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

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| **JOHN DOE, et al.,** | : | |
| | : | |
| **Plaintiffs,** | : | **Case No. 2:91-cv-464** |
| | : | |
| **v.** | : | **JUDGE HOLSCHUH** |
| | : | |
| **STATE OF OHIO, et al.,** | : | **MAGISTRATE JUDGE KEMP** |
| | : | |
| **Defendants.** | : | |

**NOTICE TO OHIO STUDENTS WITH DISABILITIES AND THEIR PARENTS OR GUARDIANS OF PARTIAL SETTLEMENT OF CLASS ACTION LAWSUIT**

1. This notice may apply to you if you are the parent or guardian of a student with disabilities age three through twenty-one or a student with disabilities. The student must be enrolled or seeking enrollment in Ohio's public school system and require special education, related services, or accommodations as a result of a disability.

2. The purpose of this notice is to tell you about a proposed partial settlement in a lawsuit that may affect you and the student. The lawsuit was brought by people like you who want children with disabilities to receive a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA).

**The Lawsuit**

3. This lawsuit has two parts. The first is a challenge to the way Ohio funds special education and related services. The second is a challenge to the Ohio Department of Education's (ODE) procedures for implementing the IDEA.

4. The challenges to ODE's implementation of the IDEA raise four matters. The first is the way ODE monitors local school districts' and other agencies' compliance with

the IDEA. The second is the way ODE handles school districts' requests for waivers of state standards controlling the delivery of special education services. The third is the way ODE operates its system for handling complaints about special education matters. The fourth is the way ODE corrects school districts' failure to comply with the IDEA.

5. The people who brought the lawsuit (named plaintiffs) were John Doe, by and through his parent, L.B.; T.M., by and through his parent, S.J.; L.J., by and through his parent, J.J.; T.D., by and through his parent, A.D.; L.A., by and through his parent, E.A.; B.M., by and through his parent, D.M; S.W., by and through his parent, C.S.; and M.G., by and through his parent, J.G. Their attorneys are Susan G. Tobin and Jason C. Boylan of the Ohio Legal Rights Service, an independent state advocacy agency. The Judge in this case has decided that these eight people and their attorneys will fairly represent all students who require special education, related services, or accommodations as a result of their disability, making this case a "class action."

6. The plaintiffs sued the State of Ohio, state agencies and commissions, and state officials responsible for ensuring the delivery of special education and related services. The defendants are the State of Ohio; Governor Ted Strickland; the Ohio School Facilities Commission; State Superintendent of Public Instruction Deborah Delisle; the State Board of Education; ODE; the Office of Exceptional Children; and the Office of Early Learning and School Readiness.

**The Settlement**

7. After more than a year of negotiating, the parties have agreed to a partial settlement of this case without a trial. That settlement resolves the claims about the way that ODE implements the IDEA. It does not settle the challenges to the way Ohio funds the education of students with disabilities.

8. The plaintiffs and defendants have written the agreement in a document called a "Consent Order." The Judge has given preliminary approval of the Consent Order. Before the Judge decides to give final approval of the Consent Order, you can tell the Judge if you disagree with any part of it. To get a copy of the Consent Order you may write to the Ohio Legal Rights Service, 50 West Broad Street, Suite 1400, Columbus, Ohio 43215-5923, call 1-800-282-9181, or view it online at www.olrs.ohio.gov.

9. The Consent Order requires ODE to take a number of steps to identify and correct violations of federal and state special education statutes to ensure that class members receive a free and appropriate public education. The Consent Order's provisions include:

    a. Monitoring: ODE will be required to provide public involvement and access to information regarding its IDEA monitoring systems by requiring public posting of local school districts' performance and holding open meetings where individuals may present their concerns.

    b. Waivers: Waivers are requested by local school districts when the district claims that it can not meet special education service delivery ratios (such as class size, range of students' ages in the same classroom, service provider to

student ratios), which are required by law. The Consent Order requires protections for students with disabilities and additional ODE oversight when a waiver is requested. Parents whose children with disabilities may be affected by waivers will now be given notice of requests for such waivers before the request for the waiver is decided. Waivers cannot result in the denial of a free and appropriate public education to affected students with disabilities.

c. Complaints: This Consent Order provides a number of new measures to protect students with disabilities when a parent/guardian files a state-level complaint with ODE. As a result of the Consent Order, ODE will provide additional notice to parents/guardians of the complaint process and advocacy resources to assist parents/guardians. ODE will be required to conduct a more thorough investigation of complaints challenging the delivery of a child's free and appropriate public education, a local school district's failure to implement due process hearings or state level review decisions, and the inappropriate use of restraint or seclusion. ODE will ensure that violations of the law will be corrected in a timely manner. The Consent Order does not change the procedures controlling due process hearings before impartial hearing officers.

d. Complaint Timelines: If only the school district requests an extension of time for a decision by ODE and the parent or guardian does not agree to the extension, ODE may only grant the district's request in extraordinary circumstances. When both the parent/guardian and the school district agree

to enter into mediation, the mediation will not delay the outcome of state complaints and an extension of time will be granted only when agreed to by both parties.

e. Corrective Action: When a local school district fails to meet state or federal standards, ODE will require that the district correct those deficiencies within a year. The district may be subject to penalties if it fails to correct the deficiencies.

**Effect of the Consent Order**

10. The Consent Order is a partial settlement between the plaintiffs and defendants because it does not resolve plaintiffs' claims about the way Ohio funds the education of students with disabilities. If this Consent Order is finally approved by the Judge, plaintiffs' claims about the way Ohio funds the education of students with disabilities remain unaffected.

11. If ODE does not carry out the terms of the Consent Order, the plaintiffs can enforce those terms for two years after the Judge orders final approval. However, if this Consent Order is finally approved by the Judge, the claims of this case that are summarized in paragraph 9 of this notice may not be relitigated.

12. The plaintiffs and defendants agreed in the Consent Order that plaintiffs are entitled to reasonable attorneys' fees and costs. The amount of those fees and expenses will be determined later.

**Next Steps**

13. If you agree with the Consent Order you do not have to do anything, but you may submit comments to the Judge in the same manner as described in paragraph 14 of this notice.

14. If you disagree with any part of the Consent Order and you want to tell the Judge, you must submit written objections **NO LATER THAN SEPTEMBER 16, 2009.**

    a. On the first page of your objections, write in large or underlined letters: "OBJECTIONS TO PROPOSAL IN DOE V. STATE, Case No. 2:91-CV-464."

    b. A parent or guardian may object on behalf of a child class member, but must state in the objection the relationship he or she has with the affected child class member.

    c. You must sign your name, and include your address, your phone number, and the date the objections are mailed. You may or may not be contacted by plaintiffs' or defendants' attorneys to discuss your concerns.

    d. Objections must be mailed to the following address:

        Clerks of Court
        United States District Court for the Southern District of Ohio
        Joseph P. Kinneary U.S. Courthouse
        85 Marconi Boulevard
        Columbus, Ohio 43215
        Attn: Judge Holschuh's Docket

    e. DO NOT CALL THE COURT. THE COURT WILL NOT ACCEPT PHONE CALLS ABOUT THIS MATTER. ALL OBJECTIONS MUST BE SUBMITTED IN WRITING.

15. A hearing will be held at 10:00 a.m. on October 20, 2009, before the Honorable John D. Holschuh, in Courtroom 3 of the United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus, Ohio 43215. At the hearing, the judge will consider whether the proposed partial settlement is fair, reasonable, and adequate and whether it should receive the court's final approval. The hearing is open to the public. Persons who have submitted timely objections may be given the opportunity to speak at the hearing if they so desire. If you desire to speak at the hearing, please note this on your objection.

16. Following the hearing, the Judge will decide whether to approve the Consent Order and allow this part of the lawsuit to end. If the Judge decides to approve the proposed Consent Order, his decision is final and the Consent Order becomes effective and lasts for 2 years.

17. If you have any questions about this case you can call Ohio Legal Rights Service, Intake Worker, 50 West Broad Street, Suite 1400, Columbus, Ohio 43215-5923, at 1-800-282-9181 or (614) 466-7264. Please mention that you are calling about the case *Doe v. State of Ohio,* Case No. 2:91-cv-464.