

Connecticut State Department of Education

MEMORANDUM

Division of Educational Programs and Services
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TO: Directors of Special Education and Pupil Services
Directors of Private Approved Special Education Facilities

FROM: Leslie M. Averna, Acting Associate Commissioner *WA*

DATE: January 22, 1997

SUBJECT: Update #5

Happy New Year! The weeks are passing quickly and we are busy completing our workplan, reorganizing the bureau, searching for a new chief and preparing for the federal compliance visit. The following information will update you more specifically about a variety of projects.

OSEP Return Visit

The Office of Special Education Programs, U.S. Department of Education, has confirmed that they will return to Connecticut for a follow-up compliance review during the week of February 3, 1997. They will be here for a week working in the Middletown office and in selected school districts which have yet to be announced. The review will focus on the implementation of the corrective action plan activities which were outlined in the policy memos distributed to you in June, 1996 and covered in the statewide training conducted by Bureau staff in September.

Hearing Officers

The federal law (IDEA) requires that a list of hearing officers be available for parental inspection. The following is a list of the currently serving hearing officers and their credentials.

Marie S. Bierman holds a B.S. in education from Fordham University, an M.A. from Columbia University in speech and hearing, a Certificate of Advanced Graduate Study from the University of Hartford in administration and supervision. In addition she has thirty-three graduate hours in

special education from Southern Connecticut State University and six graduate hours in administration and supervision from Baruch College of CUNY. Mrs. Bierman has been a director of pupil personnel services, and assistant superintendent of schools, a director of regular education instruction, an executive director of a non-public special education school in New York City, a special education team leader, a coordinator of speech and hearing services, a speech pathologist and a teacher of high school English. She is a past president of the Connecticut Association of Pupil Personnel Directors and has written various articles for special education journals. She has also been a systems analyst and writer in private industry. Mrs. Bierman is the parent of a severely handicapped young adult.

Marylouise S. Black is an attorney who is currently serving as a trial referee for the Judicial District of Danbury and the Judicial District of Stamford/Norwalk. Her area of practice is civil litigation. Attorney Black, prior to receiving her law degree, taught a self-contained classroom in the public schools and in a private residential treatment center. She is very well versed in administrative law and has vast experiential knowledge of the substance of special education law. Attorney Black received her B.A. in English from Stonehill College, her M.A. in American Studies. Literature from Fairfield University and her J.D. from Pace University School of Law.

Victor M. DeBonis is an attorney currently in private practice concentrating in the areas of education and public sector labor relations. Attorney DeBonis is also currently serving in the capacity as a New York State hearing officer in the area of employee discipline and has been eligible to serve as a special education hearing officer. Attorney DeBonis has served as a senior attorney with the Office of Counsel, State Department of Education for the State of New York. He received his education from the State University College at Potsdam, New York, receiving a B.A. degree, and earned a J.D. degree from Albany Law School, Albany, New York. Attorney DeBonis is certified in New York as a school district administrator.

Mary H. B. Gelfman holds an A.B. from Swarthmore College in history, an M.A. from Teachers College, Columbia University, in education, and a J.D. from the University of Connecticut School of Law. She has taught high school mathematics; worked in the Due Process Unit, Connecticut State Department of Education; and has practiced law since 1984. She served on a local board of education in Connecticut for eleven years and on the Connecticut State Advisory Council for Special Education for four years. She has presented professional development programs in special education legal requirements and in school law in Connecticut school districts and in other states, as well as presented similar information to parents' groups, and has written articles about confidentiality and student records law and student discipline. Admitted to practice in Connecticut in 1979 and in the United States District Court, Connecticut, in 1986, she is a member of the CBA and the ABA.

Deborah R. Kearns is an attorney currently in private practice. She has experience in divorce mediation and has provided advocacy for individuals with disabilities. Attorney Kearns has served as a Special Master, Middletown Regional Family Court, where she served as a pretrial mediator for custody matters. Attorney Kearns has taught at the college level, and has a superior familiarity with federal and state statutes and regulations relating to the provision of special

education. Attorney Kearns received a B.A. from Boston College, and her J.D. from New England School of Law, Boston, Massachusetts.

Gail K. Mangs is an attorney in private practice in Farmington, Connecticut. She holds a B.A. degree from Clark University in history and education, an M.A. degree from Northwestern University in curriculum with a specialization in early childhood education, and a J.D. from the University of Connecticut. She has worked as a teacher, board member, and chairperson of the board in private daycare programs, as a teacher in an early childhood special needs program, and as the coordinator of a home-based early intervention program for Headstart. As an attorney, she practices in the area of family law, and has served as both attorney and guardian ad litem for children. She is a member of the Connecticut Bar Association.

James A. Monk is an experienced special education hearing officer, having served the State of New York in that capacity for nine years. Dr. Monk has a vast array of experience in the public schools, as a teacher and administrator he has served as a superintendent of schools and principal during his twenty-three-year public school career. Dr. Monk has an Ed.D. from SUNY, Albany in the educational administration, and also has an M.S. and B.S. in elementary education and school supervision from SUNY, New Paltz, New York.

Margaret D. Northrop is an attorney currently serving as a Connecticut state court magistrate, trial referee, fact-finder, hearing officer and private alternative dispute resolution provider. She has also served as a hearing officer for the Connecticut Commission on Human Rights and Opportunities since 1992. Attorney Northrop earned a teaching certificate from the State of Rhode Island and has taught in the private sector. Attorney Northrop has a B.A. from Brown University and received her J.D. from Loyola University in Chicago, Illinois.

Edward W. Pepyne is a former division director and professor in the Division of Human Services in the College of Education at the University of Hartford. He holds a B.A. degree in economics and sociology from American International College; an M.S. degree in educational management from the University of Massachusetts; a professional diploma in psychological assessment from the University of Connecticut; an Ed.D. in counseling and research from the University of Massachusetts; and a J.D. from Western New England Law School. He has been a teacher, counselor, psychological examiner, director of pupil services, and superintendent of schools. He is also a member of the Bar in Massachusetts, the Federal Bar for the First Circuit and is admitted to practice before the Supreme Court of the United States.

Heather A. Rodin is an attorney, a past chairperson of the Norwalk Housing Coalition and a past chair of the Norwalk Housing Authority. She holds an A.B. degree in Liberal Arts from the University of Chicago; an LL.B. from New York Law School; an M.S. in Elementary Education from the University of Bridgeport; and has a master's degree in urban affairs and policy analysis at the School for Social Research. She has been a classroom teacher, a special education teacher, a consultant in urban problems, a civic volunteer and an attorney in private practice and with the Legal Aid Society. She is a member of the Bar of the State of New York.

Justino Rosado is a partner in the New Haven law office of Chaucer & Rosado, LLC. He received a Bachelors in Science Degree from Sacred Heart University and Juris Doctor from the University of Bridgeport, School of Law. His Law Practice is mainly concentrated in Family Law, Juvenile Law, and Civil Rights. Attorney Rosado is a member and founder of the Connecticut Hispanic Bar. He is a hearing officer for Bridgeport Board of Education Expulsion Hearings, and a member of the American Bar Association. Attorney Rosado is fluent in Spanish.

Margaret J. Slez is an attorney currently in private practice. Attorney Slez had a ten-year career in public education and taught for the Cleveland, Ohio, and Bridgeport and Stratford Boards of Education prior to pursuing a career in law. Attorney Slez demonstrated a thorough knowledge of administrative and special education law. She received her B.A. from Ursuline College, Cleveland, Ohio, in Music Education, an M.S. from the University of Bridgeport in education and her J.D. from Quinnipiac College School of Law.

Christine B. Spak graduated from the University of Connecticut School of Law in 1981. She has extensive experience conducting administrative hearings in addition to serving as a magistrate for the State of Connecticut. Prior to practicing law she was a registered nurse and worked in a variety of settings, including a psychiatric setting. Her legal work has included the areas of health law and issues affecting children.

Serious Emotional Disturbance

I am attaching the draft of the Guidelines For Identifying and Educating Students with Serious Emotional Disturbance to this Update. During the Corrective Action Plan training programs requested by the Office of Special Education Programs (OSEP), many pages of this booklet were disseminated to you. The Bureau of Special Education and Pupil Services has received edits and comments throughout the Fall of 1996 and this draft represents many of the comments that the directors of special education and their professional staff have raised. The draft is currently being prepared for publication and our intention is to have it in the hands of your staff as they prepare for the students' annual reviews. The document is a working model that can be field tested and revisions will occur with the consideration of the practitioners' input. Appreciation is extended to each member of the Task Force on Students with Serious Emotional Disturbance who devoted many hours to the development and revision of the guidelines. For further information or comments, contact Paul Flinter at (860) 638-4230.

Neurologically Impaired

There have been many concerns about the category of neurological impairment. Please be advised that neurological impairment (NI) continues to be a category of disability under Connecticut Regulations. NI has never been a category of disability under the federal regulations and is not now. The confusion seems to lie in the fact that there was proposed legislation in Connecticut last year to eliminate NI as a category under the Connecticut regulations in order to align state and federal regulations. However, this legislation did not pass, thus, NI continues to be a disability category in Connecticut.

Gifted and Talented

The Connecticut Department of Education is co-sponsoring the Third Annual New England Conference on Education of the Gifted and Talented to be held on Friday and Saturday, March 21 and 22, 1997, at the Quality Inn Conference Center in Vernon. Other co-sponsors include state advocacy groups and departments of education from each state in the region.

In addition to more than 50 workshops, the following major presentations are scheduled:

Friday morning:	Bruce Shore	"Raising the Ceiling – Raising the Roof: Gifted Education Home Improvement"
Friday noon	Nancy Robinson	"Whizzing Through Secondary School: Accelerative Choices"
Friday evening	Robert Sternberg	"The Transition from Giftedness in Childhood to Giftedness in Adulthood: Who Makes It, Who Doesn't."
Saturday morning	Judy Galbraith	"Growing up Gifted: Issues, Concerns and the Importance of Self-esteem"
Saturday noon	John Feldhusen	"Challenging Gifted and Talented Youth with Appropriate Educational Services"

Registration materials will be mailed to Directors of Special Education in late January. For further information, please call Alan White (860)-638-4247.

Staffing

We are in the process of recruiting two (2) additional staff: a special education generalist and a pupil services generalist. When the announcement is approved, I'll send it under separate cover.

Private Duty (One -To-One) Nursing: Obligations of School Districts under IDEA

Several school districts have recently asked the Department of Education, Bureau of Special Education and Pupil Services, the following question:

If a medically fragile student's nursing needs are so acute that he/she requires a one-to-one nurse in order to attend school, is the provision of that nurse a responsibility of the LEA?

This question, and additional related questions, including IEP development, were addressed in a response to one school district's request for guidance last fall. The response has been adapted into an "advisory" document, which we do plan to send out to the field at a later date. In the meantime, however, if you have a student who may require such intensive nursing services, and wish to have a copy of the advisory, please contact Nadine Schwab at 638-4244. Since the *short* answer to the above question is "probably not," but the *right* answer is more complex, the

advisory should provide helpful guidance in determining your responsibilities in an individual situation.

Specialized Health Care Procedure Manual For School Nurses

As a companion to the 1992 publication, *Serving Students with Special Health Care Needs*, a new publication, titled *Specialized Health Care Procedure Manual For School Nurses*, is in its final stage of internal review in preparation for printing. This manual, targeted especially to school nurses, provides the "steps" and "special considerations" required for each of the health care activities addressed in the 1992 guidelines. It also provides updated information on the responsibilities of school nurses in making decisions about delegating health care activities to other school personnel. The latter is based on a Declaratory Ruling of the Connecticut Board of Examiners for Nursing, published in 1995.

The manual will be printed in loose-leaf format so that these clinical procedures can be individually updated on a periodic basis. This format also allows additional items or resources to be added in the future. We hope it will be of assistance in serving students who have special health care needs and require specialized physical health care in school.

Strategic School Profiles

Enclosed are two data profiles based on 1995-96 data. One profile is for the state as a whole while the second is specific to your school district. These profiles will provide you and your staff with valuable comparative information about your special education programs. Included in each profile are data on (1) student counts and prevalence rates by disability category, racial group and primary language, (2) student program location and time with non-disabled peers, (3) mastery test exemption rates and students exiting special education, (4) excess cost grants and placing agency, (5) number and classifications of teachers and pupil services staff and (5) total special education expenditures.

In the near future you will receive an additional report which will include a detailed analysis of fiscal and demographic trends for the state. This report, which will provide information on a district-by-district basis, will permit you to compare your district with other districts statewide.

Russman v. Sobol

As you may be aware, the Court of Appeals for the Second Circuit, which includes Connecticut, issued a recent decision in which the obligations of LEAs to provide services to children enrolled by their parents in nonpublic schools, particularly parochial schools, was the primary issue in the case. The following clarifies the obligations of school districts in Connecticut to provide services to nonpublic school children in response to this recent holding.

A Bureau memo was initially distributed to Superintendents of Schools and Directors of Special Education in 1990-91, revised in October, 1994, in which school districts were advised of their obligations to provide services to children placed in nonpublic schools by their parents.

Consistent with the memo, the district court of Connecticut issued a ruling in Crespo v. New Haven Board of Education, (1993) in which the court ruled on the obligations of LEAs to provide services to nonpublic school children by doing an analysis of the EDGAR regulations and OSEP policy directives on this issue. In sum, the Crespo court stated that : (1) LEAs must merely make a FAPE available for each parentally-placed child at the relevant public school should the child re-enroll there; and (2) consult with private schools to determine to whom the LEA will provide the IDEA Part B services. The district court relied heavily on the OSEP policy directives and SDE memos in reaching its conclusions.

The Russman court essentially rejected the OSEP policy memos which gave school districts discretion in the provision of services to nonpublic school children, and held, conversely, that the “statutes and regulations are more consistent with mandatory entitlements than with discretionary authority.” In sum, the Russman court found that the limiting factor in providing services on-site to nonpublic school children was a cost factor. The court gave the following examples to provide an interpretation of the language found in IDEA limiting the obligation of states to provide special education and related services to private school students “to the extent consistent with the number and location” of disabled children placed by their parents in nonpublic schools:

Number of students: If one occupational therapist can efficiently aid five disabled students and three therapists are available in a public school attended by fourteen such children, public school authorities are not required by the IDEA to provide a therapist to a private school with only one such student. In our view, the statute affords discretion to offer occupational therapy to the private school child only at a public school because of the higher per-student cost of providing it at the private school. The reference to the ‘number’ of students suggests only that school districts have discretion to deny on-site provision of services at private schools where economies of scale in providing the services at one place exist.

Location of services: ...we read the IDEA to mean only that, where the provision of services at a distant private school would entail significant additional costs, e.g., transportation, to be borne by the state, public school authorities may fulfill their IDEA obligations by offering the services at a local public school.

In sum, the Russman court stated: “Where the cost of special services does not vary with where they are provided, the IDEA and regulations regarding voluntary private school students make little sense if such service may be made available only in the public schools. The statute and regulations require that necessary services be provided to disabled private school students according to their needs rather than the name of their school and state that such services must be ‘comparable in quality, scope, and opportunity for participation’ to those offered to public school students.”

Given that the Russman court did not take into account the limitations on the expenditure of funds as stipulated in the EDGAR regulations, LEAs are advised to adhere to the following procedures in determining the amount, type and location of services to be provided to children placed by their parents in nonpublic schools:

1. The revised memo issued in October, 1994 should be followed in its entirety. (Copy enclosed)
2. LEAs should continue to complete their LEA applications as they have done so in the past, indicating that they have consulted with private schools to determine to whom the LEA will provide the IDEA Part-B services.
3. On a case-by-case basis, the PPT shall determine whether or not the location of services will be on-site at the nonpublic school, considering the cost factors cited by the Russman court.

In sum, LEAs are not required to spend any additional moneys, i.e. state or local, on the provision of services to children placed by their parents in nonpublic schools in response to the Russman decision. On a case-by-case basis, the PPT will determine, using the cost factors cited by the Russman court, whether or not services will be provided on-site at the nonpublic school.

If you have any questions regarding this issue, please contact Terri DeFrancis at (860) 638-4275.

FY 1997-98 Consolidated ESEA/Perkins/IDEA-Part B Applications And the Initial Idea-Part B, Section 611 Entitlement Per Child

In March, districts and agencies eligible for receipt of **IDEA-Part B, Section 611** entitlement grants in FY 1997-98 will receive application forms for that grant, together with forms for the IDEA-Part B, Section 619 (preschool), Perkins and ESEA grants, all components of the FY 1997-98 Consolidated ESEA/IDEA/PERKINS application.

For initial IDEA-Part B, Section 611 grants (for students aged 3-21), eligible districts and agencies will utilize a figure of \$400.00/child to prepare budgets for that grant. The \$400.00/child figure compares with \$305.00/child being utilized in the current year, a 31% increase.

The reason the Department is able to provide this significant increase for use by eligible districts and agencies in FY 1997-98 is that Congress made a major upward adjustment to the IDEA-Part B, Section 611 appropriation for utilization in FY 1997-98. The Congressional increase in appropriation to the IDEA-Part B, Section 611 entitlement is the largest in 20 years!

By alerting you to this significant increase **now**, the Department trusts that knowledge of the increased level of funding for this grant will enable you to solidify program development for the FY 1997-98 cycle and assist you in making personnel determinations at the earliest possible time.

The Congress did not increase the level of funding available in FY 1997-98 for the IDEA-Part B, Section 619 (preschool) grant; therefore, eligible districts/agencies can anticipate approximately level funding for FY 1997-98, assuming their eligible child counts remained stable.

Connecticut Learns

Connecticut Learns is a partnership in which employers, educators, students, parents, organized labor, state agencies and the community work together to effectively prepare students for the global marketplace and higher education. It is designed to motivate all youths, by providing enriched learning experiences and assistance in obtaining good jobs and continuing their education in postsecondary educational institutions. The goals of this partnership are ultimately to improve student performance and achievement and provide career opportunities for all students, beginning in elementary school and continuing through higher education or high-skilled employment. This high level of collaboration between the schools and the business community requires that both parties share common goals and purposes for student involvement. The primary question, "What do we want our students to know and be able to do?" should direct all our efforts in facilitating school-to-career opportunities for all of our students. To that end and in order to continue the initiative that was started under the state transition grants, Karen Palma-Halliday will become part of the Connecticut Learns office as of July 1, 1997. She brings a wealth of expertise as an effective agent for change and will add to the breadth and depth of technical assistance at a statewide level for the implementation of school-to-career. Susan Binkowski, Program Manager for Connecticut Learns, and Karen will be available to attend regional CONNCASE meetings, on a request basis, to provide an overview of the entire initiative and to schedule such meetings.

Attachments

cc: Theodore S. Sergi, Commissioner, Department of Education
Mitchell Chester, Bureau of Curriculum & Instructional Programs
Rosemary Baggish, CAPSEF
Edward Prenata, Council on Developmental Disabilities
Bonnie Moran, Special Education Advisory Council
Bureau Staff