



January 2008

**To:** District Superintendents of Schools  
Superintendents of Public Schools  
Directors of Special Education  
Chairpersons, Committee on Special Education  
Parents, Individuals and Organizations Interested in the Education of Students with Disabilities

**From:** James P. DeLorenzo 

**Subject:** Provision of Special Education Services to Students with Disabilities who are Instructed at Home by Their Parents

This memorandum is to inform you of a ruling relating to the provision of special education services to students with disabilities in New York State (NYS) who are instructed at home by their parents (home schooled). The Individual with Disabilities Education Act (IDEA) requires that home schooled students receive special education services to the same extent that other parentally placed private school students receive services only if the home schools are recognized under State law as private elementary or secondary schools. As discussed in the June 2007 State Review Officer's (SRO) decision (Application of a Child with a Disability, No. 07-043), home schools are not recognized in NYS as private elementary or secondary schools pursuant to section 3602-c of the Education Law. As a result, it was determined that the provision of individualized education program (IEP) services by a public school district to students with disabilities who are home schooled students educated pursuant to section 100.10 of the Regulations of the Commissioner of Education is not authorized under IDEA or NYS law.<sup>1</sup>

While the public school district may not provide special education services to students that are home schooled, the Committee on Special Education (CSE) of the public school district must, if parental consent is obtained, conduct an individual evaluation of a home schooled student and who is suspected of having a disability and develop an IEP for such child, which would be the district's offer of a free appropriate public education (FAPE) to the student if the parents choose to enroll their child in a public school. However, the parents of a home schooled student may refuse consent to an initial evaluation and, if they

<sup>1</sup> The SRO also considered decisions of the Commissioner of Education that home instructed students are not enrolled in nonpublic schools for purposes of 3602-c of the Education Law (Appeal of Ando 45 Ed. Dept. Rep. 523, Commissioner's Decision No. 15,403 - finding that a home instructed student may not receive career education services through a Board of Cooperative Educational Services (BOCES); Appeal of Pope, 40 id 473, Commissioner's Decision No. 14,530 - finding that a home schooled student may not participate in driver education classes that are offered to students enrolled in the public school).



do so or if they do not respond to a request for such consent, the school district may not seek to compel the parent to have their child evaluated to determine eligibility for special education services. (Durkee V. Livonia Central School District, 487 F. Supp. 313 (W.D.N.Y. 2007); 34 C.F.R. section 300.300(d)(4)(1))

For home schooled students currently receiving special education services from the public school district, the CSE should reconvene to determine if any amendments are needed to ensure that FAPE is provided upon enrollment of the student in the public schools. Parents should also be notified of the need to review and revise, as appropriate, the child's individualized home instruction plan (IHIP) to address their child's special education needs. The IHIP would then be reviewed and approved by the school superintendent. As home instruction is, by its very nature, individualized and flexible, parents may provide for the special education needs of their children in different ways than those contained in the IEP.

Please share this memorandum with appropriate staff, including Directors of Special Education, CSE Chairpersons, Directors of Pupil Personnel Service and Principals. If you have any questions about this information, please contact the Office of Vocational and Educational Services for Individuals with Disabilities (VESID), Special Education Policy Unit, at 518-473-2878 or your Regional Associate at one of the following VESID Special Education Quality Assurance Regional Offices:

Central NY Regional Office	(315) 428-3287
Eastern Regional Office	(518) 486-6366
Hudson Valley Regional Office	(914) 245-0010
Long Island Regional Office	(631) 884-8530
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