, and directing M.G., A.D., and M.W. to either join the State Defendants or risk dismissal of certain claims. Thereafter, Plaintiffs filed a Second Amended Complaint joining the State Defendants.

7. The Third Amended Complaint was filed, *inter alia*, to assert class action claims with respect to certain of Defendants' alleged systemic practices alleged by Plaintiffs.

8. The Court granted Plaintiffs leave to file the instant Complaint to appeal, in part, the decision of the State Review Officer that was issued on behalf of the Y.T. Plaintiffs in April 2015.

PARTIES

9. Plaintiff Y.T. is a child with an ASD who has been classified as autistic pursuant to the IDEA. Y.T. is also an individual with a disability under Section 504. Plaintiffs M.G. and V.M. live together with Y.T. (collectively the "Y.T. Plaintiffs") in Queens, New York.

10. Plaintiff A.D. is the parent of D.D., a child with autism who has been classified as autistic under the IDEA. D.D. is also an individual with a disability under Section 504. Plaintiffs A.D. and D.D. (collectively the "D.D. Plaintiffs") live in Staten Island, New York.

11. Plaintiff M.W. is the parent of E.H., a child with autism who has been classified as autistic under the IDEA. E.H. is also an individual with a disability under Section 504. Plaintiffs M.W. and E.H. (collectively the "E.H. Plaintiffs") live in Manhattan, New York.

12. Plaintiffs N.S. and S.A. are the parents of K.S., a deaf child with autism who has been classified as autistic under the IDEA. K.S. is also an individual with a disability under Section 504. Plaintiffs N.S., S.A., and K.S. (collectively the "K.S. Plaintiffs") live in Queens, New York.

13. Plaintiff A.G. is the parent of S.B. and K.B., two children with autism. They have been classified as autistic under the IDEA. S.B. and K.B. are also individuals with disabilities

under Section 504. Plaintiffs A.G., S.B., and K.B. (collectively the "S.B. Plaintiffs") live in Queens, New York.

14. Plaintiff E.H. 1 is the parent of E.H. 2, a child with autism who has been classified as autistic under the IDEA. E.H. 2 is also an individual with a disability under Section 504. Plaintiffs E.H. 1 and E.H. 2 (collectively the "E.H. 2 Plaintiffs") live in the Bronx, New York.

15. Plaintiff E.E.G. is the parent of Y.A., a child with autism who has been classified as autistic under the IDEA. Y.A. is also an individual with a disability under Section 504. Plaintiffs E.E.G. and Y.A. (collectively the "Y.A. Plaintiffs") live in Brooklyn, New York.

16. Defendant CARMEN FARIÑA is the Chancellor of the New York City School District (the "Chancellor") and is entrusted with the specific powers and duties set forth in N.Y. EDUC. LAW §2590-h. At the time of the Initial Complaint, DENNIS WALCOTT was the Chancellor. Chancellor Fariña is the successor-in-interest to Chancellor Walcott and, as such, is not a new defendant.

17. Defendant THE NEW YORK CITY BOARD OF EDUCATION (the "Board of Education" or the "Board") was, or continues to be, the official body responsible for developing policies with respect to the administration and operation of the public schools in the City of New York.

18. Upon information and belief, defendant THE NEW YORK CITY DEPARTMENT OF EDUCATION ("Department" or "DOE") claims to be responsible for, and appears to have been delegated by the Chancellor, the responsibility of developing policies with respect to the administration and operation of the public schools in New York City, including programs and services for students with disabilities. The DOE is not a legally formed independent entity,

although it appears in lawsuits and claims to be a "municipal" corporation. It is a recipient of federal financial assistance.

19. The City Defendants, individually and/or together, form the Local Educational Agency ("LEA") and are responsible for providing a Free Appropriate Public Education (a "FAPE") under the IDEA to all disabled children in New York City. The City Defendants are also individually and/or jointly responsible for delivering educational services to children in New York City under New York State Education Laws.

20. New York State has chosen to receive funding under the IDEA and has established procedures for providing special educational services to children with disabilities, as set forth in N.Y. Educ. Law §4401, *et seq*. and 8 N.Y.C.R.R. Part 200.

21. Defendant NEW YORK STATE EDUCATION DEPARTMENT ("NYSED") is the State Educational Agency ("SEA") in New York State pursuant to the IDEA.

22. Defendant JOHN B. KING, JR., COMMISSIONER OF EDUCATION ("Commissioner King"), is in charge of NYSED. Commissioner King is named herein in his official capacity.

23. All Defendants are recipients of federal assistance within the meaning of Section 504.

JURISDICTION AND VENUE

24. This Court has jurisdiction under 28 U.S.C. §1331, in that claims are asserted under the laws of the United States; under 28 U.S.C. §1343(a), in that claims are asserted under laws providing for the protection of civil rights; and under 20 U.S.C. §1415, 42 U.S.C. §1983, and 29 U.S.C. §794, *et seq*.

25. This Court has jurisdiction over Plaintiffs' pendent state law claims pursuant to 28 U.S.C. §1367. Plaintiffs also seek declaratory relief pursuant to 28 U.S.C. §§2201 and 2202.

26. Venue is proper under 28 U.S.C. §1391(b).

FRAMEWORK OF THE IDEA

27. The IDEA guarantees that all eligible children with disabilities, ages three through twenty-one, must be offered a FAPE. 20 U.S.C. §1412(a)(1). A FAPE must meet each student's "unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. §1400(d)(1)(A)-(B).

28. A FAPE must: (a) be free; (b) "meet the standards of the State educational agency" (which here, are the State Defendants); (c) "include an appropriate . . . secondary school education in the State involved"; and (d) be provided in conformity with an Individualized Education Program ("IEP"). *See* 20 U.S.C. §1401(9); 20 U.S.C. §1414(d)(2)(A); 8 N.Y.C.R.R. §200.4(e)(1)(ii). In addition, a FAPE must be provided in the Least Restrictive Environment ("LRE"). 20 U.S.C. §1412(a)(5).

29. To be entitled to a FAPE, a child must have one or more of thirteen disabling conditions and, by reason of his/her disability, require "special education" and "related services." 34 C.F.R. §300.8(a)(1).

30. The City Defendants are responsible for providing a FAPE to all eligible children in New York City and for promulgating policies and procedures in accordance with the IDEA.

31. The State Defendants are guarantors of a FAPE under the IDEA and are responsible for the provision of a FAPE if the City Defendants are unwilling, or unable, to provide it.

32. The State Defendants are obligated to have policies, procedures, protocols and regulations to ensure every eligible child's right to a FAPE, and protect the due process rights of those children and their parents, in compliance with the IDEA and Section 504.

33. The State Defendants also have an obligation to monitor the City Defendants' compliance with the IDEA, and to ensure that the City Defendants maintain adequate policies and procedures under the IDEA.

34. The IEP, which must be individually tailored to each student, is meant to serve as a blueprint for each child's special education services. 20 U.S.C. §1414(d).

35. By the beginning of each school year, the City Defendants must have an IEP in place that offers a FAPE for each eligible child. 20 U.S.C. §1414(d)(2).

36. Before an IEP can be developed, a child must be evaluated in accordance with the detailed procedures outlined in both federal and state laws. 20 U.S.C. §1414, 34 C.F.R. §§300.15, 300.303- 300.311, 8 N.Y.C.R.R. §200.4. A child is reevaluated in accordance with the same standards at least every three years or earlier, if a parent or school district believes it is necessary.

37. Among other things, an IEP must be developed by a properly constituted IEP team that must include particular members, including the parent and a district representative who is knowledgeable about the services and able to commit district resources. 20 U.S.C. §1414(d)(1)(B). In addition to the IEP team, New York State Law has created Committees on Special Education ("CSEs") and Subcommittees on Special Education ("SBSTs") (usually school-based teams), that have differing levels of decision-making power. N.Y. Educ. Law §4410; 8 N.Y.C.R.R. §200.3(a)(1).

38. The IEP team must meet at least annually, and more frequently, if necessary, to modify a child's services and to address "[a] lack of expected progress toward the annual goals and in the general education curriculum." 20 U.S.C. §1414(d)(4)(A)(ii)(I).

39. As alleged herein, Defendants' IEP teams are not properly trained on the IDEA's requirements for annual review meetings, nor do they properly track or benchmark students' progress, and fail to modify services to address a lack of progress for children with autism.

40. The IDEA broadly defines the categories of services that must be offered, including, but not limited to: special education, related services, supplementary aids and services, transition services, assistive technology, and positive behavioral supports and services (collectively "Special Education Services").

41. The IDEA prescribes, in detail, the process for developing IEPs and their contents. 20 U.S.C. §1414(d)(1)(A), (d)(2); 34 C.F.R. §§300.320(a)(2)-(3); 300.324; 8 N.Y.C.R.R. §200.4(d)(2)(iii).

42. For example, all IEPs must contain the results of a child's most recent evaluations, as well as an accurate and consistent description of his/her strengths, present levels of academic achievement and functional performance (called "Present Levels of Performance" or "PLPs"). 20 U.S.C. §1414(d)(1)(A).

43. An IEP must contain "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modification or supports for school personnel that will be provided for the child." 20 U.S.C. §1414(d)(1)(A)(i)(IV).

44. Each IEP must also contain research-based instructional strategies unless they are not feasible, including research-based positive behavioral interventions and supports, 34 C.F.R. §§300.320(a)(4), 300.324(a)(2)(i); 8 N.Y.C.R.R. §§200.4(d)(2)(v)(b), 200.4(d)(3)(i), and

"positive behavioral supports" for those children whose behavior impedes their own learning and that of others. 34 C.F.R §300.324(a)(2).

45. An IEP team must also consider whether a student would benefit from assistive technology. 34 C.F.R. §§300.5, 300.6, 300.105, 300.324(a)(2)(v).

46. For high-school age students, the IDEA also mandates that "transition services" be provided. Transition Services are a "coordinated set of activities" based on the child's needs and transition goals that are "designed to be within a result-oriented process, that is focused on improving the academic and functional achievement" of the student to facilitate the student's "movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation." 20 U.S.C. §1401(34); 34 C.F.R. §§300.43, 300.320(b)(1); 8 N.Y.C.R.R. §200.4(d)(2)(ix).

47. Under the State Defendants' regulations, the City Defendants have to provide specific services to children with autism. 8 N.Y.C.R.R. §200.13.

48. All decisions about a child's IEP and placement must be individualized and based upon a child's specific needs. Courts have found that where a district employs blanket policies or practices that set services and delivery by rules or other administrative criteria as opposed to individualized determinations, such policies and practices run afoul of both the IDEA and Section 504, resulting in a denial of FAPE and discrimination. *See Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840 (6th Cir. 2004).

OVERVIEW OF IEP-BASED SERVICES FOR CHILDREN WITH AUTISM

49. Autism is one of the thirteen disabling conditions entitling a child to Special Education Services under the IDEA. 20 U.C.S. §1401(3)(A)(i); 34 C.F.R. §300.8(c)(1). Autism is defined under the IDEA as:

> A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. 34 C.F.R. §300.8(c)(1).

50. While classification is not necessarily the same as a diagnosis, presumably, no child should be classified as autistic unless they have a diagnosis. In New York, many children who are diagnosed with ASD under the Diagnostic and Statistical Manual of Mental Disorders ("DSM-V") (and its precursor) are also generally classified by Defendants as autistic. However, some children diagnosed with an ASD may not be classified as autistic on their IEPs.

51. The number of school-aged children classified with autism under the IDEA in New York State has grown significantly over the years.

52. According to statistics posted on State Defendants' website, there were 449,688 children ages 4-21 classified with disabilities cross New York State as of October 2014. Out of those children, 211,275 (approximately 54%) were in New York City.

53. In the 1995-1996 school year, there were approximately 346,305 children ages 5-21 classified with disabilities in New York State; out of that group, 3,113 were classified with autism. By the 2001-2002 school year, the number of children in New York City classified as autistic grew to 7,023.

54. According to the State Defendants' statistics from the 2007-2008 school year, there were 6,526 children ages 4-21 classified with autism in New York City. By the 2010-2011 school year, that number grew to 8,886.

55. According to statistics posted on the State Defendants' website, by October 2014 there were approximately 13,194 children ages 4-21 classified with autism in New York City.

56. Despite the rapid growth in children who qualify for Special Education Services, Defendants' Special Education Services and Programs have not expanded or evolved to keep up with the growing number and diversity of needs of the ASD population, nor the latest research on interventions. Further, very few students with ASD are educated in the LRE.

57. Instead, Defendants rely primarily on a one-size-fits-most approach when it comes to serving children with ASD.

58. Under IDEA, each SEA (here, the State Defendants) and LEA (here, the City Defendants) must adopt a "continuum of alternative placements" ("continuum") that must include, *inter alia*, regular classes, special classes, special schools, and instruction at home. 34 C.F.R. §300.115.

59. In 2001, the City Defendants implemented the following "New Continuum" for school-aged students with disabilities, offering the following categories of placements, ranging from the "least" to the "most" restrictive environments (*i.e.*, segregated from typical peers) for students with special needs:

a. General education in a community school (*i.e.*, a regular neighborhood public school);

b. General education with related services (such as speech therapy, occupational therapy, etc.);

c. General education with "special education teacher support" ("SETS") (formerly "resource room");

d. Collaborative Team Teaching ("CTT") in a community school;

e. Special education class in a community school;

f. Special education class in a "specialized school" in District 75;

g. State-Approved Private Day programs ("NPS");

h. State-Approved Private Residential program; and

i. Home and Hospital Instruction.

60. Prior to the implementation of the New Continuum, Defendants placed students with disabilities based upon their disability categories. One of the stated goals of the New Continuum was to end this practice. However, children with the most severe disabilities, like Plaintiffs, are still generally placed by their disability categories by the City Defendants' IEP teams and pursuant to the State Defendants' policies.

61. Since 2001, the City Defendants have reorganized the special education service delivery system several times and a new reform was implemented in the past two years.

62. Through all of these reorganizations, the City Defendants have maintained their separate, citywide, segregated, special education district called District 75. According to the City Defendants' website: "District 75 provides citywide educational, vocational, and behavior support programs for students who are on the autism spectrum, have significant cognitive delays, are severely emotionally challenged, sensory impaired and/or multiply disabled."

63. The City Defendants' statistics show that, as of 2008, four classifications comprised 87% of the 20,125 classified students enrolled in school-based District 75 programs: "emotional disturbance," "autism," "intellectually disabled" and "multiple disabilities."

64. District 75 offers a limited "menu" of classes and programs in which children are generally placed by their classification:

a. 6:1:1 classes are for autistic children;[1]

[1] A 6:1:1 ratio means six children, one teacher, and one paraprofessional.

b. 12:1:4 classes are for children classified as “multiply handicapped”;

c. 8:1:1 classes may be for children who are intellectually disabled, autistic, or “emotionally disturbed”; and

d. 12:1:1 classes are for children who are intellectually disabled and emotionally disturbed.

65. Statistics show that in 2013 at least 51.1 % of the children classified as autistic were recommended for 6:1:1 programs.

66. Over the past ten years, the City Defendants have been slowly developing a small number of specialized programs for children with ASD who are high functioning and have limited, or no, behavioral issues.

67. According to the City Defendants’ website: “[t]he ASD Nest program is a program for high functioning students [ASDs] that takes place in an integrated co-teaching class in a community school.” Similarly, the City Defendants’ website notes that “[t]he ASD Horizon program is offered primarily in self-contained classes in community schools to students with [ASDs] who work well in a class that has a ratio of eight students and two adults. This program is the result of a collaboration with the New England Center for Children.”

68. There are very few available seats in the Horizon and ASD Nest programs, compared to the number of children who would benefit from being in these types of programs. However, since the Third Amended Complaint was filed, the City Defendants have announced a plan to expand those programs.

69. IEP teams cannot generally make recommendations for ASD Nest or Horizon; these programs have discretion to accept or reject applicants based upon a screening of students’ IQ, behavior, and other factors.

70. The City Defendants also have a small program called "District 75 inclusion," which is a model of one paraprofessional matched with two or three students in a regular community school program. A typical IEP team cannot recommend this type of program; children must already be attending a District 75 segregated setting before they can be placed in a District 75 inclusion program.

71. The City Defendants have only limited options on its public school program "menu" for autistic children who are considered to be significantly impaired and/or who require intensive behavioral and instructional support to learn, generalize, or be included as all or part of the day with typical peers.

72. The 6:1:1 program in District 75 is the only public school option for most school-age children with ASD in New York City. The 6:1:1 programs are generally fully segregated programs for autistic students. There is little to no social interaction with typical peers.

73. If a child needs a more intensive ratio or additional services, City Defendants' IEP teams have only one option: to add a "health paraprofessional" or "crisis management paraprofessional" ("Paraprofessionals") to the child's IEP.

74. The Paraprofessionals in the City's schools are not properly trained to work with children with ASDs and are only required to hold a high school diploma and can start working in the City Defendants' schools after taking a brief set of online classes and passing a minimum competency test.

75. In some community districts, all children with autism attending public programs are in District 75.

76. The City Defendants' IEP teams are constrained by what is available on the City Defendants' limited menu of services, or at particular schools, and make program and placement decisions based upon what is available, not the individual needs of the child.

77. Thus, the City Defendants have illegally stripped IEP teams of their authority under the IDEA and have restricted their ability to make individualized decisions about Special Education Services.

78. The City Defendants regularly apply blanket policies, procedures, and practices to the formulation of IEPs and placement recommendations for children with autism without regard for student need. In essence, Defendants restrict the ability of IEP Teams to recommend Autism Services (defined below) on an autistic child's IEP ("Autism Services Policies and Practices").

79. In general, without a due process hearing, IEP teams cannot (and do not) recommend any of the following services on IEPs for children with autism: (a) 1:1 instruction with a teacher for all or part of the day; (b) research-based instructional strategies, including, but not limited to, Applied Behavioral Analysis ("ABA"); (c) extended school day, after school or home-based services (for students attending a school-day program); (d) parent training at home; (e) services to promote inclusion; (f) training for staff; (g) rehabilitation training; (h) leisure training; or (n) instruction in a ratio smaller than 6:1:1 for students in a public school (collectively "Autism Services").

80. The City Defendants do not actually offer ASD students the full range of educational services, supports, and accommodations that are contemplated by the IDEA.

81. For example, generally, the City Defendants' IEP teams are not allowed to make "dual" recommendations for home-based or after school services if a child is already attending a school day program.

82. Students requiring Autism Services or any other individualized modifications must seek those services through administrative litigation.

83. The City Defendants apply these blanket policies and practices even to Plaintiffs who have obtained Autism Services through litigation.

84. Each year, parents who previously won or settled for Autism Services for their children must engage in litigation again to keep those services. At the end of each school year, on July 1st, the City Defendants refuse to provide Autism Services.

85. Each year, Plaintiffs who have won or settled for Autism Services are forced to attend an illegal, pretextual IEP meeting at which the team members are constrained by the above-referenced blanket policies and practices.

86. At these meetings, the City Defendants generally terminate and/or deny Autism Services for the upcoming year, regardless of whether the child made progress in the prior year, or requires the Autism Services to obtain an educational benefit.

87. The City Defendants' policies and practices are such that they do not believe they are bound by the decision of an Independent Hearing Officer ("IHO"), or even a court, with respect to any school year other than the one that was litigated.

88. Given Defendants' blanket policies, parents can never escape the litigation merry-go-round and are in a constant state of litigation.

89. Further, when children with any 1:1 teacher support services or after school services reach the age of five and transition to the City Defendants' school-age programs, the City Defendants automatically terminate those services on the IEPs. Previously, these children could hold over these services through litigation.

90. Historically, 1:1 teacher services using ABA were available to students in the City Defendants' preschool programs.

91. The City Defendants have also directed their preschool staff to stop recommending dual programs (*i.e.*, after school 1:1 services) to preschool age children.

92. Accordingly, the City Defendants' IEP teams do not possess the power to consider reasonable accommodations for children with ASDs or to apply Section 504 to IEP recommendations or placements.

THE STATE DEFENDANTS APPLY BLANKET POLICIES AND PRACTICES

93. The law allows the City Defendants to contract with private schools and providers, or certain schools and districts, that are not considered "public schools" in New York City instead of delivering services themselves.

94. Those programs include: "853 Schools," which are state-approved private schools created by Chapter 853 of the Laws of 1976; state-supported schools for students who are deaf, blind, and/or severely physically or emotionally disabled under New York State Education Law ("NYSEL") §4201; and Special Act School Districts (collectively, "NPS" programs).

95. The State Defendants have reported that, as of October 2012, 13,586 (or approximately 8%) of children with IEPs in New York City were in "separate settings" outside of public school buildings. Upon information and belief, many of these children attend NPS Programs.

96. In order for the City Defendants to fund a student's placement in an NPS Program, their IEP team must first conclude that the City Defendants do not have the capacity to offer an appropriate public school program.

97. Defendants improperly restrict the authority of IEP teams to make decisions for children to attend NPS Programs.

98. For most NPS Programs, the City Defendants' procedures call for IEP teams to "defer" a decision to the City Defendants' Central Based Support Team ("CBST") to "approve" funding in an NPS Program. Students can also gain admittance to certain NPS Programs (NYSEL Section 4201 schools) if they are recommended by IEP teams and approved by a senior administrator.

99. The City Defendants' policies allow the CBST staff members or other administrators to reject children, and return cases to an IEP team for placement in District 75, even though the IEP team has already determined that there are no appropriate public school settings available.

100. The City Defendants' IEP teams are not even allowed to recommend a classroom ratio for children who are deferred to the CBST. Instead, CBST looks for an NPS school approved for the child's disability classification and, when one is found, the ratio is written into the IEP by the team after the school has already been selected.

101. The City Defendants have recently stopped providing IEPs for parents of children whose cases are deferred to the CBST.

102. Because of Defendants' complex system, it is difficult for a child to obtain a recommendation for an NPS Program without a lawyer or advocate.

103. Although the State Defendants are aware of the City Defendants' practices, they have not intervened or facilitated a remedy for children who have been harmed.

104. The State Defendants are aware that it is illegal to restrict services, programs, and placement choices for children based upon disability classification.

105. Yet, the State Defendants "approve" a certain number of seats in NPS programs that serve children with low-incidence disabilities and restrict the admission of children by their disability classification.

106. As a result, there are only a handful of NPS Programs that accept children classified as autistic. Further, there are no schools or programs for children who have "dual diagnoses," such as a child who is autistic and also deaf, or a child who is deaf and also blind.

107. Further, only a fraction of NPS programs use ABA, or other research-based instructional strategies, and none have ongoing after school or home-based ABA or related services. Some of the NPS Programs do not offer a more intensive ratio than District 75, and most do not offer 1:1 instruction with a trained teacher for more than a small fraction of the school day.

108. In terms of NPS Programs serving children classified with an ASD, there is one school in Staten Island, one in the Bronx, two in Manhattan (although only one that serves children over age 12), four in Queens, seven in Brooklyn, and one on Roosevelt Island.

109. Some children from New York City travel to schools in Westchester or Long Island, although there are very few options there as well.

110. The blanket policies and practices concerning Autism Services are also applied to IEPs for children who are referred for NPS Programs.

111. Despite the growing numbers of autistic children and the fact that the City Defendants and the NPS programs have often communicated to the State Defendants that there is a need to expand those programs, the State Defendants have generally refused to do so.

112. The State Defendants also restrict funding to the approved NPS Programs such that the services they can provide are limited compared to the services that might be funded in public schools.

113. In addition to the State Defendants' improper restriction on disability classification, the State Defendants refuse to allow or approve NPS Programs to offer inclusion.

THE STATE DEFENDANTS' NPS POLICY

114. Within the past two years, the State Defendants issued a directive to City Defendants, NPS Programs and other stakeholders ordering that children with disabilities no longer be allowed to receive Special Education Services on their IEPs ("Additional NPS Services") if those services were not offered by, or available at, the particular NPS Program a child was, or would, be attending (the "NPS Policy").

115. The NPS Policy was, and is now, applied to all children with disabilities who attend NPS schools, all children approved for NPS programs, and those who may be approved for NPS Programs in the future.

116. In some NPS Programs, the NPS Policy has already been implemented; at other programs it is being phased in.

117. In the past, City Defendants could recommend an NPS Program and Additional NPS Services (as long as those services were on the City Defendants' menu) even if the services (or the amount of services) were not offered on-site at a particular NPS. In those cases, the City Defendants would fund the services that were not provided by the NPS Program.

118. The State Defendants are fully aware that, for well over twenty years, the City Defendants' supplemented services for children who needed them while attending NPS Programs.

119. However, as per the NPS Policy, the State Defendants directed all NPS Programs to inform parents of NPS-attending students that they had two options: (a) they could leave the NPS Programs; or (b) they could remove the additional services from their children's IEPs. The State Defendants told the NPS Programs that if the services remained on a child's IEP, the NPS Program had to fund the services that the City Defendants had been funding. If they did not offer

those services, they had to inform the parents that the school would no longer be appropriate, and that they would have to find another program that provided the services. Parents were told that they could lose their children's seats in the NPS Programs if they did not agree to remove Additional NPS Services from their children's IEPs.

120. Some parents agreed to remove the Additional NPS Services or to refrain from asking for those services to continue, for fear of losing the NPS seats or their inability to find or afford lawyers. Other parents filed due process complaints to keep their Additional NPS Services.

121. In addition, pursuant to the NPS Policy, the State Defendants informed the City Defendants that they could not recommend a child for an NPS Program if the child required a service that would not be directly available from such a program, even if City Defendants were willing to fund the service.

122. The State Defendants also tried to influence decisions of IHOs by issuing a memorandum informing them of the NPS Policy, and its effect on related services.

123. The State Defendants' NPS Policy suggests that the City Defendants can locate other appropriate programs for children who are referred back to their districts. Yet, the State Defendants are aware that there are very few, if any, appropriate alternatives.

124. The State Defendants were aware that the NPS Policy would result in a loss of services to the most severely disabled children who attend NPS Programs, because they were the ones most likely to have additional NPS services on their IEPs.

125. Nevertheless, the State Defendants made no effort to create, fund, develop, or approve new programs to meet the needs of students attending the NPS Programs who were going to be subject to the NPS Policy.

126. The State Defendants tried to hide behind contracts with the NPS Programs; however, the State Defendants are fully aware that these programs do not have the ability to provide a full range of services that every single child may need, even if that child also needs a setting other than what is available through District 75.

127. In contrast, children with disabilities whose needs are less severe are able to attend public schools and are not, by policy, deprived of the opportunity for additional services if they are needed for a FAPE or as a reasonable accommodation.

128. By the NPS Policy, State Defendants have restricted City Defendants' ability to offer a FAPE and provide reasonable accommodations to children with disabilities that they are obligated to serve.

129. Upon information and belief, the motivation behind the State Defendants' NPS policy is based upon financial and administrative concerns and not the individual needs of children.

130. The State Defendants' financial and administrative concerns cannot trump the right to a FAPE or reasonable accommodations for disabled children.

PROCEDURAL DUE PROCESS REQUIREMENTS

131. The State and the City Defendants are required to establish and maintain procedures in accordance with the IDEA to "ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a [FAPE]." 20 U.S.C. §1415(a).

132. The IDEA affords parents the right to "examine all records" related to their child and to "participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a [FAPE] to such child, and to obtain an independent educational evaluation of the child." 20 U.S.C. §1415(b)(1); 34 C.F.R. §300.501(a)-(b).

133. Districts must "take whatever action is necessary to ensure that the [parent] understand[s]" IEP meeting proceedings. 34 C.F.R. §300.322(e); 8 N.Y.C.R.R. §200.5(d).

134. Parents must be provided with Prior Written Notice ("PWN") whenever a district "proposes to initiate or change" or "refuses to initiate or change" the "identification, evaluation, or educational placement of the child, or the provision of a [FAPE] to the child." 20 USC §1415(b)(3). The exact contents of PWN are prescribed by the IDEA; in general, it must be individualized and advise parents of the district's decisions and actions and reasons behind them. 20 U.S.C. §1415(c); 34 C.F.R. §300.503(c).

135. Prior to any evaluation or reevaluation, a district must obtain "informed parental consent." 20 U.S.C. §1414(c)(3).

136. Districts must also provide Procedural Safeguard Notices ("Safeguards") to parents. 20 U.S.C. §1415(d). As of 2004, such Safeguards must be written in a manner that is "understandable to the general public" (34 C.F.R. §300.504; 34 C.F.R. §300.503(c)) and must "include a full explanation of the [IDEA's] procedural safeguards." 20 U.S.C. §1415(d)(2).

Defendants' Due Process Hearings and Appeals Are Not IDEA Compliant

137. One of the IDEA's most well-known due process rights is the right to request an impartial hearing "with respect to any matter relating to the identification, evaluation, or educational placement of [a] child" or the provision of FAPE to a child. 20 U.S.C. §1415(b)(6)(A).

138. Thereafter, a parent "shall have an opportunity for an impartial due process hearing, which shall be conducted by the [SEA] or by the [LEA] as determined by State law or by the [SEA]." 20 U.S.C. §1415(f)(1)(A)

139. The IDEA sets forth detailed requirements for hearing procedures and IHO qualifications. 20 U.S.C. §1415(f); 34 C.F.R. §§300.511-516.

140. Among other things, an IHO shall not be an employee of the SEA or the LEA and cannot have a personal or professional interest that conflicts with the IHO's objectivity. 20 U.S.C. §1415(f)(3)(A).

141. IHOs must also be knowledgeable about the applicable laws, and be able to preside over hearings and write decisions in a manner consistent with generally acceptable legal standards. *Id.*

142. In 2004, the standard for an IHO's decision-making was amended to require a decision on "substantive grounds based on a determination of whether the child received" a FAPE. 20 U.S.C. §1415(f)(3)(E)(i). Further, "[i]n matters alleging a procedural violation" an IHO may find a child did not receive a FAPE "if the procedural inadequacies – impeded the child's right" to a FAPE; "significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of" a FAPE, or "caused a deprivation of educational benefits." 20 U.S.C. §1415(f)(3)(E)(ii)(I-III).

143. In a two-tiered administrative system, "any party aggrieved by the findings and decision rendered [by the LEA] may appeal such findings and decision to the [SEA]." 20 U.S.C. §1415(g)(1). The SEA "shall conduct an impartial review of the findings and decision appealed." 20 U.S.C. §1415(g)(2).

144. New York is one of only a handful of remaining states that employ the above-referenced two-tiered due process system.

145. In New York City, the City Defendants are responsible for ensuring that impartial hearings comport with the IDEA's requirements, and appeals from IHOs' decisions are heard by a State Review Officer ("SRO"), an employee of and lawyer for the State Defendants. *See* N.Y. Educ. Law §4404.

146. Although the language of the IDEA suggests that the SEA is the reviewing party, several federal courts have held that the SRO cannot be an employee of the SEA.

147. The IDEA itself does not set a timeline for completion of administrative proceedings, however federal regulations state that a decision should be issued within 45 days following a 30-day resolution period. 34 C.F.R. §300.515(c). An SRO decision must be issued within 30 days.

148. However, under federal law, an IHO or SRO can grant extensions of time at the request of either party. 34 C.F.R. §300.515(c).

149. Defendants have promulgated various regulations and policies, and engaged in practices with respect to due process that violate the IDEA and impermissibly restrict IHO discretion and qualifications.

Defendants' Policies and Procedures Interfere with Parents' and Children's Rights and Create Conflicts for the IHOs

150. Although review hearings in New York City are supposed to be held at the district level by independent IHOs, the State Defendants are responsible for selecting, training, monitoring, and controlling those IHOs.

151. The State Defendants exercise a significant amount of control over IHOs – including their finances, reputations, and future employment – as if they were their employees.

152. Moreover, Defendants have vested interests in limiting due process rights for parents and influencing the outcomes of cases because Defendants are responsible for bearing the costs involved in conducting hearings as well as the cost of special education services that result from the hearing.

153. For example, the City Defendants must bear the cost of administering the overall system and legal fees and State Defendants have a vested interest in the outcome of certain cases, given their supervisory role under the IDEA and state law.

154. Moreover, the State Defendants have repeatedly proposed legislation, regulations, and policy changes that would curb parents' rights and limit their ability to obtain relief through impartial hearings, all in an effort to reduce special education costs.

155. The State Defendants are on notice of the illegal policies, practices, and systemic failures that cause due process hearings to be filed; yet their focus has been on limiting parents' rights and sanctioning IHOs with regard to hearing timelines rather than on addressing the needs of students who are forced into hearings or the underlying administrative issues that cause delays in the system.

156. For example, the State Defendants are fully aware of the systemic issues alleged herein concerning Autism Services and blanket reliance on a single program model. In fact, the SRO and courts have indicated that the City Defendants must provide home-based services, 1:1 instruction, and ABA to certain children. Yet, the State Defendants have not taken steps to build the capacity of City Defendants' ability to meet the needs of the autistic children.

157. Moreover, the State Defendants' regulations and oversight activities have created conflicts of interest that interfere with the impartiality of IHOs.

158. In particular, the State Defendants started a campaign to investigate and find IHOs guilty of "misconduct" and "incompetence" if they failed to strictly adhere to state regulations regarding timelines for hearing decisions, regardless of whether they were in compliance with the federal law or extensions were agreed upon by the parties. State Defendants have also improperly vested the SRO - who is supposed to be an independent appellate review officer – with the ability to sanction IHOs for "misconduct." This campaign was initiated suddenly, after extensions had been routinely granted upon consent of both parties for many years.

159. The State Defendants have been warning and threatening IHOs to comply with certain procedures or else face sanctions, suspension, or "misconduct" charges, even when the IHOs are in compliance with the IDEA and the parties have agreed to extensions.

160. Several IHOs were publicly sanctioned, reviewed, and/or suspended by the State Defendants and the SRO.

161. The State Defendants' regulations also place restrictions on IHOs in terms of the types of extension requests they can grant, even upon consent of both parties. Recently, the regulations were loosened, giving IHOs some latitude with respect to granting extensions for settlement, although the State Defendants still frown upon the extensions.

162. The State Defendants have also insisted that IHOs adhere to a fourteen-day timeframe from the close of the hearing record to submit a final decision, regardless of the length of the record or the complexity of the issues presented.

163. While the State Defendants and the SRO have closely monitored and pressured IHOs to comply with rigid decision-writing timelines, they have not held themselves accountable for the SRO's failure to issue timely decisions.

164. This environment has affected IHOs' impartiality and caused them to be fearful for their reputations, employment, and financial well-being.

165. After this initiative started, IHOs began to limit their caseloads, recuse themselves, remove themselves from the city rotation list, and have declined to hear certain kinds of complex cases that may take multiple hearing dates to resolve or involve pro se parents.

166. The remaining IHOs are extremely busy trying to handle the extra workload within the confines of the untenable situation described above.

167. As a result, many parents have to wait for an extended period of time simply to get an IHO assigned to their cases, let alone to hear the case.

There Are No Effective Mechanisms to Address Urgent Issues in Due Process

168. Although hearings and appeals rarely resolve within the prescribed timelines in New York City, most cases do not involve urgent issues that must be resolved within 45 days, once a pendency order is issued.

169. Instead, the majority of cases involve parents seeking reimbursement for out-of-pocket tuition payments and cost of services and settle before a hearing is completed. In many cases, students have stay-put rights.

170. Given the volume of cases, the complexity of the City Defendants' bureaucracy, the small size of the parents' bar, and the staffing level of the City Defendants' settlement unit, the parties often need time to negotiate agreements.

171. However, because of the inflexible manner in which the State Defendants have tried to address the delays in the hearing system without recognizing the differences among cases, parents with urgent or complex cases who need access to timely hearings are waiting longer and longer for relief.

172. By pushing for an inflexible solution that places undue pressure on the parties and IHOs rather than trying to address the underlying systemic and administrative issues, the State Defendants have caused more delays and problems for parents and children who need due process.

173. Given the complexities of the system, an inflexible approach to timeline compliance is not practical in New York City.

174. IHOs should have the discretion to place certain cases on a settlement docket for a reasonable amount of time (upon agreement of both parties) without concern for violating timelines.

175. Further, Defendants should promulgate clear procedures to establish that IHOs can render interim or interlocutory orders when necessary to prevent irreparable harm to a student, address other urgent matters, or streamline the litigation process.

City Defendants' Policies and Practices with Regard to Students' Pendency Rights Violate the IDEA

176. The IDEA requires that a child "stay put" in his or her last agreed upon-placement when a Due Process Complaint ("DPC") is filed. 20 U.S.C. §1415(j).

177. A student's "stay-put" rights ("pendency") can be changed by agreement between the parties, or by a final, unappealed order of an IHO, SRO, or court.

178. Pendency rights are supposed to be automatic and unconditional; they attach when a parent files for due process.

179. The City Defendants do not have policies and procedures in place to ensure that students' pendency rights are timely implemented such that the intended purpose of pendency is served.

180. With limited exceptions, the City Defendants require parents to request and obtain pendency orders from IHOs in order for pendency to be implemented.

181. However, the City Defendants do not have policies and procedures in place to ensure that pendency hearings, dates, and orders can be obtained quickly and efficiently. Moreover, there is no consistency in the way pendency hearings are conducted.

182. Some IHOs allow for expedited pendency procedures such that the parties can agree to pendency terms via e-mail or a short phone call, while others require a full pendency hearing on the record including the submission of evidence and, in some cases, testimony. Similarly, some of the City Defendants' districts are prohibited from agreeing to pendency terms on the record, even when there is no substantive dispute.

183. Further, it is the City Defendants' position that they will not fund services in advance or enter into binding contracts with private pendency providers and certain schools that are not state-approved.

184. At the same time, many private pendency providers and schools will often not continue to allow enrollment or provide services until funding is secured (*i.e.*, until an enforceable pendency order is obtained). If they do choose to continue to serve the child, they do so at their own risk as they have no contract with Defendants or the parents.

185. As a result, while wealthy parents might be able to front the costs of their child's pendency services or placement and await reimbursement, parents without money and/or resources are often forced to allow their child's services to lapse.

City Defendants Continue to Apply Blanket Policies Even to Parents Who Win Hearings

186. The City Defendants refuse to accept the rulings of IHOs when it comes to awards of Autism Services.

187. An unappealed, impartial hearing order can establish a students' last agreed-upon placement in the same manner as an uncontested IEP. Yet, the City Defendants treat the two differently.

188. In general, when a parent agrees to the services offered in an IEP and the IEP is implemented, the City Defendants provide the student with the prescribed services and, at the next annual review, will consider whether those services should continue.

189. In contrast, when students' last agreed-upon placement and services are established, via an unappealed order, or resolution agreement for Autism Services, the City Defendants' IEP teams ignore the hearing order and/or agreement at subsequent IEP meetings. Instead, at the start of the next school year, they will revert back to the program offered on the last IEP, regardless of whether one or more IHOs found that program inappropriate.

190. The City Defendants' IEP teams do not acknowledge unappealed orders as having the same legal effect as uncontested IEPs, although they are supposed to confer the same rights upon children with disabilities and their parents.

191. As a result, as alleged above, parents are forced into litigation year after year to fight for the services their children require.

Defendants Have Not Vested IHOs with Authority to Preside Over Hearings in Accordance with the IDEA and Standard Legal Practice

192. LEA and SEA officers in New York are not vested with jurisdiction to hear certain claims that have not been exhausted under the IDEA. 20 U.S.C. §1415(l).

193. Similarly, there are no rules of procedure for filing motions, although interim motions are often necessary in the current litigation climate.

194. IHOs are not trained on how to resolve claims that have to be exhausted.

The City Defendants Employ Blanket Policies that Hinder the Parties' Ability to Resolve Cases Quickly, and Unnecessarily Increase the Length and Volume of Hearings

195. Defendants do not employ legally sufficient procedures in accordance with the IDEA relating to resolution of disputes, and have adopted policies and practices that have the effect of increasing – rather than decreasing – litigation of disputes in cases which are not legally defensible.

196. Before a hearing can commence, there is a 30-day waiting period during which time the LEA (here, the City Defendants) must hold a "resolution session" so that the parties may discuss the complaint and the LEA has an opportunity to resolve the issues therein. 20 U.S.C. §1415(f)(1)(B).

197. When a DPC is filed, the City Defendants are supposed to respond with the information that is required by the IDEA's PWN provisions, assuming that legally sufficient PWN has not already been provided. These responses are supposed to be used to resolve disputes. Yet,

City Defendants employ improper blanket policies and procedures in submitting responses to DPCs, and their responses do not comport with the IDEA mandates.

198. Further, the individuals who handle resolution sessions are restricted in the type of relief that they can offer. For example, they cannot authorize the expenditure of money for tuition, private services, or Independent Educational Evaluations ("IEEs"), and cannot agree to pay legal costs and fees for a family who has incurred them. Further, they are generally constrained by Defendants' blanket policies in terms of service delivery.

199. In the past, once a hearing commenced, the City Defendants were permitted to enter into agreements on the record (such as stipulations of fact) if certain issues were not in dispute, if they were willing to resolve certain issues by providing the parent with some or all of the relief sought. Such cases were resolved quickly, at minimal cost to the parties.

200. However, the City Defendants have implemented a blanket policy whereby most of its representatives and lawyers are now prohibited from entering into agreements on the record regarding any issue.

201. At this time, the only other settlement mechanism that City Defendants have is a private stipulation process that is generally limited to cases involving reimbursement or direct payment for services that have easily-ascertained costs. Through this process, the obligation to obtain and administer a FAPE, or compensatory education, rests on the parents. Further, the City Defendants have a general prohibition against agreeing to change a child's "stay-put," entering into multi-year settlements, or settling claims regarding blanket or systemic policies.

202. Furthermore, there is no settlement mechanism that can result in the City Defendants being legally responsible for ongoing services for a child or create a final resolution of a dispute.

New York City's IHO Compensation Policies Are Inconsistent with the Rest of the State

203. The current situation is exacerbated by the fact that the City Defendants refuse to pay IHOs (for hearings that go forward) in a manner consistent with virtually every other district in the state.

204. The compensation scheme for IHOs in New York City creates conflicts of interest for the IHOs and inequities for city children with disabilities. It has also interfered with New York City's ability to recruit and retain IHOs.

205. The State Defendants have adopted a "maximum" IHO compensation amount (rather than a "minimum" amount). Until 2001, IHO compensation was capped at a maximum of $40 per hour, and $300 per day. In 2001, the rate changed to a maximum of $100 per hour, and the per diem cap was removed.

206. Virtually all districts in New York State pay IHOs hourly for pre- and post-hearing work. Near New York City, most districts pay $100 per hour for all work related to the hearing – whether on or off the record. Other jurisdictions pay IHOs on an hourly basis (between $85-$100) for off-the-record work (including motions, decision writing, research, etc.) and a day rate for on-the-record work.

207. In contrast, the City Defendants have implemented a complicated and heavily restricted compensation scheme for IHOs, whereby only certain hearing-related activities and tasks are compensable, and low flat fees apply to all activities and tasks, regardless of their length and/or complexity, including decision-writing.

208. The most problematic part of the "flat fee" payment process is that the City Defendants generally pay only $300.00 for an IHO decision.

209. As the vast majority of cases in New York City settle, it may make sense to limit IHO compensation on those cases which are flagged for settlement early in the process. However,

with respect to hearings that must go forward for motions or a full hearing, there is no justification for the City Defendants' long-standing limitation on IHO compensation in relation to the rest of the state.

210. This is particularly true given that many of the IHOs on the City's rotation are also on the rotation for cases in the other districts in New York State.

211. Upon information and belief, if the compensation policies were adjusted, more IHOs would be available to hear New York City cases.

Defendants' Policies, Practices, and Payment Scheme for IHOs Weigh Deference in Favor of the SRO

212. A recent Second Circuit decision has determined that, when the rulings of the IHO and the SRO conflict, the court should defer to the decision that is the most "well-reasoned." *M.H. v. New York City Dep't of Educ.*, 685 F.3d 217 (2d Cir. 2012). Yet, given the payment scheme, the relative resources allocated at each level of the administrative process, and Defendants' policies, SRO decisions can be longer, more detailed, and appear more "well-reasoned" than IHO Decisions, even though the SRO is, by and large, considering the same evidence that was before the IHO.

213. In contrast to the number of cases that IHOs have to handle on their own, the SRO has a much higher staff-to-case ratio to handle appeals, and has started to pay consultants (some of whom are not lawyers, and possess only a B.A. degree) at the rate of $100 per hour to work on appeals.

214. The foregoing can lead to an inordinate amount of deference being paid for SRO decisions, which is especially problematic given that the SRO was not present during the administrative proceedings, and is merely reviewing the record that was before the IHO, and in recent history, the majority of SRO decisions have favored school districts.

215. Leaving aside the reason for the disparities, the original fact-finder who is responsible for credible determinations, legal analysis, and developing a clear record for the SRO and Court should have comparable resources to render decisions.

FACTS CONCERNING THE Y.T. PLAINTIFFS

216. Y.T. is an eleven-year-old boy with autism.

217. The City Defendants have classified Y.T. as autistic.

218. Y.T. is nonverbal and has weaknesses and deficits in the areas of cognition, focus/attention, eye contact, socialization, expressive and receptive language, activities of daily living ("ADL"), behavior, gross motor skills, and fine motor development.

219. As of the date this Fourth Amended Complaint is filed, Y.T. is not fully toilet trained for urination or bowel movements and tends to hold his feces. His toileting has improved, although he is not yet fully independent.

220. Y.T. exhibits self-stimulating and self-injurious behavior and engages in tantrums. He also lacks danger awareness and is a flight risk.

221. Y.T. exhibits both sensory sensitivities and hyperactivity.

222. Y.T. was born in Egypt. In 2008, the Y.T. Plaintiffs relocated from Egypt to New York City.

223. The Y.T. Plaintiffs' native language is Arabic. The Y.T. Plaintiffs are not fluent in reading, speaking, or understanding English, although they possess some basic skills. They understand, speak, and read Arabic with 100% fluency.

224. After arriving in New York City in 2008, Y.T.'s parents requested special education services from the City Defendants and notified the City Defendants that they spoke very little English.

225. The City Defendants began evaluating Y.T. in September 2008.

226. The City Defendants' September 2008 bilingual psycho-educational evaluation erroneously noted that Y.T.'s "level of autism is not severe." This evaluation was incomplete and not aligned with professional and clinical standards.

227. The City Defendants conducted a Social History with an Arabic language translator in September 2008. It noted that Y.T. was nonverbal, lacked the ability to protect himself from dangerous situations, and "requires directives and supervision for safety purposes."

228. The City Defendants' September 2008 Occupational Therapy ("OT") evaluation recommended that Y.T. receive OT services, work with a 1:1 Arabic-speaking paraprofessional, and receive a Physical Therapy ("PT") evaluation.

229. The City Defendants' October 2008 Speech and Language evaluation noted that the evaluator was unable to assess Y.T. due to his delays, and recommended speech and language therapy ("SLT") five times per week for 60 minutes on a 1:1 basis.

230. The City Defendants failed to assess and evaluate Y.T. in accordance with the IDEA and state law. Further, Y.T.'s initial evaluation should have included a functional behavioral assessment ("FBA"), an observation, an assessment by an expert in autism, and an assistive technology ("AT") evaluation.

231. These limited initial evaluations were the only assessments that the City Defendants used to create IEPs and recommendations for the 2008-2011 school years ("School Years at Issue").

232. The City Defendants initially created an Interim Service Plan ("ISP") for Y.T. recommending that he attend a 6:1:1 classroom in District 75 with a 1:1 Arabic-speaking paraprofessional. However, the City Defendants' could not provide an Arabic-speaking paraprofessional.

233. The City Defendants failed to have a thorough IEP in place for Y.T. for the beginning of the 2008-2009 school year.

234. Y.T.'s initial IEP meeting was not conducted until November 19, 2008. The IEP team recommended that Y.T. attend a 6:1:1 class in District 75 with minimal SLT and OT on a twelve-month basis. Following the November 2008 IEP meeting, the City Defendants created an IEP, which they dated November 19, 2008. No bilingual services or paraprofessional was recommended for Y.T., even though he only understood Arabic at the time.

235. In November 2008, Y.T. was placed in a 6:1:1 class at P.S. 255.

236. In the spring of 2009, Y.T.'s teacher submitted a "Type III Recommendation," requesting that the CSE initiate a 1:1 crisis management paraprofessional for Y.T. because "[his] behavior negatively impacts his learning and socialization." Further, it noted that "he tantrums and exhibits aggression toward other students and adults," and "his impulsivity and lack of safety awareness can create dangerous situations for him and others."

237. The City Defendants' Type III process has been discontinued. The Type III conference process established that the City Defendants pre-determined what they planned to recommend at Y.T.'s future IEP meetings.

238. Although P.S. 255 had determined that Y.T. should be moved to a more "structured" classroom and required implementation of the ABA teaching method, the City Defendants never added ABA to Y.T.'s IEP or specified on the IEP how many periods of ABA and/or 1:1 instruction he required.

239. The City Defendants did not hold an IEP review meeting until October 29, 2009. City Defendants drafted an IEP that they dated October 29, 2009, in which they added an English-speaking paraprofessional to Y.T.'s program.

240. The City Defendants held additional IEP meetings in 2009, 2010, 2011, 2012, 2013 and 2014 and drafted IEPs. Those IEPs recommended the same program, a 6:1:1 class with a paraprofessional. Blanket policies and practices were employed at all of these meetings.

241. Overall, the DOE's IEP development process, resulting IEPs, programs, and placements for Y.T. during all of the school years that Y.T. has received educational services from the City Defendants (the 2008-2014 school years) were substantively and procedurally flawed for reasons including, but not limited to, the following:

a. The City Defendants failed to employ proper procedures to schedule and notify the Y.T. Plaintiffs about meetings;

b. The Y.T. Plaintiffs were not provided with documents including meeting notices, IEPs, evaluations, reports, waivers, and notices of their rights consistent with the law or in their native language and were not provided with translation and interpretation services at meetings regarding Y.T.'s education;

c. The City Defendants failed to properly explain the special education process to the Y.T. Plaintiffs in their native language; moreover, by failing to translate key records, participation in the process by the Y.T. Plaintiffs was impossible;

d. The City Defendants failed to make decisions about Y.T. based upon his individual needs;

e. The City Defendants made decisions about Y.T.'s IEP and placement based on blanket policies, administrative considerations, and resources and predetermined outcomes of the meeting;

f. For all of the school years in question, City Defendants failed to conduct legally adequate evaluations and reevaluations upon which to base its IEPs for Y.T.;

g. The City Defendants never provided the Y.T. Plaintiffs with legally sufficient Safeguards and PWN as defined under the IDEA, in Arabic or in English, throughout the years in question;

h. The IEP teams were not duly constituted and did not have required members; even where certain individuals were present in name/title, they did not possess the required knowledge, training, and independence to formulate a legally valid IEP;

i. The members of the IEP teams were not vested with sufficient authority and autonomy to perform their mandated duties with respect to Y.T.;

j. The IEPs were drafted before or after the meetings;

k. The IEPs did not adequately describe Y.T.'s strengths, weaknesses, abilities, progress, academic and functional levels, the ways his disability impacted him in and out of the classroom, and they contain conflicting information;

l. The IEPs failed to contain information about Y.T.'s most recent evaluations or adequate present levels of performance;

m. The IEPs failed to include peer-reviewed, research-based instructional strategies, although such methods were feasible and Y.T. required them;

n. The goals of all of the IEPs were insufficient; they were not measurable or individually tailored to Y.T.'s needs and failed to sufficiently address the ways in which his disability impacts his academic, social-emotional, and behavioral functioning as well as his ability to engage in ADL tasks, communicate, and participate in appropriate leisure activities;

o. The IEP goals and special education services in each of the IEPs failed to address a lack of progress each year;

p. The IEPs have referenced that non-descript "ESL methods and materials" are utilized; however, Y.T. has not been provided with appropriate ESL/bilingual services;

q. The City Defendants have not conducted FBAs or developed Behavior Intervention Plans ("BIPs") in accordance with the law;

r. The City Defendants failed to consider or recommend appropriate AT for Y.T.;

s. The IEPs did not recommend special education services and supports that were adequate to address Y.T.'s areas of weakness and significant delays;

t. The IEPs did not contain services that were adequate to address Y.T.'s behaviors, including positive behavioral supports;

u. Y.T.'s related services were inappropriate and insufficient;

v. For most years, the IEPs did not include parent training as a related service and, upon information and belief, the IEP teams did not consider or discuss parent training as a related service;

w. Despite the fact that Y.T. exhibited significant deficits in his ability to generalize skills and information across environments, the City Defendants did not consider or recommend after school/home-based services for Y.T.;

x. Overall, the IEPs, programs, and placements have not included appropriate services and/or goals for Y.T. to address generalization, his lack of awareness of danger, his toileting needs, and ADL;

y. The IEPs have not offered any 1:1 instruction for Y.T.;

z. The IEPs did not include ABA;

aa. The evaluation, IEP development, and placement processes have not met the standards for providing a FAPE to children with autism as set forth in the New York State Regulations; and

bb. The City Defendants failed to provide the Y.T. Plaintiffs with adequate PWN at legally required times throughout the years in question.

242. Due to the City Defendants' blanket policies, the paraprofessional and limited related services of SLT, OT and PT were the only available special education services that the City Defendants' IEP teams could recommend in connection with the 6:1:1. The IEP teams could not recommend any 1:1 instruction for all or part of the day, research-based strategies, ABA services in school, home-based ABA services, home-based parent training, toilet training in school or at home, training in augmentative communication, OT in a sensory gym, after school related services, or any other service that Y.T. required for a FAPE.

243. Substantively, none of the IEPs offered a FAPE, and the recommendations contained therein were not reasonably calculated to confer educational benefit to Y.T. Further, the Y.T. Plaintiffs were substantially excluded from the special education process.

244. The City Defendants failed to conduct legally sufficient reevaluations of Y.T. during the school years in question.

245. Y.T. did not made sufficient progress during any of the school years in question.

246. Despite the fact that Y.T. was not making appropriate progress in any of the relevant years, the City Defendants did not modify his Special Education Services.

247. Y.T. remained at P.S. 255 in a 6:1:1 classroom with a paraprofessional until August 2013.

248. In September 2013, the City Defendants moved Y.T. to the Riverview School, in a 6:1:1 class in District 75 with a paraprofessional.

History of Y.T. I Due Process Proceedings

249. In February 2012, the Y.T. Plaintiffs filed a DPC with the City Defendants' Impartial Hearing Office raising claims concerning the 2008-2011 school years. ("Y.T. I"). They amended it in June 2012. Among other things, the DPC sought relief for a denial of FAPE, compensatory education, and an order for a new IEP that included increased speech and language services, 1:1 instruction in school and after school using research-based strategies, such as ABA, and AT.

250. On April 20, 2012, the IHO issued an Interim Order directing the City Defendants to conduct a bilingual social history update and issue Assessment Authorizations ("AAs") for independent OT, PT, and bilingual Speech and Language evaluations, all of which were to be translated into Arabic. Further, the IHO ordered the City Defendants to fund an IEE by a behavior specialist.

251. In May 2012, Dr. F., a PhD-level Board Certified Behavior Analyst ("BCBA") and expert in autism, conducted the IEE. When Dr. F. visited the school, she observed that the setting was not appropriate for Y.T. She did not see him working on communication skills, receiving 1:1 support or any ABA. Among other things, the City Defendants claimed that Y.T. was using the Picture Exchange Communication System ("PECS") to communicate; on the day she was there, Dr. F. did not observe him using PECS. When she later visited him at home, Dr. F. did not observe Y.T. perform any of the skills that the City Defendants' teachers claimed that he could perform in school.

252. On June 25, 2012, the IHO issued a Second Interim Order finding that the record had established "the appropriateness of supplemental ABA services outside the school day to permit [Y.T.] to make educational progress." Further, she found that Y.T.'s behavior and self-management skills "clearly [had] not transferred to other settings." Accordingly, she ordered the

DOE to immediately provide Y.T. with ten hours per week of after school ABA services "at an enhanced rate" by either a bilingual provider or someone with access to a translator "so the parent[s] can learn to implement the ABA techniques in the home."

253. The City Defendants began funding private ABA teachers to provide Y.T. with ten hours per week of after school ABA services in the summer of 2012.

254. The City Defendants and independent evaluators conducted reevaluations of Y.T. in the spring and summer of 2012.

255. On October 26, 2012, the IHO issued a Third Interim Order increasing Y.T.'s after school ABA services to fifteen hours per week, including a minimum of four hours per month of BCBA supervision, and four hours per month of parent counseling and training, having found that Y.T. continued to have "significant interfering behaviors" and that the record supported the additional home-based services. The IHO noted that it was "imperative that there be communication between [the] providers and the Arabic-speaking parents," and, thus, she ordered that translation must be available for the parent counseling and training sessions.

256. At the hearing, City Defendants did not object to the entry of any of the Interim Orders.

257. The City Defendants complied with all three of the interim orders, did not seek a stay of any of the orders, and did not appeal any of the interim orders as a violation of pendency.

258. As of the start of the 2012-2013 school year, the City Defendants had failed to consider any of the new evaluations conducted as part of the hearing when developing Y.T.'s IEP and program. To date, the DOE has not considered the IEE by Dr. F.

259. In January 2013, the City Defendants held an IEP review. After the meeting, the City Defendants issued an IEP (the "January 2013 IEP"). Y.T.'s parents were not allowed to partake in the IEP drafting process.

260. The January 2013 IEP failed to include a special education program or placement recommendation for Y.T.

261. Despite the independent evaluations and the addition of ABA to Y.T.'s program, the City Defendants refused to recommend any changes or ABA services. Instead, Defendants maintained a virtually identical program; the only addition was a monthly 45-minute session of parent training (without an interpreter) offered at the school. The team told Y.T.'s parents that they were not allowed to recommend ABA services at home.

262. Moreover, the City Defendants conducted their own legally insufficient AT evaluation, with which Y.T.'s parents disagreed.

263. In May 2013, the City Defendants apparently contacted Y.T.'s father to request that he participate in a phone call. He did not understand that an IEP meeting was being held, and he did not receive adequate notice.

264. The City Defendants failed to invite any of Y.T.'s home-based providers to the meeting or solicit updated information from them for the March 2013 call, despite the fact that the City Defendants were funding the program at the time.

265. In March 2013 Defendants created a new IEP adding a 6:1:1 classroom, which was apparently omitted from the prior IEP.

The IHO's Findings of Fact and Decision in Y.T. I

266. On February 11, 2013, the IHO in Y.T. I issued her final Findings of Fact and Decision (the "Y.T. I IHD").

267. In parts, the Y.T. I IHD was ambiguous, contrary to the evidence in the record and the law, and not well-reasoned with respect to many of the factual analyses and legal issues.

268. The burden of proof was on the City Defendants with respect to all issues in the Y.T. I hearing. *See* N.Y. Education Law §4404. Although the City Defendants failed to carry their burden, and the Y.T. Plaintiffs presented significant evidence supporting their allegations and requests for relief, the IHO in Y.T. I erroneously failed to rule for the Y.T. Plaintiffs on all issues.

269. The IHO found that the City Defendants had failed to provide a FAPE to Y.T. for the 2011-2012 school year and ordered that Y.T. receive twenty hours per week of 1:1 ABA services. This aspect of the IHO's decision has not been challenged by the Y.T. Plaintiffs, although the City Defendants would later cross-appeal those findings.

270. However, the IHO erroneously ruled that, even though the City Defendants denied Y.T. a FAPE in the 2011-2012 school year, the 6:1:1 class with a paraprofessional was appropriate for Y.T. Further, she incorrectly determined that the 1:1 ABA Services should only continue if Y.T. is not receiving full-time ABA instruction in school. While the IHO correctly added 1:1 ABA Services to Y.T.'s program, she was wrong as a matter of law and based on the evidence to find that the 6:1:1 program was "appropriate" and in limiting the provision of ABA services to Y.T. under the circumstances.

271. The IHO's order limiting the ABA services for Y.T. disregarded the evidence in the record establishing that Y.T. has extreme difficulty with generalizing his skills between people and settings.

272. Y.T. requires 1:1 ABA Services at home as part of a FAPE, so he may gain equal benefit from education as his non-disabled peers, who do not struggle with generalization.

273. The Y.T. IHO was not clear in terms of her rulings with respect to the 2009-2010 and 2010-2011 school years. To the extent that the IHO found that a FAPE was denied for the 2009-2010 and 2010-2011 school years, she was correct. However, the IHO was wrong to deny compensatory education, as that ruling was contrary to law and the evidence.

274. In the alternative, to the extent the IHO found a FAPE was offered for the 2008-2011 school years, and Y.T. Plaintiffs' procedural rights were not violated, the IHO was wrong as a matter of law, based upon the evidence in the record. Instead of relying upon evidence in the record to support her findings, her statements are merely conclusory, vague, and fail to include citations to the record.

275. The IHO was also wrong not to award compensatory education and not to order the additional relief that Plaintiffs requested, as the City Defendants failed to meet their burden or to rebut Plaintiffs' evidence on any issue.

276. As to all the 2008-2012 school years before the IHO in Y.T. I, the IHO should have determined that: (a) the City Defendants' evaluations were legally insufficient; (b) the City Defendants failed to consider the recommendations in the evaluations that they did have; (c) the City Defendants did not address Y.T.'s need for Arabic language instruction and interpretation; (d) the IEPs were substantively and procedurally invalid; (e) the City Defendants excluded the Y.T. Plaintiffs by denying them language access services and due process and engaging in thorough predetermination; (f) the City Defendants failed to provide legally valid FBAs, BIPs, and positive behavioral supports; (g) the City Defendants failed to rebut the proof of Y.T.'s lack of progress and contradictory information in evidence; (h) the IEPs and placements did not substantively address Y.T.'s delays in communication, attention, ADL tasks, social skills, knowledge and understanding of danger, or his self-injurious, preservative, and hyperactive

behavior; (i) the evidence showed that the recommendations were made pursuant to a predetermined decision and blanket policies; and (j) Y.T. should have been awarded the services and instruction sought by the Plaintiffs.

277. The IHO was also wrong as a matter of law, and the weight of the evidence does not support, the IHO's finding that the City Defendants "made reasonable efforts to communicate" with the Y.T. Plaintiffs. Further, the IHO was wrong to weigh this finding as an equitable factor against the Y.T. Plaintiffs, despite the fact that the record established that the City Defendants had failed to provide any legally mandated procedural evaluations, notices, and safeguards to Y.T.'s parents in Arabic or even in English.

278. Further, the IHO erred as a matter of law, and the weight of the evidence does not support the IHO's findings that Y.T. was not entitled to compensatory services, because the Plaintiffs did not provide the City Defendants with information about Y.T.'s behavior at home. Instead, she should have found that the 2008 evaluations contained information about Y.T.'s behavior at home, the City Defendants failed to involve the Plaintiffs in the FBA process, and the City Defendants failed to conduct a valid reevaluation and Social History.

279. It was the City Defendants' duty (not the Plaintiffs) to ensure that the Plaintiffs were offered a meaningful opportunity to participate in evaluations (including FBAs) and that information regarding Y.T.'s behavior outside the classroom was taken into consideration. Further, there was no evidence that Y.T.'s parents knew that this information was relevant to the Special Education Services that they could obtain for Y.T. In fact, given the existence of blanket policies, the information is irrelevant.

280. Moreover, the Y.T. Plaintiffs also requested additional services based upon a lack of progress in school.

281. The IHO was incorrect as a matter of law when she found that the Y.T. Plaintiffs' language claims were moot. The Y.T. Plaintiffs have yet to have the evaluations and IEPs translated and are continuing to be denied adequate due process and language access services.

282. The portion of the IHO's decision with respect to the claims she denied was not well-reasoned and did not reflect the evidence in the record. The IHO also ignored the Plaintiffs' closing memorandum.

283. Further, the IHO could not and did not rule upon the allegations of blanket policies and practices with respect to Autism Services alleged by the Y.T. Plaintiffs.

284. As the Y.T. Plaintiffs were not allowed discovery in the hearing, establishing proof of such policies and practices through systemic evidence collection was not possible.

285. The Y.T. Plaintiffs' claims in Y.T. I are not time-barred because: (a) they were filed within two years of the date on which Y.T. Plaintiffs knew or should have known of the claim; (b) their time to file was extended, because the City Defendants failed to provide them with due process rights as alleged herein and misrepresented facts to them, which misled them and prevented them from filing for due process; (c) the City Defendants waived a statute of limitations defense by failing to raise it at the impartial hearing; and (d) the City Defendants failed to provide translation and interpretation services.

286. The Y.T. Plaintiffs are not required to show that Y.T. suffered a gross violation that amounted to a substantial exclusion from the special education process, but to the extent that such a showing is required, Y.T. did suffer several gross violations, which would entitle him to compensatory education.

Y.T. I's Appeal to the SRO & History of This Action

287. The City Defendants initially declined to appeal the Y.T. I IHD and allowed their appeal date to lapse. Plaintiffs filed their petition appealing portions of Y.T. I IHD to the SRO on March 25, 2013 (the "Petition").

288. Thereafter, the City Defendants requested an extension of approximately two months and submitted an answer and cross-appeal, in which they appealed the portions of Y.T. I IHD that ordered ABA services and found a lack of FAPE in the 2011-2012 school year (the "Answer and Cross-Appeal").

289. After the Answer and Cross-Appeal was filed, the City Defendants notified Plaintiffs' counsel that they would terminate the ABA services that they had been providing pursuant to the Y.T. IHD on or about June 30, 2013.

290. As a result, the Y.T. Plaintiffs filed the original complaint in this action on July 3, seeking relief in federal court.

291. The court granted the Y.T. Plaintiffs' request for a preliminary injunction during the summer of 2013.

292. Almost two years later, on April 10, 2015, the SRO issued his decision (the "SRO Decision"), dismissing the City Defendants' Cross-Appeal and partially sustained Plaintiffs' Petition, and made the following findings:

a. that the DOE denied Y.T. a FAPE in the 2008-2011 School Years because the 2008, 2009, 2010 IEPs did not address Y.T.'s behavioral issues or contain appropriate SLT recommendations;

b. that the IHO's ruling that the November 2011 IEP did not offer Y.T. a FAPE should be affirmed, because, *inter alia*, Y.T. failed to make adequate progress under the substantially similar 2010 IEP, and the

2011 IEP failed to address Y.T.'s behavioral issues, and did not contain appropriate SLT recommendations;

c. that, for all years, Y.T. was denied a FAPE because the City Defendants did not provide adequate translation and interpretation services to Y.T.'s parents;

d. that the record showed that Y.T. made "minimal" and "inconsistent" progress in his communication skills during the 2008-2012 school years" with his receipt of 1.5 hours of SLT per week and that the evidence of his progress using the "Picture Exchange Communication System (PECS), is conflicting." The SRO did not address any of the other claims raised by the parents in the appeal, and

e. left undisturbed the IHO's ruling that Y.T. receive twenty (20) hours per week of 1:1 ABA services, parent training and interpretation services.

293. The SRO should have reversed the IHO's decision limiting Y.T.'s receipt of home-based ABA if he were to attend a program of full-time ABA based on the record, as well as Y.T.'s needs and the fact that the IHO had no evidence to support her conclusion that Y.T. should lose home services if he received ABA in school.

294. Moreover, the SRO's decision failed to:

a. address the Parent's allegations that the IHO failed to rule that the record supported a change from Y.T.'s 6:1:1 program with a paraprofessional to a program that offers 1:1 instruction and ABA;

b. order the DOE to change Y.T.'s program, although this issue was capable of repetition and yet evaded review;

c. rule upon the Y.T. Plaintiffs' allegations that the denial of Language Access services was not moot, and was wrong not to order a broader remedy on a going-forward basis, as the claims were plainly capable of repetition and yet evaded review;

d. address the Y.T. Plaintiffs' allegations that the City Defendants denied Y.T. a FAPE during the School Years at Issue because: (i) the IEP teams for the School Years at Issue were not duly constituted; (ii) the IEPs failed to comply with 8 N.Y.C.R.R. §200.16; (iii) the IEPs failed to address Y.T.'s ADL skills, toileting needs, sensory delays or his delays in generalizing skills between settings, people, home and community; (iv) the City Defendants did not have appropriate evaluations and reevaluations and did not identify major areas of need; (v) the IEPs did not contain legally sufficient goals in that the goals were not appropriate to Y.T.'s needs or measurable, did not contain benchmarks and did not address major areas of delay;

e. address the parents' claims that the DOE should have included a research-based methodology and ABA on Y.T.'s IEPs;

f. rule upon the Y.T. Plaintiffs' appeal of the IHO's ruling that ABA services should be provided through "RSAs," which are not used to fund ABA services; and

g. address the parents' claims alleging that the City Defendants applied blanket policies in relation to Y.T.'s IEP and placement during the years in question, to wit: (i) 6:1:1 is the smallest ratio available in public schools; (ii) home services are not allowed to be recommended on an IEP; (iii) a 1:1 teaching ratio is not available in public schools; (iv) the only 1:1 instructional ratio available in public schools is a paraprofessional; (v) IEP teams are not allowed to recommend after school services; and (vi) resources dictated the

> decisions about the language ability of the recommended paraprofessional and whether ABA was offered in Y.T.'s classroom. The IHO and SRO should have found that the City Defendants' application of blanket policies and practices violated the IDEA, Section 504 and New York State Education law and denied Y.T. a FAPE.

295. The SRO erroneously found that the Y.T. Plaintiffs' claims for AT were moot. The IHO and SRO should have found that the City Defendants' failure to conduct an AT evaluation and provide AT in a timely fashion was a violation of FAPE, as he was unable to communicate for several years.

296. Although the Y.T. Plaintiffs prevailed before the SRO, the SRO should have ruled upon the other grounds that contributed to the denial of FAPE and took the extent of the deprivation of FAPE into consideration when formulating a remedy.

297. While the SRO correctly ruled that the City Defendants' failure to provide PWN and Safeguards in English or Arabic constituted a denial of FAPE, the SRO failed to address the Parents' claims that the DOE's PWN and Safeguards were not compliant with the IDEA. The IHO and SRO should have ruled that the DOE's PWN and Safeguards did not comport with the IDEA.

298. The SRO and IHO should have ordered the relief recommended by the independent educational evaluators, as their testimony and reports were credible and unrebutted.

299. The SRO did not address any claims that the Plaintiffs asserted under Section 504, as the SRO ruled that he had no jurisdiction to do so.

300. The SRO found that Y.T.'s parents were not entitled to compensatory education for the DOE's four-year long failure to provide parent training and counseling. The SRO's ruling was wrong as a matter of law and the record, not well-reasoned, plainly erroneous and should be voided as a matter of policy.

301. The independent evaluators who assessed Y.T. testified that Y.T. should have received a full-day 1:1 program, as well as after school services during each year in question.

302. In a conclusory fashion, without ruling upon the central claims raised by Y.T., the SRO dropped a footnote that seemed, without analysis of the evidence or law, to rule against the Y.T. Plaintiffs' claims about the restrictions on IEP recommendations and Plaintiffs' needs.

303. The SRO ruled that his compensatory award "does not constitute an endorsement of the argument that with appropriate behavioral supports the student also requires 1:1 instruction or services provided at home or after school, to receive educational benefit."

304. The SRO failed to consider or rule upon the claims that the Y.T. Plaintiffs raised with respect to Autism Services and did not address the main issues raised in Y.T. IHD – *i.e.*, whether Y.T. requires ABA, 1:1 instruction, after school services on his IEP pursuant to the IDEA or Section 504.

305. Indeed, to the extent that the SRO ruled against the Y.T. Plaintiffs in relation to their position that 1:1 instruction should be provided to Y.T., he was incorrect as a matter of law and the record.

306. The SRO was incorrect to rule that the ABA, 1:1 teaching and after school instruction does not need to be placed on Y.T.'s IEP and was wrong to determine that a "teaching assistant" could deliver all of the compensatory 1:1 instruction. The SRO's failure to rule on these issues has left Y.T. back in the same place he was when his parents started the hearing in terms of an IEP-based recommendation. His family can never get off the litigation track or the ABA services will end.

307. Y.T. already has had a paraprofessional for seven years. Without a trained, qualified teacher and a BCBA to supervise, provide training, feedback, oversight, and coordinate the home and school program, the award would not be appropriately compensatory.

308. The SRO was incorrect to suggest (or to rule, to the extent that he did so) that provision of the services sought by the Y.T. Plaintiffs were a "maximization" of Y.T.'s educational opportunity.

309. The SRO was also incorrect to suggest that the LRE Mandate of the IDEA (or a provision in the state's regulations concerning home instruction) justifies a denial of services to Y.T.

310. The SRO was also wrong to rely upon decisions involving tuition reimbursement to analyze the claims raised by the Y.T. Plaintiffs, as the standard for compensatory education is different than the standard that courts apply in tuition reimbursement cases.

311. In the hearing and the Petition to the SRO, the Y.T. Plaintiffs had requested, *inter alia*, that the SRO order a bank of compensatory ABA hours (calculated at a rate of 35 hours per week) equal to at least a minimum of 4,600 hours. The Plaintiffs also requested more than 4,600 hours, as that number represented only compensatory instruction for the after school hours that the Y.T. Plaintiffs claimed Y.T. would have been entitled to during that period, and that proposed amount did not account for Defendants' failure to provide Y.T. with instruction on an in school basis during the school years in question.

312. Further, the Y.T. Plaintiffs had requested 644 hours of compensatory SLT, calculated by multiplying the five times per week of SLT recommended by two separate speech pathologists for four years, less any SLT that the DOE had provided.

313. Despite the admitted four years of FAPE deprivation, the SRO found that Y.T. should receive only ten hours per week of 1:1 ABA instruction for a period of one 12-month school year – *i.e.*, one year of compensatory services, despite the four years of deprivation. This amounts to 460 ABA hours. The SRO further ordered that, after the 1:1 instructional services have been provided, the DOE shall fund an independent evaluation of the student's progress and, in consultation with Y.T.'s parents, determine whether Y.T. requires additional 1:1 instruction to compensate for the district's failure to provide him with FAPE for the four years at issue.

314. Additionally, the SRO awarded Y.T. only one hour per week of SLT for each year he was denied a FAPE, for a total of 184 hours.

315. The SRO incorrectly denied Y.T. relief in the form of parent training and counseling as the evidence showed that he needs those services and they are required by law.

316. The SRO's ruling with regard to the relief provided was not well-reasoned, nor was it consistent with the law or principles of equity or supported by the record.

317. The SRO's ruling violated basic principles of due process, finality, equity and the IDEA insofar as it allows for the City Defendants to have control (or a role in deciding) whether Y.T. should receive additional compensatory ABA hours. Further, this ruling was particularly erroneous under the circumstances – *i.e.*, that the record showed that the City Defendants are not allowed to recommend after school services, 1:1 instruction or ABA on IEPs (a claim that the SRO failed to decide).

318. In determining the relief due for the prior School Years at Issue, the SRO considered, and weighed the fact that Y.T. received ABA services and parent training in the two years following the SRO appeal that were not before the SRO. The SRO was wrong as a matter

of law, due process and the record to consider the fact that Y.T. was receiving additional services while the appeal was pending.

319. Moreover, the SRO was also wrong to *sua sponte* raise a defense that the City Defendants did not raise by discounting the compensatory services that Y.T. should have received by reducing his compensatory award because he had received ABA services while Y.T. I was pending.

320. As the IHO's award of after school services was not designed to be compensatory, and this Court had already ruled that they were not compensatory, the SRO was wrong as a matter of law, fairness, equity, the record and principles of due process to take the post-filing services into account to reduce the compensatory award to Y.T.

321. The SRO was also wrong to consider the home-based services Y.T. was receiving without regard to whether those services were necessary for a FAPE in the 2012-2014 school years.

322. To the extent that the SRO could have considered the additional services that were ordered, the SRO was wrong not to have also considered the fact that, at the time of the decision, Y.T. had been in a program that had denied him a FAPE for four years.

323. The SRO's decision to award Y.T. 460 ABA hours for one year for a four year FAPE denial was wholly arbitrary, inconsistent with, and unsupported by the record.

324. Further, by raising this defense to the compensatory education on appeal, the Y.T. Plaintiffs had no ability to rebut the SRO's conclusion that Y.T. needed no more than 460 hours for the four-year FAPE denial.

325. The SRO should have explicitly ruled that the compensatory services could be pushed into Y.T.'s school-day program.

326. The SRO should not have considered non-compensatory ABA services provided in future school years not at issue before the IHO in relation to whether Y.T. was entitled to compensatory education for the failure to provide FAPE during the School Years at issue.

327. The SRO's decision was also inconsistent with the decision of this Court, which had already ruled that the order of the IHO for Y.T.'s after school services was not designed to be compensatory.

328. The SRO failed to solicit evidence or information concerning Y.T.'s functioning after the hearing; thus, his reliance upon Y.T.'s receipt of additional services while the appeal was pending was purely speculative.

329. The SRO also arbitrarily and erroneously considered Y.T.'s receipt of after school ABA in reducing the SLT services requested by the Y.T. Plaintiffs. Again, his decision to consider the ABA services in reducing the SLT award was speculative, arbitrary and unsupported by the law.

330. The SRO should not have considered retrospective, speculative information which the Y.T. Plaintiffs had no ability to contest or rebut to reduce their requested compensatory award.

331. The SRO failed to order that the 20 hour-per-week after school program be incorporated into Y.T.'s IEP.

332. Plaintiffs requested that the Defendants allow the Y.T. Plaintiffs to incorporate the compensatory services ordered by the SRO into Y.T.'s school program and to engage in an IEP review that includes goals across home, school and community, while taking into account these additional services.

333. However, Defendants have not confirmed that they will agree to implement the services in that fashion.

334. Further, the SRO's decision should not be afforded deference in terms of the relief awarded in that the SRO has a conflict of interest because he is in employee of the State Defendants.

335. The SRO's decision should not be afforded deference in terms of the relief awarded because the SRO is not an expert in the education for autistic children and to the extent that he did not accept the evidence in the record, he had no evidence upon which to base his conclusions.

336. The SRO uses NYSED "educational associates" to review records on appeal, analyze educational issues raised in the appeal and offer their opinions to the SRO with respect to educational issues. To the extent that the SRO relied upon the opinion of any employee or consultant with respect to educational issues in issuing the SRO decision, this process violates their due process rights under the IDEA. These individuals are not providing testimony under oath, there is no record of their involvement. Further, the Y.T. Plaintiffs had no opportunity to review any documents produced by these individuals and were not afforded the opportunity to cross-examine them.

The 2012-2015 School Years and Beyond

337. During the 2012-2014 School Years, the City Defendants maintained Y.T. in the same 6:1:1 program with a paraprofessional.

338. However, Y.T. continued to receive additional after school ABA services, as ordered by the IHO and this Court.

339. During those years, City Defendants continued to refuse to modify Y.T.'s IEP to offer any 1:1 instruction, ABA or after school instruction Autism Services.

340. The only program available to the IEP teams that have met to discuss his educational services were the 6:1:1 classroom with the paraprofessional; those teams were not

allowed to recommend 1:1 instruction for all or part of the day or extended day services of ABA on Y.T.'s IEP.

341. The Y.T. Plaintiffs filed another DPC on July 3, 2013 alleging, *inter alia*, the failure to provide a FAPE for Y.T. for the 2012-2013 and the 2013-2014 school years ("Y.T. II").

342. In September 2013, Y.T. transitioned to Riverview, a new District 75 school, as he had "aged out" of his prior school program.

343. A comparison of Defendants' documents and information from Y.T.'s teachers at P.S. 255 and Riverview obtained through Y.T. II indicate only one of two possibilities: (a) Y.T. dramatically regressed since he left P.S. 255; or (b) the evidence offered in support of Defendants' position in Y.T. I was not accurate or credible.

344. The evidence elicited via Y.T. II indicates the latter, and demonstrates that the evidence given by the DOE in Y.T. I was not fully accurate. Based on the testimony of three of Y.T.'s teachers in Y.T. II, Y.T. (and the rest of the students) received minimal attention from a certified teacher in a 6:1:1 model.

345. Indeed, Defendants' District 75 schools are constrained and offer a curriculum that is aligned to the Common Core curriculum even if the curriculum is not appropriate for a particular student, like Y.T.

346. In 2014, while Y.T. II was pending, the City Defendants held a series of IEP meetings at Riverview. Once again, the IEP team refused to change Y.T.'s program or offer ABA, 1:1 instruction or Autism Services, even though Y.T. was supposed to be receiving those services via pendency.

347. Another hearing was filed for the 2014-2015 School Year and that proceeding was consolidated before the IHO in Y.T. II, which has continued during the 2014-2015 school year.

348. There are currently IEP meetings underway for Y.T.'s IEP for the 2015-2016 School Year; however, Defendants will not place Autism Services on Y.T.'s IEP for the 2015-2016 School Year.

349. Regardless of the number of IEP meetings they attend, the Y.T. Plaintiffs will never be able to participate in a legitimate IEP process, where the team is not constrained by the services that are available. This is especially problematic because Y.T. requires 1:1 instruction, ABA and extended school day services, as well as oversight by a BCBA, AT, and intensive SLT services to receive a FAPE, and have the opportunity to obtain equal benefit from Y.T.'s state-mandated right to education.

350. The IHO also issued an order directing Defendants to provide translation and interpretation services. Defendants appealed that order and the SRO dismissed the appeal. Defendants have partially complied with the Interim Order.

351. If Y.T.'s 1:1 ABA Services are terminated, Y.T. will suffer irreparable harm.

FACTS CONCERNING A.D. AND D.D.

352. D.D. is classified as autistic and attends an NPS Program in Staten Island.

353. D.D. is currently supposed to be receiving home-based 1:1 ABA services, parent training, counseling, and OT on an after school basis through a hearing order.

354. D.D. is a student who is high functioning in some areas but has severe communication, social, behavioral, and academic delays.

355. A.D., D.D.'s parent, originally won most of these services for D.D. when he was turning five years old and was transitioning from a preschool NPS program. At that time, the City Defendants recommended that D.D. transition from the NPS program where he received ABA to a 6:1:1 program in District 75.

356. A.D. filed a DPC for the 2010-2011 school year, and on September 25, 2011, she received a decision (the "D.D. I IHD") directing the City Defendants to provide: continued placement in an NPS Program, one and a half (1.5) hours per week after school OT, five (5) hours per day of after school 1:1 home-based ABA services, seven (7) hours per week of direct parent training by a BCBA, and a private FBA. D.D. should have received 1,000 hours of home-based ABA services and 280 hours of parent training as a result of the D.D. I IHD, but City Defendants failed to implement all of the services that were ordered.

357. When the City Defendants' IEP team met in 2012 to prepare D.D.'s IEP for the 2012-2013 school year, they refused to include D.D.'s after school services. Consequently, A.D. had to – again – file another DPC in June 2012 ("D.D. II") for the 2012-2013 school year.

358. In the spring of 2013, while D.D. II was pending, City Defendants' IEP team met for the 2013-2014 school year and again refused to include D.D.'s after school services in an IEP for the 2013-2014 school year and the OT was removed due to the NPS Policy.

359. In D.D. II, however, the City Defendants agreed to keep D.D.'s Autism Services in place. The IHO issued her decision on behalf of D.D. on June 21, 2013, which, *inter alia*, directed D.D.'s entire program to remain in place for the remainder of the year (the "D.D. II IHD").

360. After D.D. II IHD was issued, City Defendants amended D.D.'s IEP for the 2012-2013 school year on June 28, 2013 (for one day) and then applied their blanket policy of terminating the after school services for the 2013-2014 school year.

361. As a result, on July 8, 2013, A.D. filed yet another DPC for the 2013-2014 school year ("D.D. III"). The IHO in D.D. III refused to issue a pendency order, and D.D. did not receive his stay-put services. As neither A.D., nor City Defendants, had contracts with D.D.'s pendency providers, A.D. needed an order to secure payment so the services would continue.

362. As D.D. was at risk of irreparable harm, A.D. moved for injunctive relief before this Court.

363. The Court issued an order directing pendency for D.D.'s services to remain in place during the due process proceedings.

364. In D.D. III, the City Defendants did not introduce any evidence and the IHO issued a decision ("D.D. III IHD") awarding relief for A.D. and D.D. for the 2013-2014 school year.

365. As of the Third Amended Complaint, A.D. had not yet had D.D.'s IEP meeting for the 2014-2015 school year.

366. However, by the time of the filing of the instant Complaint, D.D. had the IEP review for the 2014-2015 year, filed another hearing and received a decision in her favor. Although A.D. has not yet had D.D.'s IEP meeting for the 2015-2016 school year, given the systemic policies and practices of the Defendants, the IEP for the 2015-2016 school year will not include D.D.'s after school services.

367. D.D. attends the only NPS Program for autistic children on Staten Island.

368. D.D. has been making progress with the Autism Services and additional NPS Services and there is no individualized reason to remove those services.

369. D.D. requires Autism Services and Additional NPS Services to receive a FAPE, and to have the opportunity to gain equal benefit from educational services compared to his typically developing peers and to facilitate skills he will need for transition.

FACTS CONCERNING M.W. AND E.H.

370. E.H. is classified as autistic.

371. E.H. has several delays in the areas of expressive and receptive language, socialization, academics, ADL, and behavior. However, he also displays areas of strength in his academic skills, cognition, and awareness of others.

372. On February 23, 2011, while E.H. was a preschool student, the DOE held an IEP review that recommended placement in an NPS Program for children with speech and language delays with on-site related services of OT, PT, and SLT. The February 2011 IEP also offered three (3) hours per week of after school SLT, eight (8) hours per week of after school 1:1 special education teacher support, and a twelve-month school year. The 1:1 teacher used ABA with E.H.

373. On June 13, 2011, pursuant to a DPC filed by M.W. ("E.H. I"), the IHO issued a decision in a hearing concerning the 2009-2011 school years ("E.H. I IHD"). The IHO ruled, *inter alia*, that E.H. should have received ten (10) hours per week of 1:1 after school services. Defendants did not appeal this order.

374. E.H. transitioned to the school-age special education system during the 2011-2012 school year. At that time, City Defendants prepared an IEP that recommended moving E.H. from the NPS Program with after school services to a 6:1:1 program without any Autism Services or after school OT. City Defendants told M.W. that they do not offer after school special education teacher services or related services.

375. M.W. filed a DPC for the 2011-2012 school year ("E.H. II"), which was settled via a stipulation that did not affect pendency. City Defendants held another IEP meeting in 2012, during which time M.W. was told that E.H.'s after school services would be terminated in the 2012-2013 school year. M.W. filed another hearing for the 2012-2013 school year ("E.H. III"), and as part of that hearing it was agreed that pendency included placement at the NPS Program with related services, ten (10) hours per week of 1:1 special education teacher services, three (3) hours per week of SLT after school, special education transportation with air conditioning, and a twelve-month school year. E.H. III was settled by stipulation.

376. The City Defendants held a new IEP meeting in 2013 for the 2013-2014 school year. At the meeting, the City Defendants' representative stated that both the after school SLT and 1:1 teacher services would be terminated. The representative also told the NPS program that if they supported E.H.'s need for those services, he would have to find that the NPS was not appropriate for E.H. M.W. alleged that the Defendants never proposed a timely IEP for E.H. before the start of the school year, and M.W. had to file yet another DPC on July 8, 2013 ("E.H. IV") to keep E.H.'s services and pendency in place for the 2013-2014 school year. The IHO in E.H. IV refused to issue a pendency order to secure E.H.'s stay-put services, and M.W. filed this action in Federal Court, as the School for Language and Communication Development, the ABA agency, and the speech provider required an enforceable order to continue services.

377. M.W. sought a preliminary injunction before this Court directing funding for E.H.'s pendency services.

378. The Court ordered the City Defendants to prospectively fund E.H.'s stay-put services, and E.H.'s hearing is still pending; however the IHO in E.H.'s case has stated that he cannot order the City Defendants to change their policies.

379. E.H. attends the only NPS Program that specializes in educating children with communication disorders.

380. E.H. has been making progress with the Autism Services and Additional NPS Services so there is no individualized reason to remove those services.

381. E.H. requires Autism Services and Additional NPS Services to receive a FAPE, as a reasonable accommodation, to have the opportunity to gain equal benefit from educational services compared to his typically developing peers and to facilitate skills he will need for transition.

FACTS CONCERNING ADDITIONAL PLAINTIFFS

382. The K.S., Y.A., E.H. 2, and S.B. Plaintiffs have all had to participate in several due process hearings in an effort to obtain and retain their Autism Services.

383. K.S., Y.A., E.H. 2, and S.B. all need Autism Services to receive a FAPE and as a reasonable accommodation pursuant to Section 504.

384. K.S. and Y.A. have also been subject to the blanket policies, procedures and directives concerning NPS Programs.

385. K.S. has a dual diagnosis; he is deaf and autistic. K.S.'s parents' native language is also Arabic. K.S. attends one of two NPS Programs in Queens for children with autism. Through an order of an IHO, he is supposed to receive after-school Autism Services, as well as additional SLT, OT, and hearing education services that the NPS Program does not provide. K.S. has been subject to blanket policies with respect to the delivery of Autism Services and the NPS Programs for a number of years. His parents have been forced to file multiple hearings to maintain his program and services. As a result, K.S. has had his stay-put and due process rights violated. In fact, two IHOs have already found that the City Defendants' policies against Autism Services are illegal. Yet, City Defendants simply ignore these rulings as of the start of each new school year.

386. Yet, K.S.'s parents have a hearing pending concerning the 2013-2014 school year. Defendants have been unable to implement his pendency. His parents have just filed a hearing concerning the 2014-2015 school year, which was consolidated with the pending proceeding.

387. Although K.S.'s IEP meeting for the 2015-2016 school year has not been held, given the systemic policies and practices of the Defendants, the IEP for the 2015-2016 school year will not include any ABA, 1:1 instruction, or extended day or after-school services. Thus, his parents will have to commence yet another hearing.

388. E.H. 2 is autistic and E.H. 1 has been advocating for her right to be in the LRE with Autism Services since E.H. 2 transitioned from the preschool setting with 1:1 special education teacher services several years ago. E.H. 1 has filed and won, or settled, more than five hearings. She is receiving 1:1 ABA services in a regular public school, related services, and home-based ABA after school.

389. At every annual IEP meeting, City Defendants are continually fighting to strip E.H. 2 of her 1:1 ABA and after-school services. As a result, she has had to litigate every year and risks losing her services. Further, because the Defendants do not offer the services, she has been unable to obtain a comprehensive, coordinated program and for several years was stuck in a regular public school with staff that was untrained concerning autism and the LRE. The City Defendants' went so far as to try to circumvent the pending due process hearings by filing unwarranted complaints against her 1:1 teachers to try to remove E.H. 2's pendency services. The E.H. 2 Plaintiffs have a hearing pending concerning the 2013-2014 school year.

390. Y.A. is autistic. He attends an NPS Program and is supposed to receive after school 1:1 ABA and SLT services. Y.A. has been subject to blanket policies with respect to the delivery of Autism Services (namely after school 1:1 ABA and SLT services) and the NPS Programs for several years. Y.A. and his parents have been forced into multiple due process hearings to retain Y.A.'s Autism Services and was subject to the NPS Policy. Further, Y.A.'s stay-put rights have been violated. An IHO has already found that the City Defendants' policies against Autism Services are illegal. Yet, City Defendants have ignored these rulings at the start of each new year.

391. As of the Third Amended Complaint, the Y.A. Plaintiffs had a hearing pending concerning the 2013-2014 school year. They won that hearing. The City Defendants terminated his related services and Autism Services for the 2014-2015 school year, causing the Y.A. Plaintiffs

to file another hearing, which they also won. However, the City Defendants have already advised Y.A.'s mother that the IEP for the 2015-2016 school year will not include the related services and Autism Services for the upcoming school year. Thus, the Y.A. Plaintiffs will have to commence another hearing.

392. S.B. is autistic. As a preschool student, he attended an NPS Program and received a small amount of after school 1:1 teacher services.

393. During those years, the preschool teams were allowed to recommend a dual program; now, those recommendations are no longer permissible.

394. A.G. filed a hearing and won an increase in 1:1 ABA hours and an order for the City Defendants to move S.B. from his NPS Program and place him in a full-time ABA program. As the City Defendants do not have a full-time ABA program, they funded S.B. prospectively in a non-approved program. However, for the 2013-2014 school year, the City Defendants terminated all of the Autism Services and recommended a 6:1:1 classroom in District 75. A.G., S.B.'s parent, filed another hearing, and then consolidated that hearing with a new hearing concerning the 2014-2015 school year. That hearing is still pending.

395. A.G. also has a second child with autism, K.B. Until the 2014-2015 school year, K.B. previously attended a 6:1:1 program in District 75. While K.B. had attended the 6:1:1 program, A.G. had requested, and was denied, Autism Services. A.G. filed for a hearing, which was delayed due to recusals. Eventually, that hearing proceeded and the City Defendants admitted that K.B. was not making progress in his program, and K.B. was awarded compensatory education. A subsequent hearing was filed concerning the 2014-2015 school year and the IHO ordered an interim change from the 6:1:1 classroom to a non-approved private school that offers a 1:1 ABA

program as well as after-school Autism Services.. However, the City Defendants will not continue that program in an IEP for the 2015-2016 school year, as they do not offer those services.

396. Each Plaintiff parent has been told by the City Defendants that the City Defendants do not offer Autism Services and/or after-school services on an IEP and that such services can only be obtained through litigation, and not at an IEP meeting.

397. Several Plaintiffs have been subject to the NPS Policy.

398. All Plaintiffs have filed DPCs.

399. All additional named Plaintiffs require Autism Services to receive a FAPE, as a reasonable accommodation, to have the opportunity to gain equal benefit from educational services compared to their typically developing peers and to facilitate skills they will need for transition.

400. In addition, K.S. and Y.A. require additional NPS Services to receive a FAPE, as a reasonable accommodation, to have the opportunity to gain equal benefit from educational services compared to their typically developing peers and to facilitate skills they will need for transition.

NPS CLASS ACTION ALLEGATIONS

401. The NPS Class members' claims for relief with respect to Defendants' systemic practices, policies, procedures, actions, and failures to act are brought on behalf of themselves, and on behalf of all those similarly situated pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

402. Defendants have acted, or refused to act, on grounds generally applicable to the named NPS Class Plaintiffs and Class members, making relief appropriate, and able to be granted, to the NPS Class as a whole.

403. The proposed NPS Class is defined as: (i) children with disabilities under the meaning of the IDEA who (a) reside in New York City; (b) have IEPs; (c) were recommended for

or attended an NPS Program; (d) have been subject to the NPS Directives; and (ii) those children who will, in the future, meet the criteria of (i).

404. In addition, the proposed NPS class includes the following subclasses: NPS Subclass I (Due Process NPS Subclass) are all members of the NPS Class who are, or were, receiving Additional NPS Services as of July 2012 and who invoked their due process rights and obtained stay-put rights under 20 U.S.C. §1415(j); and NPS Subclass II (Lost Services NPS Subclass) are all members of the NPS Class whose Additional NPS Services were removed from their IEPs.

405. The NPS Class is so numerous that joinder of all members is impracticable.

406. Upon information and belief, there are thousands of Class members. The State Defendants have reported that as of October 2012 there were 13,586 (or approximately 8%) of children with IEPs being educated in "separate settings" outside of public school buildings.

407. The exact number of Class and Subclass members is unknown but could be easily identified as the City Defendants maintain computerized data systems that have the information available.

408. Not all parents of children with IEPs have access to lawyers. Further, requiring thousands of NPS Class members to litigate their rights would be futile, as individuals cannot litigate a systemic solution necessary in this case. Further, doing so would impose a significant economic burden on the educational and judicial systems.

409. There are questions of law and fact in common among named Plaintiffs, D.D., E.H., K.S., Y.A., their parents, and the members of the NPS Class and Subclasses, including, but not limited to, whether:

a. The State Defendants adopted and implemented policies, directives, and practices with respect to whether Class and Subclass members could receive

services funded or provided by the City Defendants while they attend NPS Programs that are not offered by or available at those programs;

b. Defendants violated the IDEA by adopting and requiring implementation of the NPS Policy;

c. Defendants violated Section 504 by adopting and implementing policies and practices with respect to the NPS Class members that treat them differently based upon the severity of their disability, compared to students who are able to attend public schools;

d. Defendants violated NPS Class members' rights by engaging in predetermination with respect to IEP meetings held concerning NPS Class members;

e. Defendants violated NPS Class members' rights by depriving them of the right to a FAPE; and

f. Defendants violated NPS Class members' rights by depriving them of the right to special education due to the imposition of the NPS Policy.

410. There are questions of law and fact in common among all Plaintiffs and the members of the NPS Subclass 3, including whether the State Defendants' NPS Policy will nevertheless prevent them from receiving a FAPE and reasonable accommodations based upon their individualized needs and the other requirements of the federal disability laws.

411. Plaintiffs' claims are typical of those of the Class that they seek to represent.

412. Plaintiffs have the same interests as the other Class members in prosecuting claims against the Defendants.

413. A class action is superior to other available methods for the fair and efficient adjudication of the matter at this time. Class actions involving similar types of claims and relief are often certified.

414. The expense and burden of individual litigation make it extraordinarily difficult for Class members to redress the wrongs done to them individually.

415. Common issues predominate over individual questions and generalized proof will resolve the legal and factual questions raised by Class members.

416. The named Plaintiffs will adequately represent and protect the interests of the Class, and Plaintiffs know of no conflict of interest among the Class members.

AUTISM SERVICES CLASS ACTION ALLEGATIONS

417. The Autism Services Class Plaintiffs' claims for relief with respect to Defendants' systemic practices, policies, procedures, actions, and failures to act are brought on their own behalf, and on behalf of all those similarly situated, pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

418. Defendants have acted, or refused to act, on grounds generally applicable to the named Autism Services Class Plaintiffs, Class and Subclass members, making relief appropriate to the Autism Services Class and Subclasses.

419. The proposed Autism Services Class consists of: (i) children diagnosed with ASD under the DSM-V, or classified as autistic by the City Defendants under the IDEA, who (a) reside in New York City; (b) have IEPs; (c) are, or will be, subject to the Defendants' Autism Services Policies and Practices; (d) have been subject to the Defendants' Autism Services Policies and Practices; and (ii) those children who will, in the future, meet the criteria of (i).

420. Autism Services Subclass 1 consists of members of the Autism Services Class who have won IHO or SRO decisions, court orders, or entered into resolution agreements for Autism Services and who have been or will be subject to the Autism Services Policies and Practices.

421. The Autism Services Class does not include children with autism whose parents have: (a) unilaterally placed them in non-approved programs by contracting with schools, programs or providers; and (b) are seeking reimbursement for out-of-pocket expenditures.

422. The Autism Services Class is so numerous that joinder of all members is impracticable.

423. As alleged above, there are at least 12,000 children between the ages of 4 and 21 classified with autism in New York City.

424. They are all subject to the blanket policies and practices.

425. Defendants have the ability to calculate the exact number of Class and Subclass members via their computerized tracking system.

426. Requiring thousands of Autism Services Class members to litigate their claims would be futile, as individuals cannot litigate a systemic solution in this case and would impose a significant economic burden on the educational and judicial systems.

427. Further, as alleged herein, parents of children with autism have to request a hearing every year in order to maintain their children's services, even if the parent has already won a due process hearing or court case.

428. There are questions of law and fact in common among named Plaintiffs and the members of the Autism Services Class, including, but not limited to, whether:

a. Defendants adopted and implemented illegal regulations, blanket policies, directives, and practices with respect to Autism Services;

b. The State Defendants failed to supervise City Defendants with respect to Autism Services;

c. Defendants failed to ensure research-based methods are used to instruct Autism Services Class members;

d. Defendants have adopted and implemented improper blanket policies, directives, practices, procedures, and protocols concerning the delivery of services to the Autism Services Class members;

e. The State and the City Defendants discriminated against Autism Services Class members based upon their disabilities;

f. The State and the City Defendants violated Class members' rights by engaging in predetermination with respect to IEP meetings held concerning Autism Services Class members; and

g. The State and the City Defendants violated Autism Services Class members' rights by depriving them of the right to education.

429. Plaintiffs' claims are typical of those of the Class that they seek to represent.

430. Plaintiffs have the same interests as the other Class members in prosecuting claims against the Defendants.

431. A class action is superior to other available methods for the fair and efficient adjudication of the matter at this time. Class actions involving similar types of claims and relief are often certified.

432. The expense and burden of individual litigation make it extraordinarily difficult for Class members to redress the wrongs done to them individually.

433. Common issues predominate over individual questions and generalized proof will resolve the legal and factual questions raised by Class members.

434. The named Plaintiffs will adequately represent and protect the interests of the Class. Plaintiffs know of no conflict of interest among the Class members.

DUE PROCESS CLASS ACTION ALLEGATIONS

435. All Plaintiffs are class representatives of the Due Process Class.

436. The Due Process Class Plaintiffs' claims for relief with respect to Defendants' systemic practices, policies, procedures, actions, and failures to act are brought on their own behalf and on behalf of all of those similarly situated pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

437. Defendants have acted or refused to act on grounds generally applicable to the named Due Process Class Plaintiffs and Class members, making relief appropriate to the Due Process Class as a whole.

438. The proposed Due Process Class consists of: (i) parents of children who (a) reside in New York City; (b) have IEPs; (c) who were denied a due process hearing that complies with the IDEA and New York State Education Law; and (ii) those parents who will, in the future, meet the criteria of (i).

439. Due Process Subclass 1 consists of Due Process Class members who are entitled to stay-put services pursuant to 20 U.S.C. §1415(j) as of the date their due process hearing is filed.

440. The Due Process Class is so numerous that joinder of all members is impracticable.

441. Neither Defendant publishes statistics on the number of due process hearings in New York City.

442. In the 2010-2011 and 2011-2012 school years, statistics on State Defendants' website show that there were slightly less than 6,200 hearings filed state-wide: 6,147 hearings in the 2010-2011 school year and 6,116 filed in the 2011-2012 school year.

443. Upon information and belief, a large number of the hearings filed are in New York City, and the number of hearings filed has been growing since June 2012.

444. Defendants have the ability to calculate the exact number of hearings filed in New York City via their computerized tracking systems.

445. Requiring thousands of Due Process Class members to litigate their claims would be futile, as individuals cannot litigate a systemic solution in this case and would impose a significant economic burden on the educational and judicial systems. In order to address these problems, class certification and systemic relief are needed.

446. There are questions of law and fact in common among all Plaintiffs and the Due Process Class members, including, but not limited to, whether:

a. Defendants adopted or failed to adopt regulations, policies, procedures, and protocols concerning the administration of due process that comply with the IDEA; and

b. Defendants have failed to ensure access to legally sufficient due process.

447. There are questions of law and fact in common between Plaintiffs who have stay-put rights based upon a prior order, agreement, or IEP with respect to Special Education Services that have been terminated due to a blanket policy as of the end of each school year, and the Due Process Subclass 1, including, but not limited to, whether Defendants have failed to adopt policies, procedures, and protocols that protect stay-put rights and have failed to ensure that students receive the services to which they are entitled via pendency.

448. Plaintiffs' claims are typical of those of the Class that they seek to represent.

449. Plaintiffs have the same interests as the other Class members in prosecuting claims against the Defendants.

450. A class action is superior to other available methods for the fair and efficient adjudication of the matter at this time. Class actions involving similar types of claims and relief are often certified.

451. The expense and burden of individual litigation make it extraordinarily difficult for Class members to redress the wrongs done to them individually.

452. Common issues predominate over individual questions and generalized proof will resolve the legal and factual questions raised by class members.

453. The named Plaintiffs will adequately represent and protect the interests of the Due Process Class, and Plaintiffs know of no conflict of interest among the Due Process Class members.

Class Counsel Is Qualified to Represent the Classes

454. Class Counsel is experienced in litigating federal class actions on behalf of children with special needs, and their parents, in New York.

455. Class Counsel is qualified to request the Classes and Subclasses and has served as counsel on several systemic and class action cases in New York.

Plaintiffs Should Not Be Required to Further Exhaust Their Administrative Remedies, as the Administrative Process Will Be Futile and Ineffective

456. Plaintiffs are not required to exhaust their administrative remedies for several reasons.

457. The situation with respect to the termination of Y.T.'s services presented an emergency at the time of filing and continues to present risk of irreparable harm.

458. To the extent that Plaintiffs seek to enforce pendency and pendency issues of an emergency nature, they do not have to be exhausted.

459. Class and Subclass members who face irreparable harm do not need to further exhaust their administrative remedies.

460. The current due process system is fraught with delays. Plaintiffs are not required to exhaust their administrative remedies, as the hearing process is too ponderous to meaningfully address their needs.

461. Several lawsuits have been filed against the State Defendants and the SRO concerning the delays in the administrative process since this action was filed.

462. Plaintiffs' claims that are systemic in nature and allege violations in policies, procedures, and practices as well as to the administrative system as a whole do not need to be exhausted.

463. Exhaustion is excused to the extent any Plaintiff has already attempted to exhaust claims at the IHO level.

464. Plaintiffs are not required to exhaust administrative remedies, because they need discovery that is not available through administrative hearings and can only be obtained through the federal court procedures.

465. Exhaustion is not required because the due process procedures are not available to exhaust all claims that are raised.

466. Plaintiffs challenge the due process procedures themselves, and, therefore, exhaustion is futile.

467. No Plaintiff is required to exhaust their systemic claims, as the Court has already ruled that such claims do not need to be further exhausted.

468. The Y.T. Plaintiffs need not further exhaust any of their claims, for all of the reasons alleged herein and also because the Court has already ruled that claims raised in the DPC concerning the 2008-2012 school years do not need to be further exhausted due to delays at the IHO level.

FIRST CAUSE OF ACTION: SECTION 504 OF THE REHABILITATION ACT

469. Plaintiffs repeat and reallege the allegations of all the above paragraphs as if fully set forth herein.

470. Defendants' conduct is knowing, intentional, reckless, and gross.

471. The State Defendants have discriminated and continue to discriminate against Plaintiffs and NPS Class members based on their disabilities by promulgating and implementing the NPS Policy.

472. The State Defendants have discriminated and continue to discriminate against Plaintiffs and NPS Class members based on their disabilities by restricting admission to NPS Programs based upon disability classification.

473. Defendants have discriminated and are discriminating against Plaintiffs and NPS Class members based on their disabilities by insisting on a one-size-fits-all approach to education for a child attending an NPS Program.

474. Defendants have discriminated and are discriminating against Plaintiffs and NPS Class members by restricting admission to, and continued attendance in, NPS Programs based upon whether or not children require additional services or reasonable accommodations not available at the particular NPS Program.

475. Defendants have discriminated, and are discriminating, against Plaintiffs and NPS Class members based on their disabilities by imposing policies and procedures that have a disparate impact on children with the most significant disabilities who require placement in NPS Programs.

476. If not for the severity of their disabilities, the NPS Program Plaintiffs could attend less restrictive schools, where they would be eligible to receive additional services. The disabilities of the class members, coupled with the City Defendants' failure to have appropriate programs, gave the NPS Class members no choice but to leave the public schools and seek approval to enroll in the NPS Programs, and, thus, their disabilities are a substantial cause of their inability to be eligible for the full range of services the City Defendants offer. The State

Defendants' restrictions imposed on Plaintiffs and NPS Program Class members Plaintiffs have deprived them of their rights under Section 504.

477. Defendants discriminated and are discriminating against Plaintiffs and NPS Class members based on their disabilities pursuant to Section 504 of the Rehabilitation Act by adopting, implementing, and subjecting them to blanket policies and practices with respect to the development of their IEPs, programs, and placement without regard to their individual needs.

478. The City Defendants discriminated and are discriminating against Plaintiffs and Autism Services Class members based on their disabilities pursuant to Section 504 of the Rehabilitation Act by adopting, implementing, and subjecting them to blanket policies and practices, prohibiting the recommendation of services on the IEPs of Class members without regard to their individual needs.

479. The City Defendants discriminated and are discriminating against Plaintiffs based on their disabilities pursuant to Section 504 of the Rehabilitation Act by failing to provide reasonable accommodations to Plaintiffs and Autism Services Class members.

480. Children without disabilities do not need services to help them generalize their skills between different individuals and settings. Autism Services Class members require Autism Services to have the opportunity to gain equal access to and benefit from education in New York State.

481. By denying them access to Autism Services, the City Defendants have discriminated, and are discriminating, against Plaintiffs and the Autism Class, based on their disabilities pursuant to Section 504.

SECOND CAUSE OF ACTION: THE IDEA

482. Plaintiffs repeat and reallege the allegations of all the above paragraphs as if fully set forth herein.

483. The State Defendants have violated the IDEA by adopting and promulgating policies and directives that force the City Defendants and schools to apply institutionalized predetermination to the IEPs and placements of Plaintiffs, NPS Class members, and Autism Services Class members.

484. Defendants have denied Plaintiffs, NPS Class members and Autism Services Class members a FAPE and substantially excluded parents of autistic children from the special education process.

485. Defendants have violated the IDEA by adopting, applying, and directing the application of blanket policies, practices, and procedures to the IEPs and placements of NPS Class members and Autism Services Class members.

486. Defendants have violated the rights of Plaintiffs, NPS Class members, and Autism Services Class members under the IDEA by adopting policies, procedures, and practices that are based upon administrative and financial concerns rather than the individual needs of children.

487. The City Defendants have violated the IDEA by applying institutionalized predetermination to the IEPs and programs of Autism Services Class members.

488. Defendants have violated the procedural due process rights of Plaintiffs, NPS Class members, Autism Services Class members, and Due Process Class members under the IDEA.

489. Defendants have violated the stay-put rights of Due Process Class Subclass 1 members.

490. Defendants have violated the IDEA by failing to adopt legally sufficient policies, procedures, and practices to ensure that the administrative due process system is functioning in accordance with the IDEA and minimum standards of Due Process.

491. The City Defendants have violated the rights of Plaintiffs and Due Process Class members who are entitled to a due process system that complies with the IDEA.

492. The State Defendants have violated Plaintiffs' procedural and due process rights under the IDEA.

493. The State Defendants have failed to supervise, oversee, and guarantee due process rights and FAPE to Plaintiffs, Autism Services Class members, NPS Policy Class members and Due Process Class members.

THIRD CAUSE OF ACTION: 42 U.S.C. §1983

494. Plaintiffs repeat and reallege the allegations of all the above paragraphs as if fully set forth herein.

495. By facts alleged herein concerning Defendants actions, Defendants have violated 42 U.S.C. §1983 by depriving all Plaintiffs and Class members, under color of state law, of their rights, privileges, and immunities under federal statutory and constitutional law.

496. By implementing, promulgating, and continuing to enforce and/or effectuate a policy, practice, and customs as alleged herein, Defendants have denied Plaintiffs, NPS Policy Class members and Autism Services Class members of educational services to which they are entitled under the IDEA and New York law, in violation of 42 U.S.C. §1983.

497. By implementing, promulgating, and continuing to enforce and/or effectuate a policy, practice, and custom of terminating the last agreed upon placement created by an unappealed order as of June 30th of every year, Defendants have deprived and will continue to deprive those Plaintiffs and members of the Plaintiff Subclasses of educational services to which they are entitled under the IDEA and New York State law, in violation of 42 U.S.C. §1983.

498. By failing to adopt adequate policies and procedures to prevent Plaintiffs and Autism Services Class members from being illegally denied Autism Services to which they are entitled under the IDEA and New York State law, Defendants have violated 42 U.S.C. §1983.

499. By failing to supervise and train their employees and agents concerning due process and the laws and policies that protect the Plaintiffs, NPS Policy Class members, the Due Process Class members, and the Autism Services Class members from denial of educational services under the IDEA and New York State Education Laws, Defendants have violated 42 U.S.C. §1983.

500. The City Defendants violated the rights of Plaintiffs and all Class members under 42 U.S.C. §1983 by failing to have adequate policies, procedures, protocols, and training to ensure that the long-standing provisions of the IDEA and Section 504 asserted herein were being implemented, which caused Plaintiffs to be deprived of the right to education afforded them under state and federal law as a result.

501. Under color of state law, the City Defendants deprived Plaintiffs, and members of the Classes, their right to educational services without due process of law in violation of the Fourteenth Amendment of the U.S. Constitution.

502. As a direct and proximate result of the misconduct, each and every Plaintiff and members of the Classes suffered and continue to suffer harm, which will continue unless Defendants are enjoined from their unlawful conduct.

FOURTH CAUSE OF ACTION: NEW YORK EDUCATION LAW

503. Plaintiffs repeat and reallege the allegations of all the above paragraphs as if fully set forth herein.

504. Defendants have violated the rights of the Plaintiffs and all Class members under the New York State Education Law §§3202, 3203, 4401, 4404 and 4410 and §200 of the Regulations of the New York State Commissioner of Education, 8 N.Y.C.R.R. §200.

CAUSES OF ACTION SPECIFIC TO THE Y.T. PLAINTIFFS

505. The Y.T. Plaintiffs repeat and reallege the allegations of all the above paragraphs as if fully set forth herein.

506. The City Defendants denied Y.T. a FAPE for the 2008-2012 School Years for additional reasons beyond those identified by the SRO.

507. Y.T. is entitled to additional compensatory education for the denial of a FAPE during the 2008-2012 school years.

508. The SRO violated the Y.T. Plaintiffs' due process rights under the IDEA by allowing City Defendants to control the remedy in the Y.T. I hearing.

509. For the 2008-2012 school years, Defendants violated Y.T. Plaintiffs' procedural and due process rights under the IDEA by failing to provide PWN that conforms to the IDEA in either English or Arabic.

510. For the 2008-2012 school years, the City Defendants violated the Y.T. Plaintiffs' rights under the IDEA, Section 504, and New York State Education law by failing to evaluate and reevaluate Y.T. in accordance with those laws.

511. The City Defendants have failed to adopt policies, procedures, and protocols to ensure that the Y.T.'s parents were provided: (a) legally compliant due process rights under the IDEA pursuant to 20 U.S.C. §1415; and (b) translation and interpretation services with respect to educational records, correspondence, IDEA notices and safeguards, meetings and hearings.

512. The City Defendants discriminated, and are discriminating, against Y.T. based upon his disability.

513. The City Defendants' actions, and failure to act, have been knowing, gross, reckless, and intentional.

514. The City Defendants have violated the rights of the Y.T. Plaintiffs under the New York State Constitution, New York State Education Law §§3202, 3203, 4401, 4404 and 4410 and the Regulations of the New York State Commissioner of Education, 8 N.Y.C.R.R. Part 200.

RELIEF

WHEREFORE, Plaintiffs request that the Court:

a. Maintain the preliminary injunction directing Defendants to prospectively fund the stay-put placements for E.H. as alleged herein;

b. Issue a preliminary and permanent injunction on behalf of the NPS Class and Subclasses:

i. Enjoining Defendants from further implementation of the NPS Policy with respect to all NPS Class and Subclass members;

ii. Directing Defendants to fund and provide Additional NPS Services that were recommended for, or provided to, NPS Subclass 1 members during the 2013-2014 school year through an IEP, final or pendency order, resolution agreement, or settlement agreement that arose out of a dispute caused by the NPS policy as of July 1, 2014;

iii. Directing Defendants to offer NPS Subclass 2 members the option of reinstating, for the 2014-2015 school year, Additional NPS Services that were terminated after the issuance of the NPS Policy and funding or providing those services;

iv. Directing Defendants to issue a notice to all NPS Class members, IEP teams, NPS Programs, relevant stakeholders, interested parties, and administrators that the NPS Policy is no longer in effect;

v. Directing Defendants to issue a notice to all NPS Programs and New York City IEP teams informing them that: (a) Additional NPS Services that an NPS Class member needs for a FAPE or an

accommodation will be funded by Defendants; and (b) the NPS Programs are no longer constrained to recommend and/or support only those services that are available in their buildings or pursuant to their budgets;

vi. Enjoining State Defendants from limiting admission to NPS Programs by students' disability classification;

vii. Enjoining State Defendants from directing City Defendants or any other organization, NPS Program, or individual to apply blanket policies, procedures, or practices in relation to IEPs, programs, or placements of NPS Class and Subclass members;

viii. Enjoining Defendants from applying blanket policies, procedures, or practices in relation to IEPs, programs or placements of NPS Class and Subclass members.

c. Issue a Permanent Injunction on behalf of the NPS Class and Subclasses:

i. Directing the City Defendants to include and/or restore Additional NPS Services to the IEPs of all members of the NPS Class and Subclasses whose services were removed or denied as a result of the NPS Policy;

ii. Directing Defendants to fund and provide compensatory education to all NPS Class or Subclass members whose Additional NPS Services were terminated or not provided as a result of the NPS policy;

iii. Directing Defendants to provide reimbursement to all NPS Class or Subclass members who incurred out-of-pocket expenses as a result of the NPS Policy;

iv. Directing Defendants to adopt policies, procedures, and protocols and to expand programs to ensure that NPS Class members are not

denied a FAPE or subjected to decisions based upon administrative concerns, availability of resources, blanket policies, or discrimination; and

v. Appointing an independent monitor to oversee Defendants' compliance with the Court's orders.

d. Issue a Preliminary and Permanent Injunction on behalf of the Autism Services Class and Subclasses:

i. Enjoining the City Defendants from terminating funding for Autism Services for any Autism Services Class members that have been receiving Autism Services at any point during the 2013-2014 school year by way of an IEP, a resolution agreement, an order, or through "stay-put" rights pursuant to 20 U.S.C. §1415 unless the parent consents, after being advised of his/her rights;

ii. Directing the City Defendants to notify parents, IEP teams, principals, administrators, NPS Programs, and other stakeholders of parents' option to retain Autism Services for the 2014-2014 school year as per the above order;

iii. Directing the City Defendants to develop a process by which Autism Services can be funded for the entirety of the 2014-2015 school year for all Autism Services Class members who are subject to this order;

iv. Enjoining IEP teams from refusing to include Autism Services on the IEPs of Autism Services Class members if the Class members received such services in the time period prior to the IEP meeting and made progress with the services; and

v. Enjoining Defendants from applying blanket policies, practices, directives, or protocols with respect to recommending and delivering Autism Services without regard to Class members'

individual needs and based upon resources, disability, availability, or other factors unrelated to these needs.

e. Issue a Permanent Injunction on Behalf of the Autism Services Class and Subclass:

i. Directing Defendants to retain a panel of practitioners and experts, including, but not limited to, experts on: (a) autism; (b) early intervention, (c) ABA and other research-based methods; (d) instructional strategies, (e) positive behavioral supports; (f) toileting and ADL skills; and (g) and inclusion to develop a plan for improving and expanding program and service options for Autism Services Class members;

ii. Directing Defendants to take all necessary actions within the scope of their obligations under the IDEA to fund and support the expansion and development of Autism Services in New York City;

iii. Directing the City Defendants to develop policies regarding Section 504 and to train their staff to consider and address requests for reasonable accommodations for Autism Services, even if such services are not determined to be necessary for a FAPE;

iv. Directing Defendants to develop and implement specialized training for teachers and paraprofessionals working with students with ASD;

v. Directing Defendants to recruit, train, hire and fund individuals to deliver Autism Services;

vi. Directing the City Defendants to modify their special education data system, "SESIS," to enable IEP teams to recommend Autism Services;

vii. Directing Defendants to promulgate new policies and procedures for IEP meetings to ensure that IEP teams are trained to make

individualized determinations, track and review progress, and increase or modify services to address any lack of progress with regard to Autism Services Class members; and

viii. Appointing an independent monitor to oversee Defendants' compliance with the Court's order.

f. Issue a Preliminary & Permanent Injunction on behalf of the Due Process Class and Subclasses:

i. Directing the City Defendants to immediately pay and provide pendency services as soon as a DPC is filed on behalf of Due Process Class members;

ii. Directing the City Defendants to set up: (1) procedures for IHOs to quickly and efficiently hear and determine uncontested pendency motions; and (2) procedures for IHOs to quickly and efficiently hear and determine contested pendency motions and other emergency applications;

iii. Directing Defendants to notify IHOs that they have jurisdiction to decide motions and issue interim orders for evaluations, services, in other emergency situations, or as necessary to promote efficiency;

iv. Designating a special master or referee to hear contested and uncontested pendency and emergency applications involving the risk of irreparable harm for Due Process Class members that cannot obtain a timely IHO assignment;

v. Enjoining the State Defendants from monitoring, sanctioning, or otherwise pressuring IHOs with respect to timelines in cases in which both parties have agreed to extend the appropriate timelines or to an adjournment, regardless of the reasons for their agreement, in accordance with the IDEA; and

vi. Enjoining the City Defendants' IEP teams from ignoring the substantive findings of an IHO when preparing an IEP for a subsequent school year and from terminating or refusing to offer services that were previously awarded by an IHO based upon blanket policies.

g. Issue a Permanent Injunction on behalf of the Due Process Class and Subclasses:

i. Directing Defendants to appoint a special master and experts to work in conjunction with the parents' bar and the Due Process Class members to create a plan to facilitate access to IDEA-compliant due process that will include, at a minimum: (a) promulgating policies, procedures, practices, and protocols for due process that balance Defendants' obligations under the IDEA with the requirements of IHO independence and discretion; (b) revising the compensation plan for IHOs consistent with the districts in the rest of the state to facilitate recruitment and retention of qualified IHOs; (c) developing a system that will facilitate pendency implementation and that can address emergency or time-sensitive issues; and (d) revising City Defendants' resolution and settlement procedures;

ii. Enjoining implementation of the portions of State Defendants' Part 200.5 regulations for due process hearings that infringe upon and/or are inconsistent with the rights conferred by the IDEA;

iii. Directing Defendants to comply with the mandates of the IDEA with respect to due process procedures as alleged herein;

iv. Directing Defendants to develop policies, practices, procedures, and protocols that are consistent with the IDEA, reduce delays and IHO conflicts, and enable IHOs to perform their duties consistent with standard legal practice; and

v. Appointing an independent monitor to oversee Defendants' compliance with the Court's order.

h. Issue Judgment on behalf of the Y.T. Plaintiffs that:

i. Defendants failed to provide a FAPE in violation the Plaintiffs' rights under the IDEA and New York Education Law;

ii. Defendants unlawfully discriminated against Y.T. under Section 504, by excluding him from his right to receive a FAPE for the School Years at Issue in Y.T. I,

iii. Defendants unlawfully discriminated against Y.T. under Section 504, by excluding him from failing to accommodate his disability, employing blanket policies and practices, and failing to provide language access to Y.T.'s Parents;

iv. The City Defendants are enjoined from terminating the funding for Y.T.'s 20 hours per week of 1:1 ABA services and parent training with an interpreter and BCBA supervision until such time as: (a) Y.T. is no longer making progress as determined by an independent BCBA following an evaluation funded by Defendants; or (b) Y.T. is no longer eligible for special education services in New York, whichever date is earlier;

v. Reversing the portions of the Y.T. I IHD and SRO Decision pursuant to which Plaintiffs were aggrieved as alleged herein;

vi. Directing the City Defendants to: (1) translate the evaluations, progress reports, assessments, and IEPs for Y.T. on a going-forward basis and provide copies of those documents to the Plaintiffs in English and in Arabic; and (2) provide qualified in-person Arabic-language interpreters for IEP meetings for Y.T. on a going-forward basis;

vii. Directing the City Defendants to develop an IEP that complies with all of the procedural aspects of the IDEA and which includes: (a) 1:1 instruction in a full day ABA program as well as OT and five hours per week of SLT; (b) twenty hours per week of 1:1 ABA services after school; (c) supervision by a BCBA of his entire program; (d) parent training at home with an interpreter; and (e) appropriate AT, including an iPad, and parent training for the communication system; and

viii. Granting additional compensatory education and equitable relief in the form of special and general education services, assistive technology, parent training and extended eligibility to make up for the failure to provide a FAPE to Y.T. for the 2008-2012 School Years as requested in the DPC filed in Y.I. I., which would include extension of his eligibility.

i. Issue a Permanent Injunction and Order with respect to all named Plaintiffs:

i. Enjoining Defendants from applying the blanket policies, practices and procedures alleged herein; and

ii. Enjoining Defendants from refusing to continue their Autism Services unless the Plaintiffs agree;

j. Issue a Declaratory Judgment on behalf of all Plaintiffs, Class members, and Subclass members declaring that the actions, policies, procedures, and protocols as alleged herein violate the governing laws;

k. Order damages under the applicable statutes;

l. Award Plaintiffs their costs and attorneys' fees; and

m. Grant such other and further relief as may be appropriate.

Dated: June 18, 2015
New York, New York

FRIEDMAN & MOSES

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