

Special Education Fact Sheet

PRIVATE SCHOOL PLACEMENTS PAID FOR BY THE DEPARTMENT OF EDUCATION

What if I want my child to attend a private school and have the Department of Education pay for the tuition?

Under special education law, children with disabilities are entitled to a “free and appropriate education and related services.” Courts have interpreted that to mean an education and related services that are reasonably calculated to enable the child to learn. That means that your child will not necessarily be entitled to attend a private school at public expense just because a private education would be better for your child. However, if you can demonstrate that the Department of Education (DOE) cannot offer your child a public school program that is at least appropriate to his or her needs, you may be entitled to have your child attend a private school at public expense.

Sometimes the Committee on Special Education (CSE) will agree that it cannot offer an appropriate program for your child and will recommend a non-public school placement on your child’s Individualized Education Program (IEP). In those cases, the CSE will write “Defer to CBST” on the front page of the IEP. (“CBST” stands for Central-Based Support Team, which is an office at the central Department of Education that helps place children in private special education schools.)

In other cases, the CSE will not agree with you, and it will be necessary to have an impartial hearing. At the hearing, you must show that the school or program that the IEP team has proposed is inappropriate for your child. However, even if you can prove that the proposed school or program is inappropriate, the hearing officer will not necessarily order the Department of Education to pay for a private school for your child. The hearing officer may instead simply order the CSE to recommend another school placement. Therefore, if you want the hearing officer to order private school, or a particular private school, for your child, you will have to demonstrate at the hearing that your child needs private school, or a particular private school, to make educational progress.

How can you do this? In certain cases, it may be enough to show that your child has tried different types of special education classrooms in public schools and not made progress in any of them. Sometimes your child’s teachers or service providers will testify at the hearing or write letters or reports explaining why your child needs a private school placement. In most cases, it helps to have evaluations from experts stating that the DOE’s recommended program or school is not appropriate and a particular private school or program offered only at a private school is appropriate. If you do not have evaluations that make these statements, you can obtain independent evaluations. Some private health insurance will cover part of the cost of

independent evaluations, and some evaluators accept Medicaid. In addition, if you do not agree with the Department of Education's evaluations, you can sometimes obtain independent evaluations at the Department's expense.

If you want an independent evaluation at the Department's expense, write to the CSE, tell them that you intend to have your child evaluated by an independent evaluator at the Department's expense, and request all necessary instructions and forms. Once you receive the forms, you must complete them with your chosen evaluator and return them to the CSE Chairperson, who then should send you and the evaluator authorization to proceed. If the Department does not want to pay for your independent evaluation, they must request a hearing to challenge their obligation to pay. If the Department can show at a hearing that their own evaluation was "appropriate," you will have to pay for the independent evaluation yourself.

If you do not know where to go for an independent evaluation, ask your child's doctor for suggestions, ask the private school that you want your child to attend for a referral, or call Resources for Children with Special Needs at (212) 677-4650. Resources for Children with Special Needs is an organization that has a database of services including independent evaluators: www.resourcesnycdatabase.org.

If possible, ask the independent evaluator to address the following issues in the evaluation:

- ❖ What features (class size, type of program, method of instruction, type of environment, type and amount of supervision) your child needs in order to make educational progress and why;
- ❖ Why the DOE's proposed placement is inappropriate for your child; and
- ❖ Any evidence from your child's record that the DOE's proposed placement has not met your child's educational needs so far.

If you have a particular private school in mind for your child, you should try to visit the school, apply for your child to attend, and ask school representatives if they think the school would be appropriate for your child and if so, why. You should take these steps even if you do not have the funds to pay on your own for your child to attend the school. Private schools often have waiting lists, so it helps to start the search process as soon as possible.

Once you have evaluations that recommend a private school for your child and explain why a private school would be appropriate, then you must meet with the CSE, show them the evaluations, and request a private school at or after the meeting. If the CSE refuses to pay for a private school, you should contact New York Lawyers for the Public Interest, Inc. (NYLPI) or another lawyer about requesting a hearing. If you contact our office, we will review your child's IEP's, recent evaluations and other information, and if we believe that the information shows that your child is entitled to a private education at public expense and you meet the criteria for receiving free legal assistance from our office, we will attempt to find a pro bono (free) attorney to represent you at a hearing.

What is a “Nickerson letter” and how do I get one?

If the DOE fails to find your child an appropriate public school placement within 65 school days from the time it receives your consent to evaluate or a referral for review, the CSE is supposed to give you a form known as a “Nickerson letter” or a “P-1 letter,” which authorizes you to enroll your child in a state-approved private school at public expense by a certain date. Along with the “Nickerson letter,” the CSE should give you a list of State-approved private schools. This list is also available on the internet at www.nysed.gov. It will be up to you to contact those schools, find out whether they have the type of program your child needs, whether they have openings, and other information. If that does not work, see #3, below.

A “Nickerson letter” is different from a non-public school recommendation (when the IEP team writes “Defer to CBST” on the IEP, as discussed on page 1. Unlike a non-public school recommendation, a “Nickerson letter” is not a decision by the IEP team that your child needs private school. It is just what you get when the DOE does not follow certain established timelines and procedures. Also, unlike a non-public school recommendation, a “Nickerson letter” expires if you do not find a private school within a certain period of time.

What if my child’s IEP authorizes non-public school, or I have a “Nickerson letter,” but none of the available state-approved private schools will meet my child’s needs?

If the CSE recommends non-public school for your child or gives you a “Nickerson letter,” you will be authorized to attend only the private schools that the State has pre-approved for this purpose. But there are two ways to have the Department pay for a private school that is not on the State’s pre-approved list. The first is for you to pay the tuition up front and seek reimbursement at an impartial hearing. This is called a “Carter” or “reimbursement” hearing. The second, and more difficult, way is for you to persuade a non-approved school to accept your child even though you cannot pay up front. In that case, you should ask the school to accept your child based upon your promise that you will seek an order requiring the Department of Education to pay the tuition up front at an impartial hearing. This is called a “Connors” or “preimbursement” hearing. At the hearing, you will have to show that (i) the DOE has failed to offer your child an appropriate school program; (ii) the non-approved private school you selected is appropriate for your child, (iii) you are obligated, or committed, to pay tuition to the private school, and (iv) you cannot afford to pay the tuition up front and seek reimbursement later.

Parents must notify the CSE before they remove their child from public school that they are rejecting the IEP team’s recommended program and intend to enroll their child in private school at public expense. If parents do not give the CSE this prior notice of their intentions, they may lose the right to seek reimbursement or preimbursement for the private school tuition at a later date. It is recommended that parents provide this notice in writing to the chairperson of the CSE.

What does “least restrictive environment” mean and how does it affect my child’s right to have the Department of Education pay for my child to go to a private school?

Under the special education law, the DOE must provide your child with educational programs and services in the least restrictive environment. That means that your child has the right to be placed in a class and school with non-disabled children, unless it is not possible for your child to learn in that environment. It also means that your child is entitled to services, such as special education teacher support services and paraprofessionals, that will make it possible for your child to learn in a regular education classroom. It also means that the DOE must consider whether a program or school in which your child will be integrated with children who do not have disabilities will meet your child’s needs before they can approve a more segregated program or school.

Many private schools are designed specifically for children with disabilities. If your child has been in regular education classes, with supports or services, or in a special education program in a school that also has children without disabilities, and this has clearly not been appropriate, a private school that is just for children with disabilities may be the appropriate, least restrictive option for your child. If, however, your child has not tried more integrated classes at a public school, it is sometimes, though not always, difficult to show that a private school that is just for children with disabilities is the least restrictive place in which your child can learn. In such cases, you might not be entitled to a private school at the DOE’s expense until you can show that your child cannot learn in more integrated programs and schools.

How do I request an impartial hearing?

To request an impartial hearing, request a form from the Impartial Hearing Office, New York City Department of Education, 131 Livingston Street, Room 201, Brooklyn, New York 11201, (718) 935-3280. It is recommended that you use this form to request your hearing, as your request may be dismissed if it does not include all the information required. In general, your request for a hearing will have to include the following information:

- (i) your child’s name, CSE case number, address and school;
- (ii) (ii) a short statement of the reason why you want a hearing – that is, the problem that you want the hearing officer to resolve – and the facts supporting your case; and
- (iii) (iii) a short statement of what you want the hearing officer to do to resolve the problem.

After receiving your request, the DOE is required to contact you to schedule a resolution session, which is a meeting to discuss whether you can resolve your issues by agreement. If you and the DOE’s representative both agree that you want to skip (or “waive”) the resolution session and go straight to hearing, or if the resolution session fails to resolve the dispute, your case will proceed to hearing at a later date.

TIPS

- **Keep a notebook**
 - **Record all phone conversations and in-person conferences and meetings**
 - **Keep all the papers you received from the DOE**
 - **Keep letters and envelopes**
 - **If documents are not dated, note the date you received the document on the back of the document or envelope**
- **Send all communications by certified mail or hand deliver them, asking the receiver to initial and date your copy**
- **Always**
 - **Keep a copy of everything you give to the DOE**
 - **take the name of the DOE person you're dealing with**
 - **If you can, get title, office, and detailed contact information**
 - **write it all down for future use**

DUE TO THE GENERAL NATURE OF THE INFORMATION PRESENTED, THIS FACT SHEET SHOULD NOT BE REGARDED AS LEGAL ADVICE.)