



THE CITY OF NEW YORK  
**LAW DEPARTMENT**

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May 9, 2024

**VIA ECF**

Honorable Paul A. Engelmayer  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, NY 10007

Re: *Frias et al. v. Banks et al.*, 1:24-cv-01767 (PAE) (VF)

Your Honor:

I am the Assistant Corporation Counsel in the Office of the Corporation Counsel of the City of New York assigned to represent Defendants the New York City Department of Education (“DOE”) and David C. Banks, in his official capacity as Chancellor of the DOE in the above-referenced matter, in which Plaintiffs seek, *inter alia*, enforcement of a May 30, 2023 administrative order issued by Impartial Hearing Officer (“IHO”) Jean Marie Brescia (the “FOFD”) pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* I write jointly with Plaintiffs pursuant to the Court’s April 25, 2024 Order directing the parties to submit a joint letter and proposed Civil Case Management Plan and Scheduling Order in advance of the Initial Pretrial Conference currently scheduled for May 14, 2024 (ECF No. 11).

At present, the parties’ have one outstanding dispute concerning the interpretation of the IHO’s award of funding for Plaintiff A.F.’s transportation “to and from” the International Academy for the Brain (“iBrain”).<sup>1</sup> Plaintiffs contend that the FOFD obligates the DOE to pay the full amount set forth in Plaintiffs’ contracts with Sisters Travel and Transportation Services LLC (“Sisters”) for the 2021/2022 and 2022/2023 school years. In contrast, Defendants assert that the IHO conditioned the DOE’s obligation to provide transportation funding on Plaintiffs’ provision of documentation substantiating Sisters’ transportation of A.F. to and from iBrain.

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<sup>1</sup> ECF No. 1-1 at 17. The DOE has already remitted payment of the tuition funding associated with Plaintiff A.F.’s unilateral placement at iBrain provided for in the FOFD.

The parties do not anticipate reaching consensus with respect to the proper interpretation of the FOFD and jointly propose to proceed with motion practice to resolve this dispute. Accordingly, the parties propose the briefing schedule below for the Court's consideration.

- **Plaintiffs' Motion for Summary Judgment:** June 12, 2024;
- **Defendants' Opposition and Cross-Motion for Summary Judgment:** June 26, 2024;
- **Plaintiffs' Reply and Opposition to Defendants' Cross-Motion:** July 3, 2024; and
- **Defendants' Reply:** July 10, 2024.

The parties also jointly propose to stay discovery and adjourn the Initial Pretrial Conference currently scheduled for May 14, 2024 *sine die* pending the disposition of the parties' proposed motions. The parties note that they currently disagree about the potential need for discovery in this case, however, the parties agree that the disposition of the parties' proposed motions may narrow or moot their present disagreements with respect to discovery. Moreover, the parties wish to avoid a situation where a remand to the IHO renders previously completed discovery redundant and/or necessitates revisions to the discovery process that would result in the duplication of the parties' efforts.

Accordingly, the parties respectfully request that the Court approve the parties' proposed briefing schedule, stay discovery and adjourn the May 14 Initial Pretrial Conference *sine die* pending the resolution of the parties' proposed motions.

Respectfully submitted,

/s/ Daniel R. Perez

Daniel R. Perez  
Assistant Corporation Counsel

Granted.

SO ORDERED.



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PAUL A. ENGELMAYER  
United States District Judge  
May 10, 2024