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ABSTRACT

This special theme issue of the journal "The Advocate," offers articles on early interventions for preschoolers with special needs, including three articles in Spanish. Contents include: "Providing An Orientation for Life" (Galen D. Kirkland); "AFC Fights Cuts in Education at 'Speak Out' Rally" (Nadine Renazile); "Testimony of AFC, 12/9/94, before the NYC Early Intervention Interagency Coordination Council" (Sharon Hammer); "Early Intervention for Children Living in Temporary Housing" (Alexandra Michalos); "Early Intervention: A Brief Parent Guide Regarding the Development of Individual Family Service Plans" (Sharon Hammer); "Intake"; "Tips for Parents/Consejos para Padres" (Janice Silber); "Physical Exams & Immunization Requirements for New Students" (Valerie Pekar); "The Impartial Hearing Process/La Vista Imparcial" (Joan Harrington); "Asistencia Tecnica (Technical Assistance)"; "A Victory for Preschool Children with Disabilities" (Ellen Gallagher Holmes); "The Family Perspective on Head Start Inclusion" (Diane Bonelli); "A Historical View on Inclusion"; "Least Restrictive Environment Update" (Diana Autin); "The Least Restrictive Environment for Peter" (Janice Silber); "The National Council on Disability Holds Hearings in New York City"; "What Services and/or Programs Are You Entitled to from Your Committee on Preschool Special Education?" (Sharon Hammer and Ellen Gallagher Holmes); and "Testimony by AFC, 11/16/94, to: NYS Association of Counties Regarding Preschool Programs for Children with Disabilities" (Ellen Gallagher Holmes). (SW)

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The Advocate

Dedicated to the protection of every young person's right to a quality education.

Fall - Winter 1995

Early Childhood Education

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AFC Staff, Board of Directors & Contributors

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24-16 Bridge Plaza South, Long Island City, N.Y. 11101, Tel. (718) 729-8866

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Staff Attorneys / Project Directors / Staff

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Managing Attorney
Odessa T. Lee
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Providing An Orientation for Life

By Galen D. Kirkland, Esq.

The treatment and care that every human being receives during his/her first years of life ultimately determines the well being of our society. Although this principle has been established for thousands of years, we still refuse to honor it.

A central question for those who care about children is how to make more people understand the critical importance of early intervention and early childhood education programs.

Many opponents of government-supported social programs reject such initiatives claiming that they don't work. This refusal to see the key role that must be played by collective efforts to address the needs of children who are at-risk is self-defeating and tragic. There is no other time in life when more leverage can be obtained in forming human consciousness and influencing future conduct.

Advocates for Children is firmly committed to the advancement of early intervention programs that identify children with special needs as early as possible, provide the framework for exceptional needs to be met, prevent poverty from being a life long inhibitor, and prepare children for learning. We are doing everything feasible to enable the State and City of New York to live up to their responsibilities to help infants, toddlers and preschoolers with developmental delays to begin their lives with the benefit of vital support services.

I have no doubt that we can give all of our children the opportunity to develop their intellects and to grow into responsible adults. I learned from my own mother what is needed to nurture a child. She very ably performed the task of raising three African American males on her own, while working overtime as a registered nurse at Harlem Hospital. Books were a constant presence as far back as I can remember, as my mother read to us and encouraged us to read everything.

However, the central ingredient in her formula for success was an unshakable base of love and respect. Even the racially hostile and conflict ridden world of the United States in the 1950's and 1960's seemed like a viable place when she got through with us. It was only after I had grown older that I understood why she kept repeating to me like a mantra, "You can do whatever you want."

Shifts in political winds have periodically provided support for early intervention/education programs and then curtailed those laudable efforts. We now appear to be entering another period of heightened indifference toward the needs of children. However, we cannot accept the irrationality of our political and social priorities as the last word. Individuals and communities of conscience must step forward to promote and implement initiatives to start children's lives with the best possible support and orientation for the future.

For example, the Harlem Council of Elders, a non-profit union of senior activists, understands the importance of early intervention programs and is currently planning to initiate one of its own. The Council is planning an expansion of its youth education program to include an adult literacy/early intervention project in Harlem to encourage parents to read to their infant children. Experienced doctors, housing developers, jurists, and educators in the Harlem Council of Elders determined that a fundamental improvement in the prospects of Harlem's children could be achieved by having literate parents introduce their children to reading. This first step in collective action for early childhood development will be followed by projects to assist parents in a range of areas where society is failing young children.

It is hard not to succumb to the presently lowered expectations of our ability to nurture all of our children. Many simply believe that some children will be fortunate and others unfortunate, according to their circumstances. Our very real power to make drastic improvements in the lives of children must inspire us to act. This issue of *The Advocate* is focused on the work that is being done to provide early intervention services to vulnerable children. Our strategy to build an active constituency and promote effective early intervention programs for all eligible children must be to convince people of how vital early childhood programs are in shaping successful adults.

People are fixated today on violence and crime to such an extent that social policies which work to cultivate human potential are often viewed skeptically. We hear criticism of remedial social programs while we simultaneously pay vast amounts of money to incarcerate a million people in the United States. Communicating about the success of early intervention and early education is a critical first step in redirecting this focus, and in convincing people to invest in human potential with all the energy, commitment and faith we can muster.

AFC Fights Cuts In Education At "Speak Out" Rally

Speech By Nadine Renazile

Good afternoon, my name is Nadine Renazile. I have an eight year old son who attends a public school in District 2. In addition, I am also employed at Advocates for Children of New York, a 25 year old private non-profit organization providing assistance to New York City public school children. Our program includes research, direct representation, community based training and public policy negotiations.

As a parent and an educational advocate, I am intimately involved in the New York City Public School System. I see firsthand the already dramatic implications of vast spending cuts. I am here to oppose further cuts!

As Chancellor Cortines so eloquently stressed in his testimony yesterday before the City Council, we cannot absorb a decrease of \$30 million more dollars for educational programs and services. Our children are already suffering due to the lack of critically necessary materials, books, teachers, and other resources — not to mention severely overcrowded classrooms and deteriorating buildings.

Why is it that the needs and future prospects of our children are so easily disregarded by bureaucrats who, not surprisingly, remain unwilling to place their own children in the New York City public school system? Of course Mayor Guilliani — the man who is insisting on slashing our educational budget — will not feel the impact of his actions since his own children are safely tucked away in private schools.

It is a sad and terribly hurtful commentary on the priority given to children and on their overall value to us as a society — that our leaders feel unrestrained in cutting educational programs and services while augmenting their commitment to punitive resources like the police, prisons, and special schools for "delinquent" kids.

It doesn't take a genius to realize that if education is lacking — and if children are essentially told by their leaders that their educational lives are of no consequence — then these same children with enormous but tragically untapped potential may turn in negative directions.

Advocates for Children urges the Mayor, the City Council Members, and other involved parties and officials to stop balancing their budgets on the backs of New York City school children. It is unconscionable to sacrifice the long term futures of our children for such a short sighted budgetary fix.

We have already seen Mayor Guilliani take this same destructive approach with regard to the Division for Youth Services — an approach which is now under investigation. Yet he is at it again — providing the same message — **LOUD AND CLEAR — WHICH IS THAT THE LIVES OF OUR CHILDREN ARE CHEAP.** We are here to say that this is not true, and although Mayor Guilliani may be perfectly willing to issue an educational death knell to our children, we will fight him every step of the way — **FOR OUR CHILDREN ARE OUR FUTURE — AND THEY ARE ALSO THE FUTURE OF OUR CITY.**

Testimony of AFC, 12/9/94 Before the NYC Early Intervention Interagency Coordination Council

By Sharon Hammer, Esq.

I. Introduction

Advocates for Children of New York, Inc. (AFC) is pleased to testify before the New York City Early Intervention Interagency Coordinating Council regarding the manner in which Part H of the Individuals with Disabilities Education Act (IDEA) is being implemented in New York City.

For the past two years, AFC has engaged in on-going correspondence with the New York State Department of Health (DOH) and the New York City Department of Mental Health, Mental Retardation and Alcoholism Services (DMHMRAS) regarding the planning and implementation of the Early Intervention Program. We have identified many areas of concern including: a lack of outreach to promote public awareness and to identify potentially eligible infants, toddlers and their families; insufficient coordination and information sharing among relevant agencies; inadequate training, and the need for effective monitoring and quality assurance.

Today, we will reiterate some of these same concerns. We note, however, that a significant reason why these programmatic shortcomings exist is due to the DOH's apparent inability to address the particular challenges faced by New York City, where almost two-thirds of all potentially eligible infants, toddlers and their families reside — presenting at least 100 different languages and cultures, and complicated variables including poverty and homelessness. Given the DOH's often ineffective response, a disproportionate burden falls on New York City to overcome critical barriers and to ensure that early intervention services are delivered in a timely, appropriate manner to all eligible children.

II. Outreach

AFC is extremely concerned that many potential referral sources in New York City lack early intervention program materials and information. Our interactions with parents, hospital workers, Head Start staff, workers in foster care agencies, lawyers, teachers, school administrators and

shelter providers indicate that all too often these individuals and groups know little or nothing about early intervention.

For example, AFC has conducted numerous early intervention training sessions at shelters for homeless families in New York City. We have learned that more often than not shelter staff and families are totally unaware of the Early Intervention Program, despite the fact that children in such settings are at great risk of developing delays.

The appalling lack of effective outreach in New York City also extends to medical settings which function as primary referral sources. One AFC attorney recently spoke with a hospital social worker and learned that although she had received an in-service early intervention training, participants were not given any written materials regarding the early intervention entitlement. As a result, neither she nor her colleagues could offer potentially eligible families informational brochures or copies of the family rights guide.

It is not surprising that AFC repeatedly receives calls from parents who have never received any of these important materials, regardless of where they are in the early intervention process. This undermines the ability of families to help themselves, and also compromises the effectiveness of the overall program.

III. Training

AFC has identified the following gaps in New York City's early intervention hiring and training practices: First, the current pool of MHRA service coordinators generally lacks sufficient training in the area of basic infant and child development, not to mention developmental delays and disabilities. On the one hand, AFC is pleased that this group of coordinators is culturally diverse and multilingual. But in order to provide effective service coordination — to walk families through the difficult and often intimidating process of Individualized Family Service Plan development and implementation — service coordinators must have a sufficient background or training in child development. Without this knowledge, service coordinators are likely to have their standing challenged by other participants at IFSP meetings and, in the words of one coordinator, to function merely as "scribes" in such settings.

Second, in order to advocate on behalf of families, all service coordinators — initial and ongoing — must understand parental due process rights and procedures. Equally important, service coordinators require training to enable them to assist and support parents in pursuing their due process rights.

Recently, the mother of a child with severe disabilities told an AFC staff member that after waiting several months for an IFSP meeting, she asked both her service coordinator and an early

intervention official about her right to an impartial hearing. They urged her to file a complaint but warned that due to backlogs it would take three to four months for her complaint to be heard.

Likewise, it is unacceptable for service coordinators and service providers to avoid conveying such information based on their conclusion that parents are too overwhelmed to understand and/or pursue their due process rights. Service coordinators and providers must be trained to act as effective advocates with a real commitment to assist and support parents and children.

In a system that is not meeting the needs of highly vulnerable children and their families, it is no surprise that many parents acknowledge feeling overwhelmed and afraid. But just as frequently, and often in the same sentence, parents stress that they have no idea what their rights are — or how to pursue them. Obviously, these two points are directly related.

AFC's experience vividly illustrates that most parents will do whatever is necessary to help their children. As one mother so eloquently stated, "My daughter is almost three years old, and she can't speak. She has no voice, so I am her voice."

IV. Inter-Agency Coordination

A persistent lack of coordination and information sharing exists among the many agencies whose involvement is vital to a successful Early Intervention Program. Typical scenarios highlighting this problem include the following:

- a parent was told by her service coordinator that only one evaluation site in Manhattan was capable of evaluating her child, and that the same site was also the only potential service provider.

- another parent was told that her medically fragile child was eligible to receive home care services through Office of Mental Retardation and Developmental Disabilities. However, she later learned that her child was too young to meet the program's eligibility criteria. OMRDD then directed this parent to a home care provider who was not approved to provide such services to infants and toddlers.

Another symptom of this problem is evident in the foster care arena. AFC's outreach and training efforts indicate that foster parents and case managers often avoid referring infants and toddlers to the early intervention program because they fear the implications of such action — not only in the area of confidentiality and consent, but also because they have little reason to believe that services will be forthcoming.

V. Capacity

Finally, anyone active in the early intervention program knows that the system is currently incapable of meeting the needs of all eligible children. As difficult as it may be to enlist, train and oversee appropriate providers, much more must be done to expand this pool. Part H clearly requires that all eligible infants, toddlers and their families receive services in natural settings. Implementing this mandate remains very difficult in New York City, where most early intervention service providers operate out of hospitals or center-based programs. Frequently, they are reluctant to deliver services in neighborhood settings or in a family's home — especially in areas they perceive to be unsafe.

Thus it is incumbent upon the DMHMRAS to challenge and to go beyond the established network of hospitals and center-based providers. These providers need assistance in understanding how early intervention funding may be used to support their own efforts to deliver services in naturalized settings. In addition, the DMHMRAS must conduct aggressive outreach, education, training and technical assistance aimed at day care workers, Head Start staff, and other community agencies and programs serving typically developing children. If the DMHMRAS acts now, it may avoid replicating the extremely segregated, inefficient and enormously expensive preschool and school-age systems serving children with disabilities. At the same time, eligible infants, toddlers and their families will be much more likely to receive the kinds of early intervention to which they are entitled.

Early Intervention for Children Living In Temporary Housing

By Alexandra Michalos, Esq.

AFC recently began outreach to New York City homeless shelters and foster care agencies to inform the residents and staff of New York's newly implemented early intervention program. Early intervention means identifying developmental problems or what could become developmental problems early in a child's life, and then providing the right kinds of services to maximize the child's growth and development.

AFC found that most homeless shelter staff, including those shelters that only accept families with children under the age of three, were unaware of the early intervention program in New York. Consequently, parents were also uninformed regarding available services.

Outreach and training efforts involving the Child Welfare Administration (CWA) also indicate that foster parents and case managers often avoid referring infants and toddlers to the early intervention program because they fear the implications of such action. Particular areas of concern include confidentiality and consent.

In addition, comprehensive policies and procedures to address the unique needs of infants and toddlers living in homeless shelters and foster care homes have not been formally developed through coordinated efforts between relevant agencies.

Infants & Toddlers Living In Homeless Shelters

During AFC's workshops with parents at homeless shelters in New York City, parents raised many questions regarding their children's development. For example, many parents of very young children fear that they will not recognize a developmental delay in their child because they are not familiar with what is considered "normal development." This concern can be alleviated by having children screened and/or evaluated under the early intervention program. Unfortunately, parents are often unaware that these screenings and evaluations are available.

Children exposed to the stressful, uncertain and frequently dangerous reality of shelter life are "at risk" of manifesting developmental delays. A typical homeless family in New York City will spend up to five nights sleeping in an unsanitary, overcrowded Emergency Assistance Unit (EAU)

before receiving a shelter placement. An EAU is nothing more than a large waiting room for people seeking government assistance in the face of homelessness.

In general, families move from one emergency setting to another during a six to twelve month period, before locating permanent housing. This tremendous upheaval poses a high risk to the normal growth and development of infants and toddlers.

While "at risk" children are not eligible for early intervention services in New York, they are entitled to periodic screening, evaluation and monitoring. The purpose of testing is to detect, as soon as possible, any manifestations of developmental delay, and to provide timely services to prevent or minimize further delays.

Outreach to homeless shelters is vital to reach families for whom early intervention can make a tremendous difference. Congress intended this program to be accessible to all children, especially those who typically encounter great difficulty securing appropriate services. One stated goal of the federal Early Intervention legislation is to ensure that "traditionally under-served groups... are meaningfully involved in the planning and implementation of all the requirements of this part."¹ To achieve this goal, families and shelter staff must be informed and educated about the rights and entitlements available under the early intervention program in New York.

Infants and Toddlers Living In Foster Care

AFC has recently conducted trainings at the Human Resources Administration and Child Welfare Administration (CWA), to inform foster care case managers and agency staff about the rights and entitlements of families eligible for early intervention services. To help ensure that appropriate services are currently being provided to eligible infants and toddlers, CWA and the New York City Early Intervention Program have developed certain practices to immediately address issues of confidentiality and parental consent. The following is a discussion of these practices for your information.

Before an infant or toddler may be referred to early intervention by a foster care agency case worker, a good faith attempt to contact the birth parent should be made. If the birth parent does not object to the referral being made within approximately two days from notification, then a referral can be made. If the birth parent cannot be reached, a referral is made and a letter advising the birth parent of the referral is mailed.²

¹34 CFR 303.128(a).

²This procedure does not apply when the child is referred to the Early Intervention Program by anyone other than a foster agency. Notice to the natural parent is not required, if anyone other than a foster agency

Whenever a foster infant or toddler is referred to early intervention by someone other than the foster care agency case worker, the Early Intervention Program will immediately inform the foster care agency of the referral. In addition, the agency will be invited to participate in the process and be informed of the Individual Family Service Plan meeting and other significant events regarding the early intervention process.

When a parent is unavailable (or chooses not to participate) a surrogate parent will be appointed. A surrogate parent cannot be an employee of any agency involved in the provision of early intervention or other services to the child. A surrogate parent is chosen through the following order of preference. The first person considered to be appointed as surrogate is a person of the birth parent's choice; the next is a kinship person or close friend; then a foster care parent; finally, if none of those persons are available the Early Intervention Official will appoint a surrogate parent.¹

Even if the infant or toddler is in foster care, the birth parent may choose to actively participate in early intervention efforts. In this case, the foster parent is not appointed surrogate parent and therefore does not assume the role of parent in the Early Intervention Program, but the foster parent is invited to participate in the process. As the daily caretaker of the foster infant/toddler, the foster parent will necessarily be a part of the child's receipt of early intervention services.

Efforts to maintain a relationship between the birth parent and the infant or toddler in foster care is necessary to facilitate the reunification of the family. To date, there are no established policies or procedures for ensuring that the natural parent remains actively involved in early intervention efforts when a surrogate parent has been appointed. Similarly, there are no provisions to ensure that the foster parent, who is the primary caretaker of the child, also remains involved in the delivery of early intervention services, when the foster parent is not appointed the surrogate parent. How the birth parent and foster parent will collaborate in addressing the needs of the child remains unclear.

Concerns have been raised in certain cases about the real or perceived need to keep the address and telephone number of the foster child's residence confidential from the birth parent. Protocols indicate that where the foster parent agrees to become the surrogate parent this information becomes part of the child's Early Intervention Program records, and is available to the birth

refers a child to the Early Intervention Program. It also does not apply when the birth parent's parental rights have been legally terminated or voluntarily relinquished.

¹ Also, following the same criteria, a surrogate parent is appointed when the child is a ward of the state. A child is a ward of the state when his or her parents have died or parental rights have been terminated.

parent upon request. In practice, however, to protect foster children, the location of the foster care home is not provided on any of the child's early intervention records. Instead, the address of the agency is provided in place of the child's foster care home.

At present foster parents and case managers are hesitant to have eligible infants and toddlers in foster care enter the early intervention program. Rather than refer a child to early intervention, case managers attempt to secure similar services for their foster care children through other programs. However, these other programs may not include provisions such as ensuring parental involvement and the delivery of services in the infant or toddler's "natural environment," which are mandated under the early intervention program.

Ending Note

In general, the Early Intervention legislation was not written with the practical implications for homeless or foster children in mind. The Early Intervention Program must become more responsive to the needs of those children whose "natural environment" is a homeless shelter or a foster care setting.

Early Intervention: A Brief Parent Guide Regarding The Development of Individual Family Service Plans (IFSPs)

By Sharon Hammer, Esq.

Background

Early intervention means identifying developmental problems or what could become developmental problems early in a child's life, and then providing the right kinds of services to maximize the child's growth and development.

Parents and professionals can do many things to stimulate infants and toddlers who have delays or disabilities. It is generally recognized that the earlier a young child is stimulated, the better, and that interaction and stimulation does make a difference in the child's growth and development.

In 1986 Congress passed landmark legislation authorizing financial assistance for states to create a comprehensive family-centered program of early intervention services for infants and toddlers (up to 2.11 years of age) with disabilities and their families. See, Part H of the Individuals with Disabilities Education Act, P.L. 99-457, (IDEA). This legislation views parents and families as key components to early intervention. Early intervention is unique to each child, reflecting the differences in children, families and service needs.

Home and family are integral to the lives of very young children. Thus, any intervention plan for a young child must consider the needs of not only the child, but also of all other family members. Together, parents and professionals create a team and formulate a plan designed to meet each family's needs in the way and on a time schedule that the family believes is best for their young child and for themselves. Under the law, services should be arranged to meet the unique needs of the child and family, rather than the child and family being forced to fit into existing programs or scheduled services.

Funding for early intervention services comes from a combination of Federal, State and local monies, as well as private and public health and accident insurance when available. **In New York State, the government — not the family — is responsible for paying any deductibles or co-payments required by a family's private insurance to cover intervention services. Further, services provided under the Early Intervention Program cannot be charged against annual or lifetime limits on accident and health insurance policies.**

Development of Your IFSP

Once your child has been evaluated and determined in need of early intervention services, you will be asked to attend an individualized family service plan (IFSP) meeting. An IFSP is a written plan which details what services your child and family need, and the goals and objectives of such services.

The meeting should be held at a time and place that is convenient for you. If necessary, you may want to request that this meeting be held at night or on a weekend, and that it take place at your home, work place, or even your local day care site.

Participants at the meeting include:

- you;
- your service coordinator;
- your early intervention official;
- the evaluator (at least one of the evaluators who actually evaluated your child).

You may also invite any other individual(s) you wish to attend the meeting, such as:

- a family member;
- another parent;
- a friend;
- an advocate;
- a current or potential service provider;
- additional evaluator(s);
- etc.

If you would like input from an individual who is unable to attend the IFSP meeting, e.g. a physician, other evaluator(s), ask your Service Coordinator to arrange for his/her participation at the IFSP meeting via a telephone conference call.

Your Service Coordinator may also wish to bring other people to the meeting, but this may only be done with your permission.

The meeting must be held within **45 days** after the early intervention program receives an initial referral. However, a parent can ask that an IFSP meeting be postponed or rescheduled. **If you**

feel that your child needs immediate services you can request an Interim IFSP so that certain services can begin right away.

The IFSP Document Must Be In Writing and Include

Information about your child's:

- health status;
- physical development;
- current abilities;
- emotional development.

Information about your family:

- including your concerns and needs.

Information about services which may include:

- family training;
- counseling and/or support groups;
- nursing services;
- speech pathology and audiology;
- occupational therapy;
- physical therapy;
- psychological services;
- nutritional services;
- social work services;
- vision services;
- assistive technology devices and services;
- transportation;
- respite services;
- the duration of such services, including beginning and ending dates;
- what, if any, provisions will be made to provide services in your child's natural environment.

A natural environment is a setting that is natural to the child. It is where children of your child's age are commonly found whether disabled or not, for example: home, day care, community center groups or classes, or a head start program. If you want services to be provided in your child's natural environment, you should clearly state this at the IFSP meeting.

- other services that may be needed by your child, but which the early intervention program does not provide.

Information about your service provider:

- You, the parent(s), should participate in choosing a service provider. While parents do not have the absolute right to select the specific service provider, you should make your preferences strongly known.

You, the parent(s), should meet potential service providers and visit potential service sites and/or programs before agreeing to have your child and family served by a specific provider.

Expected outcomes including:

- the results desired;
- how information will be gathered and progress monitored.

NOTE: ONCE YOUR IFSP IS DEVELOPED AND SIGNED, YOUR CHILD AND FAMILY MUST BEGIN IMMEDIATELY TO RECEIVE ALL THE INCLUDED SERVICES

For more information about Early Intervention, call Advocates for Children (718) 729-8866 to request a copy of If Your Infant or Toddler Needs Early Intervention... A Guide for New York City Families, or contact the New York City Early Intervention Program directly by calling (800) 577-BABY (2229) or (212) 226-0434.

Intake

School is in high gear and the busiest unit at Advocates for Children is running at full speed. Yes, that is the intake/technical assistance office. Although everyone here at AFC is always on the run, the intake staff always seems to be running faster to try to keep up with the many calls we receive from parents or staff from other agencies or schools.

The intake office is open to callers Tuesday, Wednesday and Thursday from 9:00 A.M. to 12:00 P.M. This is subject to change, depending on staff availability. Currently, we have Haitian, Chinese, Greek and Spanish speaking staff to answer callers' questions. Because the lines are so busy, callers are asked to leave their name and phone number. Although we might not be able to return the call the same day, we do attempt to return all calls. This past school year we answered more than 3,000 calls from parents, social workers, teachers and school principals as well as staff from other human service agencies. It is easy to understand why we are not always able to handle every call immediately! We do try to set priorities among calls. For example, we will try to deal quickly with cases where children are out of school.

When a parent's call is answered, we ask for some general information — the child's name, grade and age, and if the child is in a regular or special education class. Everything that is discussed is confidential and for our records only. It is information that is necessary so that the person responding to the parent's questions can give the best advice. Additionally, if the parent needs to call back, the information is here even if the original intake person is out for the day.

Depending on the difficulty of the problem, AFC may handle the call in one of three different ways:

Technical Assistance

We provide information to parents in order to help them advocate for their child's education rights.

Case Assistance

There are times when a problem is more complicated. In those cases, with the parent's consent, we will attempt to resolve the issue by making a telephone call to the school, or writing a brief letter.

Cases

If neither of these strategies work, an advocate or attorney will be assigned to help the parent to resolve the problem. In these cases, parents are usually asked to come in for an initial meeting, and to bring all relevant school records.

Advice will be given to a parent based on the current laws, Board of Education procedures and the Chancellor's regulations.

Tips for Parents

By Janice Silber, Senior Case Advocate

Parents, Know Your Rights! What Should You Do...

When your child is at risk of being held over?

According to Chancellor's Regulation A-501 you must receive written notification by January 31st if the school knows that your child is at risk of being held over.

You should then meet with the principal, look closely at your child's records, provide information on factors that may have affected his/her academic performance during the school year and find out what customized enrichment/instructional support services will be provided to your child to enable him/her to achieve the performance standards by the end of the school year.

All decisions to promote or hold over your child should be made in consultation with you.

When your child is suspended from school and then marked absent?

The New York State Commissioner of Education has ruled that students under the compulsory school age, who are suspended from school, may not be marked absent during suspensions because the district should be providing alternative instruction (alternative instruction must be "equivalent" instruction — not study hall).

Your child may only be marked absent when the district provides alternative instruction and your child doesn't attend.

When your child has a disabling condition such as: diabetes, cerebral palsy, cystic fibrosis, severe allergies, asthma, epilepsy, AIDS, etc. and is in need of individualized services or accommodations, but doesn't need special education?

According to the Office of Civil Rights of the United State Department of Education, if your child's disabling condition doesn't interfere with his/her ability to learn but interferes with his/her ability to attend school or participate in regular activities, then under Section 504 of the

Vocational Rehabilitation Act, your child's school must develop a plan to ensure the provision of necessary individualized support services.

These services might include the administration of oral medication, intermittent catheterization, monitoring of the student in the classroom, provision of insulin and other injections and testing of blood levels, etc. Appropriate training of teachers and support staff to enable them to perform these services in the general education classroom is also mandated.

Your child's residency is in question?

Generally a student's residence is presumed to be that of his/her parent(s). However, if the student is not living with his/her parents, she/he may attend school in the district where she/he is residing if the current living arrangement is the actual and only address, or if there is sufficient evidence that the parents have transferred custody and control of the child to the person(s) with whom the child is living, and that these persons are providing the care and supervision that would normally be provided by the parents.

You are interested in voting in the community school board elections?

Community School Board Elections will be held on May 4, 1993. All registered voters may vote. Parents who are not registered voters and parents who are not citizens may also vote if they have a child who is attending a NYC school.

If you wish to vote you must go to your child's school and fill out a parents' form which will allow you to vote. You must register by April 9, 1993.

If you have any problems or need further information, contact Doreen DiMartini (718) 935-2881.

Your child is in need of special education services that are not being met in his/her local zoned school?

The special education needs of your child should be met at his/her local zoned school whenever possible. If placement is not possible due to overcrowded schools, or the need for a barrier free site, then every effort should be made to find a placement within your district of residence. If it is determined that no appropriate program is available, nor a seat within an appropriate program is available in your district of residence, nor can a seat be made available by the creation of a new class, then an out of district placement must be made to ensure that your child is appropriately served.

In a new procedure initiated last year, the Division of Special Education now generates a reconciliation document twice a year identifying students who are attending programs outside

of their district of residence. The District Administrators of Special Education (DASE) and Placement Officers then review the number of out of district students and their functional levels in order to determine which students can be appropriately returned to their home zoned school where possible and at least to their district of residence.

If your child is placed out of district and you want him/her to return to his/her district of residence, it is important to contact your home DASE and Placement Officer to ensure that maximum efforts are being made to provide an appropriate program for your child in his/her home district.

Remember: An Advocate is only a phone call away!

Physical Exams & Immunization Requirements for New Students

By Valerie Pekar
Intake/Technical Assistance Supervisor

There are several regulations in place that aim at protecting the health of students in the New York City public school system.

Chancellor's Regulation A-701 requires that all new entrants to the New York City public school system have a complete physical examination prior to admission or as soon as possible after entering school.

A physical examination should include the following: weight, height, blood pressure, nutritional evaluation, dental screening, medical history, vision, hearing, & urinalysis screening, immunization and Mantoux (PPD) Tuberculin Skin Test. A lead poisoning screening is also required for children up to the age of 6.

Parents and guardians will be given a form to be completed by their child's doctor. If the form is not returned, the New York City Department of Health will arrange for a member of their staff to examine the child. Parents must be notified and a chaperon must be present during the examination. **No child may be excluded from school for not having a physical examination.**

Vision testing will also be done for all students in grades pre-k through the 12th grade, as well as hearing testing for all students in grades pre-k through the 3rd grade and again in grades 7 and 10. Regulation A-701 describes the methods and materials that will be used by school or Department of Health staff in order to complete the vision and hearing testing.

Chancellor's Regulation A-710 outlines the necessary vaccinations that every child must have when they are admitted to a New York City public school. They are based on City and State laws and Department of Health regulations.

The needed immunizations protect against Diphtheria, Pertussis, Mumps, Measles and Rubella. For children entering pre-k, immunization against Hemophilus Influenza Type B (HIB) is also required.

Children with incomplete immunizations may enter school provisionally if they received the following immunization within 2 months prior to admission:

Prekindergarten

Diphtheria, Tetanus, Pertussis (DPT)	1 dose
Polio (OPV)	1 dose
Measles, Mumps, Rubella (MMR)	1 dose
Hemophilus Influenza Type B (HIB)	1 dose

Kindergarten

Diphtheria, Tetanus, Pertussis (DTP)	1 dose
Polio (OPV)	1 dose
Measles, Mumps, Rubella (MMR)	1 dose

Grades 1-12

Diphtheria, Tetanus, Pertussis (DTP)	1 dose
Polio (OPV)	1 dose
Measles, Mumps, Rubella (MMR)	1 dose

Students must complete the entire series within 1 year.

Additionally, all new students must have a TB test, called the Mantoux PPD Skin Test, with the documented reading date within 48 to 96 hours. If, at the time of registration a child has not had the Mantoux Skin test he or she can be admitted provisionally for 14 school days.

CHILDREN WHO HAVE NOT HAD THEIR IMMUNIZATIONS OR THE MANTOUX SKIN TEST CAN BE EXCLUDED FROM SCHOOL.

Exceptions to these regulations for medical or religious reasons are allowed. If you believe that your child should not be vaccinated or receive the Mantoux Skin Test due to medical or religious reasons, the school principal will be able to advise you about the documentation that you will have to provide.

Students transferring from one New York City public school to another must be admitted provisionally until their records are received from the previous school.

The above is only a short description of two regulations that deal with the health of public school students in New York City.

The Impartial Hearing Process

By Joan Harrington, Associate Director

It has become increasingly common for Board of Education personnel to request an impartial hearing when a parent disagrees with their recommendation. An impartial hearing is an administrative due process procedure whereby an impartial hearing officer is appointed to make a determination concerning a specific child based upon the evidence presented by both parties. The hearings are held at the Board of Education, 110 Livingston Street in Brooklyn. Board of Education personnel have the opportunity to present evidence to support their position and a parent has the opportunity to cross examine the witnesses. The parent will also have the opportunity to present witnesses to support their own position.

The two reasons why the Board of Education may initiate an impartial hearing request are:

1. The school wants the parent to consent to an evaluation by the Committee on Special Education (CSE) and the parent refuses; or
2. The CSE is recommending a special education program and the parent disagrees with that recommendation.

In both of these situations, New York State Regulations permit the Board of Education to request the appointment of an impartial hearing officer. If the hearing officer agrees with the Board, the child can either be evaluated or placed in the recommended program without the parent's signed consent. The consequences of not prevailing at the hearing can be quite serious, so it is important that parents understand what their rights are and what can and cannot happen at a hearing.

When Parents Refuse to Consent to An Evaluation

Parents have the right to refuse to have their child evaluated by the CSE. But a parent's refusal is not always the last word. If the CSE strongly believes that an evaluation is needed, the CSE can request an impartial hearing in an effort to override the refusal.

At the hearing, the burden will be on the Board to show that an evaluation is necessary in order for the Board to provide the child with an appropriate education. Parents can expect that the Board will present witnesses and evidence from the school the child attends to establish that s/he

is not progressing satisfactorily in academic and/or social areas. Parents will have the opportunity to question the Board's witnesses and to present their own evidence and witnesses.

Parents always have the right to have their child evaluated privately,¹ at their own expense. If parents obtain a letter from a private evaluator indicating the date of expected completion of this evaluation, they can bring the letter as evidence to an impartial hearing. The hearing officer can order that the Board not evaluate the child until the Board has received the private evaluation and determined its usefulness. If a parent chooses to obtain a private evaluation, the evaluator must be properly licensed and certified. Although the Board does not have to follow the private evaluator's recommendations, parents often feel more confident when they choose the person that evaluates their child. Parents should bear in mind, however, that once they agree to give the Board a private evaluation they must do so even if they disagree with the evaluator's recommendations.

When Parents Disagree With a Recommendation

An impartial hearing officer will be appointed at the Board's request when the CSE makes a recommendation for special education services and the parent disagrees with the recommended program or services. The hearing will then be convened to discuss the Board's evaluations and recommendation. **At the hearing the burden will be on the Board to establish that consistent with the Individual's With Disabilities Education Act their recommendation provides the child with a free appropriate education in the least restrictive environment.**

The Board will present witnesses who have evaluated the child to discuss their observations and recommendations. A school supervisor will be present at the hearing to describe the proposed placement. The child's present classroom teacher may offer testimony concerning the child's present level of functioning. Parents or their representative can cross examine all of these witnesses as well as present their own case. Parents who have obtained a private evaluation can ask that evaluator to testify to their child's education needs. After all of the evidence is presented the impartial hearing officer will issue a written decision. The parent or the Board of Education can appeal the decision of the impartial hearing officer to the State Review Officer.

IMPORTANT NOTE: The impartial hearing officer may not change your child's pendency placement at the hearing without your consent. **YOU SHOULD NOT SIGN FOR OR AGREE TO HOME INSTRUCTION AT A HEARING WITHOUT TALKING TO AN ADVOCATE!**

¹If parents feel that the Board's evaluation was inappropriate, they can request a private evaluation at Board expense. Then the Board must either pay for this private evaluation or request an impartial hearing to prove that their own evaluation was appropriate.

The consequences of an impartial hearing can be very serious. AFC strongly urges parents who are involved in an impartial hearing to contact AFC to discuss the issues and the process. We cannot represent every parent who calls, but we can provide parents with important information and helpful hints.

Consejos para Padres

Por Janice Silber, Defensora

¡Padres Conozcan Sus Derechos! ¿Qué Deben Hacer...

Cuándo su niño está en riesgo de perder el año escolar?

Según los Reglamentos del Canciller (A 501), las escuelas están obligadas a notificar a los padres por escrito, antes del 31 de enero, indicándole si su niño/a está en alto riesgo de perder el año escolar por razones académicas.

Ud. debe pedir una reunión con el principal, revisar los expedientes escolares de su niño/a, y darle a la escuela información sobre factores que han afectado la habilidad de su niño/a a cumplir con sus asignaciones académicas durante el año escolar. Debe insistir que el principal de la escuela ayude a su hijo/a a superar los problemas en el salón de clase o por medio de servicios de apoyo tal como tutoría, consejería y el salón de recursos.

Antes de que se decida si su hijo/a va a pasar al próximo grado, usted debe ser consultado por el principal.

Cuándo suspenden al niño/a y lo marcan ausente?

La Comisión Educativa del Estado de Nueva York ha declarado que estudiantes de 6 a 16 años de edad, que han sido suspendidos de su escuela, no pueden ser marcados ausentes a menos que el distrito escolar le haya ofrecido una instrucción alterna durante el período de suspensión y los alumnos no hayan presenciado ésta.

¿Cuándo su hijo/a tiene un impedimento tal como: parálisis cerebral moderado, alergias, epilepsia, SIDA, cáncer, etc.; y necesita servicios individualizados o acomodaciones —pero no precisa educación especial?

La Oficina de Derechos Civiles del Departamento de Educación de Los Estados Unidos ha determinado que si su hijo/a tiene un impedimento que no afecta su capacidad de aprender, pero sí interfiere con su habilidad de asistir y participar en actividades de la escuela, entonces el/ella tiene el derecho de recibir servicios de apoyo o acomodaciones, bajo la Sección 504 de la Ley

de Rehabilitación, no bajo el programa de educación especial. Bajo esta ley (Sección 504), la escuela de su niño/a está obligada a desarrollar un plan que asegure que los servicios de apoyo y/o acomodaciones sean asignados a su hijo/a.

Ejemplos de los tipos de servicios que un estudiante puede recibir bajo la Sección 504 son: la administración de medicamentos orales, observación y evaluación del estado físico del estudiante, cauterización intermitente, provisión de insulina o otras inyecciones, pruebas periódicas de la sangre, etc. La Sección 504 también cubre el entrenamiento de maestros y personal de apoyo, para que se puedan llevar a cabo dichos servicios en las escuelas.

Si la residencia de su hijo/a está en duda?

Por lo general se asume que la residencia del estudiante es la misma que la de los padres. Pero, si un estudiante no está viviendo con sus padres, el/ella tiene el derecho de asistir a una escuela en la zona donde actualmente reside. En algunos casos, usted tendrá que mostrar que ha transferido custodia de su hijo/a a la familia con quien está viviendo y que esta familia le está dando el cuidado y la supervisión normalmente proveída por los padres.

Si usted está interesada/o en votar en las elecciones de la Junta Comunitaria Escolar?

Las elecciones de la Junta Comunitaria Escolar se llevan a cabo cada tres años. Todas las personas inscritas para votar tienen el derecho de participar en estas elecciones. Padres que no están inscritos para votar o que no sean ciudadanos, pero sí tienen un niño/a que asiste la escuela en la Ciudad de Nueva York, tienen el derecho de votar en las elecciones de la Junta Comunitaria Escolar.

Si usted desea votar, tienes que llenar un formulario en la escuela que su niño asiste. Si necesitas más información, favor de llamar al (718) 935-2881.

Si su hijo/a necesita servicios de educación especial que no se proveen en la escuela de su zona o en su distrito escolar?

Por lo general, es preferible que los servicios de Educación Especial de su niño sean proveídos en su escuela local. Si no es posible ubicar a su niño/a en un programa de Educación Especial porque su escuela local no tiene espacio, o si su niño/a necesita una escuela sin barreras, se debe de hacer todo lo posible para mantenerlo/a en su distrito escolar. Si el programa que fue recomendado no está disponible en su distrito, se debe considerar ubicación en otro distrito escolar.

La División de Educación Especial revisa sus expedientes dos veces al año, para identificar esos estudiantes que están recibiendo servicios afuera de su distrito escolar. A base de esta información, se determina si estos estudiantes pueden ser regresados a su distrito escolar.

Si su hijo/a asiste a una escuela afuera de su distrito y usted desea que el/ella regrese al distrito de su residencia, es importante que se comunique con el Administrador de Educación Especial y el Oficial de la Colocación Escolar para asegurar que se está siendo todo lo posible para que su hijo/a sea ubicado en una escuela apropiada en su distrito de residencia. Favor de llamar a su Comité de Educación Especial, en su distrito, para más información.

La Vista Imparcial

Por Joan Harrington, Directora Asociada

Hoy en día es más común que la Junta de Educación solicite una vista imparcial cuando padres rechazan sus recomendaciones. La vista imparcial es un proceso administrativo en el cual un oficial imparcial hace determinaciones acerca de un estudiante, a base de evidencia presentada por los dos partidos. Las vistas se llevan a cabo en la oficina de la Junta de Educación, 110 de la calle Livingston, en Brooklyn. Al personal de la Junta de Educación se le ofrece la oportunidad de presentar evidencia para establecer la posición del Comité de Educación Especial. Los padres del alumno tienen el derecho de hacer una contra-interrogación a los testigos de la Junta y de presentar testigos y evidencias para establecer su propia posición.

Hay dos razones por la cual la Junta de Educación puede iniciar una vista imparcial:

1. Cuando los padres no quieren dar permiso para que el Comité de Educación Especial evalúe a su hijo/a; o
2. Cuando los padres rechazan el programa que el Comité de Educación Especial a recomendado.

En estas dos situaciones, los reglamentos del Estado de Nueva York permiten que la Junta de Educación pida una vista imparcial. Si el oficial de la vista está de acuerdo con la Junta, puede ordenar que el estudiante sea evaluado o ubicado en el programa recomendado por el Comité, sin el consentimiento de los padres. Las consecuencias, al perder su caso en una vista imparcial, pueden ser serias. Por esta razón, es imprescindible que padres entiendan cuales son sus derechos.

¿Cuándo padres no quieren dar consentimiento para que se lleve a cabo una evaluación, cuáles son sus derechos?

Padres tienen el derecho de no aceptar que su niño/a sea evaluado por el Comité de Educación Especial. Este rechazo no quiere decir que el asunto está determinado. Si el Comité cree que su niño/a necesita una evaluación, el Comité puede pedir una vista imparcial para revocar la decisión de los padres.

La Junta de Educación tiene la obligación de mostrar que una evaluación es necesaria para proveerle al estudiante una educación apropiada. Los padres deben anticipar que la Junta

presentará testigos y evidencias de la escuela que asiste el estudiante, para establecer que el alumno no está progresando satisfactoriamente en áreas académicas y sociales. Padres tienen el derecho de interrogar a los testigos de la Junta y de presentar su propia evidencia y testigos.

Padres siempre tienen el derecho de obtener una evaluación privada —independiente— si pagan por ella. Si padres creen que la evaluación que ha hecho el Comité no es adecuada, ellos pueden exigir que la Junta de Educación pague por una evaluación privada. Si la Junta se opone a pagar por la evaluación privada, entonces los padres pueden solicitar una vista imparcial, para decidir si la evaluación que se hizo por la Junta fue adecuada.

Si padres obtienen una carta escrita por la agencia que va a evaluar a su hijo/a, indicando la fecha en que la evaluación se va a hacer, esta carta puede ser presentada como evidencia en la vista imparcial. Al recibir esta carta, el oficial puede ordenar que la Junta no evalúe al estudiante hasta que la evaluación privada sea completada, y hasta que la Junta haya tenido la oportunidad de examinar los resultados.

Si padres deciden obtener una evaluación privada, el evaluador tiene que ser licenciado. Aunque la Junta no tiene que cumplir con todas las recomendaciones del evaluador privado, muchos padres se sienten más cómodos si escogen la persona que va a conducir la evaluación. Padres deben de tomar en cuenta que al acordar que van a llevar a cabo una evaluación privada, entonces tienen que entregarle esa evaluación a la Junta, aunque no estén de acuerdo con los resultados de la evaluación y/o sus recomendaciones.

¿Cuándo los padres no están de acuerdo con las recomendaciones, qué pueden hacer?

La Junta puede pedir una vista imparcial cuando padres rechazan el programa o servicios que han sido recomendados. En esta situación el propósito de la vista imparcial sería considerar la evaluación y recomendaciones hechas por la Junta. La Junta puede presentar testigos que han evaluado al estudiante y dar información sobre sus observaciones y recomendaciones. Un supervisor escolar va estar presente para describir el programa que ha sido recomendado. El maestro del estudiante puede estar presente también, para testificar acerca del nivel académico del joven. Padres o sus representantes tienen el derecho de contrainterrogar a todos los testigos y de presentar evidencias. Padres que han obtenido una evaluación privada pueden pedir que el evaluador privado testifique sobre cuáles servicios son apropiados o no para el alumno. Después que se lleve a cabo la vista imparcial, el oficial le dará al padre una decisión por escrito. Padres o la Junta de Educación pueden apelar la decisión al Oficial de Revisión Estatal.

IMPORTANTE: El oficial no puede cambiar la ubicación de su hijo/a durante la vista imparcial sin su consentimiento. **¡USTED NO DEBE FIRMAR O ACEPTAR EL SERVICIO DE INSTRUCCIÓN EN SU CASA, SIN CONSULTAR CON UN DEFENSOR!**

Debido a que las consecuencias de una vista imparcial pueden ser serias, Defensores de Niños (AFC) recomienda que consulte a un abogado o a un defensor de nuestra oficina, antes de proceder con el juicio. Nosotros no podemos representar a todos los padres que llamen a nuestra oficina, pero sí podemos ofrecerle información importante.

Asistencia Técnica

Las escuelas están funcionando a velocidad alta, así como Defensores de Niños (Advocates for Children, en inglés). Estamos hablando del Departamento de Ayuda Técnica de AFC. Aunque los empleados de AFC están bastante ocupados, el personal del Departamento de Ayuda Técnica siempre está moviéndose a velocidad máxima, tratando de atender y ayudar a padres y a empleados de otras agencias y escuelas.

El Departamento de Ayuda Técnica acepta llamadas los martes, miércoles y jueves, desde las 9 de la mañana hasta las 12 de la tarde. Dependiendo del número de empleados que estén disponibles para responder a sus llamadas, este horario podría cambiar. Por el momento, tenemos personal que habla haitiano, chino, griego y español. Debido a que muchas veces los trabajadores del Departamento de Ayuda Técnica están ocupados con otros padres en el teléfono, cuando usted primero llama se le va a pedir a que deje su nombre y número de teléfono. Aunque siempre no podemos lograr devolverle su llamada el mismo día, siempre intentamos de responder a todas las llamadas que recibimos. Durante el año escolar pasado, nuestra agencia respondió a más de 3,000 llamadas de padres, trabajadores sociales, maestros y principales de escuelas, y personal de otras agencias de servicios sociales. Con todas las llamadas que recibimos diariamente, no es difícil entender la razón por qué no podemos siempre responder a sus llamadas inmediatamente. Nosotros le damos prioridad a ciertos casos, por ejemplo, si el estudiante está suspendido de su escuela, entonces tratamos de responder a esas llamadas primero.

Cuando usted primero llama a nuestra oficina, le vamos a pedir información general como el nombre de su hijo/a, su edad y grado, y si su niño/a está asistiendo clases generales o especiales. Toda la información que usted nos da es confidencial y para usar en nuestros expedientes. Solamente le pedimos la información necesaria para poder darle el mejor consejo posible. Información que usted nos brinda puede ayudarnos a servirles mejor, por ejemplo, si usted nos llama en otra ocasión y la persona con quien hablo originalmente no está disponible.

Dependiendo de la dificultad de su problema, podemos responder en una de tres maneras.

- 1) **Ayuda técnica:** Proveemos información y orientación para que usted mismo abogue por los derechos de su niño/a.
- 2) **Ayuda a su caso:** Cuando los problemas son más complicados, tratamos de resolver el asunto por medio de llamadas telefónicas o escribiendo una carta breve. Nunca tomamos pasos sin consultar con usted.

3) Asignación de defensor o abogado a casos: Si ninguna de las estrategias anteriores da resultados positivos, entonces un defensor o abogado será asignado para ayudarle a resolver el problema. Por lo general, cuando el caso es asignado a un defensor o a un abogado, se le va a pedir a los padres a que vengan a nuestra oficina para una reunión inicial y que nos traigan todos los documentos y expedientes necesarios para poder proceder con su caso. Los consejos que le damos a padres son basadas en las leyes locales, estatales y federales, procedimientos de la Junta de Educación, y los Reglamentos del Canciller.

A Victory for Preschool Children With Disabilities

By Ellen Gallagher Holmes, Esq.

Advocates for Children has won a significant victory affirming the right of preschool children with disabilities to receive support services in general education environments, including Head Start, day care and public and private preschool programs. This victory was attained despite strenuous objections by the New York City Board of Education, which argued that it had no legal obligation to change its current practice of placing 95% of all preschoolers with disabilities in segregated special education facilities.

In March 1994, attorneys from Advocates for Children, the Puerto Rican Legal Defense and Education Fund, Davis, Polk & Wardwell and Teitelbaum, Hiller, Rodman, Paden & Hibsher, P.C. filed a federal class action lawsuit in the Eastern District of New York on behalf of preschool children denied timely, appropriate special education services. The suit alleges that New York City and the State have failed to comply with the Individuals with Disabilities Education Act, particularly the requirement that children be educated in the least restrictive environment.

After reviewing the case, Magistrate Caden granted partial certification of the following plaintiff class:

All disabled preschool students living in New York City, ages three through five, who have not been or will not be timely evaluated, recommended for and/or provided special education services.

In January 1995, the plaintiffs' attorney renewed their argument in favor of full class certification. These efforts were affirmed on February 15, 1995, when the Magistrate agreed to expand the class to include: limited English proficient preschool children for whom the defendants failed to timely provide appropriate evaluations and special education services; and preschool children for whom the defendants failed to consider, recommend and/or provide special education services in the least restrictive environment.

The plaintiffs now intend to move for summary judgment, and hope thereby to facilitate a prompt and effective resolution of the case. For further information contact Advocates for Children at (718) 729-8866.

The Family Perspective On Head Start Inclusion

By Diane Bonelli, Head Start Parent

I consider myself a typical Head Start parent, but until recently my son, Anthony, was not a child who typically attended a Head Start program. Although there are children with disabilities attending Head Start, there had not been a child who was as physically challenged as Anthony.

Anthony was enrolled at a local self-contained Preschool Handicapped Program (New Jersey Department of Education). While all his therapy needs were met, he rarely had any interaction with the other children. It was a one-on-one situation for the entire day. Watching Anthony become more and more dependent left me very disappointed and frustrated. Everything I was working so hard to build — independence, self-esteem and fostering friendships — was being totally destroyed in that setting.

Knowing Head Start's commitment to children with disabilities I advocated for Head Start as a viable placement for Anthony.

After much resistance by the Child Study Team and a ruling by an administrative law judge, related services are now provided for Anthony at the Head Start program. Today his speech therapy and computer training involve his peers.

The difference in Anthony, since he has been at Head Start, is amazing, absolutely remarkable. I knew that positive role models would really motivate him. I just never realized how much. He no longer sits passively and allows others to do things for him. He feeds himself 5 or 6 bites of food with and without utensils. He brings home art work that was made by HIM! And he is just so proud of his accomplishments! His speech is much more audible and intelligible. (I am no longer around to "translate"!))

The most heartwarming event was when he was invited to a classmate's birthday party. He waited anxiously the day of the party, asking every five minutes if it was time to leave. As we pulled out of the driveway he was singing "We're going to the party" over and over. I literally had tears in my eyes. He had a sense of belonging. I am very fortunate to have my son work and play with such a wonderful group of people.

Anthony's transition into the program went smoothly. His teacher, Marsha Korkowski, along with the other staff, made Anthony feel right at home. It was two weeks before any child realized, or even asked, why Anthony couldn't walk. There were no modifications made to the overall classroom program. Marsha adapted puzzles by gluing spools to the pieces. She never ceases to amaze me and she has no "special education" training. I look forward to another positive Head Start experience for Anthony next year.

Thank you Head Start, you've really defined and achieved "total inclusion."

[Anthony is enrolled in a Head Start program in Washington, New Jersey, which is part of the Northwest New Jersey Community Action Program (NORWESCAP).]

A Historical View On Inclusion

By Resource Access Project (RAP)
New York University

When Head Start was created in 1965 — the most innovative system for serving young children ever developed — most parents of children with disabilities were being told that the best place for their children (and for the parent's sake as well) was placement in an institution, otherwise known as segregation. After Geraldo Rivera, the journalist, exposed the conditions at Willowbrook, the public now know this was one of the worst kinds of segregation!

In 1972 the federal government mandated that Head Start programs accept children with disabilities into their schools. Many programs had been including children with disabilities in their classrooms since Head Start's inception. Head Start was way ahead of the general educational philosophy during this time period.

Parents, always at the forefront of change for their children, became more aware of what the institutions really were like and refused to place their children there. As laws were passed to give children with disabilities a free and appropriate education, and prevent children from going into institutions, "special" schools were designed just for children with disabilities.

This was another type of segregation, only of a kinder, gentler nature. Children were getting good services but they frequently had to travel long distances to the special school and could not develop friendships with their peers who were not disabled.

The idea of mainstreaming became popular when children with disabilities first started receiving services. In the special education field, this concept refers to the idea that when some children with disabilities are "ready" to be placed in a regular class, they then can participate with children who are not disabled. In other words, they have to be fairly independent to function in the regular class.

During this time period, Head Start was already serving children with disabilities in their classrooms. In Head Start programs mainstreaming is defined as the integration of children with disabilities and children who are not disabled in the same classroom. Over the years Head Start has gained experience including children with impairments ranging from mild to severe.

But what about children with more serious disabilities? What about children who are completely dependent on other people for their needs? Don't they have a right to go to school with their peers alongside everyone else? Don't they have the right to go to their community school and develop friendships?

These kinds of questions led to the concept of integration. A good definition of integration is:

"all children should learn together from the beginning of their school experience with appropriate support systems in place."

The key here is to provide the support a child needs in the classroom. Then any child can be integrated regardless of the degree of disability.

In the last few years another word that has come along to describe this process is **inclusion**. A good definition of inclusion is:

"It is a way of life. It is about 'living together' in the community. Inclusion determines how we live, learn, work, play, and develop friendships."

So we see the evolution of the language and the ideas that these words foster for the education of children with disabilities.

Head Start has been participating in the inclusion process from the beginning. By accepting children with all types of disabilities, including the families in the process of educating children with disabilities, and helping them to be accepted in the community, Head Start plays a vital role in making the diverse people of our society equally at home.

Least Restrictive Environment Update

By Diana Autin, Managing Attorney

Introduction

In our last issue, we reported that AFC was working hard to decrease the unnecessary segregation of children with disabilities by implementing the recommendations contained in Segregated and Second-Rate: "Special" Education in New York (November, 1992). This report revealed that New York State has one of the most segregated special education systems in the country; New York City isolates 65% of all children in special education in special classes or buildings, compared to a national average of only 35%. Children of color are over-represented in these segregated programs, with tragic consequences. These students have strikingly high absentee and dropout rates, and only 24% ever graduate. This update highlights our successes to date, but shows that there is still a long way to go to make the "least restrictive environment" mandate a reality for New York City special education students.

New York State

Since our last issue, AFC has offered testimony at several hearings; participated in a series of state forums aimed at soliciting approaches toward supported, inclusionary education for children with disabilities; and continued its work as a member of the Regents' Roundtable on Special Education in New York City.

The efforts of parents, AFC and other advocates across the state, finally bore fruit in May, 1994 when the State Board of Regents issued a "Least Restrictive Environment" policy paper, which strongly mandates the provision of LRE services in the general education classroom to the maximum extent appropriate, and summarizes the personnel and parent development, technical assistance, and other supports needed to implement the "LRE" requirement.

The Regents also developed legislative proposals to revise the special education funding formula, which encourages segregation by providing greater reimbursement for such settings. Although the proposals were not adopted by the legislature, the Regents will press for their passage in the coming session.

New York City Schoolage Students

LRE issues have also been an important focus of work on Jose P. Last fall, AFC brought a motion for contempt against the Board of Education for failure to implement the consultant teacher model of providing special services to disabled children in general education settings. This service had been part of the continuum for over five years, but had never been implemented in New York City. As a result of this motion, the Board of Education developed a notice that was sent to all special education parents and clinicians regarding the "least restrictive environment" mandate of federal and state law, and the availability of the consultant teacher service. All clinical staff were provided professional development in this area. Further, the Parent Guide on Special Education Services was revised to include a significant focus on "LRE" concerns and the consultant teacher service in particular.

Disturbingly, despite the trainings and notices to parents, the data as of September, 1994 indicates the continuation of the trend toward segregated placements: 50% of all initial recommendations (the first time a student is ever recommended for any special education service) were for self-contained classes or more restrictive settings, and four times more students were recommended for home or hospital instruction (the most segregated setting) than for consultant teacher services. The figures are even more damning for limited English proficient students: 65% of all initial recommendations were for self-contained classes or more restrictive settings, and not one LEP student has yet been recommended for consultant teacher services!

Even more disturbingly, a study commissioned by the New York State Board of Regents reconfirmed the "second-rate" nature of special education in New York City, and revealed additional system failures. For example, less than 2% of students are ever decertified from special education (not the 5% figure usually quoted by the Board of Education), and only 7% of students ever move to a less restrictive setting once they are in special education! Finally, the academic outcomes for self-contained classes are abysmal: after two years in such classes, only about 2.5% of the students moved out of the bottom quartile, and only 10% made any significant academic gains!

The study noted several contributing factors to these statistics: no clear understanding or application of pre-referral activities; no clearly defined criteria for placement; no standards or expectations for academic outcomes; no consistent, practical definition of "LRE;" and no exit criteria.

Thus, AFC developed and submitted to the Board of Education on behalf of all plaintiffs' counsel, a summary of the basic elements of an LRE plan that must be implemented by the Board of Education in order to comply with federal law. A comprehensive LRE meeting was held between the Board and plaintiffs' counsel on December 15 to discuss these elements and a timetable for implementation. Discussions are continuing; stay tuned for further details!

Preschoolers

In March, 1994, AFC filed a class action lawsuit against the segregated nature of the preschool special education system (95% of all preschoolers with disabilities are in segregated settings). The lawsuit (Ray M.) has already succeeded in revising one barrier to recommendations for integrated placements, the previous mandate that program providers (who are the only approved evaluation sites) were reimbursed for evaluations only through tuition add-ons. Thus, the sites had a strong incentive to recommend their own segregated program for each child they evaluated (resulting in about 65% of all recommendations being for the program which evaluated the child). Now evaluations are reimbursed separately. However, the program providers are still the only approved sites.

In addition, the State and City have taken the position that they need not pay the tuition for a child who needs to be in a regular preschool, with supportive services, in order to meet their IEP objectives. The lawsuit calls for compliance with the federal mandate that such tuition costs be covered when the child needs to be in an environment with non-disabled peers in order to progress.

Non-Special Education Services for Students With Disabilities

In other efforts on behalf of LRE services to students with disabilities, AFC successfully advocated for the development and implementation of a plan to provide services and accommodations for children whose disabilities do not affect their ability to learn (therefore, they are not eligible for special education services) but who require assistance/accommodations in order to participate fully in their school. Despite longstanding legal mandates, the Board of Education never developed a system-wide approach for identifying and serving these children.

Without appropriate services, some children had been forced to stay at home for months. Others had been inappropriately stigmatized and placed in special education.

After intensive administrative negotiations with the Board of Education, numerous impartial hearings to obtain services for eligible children, and the filing of a complaint with the U.S. Department of Education's Office of Civil Rights, the Board of Education finally approved a Section 504 plan in February, 1994 for implementation in September, 1994. Unfortunately, the plan has been unevenly implemented, so AFC continues to represent individual families and work with the Board of Education to ensure comprehensive implementation system-wide. AFC is also serving on a Board of Education Task Force to develop recommended regulations for Section 504.

Conclusion

Bit by bit, the New York City public school system — with a lot of pushing from parents and advocates — is inching its way toward a more inclusionary system. **But any relaxation of our efforts will doom this movement to failure. The time is now for continued pressure from all of us.** If you are interested in being part of the solution, join our Coalition for Inclusive, Desegregated Education for All Students (IDEAIIIS) by calling AFC.

The Least Restrictive Environment for Peter

By Janice Silber, Senior Case Advocate

Mr. & Mrs. S. were ecstatic because they felt that their son, Peter, who was graduating from a preschool special education program had made enough progress to be ready for general education with related services. When they went to the Committee on Special Education (CSE) for the review, their impressions of Peter were confirmed, and the team recommended Regular Grades with the related services of speech and occupational therapy.

Two days later, after giving much thought to the matter, Mr. & Mrs. S. realized that although they were happy with the recommendation of Regular Grades, they did not feel that the recommended services would give Peter enough support at this time. Peter is a child who needs individualized attention, reinforcement and praise, as well as supervision, to remain focused. He was coming from a class that had twelve children with a teacher and two paraprofessionals and would now be going into a class with twenty-five or more children with only one teacher. Peter's parents were concerned that no matter how "great" the teacher was, s/he alone could not provide him with all that he needed. They felt that a full time paraprofessional (transitional support para) to work with him, at least during the transitional period, was essential for his success.

They wrote to the CSE chairperson requesting a paraprofessional, making it clear that this was something they were adamant about and were prepared to do whatever they had to do to get Peter the services they knew he needed and to which he was entitled.

Shortly thereafter, they were informed that the educational evaluator was going to go to Peter's school to do an updated evaluation. (The previous evaluations were done by the staff at the preschool program.) After the completion of the evaluation, another review would be held.

Two weeks after the first review Mr. & Mrs. S. met with the CSE again. Unfortunately, they were unpleasantly surprised. The CSE's ideas were quite different than theirs. This time, based on the educational evaluator's impressions, the CSE recommended MIS IV, a self-contained class. Mr. & Mrs. S. were livid. They went home, sent a letter to the Board of Education requesting an impartial hearing, a copy to the CSE chairperson, and a copy to us, and also called our office.

An intake worker took down all the details and asked Mr. & Mrs. S. to send us a copy of the evaluations and IEPs. When we received the documents and read them we knew this was a case that had to be taken in, especially in view of the fact that within a two week period, two reviews were held and two totally different conflicting recommendations made.

At the first review early in the month, when the CSE recommended Regular Grades with Related Services, on the IEP, in the box under "Other Programs/Service Categories Considered" was MIS IV; in the box under "Reasons for Rejection" was "He has made enough progress and requires the stimulation of regular grades." At the second review, only two short weeks later, when the CSE recommended MIS IV, on the IEP, in the box under "Other Programs/Services Categories Considered" was "Regular Grades with Consultant Teacher and Related Services". In the box under "Reasons for Rejection" the CSE noted "He requires a small ratio special education program with a paraprofessional to ensure adequate progress in learning, language and social/emotional areas."

It appears that the CSE had "tunnel vision" — narrowness of viewpoint (as defined in Webster's Ninth New Collegiate Dictionary). Quite simply, when the team thought Peter needed two related services, they recommended Regular Grades. When they realized that he needed more services in order to be successful, they automatically recommended a self-contained special education program.

Evidently, the CSE did not agree with the Federal Law (IDEA) that states, "to the maximum extent appropriate, children with disabilities must be educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." Nor did the CSE agree with the New York State Law that states, "Each district shall provide to the maximum extent appropriate (special education) services in a manner which enables children with handicapping conditions to participate in regular education services when appropriate."

I contacted the CSE and discussed the situation with the Chairperson's designee, highlighting the two conflicting IEPs, which made it look as if the CSE did not know what to do with Peter. I informed the designee that the parents were not accepting a MIS IV recommendation, and that we were requesting the services of a consultant teacher and a transitional support para in addition to the original recommendation of Regular Grades with speech and occupational therapy. I also informed him that we were prepared to go to an Impartial Hearing, if necessary. We then set up an appointment for another review.

This time we met with the Chairperson and a different team. They agreed to the Consultant Teacher Services and the transitional support para. A lengthy discussion followed regarding how

many periods of consultant teacher services were needed per week. We finally agreed on seven periods — two periods of indirect service to train the classroom teacher on how to work with Peter and five periods of direct service to work with Peter and his para. We agreed to meet again in a couple of months to review the need for the continuation of these services.

We left the CSE happy, but apprehensive about when the services would actually begin.

This story, unlike so many others, has a happy ending. Before writing it, I contacted Mr. & Mrs. S. and was informed that the para began at the start of the school year, and that the consultant teacher began shortly thereafter. They were very excited and boasted that Peter was "doing extremely well, functioning on or above grade level, blossoming and even had a girlfriend." They and the staff are considering gradually reducing the number of consultant teacher hours because Peter's teacher and para feel confident that they can provide him with all that he needs to meet with continued success in their classroom.

The National Council On Disability Holds Hearings In New York City

The following transcript sections are taken from a full hearing conducted on November 5, 1994 by the National Council on Disability. Thanks to the organizing efforts of Jennifer Weiser, an AFC intern, many New York City parents of children with disabilities testified regarding their experiences obtaining appropriate special education services in the least restrictive environment. AFC was fortunate to provide advocacy and direct representation in each of these cases.

The National Council on Disability is an independent federal agency led by fifteen members appointed by the President of the United States and confirmed by the United States Senate. The overall purpose of the National Council is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature of the severity of the disability and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of our society.

It is our responsibility to advise the President, key Administration officials, and the Congress on all matters related to the development and improvement of disability policy in America. As such, we're currently in the process of launching the first ever process to develop a comprehensive coordinated national and international disability policy. This policy will bring together information from the many policy and program areas that touch the lives of individuals with disabilities, their families, and their communities.

This policy will be based on the input of consumers from all across the nation. Beginning with a national summit, this process will take us all across the country to seek the views of people with disabilities, family members, and other advocates as to the nature and content of the future of future policy and programs in all areas.

Of course, our purpose here today is to gather information regarding a very important part of our present approach to national policy and programs regarding people with disabilities, the implementation of the Individuals with Disabilities Act or "IDEA."

For nearly twenty years children with disabilities in America had been eligible to receive free and appropriate public education. This is one of the basic civil rights under federal law, most notably the IDEA as well as state law. This civil right is accompanied by the right to be free from

discrimination based on disability as set forth in legislation such as the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

However, many studies have demonstrated that progress toward obtaining the promises contained in this legislation regarding positive outcomes for students with disabilities has been quite slow. The United States Department of Education is responsible for the oversight and enforcement of IDEA with state and local education agencies. Far too often the failure to achieve desired outcomes is caused by the failure of education agencies to implement IDEA properly.

The Congress is currently in the process of reviewing the implementation of IDEA, the federal legislation that supports the vast majority of special education program across the nation. The Council wishes to provide the Department of Education and the Congress with assistance in this area via a set of recommendations for improving the implementation of IDEA. These recommendations build upon two recent reports involving special education, strong parental input, its previous congressional testimony, and other relevant research and policy studies on improving special education.

In keeping with the Council's overall commitment to consumer empowerment and customer service, the hearings we're conducting across the United States will develop a profile of special education practices with a focus on the experiences of parents, family members, students, adults with disabilities, and other interested persons with a family based perspective.

Testimony

WALTER THEIS: Good morning. Last month my son Keith began attending a general education kindergarten in a neighborhood public school. Keith joined his class late, and the path to his new school was rough. But having overcome the most formidable obstacle to his being included — simply getting him through the door — I am hopeful that Keith's new school will successfully tailor a program that meets Keith's needs and the needs of his typically developing classmates.

Yes, this is a success story. However, I am dubious whether if Keith were not my son, he would have been afforded this opportunity. Keith has congenital rubella syndrome resulting in total deafness and extremely low vision. When I first met Keith, I simply assumed that he would attend a segregated class. In fact, I had never even heard of inclusion until the summer of 1993 when I entered a graduate program in special education.

In early spring this year I expressed my desire that Keith be included to the director of inclusion services at the New York City Board of Education, and she and others worked diligently toward achieving this goal.

However, I go on record as saying that the implementation of IDEA locally is disappointing for I believe that I was successful in my inclusion bid as a result of privilege. I am well educated, reasonably articulate, sufficiently forceful, and perhaps most important, I count as my colleagues individuals who are leaders in the field of education.

From the outset I consulted with those individuals, many of whom were in positions that afforded them the ability to make decisions that ultimately placed Keith in a school of choice. Had I instead relied on a perfunctory annual review of Keith's place, I easily can imagine hearing some of all of the following statements:

"Sorry, but we don't have an inclusion program." Generally, education teachers don't know anything about working with children like Keith. "The union is against this." Or my favorite, "Your child is not ready for inclusion."

And even with my advantages Keith was rejected by the first school to be given the opportunity to have him as a student. And that school is the public school of choice for the children of our neighborhood. As I stated earlier, a satisfactory alternative neighborhood placement was identified, but were I a parent without my advantages, I strongly suspect that the outcome would have been different.

Unless a child with disabilities has the good fortune to be selected as part of an inclusion demonstration project, I suspect that the subject of inclusion if never broached as an option by the education system. And the parent who asks timorously whether her child might be included, especially if the question is posed at the school level, has a dismal prospect for success.

Ladies and gentlemen, as a newly appointed special education teacher working at a segregated site, I confess that I have yet to broach the topic of inclusion with the parents of my students. And my reasons for failing to do so, though they tweak my conscience, appear valid to me given systemic inertia. I believe inclusion will become a viable choice only when federal and state monitoring efforts aggressively enforce basic IDEA requirements. As of now, the right to an education in the least restrictive environment, which was supposedly won nearly twenty years ago, can hardly be said to be a right at all.

In closing, I wish to relate an anecdote illustrative of my rationale for favoring inclusion for Keith. One day I spoke to my friend Laurie regarding the philosophical foundations of inclusion. Laurie wanted to know what types of children might successfully be included. She said, I can see how a child like Keith would benefit, but would you also include children with severe disabilities?

Make no mistake, Keith is a child with severe disabilities. But Laurie's question furnished me with the confidence I was lacking since Laurie's opinion of Keith's abilities was formed by her

opportunity to observe Keith over the span of years. Her experience likely has enabled her to focus on the child rather than on his disability.

Similar experiences with Keith's new teacher and his classmates lead me to understand that inclusion, like education for any typically developing child, is a process in which placement is crucial. Disability is real. Its educational implications cannot be ignored. However, we already have demonstrated adequately that poor quality of life outcomes can be predicted by mindlessly segregating individuals with disabilities.

I believe that all children must have readily available to them the range of choices mandated by IDEA, including first and foremost attendance in general education classes with the delivery of necessary supports and services. Until children are offered choices with regard to school placement, IDEA cannot be said to be implemented, and inclusion will remain an option for the privileged — with devastating consequences to thousands and thousands of children relegated to overly restrictive environments.

I have done and I will continue to do my best to express the intentions of this piece of legislation, yet until the federal government compels states and cities to comply with its mandates, IDEA will remain a haven for the few.

LARRY BROWN: Thank you very much. Geraldine Alexis.

GERALDINE ALEXIS: Good afternoon, ladies and gentlemen. I'm the mother of Steven Alexis.

LARRY BROWN: Could you use the microphone?

GERALDINE ALEXIS: Yes, good evening, ladies and gentlemen. I'm the mother of Steven. Steven is six years old, and Steven was one of twins that were both born premature. About five days after Steven was born, Steven contracted a staph infection. He was a very ill baby. For three months Steven lay in the hospital in a coma-like state, and we didn't even think that, or even the doctors didn't think that Steven would live. But anyway Steven survived.

However, because of all the problems that he had, he is slow in developing and has many problems, e.g. speech problems. He has both hips dislocated and as I say, is slow in his mobility.

When we were ready to enroll Steven in the educational system, we were lost, we were confused, we didn't know, we didn't understand what was going on. Anyway, my husband took him to be tested in the Brooklyn area, I think it was district 17, and we were told that Steven was supposed to be placed in a small classroom.

We had no idea — it was called a MIS 4 — we had no idea — my husband and I were happy because they said a small classroom. We said, okay, a small classroom is good for anybody. But nobody took the time to explain to us what they really meant or what a MIS-4 class was. So we decided to turn to Advocates for Children to help us along with Steven, and we were assigned an attorney by the name of Ellen Gallagher Holmes, and she was very helpful in helping us to place Steven in a regular classroom with related services.

Steven is doing fine. He's in the grade one right now. He has a consultant teacher. He gets all his therapy. He has speech and occupational and physical therapy, and he's also assigned a para-professional because of this hip problems.

We are very pleased with where he's placed right now, but I want to say to all parents please be careful in choosing what you choose for your child because the people who tested our son, they never explained anything to us. We never knew that there were programs or help in a regular classroom that a child could receive. We were just told a MIS-4, and that's it.

One person tested him, she didn't even test him, as a matter of fact. She saw Steven. I was holding Steven's hands, and she looked down at him and she said, oh, he should start in a MIS-4. Never asked him his name, never knew if he could talk or even say his ABC's. And all I want to say is that, parents, be careful because what you're doing for your children is going to be for a lifetime.

And I want to say that whoever is in charge of the special education program, I'm not against special education, but parents should be told their rights and their children's rights. And that is all I have to say today. Thank you.

LARRY BROWN: Thank you. Ms Alexis.

LARRY BROWN: Thank you. Ms Voutsinas.

ELEANOR VOUTSINAS: Good afternoon. Thank you for the opportunity to allow me to speak here. My name is Eleanor Voutsinas. I am the mother of Alex Voutsinas. Alex is a seven year old boy with Downs Syndrome. He has been included in a regular education classroom for three years.

When Alex was ready for kindergarten, my husband and I heard about inclusion. After investigating the pros and cons of a regular education placement versus the special education MIS-5 where the New York City Board of Education wanted to place him, we decided that inclusion would be best for him. Thus began a long drawn out battle with the New York City Board of Education.

The first time I brought up inclusion during a CSE meeting, I was asked by these education professionals what inclusion was. I was told that it was too new. I was told that it could not be done. Regular education classes were too big. I was told that Alex couldn't be in regular education and still retain his required therapies.

Luckily one day someone at Alex's preschool gave me the phone number of Advocates for Children, with the admonition, don't say I gave this to you. Without Advocates for Children and the help of their personnel, I would never have been able to get Alex into an inclusive setting. They assigned a lawyer advocate for Alex's case. She accompanied me to the following CSE meeting.

The members of the CSE still tried to intimidate us which my advocate would not allow, but we were still lied to and told that inclusion would be impossible. Finally, we were promised that if we could find a teacher willing to take Alex into her class, the CSE would consent to it. One teacher in particular who was seriously considering taking Alex suddenly and adamantly backed down after talking to her UFT representative.

The CSE insisted that Alex be placed into MIS-5. I kept Alex home rather than place him in an inappropriate setting. My advocate called for an impartial hearing where a hearing officer ruled that Alex receive a regular education placement with services, in other words, inclusion. But even after the ruling several weeks passed before an appropriate school was found for Alex.

He at last entered kindergarten at the end of January '93. He had lost five months of school. That first year in kindergarten did not work out well. His teacher immediately placed Alex and his para at a separate table at the back of the room. He was not allowed to participate with the other children in normal activities. He was not allowed to interact with other children. His teacher chose to be uncommunicative and uncooperative with everyone involved. Even Alex's para was ignored and made to feel like a stranger in the class.

Last year Alex had to repeat kindergarten. Fortunately, it was a wonderful year. Alex's new teacher was a natural. She treated Alex exactly as she did the other children. Alex was made to feel a part of the class. The whole teaching team came together, and it was magic, and Alex thrived. This year Alex began first grade. His teacher is very effective and things seem to be going well.

From my experiences I can tell you that there are many problems in New York City that hamper implementation of inclusion. First and foremost is lack of parent education. Too many parents are totally uninformed about inclusion and their rights concerning the placement of their children.

Secondly, the CSE many times intimidates and bullies parents. Under the guise of authority, they profess to be the only ones to know what is exactly right for the child and discount any input

from the parent who has known the child all his life. I could not have gotten inclusion for my son without an advocate. Why should a parent need an advocate?

Third, the various staff of the Board of Education of New York City are not well informed about inclusion or the least restrictive environment requirement. Why should I have to explain it to members of the CSE or to teachers or principals?

Fourth, there is enormous opposition to inclusion by the UFT in New York City. They are using half truths, outright lies, and scare tactics to keep their member-teachers from embracing inclusion. Who gives the UFT the power to oppose federal government mandates? Why are they allowed to advocate discrimination against disabled children?

Yes, I was successful in getting my son Alex into an inclusion classroom. I had mentors, lawyers, advocates, media attention, and my own persistence. But most parents do have so much going for them, nor should they have to in order to secure legally mandated services. Equal education is a right and a necessity. Thank you very much.

LARRY BROWN: Thank you. Ms. Mercado.

DENISE MERCADO: I am Denise Mercado, the mother of Vanessa, a bright twelve year old with a learning disability and attention deficit. I have also been a special education teacher for ten years.

I have struggled to help Vanessa. She made progress in a resource room, but none of the general education teachers knew teaching techniques which would help her. None of them had any real contact with her resource room teachers. No one in her evaluation unit has ever suggested anything helpful or even explained her test results to me. They knew me as a teacher, but when I showed up as a parent, they did not make the connection and treated me very differently.

I have a Master's degree in special education, but I can't understand the evaluation unit letters. Last year the evaluation unit recommended self-contained classes for Vanessa. They did not offer me any other options. I had to go to family, friends, an outside evaluator and Advocates for Children to help stop the process. My helpers warned me that parents who oppose a recommended placement are sometimes reported for neglect.

They guided me regarding the consultant teacher model which puts a skilled teacher in the regular classroom to work with Vanessa, her teacher and her class. The city and state have mandated that model since 1988, but we had to educate the evaluation unit about it. In the meantime, Vanessa was put in a self-contained class without my consent.

Now she is back in her regular classroom. They're seeking a consultant teacher, although yesterday I was informed there will not be one provided. They don't have money in the budget for it. Last year she got 55 in just about every single subject. This year she has been getting 80's and 90's in some subjects.

I have learned a lot from this experience as a mother and as a teacher. If I had to go outside the system to help my child, what can other parents without my background do? How can they understand the jargon and legalese and the letters and booklets? How can they stand up against a placement which suits everyone except the child?

I have also noticed that it's not just regular classroom teachers who are untrained. I share materials to help special education teachers in my school. Better training for all educators — teachers, principals, and others — is paramount. I think we need to blur the line between what is called special and regular education.

Teachers need to understand that children have many learning styles, and there are many ways to teach. They need to be able to call on expert help when necessary. They need classes of twenty with only one or two special needs children in the room. Thank you

(Three months after this hearing, Vanessa was finally provided with a consultant teacher - but only after a pro bono law firm was assigned to the case and requested an impartial hearing.)

A Modeling Agency for Differently-Abled Kids

As you poured over mail-order catalogs, advertising circulars and magazines in recent months, you may have noticed something. More and more traditional advertisers have begun to use adults and children with disabilities in their advertising, reflecting the fact that there are over 49 million individuals with disabilities in the United States.

With an eye toward building a more inclusive society as well as building children's self-esteem, a modeling agency seeking to represent children with disabilities recently opened. For more information contact Ginnie Cuomo at:

**Beautiful Kids Modeling Agency
for Differently Abled Children
P.O. Box 506
Ironia, New Jersey 07845
(201) 927-7759**

What Services and/or Programs Are You Entitled to From Your Committee On Preschool Special Education?

By: Sharon Hammer, Esq. and
Ellen Gallagher Holmes, Esq.

If you are a parent of a preschool child with a disability who is currently involved with a New York City Committee on Preschool Special Education (CPSE), you should be aware of the many options potentially available to you and your child. Under state and federal education law, your child with a disability has the right to receive a free, appropriate public education in the least restrictive environment. This means that, to the maximum extent appropriate, your child should receive special education services in a setting with non-disabled peers, such as a regular preschool, daycare, Head Start, or other similar program.

Unfortunately, New York City and the State often ignore this legal requirement. In fact, over 90% of all preschool children with disabilities are placed in private, separate programs offering few, if any, opportunities for interaction with non-disabled peers. This occurs, in part, because many parents are unaware of their legal rights. The following article is designed to familiarize readers with the range of placements and services that must be made available to parents of preschool children with disabilities, and which CPSEs must consider in making Individualized Education Program (IEP) recommendations.

First, based on your child's demonstrated needs, s/he may be entitled to receive one or more related services. These services include, but are not limited to: speech and language therapy; physical therapy; occupational therapy; vision services; counseling; assistance from an aide or nurse; specialized equipment, technology and/or materials; and transportation. Additionally, your child may require the services of an itinerant special education teacher to provide direct instruction or to help modify his/her existing educational program.

Related services and special education itinerant services may be delivered in a variety of settings. These settings include: the child's home; a related service provider's office; a regular daycare, preschool, or nursery program; a Head Start program; or some other community setting.

Here, it is important to note that CPSEs often require eligible children to travel to and from the related service providers' offices, as opposed to making such services available on-site at regular educational or daycare programs. This is problematic for many reasons, not the least of which is that children are sometimes required to travel late in the day, or during a time when they would otherwise be enrolled in a regular preschool program.

If your child is already enrolled in a setting with non-disabled peers, you should inform the CPSE of this fact and, if you so desire, advocate for specific language in your child's IEP mandating the provision of special education services in this setting. Alternatively, if your child is not already enrolled in a regular education or daycare program, and you believe that such a setting is necessary to meet your child's special needs, you should inform the CPSE and work with them to identify an appropriate program. Be sure to insist that such a program is ultimately mandated on your child's IEP. It is not acceptable for the CPSE to require you to secure a regular education program on your own before they will provide special education services. On the contrary, if the CPSE recognizes that such a setting is necessary to implement your child's IEP, they must assist you in securing one.

Be aware that New York City and the State are generally unwilling to fund any portion of tuition at a regular preschool or daycare setting, even if the CPSE itself deems such a setting necessary to address the special needs of a particular preschool child.

However, this city and state policy violates federal law. A recent directive from the United States Department of Education to the New York State Education Department makes clear that it is the responsibility of school districts to pay for all costs associated with the delivery of specially designed instruction or related services in a variety of settings (including public or private day care programs as well as Head Start programs), if such a placement is determined to be the least restrictive environment for a particular child.¹

¹"The public agency must provide a free, appropriate public education (FAPE) in the least restrictive environment to all eligible preschool-aged children with disabilities, even if the local educational agency does not provide free preschool programs or regular education to non-disabled preschool-aged children. When a public agency places a child in a private preschool program for the purpose of receiving FAPE, the child's entire educational program during the time the child is placed by the public agency must be provided at no cost to the parent." (Letters to Thomas B. Neveldine, Assistant Commissioner, Office for Special Education Services, dated April 15, 1994 and January 25, 1995). This correspondence further states that "If the placement team determines, based on the child's IEP, that in addition to [stand alone]

Another possible service option for your preschool child is placement in a SuperStart Plus program. These pilot programs, designed and operated by the New York City Board of Education, integrate preschool children with and without disabilities in a single classroom setting. The typical classroom consists of 2 teachers (one general and one special education), 8 children with disabilities and 10 children without disabilities. Currently, SuperStart Plus programs exist in 13 of the 32 school districts, serving approximately 214 of the approximately 11,000 potentially eligible preschoolers with disabilities.

Until recently, it was the policy of the New York City Division of Special Education to prohibit CPSE administrators from recommending placement in an integrated, SuperStart Plus program unless they knew of an opening in their district, or that a child had been accepted into such a program in another district. Now, CPSEs have been instructed to recommend SuperStart Plus for any child in need of such a placement, regardless of availability. As an added note, you should be aware that a limited number of other integrated programs exist that are not necessarily termed "SuperStart Plus." These programs are typically operated by private, special education preschool providers who contract with the Board of Education. If you believe that your child may benefit from placement in an integrated setting, you should raise this issue with your CPSE and advocate strongly for the inclusion of this recommendation on your child's IEP. Don't be discouraged if you are told that no such placements exist, or that the CPSE is not authorized to order either a "SuperStart Plus" or an integrated program. Both responses are inadequate, particularly if your child's evaluations and classroom observations indicate that such a placement is appropriate.

Some preschool children with disabilities require more intensive services than the previously discussed options provide. The needs of these children are appropriately addressed through placement in private special education settings, otherwise known as "center-based" programs. These settings provide classroom based special education and related services to children with disabilities only. They tend to offer few, if any, opportunities for interaction with non-disabled peers. Some programs provide services to children with different types of disabilities, while others specialize in one particular area such as vision or hearing impairments, or autism.

As mentioned previously, over 90% of all preschool children with disabilities in New York City are placed in center-based facilities. This can be traced, in part, to the fact that only center-based program providers are presently authorized to conduct preschool evaluations. At the same time, staff from these preschool programs/evaluation sites typically participate as members of CPSE review teams, and thus play a role in determining ultimate placements for the preschool children

services, the child needs interaction with non-disabled peers, the public agency is responsible for making available an appropriate program and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no costs to the parents." Id.

they evaluate. Approximately 75-80% of all preschool children with disabilities are ultimately placed in the same program which evaluated them. Parents should be aware that this set of circumstances clearly results in the over-utilization of center-based programs. Again, federal and state law requires that other, less restrictive environments must be considered and rejected prior to the CPSE recommending a center-based program.

Testimony by AFC, 11/16/94 To: NYS Association of Counties Regarding Preschool Programs for Children with Disabilities

By Ellen Gallagher Holmes, Esq.

Introduction

Advocates for Children of New York, Inc. (AFC) is pleased to testify before the New York State Association of Counties regarding the manner in which Part B of the Individuals With Disabilities Education Act (IDEA) and section 4410 of the state education law are being implemented.

For over 23 years, AFC has provided assistance to public school children in New York City seeking quality educational services. Our program includes research, direct representation, community based training and public policy negotiation. Approximately one-third of our cases involve families attempting to negotiate the special education system. In addition to serving as co-counsel in the Jose P. v. Sobol class action litigation, we have recently filed a separate class action lawsuit on behalf of preschool children with disabilities for whom New York City and the State have failed to provide timely, appropriate services in the least restrictive environment (LRE).

New York's Segregated Preschool System

Turning to the specific areas of concern outlined in NYSAC's notice, I would like to begin by commenting on the extent to which New York City and the State are implementing the least restrictive environment mandate. Unfortunately, national data make it appallingly clear that New York ranks last when it comes to serving preschool children with disabilities alongside their non-disabled peers. For example, according to the 16th Annual Report to Congress, only 7% of all preschoolers with disabilities in the United States are placed in private, separate facilities. The figure for New York is almost ten times as high, with over 67% of all preschool children placed in private, separate facilities offering few, if any, opportunities for interaction with non-disabled children. The figure for New York City is even higher, at 95%! The almost exclusively

segregated nature of New York City and the State's preschool system is further emphasized in a 1994 report from the New York Office of the State Comptroller as well as a follow-up study by Peat Marwick Management Consultants.

Not surprisingly, the U.S. Department of Education, Office of Special Education Programs (OSEP), has threatened to withhold federal funding from New York based on its persistent failure to comply with the LRE mandate. A 1994 directive from OSEP to the State Education Department (SED) stresses that the LRE requirement applies regardless of whether local educational agencies provide universal regular education or free preschool programs to non-disabled children. Thus, New York must, without exception, determine the least restrictive environment in which the unique needs of each individual child can be met, and implement an appropriate program in that setting.

Federal law and regulations note that this duty requires consideration of a range of options, including regular day care and/or preschool programs with supplementary supports and services. Stated differently, if a preschool child with a disability requires interaction with non-disabled peers in order to realize goals and objectives contained within his or her Individualized Education Program (IEP), this "regular education" must be provided at no cost to eligible children and their families. Nevertheless, New York City and the State maintain a policy whereby they refuse to fund any portion of a regular day care and/or preschool program, even if such a setting is necessary to implement IEP mandated related or itinerant services.

The implications of this policy are evident in the case of David E. Following a series of evaluations, a New York City Committee on Preschool Special Education (CPSE) recommended that David E. receive special education itinerant services and counseling to address his behavioral and learning needs. In doing so, the CPSE acknowledged that David E. also required a regular preschool setting in which such special education services should be delivered. The Board of Education, however, was unwilling to pay for any portion of a regular preschool setting. David E.'s foster mother lacked the resources to pay for regular preschool, and was unable to obtain a city-supported voucher. Consequently, eight months after being evaluated and determined to need special education, David E. had not received any services. In fact, the CPSE ultimately closed his case, stating their willingness to reopen if his parent could secure placement in a regular preschool.

Ironically if David E. had been recommended for a full-time special education program, neither the city nor the state would balk at spending between twenty to thirty thousand dollars to place him in this most restrictive setting. And yet, as the 1994 Comptroller's report points out, the provision of itinerant services in less restrictive settings would likely result in a tremendous cost savings in New York, while simultaneously helping to ensure compliance with the LRE mandate. In addition to the unquestionable fiscal advantage, current research shows that inclusive and/or

integrated preschool opportunities also result in substantial educational benefits for all children and their families.

Despite aggressive efforts by Advocates for Children, as well as many other individuals and agencies committed to enforcing the LRE mandate, New York City and the State have refused to develop and implement comprehensive remedial strategies. Thus, they now face the prospect of protracted litigation — which focuses not only on violations of the LRE mandate, but also on other issues directly relevant to this hearing.

**Section 4410's Unwarranted Limitation:
Only Approved Preschool Providers May Perform Evaluations**

Clearly, the high number of preschool children placed in segregated, center-based programs can be traced, in large part, to Section 4410's unwarranted restriction that only approved preschool providers may perform evaluations. Since the vast majority of all preschool programs approved by SED are segregated and center-based, this sets up an "inherent conflict of interest" which has been identified in several recent reports. Numerous problems associated with limiting evaluators to approved preschool programs emerge from studying files in the preschool lawsuit. First, based on a review of hundreds of evaluations conducted on preschool children with disabilities, it is clear that clinicians often recommend segregated, center-based programs without any meaningful consideration of less restrictive sites. These same clinicians frequently appear at CPSE meetings, where they lobby for placement in their own center-based program.

A second problem associated with the 4410 limitation is that it excludes hundreds of equally, if not more, qualified clinicians who could serve as effective evaluators. Preschool files illustrate that some children receive hospital-based evaluations between the ages of birth to 2.9. Once they enter the preschool system, however, they can no longer rely on these same clinicians, and are forced to undergo a new round of testing, even if their most current evaluations are less than six months old. Consequently, children are denied a certain continuity in service provision, and additional, often unnecessary costs are incurred.

Limiting who can conduct preschool evaluations also contributes to tremendous delays in actual service delivery. This results in unconscionable harm to already vulnerable children, and increases the likelihood that they will be placed in overly restrictive settings. Children with limited English proficiency are particularly affected by shortages in the supply of evaluators, and the fact that too few are licensed to conduct bilingual testing.

Finally, even when evaluators from approved sites recommend settings other than center-based programs — for example an integrated preschool or a regular day care with supports and services — CPSEs fail to consider or to recommend these less restrictive programs. In almost one-fifth of the approximately 165 cases reviewed in the preschool litigation, evaluation results and/or IEP

notations indicated the appropriateness of a regular day care or preschool program with supports and services. **Yet in none of these 165 cases did a CPSE recommend such a program.**

To date, the only integrated program offered by the New York City Board of Education for preschool children with disabilities is SuperStart Plus. This initiative exists in only 13 of the 32 school districts, and serves a tiny portion of the over 11,000 potentially eligible preschool children with disabilities. Much more needs to be done to expand this otherwise promising initiative, and to ensure that a broader array of options exist through which preschool children with disabilities are afforded opportunities to interact with their typically developing peers.

The Cost Based Reimbursement Methodology

As in the context of school age children with disabilities, the preschool special education reimbursement methodology inevitably drives program development and placement. A tuition based methodology in and of itself is not problematic, except in the case of New York, where no parallel reimbursement exists for non-special education programs. This same issue was identified earlier in the OSEP to SED correspondence. Obviously, if the only way a program provider receives payment is through a tuition based methodology, and if such tuition payments are limited only to approved program providers, then we will continue to fund an almost wholly segregated, center-based preschool system. Given the historic lack of monitoring of this same system, we will also likely witness pervasive abuses, including exorbitant and unnecessary tuition costs.

The challenge for New York City and the State is to design a legitimate formula which supports each child, regardless of the setting in which special education services are delivered. Moreover, this support must be provided in a manner that encourages, rather than discourages, compliance with the LRE mandate. In conjunction with the SED, the New York State Regents have developed and attempted to implement a "placement neutral" special education funding formula. This same approach is justified in the area of preschool special education, but the city and state's current policy of refusing to fund any portion of a general preschool education must change in order to facilitate LRE placements.

Instead of pouring millions of dollars into restrictive settings, New York must develop creative, flexible approaches to supporting the placement of preschool children with disabilities in public and private programs such as regular day care, preschool and Head Start programs. This focus is wholly consistent with the language and intent of IDEA, not to mention Section 504 of the Rehabilitation Act, and the landmark Americans with Disabilities Act. New York can wait for the federal government to withhold precious funding, or for advocates to bring costly and time consuming lawsuits. The better, more constructive path is to exercise enlightened leadership, and to build upon the successful models and expertise which already exist. Thank you for your willingness to hold these important hearings. We look forward to working with you in the future.

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