

What Parents Need to Know
if they are seeking to remove their child
from a New York City Public School
and place their child in a
Non-Public School Program

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BACKGROUND

One of the chief mandates of the IDEA of 2004, is to *ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living and to ensure that the rights of children with disabilities and parents of such children are protected.*

In general, children with disabilities in private schools are provided special education and related services, in accordance with an individualized education program (IEP), at no cost to the parents.

However, the IDEA does not require the New York City Department of Education (NYC DOE), to pay for the costs of special education and related services of a child with a disability at a private school if it made a free appropriate public education available to that child and the parents elected to place the child in such private school.

If a parent of a child with a disability, who previously received special education and related services from the NYC DOE enrolls the child in a private school *without the consent of or referral by* the NYC DOE, then a court or a hearing officer *may* require the NYC DOE to reimburse the parents for the cost of that enrollment *if* the court or hearing officer finds that the NYC DOE *had not made a free appropriate education available to that child in a timely manner prior to that enrollment.*

The cost of reimbursement may be reduced or denied if:

a) at the most recent IEP meeting that the parents attended prior to the removal of the child from public school, *the parents did not inform the IEP team that they were rejecting the placement proposed...*including stating their concerns and their intent to enroll their child in a private school at public expense, or

Note: If you have decided to place your child at a Non-Public School Program, then at the very next IEP meeting, you must tell the IEP Team that you disagree with their recommendation for placement and that you intend to enroll your child in a Non-Public School Program.

b) *10 business days* (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents *did not give written notice* to the NYC DOE of their intent to enroll their child in a private school

Note: You must notify the CSE as soon as you have made your decision to remove your child from Public School and place him in a Non-Public School Program. This notification must be at least 10 business days before the removal of the child from public school.

c) prior to the parent's removal of the child from the public school, the NYC DOE *informed the parents* (in writing) of *its intent* to evaluate the child, but the parents did not make the child available for such evaluation, or

Note: Whether your child is in private school or public school, parents must always cooperate with the CSE when they request that your child be evaluated. Failure to cooperate with the CSE can reduce or eliminate tuition reimbursement awards.

d) if the parent's conduct is found to be unreasonable by the court or impartial hearing officer.

However, the cost of reimbursements shall not be reduced or denied if:

- a) the school prevented the parent from providing such notice of intent to remove the child from public school;
- b) the parents had not received notice of the public agency's intent to evaluate the child; or if
- c) compliance with notifying the public agency of the parent's intent to remove the child from the public school would likely result in physical harm to the child.

PROCEDURE TO FOLLOW

Once parents have determined that their child's special needs are not being met at their child's public school, and they have made it known to their local Committees on Special Education (CSE) at the IEP's meetings, the parents need to do the following:

Where the NYC DOE has made a recommended placement, in order to make an accurate determination if a proposed placement is appropriate for your child, we suggest that you take the following steps:

a) Find out about the school by getting the school's Report Card from www.nycenet.edu and also using the website www.insideschools.org. These websites will give you information about the reading and math scores, how special education students are performing in that school, graduation rates, and police incidents.

b) Using the NYS Department of Education website <http://www.emsc.nysed.gov/deputy/nclb/nclbhome.htm>, you can find out if the school has been designated as a low-performing school under the federal law called No Child Left Behind. You have a right not to be forced to send your child to a designated low performing school.

c) Request a class profile from the recommended school placement. You are entitled to know if your child will be in a class with other students who have similar academic, social, emotional and psychological needs as your child. One way to accomplish this is to request a class profile. The class profile does not identify students by name, however it provides information on each student in the proposed class concerning their reading and math skills, management needs, social skills and cognitive functional levels. The regulations say that your child should not be in a class where students are either three years older or younger than your child, and where students are academically functioning more than three years above or below your child.

According to New York State Law, specifically 8 NYCRR 200.6 (f)(2), there is a requirement that the composition of a special education class shall be based upon the individual needs of the pupils. That is to say, is your child going to be placed in a classroom with students who have the same special needs as your child or is he being placed in a class with children with very different types of special needs that will in some way detract from your child's ability to learn. In analyzing this issue, there are four factors to be considered: the pupils' levels of academic achievement and learning characteristics; the pupils' levels of social development; the pupils' levels of physical development; and the pupils' management needs.

So what does this mean for your child? If your child has a speech and language impairment and the CSE seeks to place him in a classroom of 12 children, 11 of whom have been classified as emotionally disturbed (ED), then there is a great likelihood that your child's ability to learn will be diminished. So, you need to ask for a class profile. You need to ask the following questions:

- How many students in the class?
- How many students have the same classification as your child?
- How many students have different classifications from your child and what classifications do those children have?
- What teaching methodology is going to be used by the teacher? For many children with speech and language impairment, a multi-sensory approach is the preferred teaching method. Is that the same methodology that the teacher is going to use for the other students who have been classified as ED or LD (learning disabled)?

d) Make a personal visit to the recommended school and speak with the proposed classroom teacher, the principal or assistant principal and the supervisor of special education, if the school has such a person. Make sure you take your child's IEP and any evaluations that you have and make sure you take notes on the answers you have received from the school personnel. Inquire as to what types of teaching methods, services, and learning environment your child's IEP and evaluations recommend.

By visiting the proposed placement, your goal is to establish that this placement is **not appropriate for your child**.

After you have visited the proposed placement, you need to send a detailed letter to the CSE **rejecting** the proposed placement with an explanation for the rejection. If you have found a private school that you believe will meet your child's special needs, then you must notify the NYC DOE **in writing** of your intent to remove your child from the public school and enroll him in the private school. **YOU MUST GIVE THE NYC DOE TEN BUSINESS DAYS** (not including holidays and weekends) **NOTICE OF YOUR INTENT TO ENROLL YOUR CHILD IN THE NON-PUBLIC SCHOOL PROGRAM**.

**For additional information contact:
Brian S. Goldman, Esq. at 516-773-8585 or**

Checklist

- Learn about your child's disability.. Join organizations and check internet sites.
- Find out who is the chairperson of your school district.
- Find the State Education Department's website and see what brochures and/or materials available for the proposed school.
- Request a copy of the State Education Department's "Parent Handbook"
<www.vesid.nysed.gov/specialed/publications/policy/parentguide.htm>
- Find the list of approved non-public schools online at
<http://www.emsc.nysed.gov/irts/schoolDirectory/nonpublic/sectionI.pdf>
- Telephone your CSE, obtain their address and send a letter (by certified mail/return receipt requested) requesting a CSE Meeting.
- Identify several non-public schools, find their websites and contact them to request brochures.
- Visit the public school placements suggested by your CSE.
- Have your child evaluated by appropriate professionals in order to provide up-to-date information/data and make recommendations to the IEP team about what your child needs.
- Make a list of appropriate questions to ask as you visit the suggested public school placements. Take notes of the answers you receive.
- Send a request to inspect and review your child's records maintained by the public school. This lets you know what documents they are basing their recommendations on and what they have in their file.
- Start a file and keep copies of all records and correspondence related to your child.

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