



# On The Alert!

**Date:** December 3, 2020  
**Attention:** ASCIP Members with Special Education Programs  
**Affected:** All School Facilities  
**Applicability:** Public K-12 Districts

## IDEA Class Action Lawsuit - Update

### UPDATE DECEMBER 1, 2020:

#### **New York Class Action** - *J.T., et al. v. Bill de Blasio, et al.*

J.T. is the lead plaintiff in a class action filed in New York filed by the Brain Injury Rights Group. The complaint named every school district throughout the country, alleging the districts failed to provide plaintiffs with the special education services they were entitled to. ASCIP retained Marlon Wadlington of Atkinson Andelson to defend any members served with this lawsuit. On November 13, 2020, the Chief Judge dismissed the claims against all out-of-state districts for a myriad of reasons.

#### **California Class Action** - *Danielle Martinez, et al. v. Gavin Newsom, et al.*

Martinez is the lead plaintiff in a class action filed in the Central District of California filed by the Law Offices of Fazil Munir. The complaint named every California school district and alleged the districts failed to provide plaintiffs with the special education services set forth in their IEPs. ASCIP retained Marlon Wadlington of Atkinson Andelson to defend any members served with this lawsuit. Recently, the judge dismissed plaintiffs' case as to all districts on the grounds plaintiffs failed to exhaust administrative remedies. The dismissal was "without prejudice." This means plaintiffs are permitted to refile the suit. It is anticipated some plaintiffs will attempt to exhaust administrative remedies and then refile. If your District is served with another lawsuit, please contact ASCIP Property & Liability Claims.

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### ORIGINAL RISK ALERT DATED SEPTEMBER 2, 2020:

On July 28<sup>th</sup>, 2020, a class action lawsuit alleging violation of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §1400), et seq., was filed against all public school districts in the United States. This suit seeks declaratory and injunctive relief from districts that, due to school closures related to Covid-19, shifted from in-person to remote learning. Such a shift is alleged to have blocked disabled students' access to a Free Appropriate Public Education (FAPE) and interrupted these students' Individualized Education Plans (IEP). While this suit was initially filed in the state of New York, it lists a number of ASCIP districts as defendants and all public schools in the United States.

This suit seeks relief through a variety of methods such as:

- Immediate restoration of programs and placement services outlined in existing IEPs;
- Conducting independent evaluations of affected students' current level of educational performance and provide compensatory education plans addressing any regression that resulted from school closures;
- Compensate parents and guardians for employment or out of pocket expenses incurred as a result of the failure to provide services outlined in students' IEPs; and
- Punitive damages and attorneys' fees.

As with any lawsuit, it must be personally served upon your district in order for your district to be obligated to respond. ASCIP does not recommend your district respond to an email from the plaintiffs' attorneys waiving service or accepting service by any means other than personal service. As an ASCIP member, your district can rely on ASCIP's guidance to assist with next steps. Should your district receive notice of this suit or communications from plaintiffs' counsel, please contact:

Noel Waldvogel, Claims Manager  
(916) 245-3523  
[claims\\_info@ascip.org](mailto:claims_info@ascip.org)

Additionally, ASCIP can offer solutions to address inquiries from the media. Please contact your ASCIP Risk Services staff for further assistance.

***Please contact your ASCIP risk services consultant at (562) 404-8029 for additional assistance.***