

Private Schools – Lunchtime Law Series: Spotlight on New York City Private Schools The NYC DOE and Nonpublic Schools Relationship

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I. Introduction

Defining Key Terms

- **NYC DOE (NYCDOE):** Local Public School Authority (LSA) for the city.
- **Nonpublic Schools (NPS):** General term for private, independent, and religious schools.
- **Office of Nonpublic and Charter Schools (ONPCS):** The specific NYC DOE office that manages this relationship.

I. Introduction

Key Points

- **NYC DOE as local education agency**
 - Serves as the LEA for students attending nonpublic schools, particularly in special education.
 - Provides funding in specific circumstances such as tuition for special education students whose needs cannot be met in public schools.
- **Scope of partnership**
 - Approximately 30% of New York City students attend private, parochial, or independent schools. DOE coordinates services and supports for these students even when they are outside the public school system.
 - Ensures that all New York City students, including those in nonpublic schools, receive appropriate educational supports that meet the students' needs.

I. Introduction

Key Points *(continued)*

- **Purpose and impact**

- Ensures equitable access to services and supports, to which students are entitled under state and federal law (e.g. IDEA)
- Provides funding in specific circumstances such as tuition for special education students whose needs cannot be met in public schools. Coordinates with families and private schools to create individualized education programs (IEPs)

- **Shared goal**

- All New York City students, including those in nonpublic schools, receive appropriate educational supports that meet the students' needs.

II. The Regulatory Role: Substantial Equivalency

The State Mandate

- **New York State Education Law Section 3204**
 - Requires that all students in New York State receive an education that is “substantially equivalent” to that provided in public schools.
 - Applies to all nonpublic schools, including independent, parochial, and other private institutions.
 - Focuses on ensuring students receive essential instruction in:
 - English Language Arts & Literacy
 - Mathematics
 - Science & Social Studies
 - Civics, Physical Education, Health and other core subjects
 - The goal is not to standardize curriculum, but to ensure that nonpublic school students receive an education that prepares them for civic engagement, further education, and economic self-sufficiency.

II. The Regulatory Role: Substantial Equivalency

Role of the NYC DOE

- Acts as the LEA and is required to conduct local reviews in nonpublic schools located within the city.
- Reviews are guided by New York State Education Department Regulations.
- DOE conducts the local review process and submits a recommendation to the State Education Department.

II. The Regulatory Role: Substantial Equivalency

Collaboration with nonpublic schools

- SE is not designed to interfere with religious instruction or school philosophy
- Nonpublic schools retain curricular autonomy, traditions, and cultural identity.
- DOE works collaboratively with nonpublic schools to support compliance while respecting their distinct missions.

III. The Service Provider Role: Equitable Access to Funds

Publicly Funded Services for Nonpublic School Students

- DOE, through Office of Non-Public Schools facilitates access to state and federal programs that provide certain publicly funded resources to students enrolled in nonpublic schools.
- Services go to students, not to private school themselves, and must be secular, neutral and non-ideological as required by state and federal law.

III. The Service Provider Role: Equitable Access to Funds

Key Services Coordinated by NYC DOE

- Access to New York state's textbook loan program which provides:
 - ✓ Textbooks
 - ✓ Library Books
 - ✓ Equipment (software/hardware)
- Materials are owned by the DOE and loaned to students for their use.
- Transportation services
 - DOE provides transportation for eligible nonpublic school students including busing (general and special), where eligible and metro cards

III. The Service Provider Role: Equitable Access to Funds

Key Services Coordinated by NYC DOE *(continued)*

- Federal Title Services
 - Federal equitable services, provided through the DOE using federal funds include:
 - **Title 1** - supplemental academic support for eligible low-income students who are academically at risk
 - **Title 2** - professional development services for teachers and nonpublic schools (delivered by DOE selected vendors)
 - **Title 3** - English language acquisition services for students who are multilingual learners or English learners
 - **Title 4** - Enrichment programs supporting well-rounded education, safe healthy learning environments and effective use of technology

III. The Service Provider Role: Equitable Access to Funds

Key Services Coordinated by NYC DOE *(continued)*

- Federal Title Services *(continued)*
 - Federal services must be supplemental, not replace the school's core program.
 - Be secular, neutral and non-ideological
 - Be equitable compared to services offered to public school students
 - It is important to remember that services are provided to students, not to support or enhance private school operations.
 - DOE is required to ensure compliance with federal and state requirements including equitable participation, documentation and accountability, vendor management for service delivery.
 - Collaboration with nonpublic schools helps ensure families access the support they're entitled to

IV. Special Education and Student Support

Overview

- **Current DOE Trends**
 - Increasing movement toward full impartial hearings and more adversarial case handling
 - Greater scrutiny of documentation, testimony, and school practices
 - Shifting expectations for private schools
- **Best practices to support students and strengthen school positioning**
 - Proactive witness and affidavit preparation
 - Strong, detailed documentation on student's progress
 - Active participation in IEP processes and communication with families
- **Preparing for shifting policies and administrative changes**
 - DOE priorities can shift significantly with each new administration
 - Schools must remain adaptable, and warmth and equipped to pivot quickly

IV. Special Education and Student Support

Current DOE Trends

- DOE is increasingly moving towards pursuing impartial hearings on the vast majority of special education tuition reimbursement/ payment cases
- Previously most cases were settled – this is no longer the norm
- DOE attorneys are challenging records more aggressively, requiring stronger evidence and clearer testimony
- Hearing officers are conducting independent lines of questioning, testing witness credibility and internal consistency
- Shift in DOE strategy makes proactive preparation essential. Schools must be ready well before a case is filed.

IV. Special Education and Student Support

Best Practices to Support Students and Strengthen School Positioning

- Witness preparation and staff coverage
 - Identify more than one potential witness early on. Rely on more than one staff member who understands the students program
 - Ensure all witnesses are well prepared
 - Early preparation reduces last minute errors and supports consistent testimony
- Staff's understanding of student program
 - Witnesses must clearly understand the program and how it meets the student's unique needs
 - Student's challenges, development and progress over time
 - Well prepared testimony reinforces the school's credibility

IV. Special Education and Student Support

Best Practices to Support Students and Strengthen School Positioning (*con'd*)

- Affidavits' accuracy and risk management
 - Parent counsel may draft affidavits but schools must verify:
 - accuracy of every statement
 - whether the details fully reflect the student's needs and program
 - Affidavits are admitted as direct testimony, and witness signing off on the affidavit must be available for cross examination.
 - Review the affidavit carefully and ensure all information is clear, complete, and accurate. If anything needs clarification, work with parents counsel to make appropriate revisions before signing.
- Credibility under cross examination
 - Hearing officers increasingly prove inconsistencies or missing details any contradiction between the affidavit and testimony can undermine the school's credibility
 - If something in the affidavit does not match your understanding consult with parent's counsel and request revisions. School plays a central role in establishing the strong record.

IV. Special Education and Student Support

Preparation Begins Before the Hearing

- Strong documentation equals strong testimony
- DOE appears to be returning to phone based IEP meetings.
- Whenever possible request Zoom participation.
 - enables identifying all attendees
 - ensures the meeting record is accurate
 - provides stronger evidence if the IEP is later scrutinized in a hearing
- DOE litigation posture
 - DOE may fight more cases, but this does not indicate that each case is strong.
 - Schools should maintain a consistent, factual and prepared stance. It is important to remember that disputes may be resolved at any point prior to a hearing.

IV. Special Education and Student Support

Introduction to IDEA Consultation Process

- DOE meets with private schools to gather information about:
 - Parentally placed students seeking equitable services
 - Students with IEPs whose parents are seeking tuition reimbursement
- This process increases DOE outreach and places new administrative responsibilities on the private schools.
- Responsibilities for Private Schools
 - Schools must notify families about the consultation process so parents understand how their information may be used
 - The DOE issued parent notice must be posted in a prominent, clearly visible location
 - Before sharing any student specific information, schools must ensure
 - that parents have provided informed consent
 - When in doubt consult your school attorney before providing sensitive information or responding to any request that is unclear to you
- Proper handling of the consultation process protects both students and the school

Thank You

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