



THE NEW YORK CITY DEPARTMENT OF EDUCATION

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To: All New York City Superintendents
All New York City Charter Schools
CSEs

From: Garth Harries, Chief Executive, Office of New Schools
Michael Best, General Counsel, Office of Legal Services

Date: February 28, 2007

Re: Protocols for Provision of Special Education Services to Charter School Students

The following procedures were developed by the Office of Legal Services, the Office of New Schools and the Office of Special Education Initiatives. The procedures outlined below constitute the Department of Education's ("Department") policy and protocols for the provision of special education services to New York City resident students suspected of or identified with a disability who attend a charter school.

I. LEGAL STATUS

- a. Legal status of charter school. A charter school is deemed an independent and autonomous public school within which the charter school is located. For purposes of special education, charter schools are viewed as schools within a local educational agency (“LEA”). However, the New York Charter Schools Act allows charter schools to arrange to have special education services provided by the Department, or by the charter school directly or by contract with another provider. New York Education Law § 2853(4).
- b. Legal status of Department. For purposes of special education, the Department is deemed the LEA for all charter school students with a disability residing in the New York City school district.
- c. Legal status of charter school students. For purposes of special education, disabled students attending a charter school are deemed public school students, and must be served in the same manner as students with disabilities attending a New York City Department of Education school including providing supplemental and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services to its other public schools. 34 C.F.R. §300.209.

II. EVALUATION PROCESS

- a. Responsibilities of the Department’s Committees on Special Education.
 1. The Department’s constituent committees on special education (CSEs) are responsible for the evaluation and placement of all students who attend a charter school in accordance with Section 2853(4) of the Charter Schools Act, are New York City residents and have, or are suspected of having a disability. Each CSE shall exercise that responsibility in accordance with a Regional service model.¹
 2. During any stage of any type of evaluation (initial, annual, requested) of a student attending a charter school in accordance with Section 2853(4) of the Charter Schools Act, the student shall be treated by the CSE in *exactly the same manner as a student attending a Department of Education school: s/he is to be evaluated in accordance with the same regulatory/judicial mandates and established procedures that apply for students attending a Department of Education school (e.g., consent, timelines, team membership, etc.).*² In addition, the eligibility criteria for special education services are the same as those used for students attending all other public and non-public schools.
- b. Responsibilities of charter school.

¹ Service Region means the New York City Region in which the charter school is physically located. (For example, a charter school located in Region 3 would work with the Region 3 CSE regardless of the student’s district of residence.)

² In New York State the CSE functions as the IEP Team. Accordingly, such terms are used interchangeably in this document.

1. When referring a student to the CSE, the charter school must use the official Department of Education referral form available from the regional CSE to which the charter school is assigned. The referral must:
 - A. indicate the reasons for the referral including any test results, records or anecdotal reports on which the referral is based;
 - B. describe the attempts (e.g. academic intervention/prevention services) made to remediate the student's performance prior to the referral or the reason no such attempts were made; and
 - C. describe the extent of parental contact or involvement prior to the referral. If all the above items are not included, the referral will be considered incomplete and will be returned to the sender for completion. The evaluation process will not begin until the referral is completed and resubmitted to the CSE.
2. The charter school must fully cooperate with the evaluation process, allowing for classroom observations, records exchange³, and the participation of the student's teacher or teachers and/or related service providers or school nurse in the CSE review meeting.
3. A charter school cannot establish a CSE or subcommittee thereof. Moreover, a charter school may not, in any way, unilaterally amend a student's Individualized Education Program (IEP), but may seek to amend an IEP to better align with the programs and/or services offered by the charter school.

³ Since a charter school is considered a public school for purposes of the provision of special programs and services, the same rights and responsibilities regarding records transfer and access to records under the federal Family Educational Rights and Privacy Act (FERPA) as between the Department's public schools apply to records transfer and access between the charter school and the CSE or the Department's public schools. The charter school must maintain full confidentiality of records in accordance with the federal Individuals with Disabilities Education Act (IDEA) and FERPA and the implementing federal regulations. (34 C.F.R. §§ 300.560—300.577; 34 C.F.R. Part 99).

III. RECOMMENDATION PROCESS

a. Determination based on student's needs.

1. The identified individual needs of a student attending a charter school, in accordance with the IDEA and its charter agreement, must drive his/her program/service recommendation(s), regardless of the availability of services at the charter school. While the development of an IEP should be a consensus driven process, the CSE has ultimate responsibility to ensure that the IEP recommends the services that the student needs in order to receive a free appropriate public education (FAPE).
2. If it is determined that the student is eligible for special programs and services, the CSE shall recommend the type and intensity of required programs and services, subject to III.(b).

b. Consideration of charter school's educational program.

1. Unlike a Department of Education school, charter schools are exempt from all State requirements relating to class size and instructional groupings, and are not required to follow or to provide program and services in accordance with the Department's continuum. Thus, the CSE should consider whether that school's innovative general educational program and approach to the delivery of special education services (one that is consistent with the IDEA, Section 504 of the federal Rehabilitation Act of 1973 and federal regulations) can appropriately meet the student's identified individual needs. If the CSE determines that the charter school's programs and settings can appropriately meet those needs, the CSE team may recommend those programs and settings and draft them into the IEP.

c. Placement Recommendations.

1. Initial Placement. Pursuant to state law, a charter school's admissions process is based on a blind lottery system. (The charter school has no knowledge of an applicant's educationally related disability until after the lottery selection). Therefore, the CSE *cannot* recommend student's initial placement in a charter school.
2. For students attending a charter school in accordance with Section 2854(2) of the Charter Schools Act:
 - A. The CSE may recommend the program provided by the charter school for the student if the IEP team has determined that the program at the charter school would meet the student's identified educational needs.

B. In all cases, the IEP team must determine educational needs of the child consistent with the IDEA (FAPE and least restrictive environment) and inform the charter school of its IEP determination. If the IEP requires a program or services not currently offered by the charter school, the charter can opt to offer the program or services at the charter school, or have the Department provide some or all of the program or services. In very rare cases (e.g. autism, visual impairment), the child's identified educational needs may only be met by a specialized program in another public school pursuant to the Department of Education's continuum.

d. Charter School Responsibilities.

1. After a student is admitted to the charter school in accordance with Section 2854(2) of the Charter Schools Act, the school must review the student's IEP to determine what services are recommended for the student and whether the school is capable of providing the special education services as set forth on the IEP. If the Charter school determines that it is unable to provide (or contract to provide) some or all of services as recommended on the student's IEP, the school must either: a) request that the CSE meet to review and if appropriate, amend the IEP; or b) request through the CSE that the Department provide those services that it is unable to provide. Both the CSE and the charter school must make best efforts to develop innovative and flexible special education service models that will allow for the student's needs to be met in the charter school. If a charter school is unable to provide the services and has accordingly requested an IEP team meeting to amend the IEP the charter school should continue to educate the student with services as per the IEP until the student has been otherwise placed by the Department. Charter schools should not attempt to suspend such students other than for disciplinary reasons.
2. As LEA for the purposes of IDEA, the Department must collect information regarding the provision of special education services for students with disabilities. As public schools, charter schools are required to provide this data. If a charter school directly or indirectly provides special education services, the charter school is responsible for entering the "first attend" date into CAP, the Department's computerized special education database.

IV. PROVISION OF SERVICES

a. Generally.

1. In educating a student with a disability, a charter school may provide the services directly, may provide services indirectly by contracting with a third

party provider, or arrange with the Department for the provision of special education services. Education Law § 2853(4).

2. If applicable, the Department expressly provides funding to a charter school for the delivery of such services by passing through any federal and state aid attributable to a student with a disability in a manner consistent with Section 2856 of the Charter School law and the Regulations of the Commissioner of Education, 8 N.Y.C.R.R. §119.1.
3. Additional assistance for special education: To assist charter schools in fulfilling their mandate to provide special education services to students, the Department will, upon request, provide additional support for charter schools that directly or indirectly provide special education services to students. The Department will provide the equivalent of the local tax levy share of excess cost funding attributable to a student with a disability attending the charter school. This funding will be provided in proportion to the level of services for such student that the charter school provides directly or indirectly. The methodology to determine per pupil funding is described in Exhibit A. These funds are in addition to the per pupil charter school financing requirements of the Charter Schools Act.
4. The provision of additional funding, as defined in this section, is subject to the continuation of charter school funding as defined and mandated by the Charter Schools Act. The Department reserves the right to amend these procedures, if necessary, upon any amendment to the Charter Schools Act.

b. Provision of services upon request.

1. If a charter school seeks to have the Department arrange for the services, the school must make a *written request to the Regional Deputy Superintendent for Special Education* (and copy the Office of New Schools) that identifies the student and the services being requested.
2. In complying with such a request, the Department may, in its sole discretion, exercise any one of the options listed below.
3. For *related services*, the Department may
 - A. provide the service before, during or after the school day at the charter school, public school nearest the charter school of attendance or the student's home. The Department of Education will assume the full cost of these services, and will retain any federal or state aid attributable to the student served; or

- B. utilize agencies under contract with the Department for these purposes. The contracted vendor shall bill the Department directly for these services. The Department will retain any federal or state aid attributable to the student served; or
- C. provide the parent with a related service authorization (“RSA”). This RSA authorizes the parent to identify an appropriately licensed provider and is accompanied by a Registry identifying several providers that have already been screened, approved, fingerprinted, and with whom the Department has negotiated special rates. Note that if the parent chooses to use a provider other than one listed on the Registry, the parent shall contact the school district’s designated representative for this function to ensure that the appropriate approval protocols are followed (i.e., licenses checked, fingerprinted, etc.). The Department will assume the full cost of these services and will retain any federal or state aid attributable to the student served.

4. For *special education teacher support services* (“SETSS”), the Department may provide the service before, during, or after the school day at the charter school, public school nearest the charter school of attendance or the student’s home. The Department will assume the full cost of these services and will retain any federal or state aid attributable to the student served.

5. For *full-time special education services*, the Department will not arrange for the service at the charter school. In this instance, the charter school must continue the student’s enrollment in the charter school and request that the CSE conduct an IEP meeting as described in section 111 d 1. In the few instances where the IEP Team believes that the student’s educational needs are so severe that they cannot be met at the charter school the CSE will recommend a placement consistent with the Department’s continuum. If the parent does not agree to an alternative placement the student will remain at the charter school until there is further resolution. The charter school is responsible for adjusting its instructional program in order to adequately and sufficiently meet the student’s needs as per the IEP.

V. REMEDIES

a. Parent’s rights.

- 1. The parents of disabled students attending a charter school may request mediation and/or a due process hearing, in accordance with applicable federal laws and regulations, relating to the identification, evaluation or educational placement of their child.

2. Parents shall not have the right to request mediation or a due process hearing in order to attempt to circumvent the provisions of Section 2854(2) of the Charter School Act to obtain initial enrollment in a charter school.
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- b. Charter school's rights: Pursuant to federal and state law, because a charter school is a school within an LEA (the Department), it is not a public agency and is not entitled to request an impartial hearing. A charter school seeking to bring an impartial hearing must file such a request with the CSE. Thereafter, it is the CSE's responsibility to contact the Impartial Hearing Office to request the hearing, and to work with the charter school to the extent necessary.
 - c. The student's enrollment in and/or attendance at the charter school in accordance with Section 2854(2) of the Charter Schools Act shall not constitute either a recommendation or offer of public placement by the Department, nor shall it be construed as an agreement between the Department and the parent that the charter school constitutes either an appropriate public placement, or the student's then current placement.