



236 Second Avenue. New York, NY 10003 Tel. 212-777-5966

By E-mail: RESOLUTIONCOMMENTS@HEALTH.NYC.GOV

By Fax: (212) 788-4315

Rena Bryant, Secretary
Board of Health
125 Worth Street CN-31
New York, NY 10013

Re: Repeal and Reenactment of Article 47 of the New York City
Health Code

Dear Ms. Bryant:

The Gateway School of New York is a special education elementary school which contracts with the New York City Department of Education to provide educational services to children with disabilities whose needs cannot be met in public school classrooms. The Gateway School is approved for school district contracts by the Commissioner of Education of the State of New York. We were chartered by the Regents in 1966 and currently serve about 60 students between the ages of 5 and 12. We are one of approximately twenty such approved private elementary schools in New York City.

Classes at Gateway (and in other private schools approved for school district contracts) are small and highly individualized. Our youngest children reach the age of five years in the calendar year in which they are admitted and are taught in groups of eight students in mixed age classes with two special education teachers. Since our classes include fewer than seven children under six years of age we have never been considered a "day care service," as such term is defined in the current Article 47, and have not been required to seek a day care permit.

We have recently been made aware that the proposed amendment of Article 47 defines a "child care service" as a program providing "child care" for "three or more (rather than seven or more) children under six years of age." I am writing to bring to your attention the fact that this change extends the requirement for a DOHMH Permit to kindergarten classes in approved special education schools which are already highly regulated and already required to meet (or exceed) Article 47 standards.

Extending "day care" (or "child care" in the new Article 47) status to kindergartens that are part of special education elementary schools that are approved for school district contracts would create an unnecessary layer of regulation that would impede the operation of our special education programs.

As a “child care service,” our kindergarten would be segregated to some degree from the rest of the elementary school, notwithstanding the educational merits of grouping children with special needs on the basis of similarity of need, rather than strict age or grade level. Grouping by “similarity of need” rather than age is, in fact, required by Regulations of the Commissioner of Education which allow three year age spans in special classes.

At present our schools operate under contract with the New York City Department of Education (“DOE”) and are regulated and visited by the VESID Special Education Quality Assurance Office of the New York State Education Department (“SED”). If we are required under the amended Article 47 to treat our kindergarten class as a “child care service,” we will be required to duplicate in different formats certain reporting requirements and will be required to provide separate spaces and services for our youngest children. Child Care Services require, for example, cots for napping and require teachers to document “guided physical activities” for Department of Health review. Children in our kindergartens are educated throughout the school day in accordance with each student’s approved IEP, and progress and services are monitored by Committees on Special Education.

Department of Health regulation of our kindergarten classes would result in unnecessary expenditure of public funds and would force on our schools paperwork requirements which are duplicative of DOE and SED requirements. Most important, because compliance with Department of Health regulations would, in some instances, be inconsistent with our mandate to meet individualized education needs, we strongly urge that Article 47, as amended, not be extended to cover kindergartens which are part of and located in New York State approved special education schools.

The problem can be resolved by excluding from the definition of the term “child care service” (§ 47.01), a kindergarten that is part of an elementary school that contracts with the Department of Education for special education services. The proposed re-enactment of Article 47 already excludes kindergarten classes that are located within elementary schools if they are operated by religious organizations or by the Department of Education. Special education schools that contract with the Department of Education are subject both to regulations of the Commissioner of Education (8 NYCRR § 200.7) and to a Requirements Agreement with the Department of Education. Such exclusion would, therefore, be fully consistent with the child protective objectives of the proposed Article 47. The following summary of ways in which special education kindergartens in SED approved schools already meet (or exceed) Article 47 standards may be helpful:

1. Teaching Staff Qualifications (§ 47.13)

All professional instructional and supervisory personnel in our schools must be fully certified. The DOE contract requires that our children be supervised by appropriately licensed or certified personnel from the time they arrive at school through the time of departure.

2. Criminal Justice and Child Abuse Screening (§ 47.19)

All persons having contact with children in our schools are required by DOE contract to submit to security clearance procedures. Personnel may not be in unsupervised contact with children until a fingerprint check has been submitted and cleared by DOE's Office of Personnel Investigation.

3. Supervision: Staff to Child Ratios and Group Size (§ 47.23)

Article 47 allows a ratio of fifteen students to one teacher (15:1) and a maximum group size of twenty five for children of kindergarten age. In contrast, special education kindergartens generally serve fewer than ten students (ours have eight) and there are always two teachers in addition to specialized therapists in each classroom.

4. Health of Children and Staff (§ § 47.21, 47.29, 47.31, 47.33)

The DOE contract requires that students in our schools show proof of required immunizations and annual physical examinations. Teachers are also required to provide medical clearances, including proof of a tuberculin skin test or chest x-ray and a history of immunization.

5. Physical Facilities (§ 47.39)

Physical facilities in approved schools are subject to review and approval by the State Education Department and are also subject to Articles 45 and 49 of the Health Code. While kindergartens in approved schools (unlike child care services) can be above the third floor (Gateway expects its new elementary school to occupy fifth and sixth floor space), safety concerns are fully addressed. Evacuation plans are supervised by the local Fire Department and schools have higher ratios of adults to children to assist in emergency evacuation.

6. Fire Safety (§ 47.59)

Our schools are required to request fire inspections annually and to maintain fire drill evacuation procedures that are submitted for approval to the local Fire Department station and that include arrangements for children with special needs. In addition, fire drill requirements for our schools exceed those required by Article 47. Under State law we must conduct twelve fire drills during the ten months of the school year, eight during the first four months.

7. Safety: General Requirements

Our schools are required to prepare and maintain incident reports for school related crimes, incidents and injuries. Incidents must be reported to the Emergency Information Center of the Department of Education.

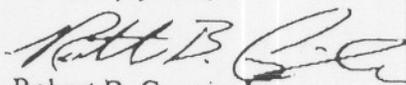
8. Program, physical activities, limits on television viewing, etc. (§§ 47.67,47.71)

All children in our classes have Individualized Education Programs (IEP's) which provide the guidelines for the educational program and which are consistent with State Education Department standards and curriculum requirements. Our we understand Department of Health concerns about closing schools which don't meet health and safety standards. Our schools are subject to visitation by both the New York City Department of Education and the State Education Department. Schools can be removed from SED's approved list (with automatic termination of the DOE contract) for programmatic deficiencies relating to any of the regulatory standards.

I hope this letter has been helpful to the Board of Health and will assist it in its deliberations about the proposed Article 47. Gateway has been serving New York children with special needs since it received its first provisional charter more than 40 years ago in June 1966. It is highly regarded by professionals in the field of special education, is accredited by the New York State Association of Independent Schools (NYSAIS), is a member of the National Association of Independent Schools and the Guild for Independent Schools of New York City, and serves as a testing site for the Educational Records Bureau. (Further information can be accessed at our website <http://www.gatewayschool.org>). We are, however, only one of some twenty similar excellent special education schools in New York City, many of which, I can say with assurance, share our concerns and will be pleased, at your request, to add to this comment.

Please feel free to call me if I can add further information.

Sincerely yours,



Robert B. Cunningham
Head of School