

Proskauer Achieves Landmark Special Education Settlement in New Jersey State Prisons

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Proskauer recently reached a landmark agreement with the New Jersey Department of Corrections (NJDOC) and Department of Education (NJDOE) to ensure that students entitled to special education services in NJDOC custody will receive those services to which they are legally entitled under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act (ADA). This settlement is consistent with Proskauer's long-standing commitment to provide legal services to some of the country's most vulnerable communities.

The agreement ensures that the NJDOC will identify students entitled to special education, develop Individualized Education Programs (IEPs) to meet the specific needs of each student, and provide a minimum of four hours of instruction per day in a regular classroom setting. This classroom instruction will be provided by teachers with the appropriate training and certifications. This shift in teacher certification is a significant improvement, given that plaintiffs' counsel's investigation into the provision of special education services revealed that instructors often lacked the requisite training and expertise to effectively teach a specific subject (*e.g.*, those certified in English were required by the NJDOC to teach mathematics, etc.). In fact, in a departure from the NJDOC's past practices, classroom instruction will become the norm, and "cell study" will be limited to specific circumstances. Additionally, students confined to cell study will be provided the opportunity for in-person instruction. Equally significant is the opportunity for class members to submit a compensatory education claim and receive additional services – or up to \$8,000 in funds – to be used for educational, vocational, or reentry purposes for each year that the NJDOC denied educational services to which that class member was entitled.

The NJDOC's compliance with the requirements set forth in the settlement agreement will be monitored by an independent external monitor and the NJDOE, both of whom will conduct site visits, observe classes, interview the NJDOC staff and students, and review records. To the extent these periodic assessments reveal that the NJDOC is falling short of its obligations, the NJDOE will prepare "corrective action plans," that set forth certain remedial measures that the NJDOC must undertake within a specified time period. From there, the NJDOE and the independent external monitor will then follow up to ensure compliance. The external monitor also will produce periodic reports to assess whether both the NJDOC and the NJDOE are substantially complying with the terms of the agreement.

The implementation of these groundbreaking procedures marks the culmination of more than four years of work, as Proskauer, along with the [American Civil Liberties of Union of New Jersey](#) (ACLU-NJ) and [Disability Rights Advocates](#) (DRA), first filed a class action complaint in 2017 alleging that the NJDOC was failing to uphold its responsibilities to provide special education and related services to students in its custody, and the NJDOE was failing to monitor the provision of education services provided by the NJDOC as required by law. Settlement negotiations lasted over three years, with the parties overcoming substantial practical difficulties arising from the COVID-19 pandemic (among other things). Through it all, Proskauer and co-counsel persevered to ensure that special education students in NJDOC's custody have the best possible chance at making the most of their lives once they're released.

A class action settlement fairness hearing is scheduled for January 26, 2022. In the meantime, Proskauer, the ACLU-NJ and DRA are in the midst of providing notice to the more than 400 class members affected by the agreement.

To learn more about the class action settlement agreement, please visit the [ACLU's webpage dedicated to this case](#).

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