April 2015

The following questions were posed by Advocates for Children to clarify State requirements.

**NONPUBLIC SCHOOL (NPS) PLACEMENT RECOMMENDATION QUESTIONS**

If the participants at an IEP meeting agree that a program or a placement is appropriate, must a supervisor of psychologists approve that program or placement outside of the meeting? Can an NPS recommendation on an IEP be contingent upon the approval of anyone not at the IEP meeting and not on the IEP team?

No. An IEP must be developed by the student’s CSE. The school district must ensure that all individuals who are necessary to develop an IEP that will meet the student’s unique needs and who can commit the resources of the school to address the student’s needs, participate in the student’s CSE meeting. Individual staff members do not have the authority to “approve” or “disapprove” the IEP recommendations developed by the CSE. Therefore, it would be inconsistent with federal and State requirements to make the CSE’s recommendations contingent upon the approval of a supervisor of psychologists outside of the CSE meeting. The school district may have a process that ensures that professional staff members appointed to the CSE bring to the meeting information that is necessary to ensure that the CSE fully considers the extent to which the use of supplementary aids and services have been considered or tried prior to a recommendation that the student’s placement be changed to a more restrictive setting. Absent this information, the school district representative on the Committee could determine that additional information is needed in order to make the least restrictive environment determination.

**Can a school district staff member reject an IEP recommendation if the staff member did not actively participate at the IEP meeting?**

No. However, school personnel may request another CSE meeting to review and consider objections or concerns.

**What if the staff member attends only during the time at which the staff member’s approval is requested?**

Members of the CSE share the responsibility to contribute meaningfully to the development of a student’s IEP. Federal and State regulations provide that parents and the district may agree that the attendance of a member, in whole or in part, is not necessary or that a member may be excused.
The CSE should work toward consensus; however, there is no requirement that each member who is responsible for implementing a student’s IEP “approve” a CSE recommendation, whether in attendance at the meeting or not. If the CSE cannot reach consensus, the CSE chairperson, as the school district representative, has ultimate responsibility to provide a recommendation. In fulfilling this responsibility, the chairperson must consider all of the discussions and recommendations of the committee members and reach a decision that best responds to the needs of the student and ensures that the student’s IEP identifies a free appropriate public education in the least restrictive environment. In addition, school districts are strongly encouraged to seek input from staff that will not be attending prior to the CSE meeting.

**Must a school recommend a more restrictive public school placement before recommending an NPS?**

Placement must be determined based on the least restrictive environment where the student’s IEP can be implemented. Pursuant to section 200.6(j) of the Regulations of the Commissioner of Education, an application for reimbursement for a student in an in-State private school will only be approved if the CSE can certify that the nature or severity of the student’s disability is such that appropriate public facilities for instruction are not available. The district must document its efforts to place the student in a public facility and the outcomes of those efforts, and/or of CSE findings regarding the lack of suitability of each currently available and geographically accessible public placement. The CSE must also document all efforts to enable the student to benefit from instruction in less restrictive settings and detailed evidence of the student’s lack of progress in previous less restrictive programs and placements, or reasons why such evidence is not available.

**May a team require that an evaluation be done within the prior 6 months before recommending a day treatment or State approved private school?** (This question applies to all evaluations, but we have seen this occur most prevalently with IEP teams who agree a nonpublic school (NPS)\(^1\) is appropriate, but require a psychiatric evaluation before making the referral on the IEP, thus delaying the placement.)

Section 200.14 of the Regulations of the Commissioner of Education prescribes the educational programs and services to students with disabilities enrolled in Office of Mental Health day treatment programs. A student with a disability who has been admitted to a day treatment program in accordance with the program’s admission criteria is eligible for placement in the educational component of the day treatment program, if the program is appropriate to the student’s special education needs. In addition to conducting an individual evaluation required pursuant to section 200.4(b), the CSE must assure that appropriate staff participates in the treatment planning conducted by the treatment team and that the evaluation include an assessment by the day treatment program’s special education teacher and other appropriate professional staff of the day treatment program.

Section 200.6 requires that the CSE have a current individual evaluation or reevaluation of the student, which must have been completed within six months prior to the CSE’s initial recommendation for a private school placement. This contemplates that the CSE is using up-to-date evaluation information to determine if placement in an approved private school is needed. In addition, because admission policies of many approved private schools, the district may request a psychiatric evaluation of the student prior to referral. However, the district must ensure that such evaluations are completed and the student’s placement is effectuated within 30 school days of the IEP recommendation for placement in an approved private school (NPS).

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\(^1\) Approved private school