



Advocates for Children of New York

Protecting every child's right to learn

News Release

For Immediate Release

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Class Action Filed Against NYC Department of Education on Behalf of Students with Disabilities to Address Losses During Remote Learning

November 23, 2020 (NEW YORK CITY) — Today, Advocates for Children of New York (“AFC”) and Patterson Belknap Webb & Tyler LLP filed a class action complaint in federal court against the New York City Department of Education (“DOE”) and New York State Education Department (“NYSED”) on behalf of students with disabilities who have not received an appropriate education during the time of remote learning as a result of the COVID-19 pandemic. The plaintiffs are asking the Court to require the DOE to create a system to provide make-up educational services to address the resulting learning loss.

When schools closed their physical spaces due to the COVID-19 pandemic, tens of thousands of students with disabilities in New York City were – and still are – unable to access appropriate services and programs during remote learning. The loss in education and progress for these students becomes more pronounced every day that they do not receive all of the services mandated on their Individualized Education Program (“IEP”) in a way that is accessible and appropriate in consideration of each student’s disability. For students with disabilities who are English Language or Multilingual Learners, or whose parents do not speak English, the challenges of accessing remote learning have been even more significant.

Chrystal Bell, one of the parents named as a plaintiff in the litigation, has a son who is deaf, blind, and non-verbal. As Ms. Bell explains, “My son cannot see, hear, or speak. How can he be expected to learn sitting in front of a computer all day, when he has no way to interact with his teachers or understand what they’re asking of him? My child just turned 21 and will now be considered too old to remain in his DOE high school. Without compensatory services, he will have lost more than a year of his education that he will never be able to get back.”

Under the federal Individuals with Disabilities Education Act (“IDEA”), school districts must provide a free and appropriate education (“FAPE”) to all students with disabilities. When the school district fails to do so, the law requires that they must provide “compensatory services” to make up for the

education and therapies that the student lost. Although the widespread inability of the students to access their IEP-mandated services and program during remote learning has resulted in a denial of FAPE in violation of the IDEA, Section 504 of the Rehabilitation Act, and New York Education Law, the DOE has not announced any plans — in the eight months since schools closed – to develop a system for identifying which students with disabilities require compensatory services, determining what services they need, and providing those services.

The complaint filed today asks that the DOE create an expedited and efficient process to provide make-up services for the instruction and services students with disabilities have lost during the period of remote learning, rather than requiring that each of the tens of thousands of parents of students with disabilities litigate individually to receive the services their children need and require.

Kim Sweet, Executive Director of AFC, explained, “Tens of thousands of students with disabilities have gone months without appropriate educational services, with many losing the progress they had made. These students should receive the compensatory services they need as quickly as possible, without having to jump through cumbersome legal hurdles that will favor families able to afford lawyers and leave economically disadvantaged students behind.”

“We’re pleased to partner with AFC on this important class action, to attempt to rectify the disparities in education that students with disabilities have encountered in New York City due to the COVID-19 pandemic,” said Joshua Kipnees, Partner at Patterson Belknap. “City students with disabilities have been denied access to an appropriate education for the better part of a year, and we hope that today’s complaint brings justice and essential compensatory services to these students as quickly as possible.”

Read the class action complaint filed in federal court [here](#).

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.