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May 11, 2020

Hon. Shannon Tahoe
Interim Commissioner, New York State Education Department
89 Washington Avenue, Room 111
Albany, NY 12234

Dear Interim Commissioner Tahoe:

Thank you for your reply to our November 27, 2019 letter regarding the acute impartial hearing officer (IHO) shortage facing the New York City Department of Education's (NYC DOE) due process system. We appreciate your continued attention to this issue and we hope that you and the rest of the staff at NYSED are healthy and well.

Since we first wrote to you last November, the crisis we described has evolved from an acute emergency into a chronic one. Through December and most of January, no newly filed cases by our firm were assigned impartial hearing officers by the New York City Impartial Hearing Office, except the few assigned pursuant to regulatory exceptions to the rotation selection process. Then, in late January, a small number of IHOs began accepting assignment to some cases. However, the majority of new due process cases filed in February through the present date have not been assigned a hearing officer, and dozens of cases filed by our firm from 2019 and early 2020 remain in limbo on the IHO waiting list.

We understand that the current health emergency means that your office has been called to navigate unprecedented and unforeseeable policy issues, and we also understand that priorities have temporarily shifted out of necessity. We are also, however, acutely

aware that a very significant number of new cases will soon be filed regarding the 2020-21 school year, compounding the problem.

In early March, we were informed that approximately three dozen new impartial hearing officers were being trained and would soon begin work at the NYC IHO. We would greatly appreciate any update you can provide as to a start date for these new IHOs.

We would also like to make a timely recommendation for a regulatory suspension that could help address this issue in the short-term.

There remain pending a large number of tuition reimbursement claims against the NYC DOE from SY 2018-19 that were approved for settlement negotiations without the filing of a due process complaint but which have not resolved. These claims will need to be perfected with the filing of a new due process complaint in the coming weeks because of the two-year statute of limitations on due process cases.

New York State's Blanket Toll on Statutes of Limitations Due to COVID-19 has advanced the date until which all statutes of limitation are only tolled by a number of weeks with each new executive order issued by Governor Cuomo. Currently, Executive Order No. 202.28 extends the tolling of New York statutes of limitation until June 6, 2020.

If NYSED were to enact emergency regulations suspending the two-year statute of limitations for one year, we would be able to avoid the filing of many of these complaints, alleviating the immediate burden on the IHO as we await the implementation of much-needed reform. Furthermore, with regard to pending settlement agreements for cases currently pending in front of IHOs, many parent attorneys would likely consider withdrawing those claims the very next day if the statute of limitations were extended.

We greatly appreciate your attention to this issue.

Sincerely,

Regina Skyer

Jesse Cole Cutler

Greg Cangiano

Diana Gersten

Sonia Mendez-Castro

William Meyer

Abbie Smith

cc: Hon. John D'Agati, Senior Deputy Commissioner for Education Policy
Cathryn Tisenchek, Supervisor, Due Process Unit, NYSED Office of Special Education