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ATTORNEYS AT LAW

LAWSUIT ALERT: TAKE CAUTION BEFORE RESPONDING TO SPECIAL EDUCATION CLASS ACTION

This is to alert you to a class action lawsuit in which the attorneys for the plaintiff students, although bringing the case in a New York federal court, are attempting to draw in school districts throughout the country, even in Illinois. If you receive notice of this case, we advise you not to respond without first consulting your attorneys.

On July 28, 2020, a group of special education students filed a class action lawsuit in the United States District Court for the Southern District of New York. The lawsuit, *J.T. v. DeBlasio, et al.*, focuses primarily on the State of New York's decision to close schools and switch from in-person instruction to remote learning because of the COVID-19 pandemic. The lawsuit alleges that the school closings prevented special education students

from receiving a Free Appropriate Public Education (“FAPE”) and resulted in special education students receiving less instruction in comparison to general education students. Because the decision to close schools was not made by just New York, the lawsuit names each State Department of Education, as well as nearly every school district in the country. Like all class action lawsuits, the students seek to add all other “similarly situated” students across the country to the list of students currently named as plaintiffs in the lawsuit.

The students’ complaint requests various compensatory and punitive damages and includes numerous allegations that students with disabilities were denied procedural and substantive protections under the Individuals with Disabilities Education Act (“IDEA”) due to changes in services without notice to and input from parents. The complaint alleges that the substitution of remote learning for in-person instruction denied students an appropriate education and that students with disabilities did not have the same access to appropriate educational services compared to their general education peers. The complaint also alleges a violation of the IDEA’s “stay put” provision, which

they argue should afford students with a stable learning environment during an event such as a pandemic. The students claim that if their current placement becomes unavailable, the school district must somehow provide similar services pursuant to the “stay put” provision.

However, on September 2, 2020, the Chief Judge of the New York court issued an Order to Show Cause (a judge’s demand to a litigant(s) for information related to the case), which began with the Chief Judge stating that she entertains “serious doubts about numerous procedural aspects of the case.” The Order to Show Cause requires the students’ attorneys to persuade the court that: (1) the court has jurisdiction over the non-New York school districts; (2) the court’s district (as opposed to the other 3 U.S. District Courts in New York) is a proper venue for the lawsuit; and (3) that all defendants other than the New York City Department of Education are proper defendants because they (allegedly) have made specific, individualized decisions to deprive the students of the services to which they were entitled during the pandemic. If the students’ attorneys cannot persuade the court accordingly, the lawsuit will be dismissed, a

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different federal New York court will hear the case, or certain defendants will be dismissed from the lawsuit, or a combination of the foregoing will occur.

Some Illinois school districts are starting to receive requests to accept or waive service of the lawsuit from the law firm representing the students (the New York-based Brain Injury Rights Group). If you receive one of these requests please notify your attorney immediately, and do not accept or waive service without first consulting with your attorney.

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