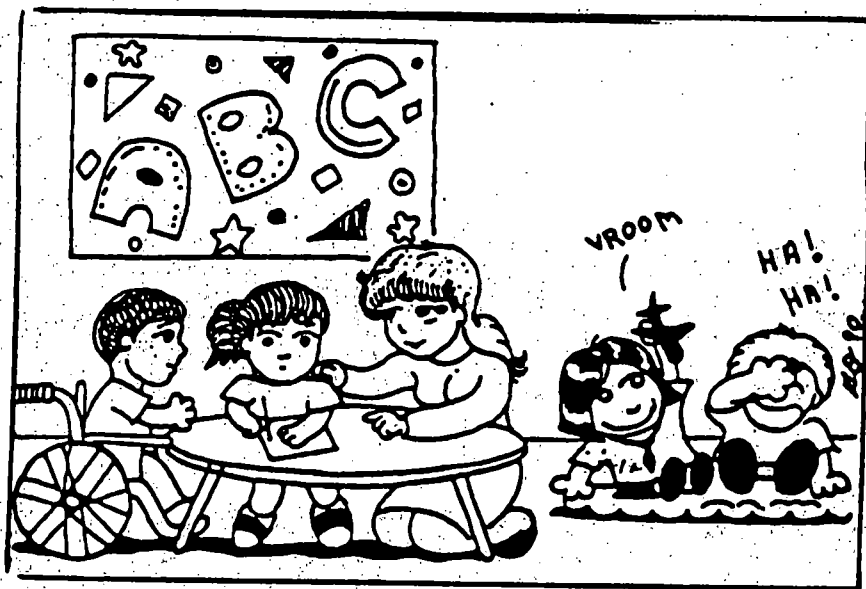

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**SECURING AN APPROPRIATE EDUCATION
FOR YOUR PRESCHOOL CHILD
WITH A DISABLING CONDITION:
A GUIDE FOR NEW YORK CITY PARENTS**



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Revised - 9/93

**SECURING AN APPROPRIATE
EDUCATION FOR CHILDREN WITH DISABLING
CONDITIONS IN NEW YORK CITY:
A GUIDE TO EFFECTIVE ADVOCACY**

Advocates for Children of New York, Inc.
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ACKNOWLEDGEMENTS

Advocates for Children is deeply grateful to all those who participated in the long and arduous process of revising this manual to reflect the multitude of changes in law, regulation and procedures that have occurred over the eight years since the first edition was published. We also want to extend our appreciation to Manhattan Borough President David Dinkins for securing a grant from the Community Development Agency which helped to cover the cost of producing this handbook for use by Parent Members of Committees on Special Education as well as parents and advocates assisting children with disabling conditions.

Our special thanks for their extraordinary and tireless efforts go to AFC staff members Joan Harrington, Diana MTK Autin, Sara Baughan and our consultant, Kevin Keane, all of whom worked on writing and editing the manual; to Rosmarie Homberger and Tara Harrington, who verified and entered data; and to Claire Jacobs who single-handedly designed the layout and typeset the entire handbook.

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Executive Director

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PREFACE

Advocates for Children of New York, Inc. (AFC) was organized in 1970 to ensure equal educational opportunities, promote quality education services and overcome school failure for New York City's 1,000,000 public school students. AFC's commitment is to those children at greatest risk due to disabling conditions, poverty, racial discrimination, social or familial deprivation, or inadequate academic preparation.

The goal of our parent, youth and community founders was to develop a community-based network of advocates trained to assist and represent young people deprived of or excluded from appropriate education and related youth services. Advocates, we believed, could help parents and young people participate meaningfully and influence educational decisions; assure non-prejudiced and responsive conduct by education officials; pursue greater leverage for often powerless consumers (particularly the young) through individual case advocacy and class advocacy intervention; train and organize an informed and active constituency; and secure access to and assurance of equal education and related youth service opportunities.

In the last 15 years, judicial decisions, federal, state and city laws and regulations have emerged to assure equal opportunity for our disabled population. This handbook attempts to translate into a practical advocacy guide for consumers and advocates the myriad laws and regulations governing education of children with disabling conditions. It is intended to enable readers to knowledgeably walk through the day-to-day bureaucracy of the New York City Board of Education so that, in the end, children with disabling conditions, assisted by informed advocates, can take their rightful place in the public

school system.

This handbook will be translated into Spanish. We intend to update it periodically so that our readers will be constantly alerted to new developments in laws, regulations, policies, and judicial decisions.

We hope the material is clear, useful and practical. In reading the handbook, remember that it is a guide. What is presented is a description of how the process should work. It is not possible to answer every question or anticipate each problem that will arise. Our staff is available to provide technical assistance when particular problems arise.

Long Island City, New York
September, 1993

Galen D. Kirkland
Executive Director

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INTRODUCTION

Many complex issues arise in securing special education and related services, as well as in creating a smooth transition from special education to regular education classes in the "mainstream."

This handbook has been prepared to assist and empower parents and advocates in utilizing the state and federal laws and court mandates that guarantee a free, appropriate public education to young people with disabling conditions. Under these laws parents are guaranteed the right to participate in educational planning for their children with disabilities. Fair procedures and an opportunity to be heard, known legally as "due process," are central features of these laws. Due process safeguards a parents' right to participate in the educational planning process. This manual will explain these due process procedures and how parents can activate them most effectively each step within the special education process in New York City.

For easy reference there is a general table of contents at the beginning of this handbook and another more detailed one at the beginning of each chapter. Using these table, parents and advocates should be able to locate the section relevant to their current concerns.

Throughout the handbook there are references to items in the glossary and the appendix. The glossary contains definitions of words frequently encountered in the special education system, and used throughout the handbook. The appendix is designed to familiarize parents and advocates with community resources, to identify the forms used by the Board of Education at each stage of the process; and to specify the division

or department within the Board of Education which addresses particular problems or issues.

The chapters, "The Impartial Hearing" and "Appealing to the State Review Officer" explain the legal technicalities which parents and advocates must understand and follow in order to use these procedures which are the most complex of the entire due process system.

CHAPTER I

EDUCATIONAL RIGHTS OF INDIVIDUALS WITH DISABLING CONDITIONS OVERVIEW OF FEDERAL, STATE, AND JUDICIAL MANDATES

Federal Law - P.L. 94-142

Mainstreaming

New York State Law and Regulations

Court Mandates

- A. Jose P. v. Sobol
- B. Aspira v. New York City Board of Education

Parental Rights

- A. Due Process
- B. Foster Children
 - 1. If your child is in foster care
 - 2. If you are a foster parent

TABLE I - Disabling Conditions

Figure I - Least Restrictive Placement In The Continuum Of Educational Services

Federal Law - P.L. 94-142

In 1975, the United States Congress enacted the Education for all Handicapped Children Act (P.L. 94-142).¹ For children with disabling conditions and their parents, this federal law was their education "Bill of Rights." Specific regulations which became effective in October, 1977, spell out what is required under the law. The law guarantees a free and appropriate public education to all children with disabilities regardless of the nature or severity of their disabling condition. Children who have the following conditions are covered by the law's provisions:

- Autism
- Chronic or long-term health problems
- Emotional disturbances
- Hearing impairment or deafness
- Learning disabilities
- Mental retardation
- Multiple disabilities
- Physical impairment
- Speech impairment
- Traumatic brain injury
- Visual impairment or blindness
- Other conditions

Table I (p.15) provides the legal definitions of each of these disabling conditions.

Children with disabling conditions are entitled to regular or special education as well as support and other "related services" appropriate to their needs.

"Special Education" means "specially designed instruction to meet the unique educational needs of a particular child," which may be delivered in the general education classroom or in special classes.

¹ 20 U.S.C. Sec. 1401 *et. seq.* In 1991 the title of the law was amended to the *Individuals with Disabilities Education Act (IDEA)*.

"Related Services" means "transportation and those developmental, corrective, and other supportive services required to assist a child with disabling conditions to benefit from a special education program."

Whatever the program or related services provided, the Board of Education is required to offer classes in a variety of settings. Presently, such settings include:

- 1. A regular class with consultant teacher, "transitional," or other related or support services.**
- 2. A regular class with pull-out resource room services in the classroom at the child's home school.**
- 3. A regular class with resource room other than in your child's zoned school, e.g., for visual or hearing impaired students, or for students with limited English proficiency.**
- 4. Self-contained special classes with appropriate opportunities for mainstreaming.**
- 5. Special schools, such as special day schools or day treatment centers for those with emotional disabilities; centers for those with multiple disabilities; occupational training centers, etc.**
- 6. Private school**
- 7. Residential school**
- 8. Home or hospital instruction**

The foregoing is a generalized list because the Board of Education is required to create programs to meet the individual needs of each student. In creating an appropriate program, designed for a specific child, the Board of Education must include related services in addition to the special education program if the child is in need of supplemental instruction.

Related services can include:

assistive technology	psychological services
audiological services	school social work services
counseling services	speech pathology
medical services	transportation
occupational therapy	vocational services
physical therapy	

This list of related services may include other developmental, corrective or supportive services if they are "required to assist a disabled child to benefit from special education." It is important to note that the Board of Education is not required to provide the best possible program for each child with disabling conditions - it is obligated only to provide an appropriate program. To secure a related service, you will have to show that your child needs it to benefit from education.

To determine what services and programs are appropriate, the federal law requires that each child who is referred to special education receive a comprehensive, multi-disciplinary assessment in his or her dominant language. Further, assessments must be redone every three years ("triennials") to measure the child's progress and to determine again what programs and services are appropriate.

Each child who is classified as having a disabling condition and placed in special education must be provided with an Individualized Education Plan (IEP). The IEP is the guide for the child's program and it must contain long and short term goals.

Mainstreaming

Beyond requiring the Board of Education to provide each child with an appropriate program of special education and related services, P.L. 94-142 mandates that, in selecting programs and services, the Board of Education must educate each child

with disabilities in a setting with his/her non-disabled peers to the maximum extent appropriate. This means that the child must be placed in a regular educational environment ("included" or "mainstreamed") unless it can be shown that, even with the use of supplementary aids and services, he or she cannot receive an appropriate education in such a setting. This provision, known legally as the "least restrictive environment" mandate, insures that children with disabling conditions are not arbitrarily or unnecessarily isolated from their non-disabled peers.²

Too often, students with disabling conditions are segregated, remaining full-time in classes with other such children, even when they are capable of making progress in a regular classroom or regular school activity with the help of special supports or services. The degree to which a student must be separated from those who do not have disabling

² Several federal district court cases have held that because mainstreaming is a presumptive requirement of federal law, school districts must consider placing children with disabilities in regular classes, with supplementary aids and services, including classroom assistants, ("inclusion") before exploring more restrictive alternatives. Moreover, the preference or presumption in favor of an inclusive education will not be rebutted unless the child's disabilities are so severe that he or she will receive little or no benefit from inclusion; that he or she is "so disruptive as to significantly impair the education of other children" in the class; or that the cost of providing an inclusive education "will significantly affect other children in the district." See, e.g., Oberti v. Board of Education of the Borough of Clementon School District, C.A. No. 91-2818 (D.N.J. 8/17/92) (holding that the school district violated both the IDEA and Section 504 of the Rehabilitation Act by failing to investigate properly and provide reasonable accommodations necessary to enable an eight year old child with Downs Syndrome to benefit from an inclusive education in his home school district, and by excluding him from regular education programming solely on the basis of his disability); Board of Education, Sacramento City Unified School District v. Holland, 786 F. Supp. 874 (E.D. Cal. 1992) (holding that the school district's recommended half-day placement in a regular classroom was not appropriate for a moderately mentally retarded second grade child who was entitled to a full-time regular education program with supplemental services); and Greer v. Rome City School District, 762 F. Supp. 936, 17 EHRLR 881 (N.D.Ga.1990) (holding that removal from a general education classroom and placement in segregated special class, although "appropriate" for the child, did not meet LRE requirement because the child remained capable of benefiting from regular class placement, with provision of supplemental support services).

conditions must be individually determined through tests and observations. Decisions must not be based on general stereotyped ideas about the abilities of students with disabling conditions. Most students with disabling conditions do not need segregated special education classes. They may only need a related service such as transportation or counselling or speech therapy. Or they may require the assistance of a consultant teacher in the general education classroom. Some students currently in separate special education classes do not need such a segregated setting and should be returned to classes with their non-disabled peers.

The law mandates non-academic mainstreaming (i.e., art, gym, etc.) for all students unless it is clearly inappropriate for an individual student for specific reasons. However, whenever it is appropriate, mainstreaming should also extend to attendance in academic classes with non-disabled students. While some students should be mainstreamed, others will remain in self-contained classes throughout their entire school career. All students' programs should be reviewed regularly to assure that they are included or mainstreamed to the maximum extent to benefit from their education. You should take an active role in monitoring this part of your child's placement.

To serve children with disabling conditions, the Board of Education must offer a "continuum" of programs ranging from least restrictive to most restrictive placements. Each student's individual special needs determine which program in the continuum s/he will attend. Figure I (p. 9) shows how the list of special education programs flows from least restrictive to most restrictive setting.

FIGURE I
LEAST RESTRICTIVE PLACEMENT IN THE CONTINUUM
OF
EDUCATIONAL SERVICES

REGULAR EDUCATION WITH SPECIAL EDUCATION SUPPORT SERVICES (RELATED SERVICES, CONSULTANT TEACHER, ETC.)
RESOURCE ROOMS AND OTHER RELATED SERVICES
SPECIAL CLASSES WITH MAINSTREAMING OPPORTUNITIES
DAY SCHOOLS AND SPECIAL CLASS CLUSTERS
PRESIDENTIAL PROGRAMS HOSPITAL SCHOOLS HOME INSTRUCTION

New York State Law and Regulations

In addition to the federal statute, New York State education laws and regulations spell out referral, assessment, and placement procedures for children referred to or receiving special education. By state law, Committees on Special Education evaluate and place children. In New York City, there are thirty-two community school districts, and each has a Committee on Special Education to evaluate and place children who attend elementary and junior high schools within their boundaries. This is called a "service district" Committee on Special Education because the services are provided by the district in which a child attends school, which is not necessarily the district in which the student lives. "Service district" Committees on Special Education also evaluate and place high school students who attend high schools located within their geographic boundaries.

State rules and regulations require that every child referred to special education must have a multidisciplinary assessment. These regulations also establish timelines for the referral, evaluation, and placement process; teacher to student ratios; the definition of the continuum of services; curriculum guidelines; and specifications of programs leading to general education diplomas or "IEP diplomas" or certificates upon graduation.

Court Mandates

In addition to federal and state laws and regulations, litigation has resulted in the courts setting down additional requirements which affect the assessment and education

of students with disabling conditions in New York City. Two major cases are Jose P. v. Sobol³ and Aspira v. New York City Board of Education.⁴

A. Jose P. v. Sobol

This ongoing lawsuit was brought in 1979 because appropriate special education evaluations and placements were not being completed within the timelines required by state law. Some of the additional requirements ordered by the judge because of this lawsuit include the creation of School Based Support Teams (SBSTs) to facilitate the evaluation and placement process; the development of operating procedures for referral, evaluation, and placement; the establishment of supplemental procedures for students with limited English proficiency ("LEP" students); and the development and implementation of appropriate related services and instructional materials for all special education students.

B. Aspira v. New York City Board of Education

The result of Aspira v. New York City Board of Education, known as the Aspira Consent Decree, requires that a Language Assessment Battery (LAB) be administered to all Hispanic surnamed students -- whether in general or special education -- and to students who speak a language other than English. This stipulation further mandates that instructional material and equipment appropriate for general and special education Limited English Proficient students must be available for their education.

³ Jose P. v. Ambach, No. 79-C-270 (E.D.N.Y., Judgment Entered December 14, 1979) (Name change to Sobol due to appointment of new Commissioner of Education)

⁴ Aspira of New York, Inc. v. New York City Board of Education, 72 Civ. 4002 (S.D.N.Y. Aug. 29, 1979).

Parental Rights

A. Due Process

Under federal and state law, parents of children with disabling conditions are entitled to "due process," procedures that are used to protect your child's right to a free, appropriate public education from the moment you or anyone else refers your child for an evaluation. This means that you are entitled to be fully informed of your rights in the educational decision-making process. You must be formally notified of any proposed actions that will be taken concerning your child's education, as well as the reasons and purpose for those actions. You must be given the opportunity to participate in the decision-making process, and your input must be considered before decisions are made. The school system must seek your consent for evaluation and placement. If you disagree with a decision, you have the right to challenge it through an impartial hearing and further appeal to the State Review Officer and the court system. Finally, you may have an advocate present at every stage of the process to help you.

B. Foster Children

Federal law mandates that the parent's consent must be sought before a child can be evaluated for or placed in special education. When the parents are unknown, cannot be located or have had their parental rights terminated, a "surrogate parent" must be appointed to make education decisions concerning the special education process.

For the purposes of giving consent, a "parent" is defined as

"a parent, a guardian, a person acting as a parent of a child or a surrogate parent who has been appointed."

"Guardians" are private individuals who have legal custody of a child. "Persons acting as parents" are relatives or individuals who have been given permission by the child's parents to act as the parent. This might be a grandmother or aunt.

1. If Your Child is in Foster Care

If your child is in foster care but your rights have not been legally terminated, school authorities must seek your consent before evaluating or placing your child in special education. Only if you cannot be found, despite diligent efforts, or if you are not mentally capable of making a decision regarding consent, can they proceed without you.

2. If You Are a Foster Parent

If you are a foster parent of a child whose parent is unavailable or incapable, you may make educational decisions concerning the child's education if the foster child is your relative (kinship foster child) and you do not receive payment from the government for being a foster parent.

If you are a foster parent who is not related to your foster child, or a kinship foster parent who receives payment from the government for taking care of the child, you may become your foster child's surrogate parent. A surrogate parent is appointed if the child has no parent, guardian or person acting as a parent. In order to become a surrogate parent, you must take a brief training course given by the Board of Education.

If you are not willing to be the surrogate parent, another surrogate parent must be appointed to make educational decisions for your foster child. Surrogate parents may not be employees, agents, or officers of the local school district or State Education Department or Social Services Department. They must undergo the surrogate parent training and, whenever possible, must be of the same racial, cultural or linguistic

background as the child. (Foster parents are not considered employees of the Social Services Department). Your foster child's social worker, caseworker, or foster care agency cannot be appointed as the surrogate parent.

TABLE I
DISABLING CONDITIONS
REGULATION OF THE COMMISSIONER OF EDUCATION
PART 200
(Effective July 1, 1984)

200.1(cc)

- (1) Autistic. A pupil who manifests a behaviorally defined syndrome which occurs in children of all levels of intelligence. The essential features are typically manifested prior to 30 months of age and include severe disturbances of developmental rates and/or sequences of responses to sensory stimuli, of speech, of language, of cognitive capacities, and of the ability to relate to people, events, and objects.
- (2)* Emotionally disturbed. A pupil with an inability to learn which cannot be explained by intellectual, sensory or health factors and who exhibits one or more of the following characteristics over a long period of time and to a marked degree:
- (I) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - (II) inappropriate types of behavior or feelings under normal circumstances.
 - (III) a generally pervasive mood of unhappiness or depression; or
 - (IV) a tendency to develop physical symptoms or fears associated with personal or school problems.

The term does not include socially maladjusted pupils unless it is determined that they are emotionally disturbed.

- 3) Learning disabled. A pupil with a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, neurological impairment, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural or economic disadvantage. A child who exhibits a discrepancy of 50 percent or more between expected achievement and actual achievement determined on an individual basis shall be deemed to have a learning disability.

*NOTE: The State's definition of "emotionally disturbed" is more restrictive than the one used by the Federal government.

- (4) Mentally retarded. A pupil who, concurrent with deficits in adaptive behavior, consistently demonstrates general intellectual functioning that is determined to be 1.5 standard deviations or more below the mean of the general population on the basis of a comprehensive evaluation which includes an individual psychological evaluation.
- (5) Deaf. A pupil with a hearing impairment which is so severe that the pupil is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.
- (6) Hard of hearing. A pupil with a hearing impairment, whether permanent or fluctuating, which adversely affects the child's educational performance but which is not included under the definition of deaf in this section.
- (7) Speech-impaired. A pupil with a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.
- (8) Visually impaired. A pupil with a visual handicap which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.
- (9) Orthopedically impaired. A pupil who is physically disabled and who has a severe orthopedic impairment, which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly, e.g. clubfoot, absence of some member, etc.) impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.) and impairments from other causes (e.g., cerebral palsy, amputation, and fractures or burns which cause contractures).
- (10) Other health-impaired. A pupil who is physically disabled and who has limited strength, vitality or alertness due to chronic or acute health problems including but not limited to a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes or tourette syndrome, which adversely affect a pupil's educational performance.
- (11) Multiply disabled. A pupil with two or more disabling conditions that result in multisensory or motor deficiencies and developmental lags in the cognitive, affective or psychomotor areas, the combination of which cause educational problems that cannot be accommodated in a special education program solely for one of the impairments.

CHAPTER II

MEETING WITH AN ADVOCATE

The Role an Advocate Can Play

The Parent and Advocate Relationship

- A. Establishing Rapport and Confidence**
- B. Eliciting Information at the Interview**
- C. Discussing the Case**
- D. Parental Consent**
- E. Confidentiality**

Resolving Conflicts in the Advocacy Process

The Role an Advocate Can Play

It is important for you to decide whether you need or want the assistance of an advocate who is familiar with the special education system and the rights created under the education law to assist you in participating in the due process proceedings leading to the classification and placement of your child. Some of the due process rights are more easily exercised by parents than others. For example, securing an independent evaluation and submitting it to the CSE may not be as difficult for a parent as representing him/herself at an impartial hearing.

If you decide to work with an advocate, your first task will be to locate such assistance. There are advocacy organizations in New York City which provide representation to people with disabling conditions.⁵ These agencies offer a variety of services to parents and/or disabled people including: information on legal rights; counselling; independent evaluations; after school programs and tutoring; advocacy; and referrals to other agencies.

Advocates for Children of New York is a private non-profit organization of lay advocates and lawyers who work solely in education advocacy. Its services are free and there are no income eligibility criteria. There are also legal services and legal aid organizations⁶ throughout the city which serve people with disabilities. Some have trained lay advocates on their staff. Because legal services and legal aid organizations, by law, can serve only low-income people, if you seek their assistance, you will be asked

⁵ See Appendix A-11 Resource List of Agencies

⁶ See Appendix A-21 Legal Aid & Legal Services Offices

to disclose your family income to determine if you are eligible for free or low cost legal services.

"Lay advocates" are non-lawyers who are familiar with the education law and procedures and are trained to assist parents at School Based Support Team conferences, Committee on Special Education meetings, impartial hearings, disciplinary or guidance conferences, suspension hearings, and other educational proceedings.

While you may decide to represent your child yourself at meetings and conferences, Advocates for Children suggests that you seek the assistance of a lay advocate or be represented by an attorney if you take your case to an impartial hearing, which is a more formal, legalistic process or if an appeal of a hearing decision becomes necessary. Be sure, however, that the lawyer you retain has experience with administrative hearings and special education since not all lawyers are familiar with the educational system and the needs of children with disabling conditions.

The Parent and Advocate Relationship

If you decide you would like to have an advocate represent you, set up a meeting by calling an agency like AFC or Legal Aid, which provides advocacy. The initial meeting has three purposes: (1) the advocate will learn what you want for your child, (2) you will give the advocate background information, and (3) you will discuss strategies for obtaining the most appropriate education.

When you meet with an advocate, you must bring all educational documents, diagnostic information and medical records so that the advocate can thoroughly understand your child's educational needs and history. You should assemble all

materials and be prepared to describe any and all medical and school-related problems your child has or had in the past.

A. Establishing Rapport and Confidence

An advocate must be familiar with the special education placement process and let you know that s/he has dealt successfully with similar situations before. The advocate should let you describe, in your own words, the problem confronting you and the assistance you desire. The advocate's sensitivity and willingness to listen is essential in earning your trust.

If your child is mature enough, s/he may attend the meeting. The advocate should listen to his/her views and feelings about school and the program that has been recommended.

B. Eliciting Information at the Interview

Begin by relating your concerns about your child's schooling and educational program, giving a complete picture of the situation. You may want to bring notes to help you keep the discussion in chronological order and avoid omitting important details.

Be absolutely honest with the advocate about your child's history, disabling condition, and educational needs. It is not necessary to discuss other family members or anything unrelated to your child's education. However, withholding important information will only cause problems later. Everyone's goal must be to help the advocate fully understand all the facts related to your child's educational placement.

After you have presented the problem, the advocate will ask you questions in order to pinpoint issues and clarify the goals. Do not hesitate to ask the advocate for a

clear explanation of anything you do not understand in your child's records or about the special education placement procedures.

C. Discussing the Case

When the advocate has determined what stage in the process you have reached, s/he will explain your options and the various strategies available so you can make an informed decision about your child's education. An advocate does not make any decision for you.

An advocate will not automatically agree to assist you but must assess the facts and legal basis to support your position and must carefully explain the problems you will face in trying to reach your objective, whether or not s/he represents you. An advocate must also explain whether your request seems appropriate, reasonable, and/or attainable. For example, there may be no legal right to a program or service you are seeking. In such a case, the advocate must be sure to explain what the law does allow and why your child is not entitled to the particular service you would like.

D. Parental Consent

An advocate's authority to act is based upon the written consent of the parent. If you are divorced or unmarried, the consent form must be signed by the parent with legal custody of the child. If the student is eighteen or older, the student should sign the consent form unless the student is unable to understand what s/he is signing.

Even after you sign a written permission form, however, the advocate will not make contacts or commitments without your involvement and consent. This means an advocate should call you to explain what action is going to be taken and receive your approval in advance. Frequent contact between you and the advocate assures you that

the advocate is actively working toward solving the problem. By being in close contact with the advocate, you will learn what to do, whom to contact, and how to use the due process procedures. In this way, you will develop the confidence and ability to advocate for yourself and your children in the future, having become familiar with your legal rights and the process.

The advocate needs your child's records in order to be effective on the case. You must sign release forms so the advocate can obtain the school and evaluation records. Release forms should include your child's name and birth date and a description of the materials and records to be copied and sent to the advocate.

E. Confidentiality

An advocate must keep all records confidential. This includes your child's records, conversations with you, the advocate's notes and all correspondence. The advocate must assure you that s/he will not discuss your child's history and will not release any records to any person without your written consent.

Resolving Conflicts in the Advocacy Process

The advocate and you are both seeking the most appropriate educational placement for your child. Occasionally an advocate may feel that a program you request is not the most appropriate one, or you may disagree with the recommendations of the advocate. The advocate should be totally honest, explaining the reasons for his/her position. You must also express your opinions and preference for particular programs and help the advocate understand your position. Sometimes these situations are irreconcilable. In that event, you and the advocate must then decide whether you can continue to work together toward a common goal.

If the decision is to discontinue the association, the advocate will refer you to other potential resources.

CHAPTER III

RECORDS: WHAT EVERY PARENT SHOULD KNOW ABOUT OBTAINING AND KEEPING RECORDS

School Records

- A. Permanent Records or Cumulative Records**
- B. Health Records**
- C. Temporary Guidance Records (or Dean's Folders)**
- D. Teachers' and Guidance Counselors'
Private Notes**

Access to School Records

Records of the School Based Support Team and Committee on Special Education

- A. Minutes of Meetings**
- B. Attendance Sheets**
- C. Evaluation Documents**

Access to Evaluation Records

Parent Recordkeeping

Computerized Records

All parents have an obligation to learn about their children's school program, activities and work -- but, if you are the parent of a child with disabling conditions, you have an additional extremely important recordkeeping task. Your child's educational program and placement is based upon required diagnostic evaluations. In addition, many of the rights granted by federal law are based on a variety of notices which give you information concerning your child's classification and placement. The law also gives you the right to know what is being recorded daily about your child by the school personnel. All of these records are important and without them it is difficult, if not impossible, to make informed educational placement decisions.

School Records

When a child who has been attending school in a general education program is being considered for supportive services or special education, there will be a determination of whether the child has performed adequately in the mainstream class. The evaluation team will determine this by looking at the child's school records. The following are the types of records normally kept by schools:

A. Permanent Records or Cumulative Records

These records are kept in the principal's office and contain grades, attendance information, disciplinary actions, standardized test scores, and teacher comments. Since entries on the permanent records are often not made until the end of the school year, you will need the final year's report card to have the most current information.

B. Health Records

These records include immunization history, results of hearing tests, or any other medical tests given to your child.

C. Temporary Guidance Records (or "Deans' Folders")

These are "anecdotal" files which record your child's behavior in school on a daily basis. These files are kept in the guidance office instead of the principal's office. They are not kept for every child but, if the words "confidential file" are checked on your child's permanent record card, this indicates there is a guidance folder maintained on him or her. You have the right to see these folders although you may often be told you cannot.

D. Teachers' and Guidance Counselors' Private Notes

These notes are made for their own use and are their personal property. As long as they do not share them with anyone else and do not place them in your child's records, they are not required to disclose them to you. If they are not disclosed, they may not be used to justify the school's recommended program or placement for your child.

Access to School Records

The Board of Education is obligated to safeguard all student records, whether manual or computerized, to protect each individual's privacy.⁷ However, all records, including those on computer, are available to you upon request. Records may be requested by mail (use certified mail, return receipt requested), but it takes less time to call the principal's office and make an appointment at the school your child attends to get the records in person. A secretary or other office assistant usually handles requests for records.

⁷ *Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. 1232-g*

New York City Board of Education policy and procedure for obtaining school records are controlled by Chancellor's Regulation A-820, "Student Records: Access and Disclosure,"⁸ and are consistent with federal laws. This policy states that you can see your child's records "at the earliest convenient date [but] in no case... longer than forty-five days after the school receives the request." High school graduates or students over 18 years of age may obtain copies of their own school record. High school students under 18 may see their permanent records only with the permission and in the presence of their parents.

You have the right not only to see your child's records, but also the right to obtain copies of them. Schools may charge you copying costs, usually 10 cents a page. They cannot charge you more than 25 cents a page. You have a right to free copies if you cannot afford to pay for them. If a principal refuses to make copies of the records, you may appeal that refusal. The appeal procedure, outlined in Regulation A-820, requires you to send a letter stating all the facts to the appropriate Community School District Superintendent or to the High School Assistant Superintendent.

Regulation A-820 also contains a procedure for requesting removal of derogatory, inaccurate, or misleading information about your child from his/her school records. Since these records will be used to evaluate your child if a referral is made, it is important that you exercise this right, in advance, before these school records are released.

⁸ See Appendix A-69 to A-89, Chancellor's Regulation A-820

**Records of the School Based Support
Team and Committee on Special Education**

You should not discuss your child's educational needs without obtaining all records of any evaluation of your child. As with all school records, you are entitled to copies of any documents that may have a bearing on a School Based Support Team or Committee on Special Education recommendation. These include test results, Individualized Education Plans (IEP), plans for service, attendance lists, summaries of meetings, referral and recommendation letters, notes of telephone conversations or other contacts, and reports forwarded to the Committee on Special Education or School Based Support Team by independent agencies that have worked with your child.

The following list details the documents that may be in the files of the School Based Support Team or the Committee on Special Education.

A. Minutes of Meetings

These are notes from educational planning conferences of the School Based Support Team or the Committee on Special Education review meetings. They can be used to prove not only what happened at that meeting, but also what did not happen.

B. Attendance Sheets

These lists identify who was present at meetings of the School Based Support Team or the Committee on Special Education concerning your child. The law requires certain professionals to attend all meetings and the absence of any one of them may create a legal right to challenge the validity of a recommendation made at the meeting.

C. Evaluation Documents

These are reports from the School Based Support Team and/or the Committee on Special Education which include:

1. Reports of consultations
2. Reports of informal assessments
3. Formal assessment summary
4. Consent forms for a child's evaluation and consent forms to release records
5. Notice of the recommended classification and program placement
6. Individualized Education Plan (IEP)
7. Plans for Service
8. Reports sent to the School Based Support Team or the Committee on Special Education from independent agencies.

Access to Evaluation Records

Although you may request records by mail (use certified mail, return receipt requested), it is faster to make an appointment to pick them up at the Committee on Special Education in the district in which your child attends school. You may be asked to pay a reasonable fee to have these records copied but records may not be withheld if you cannot pay. Your request for records must be answered within forty-five days. You are entitled to a legible copy of the records. If the reports are handwritten and cannot be read, ask for a typewritten copy. Contact the Chairperson of the Committee on

Special Education⁹ if difficulties arise in getting the records. If the Chairperson does not help you, contact the Deputy Assistant Superintendent¹⁰ (DAS) in your area.

Parent Recordkeeping

In addition to records maintained by the school, you should keep your own record of all contacts concerning your child. Keep a record of all telephone conversations, including the date and the name of the school person you talked to. It is important that you send a letter confirming the substance of any conversation to the person with whom you had the conversation. Keep a copy of each letter you send to avoid confusion or misunderstanding later.

Also keep the envelopes in which you received documents, because the postmark date may be needed to establish facts about the School Based Support Team's or the Committee on Special Education's timeliness in handling a referral for evaluation or making a special education placement.

Computerized Records

The Board of Education maintains information about all students in a centralized student data bank. Each child's name, address, date of birth, sex, school, grade, class, and a randomly assigned identification number are maintained in the "OSIS" (Office of Student Information Services) directory system.

In addition, children referred for evaluation or placed in special education programs are tracked by a computer to assure that the timelines required by the

⁹ See Appendix A-2 to A-6, District Committee on Special Education Offices

¹⁰ See Appendix, A-7 to A-9, District Assistant Superintendents Offices

Commissioner's regulations are met. This data system ("CAP") is operated by the Division of Special Education.

Letters requesting your child's computerized records should be sent to the Director of the Office of Community School District Affairs, Board of Education, 110 Livingston Street, NY 11201. Be sure the letter includes your child's name, address, school and borough of attendance, and a statement that you are the parent or legal guardian. Both the OSIS and data system file numbers can be found on your child's IEP, or the Committee on Special Education can give you the numbers.

CHAPTER IV

ORGANIZATION OF SPECIAL EDUCATION WITHIN THE BOARD OF EDUCATION

**Figure II - Relationships Between Central, Regional and Community School District
Personnel**

In New York City, the Board of Education is responsible for administering all centralized public education programs. These include those operated by the Division of High Schools and the city-wide programs operated by the Division of Special Education. These are programs for severely disabled children of all ages.

The 32 Community School Districts administer instructional and major related services (speech and counseling) for mildly and moderately disabled special education students in elementary and junior high schools. Each district is responsible for operating all elementary and junior high schools within their boundaries.

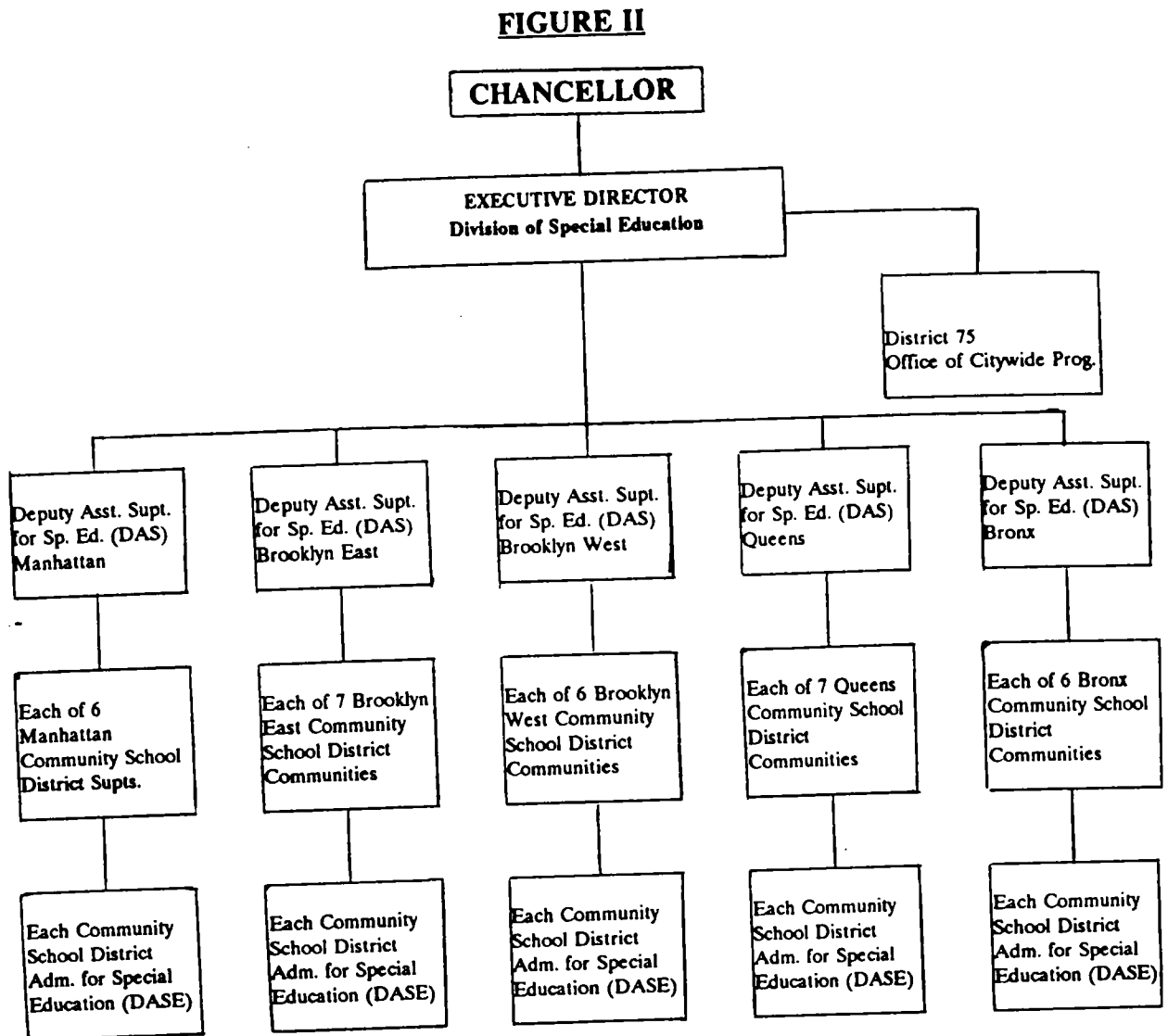
Each Community School District has a Community School Board which is an elected administrative body responsible for setting educational policies within the district. The Community School Board hires the Community Superintendent to oversee the day-to-day operations of the district's schools, including its Committee on Special Education¹¹ and its special education programs.

Community school districts are responsible for students with mild and moderate disabilities who attend elementary and junior high schools within their boundaries. To protect the rights of students with disabling conditions, the operation of special education in the districts is monitored by the Central Board of Education through the Chancellor's Office of Monitoring and School Improvement (OMSI) and is coordinated through six regional offices, each of which is headed by a Deputy Assistant Superintendent (DAS). These regional offices coordinate the operation of the Committees on Special Education and the School Based Support Teams and provide resources for districts within their boundaries. Each regional office also has a bilingual coordinator.

¹¹ See Appendix, A-2 to A-6, for a Directory of Committees on Special Education

Each community school district has a District Administrator of Special Education (DASE) who oversees instructional programs and some related services within the district.¹²

The following diagram (Figure II) illustrates the relationships between central, regional, and community school district personnel:



¹² See Appendix, A-7 to A-9 for a directory of District Administrators for Special Education

CHAPTER V

THE REFERRAL AND ASSESSMENT PROCESS PART I:

The School Based Support Team

Who Can Refer a Child

School Based Support Team

- A. Functions**
- B. Team Members**
- C. Notification to Parents of SBST Meetings**
- D. SBST Consultation and Preventive Services**

1. Preventive Services

- a. Support Services**
- b. Consultation**
- c. Informal Assessment**

Referral for Formal Assessment

- A. Referral for Formal Assessment**
- B. Parental Consent**
- C. Time Limits to Complete Assessment**
- D. Preparing for the Formal Assessment**
- E. Scheduling Assessment Appointments**
- F. Assignment of a Social Worker**

Components of the Formal Assessment

- A. The Social History Interview**
- B. Medical Examinations**
- C. Psychological Tests**
 - 1. I.Q. Tests**
 - 2. Psychomotor Tests**
 - 3. Projective Tests**
- D. Educational Tests**
- E. Specialized Assessments**
 - 1. Speech and Language**
 - 2. Hearing and Vision**
 - 3. Physical and Occupation Therapy**

Inaccurate or Biased Assessments

Requests for an Independent Evaluation

Special Circumstances in Formal Assessment

- A. Students Whose Primary Language is not English
- B. Children with Medical Conditions

The Educational Planning Conference

- A. When and Where the Meeting is Held
- B. Participants
- C. Documents to Bring
- D. Discussion at the Conference
- E. Recommendations

**TABLE II - Evaluation Safeguards on the Assessment
of Students Referred to Special Education**

Who Can Refer a Child

A request for referral of a child to be evaluated for possible special education needs can be made by a number of individuals, including: parent, general education teacher, special education teacher, principal, other school staff or, if the child is 18 or older, by him/herself. At the school level, such a request sets in motion the referral and evaluation process which can lead to a number of outcomes. It should be remembered that an evaluation of your child will not proceed without your consent unless an Impartial Hearing Officer orders it.

School Based Support Team

Under New York State Education Law, the Committee on Special Education (CSE) is responsible for evaluating students and recommending special education and related services when needed. In 1980, the New York City Board of Education created School Based Support Teams (SBSTs) operating under the supervision of the thirty-two district Committees on Special Education.¹³ Each school in New York City is served by the SBST assigned to it. The Team in each school is responsible for evaluating students who have been referred to them to determine if they have special educational needs.¹⁴ Most teams are assigned to one school, although small schools may be served by a team on a part-time basis.

¹³Legislation passed in 1991 designates SBSTs as subcommittees of the CSE.

¹⁴Referrals for children who are preschool, have just started school, are multiply or severely disabled or are enrolled in private schools go directly to the Committee on Special Education. See Chapter VI.

A. Functions of the School Based Support Team

The School Based Support Team has three functions:

1. evaluating children to determine if they have disabling conditions;
2. arranging resource room instruction, consultant/itinerant teachers, and related services for children who have been identified as having disabling conditions; and
3. providing preventive services or consultive services to teachers.

Because of the numbers of students in need of evaluation, the preventive service component is limited. However, you can request supportive or "preventive services" for your child in the regular class. By doing this, you encourage the school to provide a creative alternative to special education programs.

B. Team Members

The SBST is composed of the principal, or a designee of the principal, who may be the Team leader (facilitator); the school's guidance counselor; you, as the parent of the student being discussed; your child's teacher(s); the school psychologist; school social worker; and an education evaluator. The composition of each SBST varies for each student, although it must have a school psychologist, educational evaluator, and administrator. For initial cases, a social worker must be involved.¹⁵

The Team's facilitator coordinates assessments, conducts meetings, and ensures that the Team runs smoothly and performs its tasks correctly. The school psychologist will administer tests and observe how your child acts in the classroom. This observation

¹⁵ New York State law mandates the participation of a school psychologist only when a new psychological evaluation is reviewed or a change to a more restrictive program is considered. 8 NYCRR Part 200.3(c). In New York City, however, an SBST must include a psychologist under all circumstances. *Jose P. v. Sobol*, Judgement paragraph 17.

is called a "structured observation." The educational evaluator will test your child to determine learning styles, strengths and weaknesses, and reading and math levels. The social worker explains the due process procedures to you and is the person who must notify you of all SBST conferences.

C. Notification to Parents of SBST Meetings

The SBST's social worker is responsible for informing you of all SBST conferences by mailing a notice at least one week before any meeting and telephoning you to confirm the meeting two or three days in advance.

If you are not able to attend a scheduled meeting, inform the social worker and request a new meeting date. If you cannot attend the meeting, the social worker must attempt to reschedule the meeting at your convenience or arrange a telephone conference with you to discuss the outcome of the meeting. If you believe a meeting took place without prior notification to you, contact the CSE for that school district.

D. SBST Consultation and Preventive Services

Consultation with the SBST and informal assessment are forms of preventive services to investigate possible ways to accommodate students in general education programs. An informal assessment cannot result in your child being classified as having a disabling condition or his/her placement in special education. Only formal evaluation can be used to determine a child's condition and recommend a special education program. You should be sure to explore all avenues of preventive services before a formal evaluation is conducted.

1. Preventive Services

a. Support Services

The SBST can suggest ways for the teacher and/or you to help your child and it can deliver support services in the classroom. These services can include academic assistance from the educational evaluator, remedial instruction from the resource room teacher and/or emotional support from the psychologist or social worker, in the form of counseling.

Your child might be able to perform adequately in a regular class if classroom modification, different teaching strategies, and other supportive services are used. This could prevent premature evaluations (formal assessment) of your child and avoid unnecessary placement in a restrictive, perhaps self-contained, special education program. Be sure to explore preventive services fully before placing your child in special education.

b. Consultation

Consultation is a form of preventive service available to assist a teacher having trouble with a child. A member of the SBST examines the child's classwork and permanent (cumulative) record card, observes the child's performance in class, and discusses the child's strengths and weaknesses with the teacher.

Based on this observation and discussion, the Team member recommends new teaching strategies to the teacher or a change in the classroom environment. These recommendations are not binding on the school although, if they are not followed, you should ask for a meeting to explain why.

c. Informal Assessment

Based on the preliminary findings at a consultation conference described above, you or the SBST may decide a more detailed assessment is needed. The "informal assessment," unlike a formal evaluation, cannot result in your child being classified as having a disabling condition or being placed in special education. After the informal assessment, your child is still considered non-disabled even though supportive services may be recommended to help him/her function in regular classes. Before an informal assessment can be done, your written consent must be obtained by the SBST.

The Team members will observe your child, not only in classes, but in the gym, at assembly, in the lunchroom, and in other school settings. They will review school records and, with your written consent, obtain records from outside agencies that may have already done evaluations. In addition, the Team members will have discussions with school personnel who work with your child.

When the SBST finishes the informal assessment, they will meet with you to discuss the results. You must be notified of the conference date, place and time. At the conference, the Team should present the results of its observations and conversations and should explain your child's records.

The conference participants should recommend future action. Whatever the recommendation, you should sign the attendance sheet. (Even if you don't agree with what happened, sign the attendance sheet to prove that you were there.) Be sure it is marked as an attendance sheet only and request a copy of the Informal Assessment Conference Summary Report and the Plan for Service, which will contain one or more

of the following recommendations by the SBST:

1. No further action, the problem is resolved
2. Suggested actions for the teacher
3. Suggested actions for you
4. Suggested actions for other school staff, such as the guidance counselor or paraprofessional
5. Counseling or other services by a community Agency that is independent of the school system. (If the Team recommends an outside service, the facilitator or another Team member should help you locate the service.)
6. Recommendation for support services
7. Request for formal assessment

The Team should specify the goals they expect the services to accomplish. A date should be set to re-examine your child's progress and review the Plan for Service. Before any services can begin, you must give written consent, which you may revoke if you decide later to change your mind. Before leaving the conference, the social worker must give you detailed due process information and a copy of the booklet, "Your Child's Right to Special Education in New York City," which explains the system for obtaining special education service.

As a result of the informal assessment, the Team may recommend a formal assessment and this means additional in-depth tests or evaluations.

The Referral for Formal Assessment

The Regulations of the New York State Commissioner of Education require that each referred child be evaluated prior to placement in a special education program.¹⁶

¹⁶ 8 NYCRR Part 200... Legislation passed in 1991 requires the evaluation to include a psychological assessment the first time a student is referred to special education; whenever a move to a more restrictive environment is recommended; and whenever the school

In New York City, the School Based Support Team or the Committee on Special Education, (whichever group does the formal assessment), must complete a social history and conduct a psychological and educational examination for each child. You will be asked to submit a recent medical report. Depending on the nature of your child's disabling condition, more specialized examinations may be necessary. If so, this will be decided after the required evaluations are completed.

With formal assessment, you acquire legal rights under federal education law because, for the first time, the school is considering whether your child has a "disabling condition." A child is not considered to have disabling conditions until the SBST or the CSE reviews the results of a formal assessment and you sign the recommendation letter.

In order to protect your rights, a number of safeguards have been developed with regard to the assessment process. Table II (p.51) lists the minimum safeguards that you should be familiar with in guiding your child through the formal assessment process.

A. Referral for Formal Assessment

The SBST, other school staff members, you, or a licensed physician, can refer your child for a formal assessment. A referral is a written notice to the SBST or CSE, whichever is appropriate.

B. Parental Consent

If a formal assessment is to be done, the SBST must obtain your consent, even if you have previously consented to an informal assessment. They will either hand you a consent form at the close of the informal assessment conference or mail it to you later.

psychologist feels that it is necessary. NYC still mandates a psychological assessment as part of every evaluation.

You have the right to refuse a formal evaluation or withdraw your consent. If you do, the SBST can request an informal conference to establish the need for these evaluations.

You may bring counsel or an advisor to this conference to ask questions about the assessment. After this conference, the principal will recommend whether or not your child should be evaluated. If you disagree with the principal's decision that your child does not need an evaluation, you may request an impartial hearing. If you disagree with the principal's decision that your child does need an evaluation, no evaluations may be conducted unless the school requests an impartial hearing and the hearing officer issues an order forcing the evaluation of your child over your objection.

This impartial hearing is a formal proceeding. The hearing officer will hear evidence from you and the school and issue a decision as to whether your child will be tested without your consent. This decision may be appealed to the New York State Review Officer by either the school or by you.

C. Time Limits to Complete the Assessment

The SBST must perform the formal assessment and make recommendations at an Educational Planning Conference (EPC) within thirty school days after receiving the referral. (In the case of an initial referral, the SBST is also given up to 10 additional days from the referral date to obtain your consent if the referral was made by someone other than you.) If the SBST concludes that your child needs a special education program, they must make a placement within thirty additional school days of the date of the program recommendation.

Delays that are caused by you may prolong the placement process. Attempt to keep all appointments and minimize delays.

D. Preparing for the Formal Assessment

The SBST collects existing information, such as school records, anecdotal records, doctors' reports, and clinical reports from hospitals or independent agencies. The social worker will ask you to sign a consent form before contacting the agency or person who has these documents. On this form, you may specify which records you will permit the outside agency to release to the SBST and those you want to remain confidential.

The SBST members will also observe your child in school and interview teacher(s) and other school staff if it has not already done so. The completeness of the existing information will determine whether additional evaluations are needed.

E. Scheduling Assessment Appointments

Because the SBST is located within your child's school, it will arrange for professionals to complete the necessary assessments during the school day. Your child will be excused from class for short sessions over a two or three week period, depending on the availability of psychologists and educational evaluators to do the testing. The SBST should talk to your child's teacher(s) to make sure that no class tests have been scheduled for these days.

If the assessment includes specialized evaluations such as a neurological examination or psychiatric testing which cannot be done at the home school, the SBST will arrange an appointment through the Committee on Special Education. Some of the testing may be arranged at an outside diagnostic agency or hospital facility.

During the summer, formal assessments are conducted at the office of the CSE instead of at your child's local school.

F. Assignment of a Social Worker

For the initial formal assessment, a social worker will give you information on meetings, your rights, the assessment, and placement. S/he will notify you of: (1) the date, time and place for all testing, and (2) the date, time and place for the Educational Planning Conference (EPC) at which the SBST will discuss all the test results.

Components of the Formal Assessment Process

A. The Social History Interview

A child's social history frequently influences the recommendations reached by the evaluators. You should come to the interview well prepared, bringing along any records that might be helpful, including, if available: letters from private physicians; therapists and tutors; reports of independent evaluations; and your child's permanent school or guidance records.

You will be interviewed by a social worker who will obtain background information about your child. S/he may ask questions about the child's general health and "developmental milestones," including when the child first sat, crawled, walked, talked, etc.. S/he will also need to know when and why you first thought (or discovered) your child might have a disabling condition.

You should answer questions about your child and remember you have no obligation to offer information concerning medical, social, emotional, financial, or legal problems of other members of your family. There is no need to volunteer any sensitive family information. Such information, if reported, will remain in the Board of Education's records, and be available to anyone in the educational system without your

knowledge or consent.

The social history interview gives you the opportunity to express your expectations for your child's education. This is very important because the SBST meets after the testing to discuss possible classifications and special education placements for your child.

TABLE II

EVALUATION SAFEGUARDS ON THE INDIVIDUAL ASSESSMENT

OF STUDENTS REFERRED TO SPECIAL EDUCATION

School Districts must ensure that:

- I. Tests and other assessment procedures:**
 - (a) are provided and administered in the child's dominant language or other mode of communication, unless it is clearly not feasible to do so
 - (b) have been validated for the specific purpose for which they are used; and
 - (c) are administered by trained personnel in accordance with the instructions provided by those who developed such tests or procedures.
- II. Tests and other assessment procedures include those tailored to assess specific areas of educational needs and not merely those which are designed to provide a general intelligence quotient;**
- III. Tests are selected and administered to ensure that, when a test is administered to a child with impaired sensory, manual or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills, except where those skills are factors which the test purports to measure;**
- IV. No single procedure is used as the sole criterion for determining an appropriate educational program for a child;**
- V. The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with certification or knowledge in the area of the suspected disability;**
- VI. The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, vocational skills, communicative status and motor abilities; and**
- VII. The evaluation includes observation of the pupil in the current educational setting.**

B. Medical Evaluation

Medical evaluation may include physical exams, neurological tests, and/or psychiatric evaluations. You may request a medical evaluation from the CSE if it is indicated. This request should be made in writing. The CSE must then arrange for this evaluation. In addition, the Board of Education is required to assure that all children referred for educational evaluation receive a hearing and vision screening.

C. Psychological Tests

These tests consist of an interview, IQ test, psychomotor tests and/or projective tests, all of which are administered by a school psychologist. Because many of these tests are not normed for children whose dominant language is not English, test results for Limited English Proficient (LEP) children are often reported as a range rather than a specific number.

The most frequently used tests are described below:¹⁷

1. IQ Tests - The "Intelligence Quotient" test is interpreted as a measure of a child's potential for academic achievement. As such, it is different from a reading or math test which measures actual achievement. The IQ test compares the child who took the test to an "average" child of the same age: a full-scale of 100 indicates that the child is exactly "average."

Because the law prohibits school districts from placing students in special education programs based on IQ scores alone, other tests must be administered and

¹⁷ Although these are the tests that are routinely used to evaluate your child, there is an ongoing debate about their validity as evaluative and predictive tools.

their results considered.¹⁸ If it appears from studying the records that your child's placement was based solely on an IQ score, or if other tests administered point toward a different placement recommendation, you should ask the SBST or CSE to explain why their placement recommendation appears to have been based solely on the results of the IQ test.

Some of the standard intelligence tests used are: the Stanford-Binet; the Wechsler Pre-School and Primary Scale of Intelligence (WPPSI); the Wechsler Intelligence Scale for Children - Revised (WISC-R) and the Wechsler Adult Intelligence Scale (WAIS) for older students.

2. Psychomotor Tests - These tests measure a child's ability to copy designs, which is interpreted to indicate whether s/he has problems in visual perception. For example, not seeing figures as they really are may signal problems in "visual-motor integration" (the ability to coordinate the hand with the eye in order to copy accurately what the eye sees).

3. Projective Tests - Projective tests are used to identify personality disturbances and are used by psychologists to evaluate a child's personality characteristics such as mood, attitude, anxiety, self-image, imagination, maturity, and perception of reality.

Projective tests are not scored like IQ tests because there are no right or wrong answers to the questions in this test. Instead, the child's responses are interpreted subjectively by the psychologist who administers the test.

Some of these tests are: the Rorschach Ink Blot Test; the Thematic

¹⁸ 34 C.F.R. Sec.300.532(b)

Apperception Test (TAT), and the Children's Apperception Test (CAT).

D. Educational Tests

The educational evaluator evaluates your child's achievement and related areas. These tests diagnose difficulties in reading, spelling, mathematics, and spoken language. The evaluator looks for an indication of learning disabilities or for consistently delayed performance, such as a child with reading scores two or three years below his/her actual grade level.

Scores on tests given by the educational evaluator are reported in terms of grade equivalents ("G.E.") or mental age ("M.A."). An "M.A." of 6.1 means that the child performs at a level equivalent to a child 6 years and one month old. A "G.E." of 6.1 means that the child performs at a level equivalent to the first month of the sixth grade.

The educational tests usually given are: the Wepman - Auditory Discrimination Test, the Peabody Individual Achievement Test (PIAT), the Illinois Test of Psycholinguistic Abilities (ITPA), the Wide-Range Achievement Test (WRAT), the Woodcock, and the Peabody Picture Vocabulary Test (PPVT).

E. Specialized Assessments

Every child is given social, psychological and educational assessments and testing, but not every child is given all the tests described below. An evaluator may recommend one or more of the following specialized examinations for your child:

1. Speech and Language - If a speech or language impairment is suspected, the CSE will arrange for a speech teacher to evaluate your child's ability to make speech sounds and use language.

2. Hearing and Vision - If the SBST or the CSE suspects a hearing or

eyesight impairment, they will refer you to the closest Hard of Hearing and Visually Impaired CSE (HHVI) satellite where specialists diagnose these conditions. HHVI holds its own Educational Planning Conference and review. If it recommends special education or related services, HHVI will also write the Individualized Education Plan.

If the HHVI determines that your child does not have a hearing or vision problem, it will refer the case to the CSE to determine whether other disabling conditions are present. You have the right to attend any meeting of the Hard of Hearing and Visually Impaired Assessment Unit concerning your child.

3. Physical and Occupation Therapy - If your child needs specialized help in these areas, s/he must be evaluated by licensed therapists. You can get such an evaluation privately, at your own expense, or you may request a Board of Education evaluation, at their expense.

Inaccurate or Biased Assessments

Many factors affect a child's test performance. Hunger, lack of sleep, anxiety, boredom, or even symptoms of an oncoming cold can make a child unresponsive. In addition, if the evaluator does not develop a good relationship with the child, the child may not try hard to do well. The child's responses and the evaluator's interpretations are influenced by the cultural, racial or economic backgrounds of the people involved. These factors can result in biased or inaccurate analysis of a child's responses.

The tests may be inherently biased because the concepts tested to measure intelligence are designed for white, middle class students. For example, an evaluator may think a child's speech is underdeveloped because s/he does not use "Standard English" when, in reality, the child's speech may be appropriate for someone of his/her

cultural group. If you or your advocate believe that a low test score might be attributable to cultural differences, you should consider seeking an independent evaluation by someone with a background similar to your child's who can interpret the responses fairly.

Every child is legally entitled to be tested with instruments that are free from ethnic, racial or economic status bias. Further, tests should measure the child's capabilities, not just his/her inabilities. Giving an oral test to a hearing-impaired child, for instance, is unfair because the child's abilities cannot be accurately determined when s/he cannot hear the questions. A visually-impaired child must be given tests with large print, or in braille if necessary, and a child who has trouble with penmanship or gets upset when pressured by time limits should be allowed as much time as necessary to complete the tests.

Another reason for inaccurate test results is the "practice effect." This means that because of frequent testing with the same instrument, children are able to memorize the tests. You can guard against this by refusing unnecessary testing. If additional testing is needed, other instruments can be used. The law requires full re-evaluations every three years ("triennials"). If it appears that your child has not been given tests that are appropriate to measure his/her abilities and special needs, you may want to consider an independent evaluation.

Request for an Independent Evaluation

There are instances when you might want to have your child tested by professionals who are not employed by the Board of Education.¹⁹ If a disabling

¹⁹ See Appendix A-13 to A-20, *Resources for Independent Evaluations*

condition is diagnosed by an independent evaluation, and a special education program seems appropriate, you can then contact the CSE or the SBST for a placement.

When selecting a qualified private evaluator, make certain the evaluator will, in addition to administering the tests, visit the proposed class sites and attend a hearing, if necessary.

The CSE or SBST must consider all independent evaluation reports you present to them. If you tell them you are obtaining a private evaluation instead of allowing them to do one, you must make that evaluation available to them. However, you are not required to give school personnel reports of independent evaluations or other documents that they don't know you have. You should release such documents if you believe that they will increase your child's chance of receiving an appropriate education. Make certain that independent agencies and professionals do not release your child's records to the SBST or the CSE without your written consent and prior discussion of these reports with you. Some agencies are reluctant to allow parents to see their child's records. To make certain the agency understands your wishes, indicate in writing on the agency's evaluation consent form at the time that you sign the form that no records may be released to anyone without your written permission. If you decide to disclose any part of these records, specify on the consent form the person(s) to whom this information can be released.

If you prefer that the CSE or SBST make its recommendation solely on the results of an independent evaluation without doing their own evaluation, you must be sure that the independent evaluation includes a social history, psychological, educational and medical evaluation. This is to ensure that it will not be necessary for the SBST or

the CSE to test your child in order to obtain information not provided by the independent evaluators. In these instances you will have to pay for the independent evaluation, unless you have medical insurance or public benefits which cover the cost.

If your child has been evaluated by the SBST or CSE and you believe the evaluation did not adequately measure your child's needs and abilities, resulting in an inappropriate classification and/or program recommendation, you have the right to request an independent evaluation at public expense. The Board of Education must pay for the independent evaluation if it agrees that the CSE or SBST evaluation is inappropriate or incomplete. This rarely occurs. If the Board disagrees, it can request an impartial hearing to show that the school's evaluation accurately determined your child's educational strengths and needs and that it should not have to pay for a private evaluation.²⁰

At an impartial hearing of this type, you have the right to appear with an advocate or a lawyer to present your position. In addition, all of the other rights of parents at impartial hearings apply to hearings about private tests. After you and the Board present arguments, the hearing officer will decide whether the Board's evaluation was appropriate and, if it was, the Board will not be required to pay for an independent evaluation. You can appeal to the State Review Officer if the Hearing Officer decides the Board does not have to pay for an independent evaluation.

If there is no dispute about the need for an independent evaluation, the CSE and the SBST must help you locate independent evaluators if you ask for such help. They will give you a list of agencies that provide these assessments. You may choose from

²⁰ 34 C.F.R. Sec. 300.503

this list or you may prefer to ask your family doctor, friends, the special education department of a college or university, or a hospital's psychology or pediatric clinic for information about obtaining educational evaluations.²¹ Be sure to discuss fees. Ask if there is a sliding fee scale. Fill out the necessary forms if the costs are to be reimbursed by a medical insurance plan or Medicaid. Be aware that if you choose your own evaluator, questions may arise about reimbursement by the Board of Education.

Please note that, although you generally have the right to withhold information which you consider to be confidential, if the Board of Education has agreed or been ordered to reimburse the cost of an independent evaluation, you cannot prevent the SBST or the CSE from obtaining the complete results of the testing.

²¹ See Appendix A-13 to A-20, list of Resources for Independent Evaluations

Special Circumstances in Formal Assessment

A. Students Whose Primary Language Is Not English

When a child is referred for formal assessment, the referral letter should indicate the child's primary language, and the social worker on the SBST or CSE should obtain this information from you at your first meeting.

As required by the Aspira Consent Decree²², all students with an Hispanic surname and students who speak a language other than English must be administered a Language Assessment Battery (LAB). The LAB serves as an indicator of the most appropriate language in which the students must be tested.

If the assessment is done by the SBST, the team's social worker will contact the Committee on Special Education to find professionals who can evaluate the child in his/her dominant language. If the school district does not have evaluators who speak the language fluently, the Committee must contact the Central Board of Education Office of Related and Contractual Services for a list of bilingual evaluators who perform evaluations under contract with the Board of Education.

If, after maximum effort, no Board of Education, or contract agency bilingual evaluators are available, evaluations can be performed by monolingual staff with the assistance of a bilingual teacher serving as a translator. Because translated evaluations are of questionable validity, they should be performed only if absolutely necessary.

Students who communicate in American Sign Language must be tested in that language by a certified interpreter, and the Board of Education must pay for this evaluation at an outside agency if an interpreter is not available to test your child.

²² A legal agreement signed by all parties in the ASPIRA lawsuit.

If your child was not evaluated in his/her dominant language but should have been, and you believe that a language barrier caused depressed test scores, you may file a request with the CSE or SBST to pay for an independent evaluation. However, the Board of Education can call for an impartial hearing to challenge your request.

B. Children with Medical Conditions

If your child has a medical problem or condition that could affect educational placement, the Board of Education must provide a physician to review your child's evaluations.²³

Educational Planning Conference

The Educational Planning Conference (EPC) is held after the formal assessment is completed. The purpose of the EPC is for you to meet the professionals who evaluated your child, to discuss the results of the formal assessment and to have a preliminary discussion about appropriate programs and/or services.

A. When and Where the Meeting is Held

The conference is usually held at the home school as soon as all the formal assessments are complete. If your child was evaluated at a special unit, such as the Hard of Hearing and Visually Impaired Unit, the meeting will be held there. (If you learn that a conference was held without your participation, ask to see the SBST's records listing their attempts to contact you.)

B. Participants

The participants include the members of the SBST and the people who tested your child. You may bring an advocate or a friend to the conference. A friend's moral

²³ *Jose P. stipulation 7/88*

support or an advocate's expertise can be particularly reassuring when talking to the professionals about your child's needs. If the child wants to attend, you may permit it. Bilingual interpreters, if needed, must be provided by the school.

A professional who has evaluated your child or a teacher who has worked with your child for a long period of time may have important information to contribute. Similarly a tutor, therapist, or social worker who knows your child well may offer valuable insights. You may invite any of them to attend the conference.

If these professionals cannot attend the meeting, you should obtain written statements from them which set forth their professional qualifications, describe how long and in what capacity they have worked with your child, and state their recommendations for your child's educational program. You should keep copies of the statements with your records.

C. Documents to Bring

Before the EPC, you should request, receive and review a copy of the social history, psychological examination, educational evaluation, and any other tests conducted with your child. If you do not receive a copy of the reports, arrive early for the conference and ask the social worker or another SBST member to make copies so you can read them before the conference.

You should also bring copies of your child's school records, as well as any independent evaluations from previous years.

D. Discussion at the Conference

The SBST's facilitator should take attendance and explain the purpose of the meeting. All who attend the conference may participate freely in the discussion. The

evaluators should explain the tests and their conclusions along with evaluation reports from outside agencies, if you have provided them. Clinical reports should be translated orally if you are a non-English speaking parent.

Team members may ask for more information about your child's development, medical, social, or educational history and other Team members might want to explore your child's capabilities and strengths.

Be receptive to these inquiries. Because you know your child best, offer opinions, and don't be afraid to suggest methods of instruction, classroom placement, type of program, or supportive services that might help your child's progress. If you have an advocate, make sure you discuss these issues with him/her prior to the conference.

E. Recommendations

At the end of the EPC, the participants should reach an agreement about your child's future educational program. The participants may reach a decision similar to those listed for the informal assessment conference (see p. 44), or they may recommend the child for special education with or without related services.

Unlike the recommendation for supportive services in a regular educational classroom that may follow an informal assessment, a special education recommendation requires that the SBST conclude that your child has a "disabling condition."

Once your child is classified as "disabled," a decision will be made concerning the need for a special education placement. The Team may feel your child should receive, for example, resource room services, services of an itinerant/consultant teacher, or related services in addition to regular classroom instruction.

The Team may recommend that your child be placed in a self-contained special

education class or attend a program outside the home school. In that event, the CSE is required to review the decision and determine whether it is an appropriate placement. No placement in a self-contained class or placement outside the home school is final until the Committee on Special Education meets to make that decision.²⁴

After the Team recommends a special education program, with or without related services, goals are set for your child and an Individualized Education Plan (IEP) is written. Your child's teacher must be present at any meeting where your child's IEP is developed or revised. The Team must obtain your written consent before any of these services begin. If you disagree with the decision, request a review by the Committee on Special Education. The IEP is a legally-required document. You must participate in its preparation and receive a "Parent's Copy," to keep in your file.

Whatever the EPC recommendation, you and the facilitator should sign the Education Planning Conference Summary and all participants should get a copy. Sign it to show you attended even if you disagree with the discussions there. Remember that no decision is final if you disagree and seek a review by the Committee on Special Education.

²⁴ NYS law was changed in 1991 to allow the SBST to make recommendations for any placement except first-time placement in a self-contained class or placement outside the home school.

CHAPTER VI

THE REFERRAL AND ASSESSMENT PROCESS

PART II: THE COMMITTEE ON SPECIAL EDUCATION

Committee Participants

A. Members:

1. Special Educator
2. Parent Member
3. Physician
4. School Psychologist
5. Educational Evaluator
6. Social Worker

B. Others Who May Attend

1. Program Supervisor
2. Representative from the School Based Support Team

Referral or Review by the Committee on Special Education

- A. Initial Referral
- B. Review Meetings

Parental Consent

Assessment by the Committee on Special Education

The Committee Meeting

- A. Scheduling the Meeting
- B. Deciding Whom to Bring
- C. Deciding What to Bring
- D. Opening the Meeting
- E. The Committee's Recommendation
- F. Challenging the Committee on Special Education's Recommendation
- G. Concluding the Meeting

Every Community School District has a Committee on Special Education.²⁵ The CSE is responsible for reviewing decisions of the SBST regarding placement of children in special education programs. In cases where the SBST recommends a self-contained special education class or placement at a school other than the child's home school, review by the CSE is mandatory. Referrals for students just starting school, those who are non-attending, those who are severely or multiply-disabled, or those enrolled in non-public schools and pre-school children, must come directly to the CSE for evaluation. Where feasible, the CSE will refer you to the SBST in your local school.

Committee Participants

A. Members

New York State law²⁶ and city policy mandate the membership of the CSE. Its members and their functions are:

1. Special Educator - a special education teacher or administrator.
2. Parent Member - a parent of a child with a disabling condition who lives in the CSE's Community School District.
3. Physician - New York law does not require that a CSE have a physician member. The law does require that a physician attend a CSE meeting whenever a parent, child, or CSE member makes a written request for a doctor's presence. You must submit this request to the CSE at least seventy-two hours before the meeting.
4. School Psychologist - To give psychological tests to students referred for evaluation.

²⁵ See Appendix A-2 to A-6.

²⁶ N.Y. Educ. Law Sec. 4402.1.b.(1).

5. Educational Evaluator, mandated in New York City - who administers educational tests to a child referred for evaluation.

6. Social Worker - mandated in New York City.

7. Your child's teacher.

B. Others Who May Attend

1. Program Supervisor - the person who is familiar with the recommended special education program and the school where the program is operated.

2. Representative from the School Based Support Team - this person is present if you request it to clarify the reasons for the SBST's findings.

Referral or Review by the Committee on Special Education

A. Initial Referral

A referral to the CSE must be written. It should be sent by certified mail with a return receipt requested, so there is a record of the date on which the CSE received the referral. The letter should ask for a formal assessment in order to determine whether a child has a disabling condition for which special education and/or related services are needed. The written referral should state the child's name, date of birth, address, and the school the child currently attends, if any.

If a physician, independent agency, or other third party writes the referral, the CSE must send you a notice that an assessment has been requested and identify the referral source.

The CSE must complete all evaluations and make a recommendation for special education classification and placement within thirty working days after receiving a referral. (For initial referrals, the SBST is given up to an additional 10 days to obtain

your consent for the evaluation.) A site for the recommended program must be offered to you within thirty additional working days following the referral.²⁷

B. Review Meetings

If review of an SBST's decision by the CSE is mandatory, or if you inform the SBST that you want the CSE to review the SBST's recommendation, the SBST's facilitator should call the CSE immediately and schedule a meeting. Board of Education procedures state that the meeting must be scheduled and a decision made within ten working days after a formal request for review is made. If you send a certified letter requesting the meeting, the return receipt indicates the date on which the request was received, making it easy to check if the CSE has taken longer than the time allowed. If the CSE does not respond, or does not schedule a meeting within ten days, you can proceed directly to an impartial hearing.²⁸

Parental Consent

After the CSE receives the referral they must secure your written consent to allow the evaluations to be done. If you do not give consent, or withdraw your consent, the Board of Education can request an impartial hearing to have the evaluation ordered if sufficient cause is proved. You have the right to be represented by an advocate or attorney at the impartial hearing.

In cases where the CSE is merely reviewing a recommendation by the SBST, your additional consent is not needed before the Committee undertakes its review of the SBST's decision. The consent you signed for the SBST assessment is in effect. The

²⁷ 8 N.Y.C.R.R. Part 200.4 (d)

²⁸ Jose P. v. Ambach, No. 79-C-270 (E.D. N.Y. 1979)

SBST will deliver all the assessment results and the Educational Planning Conference Summary to the CSE.

Assessment by the Committee on Special Education

Children who, for any of the reasons previously described, have not been evaluated by a SBST will be evaluated by the CSE, providing you have consented to the assessment. If your child has been tested by outside agencies, the CSE will ask your consent to obtain copies of those records. After reviewing them, the CSE will decide if additional testing is necessary. Obtaining outside evaluations will not prevent the CSE from doing their own testing.

The CSE's evaluations are similar to those conducted by the SBST. The CSE's social worker will inform you of the appointment date or dates.

At the first assessment appointment, the social worker will meet with you to describe the evaluations, the CSE process, appeal procedures, and your rights at each stage.

The CSE Meeting

Whether the CSE was asked to do a formal assessment or to review the findings and decision of a SBST, it will meet with you to review the evaluations and reports and render its decision.

A. Scheduling the Meeting

The CSE sends you an appointment letter stating the date, time, and place of the meeting. The social worker is required to contact you in accordance with the same outreach procedures used by the SBST.

If you can show that advance notice of the meeting was not given, the CSE should

give you an appointment on the next available date. Should it be necessary to postpone the meeting, call the CSE's social worker and ask for another appointment. If the CSE has sent you a notice but you do not appear for the meeting, the meeting may be convened without you being present. You must be notified of the outcome.

If it is impossible for you to attend meetings during the school day, it is the social worker's responsibility to arrange a telephone conference or a personal meeting after school hours, if possible. S/he can explain your due process rights, relate what took place at the CSE meeting, and interpret the CSE's recommendations.

B. Deciding Whom to Bring

You may want to bring your child if s/he is old enough to understand the purpose of the meeting. Students who are already in special education and who know about the Committee on Special Education may want to be involved in the process.

Especially if you have not met the CSE members before the meeting, and particularly if it is your first encounter with the special education system, a friend's presence and moral support and/or an advocate's experience can be very reassuring and helpful at the conference. If possible, you should bring along other professionals who have worked with your child. These professionals can give the CSE first-hand knowledge that is extremely helpful in selecting appropriate instructional and related or support services.

C. Deciding What to Bring

In preparation for the meeting, make a chronological listing of all dealings you have had with the SBST and the CSE regarding your child's education.

Assemble all the school records and evaluation reports for presentation. In

addition you may ask a teacher or supervisor to prepare a written statement regarding your child's performance. If any evaluation records have not been reviewed by the meeting day, you can arrive early at the CSE's office and ask the social worker, or another member of the CSE's staff, to make copies immediately so that you can review them before the meeting starts.

D. Opening the Meeting

The CSE member chairing the meeting will introduce the participants and ask that each one sign an attendance sheet. You are entitled to have a copy of this list, which establishes whether the CSE was properly constituted, that is, whether the parent member, physician (if requested in advance), psychologist and special educator were present. If the psychologist and special educator are not present, the meeting must be adjourned. If the parent member is not there, the Chair may ask you to waive the presence of the missing parent member. You may agree to the waiver or adjourn the meeting.

The Chair will then explain your right to obtain an independent evaluation and receive copies of records and the procedures you must follow to appeal the CSE's recommendation. The Chair should give you a written statement describing the process²⁹ and the booklet, "Your Child's Rights to a Special Education in New York City."

E. The Committee's Recommendation

Next, the CSE should interpret the evaluation reports in jargon-free language. You should ask questions and request the psychologist or educational evaluator to

²⁹ See Appendix A-24 to A-26.

explain the evaluations and results in understandable terms. Clinical reports should be translated orally for non-English speaking parents.

If the meeting is to review a decision of the SBST, the CSE might be looking at the SBST's records for the first time. A member of the SBST, if present, can explain the recommendation of the Team. However, the Chair should be prepared to explain the SBST's test results and answer any questions you pose. The Chair should also ask you why a review was requested and what you want the CSE to recommend.

Based on the evaluations, the Committee members will determine whether your child has a disabling condition entitling him/her to special education and/or related services. If so, they will recommend a special education program and/or related services to meet your child's individual needs.

Members of the CSE will probably ask you and the people you brought to the meeting questions in order to determine if the services they are recommending, or the service you prefer (if there is one), is the appropriate one for your child. You may also ask questions about the types of programs or related services available and you should take notes on the statements made by the CSE members when discussing particular aspects of the classification or program recommendation.

If you bring additional professionals to this meeting, they should present their records and conclusions about your child's needs, and participate in the discussion of the appropriate classification, programs and/or related services. Because many professionals know the various special education classifications and programs, it is extremely useful for them to express ideas about the type of program and the kind of services they feel would help your child.

After discussion, a CSE that has met to review a SBST's recommendation may:

1. adopt the SBST's classification recommendation and select a school for your child to attend; or
2. make a new recommendation (classification, type of program, or both) which is different from that of the SBST; or
3. return the case to the SBST with suggestions for revising its original decision; or
4. arrange for further evaluations.

Because most CSEs describe their special education programs in traditional language, they often limit themselves from considering creative approaches to meeting a child's educational needs. Therefore, you should take the initiative by making suggestions and proposing new ideas to encourage discussion and flexible planning.

If the CSE classifies your child as disabled and recommends a special education program and/or related services, it will prepare your child's Individualized Education Plan (IEP). Your child's teacher must be present whenever your child's IEP is developed or revised. You have the right to participate in this discussion.

F. Challenging the CSE's Recommendation

If you requested the CSE meeting to try to convince the Committee to change its recommendation, you should state your position and supporting arguments clearly, accurately and persuasively. Be specific in defining the areas of disagreement with the recommendation and suggest alternatives for the Committee's consideration.

G. Concluding the Meeting

To expedite placement, the CSE can make a recommendation at the conclusion of the conference and give you a copy of the summary of the meeting which sets forth

the classification, program recommendation, and site.

In accepting the CSE's recommendation you are asked to consent to the recommendation of the specific school where the special education class is offered. You have the right to visit the class, and you should be certain to do so, before deciding whether to accept it. It is not wise to sign anything without seeing the program at the site offered.

The CSE usually concludes the meeting with a proposed classification and program recommendation. Following the meeting, the Committee will send you a formal notice of their recommendation, a summary of the meeting and a brief review of your child's evaluations, whether or not you attend the conference. The recommendation letter contains the proposed classification, programmed and/or related service recommendations, and proposed class site. If you sign, the proposed services and classification become effective. If you do not agree, do not sign. In this event, send a letter indicating your refusal to accept the classification or placement and request a conciliation review meeting or go directly to an impartial hearing.

Under the law, if you do not sign the letter, the CSE must pursue an impartial hearing. However, sometimes this does not happen and unless you take action the matter becomes dormant, with no services provided. Therefore, if you disagree with the CSE's proposals and you want further action taken, it is important to actively pursue a conciliation meeting or impartial hearing.

CHAPTER VII

YOUR CHILD'S PROGRAM

Instructional Services

Instructional Services for Students with Limited English Proficiency

The Individualized Education Plan

A. Writing the IEP

B. Contents of the IEP

1.
 - a. Recommendation
 - b. Functional Description of Performance,
including strengths/weaknesses
 - c. Test Scores Results
 - d. Annual Goals
 - e. Special Modifications
 - f. Special Alerts
 - g. Management Needs
2.
 - a. Short Term Instructional Objectives
 - b. Methods and Materials
 - c. Signatures of Participants

Annual Review

Triennial Review

Transitional Support Services

Decertification

Obtaining a Diploma or Certificate

A. Diploma

B. IEP Annotated Diploma

C. Local Certificate

TABLE III - Instructional Programs

Instructional Services

Following the formal assessment, the Committee on Special Education or the School Based Support Team must determine the appropriate program for each child diagnosed as having a disabling condition. Depending on your child's needs, s/he can remain or be placed in general education and receive supplementary services or be placed in a continuum of programs in special education. All instructional services should be based on the amount of support, modification, or adaptation to the general educational programming that is necessary to meet your child's needs.

In New York, students with disabling conditions are recommended for special education programs according to the similarity of their individual needs. This is referred to as functional grouping, in that students are grouped according to similarity of their educational needs in academic, social and physical areas. Although identification of disabling condition is necessary to be eligible to receive special education services, it does not determine the type of services to be delivered or necessarily indicate the educational grouping of students for instruction.

Four major groupings for instructional services have been established:

- 1) Consultant Teacher Services, 2) Supplemental Instructional Services (SIS), 3) Modified Instructional Services (MIS), and 4) Specialized Instructional Services (SIE).
- Table III (p.79) lists the services under each category of functional grouping.

TABLE III

CONTINUUM OF SPECIAL EDUCATION SERVICES

<u>Category</u>	<u>Instructional Program</u>	<u>Age Range</u>	<u>Ratio in Class Students : Teacher : Para</u>
Consultant Teacher	Mainstream Setting	4.9 - 21.0	vaired
Generic Resource Room	Supplemental Instructional Service I (SIS I)	4.9 - 21.0	20:1
Hearing Resource Room	Supplemental Instructional Service II (SIS II)	4.9 - 14.9	10:1
		14.9 - 21.0	12:1
Vision Resource Room	Supplemental Instructional Service III (SIS III)	4.9 - 14.9	10:1
Speech Resource Room (Speech Center)	Speech & Language Therapy	14.9 - 21.0	12:1
Educable Mentally Retarded	Modified Instructional Service I (MIS I)	6.9 - 21.0	12:1
Children w. Emotional Disabilities			
Neurologically Impaired Emotionally Disabled	Modified Instruction Service II Social Needs	6.9 - 21.0	12:1:1
Educable Mentally Retarded Emotionally Disabled			
Speech & Language Hearing Impaired Children	Modified Instruction Service III Communication Needs (Learning Disability)	6.9 - 14.9	10:1:1
Learning Disability			
Readiness	Modified Instruction Service IV Early School Years	4.9 - 7.9	10:1:1
Trainable Mentally Retarded	Modified Instructional Service V Functional Academic Life Skills	4.9 - 7.9 7.9 - 14.9	10:1:1 12:1:1
Visually Limited Multiply Disabled	Modified Instructional Service VI Vision Needs	4.9 - 7.9 7.9 - 21.0	10:1:1 12:1
Hearing Impaired	Modified Instructional Service VIII Hearing Needs	4.9 - 7.9 7.0 - 14.9	10:1:1 12:1
Centers for Multiply Disabled Children	Specialized Instructional Environment I	4.9 - 21.0	9:1:3
Track IV	Specialized Instructional Environment II	4.9 - 8.9 8.9 - 21.0	6:1:2 9:1:3
Autistic	Specialized Instructional Environment III	4.9 - 21.0	6:1:1

Continuum of Special Education Services (continued)

<u>Category</u>	<u>Instructional Program</u>	<u>Age Range</u>	<u>Ratio in Class</u> <u>Students : Teacher : Para</u>
School for Career Development	Specialized Instructional Environment IV	14.9 - 21.0	12:1:1
Occupational Training Center 8:1:1 Adult Skills Training Center	Specialized Instructional Environment V	14.9 - 21.0	12:1:1
Speech/Retarded	Specialized Instructional Environment VI	4.9 - 15.9	10:1:2
Day Treatment Schools	Specialized Instructional Environment VII	4.9 - 7.9 7.9 - 21.0	6:1:1 10:1:1
Day Schools	Specialized Instructional Environment VIII	9.9 - 21.0	10:1:1
J.H.S. 47 (School for the Deaf)	Specialized Instructional Environment IX, X, XII	4.9 - 21.0	
Home/Hospital Instruction	Home/Hospital Instruction	4.9 - 7.9	10:1:1
Private Schools	Private School	4.9 - 7.9 7.9 - 14.9	10:1:1 12:1

Instructional Services for Students with Limited English Proficiency

In accordance with legislative and court mandates, specific educational/ instructional services have been developed to meet the needs of students with disabling conditions whose dominant language is not English and who are limited in English proficiency (LEP). These educational services are designed to provide basic instruction in the student's proficient language in order to maintain academic achievement while developing English language skills.

Before a student is recommended for services as both disabled and LEP, the student must be evaluated by a team member who is proficient in the "other than English" language and can assess the student's overall level of functioning.

The scores on the English version of the Language Assessment Battery (LAB) are used to determine whether a student is limited in English proficiency and eligible for specific educational services to address that limitation. In determining the appropriate level of bilingual services for LEP students with disabling conditions, other formal and informal testing must be conducted in both English and the dominant language.

The continuum of special education services (TABLE III) are also available for LEP special education students. However, the program recommendation should include:

BIS (Bilingual Instructional Service) - for students who are dominant in a language other than English. Students requiring BIS Services will be functionally grouped according to levels of dominant language proficiency, and English language skills (listening, speaking, reading, writing and math.) The language of instruction for each subject area must be identified on the IEP. Bilingual instruction includes English

as a Second Language (ESL), dominant language arts skills, and substantive subject area instruction in your child's dominant language and English.

Bilingual Resource Room - for students in a general education bilingual class with bilingual resource room.

The Individualized Education Plan (IEP)

Federal and state law requires a written Individualized Education Plan (IEP) for each student receiving special education and/or related services.³⁰ The IEP is a statement of your child's educational needs, determined after formal assessment.

The classroom teacher is accountable for achieving the goals established in your child's IEP and for using the teaching methods it specifies. If your child does not achieve the goals, you should ask for a meeting to determine why not. Your child is entitled to receive all the related services specified in the IEP. If the services are not provided, contact the Office of Related Contractual Services, 110 Livingston Street, Brooklyn, NY 11201.

A. Writing the IEP

When your child is first recommended for special education and/or related services at the Educational Planning Conference or at the CSE meeting, your child's first IEP is completed. Once your child is in a special education program, your child's IEP will be reviewed annually and revised if necessary at an annual review meeting conducted by your child's teacher.

The school must involve you in the IEP planning process. The IEP conference is the time for you to share with the teacher your knowledge of your child's strengths and needs. Under the regulations of the New York State Commissioner of Education³¹, the following people are required to participate in the IEP Planning Conference, your child's

³⁰ 34 C.F.R. Sec. 300.340 to 349; 8 N.Y.C.R.R. Part 200.4 (c)

³¹ 8 N.Y.C.R.R. Part 200

teacher; your child, if appropriate; you; and a representative of the school district who is qualified to provide or supervise special education programs.

Other school personnel who are or will be providing related services, such as speech therapy or psychological counseling, should be invited to the meeting. If they do not attend, you should arrange to meet with them separately at another time. Ask these school personnel to attach a statement to the IEP which includes: their long-term and short-term goals in working with your child, the instructional materials they will use, and how often (number of days and hours per week) your child will receive the related service.

If your child is to attend classes with non-disabled children, his/her consultant and/or "mainstream" teachers should also be invited to the conference. You can request their attendance. If there are administrative matters involved in implementing the IEP, such as attendance in regular class or testing modifications, the special education coordinator should be invited to the conference.

You can bring a friend, relative, the child, or an advocate to the IEP conference.

In order to assure your participation in the IEP Planning Conference, the school must arrange a mutually agreeable date and time with you. If it is not possible for you to attend the IEP conference, the law requires the school to use other methods, such as a telephone discussion. If you need an interpreter, the school must provide one at the IEP conference to allow you to communicate in your dominant or primary language.

You must receive a copy of the IEP for your records and for you to refer to in future discussions with the SBST or CSE. If you cannot attend the conference, the

teacher must send you a copy of the IEP.

There are due process protections that you can exercise in order to assure the development of an appropriate IEP or to insure compliance with its requirements. If the teacher and the SBST (1) do not write an IEP, or (2) do not include you in their planning, or (3) do not provide the instructional materials or use the teaching methods suggested in the IEP for reaching the goals set for your child, or (4) do not include necessary related services on the IEP, you may use the due process procedures (meetings with the SBST or the CSE, impartial hearings, appeals) to ensure an IEP is written or to enforce compliance with the program or related services specified on the IEP.

If you disagree with the IEP after it is written, you can use the due process procedures to change the IEP. If your child is consistently not meeting the goals set for him/her, this may indicate that the IEP is improperly written or that the placement is inappropriate. The law requires an annual review of each child's placement and a new IEP. However, you need not wait for the annual review. You can request an SBST or CSE meeting to revise the IEP at any time.

B. Contents of the IEP

A sample IEP is provided in the appendix of this handbook.³² It will be helpful to refer to it while reading the rest of this chapter.

The IEP consists of several pages which detail your child's academic, social, physical and management needs; annual goals; short-term instructional objectives; and teaching and evaluation methods.

³² See Appendix A-28 to A-30.

1. Recommendation - The IEP restates the recommended special education program (Consultant Teacher, SIS, MIS or SIE). If your child is eligible for 12-month school year programming, it will be indicated here. (See Chapter XI "Entitlement to Summer School.") The IEP also includes all the recommended related services, for example, transportation; physical, occupational or speech therapy; orientation and mobility training; counselling, etc. For each related service, the IEP must record the frequency, duration and group size of the service, for example, individual speech therapy for one hour per day, two days a week.

If you find that the school is not providing related service stated in the IEP, contact the CSE and insist that it enforce the recommendation. If the service is recorded on the IEP, the school must provide it whether it is a service usually offered by the school or not. It is illegal for a school to deny services to your child simply because they are presently unavailable. If the school cannot provide a particular service, it must contract with an outside agency to provide this service or issue a letter, called a Related Service Authorization (RSA), which permits you to locate a private individual to perform this service at Board of Education expense. (See Chapter XI "Related Service Authorization Procedures.")

After your child has started the agreed upon program, you and the classroom teacher may decide your child needs a related service which is not available in the school. If this happens, ask for an SBST meeting to secure the services.

If your child has been recommended for any classes with non-disabled children, these should be specified on the IEP in the space provided, under "Regular Class

Programming." Talking to your child's teacher is the best way to discover if the recommended "mainstreaming" is being provided. If it is not, you should immediately contact the CSE.

2. Functional Description of Performance Including Strengths and Weaknesses -

If your child had a recent formal assessment (evaluation), most of the information about his/her present levels of performance will come from these assessment results. The teacher can add information on your child's classroom work later. In recording both strengths and weaknesses, these sections may discuss academic, social, and/or behavioral areas. Descriptions should be specific, not vague, in order to give the teacher an indication of how your child functions and what can be expected in the classroom setting.

3. Test Scores/Results - The name of the tests and the date given should be recorded. Performance should be described by specific grade or age equivalents rather than by vague phrases like "below level." If the scores are not measured in grade or age equivalents, the IEP should have a brief description of your child's performance. Language, general information, reading, math, auditory, visual, and motor skills should be included along with behavioral and social habits.

4. Annual Goals - This part of the IEP projects goals for your child to achieve within the following year. The goals should be specific to your child, based on present levels of functioning, and should help your child increase his/her academic skills, develop more appropriate behavior, and form successful relationships with classmates and teachers. Annual goals should be set for all the skills your child must acquire whether they are academic (such as better reading comprehension) or behavioral (such as sharing

toys with other children). If the annual goal is vague, such as "will feel better about self," you cannot tell if your child achieved it or not because there are no objective standards by which to measure improvement.

If your child exceeds an annual goal, new goals can be written during the year to promote further progress. If an annual goal is not reached, the goal will remain on next year's IEP. You must make certain that annual goals will challenge your child and are not set too low just to ensure that "progress" is made.

5. **Special Modifications** - If your child requires any special modifications for testing (such as extended time for a child who has attention problems and needs to take breaks, or math questions to be read to a child who is dyslexic) modifications should be specified. The CSE should be contacted if the school refuses to implement these modifications. If your child requires the use of adaptive equipment (braille, typewriter), the CSE or the SBST will note this.

6. **Special Alerts** - Any special concerns, such as allergies, taking medication or need for air conditioning, should be recorded in this section of the IEP in order to alert the school of any health services needed.

7. **Management Needs** - Any particular management needs that must be met to help your child attain the stated goals must also be specified.

8. **Short-term Instructional Objectives** - Short-term objectives are a sequence of tasks that are directly related to the annual goals specified in the IEP. Short-term objectives, in their sequential order, build upon the skills acquired from mastering the preceding goal. All of the short-term objectives must be steps along the way toward

reaching an annual goal. This process is called "task analysis." Task analysis is a way of breaking down skills into the individual steps necessary to achieve the final outcome--- "annual goal." Task analysis may be used for both academic and behavioral goals. A date for mastering each short-term objective is projected in the IEP.

Short-term instructional objectives are based on observable behavior and are usually updated every semester. However, if your child masters an objective earlier, s/he can proceed to the next sequential step toward reaching the annual goal. As soon as your child masters each short-term objective, the teacher should record the "date of mastery" in the space provided on the IEP.

9. Methods and Materials: Evaluation Method and Criteria - The IEP contains space for the teacher to describe teaching methods and materials to be used and how your child will be evaluated in reaching set objectives.

Most evaluation is done by "teacher observation" of the student's behavior, or "informal tests" such as spelling tests or math quizzes. At times, the teacher uses standardized tests, such as the city-wide reading test. The teacher should identify the evaluation method used.

Teachers also use a "percentage of accuracy" standard to determine if your child has learned a task. If your child does the task correctly approximately eighty percent of the time, the teacher may move on to the next goal. Teachers write the percent of accuracy s/he hopes your child will achieve on the IEP in the space provided for "Evaluation Criteria."

Your knowledge of your child's previous school experiences can help the teacher eliminate instructional methods and curricula that have not been successful. Ask the teacher to explain methods specifically so you can reinforce the teacher's work by using the same methods when helping your child with homework.

If the teacher does not have the prescribed instructional materials, you should inform the District Administrator of Special Education (DASE) and insist that the teacher receive them.

10. Signatures of Participants - Everyone who attends the conference must sign Page 2 of the IEP, which merely lists the participants in the conference. Signing this does not mean that you agree with the recommendations.

Annual Review

The law requires that your child's placement be reviewed annually.³³ In New York City, annual reviews are held in early fall by your child's new classroom teacher. However, if your child will be graduating or articulating from one school or program to another, or it is anticipated that s/he may need a different program in the fall, an annual review should be held in the spring so that your child's placement is not disrupted in October. Usually it is not necessary to conduct another in-depth assessment at this time. The teacher will arrange the annual review and IEP meeting. As with the initial IEP conference at the school, all personnel involved with your child's program (consultant teachers, resource room teachers, mainstream teachers, related services professionals, and the special education supervisor or program coordinator) should attend the annual

³³ 34 C.F.R. Sec. 300.343 (d).

review meeting. Anyone who cannot attend should submit a written progress report to the teacher.

The annual review meeting is an informal discussion in which the participants assess the classroom instruction and related services provided during the year and determine how many of the IEP's goals were met. Based upon this, new goals will be set for the coming year and a new IEP will be written.

If the group decides your child should receive different or additional related services next year, or that your child should be placed in a different program, the teacher will initiate a "Type III" referral. This means that your child's program will be reviewed by the SBST or CSE to determine whether it is still appropriate for him/her.

In addition to the annual review, you have the right to meet with the SBST or CSE at any time you feel the placement is no longer appropriate. You can also contact the teacher(s) at any time during the year for a progress report and, if the IEP goals are not being met, you can request another conference. If your child is meeting the goals earlier than expected, you and the teacher should meet again to set higher goals.

Triennial Review

By law every child in special education must be re-evaluated, that is, receive a complete formal assessment every three years³⁴ to assess progress and assure that his/her placement reflects current abilities and skills. This assessment will be scheduled by the special education supervisor at your child's school and does not require your consent. However, you must be notified of the triennial and be invited to an education

³⁴ N.Y. Educ. Law Sec. 4402 1(3)(d).

planning conference (EPC) after it is completed.

You can always contact the SBST or the CSE to request a new evaluation at any time, even before the three years have ended. But keep in mind that having a child tested too frequently may produce false results because of the "practice effect." As a result, your child may be placed in a program that will not offer the help needed. If the Board of Education wants to re-evaluate your child before the three years, it must notify you. If you object to the re-evaluation, you have the right to request an impartial hearing to determine if a re-evaluation is warranted.

Decertification

Decertification is the procedure for returning a student from special education programs to regular classes because s/he is ready to fully participate in school with non-disabled children. Decertification means the removal of the "disabled" classification.

The SBST or the CSE, whichever placed your child in special education, will consider a request for decertification. You may ask for a meeting whenever you think it is appropriate. You do not have to wait for the annual placement review to raise the possibility of decertification.

During the decertification process, your child's school reports are examined to determine whether s/he has the skills in reading, math, and other subjects to accomplish the work in regular classes. Your child's behavior and social skills will also be assessed to see if s/he can handle the transition from the special education environment to the larger, more impersonal regular education classes.

Transitional Support Services

These temporary services are designed to assist either a general or special education teacher in providing appropriate educational services to a student with a disabling condition who is transferring to a general education program or to a special education program in a less or more restrictive environment. Transitional Support Services must be specified on the IEP and must be recommended by the CSE or the SBST. Since it is a temporary service, the specific length of time and projected date of review must be stated.

You can ask the SBST or the CSE to provide your child with resource room assistance (for one to two hours each day) and part-time regular class placement as a transitional placement. If your child progresses further and no longer needs the resource room, decertification may be considered at that time.

Obtaining a Diploma or Certificate

A. Diploma

Students in special education can earn a high school diploma by meeting the same requirements as students in general education. Your child's school has a guidance counsellor with whom you can discuss these requirements. You should be informed whether or not your child is enrolled in a program that can lead to a regular diploma.

B. IEP Annotated Diploma

An Individualized Education Plan Diploma is a diploma which states on it that it has been awarded based on the student having met his/her current IEP goals.

An IEP diploma is available to a student who has achieved his/her IEP goals at

the end of the school year in which s/he turns twenty-one. It may also be awarded to a student who has received a "substantially equivalent" education for twelve years beyond kindergarten. Even if your child is awarded an IEP diploma, s/he still has the right to attend public high school until s/he earns a regular diploma or until the end of the school year in which s/he turns 21.

C. Local Certificate

New York City schools may issue a local certificate to students with disabling conditions who choose to withdraw from attendance after they have passed compulsory education age.

Your child may apply for a local certificate if s/he has attended school for thirteen years or more past kindergarten and has mastered IEP goals for the current year. In some instances a local certificate may be awarded to a student classified as mentally retarded who has attended less than thirteen years.

CHAPTER VIII

THE RECOMMENDED PLACEMENT

Selecting a Site

Visiting the Proposed Site

Observing the Class

Admission to the Class

Transportation to the School

- A. Contract Bus**
- B. Related Services Pertaining to Transportation**
- C. Public Transportation**
- D. Travel Training**
- E. Suspension from Transportation**

It is the responsibility of the Committee on Special Education (CSE) to locate an actual school placement for every child recommended for a special education program and/or related services. The CSE must locate and offer a specific site within sixty working days from the date of the written referral for evaluation.³⁵ The CSE may have up to an additional 10 days to obtain parental consent in the case of an initial referral. The recommendation is not complete until a site and a program placement are offered to you in writing.

The word "program" refers to the type of special education services the CSE recommends. The word "site" refers to the specific school where the program is located. Programs with the same name are frequently not identical in content or quality from one school to another.

Selecting a Site

Your child is legally entitled to attend your zoned or neighborhood school if at all possible, or a school as close as possible to your home. Each CSE has a Placement Officer who is responsible for finding sites for students in elementary and junior high schools. Students recommended for "low incidence" programs are placed by the City-wide Placement Officer. A "low incidence" program is centrally administered and serves children with multiple or severe disabling conditions in community school districts and special centers.

The Placement Officer should be familiar with all the special education programs in the district and should be able to select the site that meets your child's needs based

³⁵ 8 N.Y.C.R.R. Part 200.4 (c)(d).

on a knowledge of each class and the information contained in your child's Individualized Education Plan (IEP).

Visiting the Proposed Site

Before you accept or challenge a placement offered by the CSE, you have the right to visit the site. First, call the Placement Officer and ask for a Class Profile Sheet. This sheet helps you determine if the other children in the class have educational needs similar to those of your child. It includes the number of students in the class by sex, age, reading and math levels. It will also describe the behavioral characteristics of the students in the class and the related services they receive.

Then, call the CSE and ask for the name and phone number of the special education coordinator or supervisor of the proposed site.

Call the supervisor and make an appointment to visit the school. Ask to meet with the teacher who will teach your child. If your child is recommended for regular education classes, meet the principal and guidance counselor in the school. If your child will receive a related service such as speech therapy, ask to meet the person providing that service. The supervisor can schedule the visit so that you can see all of the personnel attached to the prospective program.

Plan to visit the school during the school day in order to observe the academic program. Above all, make sure that classes will be in session when the visit is scheduled and that students are not in the gym, on a field trip, or taking tests.

Keep in mind that during the first few days of school any class may be disorganized. If you visit in September, therefore, you may not see how the class

routinely functions. However, by meeting the teacher and the students, you can get some idea of what the class routines will be later on. If the teacher suggests that you will get a more accurate impression of how the classes will function at a later time, be sure to schedule another visit.

You have the right to bring someone with you when visiting the school. This person could be a therapist or former teacher who knows your child and the type of educational services that would be beneficial. An advocate should visit the class with you particularly if s/he will represent you at a meeting or impartial hearing.

In some cases, you might decide to bring your child. This would depend upon your child's maturity. If possible, talk to other parents whose children attend that particular class. Ask them about the program, the teacher, and the school.

Observing the Class

In order to have a productive visit, you should prepare a written list of questions in advance. Observe the class in progress before asking questions. If the teacher wants to limit the visit to a few minutes, explain that parents have a right to observe the placement proposed by the CSE in order to determine whether their child is suitable for that particular class. If you are asked to leave, notify the program supervisor or the principal. If the supervisor or coordinator does not cooperate, make a complaint to the District Administrator for Special Education (DASE).³⁶

³⁶ See Appendix A-7 to A-9 for the address and phone # of the DASE in your district.

Below is a list of questions that you should think about when sitting in the classroom:

- . What is the size of the classroom?
- . Where is it located?
- . How many students are in the class?
- . What is the ratio of boys to girls?
- . What materials are available?
- . Is students' work displayed?
- . How many professionals are in the classroom?
- . Are the students involved in their school work?
- . Is the atmosphere relaxed but well controlled?

When meeting with the teacher, here are some questions you may ask:

- . Request to see a daily or weekly schedule.
- . How many academic periods are there each day?
- . How long is the instructional day? (By State law it must be five hours for elementary school students and five and one-half hours for secondary school students).
- . How often are science and social studies offered?
- . Are art, music, gym, shop, library and home economics or other activities available?
- . What is the curriculum? Is it similar or parallel to that used in general education classes?
- . How does the teacher individualize instruction?
- . Does the class provide for the learning of daily living skills (hygiene, feeding, dressing, etc.) if the child needs this?

- . Are there opportunities for vocational education (especially on a high school level)?
- . How are the special education students integrated into the rest of the school? Do they eat lunch in the cafeteria and play in the playground with general education students of the same age?
- . What opportunities are there for "mainstreaming" in academic subject areas if appropriate?
- . How are decisions made about each child's "mainstream" classes?
- . In general, how do the other students function in the class?
- . If it is a high school program, how many students each year receive diplomas? IEP certificates? How many students drop out?
- . What approach is used to maintain discipline in the class? How are disruptive students handled?
- . What teaching background does the classroom teacher have?

When meeting with the program supervisor, you may want to ask:

- . What related services are offered in the school? How often are they available?
- . How will all the related services specified in your child's IEP be provided?
- . How is transportation to and from school arranged?
- . If your child will travel by school bus, how long is the ride? What times will your child board the bus in the morning and return home?
- . If your child travels by public transportation, what is the best route to and from school? How are the appropriate transportation passes arranged? Is the public transportation too complicated or too long for your child?

If you decide to challenge the CSE's recommendation, first see the site to get sufficient facts to explain why the particular class or site will not meet your child's needs.

You must convince the CSE that the program or site is educationally inappropriate. Rarely will the CSE be influenced by non-educational reasons for changing the site they have recommended.

Admission to the Class

When the CSE receives your written consent to the placement it will notify the school. To avoid delay, you must check with the CSE Placement Officer to be sure the school is contacted and that your child's records are sent to the new school. You should not hesitate to call the school and ask if they have received the records and are aware your child is to be admitted. If you are available to do so, you can get the materials from the CSE and take them to the school yourself.

Transportation to the School

State law requires the Board of Education to provide free transportation to every special education student who needs it.³⁷ This includes students attending public and private special education day schools recommended by the CSE.

A. Contract Bus

Children with disabling conditions may ride door-to-door on buses operated by private bus companies contracted by the Board of Education. Because delays in arranging busing are common, you should keep in touch with the representative from the Bureau of Pupil Transportation to assure that your child will be assigned to a bus route quickly. Until bus transportation is officially arranged, you may take your child to and from school at your own expense. According to the law, transportation must be

³⁷ N.Y. Educ. Law Sec. 4402.4.

provided within the sixty day period from referral to placement. If it takes longer, the school must pay for your travel.

To find out your child's bus assignment, you must first determine your child's Data Bank number. You can find the number on the top right hand portion of the IEP. With the Data Bank number in hand, call the Office of Pupil Transportation Hotline at 718-392-8855. If you have received a letter with the name of the bus company who is transporting your child you should call the number also.

Children are entitled to a special education placement that is reasonably close to home. If your child's ride exceeds 45 minutes within a borough or one hour between boroughs, contact the Bureau of Pupil Transportation to request a route change.

Your child's instructional day must not be shortened to accommodate a bus company. Ask teachers what time bused children are dismissed, and make certain that your child does not lose instructional time because the bus company schedules an early pick-up time. Keep in mind that children in elementary classes are entitled to five hours of instruction and older students must receive five and one-half hours.

B. Related Services Pertaining to Transportation

If your child needs wheelchair accessible transportation, if s/he needs to be carried from your apartment to the transportation by the bus company, or if s/he must travel in a special vehicle like an ambulette, these related services must be included on the Individualized Education Plan.

C. Public Transportation

If your child knows how to take public buses and/or subways alone, s/he is entitled to a free bus or train pass. You can get a pass from the program coordinator, supervisor or classroom teacher.

D. Travel-Training

Adolescents in certain special education programs are entitled to travel-training so they can learn to travel alone to and from school on public transportation. The ability to travel independently is an important life skill and many children, if they are properly trained, can acquire this independence. The school travel-trainer, with your consent, initially accompanies your child to and from school on public transportation. When the trainer decides your child knows the route and has learned to travel safely, s/he begins to travel alone.

E. Suspension From Transportation

Schools and bus companies must follow certain procedures before excluding your child from bus service.

Under Chancellor's Regulation A-434,³⁸ if your child misbehaves on a bus, the driver must inform the teacher, who should then discuss the problem with you and your child. If your child's behavior does not improve, the principal and/or Division of Special Education supervisor must be notified in writing. A copy of the letter must be sent to the Central Board of Education - Office of Pupil Transportation, which must investigate the causes for the misbehavior. If the driver or escort is at fault, the Office of Pupil

³⁸ See Appendix A-57 to A-58.

Transportation must instruct the bus company to take appropriate action.

If your child's behavior threatens his/her safety or the safety of others on the bus, the supervisor or principal must arrange a conference with you to discuss how to solve the problem. You might be asked to ride on the bus with your child or take your child to school yourself for a short period.

If your child's behavior does not improve, the bus driver or bus company can not simply decide to refuse to carry your child to school. Drivers must report any continuing discipline problems on the bus to the school principal, who must arrange a conference with you (and your advocate, if you wish) the teacher, and the supervisor. The conference is used either to resolve the problem or arrange other means of transportation. The principal or DSE supervisor may not exclude your child from bus service for more than five consecutive days.

If there is an emergency on the bus on the ride home that threatens the safety of your child or anyone else on the bus, and the principal or special education supervisor can't be reached, the Director of the Office of Pupil Transportation can decide that your child will not be picked up by the bus company the next day, but you must be notified in advance. The principal or supervisor will then be contacted and will make a final decision on whether or not your child will be excluded from bus service for up to five consecutive days. Exclusion from bus service does not mean that your child is suspended from school.

CHAPTER IX

THE IMPARTIAL HEARING

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The Impartial Hearing

When you and the Committee on Special Education (CSE) cannot agree, the impartial hearing is an opportunity to have a neutral decision-maker determine classification, placement, independent evaluation, and related services issues. The hearing is also a way to force the Board of Education to provide the program or related services recommended by the SBST or the CSE and agreed to by you.

Although the hearing procedure is not as formal as a courtroom proceeding, it is similar in many respects, particularly when you and the Board are represented by attorneys. The Board of Education will produce evidence to support its position and your attorney or advocate will present evidence to support your view. Instead of the informal and open discussion style of CSE meetings, there are rules for the conduct of an impartial hearing that are similar to those of other administrative proceedings. However, if you attend a hearing unrepresented, or appear with an advocate who is not a lawyer, the Board of Education does not generally have an attorney present and the proceedings are conducted more informally.

Depending on the issues raised at the hearing, the proceedings will vary in length: some last a few hours and some take one or more days if there are many witnesses, lots of documents, and a complex situation to address.

During the impartial hearing process and during any appeal after a hearing officer's decision, your child is entitled to remain in the current educational placement.³⁹

³⁹ 34 C.F.R. Sec. 300.513.

When to Request an Impartial Hearing

When you request an impartial hearing, you are asking for an opportunity to have an impartial decision-maker determine what your legal rights are and what actions can and should be taken. The time to request an impartial hearing, therefore, is when you believe that your rights are being violated. Such a violation may occur as a result of any of the following circumstances or events:

- (1) an improper recommendation for classification or placement;
- (2) the failure of the SBST or the CSE to follow appropriate procedures;
- (3) the failure of the Board of Education or the school to implement a special education or related services recommendation;
- (4) the omission of related services from a recommendation for special education;
- (5) the SBST or CSE's failure to act on a referral for evaluation;
- (6) the CSE's failure to schedule a meeting to review a decision of the SBST within ten days of the request for a review.

While there is no strict time limit during which you may request an impartial hearing, you should do so before a CSE or SBST recommendation with which you disagree is implemented to assure that your child is not transferred. Once you request the impartial hearing, you are entitled to maintain your child in his/her current educational placement until the entire hearing process is completed.

How to Request an Impartial Hearing

Send your request for an impartial hearing to the Impartial Hearing Office at the Central Board of Education (110 Livingston Street, Brooklyn, NY 11201) by certified mail, "return receipt requested." If you deliver the request by hand to the Hearing

Office, get a written, dated receipt. A receipt provides documentary proof of the date you requested the hearing and that the Impartial Hearing Office received your request.

When asking for an impartial hearing, you need not and should not include your reasons for the request. Giving any explanation at this point may be to your disadvantage and can even be used against you at the impartial hearing. An exception to this general rule is if the reason you are requesting a hearing is because the school or CSE failed to carry out its duties or has not implemented the program or related services recommended. In these instances, your letter should explain the reasons for the request so the Impartial Hearing Office will understand the issue and perhaps be able to settle it without a hearing.

The Impartial Hearing Office will set a date for the hearing and notify your CSE of your request.

When the request is received at the Impartial Hearing Office a packet of materials will be mailed to you.⁴⁰ It includes (among other things) forms on which you can request an interpreter if you are hearing impaired, non-English speaking, or limited in your ability to speak English. It also has an authorization form to fill out if an advocate will appear with you. Sign and return these forms to the Impartial Hearing Office if you need an interpreter and/or if you are going to have an advocate with you at the hearing. Your request for an interpreter or to bring an advocate can not be refused.

⁴⁰ See Appendix A-32 to A-37.

The Hearing Officer

Hearing officers are selected at random from a list established and maintained by the Board of Education. They must not be Board of Education employees.⁴¹ There are no minimum qualifications for hearing officers set by either federal or state law and they are not required to be lawyers. However, in New York City, they are all lawyers with a minimum of three years legal experience. The resumes of the hearing officers are available for your inspection at the hearing office.

The hearing officer presiding at the impartial hearing will inform you and the Board of Education representatives of the rights and procedures governing the hearing. Besides making the final determination, the impartial hearing officer will rule on preliminary motions, such as a motion to adjourn or a motion to exclude documents, if they have not been furnished to the opposition five working days before the hearing.

The hearing officer is also responsible for maintaining order during the hearing. S/he will determine when each party may ask questions of a witness and decide what documents may be submitted into evidence. When listening to witnesses testify, s/he may seek clarification of a point or ask additional questions at any time. If you are not represented by an attorney or advocate, the hearing officer plays the additional role of helping you explore the testimony from the Board's witnesses.

After the hearing, the hearing officer will review the case as soon as s/he receives a typewritten copy of the hearing transcript. Based on this transcript and documents submitted into evidence, including memoranda of law, the hearing officer will write a decision and inform you and the Board of Education what action must be taken.

⁴¹ 34 C.F.R. Sec.300.507(a).

Included in this decision will be the hearing officer's ruling on the facts of the case which will be the basis for the hearing officer's decision.

Working With An Advocate

It is usually helpful to have an advocate assist you at the impartial hearing, but it is not always necessary. The advocate's task is to research and present the facts of the case and the law supporting your position. The facts must be fully and clearly presented to the hearing officer especially because facts that are not made part of the hearing record cannot be used to support any appeal you pursue if the decision from the impartial hearing officer is unfavorable. Although the New York State Commissioner of Education, to whom such an appeal would be brought, has the discretion to admit additional evidence on an appeal, such new evidence is rarely admitted unless it could not have been made available previously.

An advocate can help organize the information to be presented at the hearing, communicate the key points effectively, and ensure that none are overlooked. This involves defining the issues and identifying what you need to prove in order to achieve your objectives. In developing a strategy, an advocate can help you obtain the necessary documents and arrange for witnesses to appear at the hearing on your behalf. If subpoenas are necessary to obtain information or assure a person's presence, an advocate will prepare and serve the subpoenas. Once the witnesses and the documents needed for the hearing are selected, the advocate will prepare the case. S/he should meet with you and the witnesses and develop questions which will introduce the necessary information at the hearing.

Your advocate should also be prepared to cross-examine the Board of Education's witnesses. During the hearing an advocate will make objections to the

introduction of improper evidence, whether it is documentary or testimony from witnesses.

In selecting an advocate, choose a person who will not only be effective but someone with whom you feel comfortable. This person may or may not be a lawyer. While lawyers usually have experience presenting arguments in the adversarial context of hearings, this experience is probably not as important as experience with the rules and procedures unique to the special education impartial hearing process. A "lay advocate" who has this experience may be more effective than a lawyer who is not familiar with special education.

If you are represented by an attorney, you may be entitled to reasonable attorney's fees if you win all or part of what you ask for at the impartial hearing. You are not entitled to fees if you are represented by an advocate or if you represent yourself.

Expert Witnesses at the Impartial Hearing

An expert witness is a person who has specialized knowledge which qualifies him/her to offer opinions in legal proceedings in his/her area of expertise. Hearing officers are often persuaded by an expert's opinion because of the expert's particular ability to understand your child's problems and to identify the type of program or services required to address them.

Depending on the case, obtaining expert testimony can be extremely important to you. This is especially so, because the hearing officer will regard the Board of Education personnel who testify against you as experts having particular expertise. In order to counter the Board's witnesses on issues of classification, you should present a private expert who will testify about deficiencies, errors, and inaccuracies in the

Board's testing, methods, and conclusions.

Therapists are useful when you are challenging the CSE's recommendation for placement and/or related services. Teachers are usually helpful when you disagree with the recommended program or site. The more familiar the expert is with your child, the more importance the hearing officer is likely to attach to his/her testimony.

In developing a case, you or your advocate should consider testimony by any of the following people who qualify as experts and can address issues in their fields:

Teachers
Tutors
Social Workers
Educational Evaluators

Pediatricians
Psychologists/Psychiatrists
Day Care Workers
Speech Therapists

Since expert witnesses are extremely busy and expensive, and because scheduling difficulties frequently occur, it can be difficult to secure their services. You and/or your advocate should schedule the hearing to minimize any inconvenience for your expert witnesses, even though this might necessitate holding a hearing on two separate days.

It is good practice to have a meeting with experts before inviting their testimony. All copies of your child's testing and evaluation materials should be sent to the expert well in advance of the hearing. It is advisable to personally ask the expert to testify rather than asking over the telephone or by mail. Also, if you can afford it, the expert should be made aware that s/he will be paid for their time. If the hearing has been requested in order to challenge an inappropriate placement, the expert should visit the program at the recommended site.

If the expert cannot attend the hearing, request a letter setting forth his/her opinion of your child's needs and submit this letter at the impartial hearing. A copy of the letter must be given to the Impartial Hearing Office five working days prior to the

hearing date. The letter should be objective, detailed, and decisive. It should state the expert's qualifications and experience with your child and/or with special education. Opinions or recommendations should be supported with facts and reasons. An advocate can suggest to the expert what type of information is needed for the hearing and can offer suggestions for revisions or additions that might strengthen the effectiveness of the expert's letter. It should be noted, however, that letters are less effective than personal testimony.

Bringing Your Child to the Hearing

The potential impact on your child of attending the impartial hearing should determine whether s/he should participate or not. This is your decision. For some children, attendance at the impartial hearing can be traumatic. Some children may be devastated if the parent does not "win" at the hearing. It can also be upsetting for children to hear their disabilities and their weaknesses discussed. On the other hand, excluding older children who understand the significance of the impartial hearing may not be in their best interest.

In evaluating whether your child will offer helpful testimony, keep in mind that many children are susceptible to the influence of teachers and school officials. As a result, the child may tend to respond to questions from the Board of Education with answers s/he believes are what should be said, rather than those that accurately reflect his/her feelings. Because of these considerations, most parents do not bring their children to the impartial hearing. The hearing officer will not expect the child to attend and his/her absence will not be held against you.

Nevertheless, in some situations a child's testimony can be a valuable addition to the case. If your child testifies, the Board of Education will have an opportunity to

cross-examine him/her. The cross-examination cannot be predicted, but usually the questioning of a child is treated sensitively. Explain to your child how the hearing is conducted in advance, so that s/he knows what to expect at the impartial hearing, to lessen his/her fears.

If you decide to have your child attend, you should submit the "Request for Child's Attendance" form included in the packet sent by the Impartial Hearing Office. But even if you do not submit this form, your child may attend the hearing. If your child is over 18, there is a different form for him/her to complete and send to the Impartial Hearing Office.

Preparing for the Impartial Hearing

A. Formulating a Strategy

To develop a strategy for the impartial hearing, it is important to precisely identify your goals. Hearing officers frequently ask for a summary of your position at the beginning of the hearing and you or your advocate should be prepared to provide a short oral summary of the case.

You and/or your advocate should determine what resources are available to help accomplish your goals by locating people and documents, both inside and outside of the school system, that can assist in presenting the case.

Preliminary legal research must be done to determine what legal basis there is for your position, and what arguments have been made in other similar cases. Preparation for the hearing should begin two or three weeks in advance. Remember that all of your documents are required to be submitted to the hearing officer five working days before the hearing.

In most cases the legal research should focus on the regulations and decisions of the New York State Commissioner of Education and the State Review Officer.

Advocates for Children has prepared a digest of these decisions which is updated periodically. This digest is a valuable tool in keeping up with the Commissioner's decisions. In preparing for the hearing, you or your advocate should obtain a copy of the digest from Advocates for Children.

You must also try to determine what the Board of Education's position is and examine that position to see if and how it can be justified. This will uncover the obstacles that you must overcome in order to prevail at the hearing. The law places the burden of proof on the Board of Education, which must prove the appropriateness of its special education classification and/or placement recommendation.

Having identified the goals, resources and obstacles in your case, you and/or your advocate will begin to obtain the evidence needed to present the case to the hearing officer.

B. Obtaining Evidence

When the Impartial Hearing Office sets a hearing date, it will also furnish the subpoena forms necessary to compel witnesses, documents and other information from the Board of Education. If you or your advocate need more of these forms, make copies.

1. Subpoenaing Witnesses

In order to insure the presence of a witness at the hearing, complete a subpoena form with the name and title of the person, and the reasons for requiring his/her presence at the hearing. File the requests as soon as possible by delivering subpoenas for Board of Education personnel to the Impartial Hearing Office. If you subpoena

witnesses that are not Board of Education employees, you or your advocate must deliver the subpoena in person.

While a subpoena request form may be used to compel a witness to be present at the hearing, in some cases it is simpler, and more courteous, to invite witnesses to the hearing rather than to subpoena them. It is necessary, however, to subpoena Board of Education employees if you require their presence at a hearing. You may also subpoena a person who has important information but refuses to attend voluntarily. But persons who are hostile do not make good witnesses, so it is usually advisable to get information in some manner other than by subpoenaing hostile witnesses to testify.

2. Subpoenaing Documents

When it is necessary to subpoena documents and other information from Board of Education personnel, the subpoena must be addressed to the person at the Board of Education who has the documents or information sought. Fill out the form by providing the name and title of the person and a detailed description of the documents or information you are requesting, including document titles whenever possible. Deliver it to the Impartial Hearing Office at least five working days before the hearing.

If the CSE has already furnished some information on your child, you or your advocate should visit its office to look at the complete file and get copies of anything you do not already have. If this cannot be accomplished by request, use a subpoena. Since the CSE Chairperson's testimony will, for the most part, be based on the CSE's file,⁴² a prior review of those documents will help you or your advocate prepare to cross-examine the Chairperson. Also, there may be additional documents in your child's file which you

⁴² The CSE Chairperson must provide the Hearing Office with the materials upon which the recommendation was based. 9487 Matter of Janet S. 17 Ed. Dept. Rep. 52 (1977).

will want to submit at the hearing to show, for example, irregularities in the CSE's procedure.

Subpoenas may be used to obtain specific documentation concerning your child's present and/or recommended program and class placement. Such subpoenas should be addressed to the Impartial Hearing Office. While visiting the school is generally the best means of obtaining information about the placement offered to your child, a subpoena can also be used to get such information. A subpoena will produce certain data, such as the ages of the children and the number of children in the class; the qualifications of the teachers; the math, reading and intelligence scores of the students; the availability of essential related services; and the qualifications of the related services personnel, including guidance counselors and speech and language or physical therapists. The hearing officer decides whether to order the attendance of subpoenaed witnesses, documents, and any other information. The representative of the Board of Education who receives the subpoenas may oppose them on various grounds. For example, the Board may assert that you are not entitled to the information; that the information is unavailable; or that it is too expensive and difficult to obtain. If the Board's representative resists the subpoenas, find out why by discussing the reasons with him/her and suggest a compromise where possible. However, do not compromise on information or witnesses that are essential to your case.

If a compromise cannot be reached, the hearing officer will rule on which witnesses and what documents you are entitled to have at the hearing. If it is necessary for you or your advocate to appear before the hearing officer to argue in favor of granting subpoena requests, it will be the first time the hearing officer learns of the case. Be completely prepared to explain the reasons for making the requests and why the

information is important. If the hearing officer decides to give you information that cannot be collected before the scheduled impartial hearing date, it may be necessary to postpone the hearing. Generally, subpoena requests do not require hearings, and a hearing officer will sign them and direct them to be served.

When the hearing officer signs and approves the subpoena, you or your advocate is technically obliged to deliver them in person to the persons subpoenaed. In practice, however, the Impartial Hearing Office will serve subpoenas on all Board of Education employees, collect the documentary information, and turn it over to you or your advocate. When you receive this documentary information, acknowledge its receipt to the Impartial Hearing Office in writing, listing all documents received.

3. Organizing the Documents

It is helpful to organize your documents chronologically, number them, and prepare a table of contents indicating the title and date of each document. (Be sure to make copies of all documents before you underline or write on them). A table of contents is useful in helping to locate each document in the sequence of events that led up to the impartial hearing. Underline important statements in each document so that they can be easily located for use in bringing out testimony on direct or cross-examination.

Five working days before the hearing date, you must give the Impartial Hearing Office one copy of any document you will introduce into evidence. Send copies which you have not underlined or marked at least eight working days prior to the hearing to assure they will get there in time. Before the hearing, the Impartial Hearing Office will send you or your advocate copies of the documents the Board of Education will put into evidence which they have also submitted five days in advance.

Be sure to bring an extra unmarked copy of any document that you will present as evidence to the hearing. You must give this second copy to the hearing officer at the hearing. This copy will become part of the official record of the hearing when the hearing officer stamps it and receives it into evidence.

D. Preparing Your Witnesses' Testimony

You or your advocate must prepare every witness who will be called on your behalf. Before the impartial hearing, you or your advocate should meet with each witness to discuss the case, explain how the hearing will be conducted, and "rehearse" the testimony of the witness. A "witness sheet" should be prepared for each witness, which details all the testimony to be given by all witnesses. Giving the witnesses a practice "run-through" is extremely helpful, as it allows you or your advocate to help the witness testify as coherently and effectively as possible. Do not prepare a "script," however. Simply get the witness to convey the information thoroughly and clearly.

Discussions with your witnesses should begin well in advance of the impartial hearing date because the witness may need to do some research to be most effective and knowledgeable about the issues in your case. For example, if you are contesting placement, an expert witness who has worked with your child should visit the proposed placement prior to the impartial hearing. That will prepare the witness to testify not only about your child's needs, but also to offer expert opinion on whether the recommended placement can satisfy those needs.

You or your advocate must furnish the expert witness with copies of your child's test results. Make sure you do this promptly to allow the witness enough time to critique those evaluations in advance of the hearing and to become familiar with documents that will be used by the Board of Education on cross-examination. This is

important because your expert witness will often have to testify to rebut a position taken by one of the experts for the CSE.

In preparing witnesses for the hearing you must anticipate questions that will be asked on cross-examination by the Board of Education. You or your advocate should instruct your witnesses to take time before answering each question. This pause will allow your advocate (or you, if you do not have an advocate) time to object to the question, if that is appropriate, and give the witness time to consider his/her answer carefully.

You, too, must be prepared for giving your testimony. Your knowledge of your child is an essential resource in developing your case. Make a list of the important points you want to make, including the factual basis for every one of those points. If, for example, you believe that the placement offered is inadequate, make a list of the reasons. If you have met anyone from the Board of Education, record your impressions of the Board of Education personnel as well as the history of meetings with them. These factors can be important in preparing the case.

E. Preparing a Response to the Board of Education's Case

Before the hearing, you or your advocate should outline the cross-examination you will use for each of the Board's witnesses. It is unwise to ask witnesses questions on cross-examination to which you do not already know the answers. Therefore, in preparing for cross-examination, you should carefully read any evaluations or reports belonging to the Board's witnesses. Cross-examination can often produce oral testimony from the witness which contradicts his/her earlier written statements. Cross-examination also may show that the Board of Education's witnesses lack a particular knowledge important to the case.

The Hearing

A. Where the Hearing is Held

The impartial hearing is usually held in one of several rooms located at Board of Education headquarters, 110 Livingston Street, Brooklyn. The room in which your hearing will be held is posted in the Impartial Hearing Office, Room 118, on the ground floor. You can wait for the hearing to begin in the Impartial Hearing Office or in the hearing room itself.

B. The Hearing Room

The hearing is held in a conference room, not a courtroom. A large rectangular conference table dominates the room. The hearing officer will sit at one end of the conference table. The Board of Education personnel (the Board's representative, the Chairperson of the CSE, and any witnesses testifying on the Board's behalf) sit together on one side of the table. You, your advocate, and your witnesses will sit across from them on the other side of the table. Your advocate, representative, or lawyer, if you have one, should sit closest to the hearing officer.

C. Who Attends From the Board of Education

By law, the impartial hearing is closed to the public unless you request an open hearing. Occasionally observers will be present, but the Board must ask your permission before anyone observes the hearing. Observers may be prospective hearing officers, new CSE Chairpersons, or new attorneys in the Board's Law Department seeking to gain experience through observation.

The CSE Chairperson is likely to be present at the impartial hearing. Other Board of Education personnel may be present to testify in support of the CSE's recommendation. Among them may be people who evaluated your child, a supervisor

from the recommended special education program, a school psychologist, or a guidance counselor. Sometimes, however, only the CSE's Chairperson is present.

You should not discuss the details or merits of your case with any Board personnel either before or during the impartial hearing. And, although you may be frustrated and angered at the testimony of Board personnel, there is little to gain by being openly antagonistic.

D. The Record of the Impartial Hearing

The entire hearing is tape-recorded by a technician. The tape recorder is placed behind the conference table and several microphones are positioned on the conference table. A written transcript, or "record", of the entire hearing will be sent to you or your advocate, at no cost, approximately ten days after the hearing. An identical transcript will be sent to the hearing officer and the Board of Education's representative.

The hearing officer's decision must be based only on what is contained in the record. The record includes: (1) the testimony of the witnesses as it appears in the written transcript, (2) any documents offered and accepted ["admitted"] into evidence, and (3) any memoranda of law submitted by the parties. Hearing officers should not consider any oral statements not contained in the recorded testimony.

During the course of the hearing, the hearing officer may make reference to "going off the record." This means the tape recorder will be stopped and whatever discussion occurs during that time will not be included in the written transcript of the proceedings. It is impossible to describe all of the circumstances when this might happen. For example, the hearing officer might permit an "off the record" discussion if the CSE Chairperson offers you a site other than the site originally recommended, or makes some other new suggestion, which could eliminate the need to continue the

hearing.

There is no general rule for deciding when to "go off the record." Generally speaking, you want everything "on the record." Moreover, if you or your advocate thinks a particular "off the record" discussion should be mentioned "on the record," ask the hearing officer to summarize the discussion that took place and have it recorded. If the hearing officer, for some reason, does not accurately or fully summarize the nature of the "off the record" discussions, you or your advocate should be allowed to make additional clarifying remarks "on the record."

E. Preliminary Matters

Before the impartial hearing formally "opens", there may be preliminary matters to address. For example, it may be necessary to reschedule the impartial hearing or have it continued on another day because of an unforeseen circumstance that makes it impossible to proceed. This could occur if one of your expert witnesses has an unbreakable commitment on the hearing date. In that case you or your advocate can ask to have that witness give his/her testimony on a different date instead of rescheduling the entire hearing. In addition, if you had planned to go forward with the hearing without the assistance of an advocate but changed your mind, you may request an adjournment to obtain representation.

If subpoenas have been served, but the recipients have not appeared at the hearing, this can be addressed prior to the formal opening of the hearing. If the failure to comply has important implications for the case, you or your advocate should ask the hearing officer to adjourn the hearing until the recipients of subpoenas have complied.

In certain cases, you may also want the hearing officer to protect your child's rights during the time between the hearing and the decision. For example, if the CSE discontinued a related service your child was receiving, you can ask for an "interim order" restoring the service until the hearing officer decides whether your child should continue to receive the service.

If any preliminary requests are denied before the tape recorder has been turned on, you or your advocate should summarize what has happened when the taping begins. This includes the request(s) made, the reasons supporting them, and stating for the record that the request was denied.

Before the hearing begins, the hearing officer will ask you or your advocate and the Board to submit copies of the documents that each side wishes the hearing officer to consider. If the Board of Education has no objection, your documents can be stamped and marked for identification as exhibits and received into evidence as a group. Your exhibits are labeled with letters. Similarly, if you or your advocate have no objection, the Board's documents will also be marked, stamped, and received into evidence as a group. The Board's exhibits are labeled with numbers.

If there are any objections to the Board's documents, this is the time to raise them. If you or your advocate are not certain whether to raise objections at this point, state that you reserve the right to object to particular documents as they are specifically mentioned during the hearing. If, when looking through the Board's exhibits, you or your advocate find any document you did not receive in the packet submitted five working days before the hearing, you can object to its admission for that reason. The hearing officer will rule on all objections concerning evidence.

Prior to the formal opening of the hearing, the hearing officer, or the technician operating the tape recorder, will circulate an attendance sheet. Also you or your advocate may wish to make a seating chart with the name and title for each person.

Often, before the hearing is formally started, you or your advocate will have an opportunity to tell the hearing officer "off the record" what you hope to achieve from the impartial hearing. If this is done the statement should be brief. All of the details will be thoroughly explored during the testimony.

When the tape recorder is turned on, the hearing officer will begin with an introductory statement, noting the date and time the hearing is beginning, introducing him/herself, and referring to the provisions of state and federal laws that apply to the hearing. S/he will state that the Board of Education has the burden of proving its recommendation is appropriate; that the Board will present its case first; that you or your advocate will have an opportunity to cross-examine each of the witnesses; and that the Board will have an opportunity to cross-examine your witnesses. The hearing officer will then ask the people in the hearing room to identify themselves and their relationship to the subject matter of the hearing.

F. Your Role at the Hearing

At the impartial hearing you will have the separate tasks of testifying on behalf of yourself and your child and of assisting your advocate. If you do not have an advocate, the task of presenting the case will also be yours.

If you have an advocate to assist you in presenting the case at the hearing, you can help the advocate by listening closely to the testimony offered by the Board of Education's witnesses and making notes about anything you want to respond to when you testify. You can also point out specifics to your advocate as they arise during the

hearing. For example, a witness may testify about events which occurred at the CSE meeting and you may wish to inform the advocate of other events that happened at the same meeting which the witness is not mentioning. Since your advocate will also be listening to the testimony, you should communicate by passing notes. If you feel you need to talk with your advocate, ask for a recess and leave the room to have the discussion privately.

G. The Board of Education Presents Its Case

The Board of Education presents its case first because it has the burden of proving the appropriateness of the classification and placement recommendation for your child.

The Board of Education will use testimony of witnesses to demonstrate that its recommendation is correct. The Board's representative will question the Board's witnesses. This is called "direct examination." Each witness who testifies will be sworn in. Only one witness may testify at a time. If other Board of Education witnesses speak before they are called to testify, you or your advocate should object. If you wish, you can insist that only one witness at a time be in the hearing room. If you do so, however, this will apply to your witnesses as well as those of the Board of Education.

Your advocate (or you, if you do not have an advocate) may want to object to some of the questions asked by the representative for the Board. You may object to testimony on questions which are unrelated to the issues of the impartial hearing. An objection to a question should be made immediately after it is asked, and before the witness begins to answer. The hearing officer decides whether to allow the witness to answer the question. If the objection is raised after the answer is given, ask the hearing officer to "strike" the answer. Even if it seems that the hearing officer will overrule an

objection, it may be wise to object anyway, in order to focus attention on the particular issue.

Except when objecting to questions, you and your advocate may not interrupt the testimony of a Board's witness, even if it appears to you that the testimony is dishonest, inconsistent, or expresses an opinion with which you disagree. Your side can challenge or contradict the Board's testimony, either on cross-examination of the Board's witnesses or during direct testimony from you or your witnesses. During the Board's testimony, take notes when you disagree so these items can be included in your testimony or on cross-examination.

Conducting effective cross-examination requires learning specific skills. The "rule of thumb" is to ask only those questions for which you know the answer that the witness will give. The best way to accomplish this is to be thoroughly familiar with all the documents in the case. If, for example, the witness has testified to something which is contradicted by statements in a document prepared by that witness, cross-examination should include questioning to point up this contradiction.

Witnesses do not generally change their opinions as a result of the questioning. Therefore the objective of cross-examination should not be to change the opinion of the witness. Instead, the goal is to cast doubt on the testimony of the witness by focusing on (a) inconsistencies or (b) the fact that the witness is not personally familiar with your child, or (c) that the opinion of the witness is different from that of your expert witness.

Following the cross-examination of a witness, the Board of Education may again ask that witness more questions. This is called "redirect examination." Your side may then request an opportunity to cross-examine that witness further. At some point, however, the hearing officer will ask that the next witness be called. The hearing officer

can question witnesses at any time. Questions asked by the hearing officer will often indicate what his/her concerns are.

When the next witness testifies, the process of direct and cross-examination begins again and takes place until all the Board of Education's witnesses have testified. Then it is time to present your case by calling your witnesses, one at a time.

H. You Present Your Case

If you have an advocate or a lawyer, s/he will question you and your witnesses. (If you are unrepresented, you will ask your witnesses the questions. The hearing officer questions you.) After the advocate questions each witness, the Board of Education's representative will have an opportunity to cross-examine him/her.

Ideally, there should be a short break between the Board's presentation and your testimony. During the break, you or your advocate can discuss with the witnesses any additional questions which will be asked for which they had not previously prepared.

If you have a professional or expert at the hearing to testify, it is important to consider the expert's time and try to adjust the hearing to accommodate his/her schedule. It is possible to have that person testify out of order, that is, before you testify and sometimes, with the permission of the hearing officer, prior to the beginning of the case. If you do not have an advocate, the hearing officer will assist you and try to assure that all pertinent information is included in the record.

I. Rebuttal

After your case is completed, the Board of Education may recall witnesses to rebut the testimony that has been offered. Your side may then recall any of your witnesses or call new witnesses to counter the Board of Education's rebuttal testimony. At some point, however, the hearing officer will not allow further rebuttal testimony.

J. Closing the Hearing

Closing arguments summarizing the case are not normally allowed. Therefore, the hearing officer closes the hearing when the testimony is finished.

At this point, depending on the complexity or novelty of the issues, you or your advocate may ask the hearing officer for permission to submit a memorandum of law for the hearing officer's consideration. If the request is granted, the hearing officer will keep the hearing record open until briefs from both sides are received.

At the close of the hearing, the hearing officer will inform you that you will receive a copy of the transcript within seven working days.

K. The Hearing Officer's Decision

When you or your advocate receive the transcript of the hearing, review it for any errors which may have been made in typing the transcript from the tape. Sometimes inaccurate transcription changes the meaning of a question or an answer. If such errors are found, bring them to the attention of the hearing officer by writing a letter to the Impartial Hearing Office citing the exact pages and lines of the errors and indicating the corrections.

The hearing officer will examine the transcript of the testimony, together with the documents accepted into evidence, and any legal memoranda submitted. Statements made by the Board of Education's representative or your advocate are not "evidence" upon which the hearing officer can base a decision. Statements by your advocate may, however, influence how the hearing officer weighs the evidence.

The impartial hearing officer will make a decision no later than forty-five calendar days after the date on which the Board of Education received the original

request for the hearing.⁴³

To calculate when the forty-five day period will end, the hearing officer excludes all time periods that are the result of adjournment or continuances of the hearing. When the hearing officer makes a decision, the Impartial Hearing Office will send you or your advocate a copy of the decision.

The first page of the decision is a cover sheet that contains general information about the hearing: name, age, date of birth of your child, address, name of the hearing officer, and names of those participating in the hearing.

In order to understand the hearing officer's decision, read the opinion carefully. For instance, even though the hearing officer may reverse the CSE's recommendation, this does not necessarily mean that you have won. The CSE's recommendation may be reversed because it failed on certain procedural requirements, such as refusing a request to have a physician present at the CSE's review meeting, or basing its decision on out-dated evaluations. In such an event, the hearing officer might send the case back to the CSE and order them to repeat the process following appropriate procedures. The CSE may merely be ordered to recommend an appropriate placement rather than granting you the placement you requested.

L. Enforcing a Favorable Decision

1. **Obtaining Tuition Reimbursement for a Private School** - If the hearing officer orders tuition reimbursement and the Board of Education does not appeal the decision, the Board will issue a check to the private school your child attends or will attend. Because the reimbursement process is often time-consuming and there are no strict time

⁴³ 8 N.Y.C.R.R. Part 200.5 (c)(10).

limits for issuing a reimbursement check, you should request from the Impartial Hearing Office the name and telephone numbers of the Board of Education officials responsible for processing reimbursement forms so you can regularly check on the progress.

Since the Board of Education is authorized by law only to contract with private schools, it can never issue a check directly to you. If you have already paid the school, make arrangements to have the school reimburse you when they receive the Board of Education's check.

2. Other Decisions - Any order from an impartial hearing officer that is not appealed should be carried out automatically and immediately. However, the various offices responsible for operating special education programs do not always act quickly to implement it. If you intend to appeal, file your notice quickly so that your child is not unnecessarily transferred. The Board of Education has thirty days in which to appeal the hearing officer's decision. However, this requirement is sometimes not complied with until the time to appeal expires or the Board indicates it will not appeal.

If your child does not receive the proper program and/or related services within a week after the decision is received, you or your advocate should call the Impartial Hearing Office. If the Board was represented by an attorney at the impartial hearing, your advocate should call the Board of Education's attorney to see if they intend to appeal and, if not, to insist that the order be complied with immediately (letters should be written that confirm these telephone conversations).

CHAPTER X

APPEALING TO THE NEW YORK STATE REVIEW OFFICER

What is an Appeal?

Do You Need an Attorney?

Commencing the Appeal

Drafting the Petition

Serving the Petition

Answering the Petition

Appeals from an Unfavorable Decision

At the end of the impartial hearing, the hearing officer should inform you of your right to appeal his/her decision. The last paragraph of the hearing officer's written decision will also explain the right to appeal, which is guaranteed by state and federal law. You may appeal the impartial hearing officer's decision to the New York State Review Officer in Albany. A Notice of Intent to Appeal must be filed within 30 days of the hearing officer's decision. The appeal must be filed no more than ten days later. The Board of Education also can appeal an impartial hearing officer's decision to the Commissioner. It is important to note that during all appeal proceedings, your child has the right to remain in the program in which s/he is then placed, unless you and the CSE agree otherwise.

The State Education Department has published a handbook describing the procedures governing appeals to the State Review Officer entitled "Regulations of the Commissioner of Education Relating to Appeals in Other Proceedings Before the Commissioner (Handbook No. 1)." In addition to the regulations, Handbook No. 1 also contains certain model forms. The Impartial Hearing Office mails this handbook to you with the hearing decision.

What is an Appeal?

An appeal is a request made to the New York State Review Officer to reverse the impartial hearing officer's decision. The appeal is not, however, another hearing. It is a request to have the State Review Officer review the proceedings that took place before the impartial hearing officer. The decision of the State Review Officer will be based on the testimony and exhibits given to the hearing officer at the impartial hearing. An appeal to the State Review Officer does not involve personal appearances, but rather the submission of papers.

Normally the State Review Officer will not consider any facts that were not made part of the record in the impartial hearing. However, the State Review Officer does have discretion to consider any official hearing records or reports on file in the Education Department even if they are not part of the record.⁴⁴ If you want to bring information that is not in the record of the impartial hearing to the attention of the State Review Officer, file a sworn statement (an affidavit) or attach the exhibits(s) to the petition. Although the State Review Officer is unlikely to accept evidence that could have been made part of the record at the impartial hearing, s/he may be more receptive to new evidence obtained after the impartial hearing date.

Oral argument before the State Review Officer is not permitted. The appeal will be decided entirely on the basis of the papers submitted: your petition, the Board of Education's answer, your reply, affidavits that may be filed along with any of the above, and memoranda of law.

Do You Need an Attorney?

You may appeal with or without the services of an attorney. However, for many of the same reasons that you should have an advocate representing you at the impartial hearing, you should consider having an attorney represent you in your appeal or in your response to the Board's appeal.

It is important to note that advocates who are not attorneys cannot "represent" you in an appeal. However, an advocate may assist you in preparing your own appeal.

There is a specific format to follow in writing your appeal and lawyers are generally more familiar with it than lay people are. An appeal has more of the

⁴⁴ 8 N.Y.C.R.R. Part 276.5.

technicalities associated with traditional legal proceedings than does an impartial hearing. Although you can file an appeal on your own, a lawyer offers the advantage of understanding how to comply with the technical requirements. Because all the facts will have been established at the impartial hearing, the attorney will focus on developing legal arguments, pointing to the facts in the records to support those arguments.

Commencing the Appeal

A "Notice of Intent to Seek Review" must be served within thirty days of receipt of the decision of the hearing officer and the "verified petition" must be served within forty calendar days after receipt of the decision⁴⁵ (ten days after filing the Notice). It is essential to comply with these time lines since the State Review Officer will rarely excuse a delay.

Only the State Review Officer has the authority to approve an extension of the deadline for filing an appeal.⁴⁶ Inability to locate an attorney to represent you on the appeal, or inability to understand the hearing officer's decision, or the failure of the Department of Education to respond to a request for Handbook No. 1, are among the many explanations for late filing that the State Review Officer may find unacceptable.

After the Notice of Intent to Seek Review is typed, hand-deliver it to the Secretary of the Board of Education, Room 1133 at 110 Livingston Street, Brooklyn, New York. The person making the delivery should ask the clerk to "time stamp" both the copy and the original of the Notice. The original copy of the Notice of Intent should be mailed to the Office of Counsel at the State Education Department in Albany within

⁴⁵ 8 N.Y.C.R.R. Part 279.2(b).

⁴⁶ 8 N.Y.C.R.R. Part 275.16.

five days.

Drafting the Petition

The second step in the appeal process requires the filing of the petition with the State Review Officer. You are the "Petitioner." The Board of Education is called the "Respondent." (If the Board of Education is making the appeal, it is called the "Petitioner" and you are called the "Respondent.")

As noted, the law requires serving the petition, within forty days after the date the hearing officer's decision was received. (Remember the Notice of Intent to Appeal must be served within thirty days after the date of the hearing officer's decision.)

The petition and all other papers, submitted to the State Review Officer must be typewritten, double-spaced, on white paper 8-1/2 by 11 inches in size. Capitalize the entire names of the parties (the child, parent, and Board of Education). Capitalize the first letters of "Petitioner" and "Respondent." The petition should be addressed to the State Review Officer and must have your name (or your attorney's name), mailing address, and telephone number at the end of it. The petition must include a notarized statement from you verifying the contents of the petition.⁴⁷

The purpose of the petition is to persuade the State Review Officer that the decision of the impartial hearing officer was incorrect. To accomplish this, the petition should summarize the hearing officer's decision and focus attention on the issue(s) raised in the appeal.

Each paragraph should be numbered and should include only one statement. To support each argument, the petition must repeat the facts that are in the record. By

⁴⁷ See Appendix A-42.

referring to transcript pages and exhibits and by quoting pertinent parts of the record, you can direct the State Review Officer to facts in the records that support your position. If, for example, the impartial hearing officer decided that your child does not have a disabling condition, you should identify from the transcript of the hearing and from the exhibits submitted into evidence the testimony and documentary evidence that highlight your child's educational difficulties. All references to the record should be identified by the transcript page number or exhibit number and page.

Finally, you should include either in a separate section of the petition or in a separate memorandum of law, pertinent statutes, regulations, or decisions that support your position. The notarized verification should be attached at the end of the petition along with any other documents referenced in the petition.

Serving the Petition

When the appeal papers are completed, they must be delivered to the Board of Education, in person. Two photocopies must be delivered to the Board of Education, Room 1133, at 110 Livingston Street, Brooklyn, New York. The clerk should stamp all of these documents (originals and photocopies) with the date and time of receipt. Leave a photocopy of the petition for the Board of Education at that office.

After the photocopy has been delivered to the Board, an affidavit of personal service must be prepared, signed by you, and notarized.⁴⁸ The affidavit should be inserted at the back of the original petition, following the verification. The originals of all these papers should be sent to the Office of Counsel, State Education Department, in Albany. The remaining photocopy is for your own records.

⁴⁸ See Appendix A-44.

Answering the Petition

The Respondent is allowed ten days after receiving the petition to file an answer to the Petitioner's appeal. If the Board of Education is appealing, you are the Respondent, and therefore you have ten days to file an answer to the Board's petition.

Your answer must address each of the allegations in the Board's petition. Each allegation may either be admitted or denied, or you may not have enough knowledge or information to form a belief as to the truth of one or more allegations contained in the Board's petition. Your answer should refer to facts and law in support of your position that the impartial hearing officer's determination should be upheld.

The answer may be served on the Petitioner or the petitioner's attorney by mail or by personal service. If you hand-deliver the answer to the Board of Education, the original and one photocopy of the answer go to Room 1133 at 110 Livingston Street, Brooklyn, New York. The clerk at that office should stamp the papers with the date and time of receipt. Again, the photocopy of the answer should be left with the Board. Then, the person who delivered the answer should prepare an affidavit of personal service and have his/her signature notarized. The affidavit should be inserted at the back of the answer. The original of the answering papers, complete with the affidavit of service, must be sent to the State Education Department, Office of Counsel, in Albany within two days of service of the answer on the Board of Education.

If the answer is served by mail, instead of delivering it in person, photocopies of the papers must be sent to the Secretary of the Board of Education Room 1133, 110 Livingston Street, Brooklyn, New York, 11201. The person who mails the papers should fill out an affidavit of service by mail, have his/her signature notarized, and then send the original of the papers, with the affidavit of service by mail, to the State Education

Department, Office of Counsel, in Albany.

If the answer contains new materials or issues which are not raised in the paragraphs of the petition, the Petitioner may write a reply to the new issues raised in the Respondent's answer and must serve the reply within three days after the date on which the answer was delivered. If the answer is received by mail, the reply will be due five days after the date the answer was mailed.

Appeals from an Unfavorable Decision

An adverse determination by the State Review Officer may be appealed in either State or Federal Court. In State Court the appeal would come under Article 78 of New York's Civil Practice Law and Rules.⁴⁹ This must be done within four months from the date the State Review Officer renders a decision on the appeal. Since an appeal is a legal proceeding, you should retain a lawyer who will advise you on whether and how to undertake such an appeal.

The scope of the state court's review of a State Review Officer decision is generally limited. In most cases, you must show that the State Review Officer's decision was arbitrary, capricious, or not supported by the substantial weight of the evidence.

In the alternative, you may initiate a lawsuit in Federal District Court instead of the State Courts. A federal lawsuit is not an "appeal" and the court will not review the State Review Officer's decision but will consider all evidence again and make a new decision. You will need to consult an attorney to discuss such a course of action.

⁴⁹ *New York C.P.L.R. Sec. 7801 et seq.*

CHAPTER XI

SPECIAL CIRCUMSTANCES

The Pre-school Aged Child with Disabling Conditions

- A. Birth to Three-Year-Olds**
- B. Three to Five-Year-Olds**

Students with Disabling Conditions Who are Over Twenty-one

Obtaining Residential Placement

- A. Residential Placements through the Department of Social Services**
- B. Residential Placements in State-Operated or State Supported Schools**

Entitlement to Summer School Programs

Related Service Authorization Procedures

Private School Placement at Public Expense

- A. Determining that No Appropriate Public School Placement is Available**
- B. Locating a Private School**
- C. Transportation**
- D. If Your Child's Private School Placement is No Longer Appropriate**
- E. Considerations About Private School**
- F. Nickerson Letters**

Suspension of Students with Disabling Conditions

- A. Overview**
- B. Principal's Suspension**
- C. Superintendent's Suspension**

Figure III - Roles of District Committees on Preschool Special Education and the Central Board's Central Based Support Team

Compulsory education in New York City requires that children who are six to seventeen years of age and who have not earned a high school diploma must attend school. Although parents are not required to send their children to kindergarten in New York, all five-year-old children have the right to attend school. Further, all children have the right to remain in school until they are twenty-one unless they receive a diploma before then.⁵⁰

The Pre-School Aged Child

The Board of Education and the New York City Agency for Child Development operate programs for four-year-olds in many school districts. While Project Superstart Plus amend is not a special education program, children with disabling conditions may be enrolled in this program if it is appropriate for the child. Children do not have to be seen by the Committee on Special Education or a School Based Support Team to enroll in Project Giant Step.

Pre-school children with moderate to severe disabilities are generally served by private schools, day care centers, Head Start programs, and some children's developmental clinics affiliated with hospitals.

A. Birth to Three Years Old

To place your birth to three-year-old child in a pre-school program not operated by the Board of Education, three conditions must be satisfied: the program must be approved by the Commissioner of Education for teaching children with disabling conditions, your child must be certified by a CSE as having a disabling condition, and a Family Court judge must order funding for your child to attend the program. The CSE

⁵⁰ N. Y. Educ. Law Sec. 3202 (1).

or the State Department of Education can recommend approved schools that offer appropriate programs for your child.

B. Three to Five-Year-Olds

A New York State law passed in 1989 ⁵¹ changes the process for referring and evaluating three and four year-old children for special education related ("itinerant") services. Under the state ⁵² and City rules, each community school district in New York City must have a Committee on Preschool Special Education (CPSE) to identify, evaluate and place three and four year-olds with special education needs.

1. Timing of Eligibility for Services

The time of the year that your child becomes eligible for preschool education services depends on the his/her date of birth.

If your child becomes 3 years
old between: _____

S/he is eligible for
preschool services:

January 1st and June 30

January 2nd

July 1st and December 31st

July 1st

2. The Committee on Preschool Special Education (CPSE)

The CPSE must provide for the private evaluation of your three or four year-old child, make an initial placement, and conduct a yearly review. You and your child's preschool teacher must be invited to all review and evaluation meetings.

The members of the CPSE must include:

- * a professional who works in the district. S/he is the Preschool Administrator of the CPSE.

⁵¹ The new law, N.Y. Educ. Law Sec. 4410 was enacted in July 1989.

55Part 200, Regulations of NYS Commissioner of Education

- * a parent of a pre-school or elementary school child with a disabling condition who lives in New York City;
- * a professional who participated in the evaluation of your child.
- * you - the parent of the child being reviewed - unless you do not wish to attend.

In addition, if your child was in a preschool program before s/he turned three, his/her teacher from that program should be part of the CPSE for your child. A staff member from the educational program proposed for your child by the evaluation site may also attend. You may bring an advocate with you.

a. Who Can Make a Referral to The CPSE

If you suspect that your preschool child has an educationally disabling condition, you must submit a written referral to the chairperson of the CPSE in your community school district. You can make an oral referral of your child to a professional staff member in the district and s/he will help you make a written referral to the CPSE. If your child's suspected disabling condition is Hard of Hearing, Deaf, or Visually Impaired, your local CPSE will refer the case to the Hard of Hearing Visually Impaired (HHVI) CPSE.

In addition to yourself⁵³ - the child's parent or legal guardian - the following people can refer your child to the CPSE:

- a licensed physician;
- a representative of a government agency involved in the care of your child (for example, the Child Welfare Agency);

⁵³ If you are not the parent or legal guardian of a child in your care, you may request that your case worker or the child's teacher make the referral.

- a judge or other judicial officer;
- a school staff member, school district employee or someone from an Early Childhood Direction Center or from another program serving preschool children.

b. What Happens When a CPSE Receives a Referral

As soon as the CPSE receives a written referral concerning your child, it must immediately send you in your dominant or "preferred" language:

1. Notice that a preschool referral has been received, along with a "Notice of Parental Due Process Rights" and a list of free and low cost legal services available to you.
2. The official list of evaluation sites and program providers that have been approved by the New York State Education Department to serve preschool children.
3. A "Consent for Initial Evaluation" letter for you to sign and give to the preschool evaluation site before the evaluation can begin.⁵⁴

If you do not consent, your child will not be evaluated

3. The Evaluation Site

If you agree to have your child evaluated, you will be asked to choose an evaluation site from the official list of approved evaluators. Currently, only preschool special education program providers are approved evaluation sites, although they may

⁵⁴ If you are not the parent of a child in your care, and the parent or legal guardian is unknown, cannot be found, or has had parental rights legally terminated, the CPSE should name a "surrogate parent" to make educational decisions for the child. The "surrogate parent" should, to the maximum extent possible, share the same cultural and linguistic background as the child. If you are the child's foster parent, and you are interested in participating in your foster child's education, ask the CPSE to name you as the surrogate parent.

contract with private and public hospitals and clinics to do evaluations. Someone from the CPSE should be available to assist you in selecting an appropriate site and in arranging for an evaluation meeting. If you have applied to the Commissioner of Education for approval for your child to attend a school for the blind, deaf, or severely physically disabled (a "4201 school"), the appropriate "4201 school" closest to your home will do the evaluation.

After you select the evaluation site, the CPSE will send materials to the site. Then, personnel at the evaluation site will send you a letter notifying you of the evaluation meeting date. The meeting must be scheduled as soon as possible but no later than five school days from the date that they send you the notification letter.

(Note: The evaluation site you selected may turn you away if it is overloaded or if it is not qualified to evaluate your child's suspected disabling condition. The CPSE will then help you select another site.)

If you feel you need someone at the conference or for interviews who can speak with you or your child in a language other than English, let the evaluation site know this immediately. If you need "other than English" services, the site will arrange for them to be provided. If the evaluation site is unable to provide appropriate bilingual personnel or translators, you should call your District CPSE.

Once you give written consent to the evaluation, the evaluation site must forward a copy of the signed consent form and any other available information to the CPSE.

If you do not consent to the evaluation, your child will not be evaluated

If you cannot make the appointment the evaluation site has scheduled, call the site and change it. Remember, you must respond to the material you receive if you want the referral to go forward. The evaluation site may withdraw a referral and close the case if they can show that they tried but were unable to make an evaluation appointment with you.

4. Your Child's Multidisciplinary Assessment (Evaluation)

The evaluation site must complete a multidisciplinary assessment and issue its report within twenty (20) school days of receiving your consent. Your child's primary language must be considered and, if necessary, the evaluation will be conducted in that language. This evaluation is conducted at no cost to you.

a. The evaluation must include:

1. a general physical examination
2. a social history
3. an individual psychological evaluation and observation of your child in her/his current education setting, if there is one.

b. The evaluation may also include, if necessary:

1. a speech/language evaluation
2. a thorough medical examination
3. a psychiatric, neurological, audiological, occupational, ophthalmological, or physical therapy evaluation.

In addition, you may submit any private reports that you wish to have considered during the process.

c. The Evaluation Summary and Individualized Service Plan (ISP)

After the evaluation, the evaluation site staff will prepare an evaluation summary and an Individualized Service Plan (ISP). The evaluation must describe your child's present level of performance and specific learning characteristics and indicate your child's disabling condition, if any. The Individualized Service Plan must include a detailed statement of your child's intellectual, social, emotional, and physical development and behavior management educational needs, as well as a recommendation for the services that are needed, how often they should be provided, and how long each session should be. It must also describe how your child can be provided with appropriate services in the least restrictive appropriate environment.

The evaluation site must send these two reports to your CPSE chairperson. The recommendation must be sent to all members of the CPSE. The site will automatically send you the evaluation summary but, if you want a copy of the full evaluation, you have to request one from the CPSE.

If you disagree with the evaluation, you may be eligible for a second evaluation at public expense. (See Chapter V for information about independent evaluations).

5. The CPSE Review Meeting

a. Scheduling the Meeting

After receiving the reports from the evaluation site, the CPSE must schedule a Preschool Special Education Review meeting. It will mail you a meeting notice at least seven days in advance, with a copy of the evaluation summary attached, and notify all the CPSE members of the meeting.

If you are not available on the scheduled date, call to reschedule. If you do not respond within seven days, the CPSE review meeting will be held without you.

b. Who Will be at the CPSE Meeting

Not all the members must be at the CPSE meeting, but certain persons are mandated by law to be there. They are:

1. the CPSE Preschool Administrator
2. a parent of a preschool or elementary school child with a disabling condition who lives in New York City.
3. a professional who participated in your child's evaluation
4. you, unless you do not wish to attend.

Other people who might be at the CPSE meeting are:

1. a translator if your preferred language is not English
2. a staff member from the program recommended by the evaluation site
3. anyone else you wish to bring.

c. What Happens at the Meeting

Everyone at the CPSE review meeting should discuss the results of the assessments in jargon-free language, identify your child's disabilities, and determine if your child needs, and is eligible for, preschool services. They should discuss and review all relevant information, including the evaluations, any information you add, and information from prior programs your child may have attended.

After discussion, an Individualized Education Plan (IEP) will be developed for your child. In so doing, the CPSE may consider the Individualized Service Plan recommended by the evaluation site, but it is not bound by it. If the CPSE members

disagree among themselves or with your preference, they must develop an objective statement describing the reasons for its recommendation. Your statements, if any, should be included and attached to the complete IEP.

6. Recommendation for Service

If the CPSE decides that your child needs assistance, it will indicate that your child is a "preschooler with a disabling condition." It will not label your child. It will also recommend an educational placement at a specific licensed or certified program site and/or itinerant services, like consultant teacher or speech or language therapy. It may recommend that the program and/or services be provided all year round.

July and August (twelve-month) services will be approved only if your child needs a year-round, structured learning environment to maintain developmental levels.

Itinerant Services

If itinerant services are recommended, the provider(s) will be selected from a list of certified or licensed providers put together by the Central Board of Education. Itinerant services may be provided at an approved preschool special education program, a government-licensed preschool or daycare program (such as Head Start, Project Giant Step, Montessori, etc.), or in your home. An itinerant services coordinator should be selected if more than one itinerant service is recommended.

7. Provision of Services

a. If the CPSE Decides Your Child is Eligible

After the CPSE decides that your child is eligible for preschool special education services, it will get a Preschool Acceptance Letter from the program it has

recommended. In some cases this may be the preschool program that did the evaluation. The CPSE will indicate in the IEP whether your child will receive ten or twelve-month school programming. The CPSE will also send you a Notice of Recommendation and IEP, and ask for your consent for the educational program it recommends. The IEP contains annual goals; short-term objectives designed to reach those goals; teaching methods; and objective criteria to determine if your child is mastering the objectives. Once you have consented, the CPSE will send a complete packet, including the Preschool Acceptance Letter and your consent form, to the Central Based Support Team (CBST)* for review and initiation of services.

No preschool or service provider may accept your child until the Central CBST forwards your child's packet to the providers.

*The CBST is the administrative division currently designated by the New York Board of Education to oversee the provision of preschool special education services.

b. If the CPSE Decides Your Child Is Not Eligible

If the CPSE decides that your child is not eligible for services, or doesn't recommend the program or services you want, it will give you the Notice of Recommendation. You should already have received the Evaluation Summary and Notice of Parental Due Process Rights. It must also send a complete packet to the Central Board's CBST for review.

8. Review by the CBST

a. If the District CPSE and Central Board CBST Agree:

(1) That Your Child Is Eligible

The CBST must complete its review within thirty school days from the date of the

district CPSE recommendation. If it agrees with the CPSE's recommendation, it will issue an Authorization to Attend Letter. If your child needs transportation, the preschool program provider (not your district CPSE) must arrange for it.

(2) That Your Child Is Not Eligible

If the CPSE and the Central CBST agree that your child is not eligible for special education, the CBST will deny special education services for him/her. It will inform you of your due process right to challenge the denial of special education in an impartial hearing.

b. If The District CPSE and CBST Disagree

If the CBST disagrees with the district CPSE, the CBST will consult with the evaluation site, the program, and the CPSE Chairperson. It will inform the CPSE of the reasons for its disagreement, and request a meeting to try to resolve those differences. You must be invited to attend this meeting.

If the CPSE does not change its recommendation, the CBST may not override the district CPSE's decision.

c. If You Do Not Agree to the Recommended Services

If you disagree with the recommendation, you may request an impartial hearing. If you do not respond to the recommendation and do not request an impartial hearing or another CPSE review meeting, the CPSE can close your case by showing that they tried to reach you.

In no case may services be provided to your child without your consent.

d. If You Agree With The Recommendations

If you agree with the recommendations, then your child must receive the services, including "appropriate transportation," beginning with the July, September, or January "school start date." Services must start no later than 30 days from the recommendation if your child is referred mid-session.

1. If the Program and/or Services are Not Available

If the services are "not available," the New York City Board of Education must develop an appropriate program. If you are aware of a program that may offer services appropriate for your child, call the CBST and an advocate.

If your child is recommended for a bilingual preschool program which is not available, s/he may be placed in a monolingual program which is otherwise appropriate and should be given a bilingual paraprofessional who speaks his/her language. This is called an "alternate" placement. Your child should be transferred to an appropriate bilingual program as soon as one becomes available. If the preschool program fails to provide a bilingual paraprofessional for your child, call the District CPSE.

10. Change of Program or Services

If you or your child's teacher or service provider believe that a change of program and/or services is needed, write to the CPSE and request a review of the IEP. If necessary, the CPSE Chairperson will ensure that additional evaluations are done and will schedule a Requested Review conference.

No change in your child's educational placement or services may occur without prior notification to you. If you object, request an impartial hearing. During this period, no change in placement or services may occur. If you do not respond, the change in placement or services may occur.

11. Your Procedural Due Process Rights

Whenever you disagree with the evaluation or recommendation of the CPSE or CBST, you may request an impartial hearing. (See Chapter IX, The Impartial Hearing.)

If your child has previously received services in this new system, s/he will remain in the current educational placement (pendency placement) during the appeal process.

If your child has not been previously served, s/he may receive services recommended by the Board of Education while you await the outcome of the impartial hearing. This will occur only if you agree to this temporary provision of services. If you do not agree, your child will not receive services during this period.

If you disagree with the decision of the Impartial Hearing Officer, you may appeal it to the New York State Review Officer. You should seek the help of an advocate or an attorney if you decide to appeal to the State Review Officer.

Figure III.

ROLES OF THE DISTRICT COMMITTEES ON PRESCHOOL SPECIAL EDUCATION AND THE CENTRAL BOARD'S BASED SUPPORT TEAM

CPSE

Receives referral
Provides for evaluation
Holds CPSE Review Meeting
Develops IEP and
Recommends Program & Services
Gets Preschool Acceptance Letter
Sends recommendation and all
other materials to ----->

CBST

Receives CPSE Recommendation
within 30 days, either:
Forwards packet to recommended Provider
or
Disagrees with recommendation, consults with all
parties; then either:
Forwards packet to the recommended provider
or
Requests a meeting with the CPSE for re-review
and you to attempt resolution

Services for Students with Disabling Conditions Over Twenty-one

New York State Education Law provides that a student who becomes twenty-one years of age between September 1 and June 30 is entitled to remain in school for that entire school year.⁵⁵ Planning for each student's transition from school should begin several years before the student will be 21, since planning for and locating programs and services for those over twenty-one is extremely time consuming. A listing of agencies to help in the process can be found in AFC's booklet, Securing Appropriate Programs for the Developmentally Disabled Adult.

Obtaining Residential Placement

Because the CSE can only recommend residential schooling for a child who cannot benefit from an education without twenty-four hour a day continuous care, residential placement is difficult to obtain. Except for home and/or hospital instruction, a residential school is the most restrictive environment and should be recommended only if your child cannot be educated in a less restrictive setting. Residential placement is generally only appropriate for students with severe emotional disturbances, severe or profound mental retardation, or those severely multiply disabled. To obtain residential school placement, evidence is required (evaluations and school performance reports) that such a placement is absolutely necessary.

Even though the cost of an appropriate education should not influence the CSE's decision, it is usually reluctant to recommend residential placement because it is very expensive. If your child is placed in a residential special education school, you may not

⁵⁵N.Y. Educ. Law Sec. 4402.(5).

be charged for tuition or for maintenance (room and board).

Once your child has been approved for residential placement, funding will be included for transportation to school at the beginning of the year and from school at the end of the year. In addition, funding will be provided for a maximum of three round-trips during the school year so that your child can come home during school vacations. Funding for more than three trips will be approved only if the school has extra vacations. Transportation funding does not include transportation for you to visit at school.

The law requires the CSE to consider placements at in-state residential schools before approving placement in out-of-state residential schools. Out-of-state residential placements will not be approved if any appropriate public or private school within the State of New York can provide a suitable program.

When the CSE is recommending residential placement for your child, your child's evaluations, IEPs, and other necessary documents are sent to the Central Board Support Team (CBST). The CBST targets potential residential schools, both in and out-of-state, that have been approved by the New York State Department of Education for teaching children with disabling conditions. Your child's clinical and educational data is sent to these identified schools as well as to the State's Regional Associate, who must give approval for residential placement. You will be sent a letter indicating the schools that have received your child's records. The CBST will also arrange transportation and interviews for you at the various schools. Your child will only be placed in an out-of-state school if five potential in-state schools have rejected your child's application. (If there are fewer than five potential in-state schools, all of the potential in-state schools must reject your child's application).

A. Residential Placements Through the Department of Social Services

The Child Welfare Agency, a unit within the Department of Social Services, can provide the funding if your child needs a residential placement for medical reasons, such as severe psychiatric or physical disability or health impairment, rather than educational reasons. Note that many of the facilities operated by the Department of Social Services are not approved by the State Education Department for educating children with disabling conditions.

To apply for placement in a facility through the Child Welfare Agency, contact the Child Welfare Agency for Children office in the borough where you live. A caseworker will be assigned to review your child's placement needs and will circulate his/her name and records to facilities that might be appropriate. These placements usually take a long time to become final.

B. Residential Placements in State-Operated or State-Supported Schools

Under New York State law, there are schools that are state-operated and state-supported for the placement and education of blind or deaf children or students with severe physical disabling conditions.⁵⁶

Some of the schools serve multiply-disabled students (blind or deaf and retarded or emotionally disturbed) and some also serve students who are blind or deaf with no secondary disabling conditions. Each school has its own separate admission requirements. Some schools have residential components but accept day students as well.

⁵⁶ N. Y. Education Law Articles 85, 87 and 88.

The Hard of Hearing/Visually Impaired Specialized Assessment Unit (HHVI) operates as the CSE which evaluates and places children who are 5 years or older with visual and hearing impairments. It also has the responsibility of reviewing the evaluations and recommending placements for children in state-supported schools for the deaf and blind, known as "4201" schools. (For the section of State Education Law under which they are governed.)

For entrance into a state-operated or state-supported school, you may apply directly to the Commissioner of Education in Albany. To do so, send documentation of deafness or blindness to the State Education Department and request placement in one of the schools. The State Educational Department Regional Associate will review the material and refer your child for an evaluation at the appropriate school closest to home and make a simultaneous referral to HHVI.

Once the evaluation is completed, a review meeting will be scheduled at HHVI. You will be invited and if the school that you requested has an appropriate program, HHVI will complete the necessary forms and submit the reports and the IEP to the State Education Department for final approval. Once approved, the HHVI placement officer will send you the Notice of Recommendation.

The HHVI placement officer retains jurisdiction over all children placed in these programs including evaluating the appropriateness of continued placement. Your due process rights for appeal are the same as with any other Committee on Special Education.

Entitlement to Summer School Programs

A structured, 12-month school program must be provided to all students with disabling conditions who require year-round programs to maintain developmental levels

and prevent regression.⁵⁷ If your child will lose any significant ground over the summer without school, then s/he is entitled to summer placement.

The CSE must consider four "need" areas when determining your child's eligibility for summer programs: academic or educational achievement, social development, physical development, and management needs.

New York City Board of Education guidelines provide automatic year-round schooling to children in the following placements: Specialized Instructional Environment (SIE) I, II, III, V-B, VI, VII-A, IX, X, XI-B and XII and Modified Instructional Services (MIS) VIII-A. (If you are unfamiliar with these program names, see Table III on page 73 for further data on program categories.) If your child attends any of these classes, the 12-month school year should be noted on the IEP.

If your child is not in any of these programs, and you believe s/he needs year-round schooling to maintain development in any of the above four "need" areas you should request that the CSE include it on her/his IEP. In order to have your child in the program it must be on the IEP.

Once your child has been recommended for this service, the Board must provide summer school placement appropriate to your child's needs. All other services outlined on the IEP, such as counseling, speech, occupational or physical therapy, and transportation, must also be provided during the summer months. If the Board is unable to provide a public school placement, it must pay for an appropriate private school for the summer. If the Board can't provide the related services, it must give you a Related Services Authorization (RSA) letter allowing you to obtain the related services from a private provider at Board expense. (See RSA procedures, page 160)

⁵⁷ N.Y. Educ. Law Sec. 4402(a); 8 N.Y.C.C.R. Sec. 200.6(j).

Related Service Authorization Procedures

The Board of Education is required to provide your child with all of the related services included on his/her IEP. If the Board does not have the appropriate personnel to render the service, it must take other steps to assure that your child is appropriately served.

A. Contracting Out for Related Services

When no Board of Education staff are available to provide a related service to your child, the Board can enter into a contract with an outside agency which will send a licensed professional into your child's school to provide the related service as specified on the IEP. The Board pays all costs for contracted services.

B. Related Services Authorization Letter (RSA)

If the Board is unable to provide any related service specified on your child's IEP through other means, it will send you a Related Services Authorization Letter (RSA). This letter permits you to locate a qualified private provider to serve your child. Along with the letter, the Board will send you a directory of persons already known to the Board who provide the required services. However, you are not limited to selecting from only those persons listed in the Board's directory. Services can be delivered in your child's school, in the provider's own office or at your home.

The Board of Education is responsible for the cost of related services provided under an RSA letter, including reasonable transportation costs if your child goes to the provider's office for services. The procedures you must follow once you have located a provider and the specific amounts the Board will pay for various services and for transportation are specified in the RSA letter.

C. If Your Child Does Not Receive Required Related Services

Once your child is settled in his/her program, check to assure that all related services are being delivered. If they are not, call the classroom teacher. If s/he cannot help you, contact the Committee on Special Education. If the problem is not resolved quickly, call the Office of Related and Contractual Services at the Central Board of Education at 110 Livingston Street in Brooklyn.

Private School Placement at Public Expense

The Board of Education must provide all students with disabling conditions with special education and/or related services which meet their unique individual needs. If there is no public school program which can meet your child's needs, the Board of Education must provide an appropriate placement in an approved private school. When the CSE recommends funding for private school and the New York State Education Department approves it, the school system, not you, pays the tuition at the private school.

The CSE only recommends placement at approved private schools, that is, schools for children with disabling conditions that have been inspected, meet the State's requirements, and have been approved by the State Education Department. The Board of Education cannot legally pay tuition to an unapproved school or to a school that is not approved for teaching children with disabling conditions.

A. Determining That No Appropriate Public School Placement is Available

Funding for a special education private school will be offered only if no appropriate public school special education placement is available.⁵⁸ Federal and state laws do not require school districts to provide the best possible, or the "optimum placement," but rather an "appropriate placement." If the Board of Education operates a program that will meet your child's special education needs, it must recommend that program for the child, even if a private special education school program offers some services not included in the public school program, or if that private school seems "better."

An appropriate special education placement must be in the least restrictive environment in which the child can be educated. The law presumes that education in the public school system with non-disabled children is preferable to segregating students in special classes and special schools. Because almost all private schools serving children with disabling conditions accept only children with such conditions, they are, by definition, more restrictive environments than special classes located in regular public schools. If the CSE decides that your child is not ready for daily interaction with non-disabled children, they will still try to find a self-contained special education class located in a public school before turning to the private special education schools.

If your child needs a special school, the CSE must try to find a public special school before examining private schools. And among private special education schools,

⁵⁸ Funding for private schools is also provided, usually for the current school year only if the Board of Education fails to meet its evaluation and placement timelines. See Nickerson Letters, page 165

the Committee will first look for one that provides opportunities for its students to associate with non-disabled children rather than one that does not.

It is sometimes necessary to go to an impartial hearing to obtain reimbursement for private school placement. At a hearing it will be necessary to prove that the public school setting offered is inappropriate to your child's needs and that the private school is appropriate. The Hearing Officer will also weigh any considerations of fairness (called "equitable considerations") that might influence the decision.⁵⁹

B. Locating a Private School

Each CSE has a book that lists and describes approved private schools in New York City and New York State. This book describes the ages and the disabling conditions of each school's students. Make sure the private school you select is approved for educating children who have the same disabling condition as your child. A private school "approved" to serve emotionally disabled children may not be "approved" to serve children with visual impairments.

If the public school system is unable to provide an appropriate placement, the CSE should actively help you find a private special education school. In addition to the CSE, the downstate office of the State Education Department is another resource to locate private schools serving children with disabling conditions.

Private schools will need your child's evaluation reports and, to save time, the CSE should furnish copies for each school and send the records to the schools suggested.

⁵⁹ School Committee of Town of Burlington, Mass. v. Department of Education of Massachusetts, 471, U.S. 359, 105 S. Ct. 1996, 85 L. Ed. 2d 385 (1985).

Some schools prefer to review the records before meeting your child. The next step is for you and your child to have an interview with the school. At the interview, you will have an opportunity to tour the school and meet the staff.

C. Transportation

When private school placement is approved, your child is entitled to free transportation either by public bus and/or train pass, or on a contract bus.

D. If Your Child's Private School Placement is No Longer Appropriate

If you believe that your child's private school placement is no longer appropriate, request a re-evaluation of the child and a review of his/her placement. When the placement of a child who attends a special education private school is reviewed, the CSE can recommend an appropriate public school program. Requesting a transfer from one private school to another will cause the CSE to review whether an appropriate public school program is available and, if a change of placement is recommended, the CSE is required, if possible, to locate a new program in a public school. You may request an impartial hearing to challenge the appropriateness of any new placements.

E. Considerations About Private School

When deciding whether to request private school placement, keep in mind that if your child will soon be able to benefit from opportunities to associate with non-disabled children, s/he will probably not get the needed "mainstreaming" at a private special education school.

If your child is high school-aged, find out how each school handles graduation. Some questions that should be asked of private school administrators are: What kind of

diploma or certificate does the school offer? Do students get credit toward graduation when they pass courses? Can students take Regents courses? Are the academic subjects which are taught sufficient preparation for taking the General Equivalency Diploma (GED) exam? Is there vocational training? What trades can students learn? On what level?

F. Nickerson Letters

As a result of the continuing lawsuit Jose P. v. Sobol, the court has established special procedures for placing children in private schools at public expense in instances where the Board of Education has failed to meet mandated evaluation and placement timelines. These procedures are set into play when you receive a "Nickerson Letter."

A "Nickerson Letter" authorizes you to seek a private placement for your child instead of continuing to wait for the CSE to evaluate and place your child. As with any private school placement, the school must be approved by the State Education Department for serving children with the same disabling condition as your child.

The Nickerson Procedures are explained in the Nickerson Letter and attachments. The Board of Education is responsible for paying your child's tuition and transportation costs when you exercise your rights under a Nickerson Letter. However, it is very important to understand that when you place your child through these procedures, he/she will probably stay in the private school for the current school year only because the CSE will seek a public school placement for next year.

You will receive a Nickerson Letter if the Board of Education fails to meet the following timelines for evaluating and placing your child:

1. Your child must be evaluated and offered a placement, if one is necessary, within 65 school days of the date of referral, if your signed consent form was received by the date of referral. If your signed consent form was not received by the referral date, the Board has an additional 10 school days (for a total of 75 school days from the date of referral.)

2. Your child must receive a placement offer or a Nickerson Letter by August 15th if s/he was referred for evaluation before May 10th.

3. If your child is turning five years old and will be entering the public school system for the first time, you must receive a placement offer or a Nickerson Letter by June 15th if s/he was referred to the CSE for evaluation by March 1st. The placement offer or Nickerson Letter is due by July 15th if your child was referred to the CSE by April 1st.

Suspension of Students with Disabling Conditions

A. Overview

The U. S. Supreme Court ruled in Honig v. Doe⁶⁰ that your disabled child may not be suspended for more than ten days if the act for which s/he is being suspended is related to a disabling condition. In addition, before s/he can be removed from the class for more than ten days (which is, in essence, a change in placement), you must be given the chance to challenge the removal at an impartial hearing. S/he may be temporarily

⁶⁰ Honig v. Doe 108 S.Ct. 592 1988.

suspended for up to ten school days for behavior that poses an immediate threat to the safety of others even if the behavior is a manifestation of the disabling condition.

B. Principal's Suspensions

Special education students may be suspended from participation in school activity by the principal but only under emergency circumstances. Suspension is defined as the temporary removal from school of a special education student for alleged misconduct which constitutes an emergency circumstance. The length of suspension by a principal may not exceed five school days. An emergency circumstance is defined as a major behavioral incident which presents a clear and present danger of injury to other students, or school personnel, or which is so highly insubordinate or disorderly as to significantly impair the education of other students.

Special education students may not be suspended by a principal: 1) solely because of a previous history of disruptive behavior, 2) more than twice during the school year, or 3) twice consecutively. Additionally, as with general education students, special education students may not be suspended solely for truancy, smoking, cutting classes, or poor academic achievement. Students must not be prohibited from taking standardized tests during the suspension period. They must be permitted entry to school to take these tests.

Prior to suspending a special education student, s/he must be informed of the charges and given an opportunity to provide a description of the incident(s). You must be notified by telephone (if possible) and in writing concerning the reason(s) for suspension. A suspension conference, conducted by the principal, must be scheduled

within five school days from the date of suspension. If you cannot attend the scheduled conference and you request a date past five school days from the date of suspension, the principal may exercise the option to hold the conference on the scheduled date regardless of whether you or your child appear.

At the suspension conference, you may be represented by counsel, an advocate or other advisor and may present witnesses on your child's behalf. You may question all persons involved in the incident.

At the end of the suspension conference if it is determined that the suspension was not justified, your child must be returned to school immediately and all records relating to the suspension removed from school files (expunged). If it is determined that the suspension was justified, then no more than five school days from the date of the suspension your child must be permitted to return to school. The principal may also refer him/her to the appropriate SBST or CSE.

Appeals of an adverse decision by the principal must be made in writing within twenty school days of the date on which the principal issued the decision. Appeals involving elementary and junior high school students proceed in the following sequence: 1) to the community superintendent, 2) to the community school board, 3) to the Central Board of Education. Appeals concerning action by the SBST or CSE are made directly to the Impartial Hearing Office.

C. Superintendent's Suspensions

If your child is found with a weapon in school or around school or on the bus, s/he may be subject to a superintendent's suspension and arrest. The procedures for a

weapons suspension are contained in Chancellor's Regulation A-430⁶¹, which also lists prohibited weapons and articles.

If your child is found with a weapon or uses any other dangerous instrument as a weapon, the principal must inform your child of the charges and give him/her a chance to offer his/her side of the story. If the principal feels that a suspension is necessary, s/he must ask the superintendent to impose an emergency suspension. If the superintendent authorizes an emergency suspension, the principal must follow all of the notification procedures outlined in the previous section on principal's suspensions.

Superintendent's suspension conferences are held at the Special Education Hearing Office at 110 Livingston Street, Brooklyn . You, your child, and your advocate or lawyer, as well as any witnesses, may attend this conference. If the charges are dismissed, your child should be immediately reinstated in class and any record of the suspension should be removed from the school files. If the charges are upheld, your child may be:

1. Reinstated to class with no record of suspension;
2. Reinstated to class with a record of the suspension being noted on his/her permanent record;
3. Reinstated to class with the provision that the record of the suspension will be sealed (kept apart from other records) and expunged (erased) on graduation or departure from the school system if there are no further school discipline problems;
4. Transferred to another class in the same program at the same or another site;

⁶¹ See Appendix A-48 to A-54

5. Referred to the SBST or CSE for an emergency reassessment to be completed within 10 working days, during which time s/he may be reinstated to class or transferred to another class. If the Chief Administrator of the Division of Special Education feels it is necessary, your child may be placed on continued suspension for the duration of the assessment period, but for no more than 10 working days from the date of initial suspension. Your consent is not required for this reassessment.

You may appeal a superintendent's decision to suspend or transfer your child or to note the suspension on your child's permanent record. If your child attends a self-contained class or a school exclusively for children with disabling conditions, or is in high school, appeals must be made to the Chancellor of the Board of Education, in writing, within twenty school days of the decision. Two copies of the appeal must be filed with the Office of Legal Services, 110 Livingston Street, 9th Floor, Brooklyn, NY 11201.

If your child is an elementary or junior high school student attending a district program, you must first appeal the Superintendent's decision to your Community School Board within twenty school days of the hearing office's decision.

You may appeal a decision to refer your child for reassessment or any recommendation to change your child's program or evaluation directly to the Impartial Hearing Office by requesting an impartial hearing.

Glossary

GLOSSARY

Accessible Building - a barrier-free building in which a person with physical disabilities can move and travel freely to use facilities. This means there must be ramps, elevators, bathrooms large enough for wheelchairs, lowered drinking fountains, etc.

Affidavit - a sworn and notarized statement.

Appeal - a request to the State Review Officer to review the decision of an Impartial Hearing Officer, or a request to the Chancellor of the New York City Board of Education to review a decision regarding the suspension of a student with disabling conditions.

Approved Private School - a private school for children with disabling conditions which has passed an inspection by the State Education Department and is on the list of private schools eligible for Board of Education funding.

Articulation - 1) a term used by the Board of Education to refer to children moving from one level of school to another, i.e., leaving junior high school to go to high school; 2) a term used in speech and language evaluations to describe how a person makes sounds.

Consultant Teacher - a certified special education professional who provides direct or indirect services to enable a student with a disability to receive education in a general classroom. This specially designed, individualized or group instruction may be provided directly to the student or indirectly to his/her general education teacher(s). Consultant teacher services constitute one kind of itinerant service.

Itinerant Teacher - a certified special education professional who travels to more than one school serving children who need his/her specialized help, i.e., a speech teacher or occupational therapist.

Integrated Related Service - services that are necessary to assist a child to benefit from special education which are delivered in a general education classroom. These services may include physical, occupational, speech and hearing therapies, as well as certain medical or school health services.

Jose P. v. Sobol - a lawsuit challenging the Board of Education's failure to appropriately evaluate and place New York City children with disabling conditions in a timely manner and its violation of legal requirements regarding the provision of special education and related services.

Least Restrictive Environment - the federally mandated requirement that "to the maximum extent appropriate," all children with disabilities receive education with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the general education environment occurs only when the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services (including itinerant services and integrated related therapies) cannot be achieved satisfactorily.

Lora v. Board of Education - a lawsuit against the Board of Education charging it with operating racially segregated special day schools to which African-American and Latino students, classified as emotionally disabled, were assigned.

Low-Incidence Programs - a term used by the Board of Education to refer to classes for children with very severe disabilities (multiple disabling conditions, autism, severe sensory impairment, profound retardation). Because fewer students have these disabling conditions, the Central Board of Education operates programs for these students, called "citywide programs", in a few sites in each borough.

Mainstreaming - a term which refers to educating students with disabling conditions, with or without the use of supplementary aids and services, with general education students.

Paraprofessional - a teacher aide or teacher assistant who works in the classroom under the supervision of a licensed or certified special education teacher and provides direct instructional service to students or assists teachers in non-teaching duties.

Placement - a term that refers to the type of special education program recommended for a child.

Public Law 94-142 (P.L. 94-142) or the Individuals with Disabilities Education Act - the federal law requiring schools to provide to each child with disabling conditions a free and appropriate public education and/or related services in the least restrictive environment and to develop an Individualized Education Plan (IEP) for each child.

Program - the type of special education services recommended by the Committee on Special Education or the School Based Support Team for a child with disabling conditions.

Recommendation - a program of special education and/or related services suggested for a child by the Committee on Special Education

Referral - a written request by a parent, school personnel or physician for the evaluation of a child to determine if s/he has a disabling condition and needs special education and/or related services.

Regulations of the Commissioner - rules promulgated by the New York State Commissioner of Education and passed by the New York State Board of Regents to implement State Education laws.

Related Services - services that are necessary to assist a child to benefit from special education. These include physical, occupational, speech and hearing therapies, psychological counseling, therapeutic recreation, diagnostic medical services, school health services, social work services, and transportation.

Resource Room - a program for which a child is removed from his/her regular classroom to special education instruction for a minimum of one period a day, up to a maximum of one-half of the school day. State law requires that there be no more than five children in the resource room per instructional period.

Section 504 - refers to a provision of the federal Rehabilitation Act of 1973 which prohibits discrimination based on disabling condition. (See 29 U.S.C. Section 794 and the Regulations at 45 C.F.R. Section 84.)

Self-Contained Special Class/School - a special education program in which students with similar special education needs are placed for all or part of their school day.

School Day - an elementary school student is legally entitled to five hours of instruction each day and a secondary school student to five and a half hours daily.

Site - the term used to refer to the specific school in which a child is to receive a special education program and/or related service recommended by the Committee on Special Education.

Special Education - instructional programs designed specifically to meet the individual educational needs of each child with disabilities. The word "special" refers to "unique" and "extra" educational services.

Special Education Teacher - a New York State-licensed teacher who has taken at least twenty-four semester hours in special education; specific licenses are required for teachers of the deaf and hearing impaired, the speech and hearing disabled, and the blind and partially sighted.

State-Supported or State-Operated Schools - schools funded or operated by New York State for the deaf, blind or severely multiply disabled.

Stipulation - an agreement between opposing parties which is legally binding. At a hearing, parties may agree to certain facts which eliminates the need to prove them during the hearing. Prior to or during a hearing, the Board of Education may agree to provide the services the parent is seeking and the case will be settled by stipulation.

Support Services - services which enable a non-disabled student to continue being educated in regular classes and avoid the need for formal assessment.

Surrogate Parent - a person appointed by the Board of Education to represent a child when his/her parents or guardian are unknown, unavailable, or when the child is a ward of the State. This appointment is for the sole purpose of securing appropriate special education placement and services.

Triennial Re-evaluation - a complete retesting of a special education student, required every three years by State and Federal law.

Vocational Education - programs to prepare students for employment. Each special education student is legally entitled to a vocational education program adapted to his/her particular needs and interests.

APPENDIX

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Directories

COMMITTEE ON SPECIAL EDUCATION DIRECTORY

MANHATTAN

District 1

P.S. 142
100 Attorney Street
New York, NY 10002
(212) 533-1440

District 3

P.S. 165
234 West 109th Street
New York, NY 10025
(212) 865-2003

District 5

P.S. 175
175 West 134th Street
New York, NY 10030
(212) 491-5550
(212) 862-7500 Placement

District 2

P.S. 33
281 9th Avenue
New York, NY 10001
(212) 279-2260

District 4

P.S. 146
421 East 106th Street
New York, NY 10029
(212) 876-9760

District 6

660 West 183rd Street
New York, NY 10033
(212) 923-0111

BRONX

District 7

I.S. 184
778 Forest Avenue
Bronx, NY 10456
(212) 585-8670

District 9

P.S. 42
Washington Avenue &
Claremont Parkway
Bronx, NY 10457
(212) 583-9000
(212) 583-0723 Placement

District 11

Truman H.S.
750 Baychester Ave., 5th Floor
Bronx, NY 10475
(212) 542-7680

District 8

J.H.S. 101
2750 Lafayette Avenue
Bronx, NY 10465
(212) 409-9004

District 10

5500 Broadway
Bronx, NY 10463
(212) 220-1003

District 12

I.S. 158
800 Home Street
Bronx, NY 10456
(212) 542-7680

BROOKLYN

District 13

P.S. 93
31 New York Avenue
Brooklyn, NY 11216
(718) 778-8007

District 15

P.S. 261
314 Pacific Street
Brooklyn, NY 11201
(718) 855-0220

District 17

P.S. 138
801 Park Place
Brooklyn, NY 11216
(718) 493-3535

District 19

P.S. 213
1965 Linden Blvd.
Brooklyn, NY 11207
(718) 498-6902

District 21

P.S. 100
2951 West 3rd Street
Brooklyn, NY 11224
(718) 266-9800

District 23

P.S. 184
273 Newport Street
Brooklyn, NY 11212
(718) 345-6410

District 14

I.S. 318
101 Walton Street
Brooklyn, NY 11206
(718) 384-7600

District 16

P.S. 81
990 DeKalb Avenue
Brooklyn, NY 11221
(718) 574-0800

District 18

P.S. 242
100-01 Flatlands Ave
Brooklyn, NY 11236
(718) 495-9600

District 20

P.S. 247
7000 21st Avenue
Brooklyn, NY 11204
(718) 236-3344

District 22

P.S. 222
3301 Quentin Road
Brooklyn, NY 11234
(718) 375-1231

District 32

P.S. 377
200 Woodbine Street
Brooklyn, NY 11221
(718) 453-4521

QUEENS

District 24

P.S. 153
72-52 Metropolitan Ave.
Middle Village, NY 11379
(718) 628-1083

District 26

P.S. 46
218th Street & 67th Avenue
Bayside, NY 11364
(718) 229-1900
(718) 229-0194 Placement

District 28

P.S. 40
109-20 Union Hall Street
Jamaica, NY 11433
(718) 526-0450
(718) 526-7244 Placement

District 30

P.S. 76
36-36 10th Street
Long Island City, NY 11106
(718) 361-8220
(718) 361-1926 Placement

District 25

I.S. 237
46-21 Colden Street
Flushing, NY 11355
(718) 445-1213
(718) 445-1220 Placement

District 27

P.S. 223
125-20 Sutphin Blvd.
Jamaica, NY 11436
(718) 322-1045
529-5521
(718) 322-3333 Placement

District 29

P.S. 147 Mini-School
218-01 116th Avenue
Cambria Heights, NY 11411
(718) 528-8791
(718) 528-0047 Placement

STATEN ISLAND

District 31

P.S. 48
1055 Targee Street
Staten Island, NY 10304
(718) 816-1900
(718) 816-0990 Placement

DISTRICT ADMINISTRATORS OF SPECIAL EDUCATION

Elliot Levy
Community School District 1
80 Montgomery Street
New York, NY 10002
(212) 406-2278

Dr. Leonard Barham
Community School District 3
300 West 96th Street
New York, NY 10025
(212) 678-5852/57

Barbara J. Kenner
Community School District 5
P.S. 175
175 West 134th Street
New York, NY 10030
(212) 491-5550, 690-5855/56

Yvette Goorevitch
Community School District 7
I.S. 184
778 Forest Avenue
Bronx, NY 10456
(212) 585-9052

Brenda Brown
Community School District 9
1377 Jerome Avenue, Room 8
Bronx, NY 10452
(212) 681-5000, Ext. 29

Mary Ann Alling
Community School District 11
1250 Arnow Avenue, Room 127
Bronx, NY 10469
(212) 519-2623

Betty Miller
Community School District 13
355 Park Place
Brooklyn, NY 11238
(718) 636-3245

Joyce Silvershein
Community School District 2
P.S. 116
210 East 33rd Street, Room 404
New York, NY 10016
(212) 481-1663/65/78

Stephen F. Kahn
Community School District 4
P.S. 146
421 East 106th Street
New York, NY 10029
(212) 427-2749

Joel Reiser
Community School District 6
660 West 183rd Street
New York, NY 10033
(212) 795-7008

Debra Pagnozzi
Community School District 8
650 White Plains Road, Room 209
Bronx, 10473
(212) 828-8833

Anthony Colon
Community School District 10
P.S. 95
3961 Hillman Avenue
Bronx, NY 10463
(212) 220-8808

Julia Martas
Community School District 12
1000 Jennings Street
Bronx, NY 10460
(212) 328-2310, Ext. 52

Josephine O'Brien
Community School District 14
I.S. 318
101 Walton Street
Brooklyn, NY 11206
(718) 384-7600

District Administrators of Special Education (continued)

Steven Rosen (Acting)
Community School District 15
360 Smith Street
Brooklyn, NY 11231
(718) 330-9313

Fannie Dickerson
Community School District 17
801 Park Place
Brooklyn, NY 11216
(718) 467-0542

Lenore Stoller
Community School District 19
P.S. 13
557 Pennsylvania Avenue
Brooklyn, NY 11207
(718) 257-6900

Laura Plotnik
Community School District 21
P.S. 238
1633 East 8th Street
Brooklyn, NY 11223
(718) 998-7084

Olivia Cromer
Community School District 23
2240 Dean St. (nr. Hopkinson)
Brooklyn, NY 11233
(718) 495-7711

Sylvia Murzin
Community School District 25
P.S. 201
65-11 155th Street, Room 202
Flushing, NY 11367
(718) 359-0666

Don Marinaro
Community School District 27
P.S. 45
126-28 150th Street
South Ozone Park, NY 11436
(718) 322-1210

Virginia Arrington
Community School District 16
1010 Lafayette Avenue
Brooklyn, NY 11221
(718) 574-2345

Judy Orange
Community School District 18
755 East 100th Street
Brooklyn, NY 11236
(718) 257-7518/08/34/35

Phyllis Shroot
Community School District 20
P.S. 105
1031 59th Street
Brooklyn, NY 11219
(718) 851-3242

Cindy Jacobs
Community School District 22
2525 Haring Street, Room 303
Brooklyn, NY 11235
(718) 648-6094

Howard Weiner
Community School District 24
67-54 80th Street, Room 101
Middle Village, NY 11379
(718) 326-8272/73

Millicent Silver
Community School District 26
61-15 Oceania Street
Bayside, NY 11364
(718) 423-9110/12

Zeader Gold
Community School District 28
P.S. 3
108-55 69th Avenue
Forest Hills, NY 11375
(718) 830-3277/78

District Administrators of Special Education (continued)

Bruce Moody
Community School District 29
221-10 Jamaica Avenue
Queens Village, NY 11428
(718) 740-1000, 525-0615

Dorothy Hively
Community School Districtg 30
P.S. 76
36-36 10th Street
Long Island City, NY 11106
(718) 361-8400/8220/8440

Dermott T. Kehoe
Community School District 31
211 Daniel Low Terrace
Staten Island, NY 10301
(718) 448-9600

Sonia Hernandez Flax
Community School District 32
P.S. 274 Annex
797 Bushwick Avenue
(entrance on DeKalb Avenue)
Brooklyn, NY 11221
(718) 574-0211

HIGH SCHOOL SUPERINTENDENCIES

OFFICE OF THE SUPERINTENDENT OF BRONX HIGH SCHOOLS

Herbert H. Lehman High School
3000 East Tremont Ave., Room 126
Bronx, NY 10461
Superintendent's Office - (212) 892-9926
Clinical Services Unit - (212) 824-3725/26/27

OFFICE OF THE SUPERINTENDENT OF BROOKLYN HIGH SCHOOLS

Edward R. Murrow High School
1600 Avenue L, Room 274
Brooklyn, NY 11230
Superintendent's Office - (718) 258-4826
Clinical Services Unit - (718) 377-3177

OFFICE OF THE SUPERINTENDENT OF BASIS HIGH SCHOOLS

Bay Ridge High School Annex
1171 65th Street, Room 210 A, B, C, and 202
Brooklyn, NY 11219
Superintendent's Office - (718) 236-5455
Clinical Services Unit - (718) 256-9772/73/74

OFFICE OF THE SUPERINTENDENT OF MANHATTAN HIGH SCHOOLS

Martin Luther King Jr. High School
122 Amsterdam Avenue, Room 338
New York, NY 10023
Superintendent's Office - (212) 496-2690
Clinical Services Unit - (212) 496-0440/0546/1181

OFFICE OF THE SUPERINTENDENT OF QUEENS HIGH SCHOOLS

Newtown High School Annex
105-25 Horace Harding Expressway, Room 109
Corona, NY 11368
Superintendent's Office - (718) 592-4496
Clinical Services Unit - (718) 699-3330/31/32

RESOURCE LIST OF AGENCIES

American Association for the Blind
15 West 16th Street
New York, N.Y. 10011
(212) 620-2000

ASPIRA, Inc.
332 East 149th Street
Bronx, N.Y. 10451
(212) 292-2690

The Associated Blind, Inc.
135 West 23rd Street
New York, N.Y. 10010
(212) 255-1122

Association for Children with
Retarded Mental Development
2212 Third Ave.
New York, N.Y. 10035
(212) 289-9381

Association for Retarded Children
N.Y.S. Chapter
162 Fifth Ave.
New York, N.Y. 10010
(212) 741-0100

Association for the Help
of Retarded Children
N.Y.C. Chapter
200 Park Avenue South
New York, N.Y. 10003
(212) 254-8203

Nat'l Office
205 East 42nd St.
New York, N.Y. 10017
(212) 986-3240

New York Association for the Blind
111 East 59th St.
New York, N.Y. 10022
(212) 355-2200

N.Y.C. Department of Mental Health
and Mental Retardation Services
Information and Referral Service
93 Worth St.
New York, N.Y. 10013
(212) 566-1887

Commission for the Blind
and Visually Handicapped
40 North Pearl Street
Albany, N.Y. 12243
(518) 473-1801

New York State Commission on Quality
of Care for the Mentally Disabled
80 Maiden Lane Ste. 320B
New York, N.Y. 10038
(212) 804-1639

Community Council of Greater
New York Information Bureau
275 Seventh Ave.
New York, N.Y. 10001
(212) 741-8844

Epilepsy Society of New York City
545 Eighth Ave., 14th Fl.
New York, N.Y. 10018
(212) 967-2930

Industrial Home for the Blind
57 Willoughby Street
Brooklyn, N.Y. 11201
(718) 522-2122

Institute of Rehabilitative Medicine
560 First Ave.
New York, N.Y. 10016
(212) 340-7300

Resource List of Agencies (continued)

Mental Health Association of New York
and Bronx Counties, Inc.
235 Park Ave.
New York, N.Y. 10017
(212) 254-0333

Nat'l Multiple Sclerosis Society
New York League for the Hard of
Hearing
71 West 23rd St.
New York, N.Y. 10010
(212) 741-7650

New York State Association for Mental
Health
252 Seventh Ave.
New York, N.Y. 10001
(212) 627-0277

Queens County Mental Health Society
80-45 Winchester Blvd.
Queens Village, N.Y. 11427
(718) 479-0030

Retarded Infants Services
386 Park Ave. South
New York, N.Y. 10016
(212) 889-5464

United Cerebral Palsy of New York, Inc.
122 East 23rd St.
New York, N.Y. 10010
(212) 677-7400

United Parents Associations of New York
70 Lafayette St.
New York, N.Y. 10013
(212) 619-0095

Mayor's Office for the Handicapped
52 Chambers St., Rm.206
New York, N.Y. 10007
(212) 566-0972

Resources for Children with Special
Needs, Inc.
200 Park Ave. South
New York, N.Y. 10003
(212) 677-4650

Learning Disabilities Hotline for N.Y.C.
817 Broadway
New York, N.Y. 10012
(212) 677-3838

RESOURCES FOR INDEPENDENT EVALUATIONS

(The list of resources below is meant to provide information to parents who want access to evaluation sources other than those provided by the Board of Education. Advocates for Children does not recommend or endorse the work of any agency listed below.)

Association for the Help of Retarded
Children
200 Park Avenue South
New York, NY 10003
(212) 254-8203

Offers diagnostic pre-school testing,
psychiatric evaluation, psycho-social
evaluation, psychological testing, speech,
hearing and/or language, vocational
evaluation

Bellevue Pediatric Resource Center
Bellevue Hospital
27th Street & First Avenue - Rm. 156
New York, NY 10016
(212) 561-5217

Hospital offers diagnostic pre-school
testing, neurological examination,
psychiatric evaluation, psycho-social
evaluation, psychological testing, medical
evaluation, physical examination, speech,
hearing and/or language testing

Bird S. Coler Memorial Hospital
Roosevelt Island
New York, NY 10044
(212) 888-2424

Hospital offers diagnostic pre-school
testing, neurological examination,
psychiatric evaluation, psycho-social
evaluation, psychological testing, medical
evaluation, physical examination, speech,
hearing and/or language testing only for
patients who are in that institution

Catholic Charities Family & Community
Services
300 East 116th Street
New York, NY 10029
(212) 876-0210

Offers diagnostic pre-school testing,
psychiatric evaluation and psycho-social
evaluation

Champ Morningside Children's Center
311 West 120 Street
New York, NY 10027
(212) 864-0400

Center arranges for diagnostic pre-school
testing, neurological examinations,
psychological testing, medical evaluation,
physical examination, speech, hearing
and/or language testing

Resources for Independent Evaluations (continued)

Karen Horney Clinic
329 East 62nd Street
New York, NY 10021
(212) 838-4333

Clinic provides psychiatric evaluation, psycho-social evaluation, and psychological testing

Institute of Applied Human Dynamics
St. Mary's Park Rehabilitation Institute
2213 East Tremont Avenue
Bronx, NY 10462
(212) 231-7000

Institute provides the following services only for current patients: diagnostic pre-school testing, psycho-social evaluation, psychological testing, medical evaluation, speech, hearing and/or language testing, and vocational evaluation

Henry Htleeson Center for Child Research
5050 Iselin Avenue
Bronx, NY 10471
(212) 549-6700

Center provides diagnostic pre-school testing, neurological evaluation, psychiatric evaluation, psycho-social evaluation, psychological testing, physical examination, speech, hearing and/or language testing

James Weldon Johnson Family & Children's Counseling Center
2089 Third Avenue
New York, NY 10029
(212) 876-0300

Center provides diagnostic pre-school testing, psychiatric evaluation, psycho-social evaluation, psychological testing, medical evaluation, and physical examinations

Interfaith Hospital & Medical Center of Brooklyn
Psychiatry Clinic
55 Prospect Place
Brooklyn, NY 11238
(781) 935-7000

Clinic provides diagnostic pre-school testing, psychiatric evaluation, psycho-social evaluation, psychological testing, and physical examination

Kennedy Child Study Center
151 East 67 Street
New York, NY 10021
(212) 988-9500

Center provides diagnostic pre-school testing, psychiatric evaluation, psycho-social evaluation, psychological testing, medical evaluation, physical examination, speech, hearing and/or language testing

Long Island Consultation Center
97-29 64 Road
Rego Park, NY 11374
(718) 896-3400

Center provides diagnostic pre-school testing, psychiatric evaluation, psychological testing, physical testing, and vocational evaluation

Resources for Independent Evaluations (continued)

Long Island Jewish-Hillside Medical Center
Schneider Children's Hospital
269-01 76th Avenue
New Hyde Park, NY 11402
(516) 470-3500

Center provides diagnostic pre-school testing, psychiatric evaluation, psychological testing, physical testing, and vocational evaluation

Manhattan Children's Psychiatric Center
Ward's Island
New York, NY 10035
(212) 369-0500

Center only performs medical evaluations upon admittance into their program

Manhattan Eye, Ear and Throat Hospital
Speech and Hearing Clinic
210 East 64 Street
New York, NY 10021
(212) 838-9200

Clinic provides medical examinations and evaluations of the eyes, ears and throat exclusively

Marymount College
Communication and Learning Center
221 East 71 Street
New York, NY 10021
(212) 517-0400

Center provides diagnostic pre-school testing, speech, hearing and/or language testing

Mental Retardation Institute
Cedarwood Hall
Valhalla, NY 10595-1689
(914) 285-8204

Institute provides diagnostic pre-school testing, neurological examination, psychiatric evaluation, psycho-social evaluation, psychological testing, medical evaluation, physical examination, and speech, hearing and/or language testing.

Mount St. Ursula Speech Center
200th Street & Marion Avenue
Bronx, NY 10458
(212) 584-7679

As forms of general therapy, center provides diagnostic pre-school testing, neurological examination, psychological examination, and speech, hearing and/or language testing

Mount Sinai Hospital
Dept. of Child/Adolescent Psychiatry
100th Street & Fifth Avenue
New York, NY 10029
(212) 241-7179

Department provides diagnostic pre-school testing, neurological testing, psychiatric evaluation, psycho-social evaluation, psychological testing, medical evaluation, physical examination, and speech, hearing and/or language testing

Resources for Independent Evaluations (continued)

Child Development Center of the Jewish
Board of Family and Children's Services
120 West 57 Street
New York, NY 10019
(212) 582-9100

Center provides diagnostic pre-school
testing, neurological examination,
psychiatric evaluation, psychological
testing, speech, hearing and/or language
testing

City College Speech and Hearing Center
140th St. & Convent Avenue
New York, NY 10031
(212) 690-5377

Center provides diagnostic pre-school
testing, and speech, hearing and/or
language testing

The City University Child Center
138th St. & Convent Avenue
New York, NY 10031
Att: Clinical Psychology Dept.
(212) 6690-6602

Center provides diagnostic pre-school
testing, psycho-social evaluation,
psychological testing

C.U.N.Y Psychological Center
8101 Broadway
New York, NY 10031
(212) 690-6602

Center does some psycho-social
evaluation and psychological testings in
the Fall only.

The Columbia Presbyterian Hospital
Psychology Dept.
622 West 168 Street
New York, NY 10032
(212) 305-2500

Hospital provides diagnostic pre-school
testing, neurological examination,
psychiatric evaluation, psycho-social
evaluation, psychological testing, medical
evaluation, physical examination, speech,
hearing and/or language testing, and
vocational evaluation

Psychological Consultation Center
120th Street & Broadway
New York, NY 10027
(212) 676-3262

Center does psychological testing and
vocational evaluation

Speech and Hearing Center
Box 191
525 West 120 Street
New York, NY 10027
(212) 678-3409

Center does speech, hearing and/or
language testing.

Resources for Independent Evaluations (continued)

East Harlem Council for Human
Services, Inc.
2253 Third Avenue
New York, NY 10035
(212) 650-4938

Federation of the Handicapped
211 West 14 Street
New York, NY 10011
(212) 242-9050

Flower Hospital Developmental Disabilities
Clinic
1249 Fifth Avenue
New York, NY 10029
(212) 360-1000

Green Chimney Children's Services, Inc.
Edwin Gould Foundation Inc. NY
Rd. 3 Putnam Lake Road
Brewster, NY 10509
(212) 892-6810

Harlem Hospital
Child and Adolescent Center
506 Lenox Avenue 5K
New York, NY 10037
(212) 491-8454

Harlem Hospital
Division of Child Psychiatry
506 Lenox Avenue
New York, NY 10037
(212) 491-1234

Harlem Interfaith Counseling Service
215 West 125 Street
New York, NY 10027
(212) 662-8613

Council provides psychiatric evaluation,
psycho-social evaluation, medical
evaluation and physical examinations

Federation provides vocational evaluation,
training and placement

Clinic provides services only for mentally
disabled patients as follows: neurological
examination, psychiatric evaluation,
psycho-social evaluation, psychological
testing, medical evaluation, physical
examination, speech, hearing and/or
language testing

Organization provides diagnostic pre-
school testing, neurological examination,
psychiatric evaluation, psycho-social
evaluation, psychological testing, medical
evaluation, physical examination, speech,
hearing and/or language testing, and
vocational evaluation

Center provides diagnostic pre-school
testing, neurological examination,
psychiatric evaluation, psycho-social
evaluation, psychological testing, medical
evaluation, physical evaluation, speech,
hearing and/or language testing

Center provides psychiatric evaluation,
psycho-social evaluation, psychological
testing and medical evaluations.

Service provides psychiatric evaluation,
psycho-social evaluation and
psychological testing

Resources for Independent Evaluations (continued)

Muscular Dystrophy Association
810 Seventh Avenue
New York, NY 10019
(212) 557-8450

New York Association for the Blind
Child Development Center for the Visually Impaired
111 East 59th Street
New York, NY 10022
(212) 355-2200

New York Association for the Blind
Lighthouse
111 East 59th Street
New York, NY 10022
(212) 355-2200

New York Catholic Guardian Society
1011 First Avenue
New York, NY 10022
(212) 371-1000

New York Chapter-Epilepsy Foundation of America
67 Irving Place
New York, NY 10003
(212) 677-6550

N.Y. Institute for Special Education
999 Pelham Parkway
Bronx, NY 10469
(212) 519-7000

New York League Hard-of-Hearing
71 West 23rd Street
New York, NY 10010
(212) 741-7650

Association provides the following services to those that are registered with the M.D.A.: neurological examination, medical evaluation, and physical examination

Association provides diagnostic pre-school testing, psychiatric evaluation, psycho-social evaluation, psychological testing, medical evaluation, physical examination, hearing and/or language testing

Association provides diagnostic pre-school testing, psycho-social evaluation, psychological testing, speech, hearing and/or language testing, and vocational training

Society provides diagnostic pre-school testing, psychiatric evaluation, psycho-social evaluation, psychological testing and vocational evaluation

Foundation provides psychiatric evaluation and psycho-social evaluation

Institute provides diagnostic pre-school testing, psycho-social evaluation, psychological testing, medical evaluation, physical examination, speech, hearing and/or language testing, and vocational evaluation

League provides diagnostic pre-school testing, medical evaluation and speech, hearing and/or language testing

Resources for Independent Evaluations (continued)

New York Medical College
Comprehensive Health Care Program
163 West 97th Street
New York, NY 10025
(212) 860-7504

New York University Medical Center
Institute of Rehabilitation Medicine
400 East 34 Street
New York, NY 10016
(212) 679-3200

Northside Center for Child Development
1301 Fifth Avenue
New York, NY 10029
(212) 860-1616

Payne Whitney Clinic
Child Psychiatry Clinic
525 East 68 Street
New York, NY 10021

Queens College Speech and Hearing
Center
Queens College
Flushing, NY 11367
(718) 520-7358

St. Luke's Hospital
Division of Child Psychiatry
308 West 94th Street
New York, NY 10025
(212) 523-4000

St. Vincent's Hospital Medical Center of
New York City
Seventh Avenue & West 11 Street
New York, NY 10011
(212) 790-7676

Program provides diagnostic pre-school testing, psycho-social evaluation, medical evaluation, and physical examination

Center provides diagnostic pre-school testing, neurological examination, psycho-social evaluation, psychological testing, medical evaluation, physical examination, speech, hearing and/or language testing and vocational evaluation

Center evaluates children and, if necessary, they perform psychiatric evaluation, psycho-social evaluation and psychological testing

Clinic provides diagnostic pre-school testing, psychiatric evaluation, psycho-social evaluation, psychological testing, medical evaluation and physical examination

Center provides diagnostic pre-school testing and speech, hearing and/or language testing

Hospital provides diagnostic pre-school testing, psychiatric evaluation, psycho-social evaluation, psychological testing, and speech, hearing and/or language testing

Hospital provides diagnostic pre-school testing, neurological examination, psychiatric evaluation, psycho-social evaluation, psychological testing, medical evaluation, physical examination, speech, hearing and/or language testing, and vocational evaluation

Resources for Independent Evaluations (continued)

The Shield Institute
1800 Andrews Avenue
Bronx, NY 10453
(212) 299-7600

Institute provides diagnostic pre-school testing, psychiatric evaluation, psycho-social evaluation, psychological testing, medical evaluation, physical examination, speech, hearing and/or language testing, and vocational evaluation

Speech and Hearing Institute at I.C.D.
Rehabilitation and Research Center
340 East 24 Street
New York, NY 10010
(212) 679-0100

Institute provides speech, hearing and/or language testing

Staten Island Center for Developmental Disabilities
657 Castleton Avenue
Staten Island, NY 10301
(718) 448-9775

Center provides diagnostic pre-school testing, neurological examination, psycho-social evaluation, psychological testing, medical evaluation, physical examination, and speech, hearing and/or language testing

State University of New York State
College of Optometry
100 East 24 Street
New York, NY 10010
(212) 420-4900

College provides diagnostic pre-school testing, psycho-social evaluation, psychological testing, and medical evaluation

United Cerebral Palsy of New York, Inc.
122 East 23 Street
New York, NY 10010
(212) 677 - 7400

Provides diagnostic pre-school testing, psycho-social evaluation, psychological testing, medical evaluation, physical examination, speech, hearing and/or language testing, and vocational evaluation

Yeshiva University
Center of Psychological
& Psycho-Educational Services
55 Fifth Avenue
New York, NY 10003
(212) 790-0416

Center provides diagnostic pre-school testing, psycho-social testing and psychological testing

LEGAL AID AND LEGAL SERVICES OFFICES

Brooklyn Legal Services Corp. B
105 Court Street
Brooklyn, N.Y. 11201
(718) 237-5000

Columbia Law Clinical Seminars
Columbia University
116th Street & Broadway
New York, N.Y. 10027
(212) 431-7200

Community Action for Legal Services, Inc.
335 Broadway
New York, N.Y. 10013
(212) 431-7200

Harlem Legal Services, Inc.
144 West 125th Street
New York, N.Y. 10027
(212) 222-7800

The Legal Aid Society
Civil Division
11 Park Place, 18th Fl.
New York, N.Y. 10007
(212) 406-0750

Legal Services Program
of Community Service Society
105 East 22nd Street
New York, N.Y. 10010
(212) 254-8900

Mobilization for Youth Health Services, Inc.
199 Avenue B
New York, N.Y. 10009
(212) 254-1456

NAACP Legal Defense and Educational
Fund, Inc.
99 Hudson St.
New York, N.Y. 10013
(212) 586-8397

New York Civil Liberties Union
132 West 43rd St.
New York, N.Y. 10036
(212) 382-0557

N.Y.U. Law Program
(Washington Sq. Legal Services)
40 Washington Sq. South
New York, N.Y. 10012
(212) 998-6363

Puerto Rican Legal Defense and
Educational Fund, Inc.
99 Hudson St.
New York, N.Y. 10013
(212) 219-3360

School Based Support Team and
Committee on Special Education Forms

When the Board of Education sends you notices of appointments, meetings, recommendations, and decisions, these documents must be written in your native language. Notices are available in Chinese, Spanish, Italian and French-Creole. If you need notices in other languages, inform the CSE or SBST and they will be provided.

There are more than 60 forms that you may receive from the CSE or SBST. If you would like a complete packet, call AFC at (718) 729-8866. We have included here the "Notice of Parental Rights" which you will receive from the SBST or CSE social worker at your first appointment.

NOTICE OF PARENTAL RIGHTS
Revised March 10, 1987

When a student is referred for possible special education services, parents and students are guaranteed important rights. These rights protect the student and give parents an opportunity to be a part of the evaluation and placement process.

This notice is a partial list of your rights. You will also receive the booklet, Special Education in New York City: A Guide for Parents, when you meet with the social worker. This booklet explains all of your rights in greater detail. The social worker will also explain your rights when you meet.

1. Consent for Evaluation

Your child cannot be evaluated for the first time without your written consent. You may withdraw this consent at any time. However, if you do not consent, the principal of your child's school may request a meeting with you to discuss the need for an evaluation and may ask for an impartial hearing to demonstrate why the evaluation is necessary and should be done without your consent.

A child who is already receiving special education services may be reevaluated. Consent is not necessary for a reevaluation but all other due process rights described in this notice apply to the reevaluation process. You must be notified in advance if the school system plans to reevaluate your child.

2. Parent Participation

You will be invited to participate in all meetings about the educational evaluation and placement of your child.

3. Timelines

Once the school system has received a written referral, the school system has thirty (30) school days (work days during the summer) to evaluate the student and, if needed, recommend special education services. Services must be provided within 30 days from this recommendation or 60 days from the date of referral (whichever is shorter). However, if you delay the evaluation or placement, the school system may have more time to complete the process.

4. Records

All educational records concerning your child are confidential and are available only to school personnel who require them to work with the student. You have the right to inspect and have copies of all school files, records and reports about your child. If you wish to see your child's records and receive assistance in interpreting them, please contact the Chairperson of the Committee on Special Education (CSE), _____ at _____.

5. Evaluation

You may submit evaluation information to the school system which will be considered as part of its evaluation or review. A parent may, at any time, arrange for an independent evaluation by a qualified clinician at his/her own expense and have it considered by the school system.

If you disagree with the school system's evaluation, you may have a right to an independent evaluation at public expense. However, the school system may ask for an impartial hearing to show that the school system's evaluation is appropriate. You must notify the CSE if you wish to have the cost of an independent evaluation paid for at public expense.

Attached to this notice you will find a list of agencies where you may obtain an evaluation. You may use other agencies. However, evaluation from other sources may not be acceptable for reimbursement if they do not meet school system standards.

6. Consent for Special Education Services

You will be asked to give written consent before we provide special education services to your child for the first time. The student cannot begin to receive special education services without this written consent. You can withdraw consent at any time before these special education services begin. However, school officials may request an impartial hearing to demonstrate that your child needs a special education program or services.

7. Appeals to CSE or SBST Actions

If you consent, your child will be evaluated by a School Based Support Team (SBST). If you disagree with any action or inaction of the SBST, and the problem cannot be resolved at the school level, you may request that the CSE review this action or inaction. The social worker at the social history interview will explain these procedures to you and provide you with a form on which to make this request. If you wish, rather than use this form, you may write a letter to the CSE requesting an appeal.

Once an appeal to the CSE is made, the CSE will offer to meet with you and will make a recommendation within ten (10) school days of the receipt of the request for a CSE Review. After the 10 days, you may request an impartial hearing regardless of whether or not you have met with the CSE or whether or not the CSE has issued a recommendation. Paragraph 8 describes how to ask for an impartial hearing.

8. Impartial Hearings

If you wish to challenge the recommendation of the Committee on Special Education (CSE), you have the right to request an impartial hearing. To do so, send a letter to the Board of Education requesting a hearing. The letter should be addressed to: New York City Board of Education, Impartial Hearing Office, 110 Livingston Street, Room 118, Brooklyn, NY 11201.

9. Appeals from Impartial Hearing Decision

If you disagree with the decision of the Impartial Hearing Officer, you have a right to appeal the decision to the Commissioner of Education of New York State. Please refer to booklet, State Education Department: Your Child's Right to An Education, for specific steps to appeal. These booklets are available at the CSE and from the Impartial Hearing Office.

10. Placement During Evaluation and Appeals

During the evaluation and placement process and during any hearings or appeals, your child will remain in the current educational program unless you and the school system agree on a temporary placement.

If you are applying to the New York City public school system for the first time, your child will be placed in a general education program until these proceedings are completed unless you and the Board agree upon a temporary special education setting.

11. Legal and Advocacy Services

You may be able to obtain free or low cost legal or advocacy services. Attached to this notice is a list of names, addresses and telephone numbers of appropriate agencies for this purpose.

12. Other Participants at Meeting

You may bring any individual(s) you wish (friends, educators, lawyers or other concerned persons) to any meeting or hearing concerning your child.

At the time a meeting is scheduled, the SBST/CSE will ask you if a translator or an interpreter for the deaf is needed. If an interpreter or translator is necessary, and you cannot obtain one, the school system will provide a qualified translator or interpreter at no cost to you. Please call the CSE or SBST 72 hours before the meeting time if you need a translator or interpreter. You have the right to request that a physician member of the Committee on Special Education (CSE) attend certain meetings, but you must notify the CSE at least 72 hours prior to the scheduled meeting time.

Revised
3/10/87

SAMPLE

Individualized Education Program (IEP) Form

CSE Case # _____

Date of Conference _____

NYC ID # _____

☐ Reconvened ☐ S8ST/CSE Update _____

Data Bank # _____

☐ Teacher/Provider Update _____**INDIVIDUALIZED EDUCATION PROGRAM**

Student's Name _____ (last) _____ (first)	DOB _____	Sex _____
Address _____ (zip code)		Apt. _____
Home Dist. _____	Service Dist. _____	Home Phone _____
Name of Parent/Guardian _____		English LAB Score _____ Test Date _____

Parent's Business Phone (_____) _____ Preferred Language of Parent _____

Agencies Known to Student _____ Language Student Speaks/Understands _____

Name of Surrogate Parent _____ Spanish LAB Score _____ Test Date _____

Address _____ Telephone _____

SPECIAL PHYSICAL/MEDICAL ALERTS _____**OTHER SPECIAL ALERTS** _____**RECOMMENDATIONS****CLASSIFICATION** _____**PROGRAM** _____**SERVICE CATEGORY** _____**CLASS SIZE AND STAFFING** _____ Supplemental Instructional Services-Days per week _____ Periods per day _____Bilingual Instructional Service ☐ _____ (language) _____ Exception to Bilingual Services, ESL services only ☐12 Month School Year ☐ _____ Other ☐ _____

Specialized Equipment/Adaptive Devices _____

Barrier-free School Required ☐Secondary Level Diploma Status: Basic 1 ☐ Basic 2 ☐ Adaptive Physical Education ☐**OTHER PROGRAMS/SERVICE CATEGORIES CONSIDERED****INDICATE REASONS FOR REJECTION**
(Include reasons for an exception to bilingual services.)

Projected Date of Initiation of Service: _____ Initiation ☐ Continuation ☐ Transportation ☐

DIVIDUALIZED EDUCATION PROGRAM

CSE Case # _____

Student's Name _____

SBST/CSE and Teacher/Service Provider Modifications: If IEP is revised, indicate areas modified and complete Pages 2, 3, 4 and 5 as needed.

Date	Initiated By	Type of Modification	Date	Initiated By	Type of Modification
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

CONFERENCE INFORMATION

TYPE OF CONFERENCE: Initial ☐ SBST/CSE Requested Review ☐ Triennial ☐ Date _____
EPC ☐ School-CSE Review ☐ District-CSE Review ☐ Reconvened CSE Review ☐ School Requested Review ☐ Annual Review ☐
 Participant's Signature _____ Title (Indicate If Bilingual) _____ Participant's Signature _____ Title (Indicate If Bilingual) _____

CONFERENCE RESULT: Initiate Service ☐ Modify Service ☐ Change Program/Service Category ☐ No Change ☐

Prior Teacher/Provider Contacts With Parent/Guardian: _____

Date Notice of Meeting Sent _____

Follow-Up Date _____ Telephone ☐ Letter ☐

Translator/Interpreter required: Yes ☐ No ☐

IEP and Notice of Recommendation given/sent to parent on _____ Date _____

Reviewed By _____ Supervisor's Signature _____ Date _____

Projected Date of Initiation of Service _____

TYPE OF CONFERENCE: Initial ☐ SBST/CSE Requested Review ☐ Triennial ☐ Date _____
EPC ☐ School-CSE Review ☐ District-CSE Review ☐ Reconvened CSE Review ☐ School Requested Review ☐ Annual Review ☐
 Participant's Signature _____ Title (Indicate If Bilingual) _____ Participant's Signature _____ Title (Indicate If Bilingual) _____

CONFERENCE RESULT: Initiate Service ☐ Modify Service ☐ Change Program/Service Category ☐ No Change ☐

Prior Teacher/Provider Contacts With Parent/Guardian: _____

Date Notice of Meeting Sent _____

Follow-Up Date _____ Telephone ☐ Letter ☐

Translator/Interpreter required: Yes ☐ No ☐

IEP and Notice of Recommendation given/sent to parent on _____ Date _____

Reviewed By _____ Supervisor's Signature _____ Date _____

Projected Date of Initiation of Service _____

TYPE OF CONFERENCE: Initial ☐ SBST/CSE Requested Review ☐ Triennial ☐ Date _____
EPC ☐ School-CSE Review ☐ District-CSE Review ☐ Reconvened CSE Review ☐ School Requested Review ☐ Annual Review ☐
 Participant's Signature _____ Title (Indicate If Bilingual) _____ Participant's Signature _____ Title (Indicate If Bilingual) _____

CONFERENCE RESULT: Initiate Service ☐ Modify Service ☐ Change Program/Service Category ☐ No Change ☐

Prior Teacher/Provider Contacts With Parent/Guardian: _____

Date Notice of Meeting Sent _____

Follow-Up Date _____ Telephone ☐ Letter ☐

Translator/Interpreter required: Yes ☐ No ☐

IEP and Notice of Recommendation given/sent to parent on _____ Date _____

Reviewed By _____ Supervisor's Signature _____ Date _____

Projected Date of Initiation of Service _____

INDIVIDUALIZED EDUCATION PROGRAM

CSE Case # _____

Student's Name _____

Date of Conference _____

☐ Reconvened ☐ SBST/CSE Update _____☐ Teacher/Provider Update _____

(For High School Students Only) LONG RANGE EDUCATION PLAN (Check one box) ☐ High School Diploma Credit Program ☐ Partially Credited High School Diploma Program ☐ Comprehensive Career/Life Skills Program	(For CPSE Use Only) Approved Evaluation Site _____																												
GENERAL ED. CLASS SCHEDULING (Mainstreaming) Check if None ☐ <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Area/Subject/Language</th> <th style="width: 15%;">Periods Per Day</th> <th style="width: 15%;">Days Per Week</th> <th style="width: 40%;">(H.S. Fall/Spring)</th> </tr> </thead> <tbody> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> </tbody> </table>	Area/Subject/Language	Periods Per Day	Days Per Week	(H.S. Fall/Spring)	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	TESTING CATEGORY (must be indicated) A. No modifications ☐ B. Modified Participation ☐ C. Excluded* ☐ *(H.S. students will not earn a diploma in this category) Modifications: _____ _____ _____ _____
Area/Subject/Language	Periods Per Day	Days Per Week	(H.S. Fall/Spring)																										
_____	_____	_____	_____																										
_____	_____	_____	_____																										
_____	_____	_____	_____																										
_____	_____	_____	_____																										
_____	_____	_____	_____																										
_____	_____	_____	_____																										

RELATED SERVICES

Check If None ☐				Check—Initiation (I), Continuation (C), Modification (M), Bilingual (B)		Sessions/Week	Min./Session	Max. Group Size
I	C	M	B	(Language)				

FOR TEACHER/PROVIDER ONLY: (Specify other type 2 Modification to IEP) _____

MANAGEMENT NEEDS

Date of Conference _____

☐ Reconvened ☐ SBST/CSE Update _____☐ Teacher/Provider Update _____

Attach as many pages as necessary.

[illegible]

INDIVIDUALIZED EDUCATION PROGRAM

CSE Case # _____

Date of Conference _____

Student's Name _____

☐ Reconvened ☐ SBST/CSE Update _____☐ Teacher/Provider Update _____

ANNUAL GOALS AND SHORT TERM OBJECTIVES

(Include all areas/subjects for which special education is indicated. Attach as many pages as necessary.)

ANNUAL GOAL _____		
Area _____		
SHORT-TERM OBJECTIVES (Number each objective. Include evaluation method and criteria. Specify language of instruction/ESL for LEP students.)	Projected Date of Review	Date of Mastery

ANNUAL GOAL _____		
Area _____		
SHORT-TERM OBJECTIVES (Number each objective. Include evaluation method and criteria. Specify language of instruction/ESL for LEP students.)	Projected Date of Review	Date of Mastery

ANNUAL GOAL _____		
Area _____		
SHORT-TERM OBJECTIVES (Number each objective. Include evaluation method and criteria. Specify language of instruction/ESL for LEP students.)	Projected Date of Review	Date of Mastery

Impartial Hearing Office Forms

The Impartial Hearing Office will notify you when a hearing has been requested and scheduled. If it is requested by someone other than you, the office will tell you who the requestor is. It will send you a copy of the Hearing Officer's Decision, along with a Handbook, which you may use if you want to appeal to the Commissioner of Education.



NEW YORK CITY BOARD OF EDUCATION
110 LIVINGSTON STREET • BROOKLYN, NEW YORK 11201

IMPARTIAL HEARING OFFICE

Room 118

BRUCE GELBARD
Chief Administrator

(718) 935-3280

JULIA WEISS
Deputy Chief Administrator

TERI CHASE
Deputy Administrator

Date

RE: _____

Dear _____:

This office is in receipt of your request for an impartial due process hearing.

A hearing has been scheduled for _____
at _____ AM/PM at 110 Livingston Street, Brooklyn, New York, Room 118.

Federal Regulations require that all evidence which may be submitted at the hearing must be disclosed to the other party at least five (5) work days prior to the hearing. Failure to disclose this material in a timely manner may render the evidence inadmissible. To avoid these consequences, please bring or mail copies of any material you wish to use as evidence to the Committee on Special Education and/or the Impartial Hearing Office so that it arrives at least five (5) work days before the hearing. It is advisable to bring an additional copy of all your evidence to the hearing as one copy must be entered into the record for the impartial hearing officer's consideration and will not be returned to you. You should receive a copy of all documents which may be submitted by the Committee on Special Education at least five (5) work days prior to the hearing.

Postponement of the hearing date may not be granted unless a request for such postponement, including valid reason and documentation, is received by this office at least three (3) days prior to the hearing date. Should your request for adjournment be granted, the 45 day period permitted between our receipt of the request for a hearing and the issuance of the Impartial Hearing Officer's Findings of Fact and Decision will stop. The time will begin to run again when the newly scheduled hearing takes place.

It is important that you ensure the presence of all your witnesses at the hearing. It is possible to compel the attendance of

a witness through the use of a subpoena. Three subpoena blanks are enclosed for your convenience; you may make additional blanks if needed. These may be photocopies, typewritten, or handwritten copies of the enclosed forms. The completed form must include the reasons you wish to compel attendance and be received by this office at least five (5) work days prior to the hearing.

You may also request documents through the use of a subpoena. The same forms and procedures should be used to obtain documents as to compel the attendance of witnesses. Any subpoenas to obtain documents must state the name or title of the person whom you believe to have the documents in his custody.

Approved subpoenas for other than Board of Education personnel will be returned to you for service on the party/parties named in the subpoenas. This office will notify Board of Education personnel named in signed subpoenas.

Unapproved subpoenas may be brought before the impartial hearing officer at the time of the hearing or at a subpoena hearing scheduled for a date before the main hearing.

In accordance with Federal Regulations Section 300.508, you have the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children. A list of free or low cost legal services is available, upon request, from the Impartial Hearing Office. You are not required to select your attorney from this list.

If you are represented by counsel, or by another individual, please notify this office. If your representative is an attorney, he/she must file a notice of appearance with this office no later than five (5) work days prior to the hearing. If the person is not an attorney, and will require access to the information in your child's file, you should complete the attached Confidentiality Release Form, "100-B" and return it to this office.

Without a Notice of Appearance from your attorney, or a Confidentiality Release Form for other representatives, we are prohibited by law from releasing your child's file or from disseminating information to them.

If you wish to have an interpreter at the hearing, please complete and return the enclosed Request Form, "100-C" no later than five (5) work days prior to the hearing.

Finally, Federal Regulations Section 300.508 (b) provides that parents involved in hearings have the right to have the child who is the subject of the hearing present and the right to open the hearing to the public. If you wish an open hearing, or to have your child present, or if your child is over eighteen years of age and wishes to be present, please complete and return the enclosed Request Form, "100-C", to this office no later than five (5) work days prior to the hearing so that appropriate arrangements can be made.

In summary, there are certain things you should do to assure that the hearing process runs smoothly.

1. Arrive promptly at _____ AM/PM on the day of the hearing.
2. Disclose any evidence you intend to present at the hearing to the Committee on Special Education and/or the Impartial Hearing Office five (5) work days prior to the hearing.
3. Bring with you a copy of all documentation you wish entered into the record.
4. Insure that this office receives your subpoenas no later than five (5) work days before the hearing.
5. File a Notice of Appearance or Confidentiality Release Form no later than five (5) work days prior to the hearing if you plan to be represented at the hearing.
6. If you wish an interpreter, an open hearing, and/or the presence of your child at the hearing, file a Request Form, to be received by this office no later than five (5) work days prior to the hearing.

Be advised that many hearings require a full day to complete. If you have any questions, you may call this office any weekday, between the hours of 8:30 A.M. and 5:00 P.M.

Very truly yours,



Julia Weiss
Deputy Chief Administrator

JW:st
Enclosures



NEW YORK CITY BOARD OF EDUCATION
110 LIVINGSTON STREET • BROOKLYN, NEW YORK 11201

IMPARTIAL HEARING OFFICE

Room 118

BRUCE GELBARD
Chief Administrator

(718) 935-3280

JULIA WEISS
Deputy Chief Administrator

TERI CHASE
Deputy Administrator

Date

RE: _____

Dear _____:

This office is in receipt of a request by _____
_____ for an impartial due process hearing.
This hearing will be held to determine whether the classification and
placement recommended by the Committee on Special Education for your
child is appropriate. The hearing will be conducted by an impartial
hearing officer who will render a decision in this matter.

A hearing has been set for _____ at
_____ AM/PM at 110 Livingston Street, Brooklyn, New York, Room 118.

IT IS VERY IMPORTANT THAT YOU ATTEND THIS HEARING. WHETHER OR
NOT YOU ATTEND, THE HEARING OFFICER MAY DETERMINE THAT THE
RECOMMENDATION OF THE COMMITTEE ON SPECIAL EDUCATION IS APPROPRIATE.
THEREFORE, YOUR CHILD MAY HAVE HIS PLACEMENT CHANGED.

Federal Regulations require that all evidence which may be
submitted at the hearing must be disclosed to the other party at least
five (5) work days prior to the hearing. Failure to disclose this
material in a timely manner may render the evidence inadmissible. To
avoid these consequences, please bring or mail copies of any material
you wish to use as evidence to the Committee on Special Education
and/or the Impartial Hearing Office so that it arrives at least five
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additional copy of all your evidence to the hearing as one copy must
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Postponement of the hearing date may not be granted unless a
request for such postponement, including valid reason and documentation,

s received by this office at least three (3) days prior to the hearing date. Should your request for adjournment be granted, the 45 day period permitted between our receipt of the request for a hearing and the issuance of the Impartial Hearing Officer's Findings of Fact and Decision will stop. The time will begin to run again when the newly scheduled hearing takes place.

It is important that you ensure the presence of all your witnesses at the hearing. It is possible to compel the attendance of a witness through the use of a subpoena. Three subpoena blanks are enclosed for your convenience; you may make additional blanks if needed. These may be photocopies, typewritten, or handwritten copies of the enclosed forms. The completed form must include the reasons you wish to compel attendance and be received by this office at least five (5) work days prior to the hearing.

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Approved subpoenas for other than Board of Education personnel will be returned to you for service on the party/parties named in the subpoenas. This office will notify Board of Education personnel named in signed subpoenas.

Unapproved subpoenas may be brought before the impartial hearing officer at the time of the hearing or at a subpoena hearing scheduled for a date before the main hearing.

In accordance with Federal Regulations Section 300.508, you have the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children. A list of free or low cost legal services is available, upon request, from the the Impartial Hearing Office. You are not required to select your attorney from this list.

If you are represented by counsel, or by another individual, please notify this office. If your representative is an attorney, he/she must file a notice of appearance with this office no later than five (5) work days prior to the hearing. If the person is not an attorney, and will require access to the information in your child's file, you should complete the attached Confidentially Release Form, "100-B" and return it to this office.

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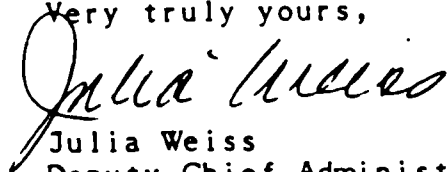
Finally, Federal Regulations Section 300.508 (b) provides that parents involved in hearings have the right to have the child who is the subject of the hearing present and the right to open the hearing to the public. If you wish an open hearing, or to have your child present, or if your child is over eighteen years of age and wishes to be present, please complete and return the enclosed Request Form, "100-C", to this office no later than five (5) work days prior to the hearing so that appropriate arrangements can be made.

In summary, there are certain things you should do to assure that the hearing process runs smoothly.

1. Arrive promptly at _____ AM/PM on the day of the hearing.
2. Disclose any evidence you intend to present at the hearing to the Committee on Special Education and/or the Impartial Hearing Office five (5) work days prior to the hearing.
3. Bring with you a copy of all documentation you wish entered into the record.
4. Insure that this office receives your subpoenas no later than five (5) work days before the hearing.
5. File a Notice of Appearance or Confidentiality Release Form no later than five (5) work days prior to the hearing if you plan to be represented at the hearing.
6. If you wish an interpreter, an open hearing, and/or the presence of your child at the hearing, file a Request Form, to be received by this office no later than five (5) work days prior to the hearing.

Be advised that many hearings require a full day to complete. If you have any questions, you may call this office any weekday, between the hours of 8:30 A.M. and 5:00 P.M.

Very truly yours,



Julia Weiss
Deputy Chief Administrator

JW:st
Enclosures

SUBPOENA

BOARD OF EDUCATION
OF THE CITY OF NEW YORK

110 Livingston Street
Brooklyn, New York 11201

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To _____

YOU ARE HEREBY COMMANDED that all business and excuses being laid aside, you appear and attend before the above named office located at:

Address _____

on _____ 19 _____ at _____ o'clock in

the _____ noon of said day, to testify and give evidence in

a proceeding pending in the said office concerning the placement of a

student by the name of _____

and that you bring with you, and produce at the time and place aforesaid

now in your custody, and all other evidences and writing, which you have

your custody of power, concerning the placement of the above-named student.

And for failure to attend, you will be deemed guilty of a violation of the

Regulations of the Commissioner of Education of the State of New York, and

subject to attendant penalties.

By the Order of the Hearing Office

Dated _____ 19 _____

HEARING OFFICER



NEW YORK CITY BOARD OF EDUCATION
110 LIVINGSTON STREET • BROOKLYN, NEW YORK 11201

IMPARTIAL HEARING OFFICE

Room 118

BRUCE GELBARD
Chief Administrator

(718) 935-3280

JULIA WEISS
Deputy Chief Administrator

TERI CHASE
Deputy Administrator

Date: _____

Re: _____

Dear

Enclosed please find a copy of the Hearing Officer's Final Disposition.

You may appeal the decision of the Hearing Officer to the Commissioner of Education of the State of New York in accordance with the provisions of Section 310 of the Education Law of the State of New York. Such appeal must be filed within thirty (30) days. If you decide to appeal, we are enclosing for your convenience a booklet entitled "Regulations of the Commissioner of Education Relating to Appeals and Other Proceedings Before the Commissioner" (Handbook No. 1).

Please be advised that the Board of Education also has the right to appeal the decision of the Hearing Officer. Such appeal must be filed within thirty (30) days.

If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Julia Weiss
Deputy Chief Administrator

JW: rm

Enc.



BRUCE GELBARD
Chief Administrator

NEW YORK CITY BOARD OF EDUCATION
110 LIVINGSTON STREET • BROOKLYN, NEW YORK 11201
IMPARTIAL HEARING OFFICE
Room 118

(718) 935-3280
FAX (718) 935-5413

JULIA WEISS
Deputy Chief Administrator
TERI CHASE
Deputy Administrator

District:
Region:

HEARING OFFICER'S FINDINGS OF FACT AND DECISION

Case Number:

Date of Hearing:

Student's Name

Date of Birth:

Address:

Parent's Name:

Address:

Primary Language
of the Home:

Hearing Requested
By:

Committee on Special Education Recommendation:

Classification:
Placement:

Hearing Officer:

Appeals to the New York State
Commissioner of Education

Along with the hearing officer's decision in your case, the Impartial Hearing Office will send you "Handbook 1", the Regulations of the Commissioner of Education Relating to Appeals and Other Proceedings Before the Commissioner. You may also request a copy of Handbook 1 directly from the State Education Department, Office of Counsel, Albany, NY 12234.

Notice of Intention To Seek Review

The undersigned intends to seek review of the determination of the hearing officer concerning the identification, evaluation or placement of (*name of handicapped pupil*). Upon receipt of this notice, you are required to have prepared proceedings before the hearing officer in this matter. A copy of the transcript and of the decision of the hearing officer must be filed with the answer to the petition for review to be filed by the undersigned with the Commissioner of Education.

Notice With Petition

You are hereby required to appear in this review and to answer the allegations contained in this petition. Your answer must conform with the provisions of the Regulations of the Commissioner of Education relating to reviews of this nature, copies of which are available from the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234.

If an answer is not served and filed in accordance with the provisions of such regulations, the statements contained in the petition will be deemed to be true statements, and a decision will be rendered thereon by the Commissioner.

Please take notice that such regulations require that an answer to the petition must be served upon the petitioner, or if petitioner is represented by counsel, upon such counsel, within ten days after the service of the petition for review, and that a copy of such answer must, within two days after such service, be filed with the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234.

Affidavit of Verification

STATE OF NEW YORK

ss.

COUNTY

....., being duly sworn,
deposes and says that he isin this proceeding;
that he has read the annexedand knows the
contents thereof; that the same is true to the knowledge of deponent except as to the matters
therein stated to be alleged upon information and belief, and as to those matters he believes it to
be true.

.....
(Signature)

Subscribed and sworn to before me
thisday of.....19....

.....
(Signature and title of officer)

Affidavit of Personal Service

STATE OF NEW YORK

ss.

COUNTY OF

....., being duly sworn,
deposes and says that he is over the age of eighteen years and is not a party in this proceeding;
that on the day of, 19....., at No.Street,
in the town of, county of, State of New York,
he served the annexed on
by delivering to and leaving with saidat said time and place a true copy thereof.

Deponent further says he knew the person so served to be the said
who is in said district.

.....
(Signature)

Subscribed and sworn to before me
this day of 19....

.....
(Signature and title of officer)

Affidavit of Service by Mail

STATE OF NEW YORK

ss.

COUNTY OF

....., being duly sworn,
deposes and says that he is over the age of eighteen years and is not a party in this proceeding;
that on the day of, 19...., deponent served the within
upon In this action, at
....., the addresses designated by for
that purpose by depositing a true copy of the same by mail, enclosed in a postpaid properly ad-
dressed wrapper, in a post office official depository
under the exclusive care and custody of the United States Post Office Department within the State
of New York.

.....
(Signature)

Subscribed and sworn to before me
this day of 19....

.....
(Signature and title of officer)

Regulations of the Chancellor

Regulation

- | | |
|--------|--|
| A- 430 | Carrying Weapons in School |
| A- 432 | Search and Seizure by School Officials |
| A- 434 | Behavior of Children on Buses |
| A- 445 | Procedures for Suspensions of Special Education Students |
| A- 820 | Student Records: Access and Disclosures |



Regulation of the Chancellor

Category: STUDENTS

Subject: CARRYING WEAPONS IN SCHOOLS

No.: A-430

Page: 1 of 7

Issued: 7/1/83

ABSTRACT

Any person carrying a weapon in a school building, facility, or contract vehicle used to transport students to and from school poses a clear and present danger to other students and staff and is subject to suspension by a superintendent or the Executive Director of the Division of Special Education, as well as possible criminal or juvenile delinquency prosecution. As used hereafter throughout this Regulation, the term "Superintendent" indicates the Executive Director of the Division of Special Education or his designee in suspensions involving special education students as defined in Regulation of the Chancellor A-445, and in suspensions involving other students, the Community, Borough, or Assistant Superintendent, as appropriate. Regulation of the Chancellor A-440, Suspension of other than High School Students and Regulation of the Chancellor A-441, Suspension of High School Students, governs the suspension of students carrying weapons, except as otherwise provided in this Regulation.

I. AUTOMATIC SUPERINTENDENT'S SUSPENSION AND SUMMONING OF POLICE

Possession of the following weapons will result in an automatic Superintendent's Suspension:

- Firearm (including pistol, handgun, and any gun small enough to be concealed on the body), firearm silencer, and electronic dart gun.
- Shotgun, rifle, machine gun, or any other weapon which simulates or is adaptable for use as a machine gun;
- Switchblade knife, gravity knife, and cane sword (a cane that conceals a knife);
- Billy (club), blackjack, bludgeon, chukka stick, and metal knuckles;
- Sandbag and sandclub;
- Slung shot (small, heavy weights attached to a thong);



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- Explosive, incendiary bomb, and bombshell;
- Dagger, stiletto, dangerous knife, and straight razor;
- Air gun, spring gun, or other instrument or weapon in which the propelling force is a spring or air, and any weapon in which any loaded or blank cartridge may be used (such as a BB gun).

Possession of any of these weapons is totally proscribed for all staff, students, and school visitors, and constitutes grounds for criminal arrest, regardless of whether the weapon is loaded. A police officer is to be summoned for the purpose of making an arrest. The Bureau of School Safety is to be notified immediately, and all procedures described in Regulation of the Chancellor A-412 are to be followed.

II. SUPERINTENDENT'S SUSPENSION AND SUMMONING OF POLICE AT THE DISCRETION OF THE PRINCIPAL

Mere possession of certain other articles is forbidden and, under most circumstances, will result in a Superintendent's Suspension. The Bureau of School Safety is to be notified immediately, and all procedures described in Regulation A-412 are to be followed.

Possession of the following articles is forbidden:

- Acid or other deadly or dangerous chemical;
- Imitation pistol;
- Loaded or blank cartridges and ammunition;
- Any deadly, dangerous, or sharp pointed instrument which can be used as a weapon (such as broken glass, case cutter, chains, wire).

Before invoking a suspension, the principal, in consultation with the Bureau of School Safety, shall consider whether or not there are mitigating factors involved in the possession of a particular article.



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for example a nail file, for which a purpose exists other than infliction of physical or mental harm. However, when there are factors to indicate that an individual in possession of such an article has the intention of using it as a weapon in order to inflict physical or mental harm, the principal shall seek a Superintendent's Suspension and immediately summon the police for purposes of making an arrest.

III. CONFISCATION AND DISPOSAL OF WEAPONS AND OTHER DANGEROUS ARTICLES

When a person is found to be in possession of a weapon or other dangerous article as described in Sections I and II of this Regulation, the principal, the school guard, or the police officer, depending on the circumstances, shall confiscate the article. In instances which do not require the police to be summoned, the article shall be given into the custody of the Bureau of School Safety.

Unless the police take custody of the weapon, the Bureau of School Safety shall retain its custody and when notified of the date of the suspension hearing shall present the article as evidence in the hearing. Upon notice that a weapons case involving suspension has been decided by the superintendent, or upon notice that a weapons possession case will not entail a student suspension, the Bureau of School Safety shall dispose of confiscated articles by delivering them to the local police precinct.

IV. SUSPENSION FOR POSSESSION OF WEAPONS

A. Authorization for Suspension

At the request of the principal, superintendents shall have emergency authority to invoke an automatic, emergency suspension of any student found to be in possession of any weapon described in Sections I and II of this Regulation. Any suspension for possession of weapons must be made by the superintendent. Principals' suspensions are not to be invoked in these cases.

Prior to requesting authorization for a weapons suspension, the principal must inform the student of the charges against him or her and, if the student denies them, give the student an explanation of the



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evidence and an opportunity to present his or her side of the story. A superintendent may not authorize a suspension until he has been assured that this preliminary investigation has been conducted or provided with an explanation as to why it was not feasible to do so.

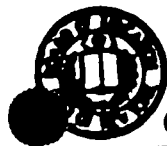
B. Suspension Procedures

After a Superintendent's Suspension for possession of a weapon has been authorized, the school principal shall adhere to the notice and procedural provisions delineated in Section II.B. of Regulations A-440 and A-441, or Sections IV.A. and B. of Regulation A-445, as the case may be. Procedures to be followed in those cases involving arrest of a student are delineated in Regulation A-412.

C. Dispositions

The superintendent shall impose a disposition on the basis of determinations at the fact-finding hearing as to the nature of the weapon found in the student's possession, mitigating circumstances, if any, and the content of the materials submitted in accordance with the provisions of Regulations A-440 or A-441, as the case may be. The superintendent may impose any one of the following dispositions:

1. Reinstatement with no record of suspension;
2. Reinstatement with record of suspension noted in the student's permanent record;
3. Reinstatement with the provision that the notation of record of suspension be expunged if the student has no further school discipline problems;



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4. Transfer,* utilizing any of the dispositions relating to the student's records as set forth in sub-paragraphs 1 through 3 above;
5. Indefinite suspension from regular school activity.*

Suspension of a student for possession of a weapon need not preclude the student's reinstatement in the school from which he or she was suspended. Although transfer may represent an appropriate disposition for students in regular programs, it should not be viewed as the best dispositional alternative in every case.

V. STUDENTS PREVIOUSLY IDENTIFIED AS HAVING HANDICAPPING CONDITIONS

A. Dispositions including Referral to SBST/COH

With respect to special education students as defined in Regulation A-445 who have been suspended in accordance with this Regulation the Chief Administrator of the Division of Special Education may:

1. Utilize any of the dispositions set forth in Section IV. C sub-paragraphs 1 through 3.

2. Transfer the student to another class in the same program in the same or other site;

3. Refer the student to the SBST/COH for an emergency reassessment under an expedited assessment procedure to be completed within 10 working days from the date that the Chief Administrator notified the SBST of his/her determination that the student possessed a weapon. While awaiting the results of reassessment, the Chief Administrator may:

*With respect to special education students as defined in Regulation A-445, transfers that constitute a change in placement or indefinite suspensions from regular school activity may only be made by the SBST/COH in accordance with Section V. below.



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- a. Reinstate the student in the class from which he or she was suspended or;
- b. Arrange for the student to attend another class in the same program in the same or other site.

4. Under extraordinary circumstances, the Chief Administrator may continue the student on suspended status for the duration of the expedited assessment period. In no event shall a student be continued on suspended status for more than 10 working days.

NOTE: Parental consent is not required in order for the SBST/COH to reassess a special education student.

B. Disposition Following SBST/COH Review of Special Education Students

1. The SBST/COH shall inform the Chief Administrator of the Division of Special Education in writing concerning the results of the reassessment and recommend a disposition in accordance with the procedures of the Division of Special Education.

2. In making such a disposition, the procedure for the use and admission into evidence of the student's school records, as well as other written material, as set forth in Regulations A-440 and A-441, as the case may be, shall be followed. In addition, the Chief Administrator may review, subject to the applicable procedures, any court ordered reports, reports and assessments prepared by the SBST or COH, and information submitted by the student's and his or her parent or guardian.

VI. APPEALS RESULTING FROM SUPERINTENDENTS' SUSPENSIONS FOR WEAPONS POSSESSION

Procedural appeals and appeals on the merits of a Superintendent's Suspension for Weapons Possession shall be made in accordance with the appeals procedures for Superintendents' Suspensions as delineated in Regulations A-440, A-441 or A-445, as the case may be.



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VII. PROCEDURES FOR REVOKING INDEFINITE SUSPENSION FROM SCHOOL

A student who has been indefinitely suspended from school for weapons possession and seeks immediate revocation of such a disposition and reinstatement in the New York City schools must first appeal the disposition as described in Section VI. of this Regulation.

If all such immediate appeals are denied, the student, his/her parent(s) or legal guardian may file a petition for revocation of the indefinite suspension of a high school or special education student with the Central Board of Education, and of a junior high, intermediate, or elementary school student with the appropriate community school board.

All petitions for reinstatement must be in writing and must include significant evidence to indicate to the board that the suspended student no longer endangers the safety or health, or constitutes a hazard to the welfare of others in the New York City schools.

The Board will not consider petitions which address defects in the suspension proceedings or the merits of a superintendent's original decision to invoke an indefinite suspension.

No petitions for revocation of indefinite suspension will be considered by a board for a minimum of six months from the date that the indefinite suspension was imposed by the superintendent. If the petition is granted, the board shall indicate the date on which the student is to be readmitted to school. If the petition is denied, the board shall indicate the date on which it will entertain a subsequent petition, which shall in no case be more than one year from the date on which the petition was denied.

VIII. CLERICAL PROCEDURES TO BE EMPLOYED FOLLOWING SUSPENSION FOR POSSESSION OF WEAPONS

Clerical procedures to be followed in suspensions involving possession of weapons are described in Regulations A-440, A-441 and A-445.

Category: STUDENTS

Subject: SEARCH AND SEIZURE BY SCHOOL OFFICIALS

Regulation of the Chancellor

I. INTRODUCTION

Every citizen has the fundamental right, secured to him or her by the Fourth and the Fourteenth Amendments to the Constitution, to be free from unreasonable searches and seizures, both with respect to his or her person and effects. These rights of pupils and others should at all times be respected. Under no circumstances should personnel conduct mass searches or indiscriminate searches of pupils.

In specific cases where there is a sufficient basis for a search, school personnel may lawfully search a pupil. One of the key elements in sustaining a search is the "reasonableness" of the search and the method used. It is incumbent upon the person ordering or conducting the search to see that the search is conducted with a reasonable degree of privacy and consideration for the dignity of the individual. Extreme caution should be exercised in this area, even to the extent of instructing subordinates that a body search should not be undertaken by school personnel.

II. SEARCH OF A STUDENT'S PERSON

In People of the State of New York v. Scott D., 34 N.Y. 2d 483 (1974), the Court of Appeals recognized that public school authorities have special responsibility and correspondingly broad power to control school grounds in order to protect students entrusted to their charge. Chief Judge Breitel noted that:

A school is a special kind of place in which serious and dangerous wrongdoing is intolerable. Youngsters in a school, for their own sake, as well as that of their age peers in the school, may not be treated with the same circumspection required outside the school or to which self-sufficient adults are entitled. The fact of an epidemic danger in the school may not be ignored in theory or in reality. The dangerous drug prevalence in many schools and in many areas is a significant fact to be considered in determining the scope of reasonableness in making searches (cf. Education Law SS 912-a, 302-a).

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The Court held that the ban against unreasonable searches and seizures was applicable to situations involving administrative searches as well as criminal proceedings, but that a wider latitude for determining whether there was sufficient cause for a search would be permitted than that normally applied to an adult or to any person outside the school precincts. Among the factors to be considered in determining the sufficiency of cause to search are "the child's age, history and record in the school, the prevalence and seriousness of the problem in the school to which the search was authorized, and, of course, the exigency to make the search without delay."

III. SEARCH OF A LOCKER

Where school authorities have a reasonable suspicion that contraband is secreted in a student's locker, they may act upon that decision and search such locker without the necessity for obtaining the student's consent (People v. Overton 24 N.Y. 2d 522). The locker search was distinguished from the personal search by the Court of Appeals in People of the State of New York v. Scott D., supra, which noted that the "facts there indicated that the student had no reasonable expectation of privacy in a locker over which the school authorities had retained extensive control. This reasoning has no application and is unpersuasive with respect to a student's person."



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1. THE PROCEDURE REGARDING MISBEHAVIOR OF CHILDREN ON SCHOOL BUSES IS AS FOLLOWS:
 - A. The driver and/or escort shall first speak with the teacher about a child's misbehavior. The teacher shall discuss the problem with the child and with the parent.
 - B. If the driver is unable to speak to the teacher or if the child's behavior does not improve after intervention by the teacher, the driver or the bus company shall notify the principal of the school and/or Division of Special Education supervisor by letter, with a copy to the Office of Pupil Transportation (OPT).
 - C. The Office of Pupil Transportation shall determine the precipitating causes for the misbehavior and whether the driver or escort contributed to the difficulty. If the driver or escort is at fault, the Office of Pupil Transportation shall contact the bus company to take appropriate action; i.e., warning, transfer, suspension.
 - D. If the causes are other than the above and the child's behavior threatens the physical safety of self or others, the supervisor or principal shall arrange for a conference with the parent and discuss methods for resolution, such as having the parent or other designated person ride on the bus with the child for a short period with the approval of the Director of OPT or independently taking the child to school.



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- E. Only the principal or Division of Special Education (DSE) supervisor may temporarily bar a child from transportation if all else fails. The bus driver has no authority to take disciplinary action. Drivers may caution pupils and if this is not effective, they are instructed to report the matter to the school principal.
- F. If an emergency threatens the safety of the child or others on the ride home in the afternoon and the principal or DSE supervisor cannot be reached, the Director of the Office of Pupil Transportation can decide that the bus company is not to pick up the child the following day and shall so notify the parent. The principal or DSE supervisor will then be contacted the next day to make a final decision on excluding the child from bus service for a longer period of time and shall so advise the parent.
- G. The principal or DSE supervisor shall arrange a conference with the parent, teacher and supervisor to help resolve the problem and to arrange other means, if necessary, of getting the child to school. Exclusion from bus service does not mean suspension from school.
- H. A principal or DSE supervisor should not exclude a pupil from bus service for any more than five consecutive days.



Regulation of the Chancellor

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ABSTRACT

This Regulation replaces Regulation of the Chancellor A-445, dated October 1, 1979, Procedures for Suspension of Special Education Pupils. The Regulation covers students formally evaluated by School Based Support Teams (SBST's) or Committees on the Handicapped (COH's) and either receiving or awaiting provision of services from the Division of Special Education.

The Regulation addresses special conditions and procedures relating to particular students, who are defined in Section I below. It describes approaches to be employed when it is necessary to discipline these students and carefully defines the specific conditions under which they may be suspended and the school authorities who may authorize their suspensions. The Regulation delineates each step to be followed in suspensions involving these students and the protections which must be afforded to them during suspension proceedings, as required under the Federal Education for All Handicapped Children Act of 1975 (PL 94-142) and the State Education Law. These steps are described in detail in Section IV of the Regulation.

The Regulation also discusses guidance considerations and alternatives that are preferable to, and should be used in advance of, disciplinary actions such as suspensions.

I. SPECIAL EDUCATION STUDENTS DEFINED

For purposes of this Regulation, the following students are defined as "special education students" and are covered by all provisions of the Regulation: Students formally evaluated by SBST'S or COH'S and either receiving or awaiting provision of services from the Division of Special Education (DSE) in accordance with recommendations of SBST's or COH'S.*

*Students receiving or awaiting provision of resource room services are covered by this Regulation; specific provisions affecting those students appear in Section IV(A)(2).



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II. SPECIAL CONDITIONS GOVERNING SUSPENSION OF SPECIAL EDUCATION STUDENTS

Students covered by this Regulation are offered certain protections in addition to those provided to other students by Regulation A-440.

Despite handicapping conditions, special education students may be suspended from participation in school activity, but only under emergency circumstances.

"Suspension" is defined as the temporary removal from school of a special education student for alleged misconduct which constitutes an emergency circumstance.

An "emergency circumstance" is defined as a major behavioral incident which presents a clear and present danger of injury to the student, other students, or school personnel, or which is so highly insubordinate or disorderly as to significantly impair the education of other students.*

Special education students may be suspended only under the emergency circumstances described in this Regulation. Special education students may not be suspended by a principal: (1) solely for a previous history of disruptive behavior; (2) more than twice during the school year, nor (3) twice consecutively. Additionally, as with non-handicapped students, special education students may not be suspended solely for truancy, smoking, cutting classes, or poor academic achievement.

III. GUIDANCE CONSIDERATIONS

Every effort must be made to assist special education students in making a successful adjustment to their educational program. These efforts may include the use of all school-based, district, and City Board pupil personnel services, such as: special education teachers, regular teachers, district supervisors, guidance counselors, SBST's, and personnel from DSE.

Frequent episodes of disruptive behavior should be documented in a student's anecdotal record that includes a description of specific remedial steps taken by staff to ameliorate the situation. Episodes of disruptive

*An "emergency circumstance" may also include possession of a weapon. Procedures for suspension of students carrying weapons are governed by Regulation of the Chancellor A-430, Carrying Weapons in Schools.



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behavior are not in and of themselves necessarily cause for suspension. They should signal the need for guidance meetings with a student's parents or guardian, teachers, the SBST, and other school staff to assess the appropriateness of a student's class site, and the possible need for an SBST or COH to reevaluate the appropriateness of the students classification or educational program, or both. Parents should be encouraged to attend these meetings. They must be informed in advance that one result of the meeting may be a determination to recommend a reevaluation or change of class site within program. If in the course of guidance meetings:

- A. It is determined that reevaluation of a student's handicapping condition is necessary, then written consent should be sought from the parent or guardian. However, if such consent is not quickly forthcoming, the student should be referred without interruption of his education to the SBST or COH with written notice to the parent or guardian;
- B. It is determined that a change in class site within the same program is appropriate, then the student may be transferred by the Executive Director of DSE* with notice to the Site Supervisor, after consultation with the Community Superintendent or the Executive Director of the Division of High Schools, or their designees, as appropriate. In such cases, the COH need not make a recommendation and no formal COH proceedings are required. The written consent of the student's parent or guardian should be sought at or subsequent to the conference. If such consent is not quickly forthcoming, or the parent or guardian disputes the advisability of changing the class site, then the change may be made, but the student's parent or guardian must be given notice that includes: a description of the proposed change, an explanation for the proposed change, a description of any other factors relevant to the proposed change, and information concerning the right to appeal the appropriateness of the class to the COH and subsequently to the Impartial Hearing Office.

*The term "Executive Director of DSE" in this Regulation shall include his or her designee(s).



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IV. EMERGENCY SUSPENSIONS

A. Principals' Responsibilities During Emergency Suspensions

If a special education student is removed from a class because of emergency circumstances, the following steps are to be taken by the principal:*

1. Prior to suspending the student, inform the student of the charges against him or her and, if the student denies them, give the student an explanation of the evidence and an opportunity to present his or her side of the story; if it is feasible to do so.
2. Prior to suspending a student placed in self-contained classrooms or a school exclusively for children with handicapping conditions, immediately telephone the Executive Director of DSE to inform him/her of the circumstances and request approval for the suspension. Approval of the Executive Director is not required prior to the suspension of students whose placements are in other than self-contained classrooms or schools exclusively for children with handicapping conditions, but the Executive Director shall be informed of such suspensions by the principal.
3. Once approval has been obtained or the Executive Director of DSE has been informed, as appropriate, notify the student's parent or guardian immediately by telephone or telegram that an emergency suspension has been authorized. Notice to parents must include the reasons for the suspension. Parents should be told where the student can be located in the school and asked to come to the school to pick up the student. School officials must make every effort to notify the student's parent or guardian that the student has been suspended on the same day as the emergency circumstance occurred, and also to arrange an emergency suspension conference with them at a mutually acceptable date and time. The suspension conference should be scheduled as soon as possible, but in no event more than five school days from the date of the suspension.

*Only the principal or, in the principal's absence, the school official designated as "acting principal", may authorize a suspension.



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4. Notify the school's SBST.
5. Retain the student under supervision until the close of the school day on which the emergency circumstance occurred, or until the student's parent or guardian arrives.
6. If the student receives door-to-door school bus transportation, notify the Bureau of Pupil Transportation that the student will not be attending school for the period of suspension.
7. Send classwork and homework assignments to the student's home. Additionally, the principal must ensure that the student is not academically penalized* during the suspension period and is permitted to take any City-wide or State examinations that are administered during the period of suspension for which no make-up examination is permitted by the testing authority, as well as to make up school examinations, such as finals, which may affect their academic records.
8. Send letters, by both certified and regular mail and no later than one school day following the day of the suspension, to the student's parent(s) or guardians informing them that the student has been suspended and including the following:
 - the specific reasons for the suspension;
 - that the student should not return to school during the suspension period;
 - date, time, and place, no more than five school days from the date of the suspension, for a suspension conference with the parent or guardian, the student, and appropriate personnel to discuss the suspension and that the parent or guardian's presence is required;

*An academic penalty, such as reduction of grade, may only be imposed as a disciplinary measure if the emergency circumstance for which a student was suspended is directly related to an academic activity. An academic penalty may not be imposed for absence during the suspension period.



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- that the suspension conference will be held on the date scheduled unless the parent or guardian requests an extension of the conference date from the principal, but that if the new date requested falls more than five school days from the date of the suspension, the principal may exercise the option to hold the conference on the scheduled date regardless of whether the student and the parent or guardian appear;
- that the parent or guardian may be represented at the conference by counsel or other advisor and may present witnesses on the student's behalf and question all persons involved in the incident for which the student has been suspended;
- a statement of the student's right to return to attendance upon instruction at the end of the suspension period;
- the procedures for appealing any actions which have been taken with respect to the suspension.
- a list of community agencies offering free legal assistance.

8. Emergency Suspension Conference Procedures

The suspension conference presents an opportunity for parents, teachers, school and Special Education personnel to assess the facts surrounding the suspension of a special education student and to devise cooperatively a mutually satisfactory solution to the problems which have been identified and prevent further disruption of the student's education.

Suspension conferences shall include the following procedures:

1. The school principal shall conduct the conference and may not delegate his responsibility to attend even if he or she was not present at the time of the suspension.
2. The parent or guardian should be strongly encouraged to attend the conference. However, if the parent or guardian fail to request an extension or request an extension to a date more than



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five school days from the date of the suspension, the principal may hold the conference on the scheduled date regardless of whether the student and the parent or guardian appear.*

3. The parent or guardian and the principal may each bring two additional persons to the conference,** unless by mutual consent they agree to the presence of additional persons. The conference is not a formal, contested proceeding; it is a guidance mechanism, and should not become adversarial. Therefore, although the additional persons brought by the parties may be attorneys or advocates, they may participate only as advisors. The parent or guardian and the student may, however, question and present witnesses, offer statements and otherwise fully participate in the proceedings.
4. A written summary record of the conference may be prepared in the discretion of the principal and entered in the student's anecdotal record.*** A copy of the record, if any, shall be made available to the parent or the Executive Director on request.

C. Disposition

If the principal determines following the suspension conference that the suspension was not justified, then the student must be returned to school immediately and all records relating to the suspension expunged.

*If the student and/or parent or guardian are absent, the principal shall so state on the record, describe efforts by school officials to ensure their presence, and proceed with the conference. The parent or guardian shall be informed in writing that the conference was conducted on the scheduled date and of any decisions reached at the conference.

**At least one of the additional persons brought by the principal shall be from the school's SBST.

***Such entry may require written notification of the parent or guardian. See Regulation of the Chancellor A-820(VII)(E).



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If the principal determines that the suspension was justified, then no more than five school days from the date of the suspension, the principal shall return the student to school or refer the student for expedited action by the appropriate SBST/COH. The SBST/COH shall review educational and clinical materials concerning the student's history and/or handicapping condition and all other information of an evaluative nature and recommend one of the following, to be provided on an expedited basis:

1. Return of the student to the class suspended from; or
2. A change in class site within the current program, in accord with the notice and consultation requirements of Section III(B) of this Regulation; or
3. An emergency reevaluation if a reconsideration of the appropriateness of the student's program is determined to be advisable by the SBST/COH. The student shall be reevaluated on an expedited basis.

When a change in class site or reevaluation is recommended, the Executive Director of DSE shall:

1. Notify the student's parent or guardian in writing; and
2. Insure that the student is returned to the original classroom at the end of the five day suspension period; or
3. Upon notice to the parents or guardian, arrange for attendance in a special interim setting, or home instruction until a new site has been located, or until the emergency reevaluation has been completed and a determination has been made as to whether the student is in need of a more restrictive program.

V. APPEALS RESULTING FROM SUSPENSIONS OF SPECIAL EDUCATION STUDENTS

A. Appeals of the principal's determination that a suspension of a child attending a self-contained classroom or a school exclusively for children with handicapping conditions was justified shall be made in writing directly to the



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Chancellor.* Appeals involving elementary and junior high students attending less restrictive programs shall be taken in the following sequence:

1. to the community superintendent;
2. to the community school board;
3. to the Central Board of Education.

Appeals involving high school students attending less restrictive programs shall be taken in the following sequence:

1. to the Borough Superintendent or the Supervising Assistant Superintendent;
2. to the Chancellor;*
3. to the Central Board of Education.

B. Appeals must be made within twenty school days of the date on which the principal issued an adverse decision. Decisions upon appeal will be in writing and will include the reasons for the decision. In any case where the suspension is found to have been unjustified, the record of the suspension and proceedings related to it shall be expunged from the student's record.

C. Appeals concerning referral of a student by the principal to the SBST/COH and any subsequent SBST/COH determinations are to be made directly to the Impartial Hearing Office. Such appeals may include those relating to change in program or evaluation.

VI. CLERICAL PROCEDURES TO BE EMPLOYED DURING SUSPENSION OF SPECIAL EDUCATION STUDENTS

A. Special education students who have been suspended will remain on the register of their schools and will be marked absent in the roll book during the period of suspension.

*A copy of the appeal should be filed simultaneously with the Office of Legal Services, Room 920, 110 Livingston Street.



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B. Youthful Delinquent Cards

When the record of the suspension is expunged, but a Youthful Delinquent (YD 1) Card has been issued against a student as a result of the suspension, the authority who expunges the suspension must undertake the following procedure:

1. Send a letter to the Commanding Office of the Youth Aid Division of the New York City Police Department, 34 $\frac{1}{2}$ West 12th Street, New York, New York 10011, stating that the suspension and the charges against the student have been expunged;
2. Request that the YD 1 Card be expunged; and
3. Request written confirmation that the YD 1 Card has been expunged.

C. Record Keeping

At the end of each semi-annual reporting period of the school year, each principal shall send the "Tally Sheet and Report on Pupil Suspension" to the appropriate superintendent.



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I. INTRODUCTION

This regulation incorporates pertinent provisions of the Family Educational Rights and Privacy Act (20 U.S.C. 1232-g) commonly referred to as "FERPA" or the "Buckley Amendment."

II. BACKGROUND

A. Purpose

1. The purpose of this regulation is to set forth the requirements governing student education records in order to insure the protection of the rights and privacy of students and parents.
2. These education records are collected and maintained by schools to provide:
 - a. data pertaining to the growth and development of individual students,
 - b. information to parents and authorized staff, and
 - c. a basis for the evaluation and improvement of school programs.
3. It is the responsibility of each school to preserve the rights of privacy of all students and parents.
4. The rights created by this regulation shall apply to all education records maintained by the City School District which relate in whole or in part to any student currently in attendance at a school or former student, identified in those records either by name, social security number, or by some other symbol such as an identification number.



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III. DEFINITIONS

1. "EDUCATION RECORDS"

1. Records directly related to a student which are maintained by the City School District or a Community School District.

2. This term does not include:

- a. School Medical Treatment Records. These are kept in the medical room of each school, are the property of the New York City Department of Health and are medically confidential. Such records and access to them are subject to regulations established by the New York City Department of Health. However, medical records that are established and maintained by Board of Education personnel (e.g. Cumulative Health Record Card, immunization sheet, or doctor's notes exempting students from physical education) are considered education records.
- b. Records maintained by principals, supervisors, teachers or other school personnel for their individual use, which are not released to any other person. These records shall be considered to be the personal property of the principal, supervisor, teacher or other school personnel, and may not be disclosed to other teachers, principals, supervisors or other school personnel.



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2. "PERSONALLY IDENTIFIABLE INFORMATION"

1. Includes, but is not limited to:

- a. student's name
- b. name of the student's parent or other family members
- c. address of the student or student's family
- d. personal identifier, such as student's social security number or student identification number
- e. personal characteristics of the student or the student's family

3. "PARENT"

1. A parent of a student includes a natural parent, a guardian, or an individual acting as a parent who provides ongoing custodial care.

4. "STUDENT"

1. An individual who is or has been in attendance at a school and regarding whom the school maintains education records.

5. "ELIGIBLE STUDENT"

1. A student who has reached 18 years of age or is attending an institution of postsecondary education.

6. "RECORD"

1. Any information recorded in any way including, but not limited to:
 - a. handwriting
 - b. type
 - c. print



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- d. film
- e. microfilm
- f. microfiche
- g. hardcopy
- h. computer disks or tapes (See §VIII for specific references to computerized information.)

7. "INFORMED CONSENT"

1. The parent or eligible student has been fully informed of all information relevant to the student's education records for which consent is sought and has been notified of the records of the student which will be released and to whom they will be released;
2. The parent or eligible student agrees in writing to the release of the student's education records for which consent is sought; and
3. The parent or eligible student is made aware that the consent is voluntary on the part of the parent or eligible student and may be reconsidered at any time.

IV. TYPES OF EDUCATION RECORDS

A. Permanent Records

1. The blank forms of all permanent records used in schools and in other offices of the City School District shall be available for public inspection in the Office of Parent Involvement, Room 108, 110 Livingston Street, Brooklyn, New York 11201 and in each school of the City School District during regular business hours.



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2. Permanent records are as follows:

- a. The Cumulative Record - Personal and Educational (elementary schools)
- b. The Cumulative Record - Test Data
- c. Pupil Permanent Record Card (secondary schools)
- d. The Cumulative Health Record
- e. Attendance Card

B. Special Education Records

1. The blank forms of special education records used in schools and other offices of the City School District shall be available for public inspection in the Office of Parent Involvement, Room 108, 110 Livingston Street, Brooklyn, New York 11201, at the Office of the Committee on Special Education in each Community School District and in each school of the City School District housing special education students during the regular business hours.

2. Special Education records are as follows:

- a. Individual Education Program (IEP)
- b. Social History Reports
- c. Educational, Psychological, Psychiatric, and Related Service Providers Evaluations and Reports
- d. Teacher Evaluations and Reports
- e. All Materials in the CSE Clinical Records File



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C. Other Education Records

1. Other education records include the following:

a. Guidance Records

1. Anecdotal Record (Dean's Record)

2. Guidance Personnel Records - These records, maintained by Guidance personnel shall be:

- i. Kept apart from the student's permanent records
- ii. Maintained in an appropriate office
- iii. Screened and reviewed at least twice each year by guidance personnel (or other person designated by the principal) for the removal of irrelevant and extraneous material

b. Parent Student Ethnic Identification Form

c. Home Language Identification Survey Form

V. ADMINISTRATIVE RESPONSIBILITY FOR STUDENT RECORDS

A. Principal or Head of Office Responsibilities

- 1. The principal or head of any office possessing student records shall be directly responsible for the observance of law, policy, regulations and directives in the collection of information for student education records, their proper maintenance, physical security and protection,



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the proper dissemination of information contained therein, and the forwarding of records for official purposes to a higher authority when so directed.

2. The principal or head of office concerned shall ensure that school staff under his or her jurisdiction receive periodic instruction and training regarding the privacy rights of students and parents, and the confidential handling of student records.

VI. NOTIFICATION OF PARENTS AND ELIGIBLE STUDENTS INFORMING THEM OF THEIR RIGHTS REGARDING STUDENT EDUCATION RECORDS

A. Annual Notification of Rights

1. The principal or head of office shall be responsible for insuring that a notice to parents delineating their rights regarding student education records is disseminated annually in such a manner that all parents and students will be informed of its contents.
2. The text of the notice should read as follows:¹

Annual Notice to Parents - Under the policies of the Board of Education of the City of New York and the Family Educational Rights and Privacy Act (FERPA) you have the following rights:

¹The pamphlet "Students and Parents: Know Your Rights - Student Records," which contains this information, can be obtained at the Office of Parent Involvement, Room 108, 110 Livingston Street, Brooklyn, N.Y. 11201. Principals or heads of office who distribute this pamphlet annually to parents and students will fulfill the notice requirement of this regulation.



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1. To inspect and review education records maintained by the schools that pertain to your child;
 2. To have access to your child's computerized education records;
 3. To challenge the content of records on the grounds that they are inaccurate, misleading or in violation of your child's privacy or other rights and request that such records be amended;
 4. To control disclosures from your child's education records, with certain exceptions;
 5. To obtain the Board of Education policy with respect to how student education records may be obtained from your child's school; and
 6. To file written complaints regarding alleged violations of the FERPA with the Family Policy and Regulations Office, U.S. Department of Education.
 - a. The complaint must contain specific allegations of fact giving reasonable cause to believe that the FERPA has been violated.
3. The principal or head of office shall provide for notification in the dominant language to parents of students identified as having a primary or home language other than English.



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VII. ACCESS AND RELEASE OF INFORMATION IN STUDENT RECORDS

A. General Provisions

1. In keeping with the individual's right to privacy, no part of a student's education record may be divulged with a personal identifier to any person, organization, or agency in any manner not covered by this or subsequent regulations unless:
 - a. There is informed written consent by the parent or eligible student. Unless there is a state law, court order or legally binding document governing such matters as divorce, separation or custody that specifically revokes these rights, the principal or his/her designee may presume a parent has the authority to exercise the rights inherent in FERPA.
 - b. There is a valid court order or lawfully issued subpoena requesting such information. In such cases, prior to complying to such order or subpoena the principal or head of office shall notify the parent or eligible student immediately in writing of the information which has been subpoenaed or which is the subject of the court order. (Questions concerning the validity of a court order or subpoena should be directed to the Office of Legal Services, New York City Board of Education, 110 Livingston Street, Brooklyn, New York 11201, Telephone number (718) 935-3636.)

B. Access to Student Records by Parents, Legal Guardians and Students

1. When a parent or eligible student requests to see his or her child's, or his/her own education records, the parent or eligible student shall be accorded an expeditious opportunity to do so. Such request is not required to be in writing.



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2. The parent or eligible student is entitled to duplicate such written records or computer printouts, and not only to have items selected and read by school officials. However, original records may not be removed from the school by the parent or eligible student.
3. Access to the record shall be made possible at the earliest convenient date. In no case shall the waiting period be longer than forty-five calendar days after receipt of the request from the parent or eligible student.
4. Parents or eligible students may make notes regarding their children's or their own records. Upon the request of a parent or eligible student, the school office shall supply duplicates of requested records at cost (no more than 25 cents per page). In cases where parents or eligible students cannot afford the cost of duplicating, the charge will be waived upon written notice to the school that the parent or eligible student is unable to afford the cost. A parent or eligible student may not be charged a fee to search for or to retrieve the education records of a student.
5. The principal shall arrange for a member of the professional staff to respond to requests for explanation of the records and to assist the parent or eligible student in interpreting the records made available at the parent's or eligible student's request.
6. Parents who are disabled or who live outside New York City are entitled to have photocopies made for them of any records which they request to see, and to have photocopies forwarded to them. Upon the request of such parent, the principal shall arrange to have a member of the school's professional staff assist the parent in



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interpreting the records made available in this way, either by telephone, in person, or through the mail, in a way the principal feels best utilizes the staff member's time. Copies of records will be made available to the parent at cost (no more than 25 cents per page). In cases where parents cannot afford the cost of duplicating, the charge will be waived upon written notice to the school that the parent is unable to afford the cost.

7. The principal shall not authorize the destruction of any education record if there is an outstanding request to inspect and review the record².
8. In the case of estranged, separated or divorced parents, or in the case of children in the custody of some person or institution other than their parent:
 - a. Requests by a parent or custodian with whom the child resides to examine the child's records will be honored according to the procedure detailed above.
 - b. For requests by a parent with whom the child does not reside, (i.e. the non-custodial parent) to see the child's records, the principal will notify the parent or institution with whom the child does reside of the request. The notice will tell the

²Destruction of student education records is governed by the Records Retention and Disposition Schedule. (See Appendix I for a copy of this document).



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custodian of the child that the request has been made, the name of the person making the request, and the date on which the request was made. Whenever practical, the notice shall be written in the primary language of the student's home. (A sample Notice of Request for Access to Student Records by Non-Custodial Parent appears as Form I of this regulation.) The parent making the request shall be notified at the time of the request that the custodial parent is being given an opportunity to inform the school as to whether a binding instrument or court order bars the school from giving the parent access to the records, and if no such document has been found within the forty-five calendar days, the records will be made available to the parent.

9. If the education records of a student contain information regarding more than one student, the parent or eligible student may inspect and review or be informed of only the specific information which pertains to his or her child or the eligible student.

10. High School students under 18 years of age have the right to see their permanent records upon request.

C. Access to Records by Parents of Students 18 Years or Older

1. When a student attains the age of eighteen, the rights accorded, and consent required of parents is transferred from the parents to the student. The school may provide the student with a waiver form which provides that, so long as the student continues to attend the school, the student authorizes his or her parents to exercise all the



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rights defined in this regulation. Such waiver will also provide that information released to a custodial parent will be considered to have been released to the student. (A sample Permission to Permit Parents to Have Access to and Authorize Release of Student Records form appears as Form II of this regulation.)

D. Access to Records by School Staff and Other Board of Education Employees

1. The policy which this regulation seeks to effectuate is that indiscriminate access to student records, even by the professional staff of a school, is neither permitted nor encouraged. A staff member or other Board of Education employee who seeks access to a particular student's records must have a specific and legitimate educational reason for the request. The validity of the legitimate educational reason is to be determined by the principal or head of office.
2. School staff members who are providing on-going educational services to the student, such as a student's current teachers or a grade advisor, are not required to obtain permission to access the student's records for legitimate educational reasons. However, other staff members must make a written request to the principal or head of office for permission to access a student's record. The request must state the legitimate educational purpose for seeking access to the student's records.
3. The principal or head of office may delegate the responsibility for evaluating whether a particular request for disclosure constitutes a legitimate educational interest. However, it is the principal's or head of office's



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responsibility to ensure that the determination is made in each case and that the person making the request has a legitimate reason for making the request.

4. Information and data concerning students or their families collected by schools for the planning, operation and evaluation of school and school-related programs shall not identify individual students or families unless the school obtains the informed written consent of the parents or eligible students involved before the collection of such information.

E. Release of Information to Persons, Organizations or Agencies Other Than Parents, Legal Guardians, Students or School Staff

1. Except in cases where there is a court order, state law or lawfully issued subpoena, no personally identifiable information concerning the student may be released to non-school agencies or individuals, including employers, colleges or universities, sponsors of scholarship or aid programs, city, state or federal agencies, the courts, labor unions, fraternal organizations, probation or welfare departments, lawyers, doctors, armed services recruiters, etc., without the informed written consent of the parent or eligible student.

- a. The parent's or eligible student's written and dated consent must specify which records may be disclosed and the purpose of the disclosure, and must identify the party or class of parties to whom the information may be disclosed.

- b. In the case of a request by a parent or eligible student for release of information



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to a third party, that request must be signed and must include the description of the information to be released and must identify the party or class of parties to whom the disclosure may be made. Parents or eligible students should be informed that if they wish to limit the purposes to which the released information may be put, their request for release should either specify those purposes or state that use should be limited to "purposes to be determined according to the agreement between (name of third party) and myself."

2. School officials may disclose student education record information to organizations conducting studies for, or on behalf of the school, without prior parent or eligible student consent, to:

- a. Develop validate, or administer predictive tests
- b. Administer student aid programs; or
- c. Improve instruction

The student education record information may only be disclosed if:

- a. The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and
- b. The information is destroyed when no longer needed for the purposes for which the study was conducted.



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3. Any individuals or groups who wish to conduct research at a school site, gather information on or from students, or survey school staff must obtain written approval from the Office of Research, Evaluation, and Assessment (OREA). Once the individuals or groups have received an approval letter for their research project, they must obtain the superintendent's and principal's signatures indicating their permission to proceed with the research in their district or school. Where access to personally identifiable student information is required, permission from the parent or eligible student must be obtained.

This procedure does not apply to research conducted by and for an office of the New York City Board of Education. (For complete guidelines please refer to "Doing Research in New York City Public Schools: Proposal Guidelines" available from OREA at 110 Livingston Street, Room 738, Brooklyn, New York 11201.)

4. Consent Forms to be used are as follows:

- a. Schools may use standard consent forms, signed by the parent, granting permission to the school to provide pertinent records to colleges and employers. Such consent forms shall be valid only while the student is registered in the school.
- b. In the case of eligible students, the written consent of the student shall be sufficient authorization for the release of such information.
- c. Whenever written consent is required, the principal shall assume that a parent who has custody of the child has the legal authority to give such consent.



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If consent is given by a non-custodial parent, for example when parents are estranged or divorced, or when custody has been granted to a guardian, no records shall be released until the following steps have been taken:

- (1) The custodial parent or institution shall be notified that the consent has been granted. Such notice shall include the name of the person granting consent, the date on which consent was granted, and the person to whom the information is to be released. (A sample Notice of Consent of Non-Custodial Parent to Release of Records appears as Form III of this regulation.) The notice will state that unless evidence is presented to the principal or head of office which denies the person giving consent the authority to do so, the records will be released forty-five days after receipt of the request. The only valid evidence which may be presented is evidence of a binding agreement, court order or state law which specifically revokes such right.
- (2) A copy of this notice will be sent to the non-custodial parent who has made the request.
- (3) The principal or head of office shall not release any records at the request of a non-custodial parent until forty-five days after receipt of the request unless he or she is informed by the custodial parent before expiration



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of forty-five days that nothing bars the non-custodial parent from granting the release of the records.

- (4) Where evidence has been presented of a binding agreement, court order or applicable state law which denies the non-custodial parent the authority to consent to the release of his or her child's records, the principal or head of office shall not release the student's records.
5. The informed written consent of the parent for release of information to non-school agencies or individuals is not required where it is determined that an emergency exists in which the health, safety or welfare of the student or other individuals requires the release of information before such consent can be obtained.
6. Records may be released without parental or eligible student consent to the following authorities:
 - a. To authorized representatives of the Comptroller General of the United States, the Secretary of Education or state and local educational authorities;
 - b. To officials of New York State and New York City to whom information is specifically required to be reported or disclosed pursuant to State statutes adopted prior to November 19, 1974;
 - c. To accrediting agencies in order to carry out their accrediting function;



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- d. To comply with a judicial order or lawfully issued subpoena, provided that the school staff shall make a reasonable effort to notify the parent of the student of the order or subpoena in advance of complying with it; and
 - e. To appropriate parties in connection with an emergency, if knowledge of the information to be released is necessary to protect the health or safety of the student or other individuals.
7. The principal or head of office does not have any responsibility to investigate the subsequent uses of student records which are lawfully released to third parties. The principal's or head of office's sole responsibility shall be to label any record released to a third party with a notice or stamp which reads as follows: "This is a copy of information contained in the education records of a student at a school within the city school district of New York City. Its disclosure is subject to the terms of the restrictions of the Family Educational Rights and Privacy Act and has been released on condition that it will not be further disclosed, without permission of the student's parent, to any party other than the officers, employees or agent of the party to whom it has been released, and that it will be used solely for the purpose for which it was disclosed."
8. This section is to be followed strictly. Doubt as to the propriety of disclosing information from a student's record is sufficient justification for withholding or denying information until the doubt is



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disputed or proper authority is shown. Questions concerning this section may be referred to the Office of Legal Services, Board of Education, 110 Livingston Street, Brooklyn, New York 11201, Telephone (718) 935-3636.

F. Recording of Request For Access

1. The principal or head of office shall, for each request by a person other than a parent or eligible student for disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:
 - a. The parties who have requested or obtained personally identifiable information from the education records of the student;
 - b. The legitimate education interest the parties had in requesting or obtaining the information; and
 - c. The information actually disclosed.
2. The record of disclosures may be inspected:
 - a. By the parent of the student or the eligible student;
 - b. By the school official and his or her assistants who are responsible for the custody of the records; and
 - c. By those parties authorized in section VII(E)(6)(a)(b) and (c) for the purposes of auditing the recordkeeping procedures of the school.



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3. The principal or head of school is not required to maintain a record of each request for access to or each disclosure of personally identifiable information from students' education records to:
 - a. school officials, including teachers, within the school;
 - b. a party with written consent from the parent or eligible student; or
 - c. a party with a subpoena or court order.

VIII. ACCESS TO COMPUTERIZED STUDENT DATA

A. Introduction

The advent of computerized student education records gives rise to new issues concerning the confidentiality of such data. Therefore, specific procedures must be followed to safeguard the information from inappropriate users or use and to ensure that the information is available only to individuals and organizations that have legitimate educational reasons for accessing the data. The policy which this Regulation seeks to effectuate is to allow individuals and organizations access to student education records information, while ensuring that the students' and parents' privacy rights are not violated. Access to all computerized student data is governed by the rules and security procedures set forth in this Regulation.

B. Access to Computerized Student Education Records Information by District Superintendents, Directors, Principals or Other Board of Education Employees.

1. Under the FERPA regulations, prior parental or eligible student consent is not required for disclosure of personally identifiable information



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from an education record of a student if the disclosure is to other school officials, including teachers, within the school whom the school has determined to have legitimate educational interests.

2. District Superintendents and their designees shall have access to personally identifiable information, without prior parental or eligible student consent, for legitimate educational purposes.

3. Directors of other Board of Education Divisions and their designees (e.g. Division of Special Education) utilizing systems such as the Child Assistance Program System (CAPS) and the University Application Processing Center (UAPC) shall have access to personally identifiable information, without prior parental or eligible student consent, for legitimate educational purposes.

C. Access to Computerized Student Education Records Information by Board and Non-Board of Education Employees in an Advisory or Consultative Role:

1. Access to computerized student records information by Board and non-Board of Education employees in an advisory or consultative role (i.e. teachers, parents, support staff, supervisors and SBM/SDM team members) shall be limited to information in the aggregate. Access to such information is for the purpose of enabling these individuals to make decisions for the planning, operation and evaluation of school and school related programs. Only Board of Education employees determined by the principal to have a legitimate educational interest shall have access to individual student records for this purpose.



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D. Storage of Computerized Student Education Records on Hard or Floppy Disks.

1. Any information contained on these disks is confidential and is subject to the same protection afforded to student education records in other formats. As such, this information should not be copied or disseminated without adhering to the applicable federal law as set forth in this regulation.

E. Security Measures

1. Each individual authorized to access the computerized information must receive a copy of Mayoral Directive #81-2 (Electronic Data Processing Security) outlining the security measures to be taken with respect to the use of electronic data processing systems, and must sign the "Acknowledgment of Receipt of Mayoral Directive #81-2" form. (A sample of these documents appears as Appendix II and Form IV to this regulation.) Such individuals must also receive a copy of "Student Records: Administrators' and Teachers' Responsibilities" outlining their responsibilities and duties and the security precautions to be taken with respect to protecting the privacy rights of students and parents. (A sample of this document appears as Appendix III.)
2. All District Superintendents, Directors and Principals maintaining any computerized student information records are responsible for ensuring that the computerized student information is safeguarded. To that end, the school's or division's computer must be placed in a secure location, and when not in use be kept under lock and key.



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3. Each school or division head should designate a person who will be authorized to access the information from the computer.
4. Computerized data must be password protected.
5. Computer printouts of student or parent data should be shredded or boxed and disposed of in a secured manner.

F. Training

1. All individuals having direct access to computerized student information must participate in an annual training program aimed at ensuring that these individuals are apprised of the need for the confidentiality of the information retrieved and the security precautions which must be undertaken with respect to this information. Additionally, these individuals must be made fully aware of the privacy rights of the students and the parents and how to protect these rights.
2. The training program will be conducted by the Office of Educational Data Services and the Division of Computer Information Services.

IX. ENTRIES IN STUDENT RECORDS

A. What Can be Recorded on the Permanent Record Card

1. The school may record information concerning activities, development and achievement in school. Only superintendent's suspensions may be included on the permanent record card.

B. What Cannot be Recorded

1. The permanent record cards may not be used to record non-school related incidents or activities of the student or his family.



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C. Recording of Derogatory Information and Parent Notification

1. A notation in the student's record which is derogatory to the student shall be entered in the record and the parent or eligible student notified within fifteen school days following the date on which the incident leading to the entry became known.

D. The Right to Challenge an Entry

1. The student and parent have the right to answer or explain in writing any material entered in any of the student's records, and such written answer shall be included in the record by the principal. The answer shall be included with the entry to which it responded whenever that entry is disclosed by the principal or head of office to any party under any of the regulations included in this document.

E. The Right to Appeal

1. In addition to the right to file a written answer to derogatory material, the parent or eligible student shall have the right to appeal any entry in his or her child's records which is derogatory, inaccurate, misleading, or in violation of the student's privacy or other rights. Derogatory, inaccurate, or misleading information, or information in violation of the student's privacy or other right shall be expunged from the student's record by the principal or ~~higher~~ authority if the parent's or eligible student's appeal is sustained.



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X. APPEAL PROCEDURES

A. Non-Special Education Records for General Education, Special Education and City-Wide Programs/District 75 Students

1. A Conference

- a. Within three months following notification of the entry of derogatory information, the parent or eligible student shall confer with the principal regarding any derogatory entry in the student's file. The principal shall make a determination concerning the entry within fifteen school days following the conference. The principal may modify or expunge the entry from the student's record where such action is warranted. Removing or expunging an entry from a student's record is not an admission that the entry was improper, or that any person acted improperly by including the entry on the record.

2. A Written Appeal to the Principal

- a. Within fifteen school days from an adverse result of the conference, the parent or eligible student may appeal in writing to the principal. The principal shall rule on such written appeal, in writing, within fifteen school days following receipt of the appeal from the parent or eligible student. If the principal denies the parent's or eligible student's appeal in whole or in part, the ruling shall include notice of the parent's or eligible student's right to appeal further.



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3. A Written Appeal to the Community Superintendent,
High School Superintendent or Superintendent,
City-Wide Programs/District 75

- a. Within fifteen school days from receipt of the principal's decision, the parent or eligible student may appeal the ruling of the principal, in writing, to the Community Superintendent, High School Superintendent or, in the case of centrally operated special education schools to the Superintendent, City-Wide Programs/District 75. The Community Superintendent, High School Superintendent or City-Wide Programs Superintendent shall rule on such an appeal, in writing, within fifteen school days following receipt of the appeal from the parent or eligible student. If the Community Superintendent, High School Superintendent or City-Wide Programs Superintendent denies the parent's or eligible student's appeal in whole or in part, the ruling shall include notice of the parent's or eligible student's right to request a formal hearing.

B. Special Education Records

1. A Conference

Within three months following notification of the entry of derogatory information, the parent or eligible student shall confer with the Chairperson, Committee on Special Education or his/her designee regarding any derogatory entry in the student's clinical file. The chairperson may modify or expunge the entry from the student's record, as per federal and local laws, where such action is warranted. Removing or expunging an entry from a student's record is not



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an admission that the entry was improper, or that any person acted improperly by including the entry on the record.

2. A Written Appeal to the Chairperson, Committee on Special Education

Within fifteen school days from an adverse result of the conference, the parent or eligible student may appeal in writing to the Chairperson, Committee on Special Education. The Chairperson shall rule on such written appeal, in writing, within fifteen school days following receipt of the appeal from the parent or eligible student. If the Chairperson denies the parent's or eligible student's appeal in whole or in part, the ruling shall include notice of the parent's or student's right to appeal further.

3. A Written Appeal to the Clinical Administrator, Regional Office

Within fifteen school days from an adverse ruling, the parent or eligible student may appeal the ruling of the Community School District Chairperson, Committee on Special Education in writing to the Clinical Administrator, Regional Office. The Clinical Administrator shall rule on such an appeal, in writing, within fifteen school days following receipt of the appeal from the parent or eligible student. If the Clinical Administrator denies the parent's or eligible student's appeal in whole or in part, the ruling shall include notice of the parent's or eligible student's right to appeal further.



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4. A Written Appeal to the Executive Director,
Division of Special Education

Within fifteen school days from an adverse ruling, the parent or eligible student may appeal the ruling of the Clinical Administrator in writing to the Executive Director, Division of Special Education. The Executive Director shall rule on such an appeal, in writing, within fifteen school days following receipt of the appeal from the parent or eligible student. If the Executive Director denies the parent's or eligible student's appeal in whole or in part, the ruling shall include notice of the parent's or eligible student's right to request a formal hearing.

C. A Written Request for a Formal Hearing Before a
Hearing Officer

1. If the Community Superintendent, High School Superintendent, Superintendent, City-Wide Programs/District 75 or Executive Director, Division of Special Education denies the parent's or eligible student's appeal in whole or in part, or fails to render a ruling within the prescribed time period, a parent or eligible student may request a formal hearing within twenty school days from an adverse ruling or failure to rule. A hearing officer shall be appointed by the Community School Board for schools or offices in a community school district, or by the Chancellor for schools or offices within the jurisdiction of the City Board of Education.
2. The hearing officer may be any person, including an employee of the City School District, so long as he or she is not directly involved with the student, school or record involved in the hearing.



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D. The Time Limit for the Formal Hearing

1. The hearing shall be held within forty-five calendar days after the parent or eligible student files the request for an appeal with the Chancellor or Community School Board, and the parent shall be given notice of the date, place and time of the hearing.

E. The Conduct of the Hearing

1. The parent or eligible student shall be afforded a full and fair opportunity to present evidence relevant to issues raised in the appeal and may be assisted or represented by individuals of his or her own choice at his or her own expense, including an attorney. No formal record of the hearing need be maintained. However, the hearing officer must take sufficient notes of the testimony heard and evidence presented at the hearing, such as the information required to be included in the hearing officer's written report in §X(F)(1), to serve as a record of the hearing if an appeal is filed.

F. The Report of the Hearing Officer

1. The hearing officer shall make a written report to the Community School Board for complaints involving schools or offices in a Community School District, or to the Chancellor, for complaints involving schools or offices within the jurisdiction of the City Board of Education, including a summary of the evidence, the hearing officer's findings of fact, recommendations and reasons for recommendations, within fourteen calendar days from the conclusion of the hearing.



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G. The Review of the Report of the Hearing Officer

1. The Community School Board (or Chancellor, as appropriate) shall review the report of the hearing officer and issue a decision within forty-five calendar days of the transmission of the hearing officer's report to the Community School Board or Chancellor. Such decision must include a summary of the evidence and description of the reason(s) for the decision.
2. Upon request, the parent or eligible student may obtain a copy of the hearing officer's report.

H. An Appeal from a Community School Board Decision

1. Adverse decisions of the Community School Board may be appealed in writing to the Chancellor. Such appeal shall be filed within fifteen school days of the decision. The Chancellor shall issue a written decision within fifteen school days after receipt of the appeal.

I. An Appeal from a Chancellor's Decision

1. Adverse decisions of the Chancellor may be appealed in writing to the City Board of Education. Such appeal shall be filed within fifteen school days of the decision. The City Board of Education shall issue a written decision within fifteen school days after receipt of the appeal.

J. The Recording of a Change in a Student Record

1. If a decision orders any change in the student's record, such change shall be carried out by the principal or chairperson under this Regulation. If the parent or eligible student so requests, notice of the change shall be sent to all parties



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(not including school staff) who were recorded as having access to the portion of the record ordered changed within one calendar year of the decision.

2. The expunging of the student's record must be done in such a way to completely eradicate the disputed entry. Notification of the expungement must be sent to all parties to whom the record has been forwarded.

K. The Recording of a Parent's Answer

1. If a decision denies the parent's or eligible student's appeal in whole or in part, the decision shall include notice of the parent's or eligible student's right to enter an answer into the student's records.

XI. TRANSFER OF RECORDS

A. Transferring Records Within the City School District

1. When a student moves from one public school to another school within the City School District, the permanent records shall be forwarded to the new school. A copy of the forwarded records will be given to the parents or eligible students upon request.
2. Prior to transferring a guidance folder (not the guidance records defined in §IV(C)(1)(a)(2) of this Regulation), the folder must be reviewed by the guidance personnel, guidance supervisor, principal or appropriate designee to ensure outdated information has been removed.



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B. Transferring Records Outside of City School District

1. The parent's or eligible student's authorization is necessary to transfer records to schools other than those in the City School District of New York. When school authorities state that a parent has registered a child with them, this shall constitute sufficient authorization for transfer of copies of appropriate permanent records. A copy of the records so transferred will be given to the parents or eligible student upon request.

XII. SUGGESTED FORM LETTERS

FORM I

Notice of Request for Access to Student Records by Non-Custodial Parent

Dear (Custodial Parent),

A request was made by (name of non-custodial parent) on (date) to examine the educational records of (name of student).

(Name of non-custodial parent) has presented the school with evidence that he or she is a non-custodial parent of (name of student). Unless the school is provided with a legally binding instrument or court order providing that the parent making the request shall not have access to the child's education records, those records will be released to the parent making the request by (date which is 45th day following initial request).



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FORM II

Permission to Permit Parents to Have Access to and Authorize Release of Student Records

I am a student attending (name of school) and I reached my eighteenth birthday on (date). As long as I continue to attend school, I authorize (name of parent or parents) to exercise all the rights defined in the regulation governing Student Records: Access and Disclosure.

All information released to (name of parent or parents) should be considered to have been released to me.

FORM III

Notice of Consent of Non-Custodial Parent to Release of Records

Dear (Custodial Parent),

A request was made by (name of non-custodial parent) on (date) to give consent for (name of third party) to examine the educational records of (name of student).

(Name of non-custodial parent) has presented the school with evidence that he or she is the non-custodial parent of (name of student). Unless you provide the school will evidence that (the non-custodial parent) does not have the authority to grant consent to permit (name of third party) to examine the educational records of (name of student), the records will be released by (date which is forty-five (45) days after receipt of request).

The only valid evidence you may produce is evidence of a binding agreement, court order or state law specifically revoking such right.



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FORM IV

Acknowledgement of Receipt of Mayoral Directive #81-2

I _____ have received a copy of Mayoral Directive 81-2 which defines the City of New York's computer usage and data security policy.

I understand that City computers, computer programs and computerized data are substantial City assets and that their use must be only for official City work. Further, I understand that any rights that I may have to use these assets will cease upon my leaving City service, whether by resignation or adverse termination procedure, and that failure to comply with Directive 81-2 will be cause for disciplinary or criminal actions to be initiated against me.

Until recently, our state has operated under the belief that an entity empowered to promulgate a rule was also empowered to waive portions of the rule. For example, our state board of education was believed to have the authority to waive its rules regarding education. Indiana's office of Attorney General has recently issued the opinion that a body may not waive a rule requirement unless the rule itself is specific in granting waiver authority.

Our recently revised special education rules, Article 7, do not contain a waiver provision. Our state board of education is interested in investigating the addition of a waiver provision. All parties understand that federal requirements can not be waived.

What is OSEP's position regarding states' authority to waive state specific rule requirements? As Article 7 as submitted to OSEP does not contain a waiver provision, would the addition of a waiver provision in any way jeopardize our conditional approval and flow of funds?

Any information you can provide will assist us with this issue. Thank you in advance.

Text of Response

This is in response to your letter regarding "[S]tate waivers for [S]tate-specific rule and regulation requirements." Specifically, you asked for OSEP's position regarding waiver of State specific rule requirements and whether the addition of a waiver provision to Article 7 (Indiana's revised special education rules), which has been submitted to the Office of Special Education Programs (OSEP), would jeopardize OSEP's conditional approval of your State plan and funding under Part B of the Individuals with Disabilities Education Act (Part B).

A State may establish procedures that permit waiver of State requirements that exceed Federal requirements, but may not permit waiver of Federal requirements or State provisions that have been established to meet Federal requirements. Further, a waiver provision should specifically state that the provision does not permit the waiver of any provisions required by Federal law.

In addition, any proposed waiver provision must be submitted to OSEP for review in accordance with State plan amendment procedures found at 34 CFR §§ 76.140-76.142 of the Education Department General Administrative Regulations (EDGAR) which state in part that:

A State shall . . . amend a State plan if there is a significant and relevant change in [t]he information or the assurances in the plan . . . or [t]he organization, policies, or operations of the State agency . . . the State shall use the same procedures as those it must use to prepare and submit a State plan . . . [t]he Secretary uses the same procedures to approve an amendment to a State plan—or any other document a State submits—as the Secretary uses to approve the original document.

Conditional approval of your State plan and continued funding under Part B would not be jeopardized by the addition of a waiver provision in accordance with the information and regulations as stated above.

For further assistance with this procedure, you can call or write your State contact person, Ms. Carolyn Smith of my staff, at the following address and telephone number:

Program Review Branch
Office of Special Education Programs
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202
Telephone: (202) 205-8159

I hope that this provides the clarification that you are seeking. If we can be of further assistance in this matter, please let me know.

Judy A. Schrag
Director
Office of Special Education Programs

Mrs. Marilyn Wessels
SATT
P.O. Box 9503
Schenectady, NY 12309

Digest of Inquiry (June 12, 1992)

- Must a public agency with the responsibility for providing FAPE to preschool children with disabilities pay for tuition costs when these children are placed in non-special education preschool programs?
- Must a public agency with the responsibility for providing FAPE to preschool children with disabilities pay for tuition costs when these children are placed in non-special education preschool programs?

Digest of Response (November 27, 1992)

Type of Preschool Placement Does Not Affect Duty to Provide FAPE

Regardless of whether a preschool child with disabilities is placed in a public preschool program or a private, non-special education preschool program, the public agency with responsibility for providing FAPE to the child must pay for all costs associated with the provision of special education and related services in the least restrictive environment as stated in the child's IEP.

Type of Preschool Placement Does Not Affect Duty to Provide FAPE

Regardless of whether a preschool child with disabilities is placed in a public preschool program

or a private, non-special education preschool program, the public agency with responsibility for providing FAPE to the child must pay for all costs associated with the provision of special education and related services in the least restrictive environment as stated in the child's IEP.

Text of Inquiry

In 1989, I wrote to you regarding clarification of a school district's responsibility for costs associated with placing a preschool youngster who is classified as disabled into a private placement. I am enclosing a copy of your response.

I have been working with a family of a preschool child who placed their child into a private program which was recommended in her IEP. For example as a goal in the IEP it was recommended that she would spontaneously initiate and sustain conversation with adults and peers in various settings, (e.g., nursery school, playground.)

As you know, in New York State, the school districts do not pay any of the costs for preschool youngsters. Instead the counties pay up front and the state then reimburses the counties for 50% of the costs. The county refused to do so in this case. I should state here that the family paid for the private nursery program because the program would not take the youngster without payment. I recommended that the family write to the State Education Department using your November 27, 1989 letter as a basis for getting the department to intervene.

On January 24th, 1992 the department responded, denying payment for the non-special education preschool program even though it was clearly indicated in her IEP. I am enclosing a copy of that letter as well. However, I have deleted all personally identifiable information as the family prefers at this point in time not to pursue this. I am told that the district is going to pay the family for the cost of the tuition.

I am writing this not to argue for this family but to ask if on the basis of your 1989 letter and the department's response if New York State is in compliance in general. I believe that it is not. Obviously this is a very important question because unless clarified, the department will continue to instruct the school districts not to place children in similar settings unless the parents pay for the entire program.

I must clarify here that I am not suggesting that tuition payment should be made for children with disabilities when their parents opt for an alternative setting unless the Committee on Preschool Special Education and the parents agree that the intended setting meets the needs of that individual child.

If you have any questions please do not hesitate to call me at (518) 377-8903. With New York State currently segregating 93% of its preschool disabled children while the figures indicate that 83% of the same children are integrated nationally, I urge that you look into this matter as soon as possible.

Text of Response

I am writing in response to your recent letter about the problems confronting parents of preschool-aged children with disabilities in New York regarding implementation of individualized education programs (IEPs) in the least restrictive environ-

ment. The specific issue is whether the public agency responsible for providing free appropriate public education (FAPE) to preschool-aged children with disabilities is responsible for paying tuition costs when placement is in non-special education preschool programs. As you state in your letter, you are not raising the issue of the provision of special education and related services to children with disabilities whose parents unilaterally place them in a private non-special education preschool program.

The information in my November 27, 1989, letter to you remains accurate in that whether a child is placed in a program provided directly by the public agency or in a private non-special education preschool program, the public agency is responsible for all costs associated with providing the special education and related services in the least restrictive environment as stated in the IEP. I have asked Mr. Thomas Neveldinc to clarify New York's position as expressed in his letter enclosed with your correspondence.

A preschool child with a disability is entitled to all of the rights and protections guaranteed by Part B of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations at 34 CFR Part 300. This includes the right to FAPE and services in the least restrictive environment.

FAPE is defined as "special education" and related services which (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the State educational agency, including the requirements of this part; (c) include preschool, elementary school, or secondary school in the State involved; and (d) are provided in conformity with an [IEP] which meets the requirements of 34 CFR 300.340-300.349." 34 CFR 300.4. The IEP must include "a statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in the regular educational program." 34 CFR 300.346(c).

Once the IEP is complete, a placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 CFR 300.533(a)(3). The placement decision must be based on the unique needs of the child as set out in the child's IEP. It must be made in conformity with the least restrictive environment rules in 34 CFR 300.550-300.554, which require that to the maximum extent appropriate children with disabilities be educated with children without disabilities. 34 CFR 300.533(a)(4) and 300.552(a)(1). The various alternative placements in 34 CFR 300.551 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) must be available to the extent necessary to implement each child's IEP. 34 CFR 300.552(b).

If a public agency places a child in a private preschool program for the purpose of receiving FAPE, the public agency must ensure that the private school program is provided at no cost to the parents. Therefore, if the placement team determines that full-day placement in a private preschool which integrates disabled and non-disabled children is the most appropriate placement in which to implement a child's IEP, the public agency is responsible for the tuition costs associated with providing that placement. If the placement team determines that part-time placement in a private preschool is the most appro-

private placement in which to implement a child's IEP and the parent wants the child to remain in the private preschool for longer than what is required in the IEP, the parent is responsible for any costs associated with the portion of the program not necessary to implement the child's IEP. However, the public agency remains responsible for all tuition costs associated with the part-time placement required to implement the child's IEP.

Your letter also raises a larger issue with regard to service delivery systems for 3- and 4-year-old children with disabilities. In New York, as well as many other States, children below age 5 are not within the State's mandated school age. As a result, public agencies do not typically operate educational programs for non-disabled children below age 5. Further, those public agencies are not required to initiate educational programs for non-disabled children below the State's mandated school age solely to satisfy the requirements regarding placement in the least restrictive environment of children with disabilities below the State's mandated school age.

Local educational agencies (LEAs) should consider alternative placement options when LEAs are not required to provide preschool programs to non-disabled children. Some of these alternatives are contained in the *Comment* following 34 CFR 300.522, and include placing children with disabilities into private programs for non-disabled children or programs that integrate disabled and non-disabled children, locating preschool programs in regular elementary schools, or providing opportunities for preschool-aged children with disabilities to participate in other preschool programs operated by other public agencies.

As you are well aware, placement of preschool-aged children with disabilities into the least restrictive environment is an issue being addressed by all States, an issue made difficult in part because there typically are not "regular educational environments" available in public school systems for non-disabled age peers. We believe that the extensive research, development of models, outreach, and intensive technical assistance to States on integrating children with disabilities into community-based settings, in conjunction with State's development of public policy and collaboration with other agencies, service providers, and parents, will continue to result in progress towards providing FAPB to preschool-aged children with disabilities with their non-disabled peers.

I appreciate your interest and advocacy for children and families regarding the placement of disabled children in environments where non-disabled children are typically found, and hope that you will continue to apprise us of problems, as well as successes, with the provision of services to preschool-aged children with disabilities in the least restrictive environment.

Judy A. Schrag
Director
Office of Special Education
Programs

¹ Special education means "specially designed instruction, at no cost to the parent, to meet the unique needs of a [child with a disability], including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions." 34 CFR 300.14(a).

At no cost means "that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to [nondisabled] students or their parents as part of the regular education programs." 34 CFR 300.14(b)(1). Tuition costs are not an incidental fee and therefore cannot be charged to the parent.

² Related services means "transportation and such developmental, corrective, and other supportive services as are required to assist a [child with a disability] to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of the disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training." 34 CFR 300.14(a).

[Inquirer's Name Not Provided]

Digest of Inquiry (September 19, 1992)

- Is sign language training for the parents of a child who is deaf included within the Part B definition of related services?

Digest of Response (December 8, 1992)

Issue of Sign Language Training for Parents Was Previously Addressed

The question of whether sign language training for the parent of a child who is deaf is covered by the Part B definition of related services was addressed in a previous OSEP policy letter. See *Letter to Dagley*, 17 EILR 1107 (1991), in which OSEP noted that sign language training for parents may be provided under the aegis of "parent counseling and training" in accordance with 34 CFR 300.346(c) and 300.13(b)(6).

Text of Inquiry

I am writing to you to ask for an official copy of your definition of related services under code of federal regulations 300.13 a—specifically as it relates to parent training—does this include sign language training for the parents of a deaf child? If so please send a copy of your policy on this to [] and [] (co-ordinators) of the committee on special education in the [] N.Y. school district. At my annual review on [], I asked that sign language training for my husband and I be put in the IEP under related services. They have refused to do this saying that parent training does not mean sign language training.

Please send an official copy of your department's policy on this to [] and [] at [] Committee on Special Education.

ITEM	DESCRIPTION OF RECORD	RETENTION
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SPECIAL EDUCATION

INSTRUCTION

1. **Special education file** of student with handicapping condition
 - a. Student information sheet, most recent attendance card, most recent 2 years' IEP [Individual Education Program], high school transcript or most recent 2 years' student progress reports, most recent referral form, most recent social worker and psychological reports, most recent audiological and reading report, special reports (career assessment, occupational and physical therapy, etc.), summary, and health record:
 - b. Other special education records including but not limited to IEP Phase I-II addendum, parent communication, agency communication, writing sample, and superseded attendance/staff reports/behavior/staff changes records:

15 years after student receives diploma, attains age 21, or is declassified from special education, whichever is shorter

6 years

NOTE: This item covers only those records of a student with a handicapping condition that concern the provision of special education services. Records that are kept on all students (including those with handicapping conditions) are covered by other items.

FINANCE

1. **State agency notification to school district identifying student with handicapping condition placed in residential facility**, (State Education Department [System to Track and Account for Children] STAC 200 or 201 form or equivalent) prepared by State agency other than State Education Department:
2. **Commissioner of Education approval for providing and funding special education services**, (State Education Department [System to Track and Account for Children] STAC 3 form or equivalent), identifying child, services provider, and type, duration, and cost of services:
3. **Federal assistance records for special education**, including but not limited to application, advisement, eligible student survey form, reports, statement of payment and memorandum of instruction:

6 years after notice superseded, or student attains age 21, whichever is shorter

6 years

6 years

PREKINDERGARTEN REFERRAL

1. **Referral service records of prekindergarten child with handicapping condition**, including but not limited to intake information record, record of referral for services, follow-up review record, and correspondence:

6 years

EXTRA-CURRICULAR ACTIVITIES

ITEM	DESCRIPTION OF RECORD	RETENTION
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EXTRA-CURRICULAR ACTIVITIES

- | | | |
|----|--|---------|
| 1. | Student organization records , including but not limited to membership records and records of activities: | 6 years |
| 2. | Athletic program records: | 6 years |

NOTE: These records may have continuing value for historical or other research, subject to the access restrictions of the Family Education Rights and Privacy Act. Therefore, SARA suggests that school districts/BOCES retain these records permanently.

STUDENT RECORDS

ITEM	DESCRIPTION OF RECORD	RETENTION
STUDENT RECORDS		
1.	Pupil personnel cumulative record (guidance folder), containing information on all aspects of student's school career:	6 years after last entry
2.	Regents scholarship program records, including but not limited to scholarship application and supplement, list of candidates for examination, list of competition winners and alternates, and reports:	7 years after scholarships awarded
3.	Student employment certificate record, including but not limited to application, evidence of age, parent's consent, physical fitness certificate, and employment certificate or rejection of application:	0 after student attains age 21
4.	Student cumulative education record file ("Permanent record card")	
	a. Cumulative achievement record equivalent for elementary and secondary school including information on school entry, withdrawal and graduation, and on subjects taken and grades received from local and Regents examinations and Regents Competency Test:	60 years after student concerned would normally have graduated high school
	b. Other student records, including but not limited to registration record, screening evaluation reports, standardized and New York State test results except local and Regents examinations and Regents Competency Tests, program admission application, remedial program participation record, counselor notes, teacher comments, correspondence, and transfer or discharge notice:	6 years after student would normally have graduated high school
5.	Certificate of Regents high school and college entrance diplomas issued:	60 years after individual concerned graduated from high school
6.	Examination records	
	a. Certification of students entitled to Regents preliminary examinations:	50 years after individuals concerned would normally have graduated from high school
	b. Claim sheet for Regents preliminary examination:	2 years
	c. Examination answer papers, including Regents, local and literacy examinations:	1 year
	d. Literacy certification record:	10 years
7.	Student disciplinary records, including but not limited to detention notice, suspension hearing record, and correspondence:	6 years

STUDENT RECORDS
continued

ITEM	DESCRIPTION OF RECORD	RETENTION
8.	Scholarship program records , including but not limited to scholarship applications, list of eligible candidates, list of competition winners and alternates, and reports:	1 year after scholarship awarded
9.	National Honor Society student selection records including but not limited to information on qualifications of eligible students, teacher ratings of students, school's honor society committee voting records and list of students selected for membership:	1 year after end of school year

ADULT EDUCATION

ITEM	DESCRIPTION OF RECORD	RETENTION
ADULT EDUCATION		
1.	Student record, including but not limited to program participation application and summary of participant achievements and attendance:	6 years
2.	Emergency medical training records	
a.	Application for training records or certification filed by individual:	6 months
b.	Original entry training records, when posted to summary record:	1 year
c.	Original entry training records, when not posted to summary record:	7 years
d.	Summary record of training:	7 years
e.	Course materials, except final or annual reports:	7 years after course completed

CITY OF NEW YORK

**SYSTEMS
SECURITY
STANDARD**
**TITLE
MAYORAL DIRECTIVE NO. 81-2
ELECTRONIC DATA PROCESSING
SECURITY**

NUMBER 008
DATE ISSUED 9/7/81
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THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

DIRECTIVE TO ALL HEADS OF AGENCIES AND DEPARTMENTS
No. 81-2
June 24 1981
Electronic Data Processing Security
Statement of Policy

The City of New York relies heavily on its electronic data processing ("EDP") systems to meet its operational, financial and informational requirements. It is essential that these systems be protected from misuse and that both the computer systems and the data that they process be operated and maintained in a secure environment. The Office of Operations and the Department of Investigation are directed to work closely with agency heads, heads of information services and Inspectors General to ensure that this is accomplished and that observations of computer fraud and misuse are reported in accordance with the requirements of Executive Order No. 16 (1978).

1. All use of City owned or leased computer systems must be for officially authorized purposes only. Agency heads shall be responsible for the proper authorization of computer utilization by their agencies and the establishment of effective use.

2. The Commissioner of Investigation shall establish City-wide standards for EDP security to ensure that programs, data files and data communications as well as City computer systems are used in compliance with this Directive.

3. The use of City computer systems for non-City consulting work or other unofficial purposes is prohibited without the written approval of the responsible agency head and the consent of the Corporate Counsel.



SYSTEMS SECURITY STANDARD

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4. The sale of City computer system time to persons or organizations other than City employees or agencies is prohibited without the prior written approval of the responsible agency head and the consent of the Corporation Counsel.

5. All computer programs and data in City computer systems and data libraries are for the sole use of the City. All computer programs and data developed for the City by consultants to the City or provided to consultants for use in conjunction with programs or data developed for the City are the property of the City and must be promptly returned to the City upon project completion or termination, unless requested prior thereto by the agency head or the agency head's designee.

6. Copies of any programs or data may only be released from City computer systems upon written authorization of the agency head or the agency head's designee.

7. Effective immediately, all information services contracts, leases, licenses or other information services agreements entered into by the City shall contain a provision, approved as to form by the Corporation Counsel, advising information services vendors of the City's retained property rights with respect to its information systems, programs and data and the City's requirements for EDP security, including data maintenance and return.

8. Passwords and other EDP security procedures shall be protected by individual users from unauthorized use or disclosure.

9. Employees whose employment is terminated shall return all City property and equipment used in connection with City computer systems. Such items as keys, identification cards and badges, portable computer and communications equipment, manuals and documentation and other materials shall be returned to the individual employee's supervisor prior to the last day of active employment. It is recommended that agency heads refer to "System Security Standard No. 116," a copy of which is attached to this Directive, on this subject.

ATTENDANCE

ITEM	DESCRIPTION OF RECORD	RETENTION
ATTENDANCE		
1.	School census records: NOTE: These records may be used to prove date of birth. They may also have continuing value for historical or other research, subject to the access restrictions of the Family Education Rights and Privacy Act. Therefore, SARA suggests that school districts consider retaining these records permanently.	6 years
2.	Student's attendance record (register), including but not limited to each student's name, date of birth, names of parents or guardian, address, and daily attendance, absence and tardiness: NOTE: These records may be used to prove date of birth. They may also have continuing value for historical or other research, subject to the access restrictions of the Family Education Rights and Privacy Act. Therefore, SARA suggests that school districts/BOCES consider retaining these records permanently.	6 years
3.	Student's attendance exemption record, including but not limited to request for and certificate specifying reason for and duration of exemption:	0 after student attains age 21
4.	Student's absence record, including but not limited to parent's excuse, investigation report, and record of attendance at religious observance or education:	1 year after end of school year
5.	Parent's consent for student to participate in, or request for student to be excused from, specific activity, including but not limited to physical education program, field trip, or athletic program:	1 year after end of school year

ITEM	DESCRIPTION OF RECORD	RETENTION
HEALTH		
1.	Student's cumulative health record , including but not limited to health history; immunization record; results and recommendations from examination, screening, or treatment; parent or guardian referral record; and teacher's comments	
a.	Summary record or individual records when not posted to summary record:	0 after individual attains age 27
b.	Individual records when posted to summary record:	1 year after end of school year
c.	Individual immunization record:	10 years, or 3 years after individual attains age 18, whichever is longer
2.	Log of students' accidents and illnesses during school day:	1 year after end of school year
3.	Student's psychological or social assessment record file	
a.	Report regarding student's ability, personality, family, and environmental influences:	6 years after report written
b.	Source materials used in preparing report, including tests and notes:	1 year after report written

APPENDIX III

STUDENT RECORDS:

ADMINISTRATORS' AND TEACHERS' RESPONSIBILITIES

Administrators and teachers have important responsibilities concerning student records which are detailed in the policy of the New York City Board of Education and are required by federal law and mayoral directive.

- Chancellor's Regulation A-820
- The Family Educational Rights and Privacy Act commonly referred to as "FERPA" or the "Buckley Amendment"
- Mayoral Directive No. 81-2 (June 24, 1981) on "ELECTRONIC DATA PROCESSING SECURITY"

The purpose of the regulation, law and directive is to ensure the protection of the rights and privacy of students and parents.

Student records include all educational information which identifies the student either by name, number, or some other way and are either in written form (hardcopy) or on a computer, magnetic or optical media. They include personal and educational information such as test scores and attendance and guidance folders. They do not include notes a teacher or other school personnel keep about a student which are for their individual use.

The rights of parents and students to view records are contained in the documents:

- "Students and Parents: KNOW YOUR RIGHTS - Student Records", which is distributed annually to all students;
- Chancellor's Regulation A-820

It is the responsibility of each school, district and central office to preserve the rights and privacy of all students and parents.

SCHOOL LEVEL: The principal's responsibility for student records includes:

- observance of law, policy and regulation
- maintenance and security of all school records
- proper dissemination of information contained in records
- forwarding of records for official purposes
- periodic instruction of staff re: confidentiality
- designation of degree of access to student data by individual staff members
- limiting members of SBM/SDM committee to aggregate data
- maintaining a record of certain requests to see student records
- providing access to records by parents and eligible students
- providing staff to interpret records for parents/pupils

DISTRICT/CENTRAL LEVEL: The superintendent's/director's responsibility for student records includes:

- observance of law, policy and regulation
- maintenance and security of all school records
- proper dissemination of information contained in records
- forwarding of records for official purposes
- periodic instruction of staff re: confidentiality
- authorization of individual staff members for use of individual and/or aggregate student data

ACCESS TO INDIVIDUAL STUDENT RECORDS should be confined to the principal, pupil accounting secretary, teachers of the student, guidance counselor, dean and to other school personnel who provide service to the student; not to community school board members, parents' associations, SBM/SDM members, news media or other city, state or federal agencies without written parental permission. The exception is a court order or subpoena. Questions regarding the release of student data to community school boards should be referred to: Doreen DeMartini, Office of School District Affairs, (718) 935-3050. Questions regarding the release of individual student data to others should be referred to: The Office of Legal Services, (718) 935-3636.

ACCESS TO INDIVIDUAL STUDENT RECORDS BY OUTSIDE AGENCIES (i.e. Unauthorized Non-Board of Education Agencies)

- need written consent by parent for access to student data
- in case of court subpoenaed records the parents must be notified immediately in writing

AGGREGATE DATA MAY BE RELEASED to community school boards, SBM/SDM members, parents' associations, news media or other inquiring parties.

SUGGESTIONS FOR SECURITY OF STUDENT RECORDS:

- student records should be locked up when not in use
- computers should be kept under lock and key
- student data on disks (backups) should be securely stored
- computerized data should be password protected
- computer printouts of student or parent data should be shredded or boxed and securely disposed of (not merely thrown into a trash can)

PARENT MAILINGS:

- list of parents names and addresses should not be supplied to any organization, including parent organizations. School-wide mailings should only be done by school personnel with the principal's knowledge and permission.

REQUESTS FROM RESEARCHERS FOR STUDENT DATA should be authorized by the Office of Research, Evaluation and Assessment (OREA - (718) 935-3767), the district superintendent, principal and teacher(s) involved. When individual student data is needed, written parental permission is required. (For complete guidelines please refer to "Doing Research in New York City Public Schools: Proposal Guidelines" available from OREA at 110 Livingston Street, Room 738, Brooklyn New York.)