

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

IF YOU ARE THE PARENT OR GUARDIAN OF A NYC DEPARTMENT OF EDUCATION (“DOE”) STUDENT IN THE BRONX WITH AN INDIVIDUALIZED EDUCATION PROGRAM (“IEP”) THAT RECOMMENDS OR RECOMMENDED ONE OR MORE RELATED SERVICES (FOR EXAMPLE, SPEECH THERAPY, OCCUPATIONAL THERAPY, OR COUNSELING)

OR IF YOU ARE OR WERE A STUDENT AT A DOE PUBLIC SCHOOL IN THE BRONX WITH AN IEP THAT RECOMMENDS OR RECOMMENDED ONE OR MORE RELATED SERVICES

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LITIGATION.

The proposed settlement (the “Settlement” or “Settlement Agreement”) resolves a lawsuit claiming that the DOE discriminated against some students with disabilities who attend DOE schools in the Bronx and have IEPs that recommend one or more related services. The lawsuit specifically addresses the distribution and administration of related service authorization (“RSA”) vouchers.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

- **You can object**—you may write to the Court if you do not like the Settlement.
- **You can go to the Fairness Hearing**—you may ask to speak to the Court regarding the fairness of the Settlement.
- **If you do nothing** and the Settlement is approved, you will be bound by the terms of the Settlement.
- These rights and options are explained in this Notice.

If you have questions or would like to get a copy of the full Settlement Agreement, please call Disability Rights Advocates at (212) 644-8644, email at rsa@dralegal.org, or visit dralegal.org.

GENERAL INFORMATION

1. What is this lawsuit about?

The lawsuit, *M.G. v. New York City Department of Education*, Case No. 17-cv-05692-PGG-KNF, filed in the United States District Court for the Southern District of New York in 2017, was brought by the Plaintiffs: two Bronx students, M.G. and G.J., and Bronx Independent Living Services (“BILS”). The lawsuit alleges that the New York City Department of Education has discriminated against students with disabilities who have IEPs that recommend one or more related services and attend DOE schools in the Bronx. Related services include occupational therapy, speech therapy, physical therapy, counseling, and other services. The Plaintiffs allege that the DOE violated the Plaintiffs’ and other Bronx students’ rights by failing to provide students with the related services on their IEPs, and particularly that the DOE does not provide enough information and support to families who have received a Related Service Authorization (“RSA”) voucher for related services to ensure that students are able to get the services on their IEPs. The DOE has denied any wrongdoing concerning these allegations.

2. What is a class action?

The Plaintiffs made their claims on behalf of themselves and other students who might also have been impacted by these practices. The Plaintiffs are asking the Court to be allowed to serve as Class Representatives on behalf of all the impacted students (also called the Class Members or the Class).

3. Why is there a Settlement?

The Court has not decided the case in favor of either side. Instead, the Plaintiffs and the DOE have agreed to settle the case. They believe that the Settlement they have reached is fair, adequate, reasonable, and in the best interests of the Class Members. In reaching this conclusion, the Class Representatives and their lawyers have considered the benefits of the Settlement, the possible outcomes of continued court proceedings, and the expense and length of continued proceedings and possible appeals.

4. Who is covered by the Settlement?

There are two groups of students covered by the Settlement. They are:

- Current DOE students: Students who currently attend a DOE school in the Bronx and had or have an individualized educational program (“IEP”) that recommends one or more related services (like speech therapy or occupational therapy) between July 27, 2015 and today.
 - The current students group also includes future students with IEPs who will attend DOE schools in the Bronx through the end of the Settlement Agreement (three full school years after the agreement starts).

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- Former DOE students: Students who attended a DOE school in the Bronx between July 27, 2015 and March 13, 2020, had an IEP that recommends one or more related services (like speech therapy or occupational therapy), received a Related Service Authorization (“RSA”) voucher for one or more of their related services, and did not receive the related services under that RSA between July 27, 2015 and March 13, 2020.

5. What do I do if I am not sure whether I or my child is included?

If you are not sure if you or your child is covered by the class, please email Disability Rights Advocates at rsa@dralegal.org or call (212) 644-8644 for more information.

6. Can a student receive money under the Settlement?

No. The Settlement does not give any monetary relief to Class Members.

7. What does the Settlement provide for the Class?

If this Settlement is approved, the DOE will be putting in place certain policies and procedures. The Settlement will be in effect for three full school years after the time the Court approves the Settlement. The actions in the Settlement generally relate to:

- Increasing the ability of the DOE to provide related services without having to use RSAs.
- When RSAs are necessary, ensuring that they are issued in a timely manner and the DOE takes steps to provide information and support to families who have received an RSA.
- Providing make-up services to students who missed services because they were unable to use an RSA or had a delay between when they were supposed to have begun services and when their services under the RSA began.

Plaintiffs will be monitoring the DOE’s compliance with the Settlement’s required actions during the term of the Settlement. This notice summarizes the requirements in the Settlement:

- **Increasing the ability of the DOE to provide related services without having to use RSAs.**
 - Assign enough funding by the summer before each school year of the agreement period to support employment offers for projected full-time occupational therapy (“OT”), physical therapy (“PT”), speech therapy, and counseling positions at DOE schools in the Bronx for the following school year;
 - Increase the number of OT supervisors in the Bronx;

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- Increase funding to the DOE's Related Service Scholarship and Loan Forgiveness Program to increase the DOE's ability to recruit degree candidates in certain related services fields to seek and maintain employment with the DOE;
- Ensure functions relevant to related service case management and tracking are included in the proposal for the data management system for which the DOE is currently seeking to replace its current system.
- **When RSAs are necessary, ensuring that they are issued in a timely manner and the DOE takes steps to provide information and support to families who have received an RSA.**
 - When neither a DOE provider nor contract agency provider can be identified, take steps to issue RSA vouchers by the 16th school day of each school year, or by the 16th school day after the relevant effective date;
 - Continue the Saturday Site program for OT and speech services in the Bronx and begin that program each school year by an agreed-to date;
 - Appoint non-school based RSA liaison(s) to support the school in assisting class members' parents in locating an RSA provider; establish procedures for how this support will be provided;
 - Notify principals of DOE Bronx schools and designated RSA Liaisons of their obligation to provide assistance to parents of class members;
 - Establish requirements for the notice given to parents of students who have received an RSA, including procedures for ensuring that parents receive this notice and a requirement that the notice describe how the DOE will support the parents through the RSA process;
 - Provide P311 with accurate information on the RSA process as an additional source of support for parents who need assistance with this process;
 - Take steps to ensure accuracy of the RSA Provider List given to parents with the RSA and to add additional detail regarding the providers' geographic preferences;
 - Implement the Vendor Contract pilot project as a potential means of incentivizing independent providers to provide related services.

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- **Providing make-up services to students who missed services because they were unable to use an RSA or had a delay between when they were supposed to have begun services and when their services under the RSA began.**
 - The DOE has also agreed to provide make-up services for students who were given an RSA for one or more related services and were not able to get services through that RSA (either who could not use the RSA at all, or who missed services between when they were supposed to have started receiving the related services and when they were eventually able to start services with the RSA). These services may be offered at Saturday Sites or summer sites. If a parent does not wish to utilize Saturday Sites or summer sites, the DOE will work with the parent to identify a provider. Parents can request make-up services by emailing BronxMakeups@schools.nyc.gov or calling 311.
 - If a class member missed services in connection with an RSA they received between July 27, 2015 and the day this Settlement becomes effective, they have one year to submit a request for make-up related service and will have up to three years to use the make-up services.
 - If a class member misses services in connection with an RSA during the course of the Settlement, they can submit a request for make-services by no later than the end of the semester after the semester in which they receive the RSA. (For example, if a student is given an RSA in the fall semester and misses services, their parent has until the end of the spring semester of that school year to request make-up services.)
- **Monitoring of Agreement**
 - As part of the Settlement Agreement, the DOE has agreed to provide Class Counsel, on a confidential basis, with data and other information needed for Class Counsel to ensure that the DOE is following the terms of the agreement. If Class Counsel finds that the DOE has not followed the terms of the agreement, the parties (the Plaintiffs and the DOE) will work to resolve the issue. Additionally, the parties are asking that the Court remain available to assist if there are compliance issues that the parties cannot resolve themselves. This monitoring will occur throughout the Settlement term, which is three full school years after the Settlement is approved.

8. Do I have to give up any rights if the Settlement is Approved?

Under the Settlement Agreement, the Named Plaintiffs agree to release (give up) certain claims and release certain claims on behalf of the Class.

- The Named Plaintiffs and the Class release any claims for systemic injunctive relief related to the administration of the RSA system in the Bronx that arose before the date

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the Settlement is effective. This means that neither the Named Plaintiffs nor any Class Member can bring another case challenging the way the RSA system in the Bronx is operated on a system-wide level based on events that occurred before this Settlement goes into place.

- The Named Plaintiffs M.G. and C.J. release any and all claims for compensatory (make up) services for occupational therapy in connection with the RSAs they received. The Named Plaintiffs do not release any other claim for compensatory services.
- Class members only release claims for compensatory services in connection with RSAs issued to them between July 27, 2015 and the end of the Settlement term if they request and actually receive make-up services.
- Neither the Named Plaintiffs nor Class Members release any other claims such as due process claims arising under the IDEA or Section 504, any claim for reasonable accommodations under the ADA or Section 504, or any monetary claims.

9. What does the Settlement provide for the Named Plaintiffs?

As part of the Settlement Agreement, the DOE has agreed to pay the two individual Named Plaintiffs \$2,000 each for class representative services and provide the two individual Named Plaintiffs with make-up services for the occupational therapy they missed as a result of getting RSA vouchers they were unable to use.

10. When will the Court decide if it approves the Settlement?

The Court will hold a hearing (called a “Fairness Hearing”) on **June 22, 2021 at 10:00 a.m.** in the Courtroom of the Honorable Judge Paul G. Gardephe at the Thurgood Marshall United States Courthouse, 40 Foley Square, Courtroom 705, New York, NY 10007, to determine whether the proposed Settlement Agreement is fair, adequate and reasonable, and should be finally approved. The hearing may be held remotely. Please contact Disability Rights Advocates for any updated information on attending the hearing remotely. If the Judge approves the Settlement after the Fairness Hearing, there could still be appeals. If any appeal is filed, it is uncertain how long it might take to resolve. If the Settlement is approved, and no appeal is filed, the DOE will start taking the actions required by the Settlement.

11. Do I have a lawyer in this case?

Yes. If you or your child is a Class Member, attorneys from Disability Rights Advocates represent you solely for the purposes of this Settlement. You will not be charged for being represented by these lawyers in this matter. If you want to get your own lawyer, you may hire one at your own expense.

12. Will the lawyers in this case be paid?

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Yes. The Settlement Agreement states that the attorneys for the Class can seek reasonable attorneys' fees from the DOE for investigating the facts of this case, litigating the case, negotiating the Settlement, and monitoring and enforcing the Settlement. The payment of attorneys' fees will not impact the services provided by the DOE under this Settlement, or the policies and practices the DOE has agreed to implement.

OBJECTING TO THE SETTLEMENT

13. How do I tell the Court that I do not like the Settlement?

If you or your child is a member of the Class, you can object to the Settlement if you do not like it. You can give reasons why you think the Court should not approve the Settlement so that the Court can consider your views. You cannot ask the Court to change the terms of the Settlement; the Court can only approve or deny the Settlement. If the Court denies the Settlement, the actions outlined in this notice will not occur and the lawsuit will continue.

To object, you must send a letter saying you object to *M.G. et al. v. New York City Department of Education, et al.* Be sure to mention the case name, and include your name, address, telephone number, your signature, and the reasons you object to the Settlement. Mail the objection to the following addresses postmarked no later than **May 22, 2021**:

Clerk of Court
United States District Court for the Southern District of New York
Daniel Patrick Moynihan
U.S. Courthouse
500 Pearl Street
New York, NY 1007

Stuart Seaborn
Disability Rights Advocates
P.O. Box #331
Berkeley, CA 94701

Janice Birnbaum
New York City Law Department – General Litigation Division
100 Church Street, Room 2-195
New York, NY 10007

14. When will the Court make a decision about approving the Settlement?

The Court will hold a Fairness Hearing on **June 22, 2021 at 10:00 a.m.** in the Courtroom of the Honorable Judge Paul G. Gardephe, Thurgood Marshall United States Courthouse, 40 Foley Square, Courtroom 705, New York, NY 10007, to determine whether the proposed Settlement Agreement is fair, adequate and reasonable, and should be approved. The hearing may be held remotely. If there are objections, the Court will consider them. The Judge will listen to people

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who have properly submitted requests to speak at the hearing. After the hearing, the Judge will decide whether to approve the Settlement.

15. Do I have to attend the hearing?

No. The lawyers from Disability Rights Advocates will attend the hearing and answer any questions the Judge may have about the case. You are welcome to attend the hearing if you would like, but you must pay for your own travel to the hearing if it is held in person or provide your own internet access if the hearing is held remotely.

If you sent an objection letter, you are not required to come to the hearing to talk about your letter. All you have to do to properly object is to have sent your written letter by the deadline. If you have your own lawyer, you may also pay your lawyer to be at the hearing, but that is up to you.

16. Am I allowed to speak at the hearing?

You can ask the Court for permission to speak at the Fairness Hearing. Please note that any costs incurred for attending the hearing will be at your own expense. To request to speak at the hearing, you must send a letter saying that it is your intention to appear in *M.G. v. New York City Department of Education*, Case No. 17-cv-05692-PGG-KNF. Make sure to include your name, address, telephone number, and signature, and list any witnesses you may call to testify and exhibits you intend to introduce into evidence at the hearing. You may also want to provide the Court with the information needed to contact you electronically.

Your letter must be postmarked no later than **May 22, 2021** and be sent to the following addresses:

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17. What if I do not do anything?

You do not need to do anything to receive the future protections of this Settlement.

GETTING MORE INFORMATION

18. Are there more details about the Settlement?

This notice summarizes the Settlement. There are more details in the Settlement Agreement itself. To the extent that this notice varies from the Agreement, the terms of the Agreement are correct.

You can access a copy of the Agreement by visiting the Disability Rights Advocates website at dralegal.org. You can also request a copy of the Agreement or ask questions about the Agreement by calling (212) 644-8644 or emailing rsa@dralegal.org.

You can access the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://pacer.uscourts.gov/> or by visiting the office of the Clerk of the Court for the United States District Court for the Southern District of New York at Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

Please do not call the Court or the Court Clerk's office to ask about this Settlement.

This Notice is also available in Spanish. To obtain copies of this Notice in Spanish or in alternative accessible formats, please email rsa@dralegal.org.

Este Aviso también está disponible en español. Para obtener copias de este Aviso en español o en formatos accesibles alternativos, envíe un correo electrónico a rsa@dralegal.org.

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