

LAW OFFICES OF  
REGINA SKYER AND ASSOCIATES, L.L.P.  
276 FIFTH AVENUE  
SUITE 903  
NEW YORK, NY 10001

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REGINA SKYER, ESQ.  
JESSE C. CUTLER, ESQ.  
GREGORY CANGIANO, ESQ.  
DIANA GERSTEN, ESQ.

142 JORALEMON ST.  
SUITE 11C  
BROOKLYN, NY 11201

212-532-9736  
FAX 212-532-9846  
WWW.SKYERLAW.COM

ALEXANDRA ABEND, ESQ.  
SONIA M. CASTRO, ESQ.  
JAIME CHLUPSA, ESQ. \*  
LINDA GOLDMAN, ESQ.  
TERI HOROWITZ, ESQ.  
MAGDA LABONTÉ, ESQ.  
WILLIAM M. MEYER, ESQ.  
ABBIE SMITH, ESQ.

\* ALSO ADMITTED IN N.J.

July 16, 2018

Hon. Bill De Blasio  
NYC Mayor  
New York City Hall  
New York, NY 10007

Hon. Richard A. Carranza  
Chancellor, NYC Department of Education  
Tweed Courthouse  
52 Chambers Street  
New York, NY 10007

Dear Mayor Bill De Blasio and Chancellor Carranza,

We are one of the largest special education law firms in New York City representing families who seek reimbursement for the cost of special education private schools, programs, and services. We are writing to express our continued and deepening concerns about the process for parents when they settle claims with the DOE.

**Background**

In a press release issued to announce the Special Education Initiative in 2014, Mayor De Blasio said: *“Every child in this city deserves a quality education. But for years, parents of children with special needs have had to wait for the City to settle legitimate claims for tuition reimbursement. Today, we are turning the page, making changes that will ease the burden on these parents. We are cutting red tape, speeding up the process, and reaching outcomes that do right by families.”*

The Special Education Initiative is comprised of four key commitments:

**“Expedite Decisions:** Where settlement is appropriate, DOE will seek settlement within 15 days of receiving notice of parent intent to unilaterally place their child in a school.

**Reduce Extended Legal Battles:** The DOE will refrain from re-litigating settled or decided cases, unless there is a change in the IEP placement recommendation. The DOE will avoid unnecessary litigation in cases where the agency is unable to offer a placement, or when a child is about to enter the final grade of a school.

**Reduce Paperwork:** Instead of requiring parents to submit full documentation every year, the DOE will only require that paperwork every three years, allowing for income eligibility updates to be made each year, as needed.

**Expedite Payments:** DOE will make tuition payments on a monthly basis when required by a program, and it will provide a payment schedule to parents following any settlement. Once parents win a claim for tuition reimbursement, the DOE will pay the tuition while the DOE appeals that decision to a higher level of review."

*Source: <https://www1.nyc.gov/office-of-the-mayor/news/306-14/mayor-de-blasio-speaker-silver-new-steps-help-families-students-disabilities#/>*

On January 20<sup>th</sup>, 2017, Council Member Dromm, in his capacity as then-NYC Council Education Committee Chair, along with Council Member Kallos and former Council Member Garodnick, wrote to you to describe the serious problems faced by a number of their constituents, many of whom were also our clients (attached).

Specifically, the Council Members wrote about how their constituents, after receiving written agreement from the Department of Education (DOE) that their claims would be settled, nonetheless experienced significant delays in the execution of stipulations and in the actual reimbursement of tuition and fees in contradiction to the pledge made to expedite payments.

Given the stated intent of the administration's policy, we expected to receive a thoughtful and constructive response, and this was largely the case when DOE General Counsel Howard Friedman replied on behalf of the administration.

In that letter, dated March 13, 2017 (attached), Mr. Friedman indicated that he understood the concerns of the Council Members and assured them that the DOE "recognize[s] that there is room for improvement." Mr. Friedman reported that the DOE had recommended a majority of the over 4,434 cases for the 2015-16 school year for settlement, and noted that to that date, 4,132 of those had executed stipulations of settlement. He further explained that new "administrative systems" for reviews at the NYC Comptroller's office had contributed to delays.

## **2017-18 School Year**

We began the new school year hopeful that we would see improvements that would ease the burden and anxiety of our families. But we are disappointed to report that we are instead witnessing a worsening of the process.

Settlement decisions are not being made in a timely way following our 10-day notices and due process complaints as compared to last year. Nothing has been done to alleviate or reduce paperwork (to the contrary, paperwork requirements continue to increase). And most

significantly for the thousands of New Yorkers whose disabled children require an independent placement in order to receive an appropriate education, the timelines for reimbursement or for direct payment have stretched out and become even less transparent and predictable.

Many of our clients are from modest backgrounds and struggle and sacrifice to ensure that their child is able to receive an appropriate education. More often than not, families are taking on significant debt, and living day-to-day with uncertainty, and unusually high levels of stress and anxiety as a result of the DOE's failure to afford their child a free appropriate public education (FAPE).

Put simply, the failure of New York City to live up to its word and "expedite payments" is disproportionately harming those New Yorkers who are not *extremely* rich.

### *Stipulations Not Executed*

Our firm has hundreds of claims from the prior (2017-18) school year that were "referred for settlement" on the basis of a ten-day notice we filed in June or August of 2017 for which the City has *still not executed stipulations*.

It is impossible for us to say for sure why this is occurring. There are certainly still delays inherent to the NYC Comptroller's review process that Mr. Friedman pointed to in his letter last year. But we believe the problem is larger in scope.

DOE staff we interact with tell us that the DOE's Office of Legal Services (OLS) has been experiencing an unusually high turnover of attorneys. We know that many of our cases have been assigned, and then reassigned, two or three times. When a case is reassigned, documents are often misplaced. Sometimes DOE lawyers go on extended leave and their cases are *not* reassigned despite our pleas to OLS supervisors. Further, we are told by DOE attorneys that many of them have tremendous caseloads (300-400+) and are completely overwhelmed.

### *Payment Delays Following Settlement*

While the 2014 Special Education Initiative promised to "ensure tuition payments are made on a monthly basis when required by a program" and to "provide a payment schedule to parents following any settlement," neither of these commitments have been realized.

In making the policy change to "monthly payments" the DOE demands attendance records and proof of payment to be delivered by parent attorney offices to the DOE each and every month—a massively burdensome change for parents, schools, individual providers, and parent attorneys, when compared to the former practice of receiving this documentation twice annually. We have met these requirements nonetheless, hopeful that the city would indeed make these monthly payments and that this would ease the financial burden on families and providers alike.

Unfortunately, the DOE is not living up to its end of the bargain. Payments are not being processed in a timely manner. The supposed move to "monthly payments" has actually *worsened* the reliability of the flow of money.

Finally, the DOE has never provided parents we represent “a payment schedule” as required by the Special Education Initiative.

*Payment Delays Following IHO Order*

Problems with the timely enforcement of Impartial Hearing Officers (IHO) orders are nothing new. Since the class action lawsuit filed by Advocates for Children in 2004 (*LV v. New York City Department of Education*), an auditor has been in place to ensure that parents and schools are paid within 30 days of a decision being rendered, as required by federal law.

However, this oversight has failed to capture IHO decisions that require payments on an ongoing basis (the majority of cases). Many of our clients’ schools and individual providers have not been paid for their services in over half a year despite submitting the required documentation on a monthly basis.

Separate and apart from the failure of the DOE to respect the spirit of the decision rendered in *LV*, this is yet another example of the city’s failure to live up to the 2014 Special Education Initiative.

*Administrative Systems Management*

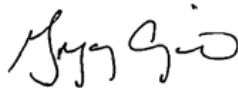
Finally, it is also clear to us that the maze-like organization of payment functionaries is a part of the problem. There is a separate office in the Bureau of Non-Public School Payables that processes settlements on notice versus on hearing request, while payments on cases that are won at hearing are handled by the Implementation Unit of the Impartial Hearing Office. These inefficiencies and needless complexities harm the ability of the city to meet its commitments to families.

We ask for your assistance in realizing the promises made in 2014 to thousands of New York families of special needs students.

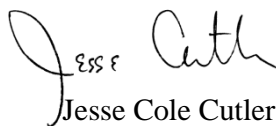
Sincerely,



Regina Skyer



Greg Cangiano



Jesse Cole Cutler



Diana Gersten

cc: Howard Friedman, DOE General Counsel  
Hon. Mark Treyger, Chair, NYC Council Committee on Education  
Hon. Daniel Dromm, NYC Council Member  
Hon. Benjamin Kallos, NYC Council Member  
Hon. Keith Powers, NYC Council Member