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UNITED STATES DEPARTMENT OF JUSTICE FINDS THAT CHILDREN'S THEATER PROGRAM DISCRIMINATED AND RETALIATED AGAINST KIDS BECAUSE OF FOOD ALLERGIES

Turners Falls, MA –The United States Department of Justice (US DOJ) today issued a Letter of Finding concluding that Young Shakespeare Players East (“YSPE”) discriminated against two children in violation of the Americans with Disabilities Act by denying them equal access to participate in the theater program due to a peanut and tree nut allergy and the need for a responsible adult willing to administer epinephrine if necessary. The Letter of Finding further concluded that the theater company engaged in unlawful retaliation that was “coercive and intimidating” against the children because of their assertion of rights under federal law. The Letter of Finding serves as an unequivocal statement by the Department of Justice condemning not only the exclusion of kids with food allergies, but retaliation against those who advocate on their behalf.

The US DOJ Letter of Finding follows an investigation by the US Attorney into complaints the children filed last year outlining how they were barred from the program and then retaliated against for seeking equal access. Eleven-year-old Mason Wicks-Lim was prohibited from participating because of his food allergies and his need for an adult willing to administer epinephrine in the event of serious allergic reaction. Twelve-year-old Sam Picone-Louro was kicked out of the program for sending an email to program director, Suzanne Rubinstein, in which she asked the program to reconsider its refusal to enroll her friend, Mason, and called his exclusion because of disability discrimination. The Letter of Finding states “a peanut allergy qualifies as a disability under the ADA if it can potentially impair a major life activity, such as breathing” and found that the educational program’s refusal to commit to administer epinephrine in the event of an allergic reaction was discrimination. As a place of public accommodation, a children’s theater program, no matter how small, must provide access and must make reasonable modifications such as providing an adult willing to administer life saving medication.

“It costs nothing to include a child with a food allergy just like it costs nothing to refrain from retaliating against young people who have the courage to stand up for the rights of a friend,” said Mary Vargas, one of the lawyers for the two children. “It matters little if children are learning to quote Shakespeare if they are also being taught that some members of their community are not worth including.”

“The Department of Justice’s Letter of Finding confirms for these extraordinary children that they deserved equal treatment and that standing up for a friend’s right to be free from discrimination is a protected activity,” said Laurel Francoeur, whose law firm, Francoeur Law Office, represents the children along with Stein & Vargas, LLP. “While the Letter of Finding cannot undo the shocking attacks YSP launched in response to the complaints – attacks that called the children and their parents names, and equated the expectation to comply with nondiscrimination laws with involuntary servitude and slavery – it does send a clear message that retaliation and discrimination against children will not be tolerated, even by those who claim to do good.”

Mason’s mother, Ali Wicks-Lim said, “I’ll never forget the night I had to tell Mason that, because of his disability, he was not welcome to participate in a program open to his friends. He was so hurt and confused but wanted to take action so other kids would not have to go through what he did. I wish Mason and Sam had not had to experience any of this, but we are so proud of them for the stand they've taken.”

Sam’s parents agreed, “It has been a difficult year as Sam struggles to accept being excluded for following her heart, but we are so proud of her for doing what she felt was right.” Sam, who misses being a part of the Shakespeare program, said “This was the first time I was bullied by a grown up – she wanted me to be scared,” said Sam, “No one deserves that.”

The Americans with Disabilities Act requires programs for children to welcome kids with disabilities, including kids with food allergies. Programs cannot refuse to administer epinephrine.

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Stein & Vargas, LLP is a civil rights firm committed to the principle that all people have full and equal access to all parts of society. Stein & Vargas, LLP has a special interest in preserving the rights of individuals with food allergies.

Francoeur Law Office is a general law practice with a focus on food allergy-related issues. Francoeur is the author of “How to Advocate for Your Food Allergic Child: A Manual for Getting What Your Child Needs at School” and co-author of the “Preschool Food Allergy Handbook.”

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