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# COVID-19 Advisory



## COVID-19 Special Education Class Actions Resolved

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California school districts were dismissed from two lawsuits alleging they denied FAPE to all students with disabilities when they closed schools and provided distance learning in response to the COVID-19 pandemic. In doing so, the courts affirmed that special education litigation must proceed on an individualized basis.

In *J.T., et al., v. Bill De Blasio, et al.*, plaintiffs attempted to bring a nationwide class action, naming all 50 state education departments and over 13,000 local school districts as defendants. Plaintiffs sought an order demanding the reopening of schools or tuition reimbursement, as well as independent evaluations, compensatory education, and reimbursement for educational expenses and lost wages, among other remedies.

On November 13, 2020, a federal judge in the Southern District of New York (Manhattan) dismissed all defendants outside the State of New York, ruling the court did not have jurisdiction over those defendants. The order also stated the case was not a class action, but rather tens of thousands of individual cases plaintiffs attempted to combine into a single lawsuit. For defendants in the State of New York, the court denied “stay put” and other relief, rejecting the theory that transitioning schools to distance learning necessarily changed the students’ placements and noting that each student must first exhaust IDEA administrative remedies.

In *Danielle Howard Martinez et. al., v. Gavin Newsom, et. al.*, plaintiffs sought to represent a statewide class of over 800,000 students with disabilities, naming State officials and every school district in California as a defendant. On November 24, 2020, a federal judge in the Central District of California dismissed most of the claims against most of the defendants, ruling that plaintiffs failed to exhaust their administrative remedies under the IDEA. The court refused to create a new exception, or apply an existing exception to the exhaustion requirement for alleged “systemic” substantive and procedural violations of the IDEA involving 800,000 students, noting that even if the named plaintiffs were “representative of the policies at issue in this case, individual administrative determinations would alert the state to local compliance problems and further correction of any problems on a state-local level.”

For the remaining claims, plaintiffs entered into a settlement with the Governor, the State Board of Education, and other State officials and agencies. If approved by the court, the settlement would require the State officials to issue a press release stating: 1) no executive order waived rights under the IDEA, 2) SB 98 and other legislation specifically require the provision of the services outlined in a student’s IEP through distance learning and that schools must determine what accommodations are necessary to ensure IEP services are delivered through distance learning, and 3) the State expects and State law requires schools implementing distance learning to deliver services required under IEPs. Court approval of the settlement is expected before the end of 2020.

Both decisions affirm that special education and related services must be individualized, and denials of FAPE must be asserted and proved on an individualized basis. Students continue to bring COVID related allegations to OAH, CDE, and other agencies across the State and the country.

DWK attorneys are monitoring these cases. If you have any questions about this issue or other student matters, please do not hesitate to contact a DWK attorney in our Students and Special Education practice group. For more information regarding the impact of COVID-19 on your district’s operations, visit our resources page at [www.dwkesq.com/covid-19-resources-page/](http://www.dwkesq.com/covid-19-resources-page/).

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