



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12230

July 1995

To: Chief Elected Officials of the Counties
Municipality Preschool Special Education Coordinators

From: Daniel W. Szetela, Associate Commissioner, Office of the Professions
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Subject: Use of Teachers of the Speech and Hearing Handicapped as Independent Contractors

Section 4410 of the Education Law requires municipalities to maintain a list of appropriately qualified individuals who provide related services (audiology, counseling, occupational therapy, physical therapy, speech pathology, medical services and other support services) to preschool students with disabilities. We write to clarify the qualifications needed by individuals who provide speech and language services to preschool students in such situations.

Related services are to be provided according to the preschool child's individualized education program. Allowable sites include: an approved or licensed prekindergarten or head start program, the work site of the provider, the child's home, a hospital, a State facility, or a child care location.

Section 8202 of the Education Law requires that all persons who practice speech-language pathology be licensed as speech-language pathologists or be otherwise authorized to practice under Article 159 of the Education Law. Section 8207(2) provides an exemption for persons employed by the Federal, State, or a local government, a public or nonpublic elementary or secondary school or an institution of higher learning, allowing such persons to perform the duties of a speech-language pathologist, audiologist, teacher of the speech and hearing handicapped or teacher of the deaf in the course of such employment.

The law does not allow teachers of the speech and hearing handicapped or teachers of the deaf to practice speech-language pathology as independent contractors unless they are also licensed speech-language pathologists. To fall within the exemption, there must be an *employment* relationship, and services must be provided in the course of such employment. However, while a municipality may not *contract with* teachers to provide speech-language pathology services, it may *employ* teachers of the speech and hearing handicapped on a temporary or part-time basis to provide these services. In the case of such employment, these teachers would be exempt from licensure.

Municipalities are urged to review their lists of related service providers to assure that individuals are providing services in a manner consistent with Section 8207 of the Education Law and Part 200 of the Regulations of the Commissioner of Education, and to take the necessary steps to ensure compliance with law and regulation. As an independent contractor, a provider of speech as a special education service must be both licensed as a speech-language pathologist and hold NYS teacher certification. The New York State Education Department is reviewing this matter as it relates to student access to services provided by appropriately-credentialed professionals, and is considering various actions that will neither compromise licensure requirements nor jeopardize the State's and school district's responsibility to provide a free appropriate public education to eligible preschool students with disabilities under the Federal Individuals with Disabilities Education Act.

Questions regarding this issue may be directed to one of the following offices:

- Office for Special Education Services (518) 473-2878
- Office of the State Board for (518) 473-0221
Speech-Language Pathology and Audiology