

Notice of Proposed Class Action Settlement

IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

**John Doe, et al., : Case No.: 2:91-cv-00464 ; Plaintiffs, : Judge: Michael H. Watson v. : Magistrate Judge:
Chelsey M. Vascura**

State of Ohio, et al., :

Defendants. :

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

I. WHAT IS THIS NOTICE ABOUT?

This Notice is to tell you of a recommended Class Action Settlement Agreement ("Settlement Agreement") in the class action lawsuit, *Doe, et al., v. State of Ohio, et al.*, Case No. 2:91-cv-00464. The Court has preliminarily approved the Settlement Agreement and scheduled a hearing for February 11, 2020. At the hearing, the Court will decide whether the Settlement Agreement is fair, reasonable, and in your best interests and whether the Settlement Agreement should have final approval. You have the right to know about this settlement and the right to comment on the proposed Settlement Agreement and to attend the hearing.

II. WHO IS AFFECTED BY THIS LAWSUIT?

Students with disabilities in Ohio's public schools, including those who have or could have an individualized education program (IEP) or a Section 504 plan and their parents are covered by this settlement. Below is more detail about who is covered by this lawsuit.

You are a member of the class and this Notice applies to you if you are between the ages of three (3) and twenty-one (21), currently enrolled or seeking enrollment, now or in the future, in Ohio's public school system, and you:

- have a disability under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* ("IDEA"), the Rehabilitation Act of 1973, 29 U.S.C. §§ 790 *et seq.*, or the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and
- require, as a result of the disability, special education and related services or accommodations that are designed to meet the individual needs of children with disabilities as adequately as the needs of nondisabled children are met, and
- the parents or guardians of all such children.

III. BACKGROUND

A. Who is involved in the lawsuit?

Doe v. State of Ohio is a class action lawsuit. A class action is a type of lawsuit in court involving a large group or class of people. Without having every member of the class join the action, a few individuals initiate a court case becoming representatives of the group. This group of people is called the class and each individual person is called a class member. A few class members are selected to represent the entire class. Those people are called representative plaintiffs. The entity that is sued is called the defendant.

Doe v. State of Ohio was filed in federal court in 1993 as part of another lawsuit about funding and providing education in the State of Ohio. Disability Rights Ohio (formerly Ohio Legal Rights Service) became involved in the lawsuit on behalf of students with disabilities, who needed special education and related services from Ohio's public schools, and their parents or guardians. The lawsuit was filed as a class action because there are over 250,000 school age students, and over 20,000 pre-school students, across the State of Ohio who have disabilities and receive

special education services. All of these students are affected by how the State of Ohio provides resources for special education to public schools. These people are the plaintiffs or class members. The attorneys for the plaintiffs are Disability Rights Ohio, the Bazelon Center for Mental Health Law, and Steptoe & Johnson LLP.

The plaintiffs filed the lawsuit against the State of Ohio, which includes those offices responsible for special education in Ohio's public schools. These offices are the defendants. The defendants are the Governor of Ohio, and the following state agencies, offices, and officials: the State Board of Education of Ohio, the Ohio Department of Education ("ODE"), and the State Superintendent of Public Instruction. Their attorneys are Isaac, Wiles, Burkholder & Teetor, LLC.

B. What is the lawsuit about?

The goal of *Doe v. State of Ohio* is to make sure that all Ohio public schools, particularly 11 of Ohio's school districts, 8 of which are large urban districts ("11 Districts")¹, have enough resources to give students with disabilities appropriate special education and related services and support in the least restrictive environment. ¹ The 11 Districts are: Canton City, Cleveland Metropolitan, Columbus City, Cincinnati Public, Toledo Public, Dayton Public, Akron Public, Youngstown City, Lima City, Zanesville City, and East Cleveland City School Districts.

IV. WHAT WOULD THE PROPOSED SETTLEMENT AGREEMENT DO?

After careful consideration, and detailed negotiations, the plaintiffs and defendants have decided to settle this case instead of going to a trial. The plaintiffs and defendants have written a document describing their agreement called the Settlement Agreement. The goal of the Settlement Agreement is to improve the overall quality of special education and related services given to students with disabilities across the State, and, in particular, in the 11 Districts, and to improve results for students with disabilities. It includes additional support by ODE so that school districts, particularly the 11 Districts, meet the requirements of federal law. After the Settlement Agreement is approved by the Court, it will last for five years. A summary of the Settlement Agreement follows.

A. Development of Plan

After the Settlement Agreement is approved by the Court, ODE has one year to develop a plan (the "Plan") to redesign and improve its support system to local school districts for special education, with a focus on the 11 Districts.

B. Contents of Plan

The Plan will be created to increase the achievement and outcomes of students with disabilities as well as increasing least restrictive environment ("LRE") rates in all school districts, in particular the 11 Districts. Achievement means how well students with disabilities perform in school and how prepared they are for life after school. LRE means that students with disabilities will be in classrooms with students without disabilities as much as possible.

The Plan will include a focus on improving language and literacy, including early literacy, for students with disabilities. This means helping students with disabilities learn to read and learn information from what they are reading. The Plan will also focus on improving supports to students with disabilities who are getting ready to graduate from high school so that they are prepared for life after school. It will also focus on helping parents understand that students can continue receiving special education until they reach age 22 or have met graduation requirements. The Plan will include more training for school district staff so that students with disabilities receive necessary supports and services and to improve achievement and LRE.

The Plan also emphasizes the use of assistive technology and universal design for learning ("UDL"). Assistive technology is equipment that students with disabilities may need to participate in school activities. UDL is a way of teaching that uses different methods to teach the same material so as many students as possible understand what is being taught. The Plan requires ODE to help school districts develop multi-tiered systems of support ("MTSS"). MTSS are used for all students and give different levels of positive behavior support to the students depending on what an individual student needs.

Finally, the Plan requires ODE to help the 11 Districts develop their own improvement plans. ODE is also required to have and enforce a policy for sanctions against school districts if they fail to meet their improvement plans. The Plan can be reviewed to make sure it is working and can be changed if it is not.

C. Advisory Group

An Advisory Group will be formed to assist ODE form the Plan. The Advisory Group will include two representatives chosen by the plaintiffs, one representative chosen by ODE, the Director of the Office for Exceptional Children ("OEC"), the Associate Director of OEC, the Director of the Urban Support Team, and up to two additional members mutually agreed upon by the parties. The Office for Exceptional Children is the part of the Ohio Department of Education that is responsible for making sure Ohio's schools are appropriately educating children with disabilities. The Urban Support Team within OEC focuses on helping the largest school districts in Ohio serve students with disabilities well. The Advisory Group will help ODE develop the Plan. The Advisory Group will review how the Plan is working and tell ODE whether the Advisory Group thinks the Plan is working or not and suggest how to change it if it is not working.

D. Updates by ODE

ODE will update the Advisory Group every 3 months about the Plan and how it is working.

E. Local District Compliance

ODE will use its authority to ensure that the 11 Districts' improvement plans are working.

F. Dispute Resolution

The Settlement Agreement has a process for working out disputes that may come up during the time the Settlement Agreement is in place. The plaintiffs and defendants will first try to work together to solve any disagreements. If they cannot work out their issues, they can ask for the help of another person called a mediator. The mediator will try to help the parties come to an agreement. If the parties still cannot agree, they can ask the Court for help.

G. Fees

Defendants have agreed to pay \$3 million to Plaintiffs' attorneys as compensation for their time and costs. Plaintiffs spent 11,614.85 hours of attorney time and 4,305.6 hours for paralegals including skilled educational advocates over a nine year period working on the class's claims. In addition, Plaintiffs had \$612,021.18 in out of pocket costs such as payment for expert evaluations. Plaintiffs have agreed not to seek additional fees and costs for their work on the Advisory Group. Plaintiffs will file a separate document (called a motion) with the Court asking for approval of this money. The motion tells the Court why the amount agreed to is appropriate given the time spent by the attorneys and paralegals on this case. This motion will be due to the Court within 20 days from the date of the Court's preliminary approval order; and, a copy of the proposed motion will be available on Disability Rights Ohio's website.

This Notice is only a summary of the main points of the proposed Settlement Agreement and Plaintiffs' motion for fees. If you want a copy of the entire Settlement Agreement or motion for fees, you can call Disability Rights Ohio (DRO) at [\(614\) 466-7264](tel:614-466-7264) or [\(800\) 282-9181](tel:800-282-9181) or visit DRO's website at <http://www.disabilityrightsohio.org>. You can also obtain a copy of the Settlement Agreement by visiting ODE's website at www.ode.ohio.gov.

V. HOW WILL THE COURT DECIDE WHETHER TO APPROVE THE PROPOSED SETTLEMENT AGREEMENT?

The Court has preliminarily approved the proposed Settlement Agreement, including the payment of attorneys' fees to Plaintiffs' counsel, but it must still give final approval. As a class member, you can tell the parties and the Court if you support the Settlement Agreement or not. A Final Fairness Hearing will be held on February 11, 2020 at 10:00 am, before the Honorable Judge Michael H. Watson of the United States District Court for the Southern District of Ohio, Eastern Division, in Columbus, Ohio. At this hearing, the Judge will consider whether the Settlement Agreement, including the payment of attorneys' fees to Plaintiffs' counsel, is a fair and reasonable way to solve this lawsuit. You are welcome to attend this hearing. The Court will set aside time from 10:15 am to 11:15 am to hear from the individuals who stated they intended to appear at the Final Fairness Hearing.

If you wish to submit comments to the Settlement Agreement or appear at the Final Fairness Hearing, you must:

- Write a letter that includes: your full name, current address, current telephone number;
 - the case name and number (*Doe, et al., v. State of Ohio, et al.*, Case No. 2:91-cv-00464);
 - whether you believe that you are a member of the Class and why;
 - a description of why you agree or disagree with the Settlement Agreement;
 - a statement of whether the comment is made only your behalf or if it is made on behalf of others,
 - a statement of whether you intend to appear at the Court's Final Fairness Hearing. If you intend to have an attorney represent you at the Final Fairness Hearing, you must state the identity of that attorney in your letter; and
 - Your signature and the date.

- Mail your letter to counsel for plaintiffs:

Disability Rights Ohio, 200 Civic Center Drive, Suite 300, Columbus, OH 43215

- Disability Rights Ohio must receive your letter by January 14, 2020.

You may send your comments in a different format (such as audio, video or by email) if you need to because of your disability. If you have questions about this, you can contact Disability Rights Ohio at [\(614\) 466-7264](tel:6144667264) or [\(800\) 282-9181](tel:8002829181). You should not call the Judge about this case. The plaintiffs will file all timely and properly-submitted comments with the Court.

The letter you send may be publicly available, so you should not include other personal information in it, like your Social Security number, your date of birth, or medical information.

Additional information about this lawsuit is available on DRO's website at <http://www.disabilityrightsohio.org>. If you have any questions about this Notice or the proposed Settlement Agreement, you can contact Disability Rights Ohio at [\(614\) 466-7264](tel:6144667264) or [\(800\) 282-9181](tel:8002829181).