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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NEW YORKERS FOR RELIGIOUS LIBERTY, INC.,  
GENNARO AGOVINO, CURTIS CUTLER, LIZ  
DELGADO, JANINE DEMARTINI, BRENDAN  
FOGARTY, SABINA KOLENOVIC, KRISTA O'DEA,  
DEAN PAOLILLO, DENNIS PILLET, MATTHEW  
RIVERA, LAURA SATIRA, FRANK SCHIMENTI  
and JAMES SCHMITT, individually and on  
behalf of all others similarly situated,  
Plaintiffs,

-against-

THE CITY OF NEW YORK, ERIC ADAMS, in his  
official capacity as Mayor of the City of  
New York, DAVE CHOKSHI, in his official  
capacity as Health Commissioner of the  
City of New York, AND ROBERTA REARDON, in  
her capacity as new York State Commissioner  
of Labor,

Defendants.

Case No.: 1:2022-cv-00752

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(Via Zoom Videoconference)

May 24, 2022

9:11 a.m.

Video-recorded Videoconference  
Deposition of ERIC EICHENHOLTZ, before Kristi  
Cruz, a Stenographic Reporter and Notary  
Public of the State of New York.

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2 A P P E A R A N C E S:

3

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22 BY: BILAL H. HAIDER, ESQ.

23 LORA MINICUCCI, ESQ.

24 ANDREA M. O'CONNOR, ESQ.

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A P P E A R A N C E S (cont'd) :

ALSO PRESENT :

DEAN PAOLILLO

BARRY BLACK

KRISTA O'DEA

FRANK SCHIMENTI

SABINA KOLENOVIC

LIZ DELGADO

GENNARO AGOVINO

BRANDON BABWAH, Paralegal

ROCCO MERCURIO, Videographer

## PROCEEDINGS

1  
2 THE VIDEOGRAPHER: We are now going  
3 on the record. Today is May 24, 2022, and  
4 the time is approximately 9:11. Please  
5 note that this deposition is being  
6 conducted virtually. Quality of the  
7 recording depends on the quality of the  
8 camera and internet connection of the  
9 participants. What is heard from the  
10 witness and seen on the screen is what  
11 will be recorded. Audio and video  
12 recording will continue to take place  
13 until all parties agree to go off.

14 This is the remote video deposition  
15 of Eric Eichenholtz in the matter of New  
16 Yorkers For Religious Liberty Inc. et al.  
17 versus the City of New York et al., filed  
18 in the U.S. Eastern District Court of New  
19 York, case number 1:2022cv00752. My name  
20 is Rocco Mercurio, and the court reporter  
21 is Kristi Cruz, and we are from Veritext.

22 Will counsel please introduce  
23 yourselves and who you represent for the  
24 record.

25 MR. NELSON: For the plaintiffs,

1 E. EICHENHOLTZ

2 Jonathan Nelson of Nelson Madden Black  
3 LLP.

4 MS. CHILD: For the plaintiffs, this  
5 is Sarah Child from Nelson Madden Black LLP.

6 MR. NELSON: Sujata, will you please  
7 introduce yourself? Perhaps you will do  
8 so later on; perhaps she's away.

9 Defendants' counsel?

10 MR. HAIDER: Bilal Haider for the  
11 defendants on behalf of the Corporation  
12 Counsel.

13 MS. MINICUCCI: Lora Minicucci for  
14 defendants.

15 MS. O'CONNOR: Andrea O'Connor for  
16 defendants.

17 THE VIDEOGRAPHER: Okay. Will the  
18 court reporter please swear the witness.

19 E R I C E I C H E N H O L T Z ,

20 called as a witness, having been duly  
21 sworn by a Notary Public, was examined  
22 and testified as follows:

23 EXAMINATION BY

24 MR. NELSON:

25 Q. Good morning, Mr. Eichenholtz.

1 E. EICHENHOLTZ

2 A. Good morning.

3 Q. Thank you for being here, although  
4 your here is not here; it's where you are in  
5 your office, I suppose.

6 A. Virtually, yes.

7 Q. So you're here for the deposition,  
8 the 30(b)(6) deposition on behalf of the City  
9 defendants in this lawsuit. And you're an  
10 attorney; is that correct?

11 A. That's correct.

12 Q. And have you ever taken part in  
13 depositions before?

14 A. Never as a witness, but as counsel,  
15 I've taken part in many depositions, yes.

16 Q. Okay. So you know the rules.

17 A. Yes.

18 Q. Very good. We can dispense with  
19 those, I think.

20 One thing we should discuss is  
21 breaks. There's a very important aspect with  
22 respect to breaks, and that is that breaks  
23 should not occur between the question that is  
24 posed and the answer that's given, and I would  
25 ask, also, that that extend to communications

1 E. EICHENHOLTZ

2 between the witness and counsel. You have  
3 counsel sitting right next to you. There's  
4 potential for passing notes, and I would  
5 direct you not to do that, please.

6 A. Understood.

7 Q. Any time somebody needs a break in  
8 this matter, then please raise that for the --  
9 you know, raise that on the record and, you  
10 know, we'll be very generous with respect to  
11 that. Anybody who needs a bathroom break gets  
12 it. And we will be breaking for lunch, if we  
13 continue that long. So we can certainly  
14 negotiate the amount of time that's necessary  
15 for lunch, but I would say it should be at  
16 least probably 45 minutes. Is that acceptable  
17 to City counsel?

18 MR. HAIDER: Bilal Haider, yes, it  
19 is acceptable.

20 MR. NELSON: Very good.

21 Q. So, Mr. Eichenholtz, what is your  
22 position?

23 A. I am the Chief Assistant Corporation  
24 Counsel for employment policy and litigation.

25 Q. Okay. And how long have you been

1 E. EICHENHOLTZ

2 doing that?

3 A. Since October of 2021.

4 Q. You know, that's fairly recent.  
5 What were you doing before then?

6 A. Before then, I was the Division  
7 Chief of The Labor and Employment Law Division  
8 here at the New York City Law Department.

9 Q. And how long did you do that?

10 A. Since February of 2013.

11 Q. And you are testifying as a Rule  
12 30(b)(6) witness on behalf of all of the City  
13 defendants; is that correct?

14 A. Correct. On behalf of the corporate  
15 entity, the City of New York, yes.

16 Q. Now, do you have a personal  
17 knowledge of the matters that are to be  
18 covered by today's deposition by order of the  
19 magistrate judge?

20 A. Some, I'd imagine.

21 Q. Okay. And what is the basis for the  
22 personal knowledge that you have with respect  
23 to the topics that have been mentioned in the  
24 judge's order?

25 A. I was involved with the formation



1 E. EICHENHOLTZ

2 and have served on the Citywide Appeals Panel  
3 for the New York City employee vaccine  
4 mandate.

5 Q. And how were you involved in the  
6 formation of the panel?

7 A. I was consulted and a part of the  
8 team that put the panel together, and worked  
9 through the reasonable accommodation process  
10 with respect to the commissioner of health's  
11 order, I believe, in October, October 20th of  
12 2021.

13 Q. And who else was on that team that  
14 put the panel together?

15 A. Various individuals. We worked --  
16 there were several agencies that worked  
17 collaboratively together, and at different  
18 stages, different people would weigh in. But  
19 it was primarily the New York City Law  
20 Department, the New York City Department of  
21 Citywide Administrative Services, the New York  
22 City Mayor's Office of Labor Relations, as  
23 well as the New York City Department of Health  
24 and Mental Hygiene, as well as those working  
25 in City Hall to coordinate, you know, the

1 E. EICHENHOLTZ

2 interagency policy issues that were going on  
3 with respect to the COVID-19 public health  
4 emergency.

5 Q. So were there any other persons from  
6 the New York City Law Department that were  
7 involved in that process, then, just the  
8 putting together of the panel?

9 A. Yes.

10 Q. And who were they?

11 A. Georgia Pestana.

12 Q. And who was involved on behalf of  
13 DCAS, the Department of Citywide  
14 Administrative Services?

15 A. It varied, but primarily Sanford  
16 Cohen, their general counsel, Barbara  
17 Dannenberg, who was the Deputy Commissioner of  
18 Human Capital, and Stella Xu, she's in an  
19 executive role then. I'm sorry, I don't know  
20 her precise title. Those were the individuals  
21 who were working on employee policy and  
22 implementation with respect to the COVID-19  
23 emergency, so they were involved in the  
24 discussion. And certain also -- at various  
25 points we also consulted with Silvia

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Montalban, who is the Deputy Commissioner for Citywide Equity and Inclusion.

Q. Who was on that group that put together the panel from the Mayor's Office of Labor Relations?

A. It was Renee Campion, the Commissioner of Labor Relations, as well as Steven Banks, who at the time was the first deputy commissioner. They were both involved in the discussions.

Q. And who was involved from the Department of Health and Mental Hygiene?

A. I do not recall at this time. They were -- I don't recall the name of the individual. They were primarily involved when it came to the commissioner's order. I spoke primarily with Lisa Landau, who was their general counsel, but I know that there were doctors and medical policy people who Lisa consulted with as needed. Their involvement was more about the order than it was the reasonable accommodation and appeal process, however. So they were not as involved in discussions about the appeal panel and the

1 E. EICHENHOLTZ

2 appeal -- and the reasonable accommodation  
3 process.

4 Q. Okay. And then, you mentioned that  
5 there were people who were involved from City  
6 Hall in the coordination, I guess, of  
7 interagency kinds of policies and that sort of  
8 thing. Who were they?

9 A. I'm trying to remember who was --  
10 Molly Schaeffer is -- was and remains someone  
11 over there who coordinates between the  
12 agencies. I don't believe there was anyone  
13 directly involved as we were discussing  
14 matters of the panel and the composition.  
15 That was done primarily discussions between  
16 the various agencies. But when we would have  
17 our structure set up, we would obviously check  
18 in with, it would have been the first deputy  
19 mayor's team at City Hall, and the first  
20 deputy mayor at the time was Dean Houlihan.

21 Q. Thank you.

22 Now, you've mentioned that Georgia  
23 Pestana was also involved from the Law  
24 Department. What was her role in that process  
25 of the formation of the panel?

1 E. EICHENHOLTZ

2 A. At the time, Georgia Pestana was the  
3 Corporation Counsel of the City of New York,  
4 so she was serving as the City's chief legal  
5 officer. This was obviously a legal  
6 compliance issue, so she as well as I were  
7 actively involved in that regard.

8 Q. And she is also a person who is  
9 representing the City departments in the  
10 lawsuit in which you're involved. Is that  
11 true?

12 A. No, that's not accurate. As she  
13 is -- as Corporation Counsel, when she was  
14 Corporation Counsel, she no longer is, she was  
15 obviously listed as the primary counsel of  
16 record in the same way, you know, a firm's  
17 headline would appear in every case. But  
18 Ms. Pestana was not personally involved in  
19 those representations, outside of an executive  
20 and supervisory role.

21 Q. So what was your role in this  
22 process of putting the panel together?

23 A. Basically, to be a part of the  
24 discussion, to provide my thoughts on what the  
25 legal requirements were, the needs were, and

1 E. EICHENHOLTZ

2 how we could go about putting together a  
3 structure to satisfy that, what resources the  
4 City might have to bring to bear to make sure  
5 that we were able to perform those functions  
6 well. That was really my involvement in the  
7 discussion, as really, quite frankly, was  
8 everyone who was involved in that discussion.

9 Q. Now, are you familiar with the  
10 standards for adjudicating religious and  
11 medical accommodation requests that were set  
12 forth in the various decisions that were  
13 issued by an arbitrator in the arbitration in  
14 the Department of Education that related to  
15 religious accommodation requests?

16 A. I'm aware of the arbitration award  
17 and generally aware of the process that  
18 resulted from that award, yes.

19 Q. And were the standards that were set  
20 forth in that process for the decision-making  
21 on religious accommodation requests considered  
22 by the persons who were involved in the  
23 formation of the appeals panel that you formed  
24 in late October?

25 A. The citywide vaccine mandate that

1 E. EICHENHOLTZ

2 we're discussing here, that October 20th  
3 mandate, was a different mandate, a different  
4 discussion, a different process. And when we  
5 were discussing how to put together the panel  
6 and the standards that it would apply, that  
7 arbitration award was not a consideration, no.

8 Q. Did you discuss it in the course of  
9 the formation of the panel, or it simply was  
10 never mentioned?

11 A. I -- I don't recall it ever being  
12 discussed when it came to how we were going to  
13 go about a citywide appeal panel process. Our  
14 focus and our discussion was both the legal  
15 standards, as well as the City's existing  
16 Equal Employment Opportunity, or EEO policy,  
17 as well as our Reasonable Accommodation  
18 policies, and how we could adapt those  
19 policies to effectively address this  
20 circumstance in the public health emergency.  
21 That was our consideration in designing and  
22 discussing the panel.

23 Q. And what adaptations did your group  
24 decide it was necessary to make in order to  
25 serve those needs?

1 E. EICHENHOLTZ

2 A. Well, we had received I think two,  
3 what I would describe as, broad policy-based,  
4 whether you want to call them, requests or  
5 considerations for what was desired from  
6 policy perspective. What was desired was that  
7 this mandate be and the reasonable  
8 accommodations be implemented in a uniform  
9 manner such that we were not going to have  
10 appeals of denials dependent on agency by  
11 agency, as well as to have a process that  
12 could both, you know, that could handle a  
13 large number of appeals that we anticipated  
14 would be coming from the agency EEO officer's  
15 determinations, so do it uniformly and be able  
16 to handle the volume, and of course to do it  
17 with effectiveness and proper consideration.  
18 Those were really the policy asks.

19 And ultimately, our determination  
20 was that we wanted to use -- the City had  
21 significant internal resources in many of  
22 these agencies that provided a unique  
23 perspective based on that agency's work and  
24 mission, and that we wanted to bring those  
25 resources to bear to create a citywide



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2 process, and that's ultimately the process the  
3 panel evolved from.

4 Q. Was part of this discussion a desire  
5 to have uniform decisions at the agency level,  
6 also, as well as at the Citywide Appeals Panel  
7 level?

8 A. No. I think the concern was more,  
9 you know, the reasonable accommodation --  
10 reasonable accommodations were essentially  
11 going to be an exception, but an important  
12 legal exception to the vaccine mandate, and  
13 obviously our focus was on making sure that  
14 employees who were denied at the agency level  
15 had that opportunity for additional review and  
16 to bring that perspective and experience to  
17 bear in that review. It is, as it's named,  
18 intended to be an appellate review process  
19 much like, you know, a court of appeals would  
20 be.

21 Q. So in the process of putting this  
22 panel together and organizing the City's  
23 response to a request for exemptions from the  
24 citywide mandate, did your panel discuss or  
25 were you personally involved in speaking with

1 E. EICHENHOLTZ

2 the agencies about the processes that they  
3 would go through to process their own original  
4 reasonable accommodation requests?

5 A. So agencies were -- we had meetings  
6 in the lead-up to the implementation of the  
7 mandate with, what we call, agency personnel  
8 officers, those are your HR leads, as well as  
9 EEO officers, where we gave very high-level  
10 instructions, as well as answered questions in  
11 a group setting. I was involved -- I should  
12 also say, we also had meetings with agency  
13 general counsel to discuss the legal issues  
14 and implications. I was involved in all of  
15 those meetings as, you know, as an executive  
16 at the Law Department overseeing employment  
17 policy and overseeing sort of that legal  
18 advice as one of the people who had been  
19 paying very close attention to the law and  
20 legal developments with respect to vaccine  
21 mandates and human resources, employee issues,  
22 including, of course, reasonable  
23 accommodations.

24 Q. Now, at any time in those  
25 discussions with the agencies or in the

1 E. EICHENHOLTZ

2 formation of the panel, did you or anyone else  
3 discuss Mayor de Blasio's desires with respect  
4 to the implementation of the mandates and with  
5 respect to limitation of the number of people  
6 who should benefit from them, from the  
7 exemptions, or with respect to the limitation  
8 with respect to the religions to which they  
9 should -- to which they belonged?

10 A. No.

11 Q. No one?

12 A. No. That was not a subject of our  
13 discussion, no.

14 Q. Did you talk about Mayor de Blasio's  
15 desires at all in those meetings?

16 A. Quite frankly, Mayor de Blasio's  
17 desires were irrelevant.

18 Q. And why were they irrelevant?

19 A. Because what we were discussing was  
20 a public health order issued by the  
21 Commissioner of Health; not the Mayor of the  
22 City of New York; a reasonable accommodation  
23 process that is mandated by the laws of  
24 federal, state, local level, and a citywide  
25 policy. And the mayor's opinions on what

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2 should happen there were not relevant to the  
3 issue of what was required under the law, what  
4 was required under policy, and what the  
5 vaccine mandate allowed for.

6 Q. Who else was involved from the  
7 people who were putting the panel process  
8 together and implementing the RA exception  
9 policy in the sort of high-level meetings that  
10 you discussed having at the various agencies  
11 of the meeting?

12 A. Yeah, the primary -- the actual  
13 compensation of the panel primarily was  
14 myself, Ms. Pestana, Commissioner Campion,  
15 First Deputy Commissioner Banks, in terms of  
16 what agencies would serve on it. The nuts and  
17 bolts of how the reasonable accommodation  
18 process would be implemented, the process of  
19 you have X days to appeal and you would get  
20 interim accommodation if you timely appealed,  
21 those sorts of policy calls were those two  
22 agencies, as well as the Department of  
23 Citywide Administrative Services.

24 Q. And did the -- was the Department of  
25 Citywide Administrative Services involved in

1 E. EICHENHOLTZ

2 the sort of agency-to-agency process that you  
3 went through to, you know, make sure that  
4 there was some understanding at the high level  
5 of those agencies of the processes that were  
6 going to be involved and the standards?

7 A. Yes. Actually, DCAS, which is the  
8 acronym for that agency, I'll use it so that  
9 we can -- we don't need to say the whole term  
10 the whole time.

11 Q. I accept that.

12 A. Yeah. DCAS was the one who  
13 organized those agency personnel officer and  
14 EEO officer meetings and calls. And I would  
15 say that they weren't -- yes, those were  
16 actually regular calls dealing with pandemic,  
17 COVID pandemic and public health emergency  
18 related issues that had been ongoing obviously  
19 before the health commissioner had issued a  
20 vaccine mandate. So they were sort of --  
21 those were the topics that were covered in the  
22 lead-up to implementation.

23 Q. And those calls were telephone calls  
24 or Zoom calls?

25 A. They were -- yeah, I don't remember

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the medium. It was a virtual video call much like this one.

Q. Now, were those conversations of those meetings, were they recorded?

A. Not that I'm aware of, no.

Q. And why not?

A. Because there was no need to. There was no -- there was no need to record it. We had all the agencies in attendance.

Q. And could you make an inquiry, please, as to whether or not there are any recordings of those calls?

A. Yes, we will do so.

Q. Thank you.

RQ MR. NELSON: And if there are, we ask that you produce those.

MR. HAIDER: We ask that you just put that request in writing. Thank you.

Q. Were any documents produced for any of these agency meetings?

A. Yes. Those meetings, generally there was a high-level PowerPoint that DCAS prepared with just some basic bullets about what was going on and what agencies needed to

1 E. EICHENHOLTZ

2 do.

3 RQ MR. NELSON: Okay. We are also  
4 going to make that document request with  
5 respect to that, but I will put it in  
6 writing.

7 Q. Now, and what about, how were the  
8 meetings set up? Were they set up by email or  
9 some other written method?

10 A. DCAS has both on the agency  
11 personnel officer and on the EEO officer side  
12 contact lists that they maintain, and excuse  
13 me, an invitation, I believe, Outlook  
14 invitation was sent out to either the APOs,  
15 the EEO officers, or both, as the  
16 circumstances warranted.

17 Q. Were you personally involved in the  
18 drafting of any standards for the individual  
19 City agency's consideration of RA requests  
20 from employees?

21 A. I'm sort of working on the word  
22 "standards" there. I was involved in the  
23 drafting of sort of a FAQ policy document. My  
24 recollection, it was really more about the  
25 nuts and bolts. There was some very

1 E. EICHENHOLTZ

2 high-level guidance, I think, put in there,  
3 but it wasn't like this is, you know, how you  
4 decide an RA request. I mean, those sorts of  
5 documents already existed, you know, in terms  
6 of general applicability in the City's various  
7 EEO and Reasonable Accommodation policies.

8 Q. So that was an FAQ that was for the  
9 Citywide Appeals Panel?

10 A. Not just the Citywide Appeals Panel;  
11 it was, as I remember, it was all aspects of  
12 implementation of the vaccine mandate,  
13 including both reasonable accommodations and  
14 the RA process. Obviously the Citywide  
15 Appeals Panel is just one phase of the RA  
16 process, so it would have been there to the  
17 extent we discussed the RA process.

18 Q. Now, are you going to be giving any  
19 testimony today which is not from personal  
20 knowledge?

21 A. I couldn't tell you at the moment,  
22 but obviously as we go along, if you'd like to  
23 inquire as to the source of my knowledge on  
24 anything, I'd be happy to respond to you.

25 Q. Of course.



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E. EICHENHOLTZ

Did you review any documents or other, you know, either virtual or physical writings in order to prepare for today's testimony?

A. Yes. I reviewed the Complaint in this action, I reviewed four declarations that I prepared over the course of the last six months or so in response to various litigation to describe the Citywide Appeal Panel and its process. I also reviewed the EEOC's -- re-reviewed, I should say, I reviewed it many times, the EEOC's guidance on COVID-19, and specifically I believe it's sections K and L which dealt with COVID-19 vaccinations and reasonable accommodation requests.

Q. And in order to prepare for today's deposition, did you speak with anyone to obtain information that you needed from them?

A. No.

Q. Going back to the question I was asking about, your meetings with the agencies to prepare them for their role: In the course of those meetings or afterward concerning the topic of those meetings, were any other

1 E. EICHENHOLTZ

2 documents shared or exchanged, or were there  
3 any follow-up emails that were involved with  
4 respect to those meetings?

5 A. I'm certain there were. My  
6 recollection is the follow-up documents were  
7 usually links to the posted FAQ, guidance on  
8 various topics that DCAS was preparing for  
9 review by agency personnel officers, EEO  
10 officers, etcetera. There was no, at least  
11 that I can recall, there was never any email  
12 or document that said, oh, in addition  
13 to what [audio interruption].

14 Q. We've lost you.

15 A. Sorry, yeah, I accidentally pressed  
16 the space bar.

17 In addition -- there was no  
18 documents of, like, sort of, in addition to  
19 the guidance at the meeting, here's additional  
20 guidance. It was generally to point people to  
21 the resources that were available that were  
22 referenced at the meetings.

23 Q. You used the word "generally" there.  
24 Specifically, were there any other follow-up  
25 emails or documents that you shared or

1 E. EICHENHOLTZ

2 exchanged that refer to other -- that were of  
3 another nature or that referred to other  
4 materials or contained other discussions than  
5 what you just testified?

6 A. None that I can recall.

7 Q. And in the prior -- in affidavits  
8 that you've submitted that you referenced, you  
9 also mentioned that you had relied upon books  
10 and records of the City of New York in the  
11 course of preparing them.

12 A. Yes.

13 Q. And can you please, you know, tell  
14 us what the nature was of those books and  
15 records? Which books, which records?

16 A. Generally, of -- it would generally  
17 be, like, things like the FAQ document; it  
18 would be, for example, if in a few of them  
19 I've had to discuss, like, we've done X number  
20 of appeals and Y number of, you know,  
21 decisions and we have -- and there were  
22 similar documents about the statistics, the  
23 number of RAs that had been requested, and I  
24 have access to the number of appeals filed  
25 with the panel, how many they've decided and

1 E. EICHENHOLTZ

2 the like, I would often consult with those.  
3 If it was a specific case, I might review, to  
4 understand what the panel's votes were, I  
5 might review the panel votes and notes from  
6 that case, and that would be a book and  
7 record, obviously. So it's those sorts of  
8 things that I would be reviewing in  
9 preparation of that, of those declarations and  
10 affirmations.

11 Q. And are you familiar at this time  
12 with the numbers involved with the -- well,  
13 I'll ask it in a different way.

14 How many religious accommodation  
15 requests were lodged with, you know, putting  
16 all of the City agencies together?

17 A. So offhand, I don't know the number  
18 of requests. I can tell you the number of  
19 requests that made it to appeal, that were  
20 filed with either the Citywide Panel -- and  
21 this, I should mention, very important, as I  
22 mentioned this earlier, but I don't want us to  
23 get confused, as you mentioned, the Department  
24 of Education was under a separate set of  
25 rules, and it is -- while there is mayoral

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2 control in the Department of Education, it is  
3 a separate entity for many purposes. So when  
4 I talk citywide here, I am excluding the  
5 Department of Education, right?

6 So I know that there were roughly  
7 about I believe between 6,500 and 7,000  
8 appeals filed. I do not know, I'm not privy  
9 to the current numbers as to how many total  
10 religious reasonable accommodations were  
11 requested. I know it approached 10,000, I  
12 don't know if it reached there, but I could  
13 tell you with respect to those, those are the  
14 approximate numbers with respect to religious  
15 reasonable accommodation appeals.

16 Q. And so, when you refer to about  
17 10,000 requests, that's at the agency level,  
18 the initial level, or at some other level?

19 A. That is at the agency level, yes.

20 Q. How many cases have been adjudicated  
21 to date by the Citywide Panel?

22 A. To date, it is roughly I believe  
23 somewhere around, fully adjudicated, 3,200  
24 cases. Partially adjudicated at this point,  
25 another 1,015.

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Q. And what does it mean to be "partially adjudicated"?

A. So the panel is composed of three different agencies, so those are cases in which one or two agencies have voted -- actually two agencies have voted. If we do one agency, I think we're somewhere around 7,000. But there are three agencies. And so, partial adjudications are one of the agencies has reviewed and voted on that case, and one or two agencies has not, so it is not ready for us to issue our final decision.

Q. And do you have an estimate as to when all these decisions will be finally adjudicated?

A. I -- because I can't really, you know, predict the time it takes for -- I've very much gotten out of the prediction business. We are working as promptly and efficiently as we can, but we also want to make sure we do our review correctly.

Q. So is the Citywide Panel created by a regulation or ordinance?

A. No.

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2 Q. And why not?

3 A. I think the context that's really  
4 important here is that it has two  
5 characteristics. One is that it is created in  
6 response to a order issued in the context of a  
7 public health emergency for which there was a  
8 compelling public health reason that there be  
9 quick and lawfully compliant implementation.  
10 So it was a matter of just creating the  
11 structure, advising of the structure. And the  
12 other piece is that it is very limited in its  
13 scope and function. It is, although we've  
14 added on, as you are well aware, several  
15 hundred Department of Education appeals, but  
16 our primary focus is to hear appeals of the  
17 Department of Health mandate that affected  
18 existing City employees on October 20, 2021.  
19 It's a very limited function in that regard.

20 Q. Sure. Just getting a little more of  
21 the statistics involved with the panel's  
22 burden, how many cases to date have been  
23 denied, requests for religious accommodation?

24 A. I cannot break it out between  
25 religious and medical. I don't have access to

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those numbers. I can -- I know denials and I know approvals, but I don't know how many of them would be religious or how many of them would be medical.

Q. So then how many in total religious -- not religious, I'm sorry.

How many in total accommodation requests or appeals have been denied by the Citywide Panel to date?

A. First off, with the context that these numbers literally change by the day, obviously --

Q. Well, I get it.

A. -- we are -- and that's why I'm going to give you a rough number. Were roughly around 3,200 appeals that were denied.

Q. And how many were granted?

A. Roughly 100.

Q. And do you know the statistics with respect to what percentage of the appellants in these appeals had raised religious accommodation requests and what percentage had raised medical accomodation requests?

A. It fluctuates as the appeals came



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2 in, but the vast majority were religious. It  
3 was somewhere between 80 to 85 percent of  
4 appeals were religious reasonable  
5 accommodations.

6 Q. And in terms of the grants, do you  
7 know the numbers of religious versus medical  
8 accommodation cases that were involved, either  
9 specifically or at a reasonable estimate?

10 A. As I say, I can't. I don't have  
11 that break down. I can tell you a substantial  
12 number of our grants were religious reasonable  
13 accommodations. Whether it's 85 percent or  
14 something -- you know, or somewhere around  
15 there, I couldn't say that for certain.

16 Q. Now, 100 as opposed to 3,200, it  
17 seems like a small percentage of the appeals  
18 were granted. And how do you explain that?

19 A. I think context here is very  
20 important. We are not getting every  
21 reasonable accommodation request submitted,  
22 right? We are getting virtually 100 percent  
23 because most people appealed, but every single  
24 accommodation we get has already been denied  
25 by an EEO officer. Certainly, if we also --

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2 for example, the agencies have the right to  
3 appeal a grant of a reasonable accommodation,  
4 I'm certain our grant rate would be higher  
5 than it is. So you're taking something that's  
6 100 percent denial, and it's already been  
7 reviewed and information gathered and  
8 carefully considered, you would expect that a  
9 substantial number -- you'd expect the sort of  
10 numbers we have, right? If they were  
11 significantly higher than these sorts of  
12 numbers, it would be a question as to what the  
13 EEO officers were doing or not doing. So  
14 it's, you know -- I think of it like an  
15 appellate reversal rate. You wouldn't expect  
16 appeals courts to reverse even, you know, even  
17 a third or a majority of cases. Then  
18 something would be wrong.

19 Q. Who has to -- who can provide us  
20 with current accurate statistics with respect  
21 to the number of grants and denials and the  
22 percentages that were religious and medical  
23 accommodation matters?

24 A. Well, certainly that data exists. I  
25 think the question really would be how we

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2 would go about cutting it in the way you'd  
3 want to cut it there, because it is not -- at  
4 least I do not have access to data cut in that  
5 particular way.

6 Q. And who in your organization would  
7 be the person who would be performing that  
8 function?

9 A. Well, is this in regard to appeals,  
10 or is this in regard to reasonable  
11 accommodations overall?

12 Q. With respect to appeals.

13 A. With respect to appeals, generally  
14 we would -- it wouldn't necessarily be a  
15 person. We would generate a report from the  
16 system we are using to facilitate the appeal  
17 process, the database system we're using.

18 Q. And who would be able to provide  
19 that information with respect to all  
20 accommodation requests?

21 A. We have -- the Department of  
22 Information Technology and Telecommunications  
23 would do it, host the database, I believe they  
24 have a vendor working with them, and we would  
25 put the request in to that vendor, and the

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2 vendor would run the reports, as we needed it.

3 Q. Now, is the Citywide Appeals Panel  
4 within the organizational structure of any of  
5 the departments or agencies or other organized  
6 entities that are a part of the City?

7 A. No, it's -- I view it, and I think  
8 structurally it is sort of a collaboration  
9 between the agencies that vote, and there  
10 are -- when it comes to citywide personnel  
11 policy and various citywide matters, there are  
12 agencies that oversee various, you know,  
13 aspects of that. So the Law Department  
14 obviously is the City's legal oversight. The  
15 Department of Citywide Administrative Services  
16 is personnel, EEO policy oversight. So those  
17 agencies basically have responsibility to make  
18 sure this is implemented properly. The panel  
19 itself essentially steps into the shoes of the  
20 agency head of the various City agencies who,  
21 under the City's EEO policy, would ordinarily  
22 decide the appeal of a reasonable  
23 accommodation request.

24 Q. So, I'm sorry, but I don't  
25 understand that answer at all.

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A. Okay. I'll try and explain it. If you ask me a clarifying question, I would be happy to clarify.

Q. So, first of all, who's in charge of the Citywide Appeals Panel?

A. As I said, it's collaborative. Obviously, I've been doing, as the Law Department representative, I've been doing a lot of the work in organizing the meetings and moving the panel process forward. I have worked with Sanford Cohen, who is the general counsel at DCAS, who is also working with me on sort of oversight and quality control work on the process. And other than that, it is a collaborative effort of the various agencies, and particularly the panel members, to move the appeals process forward. So, you know, I, as well as Mr. Cohen will review the stats, the cases, we'll confirm when the cases are ready to go out, things like that, and move the process forward in that administrative respect.

Q. So is no one, then, in charge of the Citywide Appeals Panel?

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2 A. No one individual? No, there's no  
3 one individual in charge of the Citywide  
4 Appeals Panel. We obviously report to our  
5 respective agency heads, but there is -- and  
6 obviously, there's a mandate and a directive  
7 that we do our work. But we all report, with  
8 respect to our work, to our respective  
9 supervisors at the agency. So with respect to  
10 my work in the panel, I would report to the  
11 Corporation Counsel of the City of New York,  
12 and Mr. Cohen would report to the Commissioner  
13 of the Department of Citywide Administrative  
14 Services.

15 Q. So your personal authority is  
16 limited to the work that is performed by the  
17 members from the Law Department, and Mr. Cohen  
18 has authority over the persons who come from  
19 DCAS, and other administrative heads have  
20 authority over the CCHR, you know, component?  
21 Is that your testimony?

22 A. Yes. And in terms of  
23 process-related questions and decisions, we'll  
24 discuss them collaboratively at the various  
25 agencies. So there's never been a need sort

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2 of to have one final decision-maker in the  
3 process. You know, again, we function the way  
4 I envision it, we function very much like an  
5 appellate court. And while there is a chief  
6 judge who has an administrative role, all the  
7 judges have both the authority and discretion  
8 to review cases and exercise their -- that  
9 level of discretion as they see appropriate,  
10 given the mandate and the constraints of the  
11 law and the policies we're talking about.

12 Q. So you would oversee and give  
13 quality control with respect to the decisions  
14 that are -- votes that are made by members of  
15 the Law Department?

16 A. Oh, okay, now I understand where the  
17 confusion is.

18 No, I will -- Mr. Cohen and I have  
19 an additional oversight role where we will  
20 review every case after all three votes are in  
21 for administrative and quality control  
22 purposes, and basically confirm they are ready  
23 to go out and, you know, they're in regular  
24 form and order and things like that.

25 Q. And so, you personally have reviewed

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every case that has gone out with a grant or a denial of an appeal?

A. Well, in the oversight role, I review half of them; Mr. Cohen reviews half of them?

Q. So when you have done that, on the average, how much time have you spent on each case?

A. In the oversight role or in reviewing and deciding a case? I just want --

Q. In the oversight role.

A. In the oversight role, it doesn't take very much time. Sometimes, you know, a minute or two. What you're doing in the oversight role is just making sure that the votes and the comments are in order, assigning a decision code and confirming the case is ready to be sent out. So it doesn't -- doesn't take very long at all.

Q. So do you review the substance of the work that is done by the persons who cast the votes?

A. No. The people responsible for the substance of that review are the individuals.



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2 The review of that work -- so if I see, for  
3 example, a decision or a vote that I  
4 personally might disagree with, given the  
5 facts and circumstances of the case, that's  
6 not my function in the oversight role to say,  
7 hey, I wouldn't vote the way you voted in this  
8 case. My job is to make sure that the  
9 agencies voted, the agency reps voted, and  
10 that their votes are properly recorded and  
11 that we are, you know, properly sending out  
12 the case as a denial or an affirmance and that  
13 that's accurate. It's more of an  
14 administrative, ministerial role at that  
15 stage.

16 Q. What does that --

17 A. To be clear, if there was some  
18 substantive issue I would flag, I would speak  
19 with the panel member and say, for example,  
20 and this has happened on occasion, you know,  
21 their notes don't seem to match their vote.  
22 So, you know, you see a rejection and the  
23 notes suggest that they're approving, I would  
24 go back to that panel member and say, please  
25 review this to confirm it's accurate before we

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2 send it out. But I wouldn't, like, say, oh, I  
3 think you meant to do what you said in your  
4 comments, or I think you meant to do what you  
5 said in the vote. That's up for them to  
6 review and to confirm whether it's accurate or  
7 not.

8 Q. What if the vote or the comment that  
9 supported the vote was purely inconsistent  
10 with the evidence of the case? Would you flag  
11 that?

12 A. Generally, I'm not doing that level  
13 of review because that is the function of the  
14 three agency voters on any given appeal. I  
15 am -- you know, and I perform that function,  
16 as you're aware, in many cases. But it is  
17 their job to review the evidence and to make a  
18 determination based on their review of the  
19 evidence and the record that's been presented  
20 to us.

21 Q. Mr. Eichenholtz, just stepping aside  
22 for a second, at times it looks as if you are  
23 reading something when we are -- when you're  
24 answering a question, and I'm wondering, are  
25 you reading something as you answer these

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2 questions, or have you been? And have you  
3 been typing notes to anybody?

4 A. Absolutely not. I think what you  
5 are seeing is the camera is oriented higher  
6 than my face. I'm looking at the screen, not  
7 the camera, so the angle of the camera has my  
8 eyes looking at the computer screen. I'm  
9 actually looking right at you, Mr. Nelson,  
10 when you're asking questions, and I have my  
11 Zoom in gallery view, so you're sort of off to  
12 the right-hand, top corner of my screen.

13 Q. Thank you for that explanation.

14 A. No problem.

15 Q. You mentioned also that the panel is  
16 reviewing DOE denials as a result of the  
17 second circuit decision. And have you been  
18 reviewing them with the same appellate style  
19 review that you described, taking into account  
20 the fact that all of those cases were denied  
21 prior to coming to the Citywide Appeals Panel?

22 A. Those cases were -- what we've done  
23 in those cases, there was a slightly different  
24 approach. When we got those cases -- and when  
25 I say "those cases" right now, I'm talking

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2 about the first 14 named plaintiffs which we  
3 were assigned following decision of the second  
4 circuit. You know, it was clear to us that  
5 what the DOE and the award there had done did  
6 not exactly mimic what the agencies had done.  
7 But we reached out both to the employees and  
8 to the Department of Education to get more  
9 information about the nature of their appeals  
10 to try and make sure that the records were  
11 more fulsome. So the employees -- those 14,  
12 the employees were asked a series of questions  
13 about their requests to give us some more  
14 information. Sometimes it duplicated material  
15 they had already provided the arbitrator,  
16 sometimes it did not. And the Department of  
17 Education was asked to give more information  
18 about why they were denying the request. We  
19 reviewed that record so that we could do more  
20 of an appellate style review.

21 Q. Now, with respect to the information  
22 you got in that process from the DOE, did you  
23 provide that information to the appellants?

24 A. No.

25 Q. Why not?

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2 A. Because the purpose of obtaining  
3 that information was to allow the panel to  
4 understand the relevant facts of the case.

5 Q. Would it not have been useful to the  
6 appeals panel to also understand or to receive  
7 the point of view of the plaintiffs with  
8 respect to the accuracy or completeness or,  
9 you know, correct interpretation of the  
10 material that the Department of Education was  
11 providing?

12 A. Yes.

13 MR. HAIDER: Objection.

14 THE WITNESS: Thank you. Sorry  
15 about that.

16 A. Yes, and that is why we made inquiry  
17 of the individuals.

18 Q. So you made inquiry of the  
19 individuals after you received materials from  
20 the DOE?

21 A. No, we made inquiry from both  
22 parties.

23 Q. So did you examine whether or not  
24 due process required you to get input from the  
25 plaintiffs with respect to the information

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2 that's being provided to you by the DOE?

3 DI MR. HAIDER: Objection. Objection.

4 This question appears to be outside the  
5 scope of the order here. We're at --  
6 we're getting into legal questions with  
7 respect to the DOE appeals, specifically.  
8 This is not within the scope of the  
9 Citywide Panel's process of reviewing or  
10 the standards that it applies.

11 So I'm going to instruct my witness  
12 to not answer -- the witness to not answer  
13 this question.

14 Q. So how did the process that the  
15 panel followed with respect to the other DOE  
16 employees, some -- at least one or two of  
17 which are involved in the instant lawsuit,  
18 differ, if it did differ in any way, from the  
19 treatment that the panel gave to the 14 from  
20 the Kane and Kyle lawsuit?

21 A. So other than that a lot of those  
22 inquiries became a more standard part of the  
23 process, and I think it was gathered by the  
24 DOE and sent to the panel rather than the  
25 panel needing to reach back out to everyone

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and say, please do this. That was a significant difference.

Q. So the DOE provided additional information with respect to those persons?

A. Yes, both on behalf of the DOE and based on information they collected from those persons.

Q. And those persons were not confronted with that information or given an opportunity to rebut it?

A. Confronted in what way?

Q. Well, did you send the information that you had received from the DOE to the other appellants from the DOE to get their comments?

A. No. This isn't a litigation, you know, an adversarial litigation. It's a cooperative dialogue, it's a reasonable accommodation process.

Q. So if it's a dialogue, did you reach out orally or in some other way to the appellants to get their views with respect to the information you received from DOE?

A. So just to be -- we're talking about

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2 the 500-and-so DOE individuals who were doing  
3 their -- they're having essentially the review  
4 of the earlier denial from the arbitration  
5 ordered by the panel? That's what we're  
6 talking about here?

7 Q. I don't think you captured it quite  
8 correctly.

9 A. Okay. I want to hear from you  
10 what -- because I want to make sure I'm  
11 accurate.

12 Q. So in tandem with the Second  
13 Circuit's order sending the 14 Kyle and Kane  
14 plaintiffs to the Citywide Appeals Panel, the  
15 Law Department agreed that access to the  
16 Citywide Appeals Panel would also be provided  
17 to those persons who not only went through the  
18 initial stage, but also filed an appeal and  
19 were denied in the DOE reasonable  
20 accommodation process.

21 A. Uh-huh.

22 Q. So with respect to those add-on  
23 persons, the persons who were not plaintiffs,  
24 not named plaintiffs in the other litigation,  
25 did the Citywide Appeals Panel engage in a



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2 dialogue with them with respect to the  
3 information that the panel received from the  
4 DOE?

5 A. The Citywide Appeals Panel reviewed  
6 the appellate record that it was provided by  
7 the DOE with the information from the DOE and  
8 from the employee.

9 Q. But you'd indicated that the DOE  
10 also was provided additional information that  
11 had not been a part of the proceeding below?

12 A. Right. Not -- general -- not  
13 always, but yes, they had the opportunity to  
14 do so.

15 Q. And did the panel members engage any  
16 kind of a dialogue, whether written or oral,  
17 with the other 500 or so appellants from the  
18 DOE?

19 A. Yes, we received responses to  
20 queries in writing that the DOE gathered.  
21 What follow up the DOE did or did not do, I  
22 could not tell you before providing the  
23 records to us on the panel.

24 Q. So I'm not understanding. I thought  
25 that you had said that the panel engaged in a

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2 dialogue; not the DOE engaging in a dialogue  
3 with the appellants.

4 MR. HAIDER: Objection.

5 Q. So I'm asking you to clarify this.

6 A. Okay. So what I said was, a  
7 reasonable accommodation is a cooperative  
8 dialogue; it is not an adversarial process.  
9 So I would not ordinarily -- it is not a  
10 standard part of a reasonable accommodation  
11 cooperative dialogue to have, you know --  
12 generally, the person gathering the facts will  
13 speak with the employee, will gauge the needs  
14 of the employer, and reach a determination.  
15 It's not like this, you know, confrontational  
16 back and forth, and that's what you were  
17 describing, so that's what I was trying to  
18 express there. And I was really talking more  
19 about the information-gathering stage, which,  
20 as I said, is generally the agency level. And  
21 with respect to DOE employees, we were asking  
22 DOE to query their employees to gather that  
23 information so that we had as full a record as  
24 possible for our review.

25 Q. Okay. With respect to appellants

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2 who are not from the DOE, did the Citywide  
3 Appeals Panel reach out to any of them to  
4 obtain information that was not in the record  
5 below?

6 A. So I'm going to say, because I  
7 think -- so the panel will ask the agency to  
8 do that. Again, the panel is performing an  
9 appellate function, and so if we believe  
10 additional cooperative dialogue is necessary,  
11 we would essentially, in essence, remand to  
12 the agency for cooperative dialogue, which  
13 means we will send, and any one panel member  
14 can request this, a request that the agency  
15 engage the employee in a specific way with a  
16 specific question or a specific issue. The  
17 employee would then have that dialogue and  
18 then report back to the panel, generally  
19 upload any documentation of that exchange for  
20 our review so that we can consider it when  
21 rendering a final decision on the appeal.

22 Q. And in how many cases did any panel  
23 engage in making that request and sending the  
24 matter back on rematch of the agency?

25 A. Hundreds.

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Q. I'm sorry?

A. Hundreds.

Q. Hundreds. Okay.

MR. HAIDER: Mr. Nelson, just could we take a ten-minute break at this point?

MR. NELSON: That's fine, sure. Thank you. We'll reconvene in ten minutes.

THE VIDEOGRAPHER: We're now going off the record. The time is 10:14.

(Recess was taken.)

THE VIDEOGRAPHER: Back on, the time is 10:25.

BY MR. NELSON:

Q. So welcome back, Mr. Eichenholtz.

A. Thank you.

Q. So we were just talking about contrasting the DOE people who were not in the Kane/Kyle named plaintiffs and those other 14 people. And there's a series of concepts with which I'm absolutely certain you're familiar, as an experienced lawyer, with respect to the appellate review standards that are not the kind of standards we're talking about in

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2 terms, you know, of how do you get a religious  
3 accommodation, but rather, what approach does  
4 the person who is deciding a case on appeal  
5 take toward the decision below. So for  
6 example there, there is an abuse of discretion  
7 standard which is used in some kinds of cases.  
8 There is a de novo standard which is used in  
9 other kinds of cases. And there's a range of  
10 other sort of intermediate kinds of standards.

11 So what appellate review standard  
12 does the Citywide Appeals Panel utilize in  
13 its -- in the cases that are not the Kane/Kyle  
14 cases?

15 A. It uses -- yeah, and I agree with  
16 you, Mr. Nelson, you can't exactly get  
17 precisely the same analogy, but it is akin to  
18 a de novo standard. We are reviewing and  
19 doing sort of an independent and open-minded  
20 review of the record, mindful of the agency's  
21 grounds, excuse me, for denying the reasonable  
22 accommodation that we're seeing on appeal.

23 Q. And so, how much consideration --  
24 sorry. Strike that question.

25 And why is it -- I mean, can you

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2 explain why on a de novo standard only  
3 100 cases would have been granted out of the  
4 more than 3,000 before you to decide or --

5 MR. HAIDER: Objection.

6 Q. -- not quite that many? Just to see  
7 if I got the numbers --

8 A. Right. I refer you to my earlier  
9 answer. 100 percent of the cases the panel  
10 sees was -- were denied after a conscientious  
11 review by a trained EEO professional. I would  
12 not imagine a much more significant amount of  
13 reversals there because we, in the City of New  
14 York, train our EEO officers and our  
15 Disability Rights Coordinators and the various  
16 personnel who review reasonable accommodation  
17 requests how to do it. So if they're reaching  
18 a conclusion of denial, generally there is a  
19 basis for that; obviously not in every case,  
20 but generally there is.

21 Q. Now, in some of the cases that were  
22 decided at the agency level, the agency  
23 instructions gave two options to the employees  
24 who were asking for accommodations. They have  
25 an option to go to an arbitration using the

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2 arbitration standards that were referenced in  
3 Kane and Kyle, and they had an option to go to  
4 the appeals panel. So did the appeals panel  
5 review any of the cases that were decided by  
6 arbitrators outside of the Kane/Kyle cases?

7 A. And when you say "the Kane/Kyle  
8 cases," again, I don't want us to get  
9 confused, you're talking about the 14  
10 plaintiffs or the additional 500-and-so that  
11 the panel reviewed? You're talking about that  
12 whole universe when you say "the Kane/Kyle  
13 cases," or are you talking about the 14?

14 Q. In this question, yes, the whole  
15 universe.

16 A. The whole universe. So outside the  
17 whole universe of those cases -- I hate to do  
18 this, Mr. Nelson, I'm sorry, what was the  
19 question? I lost it. I'm trying to figure  
20 out what universe we were talking about.

21 Q. Understood.

22 So in some of the cases from many of  
23 the agencies, the employees are given the  
24 option either to go through an arbitral  
25 proceeding using the Kane/Kyle standards, that

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2 is to say the arbitral standards on the one  
3 hand, or they were given an option to pursue  
4 an appeal to the Citywide Appeals Panel. So  
5 outside of the people from the Department of  
6 Education, did the appeals panel consider any  
7 appeals from decisions that had been rendered  
8 by an arbitrator under the arbitral process?

9 MR. HAIDER: Objection.

10 A. Yeah, and that's not quite how they  
11 worked on the non-DOE basis. The arbitral  
12 process was not, even though it was the  
13 same -- there were arbitrators that made that,  
14 the arbitrators were essentially the option  
15 for appeal. In all cases with respect to the  
16 October 20, 2021 Commissioner of Health order  
17 that concerned City employees, the agency made  
18 a determination in the first instance. So you  
19 didn't -- you know, you couldn't skip the  
20 agency level by going to arbitration. It's  
21 when you were denied by the agency and you  
22 were covered by a union that had reached an  
23 arbitration agreement through collective  
24 bargaining, you could appeal to an arbitrator  
25 rather than the Citywide Panel.



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2 Q. And so, you're saying that after the  
3 arbitrator decided, there was no further  
4 recourse to the Citywide Appeals Panel for  
5 those people?

6 A. No, no, no, no, you had to decide  
7 after it was denied which path you wanted to  
8 take, whether you wanted to appeal to the  
9 Citywide Appeals Panel or whether you wanted  
10 to appeal to the arbitrator. The arbitrator,  
11 arbitration by its definition is binding.  
12 There was no appeal after the arbitrator back  
13 to the Citywide Appeals Panel. So it was, you  
14 know, it ended with the -- that path ends with  
15 the arbitrator.

16 Q. Now, the DOE people who -- the 500,  
17 let's say that number which is an estimate for  
18 all the people who are named plaintiffs in the  
19 Kane/Kyle matter, all of those 500 had had  
20 their denials below adjudicated under a set of  
21 standards that the second circuit had found to  
22 be faulty.

23 A. Correct.

24 MR. HAIDER: Objection.

25 A. Correct.

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2 MR. NELSON: Just as a predicate for  
3 the question I'm about to ask, Mr. Haider.  
4 I think I understand your objection  
5 though.

6 Q. So did the Citywide Appeals Panel  
7 treat the record below or the decisions that  
8 were made below in respect of those 500 or so  
9 DOE employees any differently than it treated  
10 the appeals from the other City agencies?

11 A. No. That was -- the whole point was  
12 our, function when we got those cases was to  
13 look at the record and review and resolve them  
14 under the standards set forth by Title VII,  
15 the State Human Rights Law and the City Human  
16 Rights Law, rather than whatever standard had  
17 been set forth in the arbitration process that  
18 the arbitrators used. It was precisely to  
19 give that fresh look, and we understood that,  
20 and we did not take into account any standard  
21 or qualification or whatever you want to  
22 characterize it as that was present at the  
23 arbitration stage of the process.

24 Q. So you were -- Citywide Appeal Panel  
25 members, then, did not take into account the

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2 fact that the standards that had been applied  
3 below to DOE cases were [inaudible]?

4 MR. HAIDER: Objection.

5 A. I don't -- we didn't -- we -- we  
6 were -- we reviewed it as if we were getting  
7 the record from the agency and we were making  
8 the appellate determination; that the agency  
9 was denying the request and that we were  
10 making the appellate determination of whether  
11 or not the agency was right to deny it. And  
12 we applied the same standard in those cases  
13 that we applied to all of the other appeals  
14 that we reviewed.

15 Q. Were the individual members of the  
16 Citywide Appeals Panel who were adjudicating  
17 DOE cases given any information about the  
18 different standards that had been employed  
19 below in the DOE religious accommodation  
20 determinations than had been applied below to  
21 accommodation requests made to the other  
22 agencies?

23 MR. HAIDER: Objection. And I just  
24 want to note as to the form, the use of  
25 the word "below" here, are we referring to

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2 the agency or the arbitration?

3 MR. NELSON: So you know what? I'm  
4 going to rephrase that question.

5 THE WITNESS: Okay.

6 MR. NELSON: So I withdraw it.

7 Q. At the agency level, which in terms  
8 of an appeal, I would characterize sometimes  
9 as being the level below, at the agency level,  
10 were the initial decisions being made on the  
11 basis of the arbitral standards or on some  
12 other basis?

13 A. On the basis, as I understand it, of  
14 the Title VII standards, and that was one of  
15 the reasons we asked the Department of  
16 Education to advise us what their basis for  
17 denial was, because it could not and would not  
18 be that the arbitrator had previously denied  
19 the case.

20 Q. And in the conversations that you  
21 had with agencies prior to their making  
22 initial decisions with respect to the  
23 religious accommodation requests, did you  
24 instruct them with respect to the Title VII  
25 standards?

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2 A. In the sense that -- and when I say  
3 "you," by the way, I'm going to be a little  
4 more generic here. I don't know if the words  
5 came out of my mouth or someone else's mouth.  
6 We pointed the agency officers to the EEOC  
7 Guidance that existed, as well as the FAQs  
8 that DCAS had prepared. Those were their  
9 resources.

10 Again, I think it's important to  
11 remember that the crowd we're talking to are  
12 people who are EEO professionals, who do this  
13 for a living, who are trained in reasonable  
14 accommodation and adjudicative processes and  
15 other related staff who are under the  
16 supervision and instruction of those  
17 individuals. So it was not really necessary  
18 to sort of give a Reasonable Accommodation 101  
19 to the group. It was sort of to say, here's  
20 sort of how the standard is being -- here's  
21 the guidance for how to apply the standard in  
22 the context of COVID-19 vaccination.

23 Q. Do you have any records of the  
24 meetings in which these instructions with  
25 respect to Title VII or other standards were

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2 being given to agency personnel, you know, in  
3 connection with the formation of this citywide  
4 appeals process and RA process for COVID-19?

5 A. That was --

6 MR. HAIDER: Objection.

7 A. Yeah, that was the FAQ I was  
8 describing. And I -- it's challenging for me,  
9 I will say, just generally because, again, I  
10 hear you severing off the Citywide Appeals  
11 Panel. I'll say it again: The Citywide  
12 Appeals Panel is the appellate stage of a  
13 broader process. We did not at any point,  
14 that I can recall, focus EEO officers,  
15 agencies on the appeal panel in its process.  
16 But overall, the overall process and how it  
17 was going to work mechanically was what was  
18 being discussed.

19 Q. And did you discuss routinely with  
20 the agency personnel, with whom you were  
21 discussing the first stage of this process,  
22 the heightened standards that are provided in  
23 the New York State and New York City Human  
24 Rights Laws for the determination of religious  
25 accommodation requests?

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2 MR. HAIDER: Objection.

3 A. We were following the guidance of  
4 those agencies. They had, in the context of  
5 this public health emergency, being, adopting  
6 the guidance provided by the EEOC. But the  
7 City's EEO policy, obviously since the City  
8 Human Rights Law is our law, makes great note  
9 of the different standards and things like  
10 that. But in terms of the guidance of the  
11 application with respect to COVID-19  
12 vaccination, my understanding is that both at  
13 the state and city level was that they were  
14 adopting the policy guidance provided by the  
15 United States Equal Employment Opportunity  
16 Commission.

17 Q. And how did you learn that?

18 A. In conversations with the agencies,  
19 and I believe they had posted that guidance  
20 publicly at various stages, but I don't  
21 recall, specifically.

22 Q. And is it your understanding that  
23 the New York State and New York City Human  
24 Rights Laws were altered or modified in some  
25 way with respect to the way in which undue

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2 hardship for the agency had to be determined?

3 A. Not that I'm aware of.

4 Q. So the way the law is written is the  
5 way that it should have been applied. You  
6 would agree with that?

7 A. Well, I think the City Commission on  
8 Human Rights, in discussing how to apply it in  
9 this context, you know, was referring back to  
10 the EEOC. But yes, I mean, the law as it's  
11 written applied. There was no suspension of  
12 the law or anything like that.

13 Q. So with whom did you have  
14 discussions about these questions in the New  
15 York City Human Rights Law Department?

16 A. What's the New York City Human  
17 Rights -- I'm not familiar with that.

18 Q. You're not familiar with the New  
19 York City Human Rights Law?

20 A. I'm familiar with the New York City  
21 Human Rights Law. You're asking if I had  
22 conversations with the law. I don't know  
23 what you mean.

24 Q. I used the word department, I'm  
25 sorry.



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2 Did you have discussions concerning  
3 the way that the New York City Human Rights  
4 Law ought to be applied consistent with the  
5 equal opportunity law of the federal  
6 government, did you have those conversations  
7 with people from the City Commission on Human  
8 Rights or other human rights officials with  
9 the City?

10 A. Yeah, I'm certain either directly or  
11 indirectly. I either directly had a  
12 conversation or I was advised indirectly that  
13 the commission had been consulted at some  
14 phase by DCAS or some other agency. I could  
15 not tell you, as I sit here today, how that  
16 came about.

17 Q. And can you identify any individuals  
18 with whom you spoke from those human rights  
19 departments of the City?

20 A. On that topic, no, I could not, as I  
21 sit here today, tell you I spoke with this  
22 specific person or that specific person.

23 Q. But your understanding with respect  
24 to how the Citywide Appeals Panel ought to  
25 decide issues of undue burden, after

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2 conversation with those persons from the  
3 City's human rights departments, what was your  
4 understanding that you had after those  
5 conversations?

6 MR. HAIDER: Objection.

7 A. Again, that we would follow the EEOC  
8 Guidance with respect to specific  
9 applicability of the COVID-19 vaccine mandate,  
10 that we still, in the City, had an EEO policy  
11 and reasonable accommodation guidance that was  
12 generally applicable. That was always my  
13 understanding. It remains my understanding to  
14 this day.

15 Q. So with respect to the issue of  
16 undue hardship, what did you understand the  
17 EEOC Guidance to be in the context with  
18 COVID-19?

19 A. Well, I understood that in order --  
20 I view undue -- generally, I would expect that  
21 if -- undue hardship is something that the  
22 employer will raise in the context of a  
23 reasonable accommodation request if it  
24 determines that there is some greater than  
25 de minimus burden on the agency's operations

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2 that would articulate in some manner that  
3 would prevent it from granting a religious  
4 reasonable accommodation. In a nutshell,  
5 that's my understanding.

6 Q. So was it your understanding that  
7 the agency did not have to show a significant  
8 hardship or burden --

9 A. Yes.

10 MR. HAIDER: Objection.

11 Q. -- from the granting of an  
12 individual's religious accommodation request?

13 DI MR. HAIDER: Objection. I'd just  
14 note that this question is directing the  
15 witness' understanding rather than the  
16 Citywide Panel's standards and process.  
17 It's outside the scope.

18 So I would direct the witness to not  
19 answer the question as to his  
20 understanding.

21 Q. Okay. I'll ask the same question  
22 with respect to what standard the Citywide  
23 Appeals Panel was expected to apply.

24 A. And I don't have the precise letter  
25 and number in front of me, but it is -- there

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2 is a discussion of undue burden with respect  
3 to religious reasonable accommodations and the  
4 COVID-19 vaccination in the EEOC Guidance, and  
5 they were instructed to both review, apply,  
6 and follow that guidance, the specific request  
7 of vaccination exemption reasonable  
8 accommodation request.

9 Q. And with respect to the level of  
10 burden that the agency needed to show, was it  
11 something simply greater than the de minimus  
12 or was it a substantial burden?

13 MR. HAIDER: Objection.

14 A. As I sit here today, I don't  
15 remember the precise words; I don't remember  
16 if it was substantial appears or not. I do  
17 not want to create a greater or lesser burden  
18 than what the EEOC Guidance says by saying one  
19 word or omitting a word. Obviously, there had  
20 to be some substance to the burden, whether  
21 there was a legal term of art of substantial  
22 or something in that regard. As I sit here  
23 today, it needed to be something and we needed  
24 to see a, you know -- some sort of burden that  
25 they were articulating and to evaluate whether

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2 it was of substance, which we've done. I  
3 don't remember if the word "substantial" is in  
4 that. And again, I don't want to put words  
5 that don't exist or remove words that do  
6 exist.

7 Q. So did you ever have any discussions  
8 with or exchanges of correspondence with  
9 individual panel members in which you  
10 discussed the amount of burden that an agency  
11 might be required to show?

12 MR. HAIDER: Objection.

13 A. I know in our regular check-ins, we  
14 had discussed some issues with substantial --  
15 with undue burdens -- no, substantial -- undue  
16 burden and evaluating them in the context of  
17 the various agencies that were making that  
18 argument. We had discussions, certainly, that  
19 some agencies were not making that argument  
20 and that we were proceeding to evaluate based  
21 on, you know, the information the agencies  
22 were giving us. You know, but I can't tell  
23 you specifically, like, that category, this  
24 was said about that category. We had general  
25 discussions about undue hardship claims in

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appeals during our check-ins.

Q. I'll take just a moment of silence while I find out where I am in my outline --

A. Sure.

Q. 30-second-or-so delay that we're going to have here.

Did you ever discuss this issue of how to evaluate undue burden in any emails with individual panel numbers or with all the membership of the Citywide Panel?

A. No. It would have been at our weekly check-ins we were discussing it.

Q. And were your weekly check-ins recorded in any manner?

A. No.

Q. And why not?

MR. HAIDER: Objection.

A. Again, because the panel members were there and were participating in the discussion, and there was no identified need to go back and review those discussions afterward.

Q. You spoke of "weekly check-ins." And did you have a check-in weekly with

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respect to the work with the Citywide Appeal Panel?

A. Yes. It was weekly until roughly early to mid March.

Q. And who participated in these check-ins?

A. All the members of the Citywide Appeal Panel, so all the people who were reviewing and voting on cases.

Q. And these check-ins took place by Zoom?

A. Like I said, a videoconference. I can't recall at the moment whether it was Zoom. It may have been Microsoft Teams.

Q. And were these conferences recorded?

A. No.

Q. And were notes taken?

A. No.

Q. And why not?

MR. HAIDER: Objection.

A. Again, as I mentioned a few moments ago, these check-ins were meant to be somewhat informal opportunities for the panel members to confer, to discuss any questions, concerned

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2 trends they had. I also would often review  
3 our progress in deciding cases, go through  
4 some of the metrics and statistics.

5 The purpose of it really was to  
6 bring the group together because a lot of the  
7 cases -- obviously the cases, because we want  
8 each panel member and each agency to bring  
9 their own unique perspective, when they're  
10 reviewing cases, they're reviewing them  
11 individually. So we wanted to have these  
12 opportunities for everyone collectively, you  
13 know, to share announcements, you know,  
14 important developments, and to have the  
15 opportunity to talk at a higher level about  
16 various issues.

17 Q. And among the things that you did in  
18 these weekly check-ins, did you discuss how to  
19 adjudicate cases in, you know, various kinds  
20 of situations that had been presented in  
21 individual applications?

22 A. So generally, it wasn't one -- like,  
23 in this individual case, you know, I  
24 encountered this. It was more about trends  
25 and issues that people had encountered and may



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2 have said, hey, I wanted to see what you all  
3 thought, here is my thought process when I  
4 encountered this issue. And we'd have  
5 conversations, respectful of the fact, as I  
6 said, that everyone is entitled to their own  
7 independent opinion and judgment on the  
8 application of the [inaudible] fact and the  
9 assessment of credibility, things like that.  
10 So we would have those sorts of higher-level  
11 conversations.

12 Generally, the conversations about  
13 specific cases were more procedural; I would  
14 like more information on this issue or, you  
15 know, from the agency, I would like more  
16 cooperative dialogue on this; there seems to  
17 be a missing document in this case, can you --  
18 you know, someone follow up with the agency  
19 and see what it is, more so than a discussion  
20 of the individual panel member's assessment of  
21 the merits of the appeal.

22 Q. Were there also situations in which  
23 the three persons who were assigned to vote on  
24 a particular case, you know, spoke to each  
25 other?

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A. Yes, that's happened.

Q. And how frequent is that?

A. That's rare.

Q. Okay. And what about engaging in email communication?

A. We will on occasion engage in email communication, as well as, you know, Microsoft Teams, we will send a message to the group. You can do that, there's a function in Teams that does that. Our protocol is that when we do so about a specific case, we include the case number so that we can identify later on if it's relevant to any inquiry that we received, whether it's litigation related, what have you, we can identify those communications easily.

Q. You used the word "protocol."

A. Uh-huh.

Q. Are there any protocols that are in writing that are, you know, established by your Citywide Appeals Panel?

A. No. As I've said, and I think I've been, you know, as direct as I can about it, this was a process developed in the context of

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2 a public health emergency. I can see in an  
3 ideal world where we were spending months or  
4 even years building it up and preparing it,  
5 there would be manuals, protocols, you know,  
6 rules and regs. That's not how this went.

7 This was something where we had to  
8 build the foundation off of the structure, you  
9 know, make sure we're firm on the standards,  
10 and then as we went along, as we encountered  
11 things, we would discuss as a panel, you know,  
12 we should do this in this situation or that.  
13 In that situation, one of the things that  
14 developed early on was that we generally were  
15 working out of our database, but there were  
16 times where we needed to communicate outside  
17 the database and wanted to make sure those  
18 communications were assessable, should we ever  
19 need them moving forward.

20 Q. What database are you using? What  
21 database program?

22 A. Yeah, sure. It's called Salesforce.

23 Q. Salesforce?

24 A. Yes.

25 Q. Now, in one of your affidavits,

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2 Mr. Eichenholtz, you used the word  
3 "guidelines," and you applied it to consist of  
4 two documents that you specifically  
5 referenced. One was the FAQ on New York City  
6 Employees Vaccine Mandate, and you've already  
7 referred to that document in this deposition,  
8 and we could call it the FAQ. And the other  
9 was applying for a reasonable accommodation  
10 from the COVID-19 vaccine mandate.

11 A. Uh-huh.

12 Q. You indicated that you had been at  
13 least one of the people involved in drafting  
14 the FAQ.

15 A. Yes, yes.

16 Q. And who else participated in that  
17 drafting?

18 MR. HAIDER: Objection.

19 A. Yeah, and like I said, I can tell  
20 you the agencies rather than the individuals.  
21 It would have been DCAS and OLR, the Native's  
22 Office of Labor Relations would have been  
23 involved in those drafts.

24 Q. And so, they were also involved in  
25 the applying for a reasonable accommodation

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2 document?

3 A. Yes.

4 Q. And you were involved in that, also?

5 A. Yes.

6 Q. Okay. Now, have these guidelines  
7 changed at all since the creation of the  
8 Citywide Panel?

9 A. I -- with respect to the Citywide  
10 Panel, which is really what I'm here to  
11 discuss, I don't believe so. I could not tell  
12 you if there were other elements of the  
13 process that were altered, that were less,  
14 shall we say, relevant to directly to my work.  
15 I could not say for certain, as I sit here  
16 today, whether other elements of it were  
17 altered outside the scope of what we're here  
18 to discuss today.

19 Q. And both elements of the guidelines  
20 appear on the internet.

21 A. Uh-huh, yes.

22 Q. How has information about the  
23 existence of these guidelines been  
24 disseminated?

25 MR. HAIDER: Objection.

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2 A. As I've said earlier, generally we  
3 were disseminating it to the agency personnel  
4 officers, the EEO officers, the general  
5 counsel of the agencies, so those managers who  
6 have responsibility in the areas that that  
7 guidance covers, and how the agencies took  
8 those, that guidance and directives, and that  
9 was really up to the individual agencies and  
10 how the individual agencies operated.

11 Q. And you disseminated them by email  
12 or by some other means?

13 A. By email, by email. I'm certain  
14 there was an email, multiple emails probably  
15 to the different groups, but there were  
16 emails.

17 Q. Aside from the quality control  
18 review that you and Sanford Cohen give to  
19 decisions, is there any oversight of the work  
20 of the City Panel from anyone?

21 MR. HAIDER: Objection.

22 A. Yeah, I'm trying to, you know --  
23 generally, no, because there is no -- you  
24 know, there is general oversight of the  
25 overall process by Department of Citywide

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2 Administrative Services Law with respect to  
3 legal or compliance, Office of Labor Relations  
4 with respect to compliance with agreements,  
5 but there's no sort of, like, super appeal  
6 panel that reviews the work of the appeal  
7 panel or, you know, an appeal panel manager or  
8 something like that.

9 Q. Do panelists on the individual  
10 panels ever change their minds or their  
11 comments in the course of deciding an appeal?

12 A. Yes.

13 Q. And is that reflected anywhere in  
14 the record of the appeal?

15 A. Yes. As I understand it, all  
16 changes to the comments would be logged in the  
17 database.

18 Q. So there is a spreadsheet that has  
19 been provided to us that provides the  
20 information from the database with respect to  
21 the individual clients that we have in this  
22 lawsuit. There's a column that says Old  
23 Value. And is that column for the purpose of  
24 providing comments that had been superceded?

25 MR. HAIDER: Objection.

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A. Yes. As I understand it, that is listing comments that have since been changed.

Q. And if the column is blank, does that mean that there's been no change in position or that some material has been deleted, or does it mean something else?

A. Well, I -- so I just want to go -- if it is blank, it means the comment has not been changed. A change in a comment does not necessarily reflect a change in position. Most frequently, a change in a comment will be because the Comment field is being used to flag that there's been a follow-up request of some kind so that a different reviewer doesn't go in and vote and we wait -- and then it's also flagged so the reviewer can go back in and know -- and check to see whether the agency has uploaded material in response to the follow-up request. So it's not necessarily that, oh, I'm putting in one position in the comment, now I'm changing my position. Comment field also is used for flags as the case is being -- the appeal is being decided.



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2 Q. How many individual members does the  
3 Citywide Panel have at this time?

4 A. So let me walk through it. So there  
5 are currently five people voting for the Law  
6 Department, there are four people voting for  
7 DCAS, there are two people actively voting on  
8 the City Commission in Human Rights, and I  
9 believe we just added one more person from the  
10 Department of Health and Mental Hygiene, so  
11 they're up to three.

12 Q. Up to three now?

13 A. Yeah.

14 Q. Okay.

15 A. They've gone back and forth because  
16 they've had some personnel changes.

17 Q. So you've indicated that the  
18 personnel who are involved on behalf of the  
19 Department of Health and Mental Hygiene has  
20 changed. What about from the other  
21 departments? Are the same people providing  
22 votes now from law, DCAS, and CCHR that were  
23 involved at the very start?

24 A. Yes. And the fifth person in DCAS  
25 was added fairly recently in response to the

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2 fact that we had a large number in February, I  
3 think it was, of appeals filed with our panel  
4 from the New York City Police Department. By  
5 large, I mean I think it doubled the numbers  
6 of appeals we had.

7 Q. What was the procedure for choosing  
8 panel members?

9 A. The agencies were asked to -- told  
10 what the panel was and what its function was,  
11 and they were asked to supply qualified and  
12 appropriate personnel to review these cases,  
13 and they would report back to us with, you  
14 know -- report back with name and email, and  
15 at one point I, you know, after the agencies  
16 reported in, I put together a meeting invite  
17 to the group, and that was the panel.

18 Q. And that meeting invite was for sort  
19 of a founding meeting for the Citywide Panel?

20 A. It was an orientation meeting, yes,  
21 yes.

22 Q. And when was the orientation?

23 A. November 1, 2021.

24 Q. And how long did it take place?

25 A. I can't recall. It was between a

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half an hour and an hour.

Q. And was it recorded?

A. No.

Q. And is there any kind of a transcript or notes that relate to the meeting?

A. No.

Q. Do you know whether or not any of the people who attended took notes or recorded it?

A. I don't believe so, but I wouldn't know for 100 percent certainty.

Q. What does it mean to say that somebody is qualified to work on the Citywide Appeals Panel? That's a word that you used, "qualified and appropriate."

A. So --

MR. HAIDER: Objection.

THE WITNESS: Sorry.

A. Yeah, so the -- I think that that's someone who understands the reasonable accommodation process, someone who is capable of reviewing a record, applying law to the policy, and capable of understanding and, you

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2 know, and reaching a determination. So, you  
3 know, primarily most of the agencies assign  
4 lawyers to do it by and large. There may be  
5 one or two who are nonlawyer EEO  
6 professionals, but obviously experienced with  
7 EEO process. Yeah, so that's what I mean by  
8 "qualified."

9 Q. So the people who are on the panel,  
10 what percentage of them have participated in  
11 the initial stage of religious accommodation  
12 reviews for various agencies?

13 MR. HAIDER: Objection.

14 A. Okay. "Initial stage" -- so you're  
15 talking about making a determination for their  
16 agency. Two members of laws panel, the  
17 DOHMH -- one of the DOHMH representatives, and  
18 that's it. I don't think any of the other  
19 panel members were involved in the agency EEO  
20 review, the actual sort of reasonable  
21 accommodation process that took place  
22 pre-appeal.

23 Q. And is there a procedure or a  
24 protocol that the Citywide Panel has to make  
25 sure that people who engaged in agency level

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2 initial reviews of reasonable accommodation  
3 requests, are not also involved in  
4 determination of their appeals to the Citywide  
5 Appeals Panel?

6 A. Yeah, so, like, on the law side, as  
7 I said, the only people involved at  
8 agency-level determinations were two panel  
9 members who are attorneys for the New York  
10 City Housing Authority, and they do not vote  
11 on any matters regarding the New York City  
12 Housing Authority. The Department of Health  
13 and Mental Hygiene, same sort of process. If  
14 someone made the decision, they're not going  
15 to turn around and then review the decision on  
16 appeal.

17 Q. And is that protocol in writing?

18 A. No.

19 Q. How is it communicated to persons?

20 A. It was discussed -- when the various  
21 agencies organized themselves, they discussed  
22 how they were going to handle that, and so I  
23 had that discussion with the two NYCHA Panel  
24 members and DOHMH have that discussion amongst  
25 their panelists.

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2 Q. And does anything, any record in  
3 writing in the City, you know, a video record  
4 or audio record, is there any record that  
5 relates to those conversations?

6 A. No.

7 MR. HAIDER: Objection.

8 THE WITNESS: Sorry.

9 A. No.

10 Q. What subject matter expertise do the  
11 individual panel members of the Citywide Panel  
12 have with respect to medical and religious  
13 accommodation requests?

14 MR. HAIDER: Objection.

15 A. As I said, by and large generally,  
16 they are individuals who have either done one  
17 of two things. Primarily, they're individuals  
18 either legal or nonlegal who have been  
19 involved in EEO reasonable accommodation and  
20 compliance work and are familiar in that  
21 regard.

22 Or with respect to the law panel  
23 members, we have two attorneys on the panel  
24 who are in our appeals division, and we sought  
25 some assistance and support from the appeals

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2 division because they may not have as direct  
3 EEO experience, but they have extensive  
4 expertise in reviewing records and applying,  
5 you know, factual and legal standards. And so  
6 we wanted to tap into especially the law  
7 panel, because if you think about our  
8 perspective, our perspective is more the legal  
9 compliance perspective, it seemed like that  
10 would be good value added for the law panel.

11 Q. So from the standpoint of the law  
12 panel, the two who are in the appeals division  
13 who are members of the panel, they've had  
14 experience in litigation, I presume?

15 A. Yes.

16 Q. And what about the other persons who  
17 are -- the other three Law Department members  
18 of the Citywide Appeals Panel? Do they also  
19 have litigation experience?

20 A. So I am one of them, and yes, I have  
21 litigation experience. The two members who  
22 come from us, from the NYCHA General Counsel's  
23 Office, I know at least one does; I don't know  
24 if the other one does. There's one who's the  
25 Head of NYCHA's Appeals Division, so same sort

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2 of concept, and then the other is an attorney  
3 in their general couple's office who handles  
4 the employment issues, but I don't know if  
5 that's in an in-house capacity or a litigation  
6 capacity.

7 Q. Now, you used the word "NYCHA," and  
8 I'm presuming that is N-Y-C-H-A, a shorthand  
9 for the New York City Housing Authority?

10 A. That is correct. I apologize for  
11 not defining it. Yes, it is the New York City  
12 Housing Authority.

13 Q. You see, I'll define it for you, if  
14 you don't.

15 A. Thank you.

16 Q. So you spoke of the two who are in  
17 the Appeals Division of the City Law  
18 Department. Did they specifically have  
19 experience with appeals involving matters that  
20 are related to religion?

21 A. They don't focus on it, but they  
22 have had -- I don't know religion  
23 specifically, but they've worked on employment  
24 matters in the past. I don't know whether  
25 there was a religious reasonable accommodation



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2 at issue in any of their cases.

3 Q. So is there any kind of a firewall  
4 that the Citywide Appeals Panel or the Law  
5 Department puts in place to make sure that the  
6 people who are deciding religious  
7 accommodations and medical accommodations have  
8 not also been directly involved in litigating  
9 issues related to, you know, persons who are  
10 making religiously-related claims against the  
11 City or who are making medical accomodation  
12 kinds of claims against the City?

13 MR. HAIDER: Objection.

14 A. So the answer is yes. Our EEO  
15 officer and her staff are not on the panel,  
16 and they handle the Law Department's agency  
17 determinations pre-appeal. And obviously,  
18 none of the attorneys or personnel in The  
19 Labor and Employment Law Division are on the  
20 panel because their function will be to defend  
21 the mandate and defend individual cases in  
22 litigation.

23 Q. I understand what you've said with  
24 respect to the people who are not acting on  
25 the panel. But with respect to the people who

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2 are on the panel, is there any kind of a  
3 firewall set up to make sure that they have  
4 not litigated issues that are, you know,  
5 relevant to the determination of whether or  
6 not a claim is religious in nature in the  
7 religious accommodation appeals? That's the  
8 end of the question.

9 A. I mean --

10 MR. HAIDER: Objection.

11 A. Yeah, other than if, for example,  
12 there's a review of a case and this is a case  
13 that someone's either been involved with in  
14 litigation or something like that, which is  
15 almost, you know, would be virtually  
16 impossible outside of me, and I can tell you  
17 in the context of me, if I was reviewing a  
18 case, and this did happen on at least one  
19 occasion that I can think of, and I understood  
20 the fact pattern and the agency to be  
21 something not that I litigated, but that I  
22 provided legal advice to the agency, I would  
23 not vote on it, and I would not, you know,  
24 talk with any -- we don't talk with each other  
25 about the merits, for example.

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2 You know, so I think that's what you  
3 mean by "firewall." It wouldn't -- you know,  
4 if we had some first-level involvement or  
5 litigation involvement with a particular  
6 individual or their issue, we wouldn't be  
7 influencing any panel member in any way on how  
8 it goes. We might have to have a procedural  
9 discussion, but, I mean, we wouldn't be  
10 discussing substance at all.

11 Q. So with respect to yourself, it's  
12 kind of a personal understanding of what your  
13 responsibilities are; is that correct?

14 A. I think the -- I -- the remaining  
15 panel has the same understanding. We all  
16 understood we should not be -- the reason I  
17 say me personally is because I cannot think of  
18 a member of the panel serving who -- the other  
19 members of the panel, that are outside of the  
20 NYCHA example and the Department of Health, I  
21 cannot think of another member of the panel  
22 who is dealing with religious, reasonable  
23 accommodation issues with respect to the  
24 individuals whose appeals we're hearing.  
25 Obviously, broadly speaking, we have members

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2 of Citywide Equity & Inclusion on the panel,  
3 so they deal with it broadly speaking, but not  
4 with respect to any individual case.

5 Q. Well, okay. I understand that you  
6 all individually feel a duty not to  
7 participate in a case in which you're  
8 personally involved. But, you know, there is  
9 also an issue of subject matter and whether or  
10 not a person has worked on that subject matter  
11 in litigation in a way that may be contrary to  
12 the religious -- the nature of the religious  
13 claim that is being raised in an accomodation  
14 request. Do you have any kind of a subject  
15 matter firewall in place to prevent people who  
16 have formed legal opinions about religious  
17 issues from participating in decision-making  
18 with respect to religious accommodation claims  
19 that are made by employees?

20 DI MR. HAIDER: Objection. I'm going  
21 to instruct my witness not to answer, most  
22 importantly because it's outside the scope  
23 of the order for the Rule 30(b)(6).

24 At this point we've allowed a lot of  
25 background questions and foundational

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2 questions to get to the two topics, which  
3 is the Citywide Panel's process and the  
4 standards used by the Citywide Panel.

5 The composition of the Citywide  
6 Panel, while we have allowed some  
7 questions, is certainly not at issue here,  
8 so I would instruct the witness to not  
9 answer that question.

10 MR. NELSON: I'll ask -- I think I  
11 am entitled to know with respect to the  
12 issues into which I am inquiring with  
13 respect to standards and also with respect  
14 to procedures.

15 Q. Specifically, with respect to  
16 procedures, is there any written firewall  
17 policy that the Law Department has that  
18 relates to the Citywide Panel participation?

19 MR. HAIDER: Objection.

20 And just to get to the point of  
21 whether that's in the scope, can you  
22 define what you mean by "firewall"? I  
23 think that's a little confusing here, and  
24 then perhaps I will allow it even, maybe  
25 it's within the scope. At this point, I

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don't see how it is.

MR. NELSON: So firewall is a pretty well understood concept which creates a bar for people who have a prior knowledge with respect to a subject matter or other kind of involvement with a subject matter from participating in matters that might be thought to be kind of a conflict which would involve the same subject matter. And so, that's my definition of firewall. So --

MR. HAIDER: Can you repeat the question? With that understanding of that definition?

MR. NELSON: I can't repeat it exactly, no, but I will ask it again.

BY MR. NELSON:

Q. Does the Law Department have any kind of a firewall, written or oral, that relates to the participation of Law Department members on the Citywide Panel?

MR. HAIDER: Objection.

A. So I think we're mindful of -- and I know there have been courts that have weighed

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2 in on this issue that someone's legal work as  
3 an advocate for a client is not disqualifying  
4 in any way from their ability to be a neutral  
5 adjudicator. So I think as I understand the  
6 premise of the question, it's if someone has,  
7 for example, defended a religious -- a denial  
8 of a religious reasonable accommodation in  
9 religion, that somehow we should be  
10 disqualifying them from serving on the panel.  
11 No, we did not do that.

12 I think the whole point here, and I  
13 talk about the different perspectives of the  
14 agency, is to bring in -- different  
15 perspectives of the agency, is to bring in  
16 multiple areas of knowledge and perspective  
17 and people who have dealt with, be it in an  
18 EEO capacity or in a litigation capacity on  
19 either side of the V, religious reasonable  
20 accommodation requests, EEO matters,  
21 employment discrimination, the duty to  
22 reasonably accommodate, have knowledge that  
23 can improve our reasonable accommodation  
24 process. So no, there would not be a policy  
25 that if someone has expertise in that area

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2 owing from litigation generally, that we would  
3 remove them or screen them off from the panel.

4 Q. And have you ever had any  
5 discussions with other members of the Law  
6 Department about whether or not it would be  
7 appropriate for them to participate either in  
8 the Citywide Panel process as a whole or on an  
9 individual panel relating to a specific  
10 appeal?

11 MR. HAIDER: Objection. I'm going  
12 to instruct my witness to limit his answer  
13 to things that are not covered by the  
14 attorney/client privilege.

15 THE WITNESS: Right.

16 A. And I would say that I think I've  
17 covered the substance of any discussion I've  
18 had on that with why we engage certain groups  
19 of people and did not engage certain groups of  
20 people. Obviously, our EEO officer in our  
21 staff would be highly qualified, but they had  
22 to handle all the individual cases in the  
23 first instance, all the individual requests  
24 that the Law Department received. And The  
25 Labor and Employment Law Division was having a



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2 function where they would actually defend  
3 these decisions and mandate any reasonable  
4 accommodation and employment discrimination  
5 issues that arose from it in litigation, and  
6 that was the substance of how we decided to  
7 choose -- or where we drew members of the  
8 panel from.

9 Q. Now, at the -- withdrawn.

10 The Citywide Appeals Panel members  
11 were chosen, as I understand your testimony to  
12 be, in part because of their prior experience  
13 with issues that relate to religious  
14 accommodation. And what materials, if any,  
15 were provided to these members of the Citywide  
16 Appeals Panel that related to or trains them  
17 on the nature the religious accommodations and  
18 on the way in which adjudicators of religious  
19 accommodation claims, you know, should  
20 consider such questions?

21 MR. HAIDER: Objection. Again,  
22 outside the scope.

23 I'll allow the witness to answer.

24 A. Yeah, I -- again, you have to  
25 remember we're dealing with people who have

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2 extensive knowledge and expertise of that.  
3 There was not a particularly strong need to  
4 train people on things they were already  
5 familiar with. We did refer the entire panel  
6 to the EEOC Guidance specific to COVID-19  
7 vaccination, and the two documents, the FAQ  
8 document, I believe the reasonable  
9 accommodation process document, so that they  
10 can familiarize themselves with the  
11 particulars of our work. But every member of  
12 the panel came to the panel with an  
13 understanding of the law of reasonable  
14 accommodations, both religious and medical  
15 generally, and how those processes work at a  
16 city agency level and the legal level.

17 Q. Have you personally discussed or  
18 participated in the Kane/Kyle case or the  
19 NYFRL case, the instant case in which we're  
20 deposing you in?

21 A. Yeah.

22 DI MR. HAIDER: Objection. I'm going  
23 instruct the witness, well, not to answer  
24 with respect to questions related to the  
25 Kane and Kyle litigation.

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I believe the second part of the question, you were directing him about this litigation; is that correct, Mr. Nelson?

MR. NELSON: This litigation, yes.

MR. HAIDER: You can answer with respect to this litigation.

A. So with respect to this litigation, I've participated essentially in a -- primarily in a position fairly unique to me, which is as someone who is more of a client resource than as an attorney overseeing and directing litigation.

MR. NELSON: What is the nature of the objection with respect to the Kane and Kyle question?

MR. HAIDER: Again, outside the scope of the two fact -- the two topics that are subject to this 30(b)(6), which is the Citywide Panel's process in reviewing and the standards used by the Citywide Panel.

MR. NELSON: So referring to standards, Mr. Eichenholtz's repeatedly

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2 referred to the EEOC's Guidance with  
3 respect to COVID-19.

4 Q. Do you understand -- withdrawn.

5 Does that guidance, in the view of  
6 the panel, alter the sort of nonCOVID-19 EEOC  
7 Guidance with respect to how cases should be  
8 adjudicated?

9 MR. HAIDER: Objection.

10 A. I understand it to be guidance  
11 applying those standards to a specific and  
12 very unique set of circumstances.

13 Q. And is there any way in which the --  
14 when which the guidance is to be applied or is  
15 applied by the Citywide Panel to COVID-19  
16 circumstances and applications made during  
17 COVID-19 that relate to the vaccination that  
18 is different from the way that the EEOC  
19 standards would be applied in other contexts?

20 MR. HAIDER: Objection.

21 A. Not that I'm aware of.

22 Q. All right. So all the definitions  
23 that are in the EEOC Guidance would remain the  
24 same, so far as the panel is concerned as, you  
25 know, in the nonCOVID-19 context?