

# Special Education Report

## For Parents of Students With Disabilities

April 2008

For a Free Appropriate Public Education for All Children

Vol. 1 No. 3

### Getting the CSE to Approve Your Request for an Independent Educational Evaluation (IEE): A Step By Step Process

When your child is first referred to the Committee on Special Education (CSE) the school district must begin several types of evaluations to determine whether that student is eligible to be classified as a student with a disability as well as for special education services. Between the time your child is first referred to the CSE the school district must complete the process and put in place any recommended services within 60 days from the date you consented to have your child evaluated by the school district.

Once the school district has evaluated your child those evaluations must be considered by the CSE in determining whether s/he is a student with a disability, entitled to be classified and if so what special education services s/he is entitled to receive in order to make educational progress at school. By law the school district must perform a comprehensive evaluation of your child at least once every three years. However, evaluations may be performed as often as deemed necessary by the CSE.

When parents disagree with the outcome of a school district evaluation or the CSE's interpretation of that evaluation they are entitled to request an Independent Educational Evaluation at school district expense. However, the school district does not have to agree to that request. If a parent disagrees with the school district's evaluation, or the CSE's interpretation of that evaluation the parent must submit a written *(continued on page 3)*

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Parents of disabled children who plan to have their children attend private school this fall must notify their public school district that they want their public school district to provide special education related services by June 1<sup>st</sup> of this year or risk being denied those services.

Special Education Students attending private schools are eligible to be provided special education services (speech, occupational therapy, physical therapy, counseling & resource room) only if their parents requested it on or before June 1<sup>st</sup> of the school year before the services are requested. This deadline is critical as a public school district will often deny a parent's request received after the June 1<sup>st</sup> deadline.

### Requests for Related Services Should Be Sent to the School District of Residence and to the School District Where the Private School is Located

Since the implementation of the amendments to the Individuals with Disabilities Education Improvement Act (IDEIA 2004) jurisdictional disputes have arisen between parents and school districts over whose Committee on Special Education (CSE) has jurisdiction over the matter of a child's Individualized Education Plan (IEP) or the child's order to cover all the bases parents of students receiving related services under a current IEP or IESP, or parents whose children are not currently *(continued on next page)*

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**Deadline for Requesting Related Services at a Private School in September of 2008 is June 1, 2008!!!**

receiving such services and wish their children to receive them, should make their requests, in writing, to both school districts. The request should be addressed to the Board of Education and copied to the administrator in charge of special education for the school district. The requests should be hand delivered to the school district or sent by a delivery method that can verify that the school district received the request. Postmarks on or before June 1<sup>st</sup> will satisfy the June 1<sup>st</sup> deadline and ensure your child receives the related services required for a Free Appropriate Public Education (FAPE).

Parents should be aware that their children may be entitled to those services even if their public school district is incapable of providing those services. In that event the public school district may be required to pay for services provided by private parties or other public school districts having the appropriate programs or services necessary to provide your child with a FAPE.

**State Education Department Says Home Schooled Special Education Students Are Not Entitled to Related Services Provided at No Cost by their Public School District**

In a January 3, 2008 memo to the New York State VESID Committee, State Education Department (SED) Deputy Commissioner Rebecca H. Cort, citing a ruling by New York State's, State Review Officer (SRO), declared that disabled students being home schooled by their parents are no longer entitled to related services free of charge from their public school district. This memo can be found on SED's web site at [www.regents.nysed.gov/2008meetings/January2008/0108vesidd3.htm](http://www.regents.nysed.gov/2008meetings/January2008/0108vesidd3.htm).

A memo to all local school districts in New York State from SED's Statewide Coordinator for Special Education, James P. DeLorenzo, instructed the school districts that special education students whose parents elect to provide

**Home Schooled Special Education Students Are Not Entitled to Related Services**

them with home instruction are not entitled to receive special education related services based upon the SRO's ruling in case No.: 07-043. In that case the SRO held that home schooled disabled are not entitled to special education related services because they are not considered public or private school students under state law.

The DeLorenzo memo went on to say that if a school district was providing special education related services to any disabled student being home schooled by their parent(s) the CSE should meet to amend that child's IEP to reflect that the related services be provided pursuant to an IEP that indicates that those services be provided in a public (or private) school setting if their parent(s) choose to enroll them in a public school.

**What Should Parents of Home Schooled Special Education Students Do?**

Since the SRO's decision is binding in New York State (unless overturned by a higher court) the SED has chosen to conform its policy to that decision. As of press time it is unknown if the parents in that case have elected to appeal.

**What Should Parents of Home Schooled Special Education Students Do?**

Parents of disabled students being home schooled are in a bind. Unless the parents of the student in SRO Case No.: 07-043 appeal the SRO's decision it will become binding in New York State as to all parents unless another parents challenges a school district decision to deny their child related services and they are willing to take an appeal of that decision into state or federal court.

In the meantime, in order to protect their child's rights to special education related services, parents of disabled children should request those services and participate in meetings of the CSE at their local school district to have them provided to their child at home. In all likelihood the CSE will deny the services, citing the decision of the SRO and subsequent DeLorenzo memo, and trigger the hearing against the school district to have the services provided at home. That administrative appeal is also unlikely to be successful and will result in a ruling against the parents which they can then appeal to the SRO and eventually to a court of law.

Parents of home schooled children may also appeal to their state legislators to amend

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evaluator. Since this would defeat the parents desire not to spend money to challenge the evaluation it is recommended that they respond to this request by telling the school district that they are not required to respond pursuant to Part 200.5(g) of the Regulations of the Commissioner of Education for the State of New York.

The school district must next decide if it wants to grant or deny the parent's request for an IEE. If the school district grants the request there is no further action that need be taken. If not, the school district must initiate an impartial hearing against the parents to prove that the school district's evaluation is appropriate. School districts rarely choose this option as it is usually more expensive to challenge the parent's request for an IEE than to pay for one.

School district may impose reasonable restrictions for IEE's they agree to finance. They may ask parents if they have insurance and if they would be willing to submit their IEE to their insurance company for payment with the school district responsible for the remainder. Parents may, but are not required to submit IEE's to their insurance companies to reduce the school district's costs in providing one.

School districts may also impose financial and geographic limitations on IEE's. The Board of Education may set the amount of fees they will be responsible for by Board policy. However, those fees must be reflective of the reasonable and customary charges for such services in the community served by or surrounding the school district. School board policies in this regard are often outdated or otherwise do not reflect the reasonable and customary charge for the services the parents are requesting.

Parents should not be deterred if the school district is unwilling to pay the reasonable and customary price for the services they need. Parents should initiate an impartial Hearing on the issue of the fee and force the district to defend the fees it has decided it is willing to pay. For the same reasons of costs, as noted above, school districts rarely choose to fight parents on this issue.

Boards of Education usually have geographical limitations on where a parent can obtain an IEE. Again such a limitation will be judged for its reasonableness. Fifty miles or less will, in most cases, be found reasonable.

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section 3602(c) of the Education Law of New York State for relief.

### **Which School District is Responsible for Conducting Annual Reviews for Related Services Provided at Private Schools**

Pursuant to section 3602(c) of the New York State Education Law annual reviews for disabled children being educated at private schools are conducted by the school district where the private school is located. Likewise, requests for evaluations or Independent Educational Evaluations (IEE) are made to the school district where the private school is located. Denials of evaluations and/or IEE's and/or related services the parents think are appropriate would trigger a request for an impartial hearing against the school district where the private school is located and not the school district where the child is a resident.

### **Obtaining an IEE From the CSE A Step By Step Process**

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request for an independent Educational Evaluation at school district expense. The request should be in writing and submitted to the CSE Chairperson from their child's CSE or to the school district administrator in charge of special education. Requests can be hand delivered, faxed or mailed. If hand delivered a second copy of the request should be brought so that the school district can date stamp the parent's copy as proof of receipt. If the request is faxed a fax receipt should be printed in order to prove the school district received the request. Care should be taken that the fax number is correct and that the fax was successfully transmitted. If mailed it should be sent by a method capable of determining that it was actually delivered.

The school district upon receiving the request for an IEE from a parent may ask the parent their specific objections to the school district evaluations. Parents may, but are not required to, respond to this request. Parents should not respond to school district requests for their specific objections unless they are absolutely sure of their objections. This would usually require that they obtain an independent review of the school district evaluation from an expert familiar with the types of tests used by the school district

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## Obtaining an IEE From the CSE

### A Step By Step Process

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School districts may not tell a parent that they must choose an "independent" evaluator from a list of service providers given to parents from the school district. Parents are free to choose any provider as long as they meet the reasonable fee and geographic area test, notwithstanding a contrary school board policy.

Parents need to carefully choose the professional they are working with for their child's IEE. The first question that a provider should be asked is whether they are under contract with any public school district. Many times school district psychologists, social workers, and related services providers also work with patients as part of a private practice. Providers who are employed by school districts in any capacity should not be used for an IEE.

Whomever parents choose must be willing to review the report with the parents before sending it to the school district. Parents must set this condition in advance or choose another provider with whom to work. Likewise, some providers tell parents that because the school district is paying for the evaluation the school district is entitled to receive it and that the parents must get it from the school district. Wrong! It is an independent evaluation provided to the parents and not the school district. The school district is not entitled to even see it without the parents' permission. Parents also need to determine the service provider's position in this regard as well before hiring them to perform an IEE.

Parents also need to choose providers who are willing to participate at their CSE meeting to explain and support their evaluation to the CSE and to support the recommendations they made. They must also be willing to testify at an impartial hearing if necessary. If a provider is unwilling to do this choose someone else. Parents should understand that the provider may charge them additional fees to participate at their CSE meeting or an impartial hearing and that those fees will not be paid by the school district.

Independent educational evaluations are useful tools to enable parents to determine whether a school district has properly evaluated

## Complaints to the State Education Department vs Impartial Hearings

their child and whether it recommended appropriate services based upon its own evaluation. IEE's should be used any time a parent has a doubt about the validity of an evaluation performed by school district personnel.

Some parents choose to file complaints about their CSE or school district with the State Education Department (SED). This is the least effective way of resolving serious complaints they have with the local school district. In the first place a complaint to SED does not stop the clock on the statute of limitations which is two years in New York State. As anyone from Long Island knows it is nearly impossible to timely obtain a satisfactory resolution from the Lindenhurst Parent Information Center. Parents are sent in circles for years for years attempting to get the SED to resolve their complaints. When they are resolved the school district is told not to do it again with no other penalty imposed against it.

Similar results are obtained when filing complaints with the Federal Education Department's Office of Civil Rights. Making matters worse is that the legal problem complained of is probably now resolved allowing the school district to escape any real penalty for its unlawful conduct. Additionally, the time for the parent to initiate legal action through an impartial hearing has largely gone by and is lost.

Parents who can afford it or who can obtain no or low cost legal representation are better off filing impartial hearing requests with attorneys specializing in this area of law. An experienced attorney can tell you right away if you have a good case. More importantly a school district is more likely to quickly settle a good case and not drag it out because doing so will limit the fees it must pay their own and the parents attorneys when they lose. Yes, parents who win get their fees reimbursed from the school district.

You'll never see SED direct a school district to pay a private tutor or private school tuition. Parents having trouble getting special education services for their child should immediately consult with an attorney and if appropriate file an impartial hearing against their school district as soon as possible for the quickest resolution to their complaints.