



Advocates for Children of New York

Protecting every child's right to learn

News Release

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Court of Appeals Holds that Class Action Against NYC DOE for Special Education Services Lost During Remote Learning May Proceed

February 6, 2023 (NEW YORK CITY) — On Friday, the Court of Appeals for the Second Circuit held that a class action complaint against the New York City Department of Education (“NYC DOE”) and New York State Education Department (“NYSED”) may proceed on behalf of students with disabilities who did not receive an appropriate education during the time of remote learning as a result of the COVID-19 pandemic. The complaint, filed in 2020 by Advocates for Children of New York (“AFC”) and Patterson Belknap Webb & Tyler LLP, asked the Court to require the NYC DOE to create a system to provide make-up educational services to address the resulting learning loss, rather than requiring that each of the tens of thousands of parents of students with disabilities litigate individually to receive the services their children need and require.

In March 2022, the federal district court dismissed the complaint, requiring each plaintiff to “exhaust administrative remedies” by filing a special education administrative hearing complaint to obtain compensatory services for remote learning, a notoriously complex, lengthy, and burdensome process. The Court of Appeals for the Second Circuit reversed this dismissal, noting that the class action complaint “sets forth precisely this allegation of systemic delay” for which exhaustion of administrative remedies is not required.

Kim Sweet, Executive Director of AFC, praised the decision: “Students with disabilities continue to remain without the services that they need to make up for the lost services and learning during the pandemic. The NYC DOE needs to create a system in which students can receive these services without any further delay and with full communication and participation of parents.”

Josh Kipnees, from Patterson Belknap, said: “We are pleased the panel recognized that our allegations describe systemic violations of the City and State’s duties to provide needed educational services to students with disabilities during the remote-learning period, and that it would be futile to attempt to address those violations through the City’s woefully inadequate administrative hearing process. We look forward to continue partnering with Advocates for Children in pursuing our claims before the district court and achieving an effective and lasting solution for our clients, who have been denied meaningful relief for far too long.”

[Read the Second Circuit order](#)

[Read the class action complaint filed in federal court](#)

About Advocates for Children of New York (AFC)

Since 1971, Advocates for Children of New York has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds who are at greatest risk for failure or discrimination in school because of their poverty, disability, race, ethnicity, immigrant or English Language Learner status, sexual orientation, gender identity, homelessness, or involvement in the foster care or juvenile justice systems. AFC uses four integrated strategies: free advice and legal representation for families of students; free trainings and workshops for parents, communities, and educators and other professionals to equip them to advocate on behalf of students; policy advocacy to effect change in the education system and improve education outcomes; and impact litigation to protect the right to quality education and compel needed reform.