

The Advocate

ADVOCATES FOR CHILDREN
OF NEW YORK, INC.

Protecting Every Student's Right to a Free
and Appropriate Public Education

Spring 2001

The New Continuum of Special Education Services

In June 2000 the NYC Board of Education adopted a new Continuum of Services for special education students. The new continuum requires that all students with disabilities be given an appropriate education in the least restrictive environment (LRE); in other words, children with disabilities must be educated with their typically developing peers to the maximum extent appropriate. The new Continuum is now being phased in (starting this past February), so if you are a parent of a child who receives special education services, you may find some changes at your child's next review meeting. Do not be alarmed, though; you and your child have rights during this transition period to help you insure s/he continues to receive appropriate services.

The Continuum lays out the various special education services available, from aids and services for children who remain in a general education classroom, to special self-contained classes for those children who require more individualized, structured settings. Any one of these settings may be the LRE for your child depending on his/her individual needs.

LRE means children with special needs have the same rights as their typically developing peers to participate in extra-curricular and nonacademic activities unless their disabilities make participa-

tion inappropriate. LRE also means all children with disabilities have the right to attend the school they would have attended if not disabled, unless the Individualized Education Program (designed by the IEP team, including parents) requires other arrangements. LRE requires the provision of appropriate special education services in a variety of settings.

The period of transition for implementation will take several years. Because the Board has decentralized the process, giving a great deal of the responsibility to the individual school districts, implementation is likely to look different in each of them. However, as the transition from the old to the new Continuum takes place, families of students with special needs are protected by certain important rights. When you go to your child's IEP meeting, be aware of the following:

Right to remain in the school or district where your child now receives services. If the Committee on Special Education (CSE) recommends your child receive services in a different school or district, you have the right to have your child remain in his/her current placement until he/she graduates to the next level (e.g., elementary to middle school). This is a right that all children have, whether they are regular or special education students.

Requirement for Appropriate Placement Outside of District.

Although the Board is trying to move children back into their neighborhood schools or local districts, if the CSE is not able to offer your child an appropriate placement in your district, it must offer an appropriate seat in another district.

Pendency or Stay-Put. The right to "pendency" or "stay put" refers to your child's right to remain in his/her current educational placement during

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CFE Coalition Wins Big For New York City Students



State aid to NYC schools may be substantially increased if a landmark decision by Justice Leland DeGrasse of New York State Supreme Court stands. Early in January, the judge found that the State's convoluted system of distributing state aid does not deliver resources adequate to provide NYC public school students the sound, basic education required by the state constitution. The decision was in response to a lawsuit brought by the Campaign for Fiscal Equity (CFE), a coalition of which Advocates for Children is a member.

Judge DeGrasse defines a sound basic education as having the "foundational skills that students need to become productive citizens capable of civic engagement and sustaining competitive employment." In order to provide this, he said the state must ensure at least the following resources:

- Sufficient numbers of qualified teachers, principals and other staff;
- Appropriate class sizes;
- Adequate and accessible school buildings;
- Sufficient supplies, up to date books, libraries, technology and laboratories;
- Suitable curricula, including an expansion of programs to help at risk students by giving them "more time on task;"
- Adequate resources for students with extraordinary needs;
- A safe orderly environment.

The judge found the state's arcane aid distribution formula failed to consider the concentration of need in the city with its large numbers of poor, minority and immigrant students. He noted particularly that "poverty, race, ethnicity, and immigration status are not in themselves determinative of student achievement." He went on to say that, "the evidence introduced at trial demonstrates that these negative life experiences can be overcome by public schools with sufficient resources well deployed."

Judge De Grasse also agreed the city has over referred and placed students in special education but said the cause was lack of support services in general education and State aid incentives that tended until recently to encourage restrictive placements.

Another finding reprimanded the state for failing to factor into the aid mechanism the high costs of the city in comparison to other state localities.

Judge De Grasse ordered the legislature to reform the system by September 15, 2001, with a progress report by June 1, 2001. The state has decided to appeal, and an expedited process is now underway.

As advocates for the city's most needy students, AFC will be active in advocating for the state to now bring adequate resources for all students, including those with special needs. The judge's emphasis on the special needs population and call for adequate numbers of trained personnel, suitable curricula, an expanded "platform" of programs and more time on task are highly encouraging. Such initiatives are crucial to the successful education of at-risk students and important to the city schools at large.

The entire decision and a condensed version can be found at the Campaign for Fiscal Equity website: <http://www.cfequity.org>, or call Jessica Garcia at CFE at (212) 867-8455.

What Can I Do to Fight for Better Funding for Our Schools?

If you or an organization that you know wants to get involved to make sure that New York State provides fair funding for our schools, join the Alliance for Quality Education, a consortium of parents and community organizations that are working together to demand better funding for our schools. For information on AQE events and on how to get involved, contact Cristine Marinoni at (718) 222-1089.

IN MEMORIAM

Advocates for Children mourns the passing of Elaine Keith, one of its founding members, who died December 20, 2000. Ms. Keith was born in Brooklyn, raised in Queens, attended New York City public schools and graduated from Goddard College. At a young age, she became interested in social justice issues and was indefatigable in her defense of the rights of the poor and oppressed.

From the sixties on, her principal focus became the struggle for high quality public education. During this period, she obtained a grant and formed the Education Action Center in Long Island City for educational advocacy. After several years, she joined with Miriam Thompson and Bill Jesinkey to create Advocates for Children where for twenty years she served in various leadership roles. She was considered to be the “heart and soul” of the organization and was noted for her ingenuity and perseverance in maintaining funding for the ongoing work of the agency. During her tenure, in addition to assisting thousands of individual children and families, precedent setting cases were won that established appropriate educational services for the disabled, confidentiality protections for students, parents’ rights and protections against illegal school suspensions.

After her retirement, Ms. Keith continued to serve as a member of Advocates’ Board of Directors until prohibited by poor health. She will always be remembered for her clear and insightful political analysis, her personal integrity and her attentiveness to the needs of those she worked with and those for whom she worked.

AFC staff wishes to express our heartfelt sympathy to Elaine’s family as, in her memory, we continue the vital work she began.

New Continuum—Continued from page 1

any due process proceedings (e.g., conflict resolution, an impartial hearing, mediation, appeal, or a court proceeding).

- o You have the right to pendency in your child’s current educational placement during the transition to the new continuum. Therefore, if your child is in an old continuum placement, such as a MIS or SIE class, and is recommended for a new continuum placement and you disagree with the recommendation, he /she may remain in the MIS or SIE class until the dispute is resolved.

- o You also have pendency for 12 month (extended year) services. If your child had 12 month services before the change in the continuum and the CSE proposes to reduce your child’s program to the regular school year, your child remains in the 12 month school year placement until you pursue your due process rights.

- o If your child is receiving a specific service and the CSE recommends it be reduced or changed, your child

should continue to receive the original level of service until the issue is resolved through due process.

Functionally Grouped Special Education Services. When receiving services, children must be grouped based on similarity of levels of academic/educational achievement and learning characteristics, levels of social and physical development, as well as, management needs, and not their specific disability. You have the right to access information about the levels of the other children in the class (with no identifying information) to which your child has been recommended by CSE.

Right to Visit a Class Before Consenting to Placement. You have the right to visit the class your child will be in and to receive information about the functional grouping before you agree to the services. However, since most districts haven’t yet cre-

ated new placements under the new continuum, and are unlikely to do so until they can determine how many children will require which services and placements, you may not be able to see the program in which your child is to be placed in September. Even if you consent to a new continuum placement now, you do have the right to have your child return to his or her last placement if you request a hearing or otherwise invoke due process after seeing the new class next fall.

To get a copy of the new Continuum, parents can call the Board of Education’s Office of Student Support Services at 718 935-4042, the Pupil Personnel Team or the School Based Support Team at your child’s school, or your child’s Committee on Special Education. To get an outline of the services and placements available under the new Continuum or if you have questions or need help, please contact our office at 212 947-9779.

NYC Board of Education Revamps Bilingual Education



On February 27th, the NYC Board of Education enacted the most sweeping changes of its bilingual education policy in over two decades. Board members voted unanimously in favor of a policy resolution that emphasizes parent choice and prioritizes investment in English as a Second Language classes over bilingual education. About 160,000 of the 1.1 million students in the New York City public schools are English language learners (“ELLs”) who qualify for bilingual and English immersion programs.

The resolution, based on a plan by Chancellor Levy, calls for: (1) creating an intensive English immersion program called “Accelerated Academic English Language” in addition to the existing English as a second language (ESL) immersion program; (2) creating after-school, Saturday, and summer school ESL instruction for ELL students; (3) setting a goal of three years for students to exit English immersion and bilingual programs; (4) creating 20 new dual language programs; (5) requiring parents to consent to an ESL or bilingual program for their children before placement in such program (the current system automatically places students in bilingual education unless parents opt out); and (6) investigating ways to help special education ELL students. The changes are to be effective this June.

The Board amended the Chancellor’s original plan to ensure attention for two groups of students who show particular difficulty exiting bilingual/ESL programs. They are: 1) bilingual special education students and 2) ELL students who enter NYC schools at grade six or later. A report issued last fall by the Board’s Division of Assessment & Accountability found ELL special education students show the greatest need for improved bilingual and ESL programs. 37% of all ELL students who do not exit bilingual and ESL programs are in self-contained, special education classes. This is a dramatic overrepresentation of special education students since they constitute only twelve percent of all ELL students. In addition, only four percent of ELL students who exited within three years are in self-contained, special education classes. -- As for students who enter NYC schools at grade six or later, the report found this group to have the greatest difficulty acquiring English profi-

ciency, succeeding academically and graduating. AFC advocated strongly for these two policy priorities. The full resolution is available on the Board’s website at www.nycenet.edu.

To implement the new plan, which will require \$75 million in funding for the first year, Mr. Levy has appointed Dr. Edna Vega, currently Superintendent of Community School District 7, to be Superintendent of the Office of English Language Learners, replacing the current Office of Bilingual Education on March 27. Mr. Levy is also establishing an ELL Advisory Committee with community-based organizations to help guide the implementation.

Some have criticized the plan for: 1) its reliance on parent choice without providing the resources to properly inform parents. It is a fear that schools may not adequately or objectively inform parents about program options especially during the rush of school registration. For these reasons, the “opt-in” policy may create unnecessary delays in enrolling children into either program or hasty, misinformed placement decisions. 2) the requirement for parental consent before allowing children to continue beyond three years in bilingual or ESL programs. Research shows that children take 4 to 7 years to acquire English proficiency. 3) the plan’s budget is insufficient and does not increase investment for bilingual education outside of the small number of proposed, new dual language classes.

A survey and report released jointly in February by AFC and the New York Immigration Coalition, entitled “Report from the Front Lines: What’s Needed to Make New York’s ESL and Bilingual Programs Succeed,” documents the system’s severe shortage of certified bilingual/ESL teachers, classroom materials for ELL students, and support services for students and teachers. The report and press release are on AFC’s website at www.advocatesforchildren.org. In the report, AFC and NYIC recommend a substantial, long term investment of new funds to ensure expanded recruitment and retention of bilingual/ESL teachers, expanded professional development, and increased support services and classroom materials. AFC representatives have also testified at public hearings on these issues before the Mayor’s Task Force and Board of Education.

Parents' Tips



Hold Over Alert!

Parents—If your child is at risk of being held over, you have a right to demand that your child's school provide him or her with the extra help s/he needs to be promoted. Also you have a right to appeal the decision to hold your child back. Below is some basic information about the Board of Education's promotion policy. If you have any question about the policy or how to make sure your child is not inappropriately held over, call Advocates for Children.

Kindergarten—2nd graders:

Unfortunately the Board of Education has not expressed a clear city-wide promotion policy for kindergarten, 1st or 2nd graders. If your K-2nd grader is at risk of being held over, you can contact your district Superintendent's office for guidance or call AFC to get any updated info.

All 3rd—8th graders:

For 3rd—8th graders, the Chancellor's Regulation spells out clearly the criteria that must be used to make promotion decisions. In deciding whether a child should be promoted or held over, a school should look at three factors:

1. If the student has met that grade's standards as shown in their classwork.
2. If the child passed the city-wide or statewide test for that grade.
3. If the student kept at least a 90% attendance rate
4. (8th graders must also pass their four major subjects)

Students can only be held over if they fail to meet at least two of the above criteria.

Students who Receive Special Education Services

Special Education students also can be held over if they fail to meet the above criteria, but their promotion criteria can be modified by the IEP team. In other words, if the IEP team decides that your child should not be held to the general education standards, they will note in your child's IEP what standards they need to pass in order to be promoted. Look on page 9 of your child's IEP to see what, if any, promotion modifications your child has.

Appealing an inappropriate Hold-over:

A parent may appeal the decision to hold over their child first to the Principal and then to the Superintendent's office. Unfortunately parents are not given a lot of time to submit the appeal—you only have 3 days to appeal to the Principal (the deadline is June 13th), and 3 days from the time the Principal makes his/her decision to appeal to the Superintendent.

Summer School

All children who receive hold over notices are entitled to attend summer school. BE EXTREMELY CAREFUL IF YOUR CHILD IS BEING HELD OVER: last year many parents received letters saying their child needed to attend summer school, were then told that because there was not enough space their child did not have to attend, and later found out that their child was being held over anyway.

When in Doubt, Write it Out:

Whenever there is any confusion about what you are being told by your child's school or district, always, always, always, write the Principal or Superintendent about what you have been informed and what your course of action is (for example "because I have been informed by Ms. Xyz that there is no space in the summer school program and that my daughter does not need to attend summer school, my daughter will attend camp. Please write me if my information is incorrect.") And remember—keep copies of all letters and get a receipt for everything you mail or drop off to the school or Board of Ed. Office.

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