

MEDIA ADVISORY
January 3, 2022

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Federal Lawsuit To Keep NJ Schools Open

Families Across New Jersey With Special Needs Demand Schools Stay Open

NEW YORK, NY – Civil Rights attorney, Patrick Donohue, and Brain Injury Rights Group announced on Monday, January 3, 2022, they have filed a motion seeking a Temporary Restraining Order (TRO) against all New Jersey school districts on behalf of hundreds of thousands of special education students. The action seeks to have United States District Court Judge, the Honorable John Michael Vazquez, issue an emergency order preventing all New Jersey school districts from closing and unilaterally changing from in-person services to “remote learning” without the consent of the parents of these special education students.

There are over 237,000 students in New Jersey (more than 11% of all students) between 3 and 21 years of age receiving special education services. These students have Individualized Education Programs (IEPs) with their local school districts that outline the educational program the student is supposed to receive. When the local school districts unilaterally, substantially and materially changes their educational programs by closing school and keeping these students home to receive “remote learning”, or no services at all, they violate the federal civil rights of these students under the Individuals with Disability Education Act (IDEA). This illegal action by school districts violates the pendency or “stay-put” rights of each special education student. The specific IDEA provision, 20 U.S.C. § 1415(j), states “during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency **AND** the parents otherwise **AGREE**, the child shall **REMAIN** in the then-current educational placement of the child.” The U.S. Supreme Court “has emphasized that the provision’s text is ‘unequivocal’ and ‘states plainly’ that the child ‘shall’ remain in his current educational placement ‘during the pendency of any proceedings initiated under the act.’”

Patrick Donohue stated, “**It is inexcusable for school districts to continue to violate the rights of special education students by closing schools eighteen months after ‘Two Weeks To Stop The Spread’! This is a continuation of the COVID-19 crimes against our children based upon the fears of adults by corrupt union bosses and unaccountable education bureaucrats. Shame on those who were silent while the greatest case of child sacrifice occurs in human history! Where is Governor Phil Murphy?**”

Each student represents a family. As of Sunday evening, January 2, 2022, the following school districts have announced unilateral changes from in-person to “remote”: Camden City School District has an enrollment of approximately 1,175 disabled students with a qualifying disability under the IDEA. Other school districts like West Orange Public School District (1,299 disabled students) substantially alter the structure of Plaintiffs’ educational programs by only offering half-day schedules. Other New Jersey school districts that have announced closures include: Jersey City (3,690 disabled students), Elizabeth City (3,561 disabled students), Bayonne (1,588 disabled students), Carteret (580 disabled students), Harrison (387 disabled students), Irvington (874 disabled students), New Brunswick (1,702 disabled students), North Bergen (1,243 disabled students), Paterson (4,048 disabled students), Pennsauken (953 disabled students), South Orange-Maplewood (1,121 disabled students), Union City (1,216 disabled students), and West New York (1,095 disabled students). The following school districts have also announced unilaterally changing to “remote”: Newark, Trenton, Woodbury, Hackensack, Bridgeton, Black Horse Pike Regional School District, Plainfield, Rahway, Merchantville, Lower Cape May

Regional School District, Lower Township Elementary School District, and Burlington City schools (with more being announced every hour).

The TRO was filed as part of a pending federal statewide class action lawsuit, 2:21-cv-18746, *Carmona, et al. v N.J. Dept. of Education, et al.*, seeking declaratory and injunctive relief against the New Jersey Department of Education and many local school districts to enjoin them from violating the Plaintiffs procedural and substantive rights under the Individuals with Disabilities Education Act (IDEA), Section § 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), New Jersey Administrative Code for special education (N.J.A.C.), New Jersey Special Education Statute (N.J.S.A.), the New Jersey Constitution, New Jersey Civil Rights Act (N.J.C.R.A.), New Jersey Law Against Discrimination (N.J.L.A.D.), and the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs have suffered and continue to suffer irreparable harm as a result of Defendants' refusal to meet the educational needs of students with disabilities in New Jersey School Districts and will continue to suffer further irreparable harm unless and until the Court grants declaratory and injunctive relief against Defendants to remedy the illegal treatment of and discrimination against students with disabilities in New Jersey School Districts, and to ensure that the educational rights of students with disabilities are not violated.

The federal lawsuit also alleges the Defendants violated the Racketeer Influenced and Corrupt Organizations (RICO) Act of 1970. The RICO cause of action arises from a scheme by defendants to fraudulently use their respective enterprises to defraud plaintiffs, the beneficiaries of IDEA Part B, upwards of approximately \$368,431,755 in 2020, by making false assurances to the United States Department of Education (USDOE) that the NJDOE and its local school districts complied with IDEA during the COVID-19 pandemic. In the year 2020, NJDOE received \$393,060,421 in IDEA Part B funds, and anticipated receipt of an additional \$458,567,303 in 2021.

For more information about the lawsuit, please go to www.ReOpenClass.com and if parents want to join the lawsuit they can call the toll-free hotline: 888-927-4332 / 888-927-IDEA.

Patrick Donohue is a civil rights attorney who became an advocate after his daughter, Sarah Jane, was violently shaken by her baby nurse when she was only five days old, breaking four ribs, both collarbones and causing a severe brain injury. The Brain Injury Rights Group is a national civil rights legal advocacy non-profit organization headquartered in New York City. Besides Brain Injury Rights Group, Mr. Donohue has founded one of the largest brain injury programs in the country located in New York City, the International Institute for the Brain (iBRAIN).

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