

# Private Schools – Lunchtime Law Series: Special Education and Nonpublic Schools

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## Presented by:



**Anne M. McGinnis Ph.D.**

Member  
amcginnis@bsk.com  
Rochester, NY



**Sara M. Richmond**

Member  
srichmond@bsk.com  
Westchester, NY

# Special Education and Nonpublic Schools

- Parentally placed nonpublic students who require special education services are entitled to receive such services from the district where the nonpublic school is located.
- This obligation comes from Education Law 3602-c
  - Also known as the “Dual Enrollment Law”
- The district of location develops and provides an individualized education services program (IESP).
- This entitlement applies to students who are enrolled in nonpublic elementary and secondary schools.
  - Kindergarten-eligible students who are not enrolled in kindergarten do not receive IESPs even if they are parentally placed in a nonpublic school.

# Consultation Requirements

- The school district of location must consult with nonpublic school representatives and representatives of parents of parentally placed nonpublic school students with disabilities enrolled in nonpublic elementary and secondary schools located within the boundaries of the school district:
  - Child find
  - Provision of special education services
  - Use of federal funds

# Nonpublic Students and Child Find

- The public school district has a child find obligation that requires the district to locate, evaluate, and identify students with disabilities who qualify for special education services.
  - Education Law § 3602(c)(2-a) was amended several years ago to modify a school district's child-find responsibilities for those students in nonpublic school who may be eligible for services under the IDEA.
    - Each school district is responsible for monitoring ***students who attend nonpublic school within its geographic boundaries***, regardless of their district of residence.

# Child Find and Section 504

- In contrast to special education, a school district's child-find obligations under Section 504 to students attending nonpublic school extend only to those students who reside in its geographic boundaries.
- A district's child-find obligations under Section 504 to students attending nonpublic school extend only to those students who reside in its geographic boundaries.
- But similarly, the district of residence is not obligated to provide Section 504 accommodations to parentally-placed nonpublic school students at their nonpublic school.
  - Rather, any obligation to provide Section 504 (or ADA) accommodations within the nonpublic school setting rests with the nonpublic school under certain conditions.
- 504 is not part of the consultation process between public school districts and nonpublic schools.

# Provision of Special Education Services

- The Committee on Special Education (“CSE”) of the district of location develops an IESP for eligible students with disabilities who are NYS residents and enrolled by their parents in nonpublic schools.
- The CSE must ensure that a representative of the nonpublic school where the student attends is included in the CSE meeting when the IESP is developed.
- The CSE conducts annual reviews to develop IESPs each year for each student.

# Eligibility for an IESP

- Special education law provides for 13 special education classifications.
  - Each classification includes definitional criteria for a student to be deemed eligible for that classification.
- A student is entitled to an IESP if they meet the definitional criteria of one of the 13 special education classifications *and* if they require special education or related services as a result of that disability.
- A diagnosis does not automatically entitle a student to an IESP.
- Eligibility is determined by the CSE after conducting an evaluation and in consideration of input from the parent and nonpublic school.

# June 1 Deadline

- Parents of nonpublic students must request special education services in writing to the school district of location by June 1 preceding the school year for which services is made.
- If a student is first classified by the CSE during the school year, but before the first day of April, the parents must request the IESP services in writing within 30 days after the student is first identified.
- Late requests may be denied by the school district.

# Dual Enrollment Law – “Equitable Basis”

- Nonpublic students are entitled to receive special education support through their IESP on an “equitable basis.”
- “**Equitable basis**” means that special education services are provided to parentally placed nonpublic school students with disabilities **in the same manner** as compared to other students with disabilities attending public or nonpublic schools located within the school district.
- A nonpublic student may not be denied services that a public school student would receive based solely upon his or her status as a nonpublic student, nor can a district deny services to a nonresident nonpublic school student that a resident nonpublic school student would receive.
  - Converse is also true - a school district of location is not required to provide greater services to a nonpublic student than a public school student would receive.

# Dual Enrollment Law – “Equitable Basis”

- The manner in which special education and related services will be provided to students is determined by the district of location based on the consultation process and in consideration of the individual needs of the students.
- Final decision with respect to special education services provided to individual students is made by the CSE of the district of location.
- Services provided to parentally placed students may be provided on the site of the private school, at the district, or at another location.
- In general, the special education supports to be provided supplement the curriculum implemented by the nonpublic school.
  - e.g., resource room, consultant teacher services, related services

# Section 504/ADA and Nonpublic Schools

# Nonpublic School 504 Obligations

- Threshold Questions are:
  - Does the School receive federal financial assistance?
  - Is the School a religious entity?

# Nonpublic School 504 Obligations

- Threshold Questions are:
  - Does the School receive federal financial assistance?
    - Nonpublic schools receive federal funding and are therefore subject to Section 504, but their requirements under Section 504 are less stringent than those governing public schools.
    - May be as simple as lunch programs. Title I funding
    - Bussing, school district funds that are funneled to Independent school.
  - Is the School a religious entity?
    - Not Subject to Section 504 unless it receives federal funds

# Child-Find Obligations – Public & Nonpublic Schools

- Who provides the Section 504 accommodations?
  - Despite the district of attendance's child-find obligations, in the case of a Section 504 student attending a nonpublic school, the only entity that may have an obligation to accommodate the student (e.g., provide services or accommodations) would be the nonpublic school.
  - Letter to Veir: 20 IDELR 864(OCR 1993)

# Nonpublic Schools and Section 504 Obligations

- A nonpublic school subject to Section 504 only has a general duty to accommodate students with disabilities (i.e., nonpublic schools are not required to develop and implement Section 504 plans for their students).

# Core Duties under 504

- Cannot exclude or deny benefits by reason of a disability.
- Have to provide reasonable accommodations and modifications.
- Have to provide comparable aids, benefits and services.
- Procedural safeguards should be in place as well as written accommodation plans.

# Applicability of the Americans with Disabilities Act to Independent Schools

- The ADA as well as the New York State Humans Rights Law and the NYC Human Rights Law (for schools located in NYC) applies to independent schools in New York.
  - Independent schools (except for religious organizations) are considered places of public accommodation and can be subject to liability for discriminating against students on the basis of a disability.

# Differences between the ADA and 504 in the Independent School Context

- 504: Requires accommodations to access the general education curriculum.
- ADA: Requires supports and services to provide access to educational opportunities as non-disabled peers.
- Parochial schools are excluded from coverage under the ADA

# Core Duties under the ADA

- No disability-based discrimination
- Reasonable modifications to policies
- Provision of auxiliary aids and services
- Accessible design for new construction and for existing construction when readily achievable
- Nondiscriminatory eligibility criteria
  - Eligibility criteria should be tailored to the program
  - Assessments should be accessible and provide needed accommodations.
- **HOWEVER:** A modification is not required if it would fundamentally alter the nature of the program or impose an undue burden.

# Impact on Essential Nature of Program

- School should be able to identify the program’s essential academic and behavioral standards.
  - Always apply consistent standards but assess whether policies can be modified to accommodate without undermining essential requirements of program.
    - For example, attendance policies, disciplinary policies.
  - Use behavior plans and proactive supports to the extent practical.
- Ability to accommodate and provide program
- Deferral to pedagogical decisions
- Private schools can require that students meet “essential eligibility requirements” with respect to admissions.

# Extra Curriculars and Sports

- Independent schools must give equal access to all students
- Cannot unilaterally deny access to a disabled students
- Considerations for field trips and overnights trips
- Nursing supports

# Common Pitfalls and How to Avoid Them

- Blanket exclusions in admissions policies
- Inflexible attendance or testing policies
- Failure to engage in the interactive process
- Inaccessible learning tools
- LACK OF DOCUMENTATION

# Thank You

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