



Bricker Bullet

BRICKER BULLET NO. 2019-04

DECEMBER 4, 2019

ODE's 12.02.2019 Notice Regarding Doe v. Ohio Department of Education

On Monday, you likely received a Notice from the Ohio Department of Education regarding a proposed class action settlement, requesting that you post a *Notice of Proposed Settlement* on your district website and in central locations in your buildings, as well as distribute the notice to all parents and students. What is this request all about?

Doe v. Ohio Department of Education derived from a lawsuit that was filed in 1991 (*Thompson v. State of Ohio*) alleging that Ohio's special education system did not provide students with a free appropriate public education and was discriminatory against students with disabilities. Doe and the Ohio Legal Rights Service (now Disability Rights Ohio) were granted leave to intervene in the case in 1994. The current phase of the litigation began in October 2009, after the parties entered into a limited consent decree. In October 2009, the court issued an order approving a partial settlement agreement reached by the parties. The consent order resolved claims concerning ODE's implementation of IDEA, but did not address the funding of special education and related services. The agreement addressed: (1) the way ODE monitors compliance with the IDEA; (2) requests for waivers of state standards for the delivery of special education services; (3) investigation of state-level complaints filed by parents; and (4) corrective action to be taken when a school district does not meet state or federal standards.

In June 2010, the Ohio Legal Rights Service filed an amended class action suit, asking the Court to declare Ohio's system of funding and providing services to students with disabilities unconstitutional. On November 15, 2019, the Court issued an *Order*

Granting Preliminary Approval of Class Settlement which states that a copy of the notice will be made available to any affected student or such student's parent or guardian upon request. The tentative settlement agreement requires ODE to develop a plan for a redesigned state support system for special education, with a particular focus on 11 school districts (Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo, Youngstown, Lima, Zanesville, and East Cleveland). An Advisory Group will be formed to assist ODE in developing the plan.

The Court's Order requires that ODE post the notice of the proposed settlement on its website, and disseminate a copy of the notice to all local educational agencies (LEAs) and ask that the notice be posted on the LEA's website and in a central location accessible to the public in each of its buildings open to the public. ODE must also request that each district disseminate the notice directly to parents or students through email, any electronic portals (e.g. parent/student portals used to distribute grades, assignments, forms, etc.), or any other means reasonably calculated to reach the parents or students in that district. This is why your district received the request from ODE, even if it is not among the 11 school districts that are the focus of the litigation and settlement.

Class members may comment on the Settlement within 60 days of the court's Order (by January 14, 2020).

Questions concerning the above may be referred to any of the [Education Practice Group at Bricker & Eckler LLP](#).

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**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.

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

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.

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 or (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 or (800) 282-9181. 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 or (800) 282-9181.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOHN DOE, et al.

Plaintiffs,

Case No.: 2:91-cv-464

-vs-

**JUDGE MICHAEL H. WATSON
MAGISTRATE JUDGE VASCURA**

STATE OF OHIO, et al.,

Defendants.

**ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS SETTLEMENT**

The parties have entered into a Settlement Agreement, ECF No. 584-1, and have moved for preliminary approval of the Settlement Agreement, ECF No. 584. Having considered the Settlement Agreement along with the arguments in support of preliminary approval, the Court finds that the parties have presented a sound basis for: (1) granting preliminary approval of the Settlement; (2) directing that the Class be notified of the proposed Settlement in the form and manner proposed by the parties with one modification; and (3) setting a schedule for consideration of final Settlement approval.

Accordingly, the Court **GRANTS** the motion for preliminary approval and makes the following findings and orders:

I. THE PLAINTIFF CLASS

1. The Settlement is entered into by and on behalf of the Plaintiff class, which the Court certified, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, as including:

All children, ages three through 21, currently enrolled or seeking enrollment, now or in the future, in Ohio's public school system, who have a disability under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.*, 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 who require, as a result of their disability, special education and related services or accommodations that are designed to meet individual educational needs of students with disabilities as adequately as the needs of nondisabled children are met, and the parents or guardians of such children. Children who are disabled include those who have an intellectual disability, who are hearing impaired or deaf, who have a speech or language impairment, who are blind or otherwise visually impaired, who have a serious emotional disturbance, who have an orthopedic impairment, who are autistic, who have a traumatic brain injury, or who have some other health impairment or specific disability. Children who are disabled also include those who are multi-handicapped, who are developmentally handicapped, who are severe behavior handicapped, who have a specific learning disability, who have attention deficit disorder or hyperactivity disorder, or who have a physical or mental impairment that substantially affects their ability to perform a major life activity.

ECF No. 59.

Defendants' motion to decertify the Class, ECF No. 538, is **DENIED** as moot.

II. PRELIMINARY APPROVAL OF THE SETTLEMENT

2. The Court preliminarily approves the Settlement under Rule 23(b)(2) and Rule 23(e), finding that the terms appear to be fair, reasonable, and

adequate, warranting dissemination of notice of the proposed settlement to the Class. The Court finds that the Settlement appears to provide substantial relief to the Plaintiff class and that the parties entered into the Settlement in good faith, after years of litigation and following arms-length negotiations between competent counsel aided by the capable mediator, Frank Ray.

III. FORM AND PROCEDURE FOR DISSEMINATING CLASS NOTICE

3. The Court hereby approves the form, and the procedure for disseminating, the Notice of the Proposed Settlement to the Plaintiff Class that is set forth in the Motion for Preliminary Approval of the Settlement Agreement, with one modification. The Court finds that such notice as modified constitutes reasonable and appropriate notice that satisfies the requirements of Federal Rule of Civil Procedure 23(c)(2)(A) and 23(e)(1). It provides affected persons sufficient notice of the proposed Settlement and of the right of affected persons to object to the Settlement.

4. A copy of the Notice will be made available to any affected student or such student's parent or guardian upon request. Defendant Ohio Department of Education ("ODE") shall post a copy of the Notice prominently on its website.

ODE shall also disseminate a copy of the Notice to all local educational agencies and ask that the Notice be posted on each local educational agency's website and in a central location accessible to the public in each of its buildings open to the public. ODE shall request that each district disseminate the Notice directly to parents or students through email, any electronic portals (e.g., parent/student

portals used to distribute grades, assignments, forms, etc.), or other means that are reasonably calculated to reach the parents or students in that district. ODE shall arrange for the Notice to be posted in the offices in each of Ohio's 16 State Support Teams and 60 Education Service Centers and made available through their websites. Additionally, Plaintiffs will provide direct notice to all class representatives. Plaintiffs will also ask community organizations providing services to parents and students in the 11 Districts to disseminate the Notice. Finally, Class Counsel, Disability Rights Ohio, will post the Notice on its website and social media platforms. Each Party shall bear their own costs in disseminating the Notice as described above.

5. Within 20 days of this Order being entered, the Parties shall provide an affidavit for the Court attesting that Notice was disseminated in a manner consistent with the above.

6. In accordance with 28 U.S.C. § 1715(b), Defendants will serve the required Notice of the Proposed Settlement upon the appropriate Ohio state official. Within 10 days of serving this Notice, Defendants shall file a certification with the Court that the appropriate notices were served.

IV. PROCEDURE FOR COMMENTING ON THE SETTLEMENT

7. Any Class Member who wishes to comment on the Settlement must, within 60 days of the date of this Order, submit a written comment to Disability Rights Ohio, one of the class counsel, who will disseminate copies to the Court and Defendants' counsel. Class members will be asked to include in their

comments: (1) the commenter's full name, current address, current telephone number; (2) the case name and number (*Doe, et al., v. State of Ohio, et al.*, Case No. 2:91-cv-464); (3) whether the commenter believes that he or she is a member of the Class and why; (4) a description of why the commenter agrees or disagrees with the Settlement; (5) a statement indicating whether the commenter plans to appear at the Court's Final Fairness Hearing; and (6) the commenter's signature and the date.

8. Any commenting Class Member may appear at the Fairness Hearing, provided that the Class Member's written comment includes a statement of the Class Member's intent to appear. If the Class Member intends to appear at the Fairness Hearing through counsel, the Class Member's written comment should include the identity of any attorney who will appear on behalf of the Class Member at the Fairness Hearing. The Court will set aside time from 10:15 am to 11:15 am to hear from the individuals who specified an intent to appear at the Fairness Hearing.

9. These procedures and requirements for comments are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's comments to the Settlement, in accordance with the due process rights of all Class Members.

V. HEARING AND BRIEFING SCHEDULE

10. The Court hereby schedules a Fairness Hearing for final approval of the Settlement and an award of attorney's fees and costs to Plaintiffs' counsel on

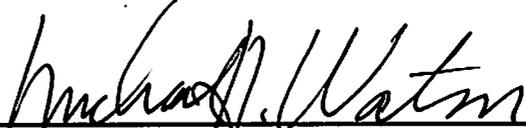
Tuesday, February 11, 2020, at 10:00 a.m. in the Joseph P. Kinneary United States Courthouse, Room 109, 85 Marconi Boulevard, Columbus, Ohio 43215.

At the hearing, the Court will consider all of the following: (a) whether the settlement should be approved as fair, reasonable, and adequate for the Class and whether judgment should be entered on the terms stated in the Settlement; and (b) whether Plaintiffs' applications for an award of attorney's fees and costs should be granted.

11. Counsel shall file memoranda, declarations, or other statements and materials in support of the request for Final Approval of the Settlement no later than three weeks after the close of the comment period. The memoranda shall include any responses to comments filed by members of the Class. Plaintiffs' counsel shall file their Fee Memorandum within 20 days of this Order being entered.

12. The Court reserves the right to adjust the time and date of the Fairness Hearing and related deadlines. In that event, the revised hearing date or deadlines shall be disseminated in the same manner as the Class Notice. However, the parties shall not be required to re-send or re-publish the Notice to the Class, and the deadline by which Class Members must submit comments will not change.

IT IS SO ORDERED.



MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT