

J.S.M. ET AL. V. N.Y. CITY DEP'T OF EDUC., ET AL.,

NOTICE OF POTENTIAL DISCLOSURE OF STUDENT RECORDS

Please read this notice carefully. This is a message from the United States District Court for the Eastern District of New York in the case identified above. Attorneys, representing certain students with disabilities and their parents in a class action lawsuit concerning certain policies in New York City applicable to claims made by these students and their parents, are seeking access to certain records maintained by the New York City Department of Education (“NYC DOE”). The records pertain to due process complaints for impartial hearings and ten-day notices (“Cases”) initiated against NYC DOE on behalf of the students and/or their families. The records are covered by a Stipulation and Order of Protection and Sealing (“Order”) that governs, among other things, their confidentiality and disclosure. The records will not be disclosed to anyone other than the parties’ attorneys, their experts, and the Court. **No student’s records will be disclosed to the general public or to anyone other than the Court (with records sealed by the Court) or the lawyers on this case, without express consent of the parent/guardian of the student who is the subject of the record (or the student if now over eighteen years of age).**

This notice may apply to you if (1) you are a current or former student with a disability (or a student suspected of being a student with a disability), or the parent or guardian of such a student, AND (2) on or after July 1, 2019, you or your child, **or an advocate/attorney on your behalf**, either:

- a. Requested an impartial hearing at NYC DOE’s Impartial Hearing Office; OR
- b. Submitted a ten-day notice to the NYC DOE’s Office of Legal Services.

NATURE OF THE LAWSUIT

In the lawsuit, *J.S.M. v. NYC DOE* (the “Litigation”), the plaintiffs are students with disabilities and their parents/guardians. The plaintiffs represent a class of New York City students. They allege that the NYC DOE and the New York State Education Department (“NYSED”) have violated the Individuals with Disabilities Education Act, among other related laws, by adopting policies that prevent class members from receiving timely dispositions of their Cases after filing requests for impartial hearings at NYC DOE’s Impartial Hearing Office. The NYC DOE and NYSED deny these allegations. Plaintiffs seek, among other relief, an order that they believe would ensure that class members receive timely disposition of their impartial hearing requests.

Plaintiffs are represented by the New York Legal Assistance Group and Sullivan & Cromwell LLP. These representatives can be reached at 212-613-6551. If you would like more information about the lawsuit, a copy of the class certification notice is available at [JSM-Class-Notice-FINAL.pdf \(nylag.org\)](#).

REQUEST FOR DOCUMENTS

As part of this Litigation, Plaintiffs seek certain documents from the NYC DOE and NYSED that may contain personally identifiable information of student class members and their families and may also contain personally identifiable information of students who are not class members and their families. The latter group may include students whose parents submitted ten-day notices to the NYC DOE Office of Legal Services but did not also file due process complaints for impartial hearings; or students whose parents submitted impartial hearing requests seeking provision of services pursuant to Individualized Education Services Programs (“IESPs”).

The documents that Plaintiffs are seeking, and that may be disclosed to the Plaintiffs without redaction as part of the Litigation, may include any record that was submitted, utilized or created as part of the impartial hearing proceeding or settlement process. Such documents may include your child’s special education plans and records, testimony from your child’s teachers or providers, evaluations from providers, underlying medical records, school records, contracts with providers or private schools, emails from you and/or your attorney to NYC DOE, your testimony, and any financial documentation you submitted (such as your tax return or a Direct Reimbursement Social Security Number Form).

“Personally Identifiable Information” includes but is not limited to: names of students, parents and guardians (including maiden names of mothers), and other family members; identification numbers, including student identification numbers (and in rare instances in the documents in question, student’s or parent’s social security numbers); contact and location information, including home addresses, home phone numbers and email addresses; and indirect identifiers, such as date and place of birth; biometric information (such as handwriting and photos); and other information that a person in the school community could link back to the student in question (in other words, information about a student that could be used to deduce the student’s identity.)

To ensure that the documents are kept **strictly confidential** and will **only be viewed by the parties’ attorneys, their experts, and the Court**, the parties have asked the Court to enter an Order of Protection and Sealing.

STUDENTS’ ENTITLEMENT TO CONFIDENTIALITY

The Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g(b) and 34 C.F.R. § 99.31(a)(9)(ii) (“FERPA”), and the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, *et seq.* (“IDEA”), are federal laws that protect the privacy of student records. These laws permit the disclosure of these records pursuant to a court order, so long as the school district makes a reasonable effort to notify students and parents before disclosing the records and provides students and parents an opportunity to object to the production of Personally Identifiable Information contained in those records.

If, after notice, a parent and/or student object, the Court will decide what to do with the objection. If the Court agrees with the objection, then the disclosing party must remove that student’s or family’s Personally Identifiable Information from the records before it produces the records.

CONSENT AND OPPORTUNITY TO OBJECT

This Notice does not affect any of your rights or those of your child, the student, in relation to the *J.S.M.* Litigation or any other matter you may have pending with the NYC DOE.

You are free to object to the disclosure of the records of your child, the student, (or your own records, if you are the student in question and are over 18 years of age). If you have an attorney or advocate assisting you, you may wish to speak with him or her about this Notice.

If you do not object to the disclosure of the information described above, no action is required. If you do object to the disclosure of the information described above, you *must*: (1) complete the “Objection to Disclosure of Student Information and Records, Case No. 20-CV-705” form attached to this Notice or found at <https://www.schools.nyc.gov/learning/special-education/help/jsm-notice-of-potential-disclosure-of-student-records>, **and** (2) either email it to the Court at Clerk_of_Court@nyed.uscourts.gov or send it to the following address:

The Honorable Roanne L. Mann
c/o Clerk of the Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201
Attn: DOCUMENT TO BE FILED UNDER SEAL

ALL OBJECTIONS MUST BE EMAILED OR POSTMARKED BY DECEMBER 8, 2021.

DO NOT CALL THE COURT. THE COURT WILL NOT ACCEPT PHONE CALLS ABOUT THIS MATTER.

You should be aware that you may be contacted by counsel for the Plaintiffs class.

If you would like more information about how to object to the disclosure of your child’s records (or your records if you are the student in question and are over eighteen), or if you need a translation of this Notice, please visit <https://www.schools.nyc.gov/learning/special-education/help/jsm-notice-of-potential-disclosure-of-student-records>. Translations are available in Spanish, Arabic, Bengali, Chinese, French, Haitian Creole, Korean, Russian, and Urdu.

All objections will be maintained confidentially by the Court under seal. If you do not send an objection form to the above address by December 8, 2021, you are considered to have waived your right to object to the disclosure of the student’s and/or family’s information and records containing Personally Identifiable Information.