Making the Promise of

Least Restrictive Environment

a Reality for

New York City Private School Children

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Executive Summary

Request: The New York City Department of Education (NYC-DOE) should add Integrated Co-Teaching (ICT) as an option for services to parentally placed private school children in the Standard Operating Procedures Manual (SOPM).

Based on a 9-29-2014 letter from the United State Department of Education-Office of Special Education and Rehabilitation to the Sephardic Community Federation and TeachNYS, the Federal Government is encouraging private schools to discuss six classroom instruction inclusion models with their Local Education Agency (LEA) as part of the Individuals with Disabilities Education Act (IDEA) required Consultation Process. Our research of relevant NYSED and NYC-DOE government regulations, guidance letters and program descriptions did not find any language that restricted these models from being used in a private school with the special education teacher being paid with government funds. On the contrary, what we found is that state law, official state and local guidance require that inclusion classroom instruction models should be available to parentally placed children in private schools.

New York State Law requires that every special education child receive services in the Least Restrictive Environment (LRE). State Law and New York State Education Department (NYSED) official guidance requires every school district to offer equitable special education services to parentally placed private school students. NYS law defines equitable as the same range of services (not just same amount of $). The New York State equitable program regulation means that LRE also applies to how special education instructional services are delivered in a private school. The NYC-DOE schools rarely use the old pull out model also known as resource room (now known as SETSS in a separate location). Now, the NYC-DOE mostly recommends push in services (SETSS, Indirect SETSS or ICT) for children with an Individual Education Plan (IEP).

There are six separate classroom inclusion models in use in school districts across the country. The six models are consistent with Federal guidelines for a special education teacher working with children in a private school setting (and in accordance with the recommendations of the child’s IEP). Based on Federal guidance, hundreds of thousands of private school children could be benefitting from LRE, with a comparable range of services, that public school children already receive. The Integrated Co-Teaching model should be adapted for private school secular classes (English, Math, Science and Social Studies).

While some private schools have already been experimenting with one or more of the six inclusion models, most schools are reluctant to do anything without official guidance from the City. There are also national organizations that use the inclusion model in some of the states they operate in, but haven’t in New York due to lack of guidance. Since government funds are involved, private schools want to act responsibly and carefully.
**Background:**

The goal of this position paper is to discuss any possible issues with using public funds for implementing the special education inclusion classroom model in private schools. Today, there is a consensus among government, teachers, advocates and the academic research community that the classroom inclusion model is significantly better for children receiving special education than the old system of pullout, separate classes and segregated schools. The Federal Government and New York State have made Least Restrictive Environment the foundation for the body of laws that govern the delivery of special education services. The movement to inclusion in the public schools began over 25 years ago. While thousands of school districts across the country are transforming their special education programs to inclusion classroom, one large section of the population has not been able to benefit- parentally placed students in private schools. Today, in the NYC-DOE system, close to 88% of all children receiving some or all of their special education services in district general education classrooms. 240,000 school age children attend private schools in New York City or 18% of the total student population. The children receiving special education services in private schools should also be able to benefit from Least Restrictive Education and the inclusion model.

While public funded special education services are provided to private school children in New York City, only one instructional model is used- pull out Special Education Teacher Support Services (SETSS) also known as resource room. Private school children continue to receive services with an instructional model that has been deemed less effective for the vast majority of public school special education children.

Last year, our two organizations, Sephardic Community Federation and TeachNYS, wrote to the Federal Government to seek guidance on the permissibility under the Individuals with Disabilities Education Act (IDEA) of six separate instructional models of inclusion. After a meeting in Washington, the Office of Special Education and Rehabilitation (OSER) along with the Office of Non-Public Education prepared a three page official guidance letter (which applies to all school districts in all 50 states). States Department of Education has written guidance as per letter dated 9-29-14 (see SCF-TeachNYS letter to the Federal Education Department and response letter attachments).

The letter offers specific guidance to LEA’s and State Education Agencies (SEA). The main issue here is whether or not a general education private school student will benefit from public funded classroom inclusion model. The entire design of the inclusion model is for the benefit of the special education student. However, there is the possibility that there may be an “incidental benefit” to the general education student. The Federal Government requires that State and LEA use “reasonable measures” when determining if there are “incidental benefits” to private school children.

“The Department has previously advised that 34 CFR §300.141 would not prohibit other children in the private school from deriving a benefit that is incidental to the provision of the Federally-funded special education and related services to those parentally- placed private school children with disabilities designated to receive services under IDEA.”

The Federal Guidance Letter encourages private school representatives, here in New York and across the country, to raise the issue of the six instructional models with the Local Education Administration (New York City Department of Education) and the state education department (New York State Education Department).
1. **In New York State, Least Restrictive Environment (LRE) also applies to how publicly funded special education services are delivered in private schools**

There are two parts of New York State Education Department program guidance that are relevant here: **Least Restrictive Environment** and **Equitable Services**:

- **Least Restrictive Environment (LRE):** The New York State Education Department Continuum of Services for School Age Students with Disabilities (April 2008 and November 2013 update) covers all required policies and practices for school districts to follow for providing special education services. Least Restrictive Environment (LRE) is the foundation for the Continuum of Services:

  5. **What does LRE mean and how does it relate to the continuum of services options?**

  LRE refers to the extent special education services are provided to a student in a setting with the student's nondisabled peers and as close to the student's home as possible. The continuum of services identifies different service delivery models to provide specially designed instruction to a student with a disability. Some of the services such as consultant teacher and integrated co-teaching services are directly designed to support the student in his/her general education class. Others may or may not be provided in settings with nondisabled peers, depending on the needs of the student. This is why the documentation of "location" in the IEP is important.

- **Equitable services:** The part of the NYS Education Law and official guidance that is most relevant to parentally placed private school children deals with equitable services. For a school district to be in compliance with the equitable basis rule, NYSED requires that every school district must provide comparable programs. Equity is not just about money but about the actual “range of services” offered. Here is the official NYSED guidance language regarding equitable distribution of services:

  10. **What is meant by services provided on an "equitable basis"?**

  The term "equitable basis" means that special education services are provided to parentally placed nonpublic school students with disabilities in the same manner as compared to other students with disabilities attending public or nonpublic schools located within the school district. The new State legislation is intended to maintain the level of services provided to NYS nonpublic students with disabilities through IEPs under the former provisions of Education Law section 3602-c. Accordingly, parentally placed nonpublic students must be provided services based on need and the same range of services provided by the district of location to its public school students must be made available to nonpublic students, taking into account the student’s placement in the nonpublic school program. A nonpublic student may not be denied services that a public school student would receive based solely upon his or her status as a nonpublic student, nor can a district deny services to a nonresident nonpublic school student that a resident nonpublic school student would receive. The converse is also true-- a school district of location is not required to provide greater services to a nonpublic student than a public school student would receive under the Rowley standard (i.e., services reasonably calculated to enable the child to receive some educational benefit (458 U.S. at 206-07)).

2. **Beginning in 2016, the New York State Education Department (NYSED)** will be taking new steps to ensure that all students with disabilities can benefit from quality inclusive settings to the maximum extent appropriate.

“Special education is a service, it is not a place. The age-appropriate general education class in the student’s neighborhood school is the first placement of choice for all students, including those who have been identified as needing an Individualized Education Program (IEP). Removal or restriction from the school the child would attend if he/she did not have a disability or the general education classroom for reasons related to the student's disability is only appropriate if the student's IEP cannot be satisfactorily implemented in that setting, even with supplementary aids and services. Students with disabilities have a fundamental right under federal law to receive their special education supports in a classroom and setting that, to the maximum extent appropriate, includes students without disabilities.” Source NYSED Memo November 9, 2015 Policy relating to the Placement of Students with Disabilities in the Least Restrictive Environment.

In a memo dated November 9, 2015, NYSED Chancellor Mary Ellen Elia requested that the New York Board of Regents agree to pass a resolution strengthening inclusive classroom practices and availability for school districts across New York State. NYSED’s commitment to inclusive classrooms should also extend to parentally placed children in private schools. Children receiving publicly funded special education services should have the same right to the benefits of inclusive classroom practices. Otherwise, this group, which is 14% of the total statewide school population, will be forced to receive what are widely considered less effective services.

**What the Research Tells Us:** Research that demonstrates the value and benefits of inclusion, not only for students with disabilities, but also for communities, schools, families, and children without disabilities is compelling. A few of these research-based findings are highlighted below:

- Students with disabilities in inclusive classrooms (i.e. classrooms in which students with disabilities are provided evidence-based and specially-designed instruction) show academic gains in a number of areas, including improved performance on standardized tests, mastery of IEP goals, grades, on-task behavior and motivation to learn.

- The use of evidence-based instructional strategies found in inclusive classrooms, such as peer tutoring, cooperative learning groups, and differentiated instruction, have been shown to be beneficial to all learners.

- Students with intellectual disabilities educated in general education settings score higher on literacy measures than students educated in segregated settings.

- The time a student with a disability spends in a general education classroom was positively correlated with: fewer absences from school; fewer referrals for disruptive behavior, and better outcomes after high school in the areas of employment and independent living.

Source: Policy relating to the Placement of Students with Disabilities in the Least Restrictive Environment 11-9-2015

The 33 page NYSED November 9th Memo provides a solid set of arguments as to why school districts must do more to increase the participation in high quality inclusive practices. NYSED also prepared a 54 page Power Point Presentation for the Regents members to use as part of the consideration of the new policy. The New York City Department of Education (NYC-DOE) can use the November 9th Memo as additional guidance for extending the benefits to parentally placed private school children.
3. **NYSED and NYC-DOE rarely recommend using pull out services. Special education services, SETSS and ICT, are provided in the General Education Classroom.**

The New York State Education Department and the NYC-Department of Education both have very clear guidance that pulling a child out of the general education classroom should only be used when a general education classroom model (SETSS or ICT) will not work. “Resource room services are small group supplementary instruction that cannot otherwise be provided during the student’s regular instructional time” (source: NYSED Continuum of Special Ed Services). The NYC Department of Education Flexible Program Guide (FPG) is the document with specific instructions for providing IEP based services for students attending any of the 1,700 schools in the 32 Districts. The underlying basis for the FPG is Least Restrictive Environment (LRE). For every single grade, K to 12, the DOE instructions are very clear: all services should be provided in the general education classroom. The Resource Room or pull out option is now rarely recommended. The DOE offers three services: Direct SETSS, Indirect SETSS and ICT.

“For too long, educating students with disabilities in New York City has meant separating them from their general education peers. We know that this model leads to some schools over-serving students with disabilities, while others under-serve them. Most importantly, we know that not all NYC students are graduating ready for independent living, college and careers. In order to better support students with disabilities, the NYC Department of Education is implementing a special education reform throughout the City starting in September 2012. The goals of the reform are to:

- close the achievement gap between students with disabilities and their peers without disabilities;

- increase access to and participation in the general education curriculum for students with disabilities;

- and build school-based capacity to support the diverse needs of students with disabilities through greater curricular, instructional, and scheduling flexibility.

To assist schools in implementing the special education reform, we have created this Flexible Programming Guide to highlight some of the special education programs and services available for students with specific needs and provide schools with some concrete examples of innovative models that address students’ needs in the appropriate least restrictive environment. In particular, we have selected 6 examples that reflect common situations schools have encountered in implementing the special education reform in New York City.” source: NYC-DOE Flexible Programming Guide 2012.

The DOE Flexible Programming Guide provides 26 different examples of how students can be moved to a Less Restrictive Environment based on individual needs. Many of these students had been learning in a self-contained class and are now in an ICT class or receiving SETSS in a general education class. Of the 26 students, only one received a recommendation for the pull out model now call SETSS in a separate location.
4. **Large and Steady Increase in the Number of ICT Classrooms in NYC-DOE Schools**

Evidence of the NYC-DOE steady transition to the use of ICT classrooms can be found in recent data compiled by the NYC-Independent Budget Office (IBO) New York City Public Schools Demographics, Resources and Outcomes October 2015. The IBO data clearly shows that the NYC-DOE believes that ICT model is the by far the best strategy for helping special education students.

*In a three year period, the number of high school students with an IEP benefiting from the ICT model increased by 59% for English classes and 73% for math classes.*

### English ICT Classes

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Source: NYC Independent Budget Office October 2015

### Math ICT Classes

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<td>1300</td>
<td>33367</td>
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</table>

Source: NYC Independent Budget Office October 2015

For full documentation of NYC-DOE English, Math, Science and Social Studies CTT classes for both High Schools and Middle Schools, see appendix on pages 9 and 10 (CTT is known formally by the NYC-DOE as Integrated Co-Teaching or ICT).
5. Six Instructional Models of the Inclusion Classroom

The push in classroom has six established models based on the work of Dr. Marilyn Friend at the University of North Carolina at Greensboro (www.marilynfriend.com). Her work is cited in numerous places and she has been a consultant on inclusion with state and local education departments including the New York City-Department of Education. We also found a publication on inclusion, Co-Teaching A How to Guide: Guidelines for Co-Teaching in Texas, from the Texas Education Agency very helpful. The first three models are consistent with the NYSED Consultant Teacher service.

1. **One Teach, One Assist.** In this approach to co-teaching, the general education teacher would keep primary responsibility for teaching while the special education teacher circulated through the room providing unobtrusive assistance to the special education students as needed. The special education teacher in the supportive role monitors student work, addresses behavior issues, manages materials, and assists with student questions.

2. **Alternative Teaching:** In most class groups, occasions arise in which the students with an IEP need specialized attention. In alternative teaching, the general classroom teacher takes responsibility for the large group while the special education teacher works with a smaller group of students with an IEP. These smaller groups (comprised of only children with IEP’s) could be used for remediation, pre-teaching, to help students catch up on key instruction, assessment, and so on.

3. **Parallel Teaching.** On occasion, students’ learning would be greatly facilitated if they just had more supervision by the teacher or more opportunity to respond. In parallel teaching, the teachers are both teaching the same information, but they do so to a class divided into two groups: general education and special education students. Parallel also may be used to vary learning experiences, for example, by providing manipulatives to one group but not the other or by having the groups read about the same topic but at different levels of difficulty.

These three models above are consistent with the NYSED Consultant Teacher or the NYC-DOE Direct SETSS services. The three models below are consistent with the Integrated Co-Teacher (ICT) classroom model Model 5 Teaming is basically the same as the Integrated Co-Teaching (ICT) model used by the NYC-DOE.

4. **One Teach, One Observe.** One of the advantages in an inclusion class is that more detailed observation of special education students engaged in the learning process can occur. With this approach, for example, the general and special education teachers can decide in advance what types of specific observational information to gather during instruction and can agree on a system for gathering the data. Afterward, the teachers should analyze the information together. The teachers should take turns teaching and gathering data, rather than assuming that the special educator is the only person who should observe.

5. **Teaming:** In teaming, both teachers share delivery of the same instruction to a whole student group. Some teachers refer to this as having “one brain in two bodies.” Others call it “tag team teaching.” Most co-teachers consider this approach the most complex but satisfying way to co-teach, but it is the approach that is most dependent on teachers’ styles.

6. **Station Teaching.** In this co-teaching approach, teachers divide content and students. Each teacher then teaches the content to one group and subsequently repeats the instruction for the other group. If appropriate, a third “station” could give students an opportunity to work independently. As co-teachers become comfortable with their partnership, they may add groups or otherwise create variations of this model. This approach is beneficial because it allows teachers to create small group activities that are responsive to individual needs.
While there are six distinct models that two teachers can use to co-teach and collaborate, an inclusion classroom can certainly have more than one model in use. During the course of an hour or two, several models can come into play or blended. **Matching the Six Models of Inclusion to the NYC-DOE Continuum of Services:** The NYC-DOE defines SETSS as less restrictive than Integrated Co-Teaching (ICT). Therefore, when a school IEP team is making a determination of services for a child, SETSS is given before ICT. The first three models would qualify as SETSS and the models 4, 5 and 6 are closer to ICT.

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**Defining High Quality Inclusion**

High quality inclusive settings would be defined to mean that:

- instruction and configuration of classrooms and activities include both students with and without disabilities;
- students with disabilities are held to high expectations for achievement;
- special education and general education teachers intentionally plan teaching lessons to promote the participation and progress of students with disabilities in learning and social activities;
- individualized accommodations, supports, and specially-designed instruction are provided to students with disabilities to participate and progress in regular education classes and activities; and
- evidence-based services and supports are used to foster the cognitive, communication, physical, behavioral and social-emotional development of students with disabilities.

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6. **Request for inserting new language into the NYC-DOE Standards Operating Procedures Manual (SOPM) Regarding the Use of Inclusion Models in Private Schools**

Based on the New York State Education Department official guidance discussed in section 1 of this paper (highlighted in yellow), it is clear that NYSED wants the same range of services to be made available to private schoolchildren. In addition, there isn’t any language in the NYC-Department of Education official guidance that restricts the provision of SETSS services to private school students to only outside of the general education classroom. On the contrary, NYC-DOE believes strongly that for many special education children, they will receive the greatest benefit if the SETSS services are provided in the general education classroom (as highlighted in section 2). The widespread adoption of inclusion across New York City is further evidence of the importance of the inclusion. For some unknown reason, possibly because NYC has not issued clear guidelines, private schools in New York City and New York State have been providing SETSS services only by taking the child outside of the general education classroom.
To correct this situation, the New York City Department of Education should modify the existing language found on page 158 of the Standard Operating Procedures Manual: The Referral, Evaluation, and Placement of School-Age Students with Disabilities and includes the words in yellow shading:

“The IESP must indicate under program recommendation that the student is “parentally placed in a nonpublic school,” and, if appropriate for that particular student, must offer equitable special education services such as Related Services, Special Education Teacher Support Services, Integrated Co-Teaching (ICT), etc.”

Appendix 1.

Sources:

- New York State Education Department Continuum of Special Education Services for School Age Children April 2008 (updated November 2013)

- New York City Department of Education Flexible Programming Guide 2012

- New York City Department of Education: Special Education Services as Part of a Unified Service Delivery System (The Continuum of Services for Students with a Disability). Most current edition available on DOE website.


- www.MarilynFriend.com

- Co-Teaching A How to Guide: Guidelines for Co-Teaching in Texas, Texas Education Agency

Appendix 2:

What are SETSS and ICT?

**Special Education Teacher Support Services (SETSS):** Special Education Teacher Support Services (SETSS) are specially designed and/or supplemental instruction provided by a special education teacher. These services help your child stay in the general education classroom while receiving services from a special education teacher. The special education teacher may work directly with your child to support participation in a general education classroom and provide direct specially designed and/or supplemental instruction to your child. This may include adapting the content being taught or using different instructional methods such as visual aids, highlighted work sheets and simplified directions (this is called “direct” instruction). The special education teacher may also work with your child’s general education teacher to adjust the learning environment and/or modify and adapt instructional techniques and methods to meet your child’s individual needs (this is called “indirect” instruction).

SETSS may be provided in the general education classroom, or in a separate location outside of the general education classroom or in any combination of general education classroom and a separate location; When SETSS are provided in a group, the group may not include more than eight students; SETSS may be provided for as few as three hours a week and as much as 50% of each day; Your child’s IEP must state the number of periods a week that the services will be provided, whether those services will be provided directly with your child or indirectly with his or her general education teacher and where the services will be provided.
Integrated Co-Teaching (ICT): Integrated Co-Teaching (ICT) classrooms include students with disabilities and students who are non-disabled educated together with two teachers, a general education teacher and a special education teacher. The teachers work together and collaborate throughout the day to adapt and modify instruction for your child and make sure the entire class has access to the general education curriculum. Children receiving ICT may also receive related services, assistive technology, para-professional services or other supplementary aids and services as necessary. ICT may be provided on a full-time or part-time basis. The periods of ICT must be specified on your child’s IEP, along with the content areas of instruction (for example mathematics) in which he or she will receive the services. The number of students with disabilities may not exceed 40% of the total class register or a maximum of twelve students with disabilities in an ICT class.

Source: A Parent’s guide to special education services for school-age children. NYC Department of Education.
## Table 3.24: High School Core Subjects

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<th>Instruction Type</th>
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<td>5,544</td>
<td>11.6</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>12,161</strong></td>
<td><strong>318,024</strong></td>
<td><strong>26.2</strong></td>
<td><strong>13,268</strong></td>
<td><strong>349,418</strong></td>
<td><strong>26.3</strong></td>
</tr>
</tbody>
</table>

**Note:** CTI is Collaborative Team Teaching.