

SCHOOL DISTRICTS TO PROVIDE SPECIAL EDUCATION SERVICES

July 18, 2008

The rules have changed yet again. You may recall that in January 2008, the New York State Education Department (SED) informed school districts they are not authorized to provide special-education services to home-schooled students. Under the Education Law, home-schooled students are taught by a private instructor (usually a parent or guardian) pursuant to an Individualized Home Instruction Plan.

On July 7, 2008, Governor Paterson signed into law Chapter 217 of the Laws of 2008, which essentially overrules SED's position on this issue. The new law directs that home-schooled students be considered students enrolled in and attending a nonpublic school, but solely for the purpose of Education Law § 3602-c, which enables students attending nonpublic school to receive special-education services. As a result, home-schooled students with disabilities are now entitled to special-education services. Ironically, this "new" rule was the generally accepted rule in New York before SED spoke on this issue in January.

The new law requires school districts to take prompt action. School districts must notify the parents of all home-schooled students with disabilities in their district that they may submit a written request for special-education services for their child. Generally, parents of students attending nonpublic school have until June 1 to request special-education services for the upcoming school year. Presumably, this deadline will also apply to home-schooled students. But since this recent rule change went into effect after this year's June 1 deadline, the statute contains the caveat that parents requesting special-education services for home-schooled students for the 2008-09 school year have until August 6, 2008, to submit their request. School districts must therefore notify parents of home-schooled students with disabilities of this new rule as soon as possible so they have the opportunity to comply with the upcoming August 6 deadline.

SED has indicated it will provide further guidance on this new law. It is hoped that SED will address a number of important issues arising from this new law, including (i) under what circumstances, if any, may a parent insist on the provision of special-education services at the student's home, (ii) whether the committee on special education is required to develop an individualized education service program for home-schooled students, which is generally required for students with disabilities attending nonpublic school in New York, as opposed to an individualized education program, which is required for students attending public school, and (iii) whether a

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school district that fails to provide timely notice of this new rule change may enforce the August 6 request deadline.

