

FAQ #1

NEWARK PUBLIC SCHOOLS SPECIAL EDUCATION

CLASS ACTION LAWSUIT SETTLEMENT

General Questions

- **What is a class action?**

A class action is a lawsuit in which a large group of people who have been harmed in a similar manner collectively bring a claim to court, with one or more persons serving as the “named,” or “representative,” plaintiff(s) on behalf of other members of the class. A court must decide whether a case may proceed as a class action; if so, the court “certifies” the class. A person may be a “member of the class” without knowing it and without having sought participation if he/she fits within the definition of the class certified by the court.

- **What is the name of the Newark Public Schools (“NPS”) Special Education Class Action Lawsuit?**

The name is the “M.A. Class Action.” The initials “M.A.” stand for the first and last names of one of the named plaintiffs in the lawsuit. The defendants are NPS, the New Jersey Department of Education (“the State”), and three individuals employed by the New Jersey Department of Education.

- **Was the M.A. class action “certified” by the Court?**

Yes, the M.A. Class Action was certified by the United States District Court for the District of New Jersey on December 7, 2009.

- **Is my child a “member” of the M.A. Class?**

Your child is a member of the class if:

- * you live in Newark;

- * your child is between the ages of 3 and 21;

- * your child is, or may be, eligible for special education services; and

* your child was not, or will not be, identified, located, referred, or evaluated for special education services in a timely manner or was not provided with the special education services set forth in your child's initial Individualized Education Program ("IEP").

**Note: all Newark children currently on "waiting lists" for special education evaluations are considered members of the class.

- **Why was the M.A. Class Action brought against NPS and the State?**

Newark Public Schools had for years failed to locate, identify, refer or evaluate resident children with disabilities for special education services or to provide special education services to such children on a timely basis.

- **What are the legal deadlines with which NPS must comply?**

There are two special education deadlines – a 20-day deadline and a 90-day deadline – that NPS failed to meet on a regular basis and must now comply with:

- * 20-day deadline: If a child's parent or guardian makes a written request for an evaluation to determine eligibility for special education services, the school district must hold a meeting within 20 calendar days to determine whether an evaluation for such services is needed.

- * 90-day deadline: A child determined to be eligible for special education services must begin receiving those services within 90 calendar days from the date the parent or guardian consented to have the child evaluated for special education services.

- **What must NPS do in order to "locate and identify" children with disabilities in Newark?**

All New Jersey school districts are obligated to "locate" and "identify" resident children suspected of having disabilities. NPS must specifically:

- * engage in public outreach activities, including posting notices and broadcasting information on television and online, designed to inform parents and guardians about the existence of special education services in the school district;

- * train public school staff to recognize students in need of special education services; and

* twice a year meet with private school representatives to assist them in locating and identifying children with disabilities.

- **Has the M.A. Class Action Lawsuit been settled?**

Yes. The settlement became effective on January 27, 2012.

- **What has NPS agreed to do under the Settlement Agreement?**

NPS' obligations under the Settlement Agreement include:

- * achieving 95% compliance with the 20-day and 90-day deadlines;
- * annually reporting the steps it has taken to locate and identify resident children with disabilities, as required by law;
- * providing "make-up" services ("compensatory education") to certain students who missed services as a result of the school district's past delays;
- * quarterly reporting on the provision of compensatory education;
- * maintaining specific forms for every student for whom a request for intervention and referral services is made;
- * implementing an electronic system for keeping all data relevant to the Settlement Agreement; and
- * establishing an internal monitoring process to comply with state and federal special education laws.

- **What has the State agreed to do under the Settlement Agreement?**

The State's responsibilities include:

- * monitoring NPS compliance with the Settlement Agreement and providing the Plaintiffs' attorneys with monitoring reports twice a year;
- * reimbursing NPS for up to \$1 million of the cost of compensatory education provided under the Settlement Agreement;
- * certifying NPS' electronic database system as "accurate and reliable; and

* notifying the Plaintiffs' attorneys of any violations of the Settlement Agreement by NPS as soon as they become apparent.

- **How long will the M.A. Settlement Agreement be in effect?**

The Settlement Agreement will be in effect until all of its provisions have been achieved, including 95% compliance with the 20-day and 90-day deadlines discussed above. For purposes of measuring compliance, the City of Newark is divided into five regions. If a given region or school level (such as elementary, middle or high school) achieves 95% compliance for a consecutive 2-year period, the Court may consider the Settlement Agreement fulfilled and terminated for that region or school level only.

FAQ #2

NEWARK PUBLIC SCHOOLS SPECIAL EDUCATION

CLASS ACTION LAWSUIT SETTLEMENT

“Compensatory Education”

- **What sort of help can students receive if NPS did not provide them with special education services in a timely manner?**

A student who suffered a delay in receiving special education services under the 20-day or 90-day deadlines can receive “make-up” or “compensatory education” services which are services *in addition to* the services they are currently required to receive. Compensatory education services may include additional hours of instruction or tutoring beyond regular school hours (such as in the evening, on weekends or in the summer); additional speech, occupational, or physical therapy services; or the services of specialists, such as behaviorists, inclusion consultants or assistive technology experts. Compensatory education may also include educational materials, such as adaptive equipment or assistive technology devices needed by the student. Individual students will receive additional services or materials only, not “damages” or cash.

- **Who will pay for this compensatory education?**

The State of New Jersey.

- **How much money is available for compensatory education?**

The State of New Jersey will pay for up to \$1 million in compensatory education costs through the end of the 2012-2013 school year.

- **Which students are potentially entitled to receive compensatory education under the Settlement?**

Compensatory education is potentially available to any student who was enrolled in NPS during the 2009-2010 or 2010-2011 school years, and for whom the 20-day deadline or 90-day deadline for special education services was missed.

- **Do parents or guardians have to do anything to get their child on the list of students potentially entitled to compensatory education?**

No. NPS is responsible for compiling the list of students who are potentially eligible. Under the Settlement Agreement, the deadline for putting together such a list is May 11, 2012.

- **How will parents or guardians know if their child is potentially entitled to compensatory education?**

When parents or guardians get notice of their children's next IEP meeting after May 11, 2012, that notice will contain a statement that compensatory education will be discussed at the upcoming IEP meeting.

- **What can a parent or guardian do if they believe their child is entitled to compensatory education but a discussion of compensatory education was not mentioned in the notice for the next IEP meeting?**

In such circumstances, the parent or guardian should notify the IEP Team that an error may have been made. If follow-up by the IEP Team does not resolve the parent or guardian's concern, a request for "mediation" or "due process" may be made.

- **What can parents or guardians do if they disagree with the decision about compensatory education made at the IEP meeting?**

A parent or guardian may disagree with the IEP Team's determination about whether or not the child is entitled to compensatory education, the type of compensatory education, or the amount of compensatory education. In the event of a disagreement, the parent or guardian may request "mediation" or "due process."

- **What is "mediation?"**

Mediation is an informal process of resolving a disagreement between a parent or guardian and the school district. A trained mediator paid by the State (but not employed by the State or the school district) assists the parties in attempting to reach an agreement, but does not reach a decision in the dispute. A request for mediation must be filed with the Office of Special Education Programs of the New Jersey Department of Education, as well as with the school district. For information about requesting mediation and the forms to use, see *The Right to Special Education in New Jersey: A Guide for Advocates* (Education Law Center 2008) (page 38 and Appendix N)

http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide.pdf.

- **What is “due process?”**

A due process hearing is a formal, trial-like hearing before an Administrative Law Judge at the New Jersey Office of Administrative Law. For information about due process and the forms to use, see *The Right to Special Education in New Jersey: A Guide for Advocates* (Education Law Center 2008) (pages 31-38 and Appendix N)

http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide.pdf.

FAQ #3

NEWARK PUBLIC SCHOOLS SPECIAL EDUCATION

CLASS ACTION LAWSUIT SETTLEMENT

“Location” and “Identification” of Children with Disabilities

- **Must NPS make efforts to find children in need of special education services or may it rely on requests for referrals for services from parents or guardians or others?**

NPS, like other school districts throughout the State, has a legal obligation to “locate” and “identify” resident children suspected of having disabilities.

- **What steps must NPS take to find resident children in need of special education services?**

Under the Settlement, NPS must:

- * post “child find” notices in local newspapers including the Star Ledger and certain foreign language newspapers;

- * broadcast “child find” information on its cable channel and post it on its website;

- * place “child find” posters in all public schools and twice a year replace them as needed;

- * twice a year mail “child find” posters and notices to Newark non-public schools, as well as day care centers, hospitals, homeless shelters and clinics servicing children; and

- * provide relevant “child find” training and assistance to public school staff and private school representatives.

- **What sort of training will NPS provide to its staff to identify children in need of special education services?**

NPS must:

* train staff to be able to determine when the behavior and academic performance of a student indicates a need for special education services;

* train staff on how to make a referral for special education services; and

* develop a “quick reference document” on these topics and distribute it at all staff trainings and to all schools and post it on the NPS intranet system.

- **Does NPS have a responsibility to locate children with disabilities attending non-public schools?**

Yes. NPS must meet twice a year with representatives of non-public schools to provide help and information to those schools regarding the location and placement of children with disabilities.

- **Must NPS report on its progress in locating and identifying children with disabilities?**

Yes. Under the Settlement Agreement, NPS must provide a “Location/Identification Report” to the State and to the Plaintiffs’ attorneys at the end of each school year.

FAQ #4

NEWARK PUBLIC SCHOOLS SPECIAL EDUCATION

CLASS ACTION LAWSUIT SETTLEMENT

Compliance and Reporting Requirements

- **How can a parent or guardian tell whether NPS is complying with the 20-day and 90-day deadlines of state law?**

NPS must report on its percentage compliance with the 20-day and 90-day deadlines every six months. Compliance Reports will be provided to both the State and the Plaintiffs' attorneys by July 31 and February 15 of each year. The July 31 reports must include a "Corrective Action Plan" to improve rates of compliance. Members of the public may request copies of these documents by filing a request with the State or with NPS under the Open Public Records Act. The State's document request form is available at: <http://www.state.nj.us/education/opra/>. NPS' document request form can be obtained by calling NPS at 973-733-7139.

- **What is a Corrective Action Plan?**

A Corrective Action Plan ("CAP") is required whenever the July 31 Compliance Report indicates that NPS failed to achieve 95% compliance with the 20-day or 90-day deadline for the previous academic year. For any region in the school district that fails to achieve compliance in a given academic year, NPS must specify in a draft CAP what it will do during the next school year to improve the rate of compliance. NPS must provide the draft CAPs to the Plaintiffs' attorneys as well as to the State. The State must approve the CAPs and may insist upon changes being made to the CAPs. The Plaintiffs' attorneys have a right to object to any CAP, and the Settlement Agreement provides procedures for resolving disputes in this regard, with court action available to the Plaintiffs' attorneys as a last resort.

- **What other reports and documentation must NPS provide?**

In addition to Compliance Reports and Corrective Action Plans, NPS must provide the following to Plaintiffs' attorneys and the State:

- * an annual report (by July 31 of each year) of the steps NPS has taken to locate and identify children with disabilities in the prior school year;

- * a report (by June 27, 2012) documenting that NPS has established an internal monitoring process to address compliance with special education laws and describing the internal monitoring process; and

- * a list of students from the 2009-2010 and 2010-2011 school years for whom the 20-day or 90-day deadline was missed (by May 11, 2012) .

NPS must also complete and maintain specific forms (Intervention and Referral Services Team Procedure Review forms) for each student for whom a request regarding referral for special education services is made.

FAQ #5

NEWARK PUBLIC SCHOOLS SPECIAL EDUCATION

CLASS ACTION LAWSUIT SETTLEMENT

Monitoring Requirements

- **Who is responsible for monitoring NPS' compliance with its obligations under the Settlement Agreement?**

The State of New Jersey, through its Department of Education, Office of Special Education, is charged with monitoring NPS' implementation of its obligations under the Settlement. Ms. Priscilla Petrosky, a former school administrator, was designated by the Plaintiffs, the State and NPS as the Special Education Compliance Officer with ultimate responsibility for such monitoring.

- **What are the specific monitoring responsibilities imposed on the State by the Settlement Agreement?**

The State must:

- * provide a Monitoring Report to NPS and the Plaintiffs' attorneys within 60 days after NPS files each Compliance Report detailing how it verified the accuracy of the Compliance Report;

- * approve each Corrective Action Plan proposed by NPS (and it may require changes to the Corrective Action Plans before it approves them);

- * provide copies of all its decisions and proposed changes related to Corrective Action Plans to the Plaintiffs' attorneys; and

- * monitor NPS' completion of Intervention and Referral Services Team Procedure Review forms for each student for whom a request for intervention and referral services is made, by randomly sampling 5% of the relevant student files.

- **What must the State do in the event NPS does not comply with the Settlement Agreement?**

In addition to imposing a Corrective Action Plan as discussed above, once the State becomes aware of any instance of non-compliance with the Settlement Agreement, it must immediately bring this to the attention of the Plaintiffs' attorneys. The State may also direct that NPS spend money that it received from the State for purposes related to compliance with the Settlement Agreement.

- **Does NPS have any monitoring responsibilities?**

Yes. NPS must establish an internal monitoring process to address compliance with Federal special education laws and must report to the State about this process by June 27, 2012. NPS must also establish an electronic system for recording compliance data.

- **What is the role of the Plaintiffs' attorneys in monitoring NPS' compliance with the Settlement Agreement?**

The Plaintiffs' attorneys will receive and review:

- * Compliance Reports and Corrective Action Plans filed by NPS;

- * Monitoring Reports and modifications to Corrective Action Plans filed by the State;

- * NPS' annual reports of steps taken to locate and identify children with disabilities during the previous school year;

- * NPS' report regarding the internal monitoring process it must develop for compliance with special education laws; and

- * NPS' list of students potentially eligible for compensatory education.

The Plaintiffs' attorneys may also object to any Corrective Action Plan provision or modification as well as to any finding in a State Monitoring Report. The Settlement Agreement provides procedures for resolving disputes about such matters, with court action available as a last resort.

The Plaintiffs' attorneys may also have access to data in the NPS records, upon request.

FAQ #6

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CLASS ACTION LAWSUIT SETTLEMENT

Enforcement of the Settlement Agreement

- **What is the role of the Plaintiffs' attorneys in enforcing the Settlement?**

The Plaintiffs' attorneys will receive and review copies of the reports filed by NPS and the State under the Settlement Agreement. The State has also agreed to inform the Plaintiffs' attorneys as soon as they become aware of any instances of NPS not complying with the Agreement.

Although the lawsuit against NPS has been settled, the Plaintiffs attorneys continue to represent the interests of Newark students with disabilities for the term of the Settlement and may bring an action in court if NPS or the State fails to meet its obligations. The attorneys have agreed, however, to make a good faith effort to resolve any issues relating to enforcement of the Settlement Agreement through meetings and conferring with NPS and the State before going to court.

- **What can a parent or guardian or other member of the public do to make sure NPS and the State comply with the Settlement Agreement?**

Parents or guardians or other members of the public can spread information, including:

- * directing parents or guardians of young children suspected of having disabilities to "child find" information contained in posters or newspaper advertisements or on NPS' television station or website;

- * informing other parents or guardians of the 20-day and 90-day deadlines NPS is required to follow in the event of a request for intervention and referral; and

- * informing other parents or guardians about the compensatory education NPS is obligated to provide to students impacted by NPS' previous failures of the 20-day and 90-day deadlines.

- **What can parents or guardians or other members of the public do if they become aware of a situation indicating a possible violation of the Settlement Agreement?**

The parent or guardian or other member of the public can:

- * report the possible violation to their child's IEP Team, if appropriate;

- * contact NPS' "designated person" once that person is designated and, before that, contact the NPS Superintendent at 973-733-7334;

- * contact the M.A. Class Action Special Education Compliance Officer, Priscilla Petrosky, at 973-621-2750; or

- * contact the Education Law Center, one of the attorneys for the Plaintiffs, at elc@edlawcenter.org or 973-624-1815 (voice); 973-624-4618 (TDD).