

IF YOU HAVE AN IEP OR HAD AN IEP

(OR ARE A PARENT OR GUARDIAN OF A STUDENT WITH AN IEP)

AND YOU WERE SUSPENDED OR REMOVED FROM CLASS, OR TRANSFERRED OR DISCHARGED FROM A NYC PUBLIC SCHOOL

PLEASE READ THIS NOTICE OF SETTLEMENT WITH THE NYC DEPARTMENT OF EDUCATION, BECAUSE YOUR RIGHTS MAY BE AFFECTED.

THIS SETTLEMENT MAY AFFECT THE RIGHTS OF STUDENTS WITH DISABILITIES WHO ATTEND OR ATTENDED NYC PUBLIC SCHOOLS AND BELIEVE THEY WERE:

- IMPROPERLY SUSPENDED OR REMOVED FROM CLASS OR SCHOOL FOR DISCIPLINARY REASONS
- DENIED APPROPRIATE EDUCATIONAL SERVICES WHILE SUSPENDED OR REMOVED FROM CLASS
- IMPROPERLY SUSPENDED OR REMOVED FROM CLASS BECAUSE OF THEIR DISABILITY
- IMPROPERLY DISCHARGED OR TRANSFERRED FROM SCHOOL FOR DISCIPLINARY REASONS

IF THIS SETTLEMENT IS APPROVED, THE NEW YORK CITY DEPARTMENT OF EDUCATION HAS COMMITTED DURING THE TIME OF THE SETTLEMENT TO TAKE CERTAIN ACTIONS, DESCRIBED IN DETAIL BELOW.

THIS SETTLEMENT **CAN AFFECT THE RIGHTS** OF STUDENTS WHO ARE PART OF THE CLASS. PLEASE READ THE ATTACHED NOTICE FOR COMPLETE INFORMATION ABOUT THIS SETTLEMENT.

United States District Court for the Eastern District of New York
E.B. et al. v. New York City Department of Education, et al., 02 CV 5118

If you are or were a resident of New York City and are or were a student aged 4-21 with an IEP who was removed from class, suspended, discharged or transferred out of a New York City public school for disciplinary reasons, you may be part of a class action lawsuit.

YOUR LEGAL RIGHTS MAY BE AFFECTED BY THIS CASE WHETHER OR NOT YOU ACT. READ THIS NOTICE CAREFULLY.

The proposed settlement (the “Settlement”) resolves a lawsuit claiming that the New York City Department of Education (“DOE”):

- Improperly removed students with disabilities from class or school,
- Denied an appropriate education to students with disabilities while they were suspended or removed from class, and
- Improperly discharged or transferred students with disabilities.

In exchange for giving up the Class claims, the Defendants have agreed to the terms of a Settlement. The rights of class members under the Settlement are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

OBJECT	You may write to the Court if you don't like the Settlement.
GO TO THE FAIRNESS HEARING	You may ask to speak in Court concerning 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. **There are deadlines to exercise these rights and options.**

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

BASIC INFORMATION

1. What is this lawsuit about?

This federal lawsuit was brought by students and parents of students with disabilities who attended New York City Department of Education (“DOE”) schools, including community schools, schools in District 75, alternative high schools, and suspension sites. The students (the “Named Plaintiffs”) filed the Complaint on September 19, 2002, claiming that the DOE (the “*Defendants*”) violated federal and state law by depriving the Plaintiffs of educational services while disciplined, removed from class, or suspended, improperly discharging or transferring Plaintiffs out of DOE schools, and improperly disciplining, suspending, and removing Plaintiffs from school or class. Defendants have denied any wrongdoing or violation of law concerning these allegations.

2. What is a class action?

The Named Plaintiffs made their claims through a class action complaint on behalf of themselves and also on behalf of other students who may have been affected by these practices. In a class action, one or more people called “*Class Representatives*”, who include the Named Plaintiffs here, sue on behalf of people who have similar claims. The Class Representatives and all people who have similar claims are the “*Class Members*” or the “*Class*.”

Because this is a class action, one court will resolve the issues for all Class Members. After the Settlement Fairness Hearing scheduled for July 23, 2015 at 9:30 a.m., a United States District Judge will decide whether to approve the Settlement and bind the Class Members to the terms of the Settlement.

3. Why is there a Settlement?

The Court has not decided in favor of Named Plaintiffs or Defendants. Instead, both sides agreed to a Settlement that they believe is fair, adequate, and reasonable. That way, they avoid the costs and risks of a trial, and the people affected will receive benefits sooner. The Class Representatives and their attorneys think the Settlement is in the best interests of all Class Members.

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

WHO IS IN THE SETTLEMENT?

To see if you may be affected by this Settlement, you first have to determine if you are a Member of the Class.

4. How do I know if I am part of the Settlement?

Everyone who fits the following description is a member of the Class that has been certified by the court:

New York City children with disabilities from kindergarten through age 21, who have been, will be, or are at risk of being excluded from school for disciplinary reasons without adequate notice and deprived of a free appropriate education through suspensions, expulsions, transfers, discharges, removals, denials of access, or other changes of educational placement.

The court has identified six groups of the Class:

- Class Members with IEPs who were denied an appropriate education because of a Superintendent's suspension or expulsion.
- Class Members with IEPs who were denied an appropriate education because of discipline imposed by a staff member at the Class Member's school.
- Class Members with IEPs who were denied an appropriate education because of a school's exclusion of the Class Member from school or class.
- Class Members with IEPs who were denied an appropriate education because of a transfer or discharge out of school.
- Class Members without IEPs who were denied an appropriate education because of a suspension, expulsion, transfer, discharge, removal, denial of access, exclusion, or change of educational placement.
- Class Members who have a disability under Section 504 of the Rehabilitation Act who were denied an appropriate education because of a suspension, expulsion, transfer, discharge, removal, denial of access, exclusion, or change of educational placement.

5. I'm still not sure if I am included.

If you are still not sure whether you are included, you can ask for further clarification. You can call Advocates for Children at 973-878-4559 for more information.

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THE SETTLEMENT – WHAT ACTIONS THE DOE HAS COMMITTED TO TAKE DURING THE TERM OF THE SETTLEMENT

6. Can a student receive money under the Settlement?

The Settlement does not give any compensatory or monetary relief for Class Members. You will still have a right to seek compensatory relief from the DOE for you or your child during the time period covered by this lawsuit. PLEASE NOTE that there are deadlines for filing a claim and you should contact an attorney or Advocates for Children if you have questions.

7. What does the Settlement provide?

If this Settlement is approved, specific requirements and procedures for student discipline will be in place during the period of the Settlement. The Settlement will be in effect for a minimum of three school years from the time the Court approves the Settlement, with a maximum period of five school years. These actions broadly relate to:

(1) suspensions and removals of students with disabilities, and education services for students while on suspension,

(2) involuntary transfers and removals of students with disabilities from class or school, and

(3) transfers and discharges of students with disabilities out of DOE schools.

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 by each of the above categories:

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Suspensions

Removals of Students Before Superintendent's Suspension Hearings

Under the Settlement, schools must follow certain steps before a Class Member can receive a Superintendent's suspension (a suspension of 6 or more days) and before a student can be removed from school and reassigned to a suspension site before the Superintendent's suspension hearing is held. These requirements include:

- A principal must get approval from the DOE's Office of Safety and Youth Development for the district to initiate a Superintendent's suspension.
- The Settlement explains the rules on when a student may stay in school before the suspension hearing and when a principal can remove a student immediately from the school before the suspension hearing.
- In some instances, the DOE is required to get approval from the Office of Safety and Youth Development to remove a student from school before the Superintendent's suspension hearing.

Manifestation Determination Reviews

A manifestation determination review ("MDR") is a meeting to determine (a) if the conduct of a student who was removed from class or suspended was caused by, or had a direct relationship to the student's disability, or (b) if that student's conduct was the result of the DOE's failure to implement the student's IEP.

If a school determines at the MDR meeting that the conduct for which the student was suspended is the result of or was directly and substantially related to the student's disability or is the result of the failure to implement the student's IEP, the school cannot suspend the student.

Under this Settlement, the DOE must conduct an MDR for a student with an IEP in three instances:

1. If a student is suspended for more than ten (10) consecutive school days in a school year;
2. If a student is removed from class (through teacher removals or suspensions) **3 or more** times for a total of 11 or more cumulative school days within a forty school day period within a school year;
3. If a student is removed from class (through teacher removals or suspensions) **2 or more** times for a total of 11 or more cumulative school days in a school year *and* the principal of the school determines (i) that the student's behavior is substantially similar to the student's behavior(s) resulting in prior removals, and (ii) the Principal determines that there is a "pattern of removals" by examining:

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- a. The length of prior removals;
- b. The total amount of time that the student has been removed through removals or suspensions from class or school; and
- c. How close in time the removals are in relation to each other.

The Settlement sets timelines and requirements for conducting MDRs, generally requiring that the MDR occur within 5 days of the removal, principal suspension conference or the Superintendent's suspension hearing:

- If the student was not removed from his/her home school prior to the suspension hearing or no contest plea and an MDR is required, the student cannot be suspended until *after* the MDR takes place.
- If a Superintendent's Suspension is withdrawn by the DOE or the charges are not sustained through a hearing, an MDR is not required, although any days of removal will be considered in the future to determine whether an MDR is required.
- At the MDR, a school must complete a worksheet that identifies the participants at the MDR, and the documents and information the school considered, and guides the decision making process,
- During the 2015-16, 2016-17 and 2017-18 school years of the Settlement, the DOE will send staff to some MDRs to gather information to help improve the process of MDRs throughout DOE schools.

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Suspension Plans and IEP Team Meetings

The DOE will prepare a Suspension Plan for each Class Member with an IEP who is suspended for more than 10 consecutive school days and assigned to a suspension site. This plan will be the special education program that the student will receive while suspended. The Suspension Plan will include IEP goals, interventions, programs, supports, testing accommodations, modified promotional criteria, medical alerts, transportation needs, proficiency levels, the special education program to be provided at the suspension site, and the names of the persons participating in the creation of the Suspension Plan.

- An IEP team meeting will be held to develop the Suspension Plan no later than the tenth school day after the Class Member first attends the Suspension Site, unless the parent requests a postponement of the meeting. If a Class Member's IEP is out of date at the time of the suspension, the DOE will create a Suspension Plan, but may use the out-dated IEP. If a new IEP is prepared during the suspension, the suspension plan will be updated if necessary.
- Class Members with IEPs will be given instruction that can implement the Suspension Plans.
- Each Class Member keeps the right to assert individual claims that the services actually provided under the Suspension Plan did not enable him or her, while suspended, to participate in the general education curriculum and progress toward meeting the goals on his or her IEP.
- It is important to note that Class Members may not challenge Suspension Plans by claiming that:
 - Suspension Plans are implemented in classes that include general education students and students with disabilities, even if those classes differ from those in the Class Member's IEP;
 - Suspension Plans were developed using the procedures required by this Settlement, or
 - Suspension Plans were used instead of IEPs.

IEPs and Evaluations While Suspended

If a Class Member is suspended for 11 to 30 school days, the DOE is not required to hold an IEP meeting or three year reevaluation during the suspension.

- Suspension Plans for these Class Members may be developed using their existing IEPs.

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- If the student's IEP is out of date, the school in which the Class Member is enrolled after the suspension will schedule an IEP meeting or three year re-evaluation to take place within 15 school days after the Class Member first returns to school after the suspension.
- If a three year reevaluation requires new assessments, the DOE will have an additional 15 school days to complete them and schedule the IEP meeting for that reevaluation.
- PLEASE NOTE: These timelines do not apply if the parent cancels or reschedules the IEP meeting or assessment, or requests an independent evaluation.

If a Class Member is suspended for more than 30 school days and the IEP is more than one year old at the time the student is suspended or will become more than one year old during the suspension, the DOE will schedule an IEP meeting.

- The IEP meeting will be scheduled for the later of (1) the 20th school day after the suspension hearing or entry of a no contest plea, and (2) one year from the date of the last IEP.
- PLEASE NOTE: These timelines do not apply if the parent cancels or reschedules the IEP meeting or assessment, or requests an independent evaluation.

If a Class Member is suspended for more than 30 school days and the IEP becomes more than one year old during the last 20 school days from the scheduled end of the suspension, the IEP meeting will occur no later than 20 school days after the conclusion of the suspension.

- If a three year reevaluation requires new assessments, the DOE has an additional 15 school days to complete them and schedule the IEP meeting for that reevaluation.
- PLEASE NOTE: These timelines do not apply if the parent cancels or reschedules the IEP meeting or assessment, or requests an independent evaluation.

Students on One-Year Suspensions

- The settlement has additional requirements for students with IEPs who are suspended for one year. Suspension Sites will provide instruction in the **four core subject areas** and will, as appropriate, provide **additional instruction in reading intervention strategies** to Class Members with IEPs.

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

- Each Suspension Site serving Class Members with IEPs with 1 year suspensions will have at least one special education teacher, one paraprofessional, and one guidance counselor, social worker, or school psychologist. Special education teachers will discuss with other staff the progress and needs of students with IEPs.
- Students on one year suspensions will be programmed and scheduled with the objective of implementing the Suspension Plans of Class Members with IEPs. .
- A Suspension Site principal will refer students without IEPs for evaluation if the students meet certain criteria. Suspension Site staff may also request that principals make such referrals and the DOE will remind principals and staff of their obligations to refer students for evaluation under federal law.
- When a student leaves a Suspension Site and returns to his prior school or a new school, the Suspension Site will make sure that the next school has certain student records (e.g., Suspension Plans, IEPs, BIPS and other formal assessments) and may provide other documents relevant to the student's educational development.

Involuntary Transfers from Schools and Informal Removals from Class

The Settlement prohibits schools from transferring students with IEPs out of their schools or class, without following required procedures.

- The DOE may not transfer a student involuntarily for disciplinary reasons to a different school to receive the same program.
- The Settlement does permit the DOE to move a student from one suspension site to another suspension site during the period of the suspension without an IEP meeting as long as the suspension time is not increased.

Under this Settlement, the DOE cannot remove or exclude students with disabilities from their classrooms or schools as discipline unless the removals are teacher removals or suspensions and the procedures set forth in the Settlement are followed.

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Discharges Out of School and Transfers to GED or High School Equivalent Program

Under the Settlement, a public school cannot discharge students with IEPs out of school or transfer students with IEPs to a GED or high school equivalent program as discipline. The Settlement requires a school to take the following steps in connection with a discharge or transfer:

- The school must conduct a meeting with the parent and student with an IEP, called a planning interview, before discharging or transferring the student.
- The school may not schedule a planning interview to be held in the first 20 school days after the student returns from a suspension.
- The purpose of the planning interview is for the school to discuss and consider ways to address the student's learning and behavior challenges so the student can progress in school to a diploma instead of being transferred or discharged.
- The school will send a written notice to the parent before the planning interview that says that the school is considering transferring or discharging the student, and tells the parent and the student of the right to attend school to the end of the school year in which the student turns 21.
- The school will provide to the parent a packet of information called the Planning Interview Packet, that tells the student and parent their rights before and after discharge.
- As part of the planning interview process, school staff must look at the student's prior school history, including past discipline. A special education staff member at the school must review the student's IEP and planning interview form.
- The school must get the parent's consent to discharge a student with an IEP, unless the student has been absent for 20 school days in a row.
- A person within the DOE who does not work for the student's school will be required to review certain transfers and discharges of students with IEPs and will work with the school and student if the reviewer believes the transfer or discharge was for disciplinary reasons.

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- The DOE will include its policy to not transfer or discharge students with IEPs for disciplinary reasons in its planning interview materials.

SETTLEMENT PROCEDURES:

8. When will the Court determine if it approves the Settlement?

The Court will hold a hearing on July 23, 2015, at 9:30 a.m. to decide whether to approve the Settlement ("Settlement Fairness Hearing"). If the Judge approves the Settlement after the Settlement 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.

9. Do I have a lawyer in this case?

Yes. Attorneys from Advocates for Children of New York and Davis Polk & Wardwell LLP represent you for the purposes of this Settlement, *if you are a Class Member*. You will not be charged for being represented by these lawyers in this matter. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. Will the lawyers be paid?

The Agreement provides that attorneys for the class may seek reasonable attorneys' fees for investigating the facts, litigating the case, negotiating the Settlement, and monitoring and enforcing the Settlement. **Any payment of Attorneys' fees will not reduce the educational services provided by the DOE under this Settlement.**

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the Settlement or some part of it.

11. How do I tell the Court that I don't like the Settlement?

If you are a member of the Class or Subclasses, you can object to the Settlement. You can give reasons why you think the Court should not approve the Settlement. The Court may consider your views. To object, you must send a letter saying that you object to *E.B. et al. v. New York City Department of Education, et al.* Be sure to include your name, address, telephone number, your signature, and the reasons you object to the Settlement. Mail the objection to the following address postmarked no later than July 16, 2015:

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

The Clerk of the Court
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Rebecca Shore
Advocates for Children of New York
151 West 30th Street
New York, New York 10001

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

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

THE COURT'S SETTLEMENT FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to come to Court to receive educational benefits under the Settlement.

12. **When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Settlement Fairness Hearing on July 23, 2015, at 9:30 a.m. at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, in Courtroom 4C. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have properly asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement.

13. **Do I have to come to the hearing?**

No. Advocates for Children and Davis Polk & Wardwell LLP will answer questions the Judge may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to court to talk about it. As long as you have mailed your written objection on time, the Court may consider it. You may also pay your own lawyer to attend, if you so choose, but it is not required.

14. **May I speak at the hearing?**

You may ask the Court for permission to speak at the Settlement Fairness Hearing. Please note that any appearance will be at your own expense. To do so, you must send a letter saying that it is your intention to appear in *E.B. v. New York City Department of Education*, No. 02CV5118. Be sure to include your name, address, telephone number, your signature and any witnesses you may call to testify and exhibits you intend to introduce into evidence at the hearing.

Your letter must be postmarked no later than July 16, 2015 and be sent to the following addresses:

The Clerk of the Court
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

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100 Church Street, Room 2-195
New York, NY 10007

15. **What if I do nothing at all?**

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

GETTING MORE INFORMATION

16. **Are there more details about the Settlement?**

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

You can access a copy of the Agreement by visiting the Advocates for Children website at www.advocatesforchildren.org. You can call Advocates for Children at (973) 878-4559 for more information.

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org