



Advocates for Children  
of New York  
Protecting every child's right to learn

Milbank

## News Release

### For Immediate Release

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## Motion Filed in Federal Court for Independent Special Master Due to NYC DOE's Failure to Comply with Hearing Orders Enforcing the Rights of Students with Disabilities

*Hundreds of students are not receiving special education services ordered by a hearing officer by the legal deadline*

**September 3, 2019 (NEW YORK CITY)** — After years of the New York City Department of Education (DOE) failing to follow hearing orders to provide or pay for services for students with disabilities, Advocates for Children of New York (AFC) and Milbank LLP filed a Motion for an Independent Special Master to oversee the DOE's implementation of these orders. The motion was filed in the federal district court for the Southern District of New York in connection with the class action lawsuit, [L.V. v. New York City Department of Education](#).

When the DOE fails to provide appropriate educational services or school placements to students with disabilities, their parents may request an impartial hearing to enforce their children's rights. Following the hearing, an impartial hearing officer can order the DOE to provide services to a student or pay the cost of services or school tuition.

In 2003, AFC and Milbank filed a class action lawsuit, *L.V. v. New York City Department of Education*, alleging that, after parents of children with disabilities received favorable orders in impartial hearings, the DOE was failing to implement the required remedies. In 2007, the DOE settled with the families and agreed to implement all orders involving special education within 35 days, unless the hearing officer set a different deadline. The settlement had increasing benchmarks that the DOE committed to reach before the settlement sunsets.

Today, AFC and Milbank filed a [motion in federal court](#) because the DOE is now failing to meet even the lowest agreed upon benchmark. While a special unit for implementation of these orders created in 2011 was supposed to improve the DOE's rates of implementation, any improvement has now slipped. In fact, between October 29, 2017 and January 26, 2018, the most recent quarter for which final data is available:

- The DOE implemented only **69.6%** of special education hearing orders within 35 days.
- The implementation rate for hearing orders requiring the DOE to provide a service directly to a child was even worse than the implementation rate for orders requiring payment for services. Within 35 days, the DOE implemented only **49.6%** of the 700 orders requiring the DOE to provide a service to a child. In other words, in this quarter alone, hundreds of students with disabilities did not receive the services the DOE was ordered to provide by the legal deadline.

Since that time, the DOE's timely implementation rate has declined even further.

The delays in implementing these orders have exacerbated the harm to students with disabilities and their families. Families file hearings only after the DOE has denied their children the services or school placements they need to learn. The most recent data show that, from the time parents request a hearing, on average, it takes 225 days to receive a hearing order. Then, after receiving a favorable decision, students have had to wait months to receive services they were awarded by an impartial hearing officer and parents have waited up to a year to receive ordered reimbursement for services, causing financial hardship.

For example, after the DOE illegally excluded one student from school, an impartial hearing officer ordered the DOE to find therapists to provide make-up services to the child. However, the DOE did not begin identifying potential providers for months, and the child had to wait more than six months for the DOE to find available therapists for each of the services the hearing officer had ordered. As his parent, Vicky Lopez, said: "I was happy when we won our hearing and my son was awarded make-up services, but, when the DOE took so many months to help me find therapists, it felt like my son was stuck and we were back to square one."

"After parents go through the lengthy and burdensome process of a hearing and win, they expect their child to finally get the services they need—not months of stalling," said Rebecca Shore, AFC's Director of Litigation. "The DOE's delays in providing ordered services are adding insult to injury for students with disabilities and their families. We need a special master to step in and fix this broken system."

Erik Wilson, an associate at Milbank, said: "It is outrageous that after nearly 16 years the DOE is still failing to provide these children the services to which they are legally entitled—especially after the DOE agreed to correct its systemic failure to do so nearly a decade ago. We hope the Court will quickly appoint an independent Special Master to ensure these students start receiving their services in a timely manner. They deserve nothing less."

The motion is available at

[www.advocatesforchildren.org/sites/default/files/on\\_page/lv\\_special\\_master\\_motion.pdf](http://www.advocatesforchildren.org/sites/default/files/on_page/lv_special_master_motion.pdf).

#### **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.*