



News Release

For Immediate Release

Contact: Betty Baez Melo • bbaez@afcnyc.org
Michael B. Miller • mbmiller@mof.com

Advocates for Children and Morrison Foerster File Federal Complaint on Behalf of Young Student Wrongfully Denied Compensatory Services

September 26, 2023 (NEW YORK, NY) – Today, Advocates for Children of New York (AFC) and Morrison & Foerster LLP filed a complaint in federal court against the New York City Department of Health and Mental Hygiene (DOHMH) and the New York City Department of Education (DOE) on behalf of a young child, R.A., who was not provided the critical services she was entitled to receive from DOHMH’s Early Intervention program for infants and toddlers with disabilities. When R.A.’s family requested compensatory services to make up for the services that were never provided, DOHMH claimed they had no obligation to provide these services – although they had failed for seven months to deliver the mandated support R.A. needed to make progress – because she had aged out of the program when she turned three years old, and was therefore no longer eligible.

R.A. was originally found eligible for services through the federally mandated Early Intervention program when she was a toddler. R.A. has Autism, has limited communication skills and has significant delays across all areas of development. DOHMH, the city agency that runs the Early Intervention program, agreed that R.A. needed a series of intensive services and created a plan for DOHMH to provide the services in her home. However, over the next seven months, R.A. never received her mandated speech therapy or occupational therapy services and only received a fraction of the behavioral therapy she had a right to receive.

“When our pediatrician told us about the Early Intervention program, we were very eager to get R.A. services,” said her mother. “We thought this program would be exactly what she needed to catch up to other children her age. But the entire process has been a challenge. We tried so many times to get her the services she needed but it didn’t make a difference. Without those services, she fell even more behind.”

The federal Individuals with Disabilities Education Act (IDEA) establishes a right to services for children with disabilities from birth to 21. In New York City, IDEA services for children from birth to three are provided by DOHMH; IDEA services for children three to 21 are provided by the DOE. When either of these agencies fails to provide mandated services, the law requires that the agency provide “compensatory services” to make up for the education and therapies that the student lost. However, in R.A.’s case, neither DOHMH nor DOE is accepting responsibility for providing the make-up services, leaving her without a means to acquire the fundamental skills that she needs to learn and progress.

“The finger pointing between DOHMH and DOE is causing further harm to the family, who simply wants the services their daughter needs and is entitled to receive,” said **Betty Baez Melo, the Director of AFC’s Early Childhood Education Project**. “We know that fewer than half of NYC’s children are getting their Early Intervention services on time. This case is not just about enforcing R.A.’s right to services; it’s about holding DOHMH and the DOE accountable so more young children aren’t left without the services they need and have a right to receive.”

“The DOHMH’s position amounts to saying that if they can just play keep-away with a 2 ½ year old until their third birthday, then their obligations under the statute magically disappear. That’s awful policy, but it’s also bad law. R.A. deserves better, and that’s what this lawsuit aims to provide her,” said **Morrison & Foerster LLP Partner Michael B. Miller**.

About Advocates for Children of New York (AFC)

Since 1971, Advocates for Children of New York has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds who are at greatest risk for failure or discrimination in school because of their poverty, disability, race, ethnicity, immigrant or English Language Learner status, sexual orientation, gender identity, homelessness, or involvement in the foster care or juvenile justice systems. AFC uses four integrated strategies: free advice and legal representation for families of students; free trainings and workshops for parents, communities, and educators and other professionals to equip them to advocate on behalf of students; policy advocacy to effect change in the education system and improve education outcomes; and impact litigation to protect the right to quality education and compel needed reform. To learn more about AFC, please visit www.advocatesforchildren.org.

About Morrison Foerster

Morrison Foerster is a leading global law firm that transforms complexity into advantage for its clients. 2023 marks the 40th anniversary of Morrison Foerster’s presence in Asia. Our clients include some of the largest financial institutions, banks, consulting and accounting firms, and Fortune 100, technology, and life sciences companies. Morrison Foerster also has a long history of commitment to the community and society through providing pro bono legal services, including litigating for civil rights and civil liberties, improving public education and fostering the wellbeing of children, advocating for veterans, promoting international human rights, enforcing the right to asylum, and safeguarding the environment. For more information, visit www.mofo.com.