

FIRST AMENDMENT PROJECT

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David Greene
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February 13, 2008

Mark Sanchez
President, Board of Education
San Francisco Unified School District
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President Sanchez:

I have been asked by Katy Franklin and Robin Hansen, members of the Community Advisory Committee for Special Education, to explain the constitutional and statutory protections raised by the refusal of the staff of the San Francisco Unified School District to print, translate and distribute a question and answer column the CAC sought to include in a newsletter the District had agreed to send to parents of special education students. As the attached letter makes clear, District staff refused to include the column because they disagreed with the content of that column. I write now to bring this highly disturbing matter to your direct attention.

The District's exercise of editorial control over the CAC's newsletter is disturbing for several reasons. First, pursuant to Education Code section 56191, the CAC is responsible to the Board of Education, not the District. The Education Code does not give the District any authority over the CAC. Second, one of the District's stated reasons for its editorial decision is that the CAC has acted beyond the scope of its statutory responsibilities. However, the District, in its letter fails to acknowledge that the CAC's duties enumerated in the law, Education Code section 56194, are exemplary ("The responsibilities shall include, but need not be limited to . . ."), not exclusive. It is quite absurd to think that providing guidance on commonly-arising issues to the relevant parent community is beyond the CAC's authority.

Perhaps of greatest concern, however, is the District's disrespect for the principles of freedom of speech. It is regrettable that the District has chosen to express its disagreement with the content of the CAC's column by simply removing it from the newsletter. This sets an unfortunate example for the students of the SFUSD – that when one disagrees with another's message, one should act to silence that message, rather than participate in the debate. The District had several alternatives available to it, each of which would have done less damage to free speech principles. The District could have, for example, requested space to provide its own answers to the questions posed. Or the District could have addressed its stated concern about an implied endorsement of the Q& A column by requesting that the CAC note prominently in the newsletter that the content was not endorsed by the District.

It is worth noting that the District has now exercised a degree of content-based editorial control over the CAC's publication that it may not exercise over a student publication. Cal. Educ. Code section 48907 ("Student editors of official school publications shall be responsible for assigning and editing the news, editorial and feature content of their publications.").

We hope that you will hold the District accountable for this regrettable conduct, and persuade them to allow the newsletter to be published as written.

Very truly yours,

David Greene
Executive Director/Staff Counsel

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General Counsel
Legal Department
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SAN FRANCISCO UNIFIED SCHOOL DISTRICT, 555 Franklin Street, 3rd Floor, San Francisco, CA 94102

MEMORANDUM

TO: Members of the Special Education Community Advisory Committee (CAC)

FROM: Miguel Márquez, General Counsel

DATE: February 4, 2008

RE: CAC Newsletter

It has come to the attention of the Legal Office that the SFUSD Special Education Local Education Plan Area (SELPA) agreed to print a newsletter twice per year to be sent to parents of students who receive special education services. Upon review, it was discovered that the newsletter contained inappropriate information in the "Question and Answer" section.

Please be assured that the District will honor its commitment to publish the CAC's newsletters. However, these newsletters will be subject to review and their content will be limited to the areas of CAC's responsibilities as enumerated in Section 56194 of the California Education Code. This includes advising the District, SELPA, and/or county office regarding the development, amendment and review of the local plan; recommending annual priorities to be addressed by the plan; assisting in parent education and in recruiting parents and other volunteers who may contribute to the implementation of the plan; encouraging community involvement in the development and review of the plan; supporting activities on behalf of individuals with exceptional needs; and assisting in parent awareness of the importance of regular school attendance.

The question and answer section you included in the last newsletter exceeds the scope of providing this type of assistance to parents. The questions are framed from a legal advocacy point of reference and provide only partial responses to the questions posed. Moreover, the newsletter will be printed and sent by the District; therefore, the contents could be construed to be endorsed by the District. For these reasons, among others, the question and answer section will be removed.

Please feel free to contact the Legal Office should you have any questions regarding this memorandum or the role of the CAC in general.

News

from the SFUSD COMMUNITY ADVISORY COMMITTEE FOR SPECIAL EDUCATION

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Contact the CAC for SpEd:

c/o Open Gate Resource Ctr.
2601 Mission St., #300
San Francisco, CA 94110
(415) 920-5040

<http://www.sfcacsped.org>

cac_specialed@hotmail.com

The CAC meets monthly, usually on the fourth Thursday of every month (except July and December).

Remaining meetings in 2007-08 are:

October 25, 2007

November 29, 2007

January 24, 2008

February 28, 2008

March 27, 2008 (date tentative)

April 24, 2008

May 22, 2008

June 26, 2008

Meetings begin at 7:00 p.m. after an informal half-hour of networking starting at 6:30 p.m. Childcare is available if reserved one week in advance. Limited parking is available; enter from 22nd St.

For more information or to join our mailing list, please contact Open Gate at 920-5040 or send an email to cac_specialed@hotmail.com.

Preparing for Transition

by Linda Tung, CAC Chair Emerita

What do we mean when we talk about Transition, and why should we be concerned about it?

There is an official Individuals with Disabilities Education Act (IDEA) definition of Transition, but what you as a parent of a child with a disability need to be concerned about is how it will impact you and your child, and how you can be prepared. Secondary Transition is the time when a student with an IEP moves from being the responsibility of the school district to being a member of the adult community. It means the student does not have one agency that is responsible for providing services. It means being integrated into the community as a whole, for education, recreation, health services, independent living and recreation.

If your child receives services through an IEP, some of your concerns will be addressed through the new IDEA. IDEA 2004 defines Transition Services as a “results-oriented process” to “facilitate movement from school to post-school activities, including post-secondary education, vocational education, integrated employment, adult services, independent living, and community participation”. This means that the school district is required to work together with families and agencies to prepare students for activities after leaving school. The services are supposed to be based on the student’s interests, and to have the student’s goals as the focus of all activities.

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Resources for Transition Planning

If your child is in 8th grade, it’s time to start planning for his or her post high-school transition. Here are some good places to start:

- “Transition to Adult Living – An Information and Resource Guide” is available online at www.calstat.org/info.html and can be ordered free of charge from CalSTAT, California Institute on Human Services, Attn: Transition Guide Request, 311 Professional Center Dr., Rohnert Park, CA 94928.
- “Transition Basics” online training: <http://tinyurl.com/2kbxfm>
- Support for Families of Children with Disabilities holds monthly Transition clinics, and also has a support group for parents of children who are transition age. You can find more information about these at www.supportforfamilies.org or by calling 920-5040.
- SFUSD has links to many more transition resources at <http://tinyurl.com/2toy2c>

Advocating for Your Child: Frequently Asked Questions

By Katy Franklin and Robin Hansen, CAC for Special Education

The recent Supreme Court ruling (Jacob Winkelman v. Parma City Schools) affirmed the importance of parental involvement in ensuring that children with disabilities receive an appropriate education.

Parents are the most important members of their children's IEP teams, yet too often we are excluded from discussions about our children's school placements and programs, and these decisions are made for us -- not with us. You are the expert when it comes to your child. You know your child best.

In order to be the best advocate you can be for your child, you'll need to know how to get organized and get educated.

Keeping meticulous records is crucial; it will help you to become a more effective coordinator of services. Examples of records you'll want to keep and organize:

- IEP and IFSP records;
- Letters and notes (from teachers, doctors, etc.)
- Medical records and therapists' reports;
- Test results and evaluations;

Get copies of all written information about your child. Keep a journal of events and concerns you have about your child's school program and make notes from conversations and meetings you have with teachers and administrators regarding those concerns.

Attend seminars and workshops. Read as much as you can about your child's disability and gather all the information you can about the latest therapies and treatments available. Join online list-serves and share information with other parents of children with similar needs and concerns. Support groups can also be very helpful for exchanging information. Finally, Open Gate has a Parent Mentor Program that offers individualized support from a mentor parent who can help you. Contact them at (415) 920-5040.

Q. *I disagree with a recent school district evaluation of my child — what can I do about that?*

A: If you disagree with the School District's assessment or evaluation of your child, you are entitled to get an Independent Educational Evaluation (IEE) at district expense. This request must be made in writing. You do not have to use an evaluator from a list the district gives you.

Q. *The school district says my child doesn't need some of the services I think he needs and won't put them into his IEP — what do I do?*

A: Whenever SFUSD denies your child a service or accommodation that you've requested -- ask them (in writing) to provide you with "Prior Written Notice." This notice should include:

- (1) A description of the action proposed or refused by them;
- (2) An explanation of why they proposed or refused to take the action;
- (3) A description of any other options that they considered and the reasons why those options were rejected;
- (4) A description of each evaluation procedure, test, record, or report they used as a basis for the proposed or refused action;
- (5) A description of any other factors that are relevant to their refusal.

Q. *During an IEP meeting, a school district employee said what I wanted for my child was "against district policy" — what can I do?*

A: If a district employee tells you that something you request for your child is "against district policy," ask for that policy in writing. District employees sometimes confuse procedures -- which are non-binding practices the district is accustomed to following -- with policies, which must be approved by the Board of Education and must conform with special education laws. Always tape record IEP meetings; and give the district 24 hours notice, in writing, that you are going to tape.

Q. *I'm unhappy with what is happening at school and wanted to have another IEP meeting, but the teacher told me that "I already had my daughter's IEP meeting this year." What can I do?*

A: IEP meetings may be held as often as you need them, not just once a year. Request an IEP meeting by sending a written request to the school. Once your request is received, the meeting must be held within thirty (30) calendar days, not counting holidays.

Q. *I want my son to be educated in a regular classroom and not in a special education class, but*

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Advocating For Your Child: Frequently Asked Questions *Continued from page 2*

the District says that they only have one inclusion program for preschool children and that is already full, what can I do?

A: If there is a program specified in the IEP as what your child needs, then that is what your child should get. The district cannot put your child on a “waiting list” for services or programs. The district will have to create a new program or pay for a private program.

Q. *The teachers at my son’s school say he cannot have speech services more than twice a week because the speech therapist’s caseload is too big. My son needs more speech, what should I do?*

A: If your son’s IEP states that he needs speech services more than two times a week, the district must provide the services that are specified in his IEP.

Q. *I do not speak English very well and need someone to interpret for me at IEP meetings. The teacher said that it is up to me to find someone to translate, is this true?*

A: No, that is not true. If you make a request, in writing, the school must provide an interpreter during the meetings, and also have the IEP documents translated for you. It is also a violation of your child’s privacy rights to have another student act as a translator.

Q. *I was told that my child no longer qualifies for speech because his cumulative speech score was 10%. Is this true?*

A: California law states that to qualify for the speech and language impaired (SLI) category, a child must have two scores that rank below 7%. However a child can have any two tests, including subtests, to qualify as SLI. An IEE from an independent therapist may show other scores that are deficient. Scores for auditory processing should also be considered in the SLI category. Also, if a child is eligible for services under any other criteria (Specific Learning Disability, Autism, etc.), then the 7% rule does not apply. Federal law states that the child must be expected to benefit from services in order to receive them, not held to any scores.

Q. *The school said my child would not receive continuing services until I sign the IEP. I am not sure I agree with everything on the IEP. What*

should I do?

A: Always take the IEP home to review it before you sign it, even if you think you agree with everything. Waiting to sign the new IEP will not discontinue any services your child is currently receiving. If you disagree with some of the IEP and agree with others, mark your initials next to each part of the IEP to which you agree. Next to the signature line, write that you do not consent to any part of the IEP that you did not initial.

Q. *The school staff told me it would be a good idea for my child to get tutoring over the summer. I can’t afford it. What should I do?*

A: If school staff thinks your child needs tutoring, they should be providing it or paying for it. Write a letter back thanking them for their advice about the tutoring and ask them how they will offer it.

Resources

Protection & Advocacy, Inc. (PAI)

Provides advocacy help for Californians with disabilities.

800-776-5746 TTY: 800-719-5798

<http://www.pai-ca.org>

Community Alliance for Special Education (C.A.S.E.)

Advocacy group and legal resource.

415-431-2285

<http://www.caseadvocacy.org>

Procedural Safeguards service of the California Department of Education (CDE) provides information regarding educational rights.

<http://www.cde.ca.gov/sp/se/> (800) 926-0648

California Special Education Programs: A Composite of Laws Parents of children with a disability may get an English-language copy of this book mailed to them at no charge. To get it, call 800-995-4099.

The San Francisco Mayor's Office on Disability

415 554-6789 TTY: 415 554-6799

Email: mod@sfgov.org

http://www.sfgov.org/site/mod_index.asp

Books: *From Emotions to Advocacy* by Pete and Pamela Wright, and *The Complete IEP Guide: How to Advocate for Your Special Ed Child* (5th Ed., Feb 2007) by Lawrence Siegel.

Web Resources For Parents, Teachers and Students

by Carol Kocivar, SFUSD Ombudsperson

The SFUSD special education web site provides a wide variety of resources for parents of children of all ages. In fact, parents of young children and parents of high school students have special web pages with information written just for them.

- **Find Special Education Services** under Departments on the San Francisco Unified School District web site: <http://www.sfusd.edu> or go to: <http://tinyurl.com/22kmvt>

Need in-depth information? Check out the online training opportunities on topics like Writing IEPs based on state standards, understanding Section 504, and transition, as well as the Developing Minds teaching strategies. A list of professional development opportunities as well as upcoming community events is also provided.

Where are special education programs located? You can find a list of all the programs at schools throughout the district in our Enrollment Guide.

Are you new to Special Education? You can use the parent guides on the front page of the web site to prepare for your first IEP meeting. These guides include information about setting goals, talking with your school about learning difficulties, and much more. They are available in many languages:

- **Parent Guide to Special Education:**
 - English: <http://tinyurl.com/2jf66q>
 - Spanish: <http://tinyurl.com/2plecx>
 - Chinese: <http://tinyurl.com/2nlpt6>

- **Does Your Child Need Help?**
 - English: <http://tinyurl.com/2l5npu>
 - Spanish: <http://tinyurl.com/2mytlv>
 - Tagalog: <http://tinyurl.com/2wmy7a>
 - Chinese: <http://tinyurl.com/32394l>

- **Special Education Enrollment Guide:**
 - English: <http://tinyurl.com/3d76sy>
 - Spanish: <http://tinyurl.com/2oyumb>
 - Chinese: <http://tinyurl.com/37sacu>

- **CAC Parent Handbook:**
 - English: <http://tinyurl.com/2jf66q>

- Spanish: <http://tinyurl.com/2plecx>
- Chinese: <http://tinyurl.com/2nlpt6>

- **Parents Rights:**

- English: <http://tinyurl.com/2tzxyo>
- Spanish: <http://tinyurl.com/3b4ezo>
- Chinese: <http://tinyurl.com/37ceas>

- **Services for Parents:**

- English: <http://tinyurl.com/2pfyo7>
- Spanish: <http://tinyurl.com/3aj6pb>
- Vietnamese: <http://tinyurl.com/3chy27>
- Chinese: <http://tinyurl.com/2oobdx>

- **Summary of Procedural Safeguards:**

- English: <http://tinyurl.com/2v4t8w>
- Spanish: <http://tinyurl.com/2ryuvf>
- Chinese: <http://tinyurl.com/2u52y2>

- **Parent Guide to Assessments and Accountability for Students With Disabilities:**

- English: <http://tinyurl.com/32734n>
- Spanish: <http://tinyurl.com/2n968q>
- Chinese: <http://tinyurl.com/2tgqzf>

- **Early Warning Signs:**

- English: <http://tinyurl.com/2np4rp>
- Spanish: <http://tinyurl.com/33qhaf>
- Vietnamese: <http://tinyurl.com/2uk958>
- Hmong: <http://tinyurl.com/35f7nl>
- Chinese: <http://tinyurl.com/35tr55>

- **Special Education Newsletter Fall 2006:**

- English: <http://tinyurl.com/36m3h7>
- Spanish: <http://tinyurl.com/2nhjvu>
- Chinese: <http://tinyurl.com/2kefta>

- **CAC for Special Education News (Feb. 2007):**

- English: <http://tinyurl.com/33mkqg>
- Spanish: <http://tinyurl.com/2jelld>
- Chinese: <http://tinyurl.com/338ybw>

Teachers and parent advocates can download material and distribute it. Parents can access information by using school or public library computers if they do not have a computer at home. Families may also use computers and photo-copying machines at Open Gate, 2601 Mission St., 3rd floor. 920-5040.

Upcoming Events

This fall, SFUSD and the CAC for Special Education are co-sponsoring Saturday video presentations of Rick Lavoie lectures at the San Francisco Public Library. For more information about this event, call 920-5040. To learn more about Rick Lavoie's work with students with learning disabilities, go to:

<http://www.ricklavoie.com>

Dec. 1 "Beyond F.A.T. City: A Look Back, A Look Ahead,"
2-4 p.m.

Community Advisory Committee for Special Education

c/o Open Gate Resource Center
2601 Mission St., #300
San Francisco, CA 94110
(415) 920-5040

<http://www.sfcacsped.org>
cac_specialed@hotmail.com

MEMBERS FOR 2007-08

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Thank you to Special Education Executive Director Deborah McKnight and SELPA Director David Wax for assisting the all-volunteer committee with this mailing.

Preparing for Transition

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Transition is a process, and to start at the beginning it's important to look towards the future. The first thing to consider is what are you and your child's goals for the future? This means more than just education. You must also consider employment, recreation, residential and healthcare concerns. What skills, supports and services will your child need to reach their goals, where should they receive them, and who should provide them?

If your child is still in elementary school, this may seem like a long ways off. But if your child is in middle school or high school, it's time to start thinking about it. Don't wait until the last year of high school. IDEA requires that Transition be addressed in the IEP no later than the student's sixteenth birthday. In fact, it's important to start thinking and planning early, and that means at least in middle school.

One of the most important issues is whether a student will be on track to graduate with a general diploma or with a Certificate of Achievement or Completion. Students who plan to graduate with a regular diploma must be enrolled in academic programs that meet state and local curriculum standards and admission requirements for postsecondary education. So during middle school you must familiarize yourself with both the state and local standards and requirements for graduation. You must make sure that both the placement and services will allow your student to participate in the classes that qualify. You also must consider whether adaptations or modifications may be necessary, both for instruction and for testing.

Students who do not meet the requirements for graduation with a regular diploma are eligible for special education until the age of 22. Again, in middle school you should be familiarizing yourself with the variety of services and placements that are available in high school that will help prepare your student.

It is never too soon to visit schools and classes at the next school level. Once you have observed the activities in the schools and the classrooms you will have an idea of whether the settings are appropriate for your student. Come prepared with questions, and don't be shy about approaching teachers, administrators, other parents and even other students to gather information about the programs.

It's also valuable to visit a number of schools, not only the one at the top of your list. There may be changes by the time your student is ready to move on, and it will also give a bigger picture of the variety of options available.