

# The Advocate

ADVOCATES FOR CHILDREN  
OF NEW YORK, INC.

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

Welcome to Advocates for Children's summer 2000 edition of *The Advocate*, the newsletter that keeps parents informed of their children's rights in New York City's schools. In this issue of *The Advocate*, you will find practical information on the rights of your children with disabilities, including their rights under Section 504 (a way to secure services and accommodations *outside* of the special education system), and an overview of Nickerson Letters (one way to get the Board of Ed. to pay for a private school). For parents of children who receive special education services and are mandated to go to summer school—read our alert on how to determine if your child can be held over this year and what to do if they were inappropriately sent to summer school. Finally, we have included updates on two AFC projects that are bringing our services to immigrant students and students at risk of being inappropriately placed in special education placements.

## Section 504— Protection for All Children with Disabilities

*If you have a child with a disability, s/he may be entitled to certain classroom accommodations under Section 504 of the Rehabilitation Act of 1973. It is not a well known law and is under utilized in providing students needed assistance in their school programs. It may in fact prevent a child from being referred to special education. Read these frequently asked questions for more information about Section 504 and how it may help your child.*

### What is Section 504?

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination by federally funded programs on the basis of physical or mental disability. It is intended to "level the playing field" by eliminating disability related impediments to full participation in federally-funded programs. The law protects individuals whose physical or mental disabilities substantially limit one or more "major life activities," such as caring for themselves, seeing, breathing, walking or learning. This statute protects children with physical and mental disabilities who are not, and should not be, receiving special education services, as well as those receiving special education services. Virtually all public school districts receive some federal funding and so are covered by Section 504. Some examples of Section 504 services are administration of medication, monitoring students' physical well-being, making facilities physically accessible, use of equipment like tape recorders and calculators, counseling, and test modifications or accommodations. Like the IDEA, Section 504 requires that children with disabilities be educated with their non-disabled peers unless such education cannot be achieved satisfactorily.

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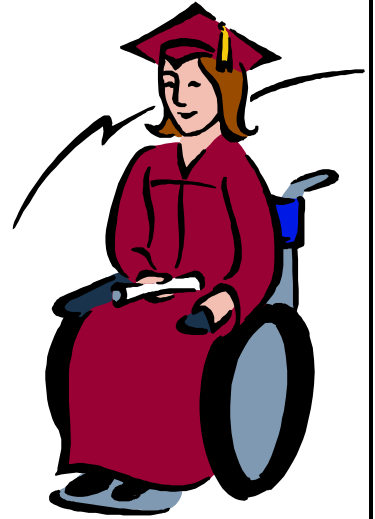
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# Section 504 (cont.)

## Who is eligible for 504 services?

Students who have a disability that substantially limits a "life activity" such as breathing, learning, eating, walking, playing, seeing, or otherwise participating in school activities are eligible for section 504 services. Many more children are eligible for 504 services than are eligible for services under the IDEA, because only children with impairments that affect learning are eligible for IDEA services, while children with impairments that affect any major area of life function are eligible for services under Section 504. Some disabilities that might require 504 accommodations include depression, attention deficit/hyperactivity disorder, diabetes, cerebral palsy, cystic fibrosis, severe allergies, asthma, epilepsy, AIDS or HIV, cancer, and visual and hearing impairments.



## How are section 504 services different from the special education services provided under the IDEA?

Section 504 is an anti-discrimination statute. Section 504 services are supposed to "level the playing field" by eliminating any disability-related obstacles to your child's full participation in the general education classroom. In contrast, special education under IDEA is an entitlement program under which school systems are given additional federal funding and in return must provide children with programs and services in addition to those available to persons without disabilities.

## What are section 504 services?

Section 504 services are accommodations intended to remove disability-related barriers to a child's full participation in school. Section 504 accommodations can include the administration of medication, special seating in the classroom, the training of school personnel to better respond to your child's needs, or even getting a full time para-professional to assist your child. Section 504 also protects children who are only perceived to have impairments. Section 504, for example, prohibits a school from excluding a child with HIV because of a perception that the child is contagious or cannot participate in school activities, even though that may not in fact be true.

### ASTHMA ALERT!

Did You Know Some Children Are Now Allowed To Carry Inhalers To School?

If your child has been diagnosed with a severe asthmatic condition by a doctor (or other duly authorized health care provider), and may have sudden attacks severe enough to cause a very weakened condition, s/he is permitted to carry and use a prescribed inhaler during the school day.

A form called the "Authorization For A Student With Asthma To Carry And Use An Inhaler" should be completed by your doctor (or health care provider) and signed by the parent and kept in the school office. Forms should be available at your school or can be obtained at Advocates for Children and should be up-dated annually.

REMEMBER: If your child has asthma s/he may be eligible to receive a "504 accommodation".

Section 504 accommodations may be very simple. For a boy with asthma who gets attacks when his neck is exposed in cold weather, for example, a teacher might make sure that he wears a scarf during recess in the winter. A child with a writing impairment might be permitted to use a pencil or computer for writing assignments. Section 504 may also require more expensive accommodations. A school might be required, for example, under Section 504 to provide nurse accompaniment on a school bus for a child with a severe seizure disorder, a paraprofessional to help a child with ADD stay focused, or a ramp in an auditorium used for graduation ceremonies for a child in a wheelchair.

## How do I get Section 504 services?

Although school districts have an obligation to locate children in need of 504 accommodations, they often fail to properly identify children who need services. Parents may have to take the first step in getting their children accommodated under section 504. To request that your child be considered for 504 services, contact the 504 Coordinator at your District Superintendent's office or the central office at the Board of Education. After providing documentation regarding your child's disability and need for services, the district should work with you to develop a written 504 plan so that your child can get the services he or she needs.

# Program Updates from AFC

## Least Restrictive Environment In Action

In our December 1999 issue of "The Advocate", we reported on the Least Restrictive Environment Initiative and the formation of a coalition of education advocacy groups that are working together to inform parents and professionals and strengthen advocacy efforts on behalf of LRE issues in New York City. In this issue, we would like to focus on another facet of the LRE work that is going on at Advocates for Children.



Matthew Lenaghan, an attorney in at AFC, received a two year NAPIL Equal Justice Fellowship to address LRE issues through case work. This fellowship is funded both by the National Association for Public Law (NAPIL) in Washington DC and the New York City law firm, Greenberg Traurig. Its purpose is to provide direct representation to New York City school children in need of special education services who are in danger of not being placed in the LRE in accordance with the Individual's with Disabilities Education Act. (Under that federal law children with disabilities must be educated with their non-disabled peers to the maximum extent possible.) Matthew's project also includes providing parent training and working with the LRE Coalition to provide pertinent information that results from his case work.

In most cases to date, Matt has seen young students in need of services who are experiencing behavior problems and are being recommended for placement in restrictive, segregated classes by the Committees on Special Education (CSE) without the benefit of appropriate interventions in the general education setting. To give two examples: In parallel cases from the same Bronx classroom, two twelve year old boys with emotional needs who were recommended for placement in a segregated class in a Modified Instructional Setting (MIS II) were able to remain in the general education setting with services following AFC's intervention. Both are now completing successful school years.

If you have any questions regarding LRE or would like additional information, please contact our office or go to our web site at [www.advocatesforchildren.org](http://www.advocatesforchildren.org).

## Immigrant Students Rights Project

Advocates for Children has expanded its advocacy programs to include a new Immigrant Students' Rights Project through which our multi-racial, bilingual (Spanish and Chinese) staff conduct outreach to immigrant families with children in the New York City public school system. The project enables us to address the varied needs of immigrant students in both regular and special education

One third of the City's 7.3 million residents are foreign-born and another 15% are children of foreign-born parents. Between 1995 and 1998 alone, nearly 112,000 immigrant students registered for public school in New York City. Many are not receiving adequate services. Through this project, Advocates for Children has helped many immigrant families overcome language and cultural barriers, and lack of familiarity with the school system, as well as obtain newcomer students appropriate educational services. We provide community education through our workshops for professionals and parents, case advocacy and legal representation and address educational policy issues related to the needs of this population. Following are a few examples of those we have been able to assist.



Ms. K. Called one day regarding her six-year-old son, Sammy, who has speech delays and was entitled to special education. Although it was already October, Sammy had not been offered a school placement because his dominant language is Mandarin and there were no bilingual special education classes available to meet his needs. The school district in Brooklyn claimed they could not find a bilingual paraprofessional to accompany him in a temporary placement. This failure to provide appropriate services was in violation of the law. A Mandarin speaking attorney from our office became involved, contacted the school and district office, accompanied the parent to the school and in a very short time, secured a bilingual paraprofessional for Sammy in his zoned school. Since then, Sammy's mother has reported great satisfaction with the placement.

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# Special Education Hold-Overs

- Parent Alert

A new Board of Ed. policy for promoting students in grades 3 - 12 went into effect 10/14/99. If your child is getting any special education services (resource room, speech, counseling, etc.) or is in any special education class ( MIS I , MIS II , SIE VII , etc.) s/he CANNOT be held over this year unless:

Your child's IEP team met with you between 11/ 99 and 1/31/00 to make three decisions and to add a new page 9 to the IEP. At the meeting the team had to decide:

1. Whether your child will take the citywide tests and, if so, what accommodations s/he needed;
2. Whether your child will be held to the new standards; or
3. Whether your child will be held to modified standards.

**IF YOUR CHILD'S IEP WAS NOT CHANGED BEFORE JAN. 31, 2000, S/HE SHOULD NOT BE HELD OVER.** If your child gets a holdover notice, you can appeal to the Board within 3 days, appeal to the NYS Commissioner of Education or NYS Ed. Dept. or file for an impartial hearing. Get a copy of the Guidelines for the Promotion of Children with Disabilities located at the CSE, District offices or your principal's office and refer the school official trying to hold your child over to pages 4-5 of the Guidelines.

### Summer School

If your child has an IEP and will be attending summer school, your child is entitled to services in summer school. S/he should receive the services listed on his or her Student Accommodation Plan which should be attached to his or her IEP.



## Immigrant Student's Rights Project (cont.)

Mei, a fifteen-year-old Chinese American student had been in the U.S. less than a year when her grandmother in China fell seriously ill. The family had to take a trip to China for this emergency for a couple of weeks causing Mei to miss school. Before leaving, Mei provided written notice to all her teachers from her mother informing them of the duration and reason for her absence. The family returned earlier than anticipated and found Mei had been discharged from her high school during their absence. Despite the full notice provided by the family, the school assumed without any evidence that the family had moved back to China. Advocates advised the family on discharge and placement rights and procedures and conducted advocacy on Mei's behalf. In short time, Mei was reinstated in her original high school.

If you or someone you know can be helped by our services for newcomers, call our Immigrant Student Hotline for advice and referral, Monday through Friday, 9 AM to 5 PM, (212) 947-9779, ext. 60.

We wish to thank the Altman Foundation, the Donors Education Collaborative and the Warner Foundation for funding this important project.

## The Nickerson Mystique



*If you have a child who receives special education services in NYC, someone at one time or another has probably told you to try to get a “Nickerson Letter” for your child – that elusive (and somewhat deceptive) piece of paper that promises to pay for a private school for your child. All parents should be aware of the possibilities through a Nickerson letter, but should also be wary of the complications that it comes with. Below is a brief overview.*

A Nickerson Letter, also known as a P-1R letter, is only available in New York City and was created in the class action lawsuit, Jose P v. Mills for which AFC is co-counsel.

The Board of Education’s practice is if the Committee on Special Education (CSE) fails to offer your child an appropriate placement within 60 days from the date you consented to the evaluation, or within 30 days from the day of the CSE review that made the program recommendation, they should automatically give you a Nickerson letter.

In this letter, the Board offers to pay your child’s tuition at any state approved non-public school that accepts your child for the remainder of the school year, of if you enroll after April 1, until the end of the next school year. With the Nickerson letter, you will receive a list of the approved schools in which you may enroll your child. You should be aware of the following:

- 1) With limited exceptions, Nickerson letters are limited to use in approved schools and there are not many seats available.
- 2) It is your responsibility to contact the schools about an opening and to provide them copies of your child’s evaluations and Individualized Education Program (IEP).
- 3) A Nickerson letter does not guarantee that you will be able to find a place in one of these private schools for your child.

If the letter indicates an expiration date but the CSE has not yet offered a site for your child by that date, you should continue to look for a school. After the expiration date, your Nickerson letter will be valid until the CSE offers you an appropriate placement.

Note of Interest: At least one attorney successfully placed a Westchester student in a school district in Westchester using a Nickerson letter even though the Nickerson letter is technically only available to students who live in New York City

## The Advocate

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