

Students

SUBJECT: SPECIAL PROCEEDING TO DETERMINE THE PHYSICAL CAPACITY OF STUDENTS TO PARTICIPATE IN ATHLETIC PROGRAMS

Upon the District's determination that a student will not be permitted to participate in an athletic program by reason of a physical impairment based on a medical examination conducted by the school physician, the student may commence a special proceeding in State Supreme Court to enjoin the School District from prohibiting his/her participation. Such special proceeding may be brought in the county in which the student resides or in the county in which the School District is located.

The petition shall be a verified petition of the parent or guardian of the student and the petition shall also have annexed affidavits of at least two (2) licensed physicians setting forth that, in their opinion, the student is physically capable of participating in an athletic program, that participation would be reasonably safe, and what, if any, special or preventive measures are needed to protect the student.

The court shall grant such petition if it is satisfied that it is in the best interest of the student to participate in an athletic program and that it is reasonably safe for him/her to do so. The District shall not be held liable for any injury sustained by a student granted such court order, *provided* that the injury is incurred during the student's actual participation in such court ordered athletic program and, further, that such injury is attributable to the physical impairment for which the court order was obtained.

Unless specifically prohibited by the court, an order granted pursuant to such special proceeding shall be considered valid and sufficient for subsequent years, *provided* that the student has not changed athletic programs and, further, that two (2) licensed physicians set forth *current affidavits* that, in their opinion, the student's physical impairment has not changed since the time of the original court order.

In no event shall a successful petitioner be entitled to costs in any such special proceedings.

Further, the District shall not be responsible for providing or bearing the cost of any special or preventive measures or devices needed to protect the student *unless* such special or preventive measures or devices are contained in the student's Individualized Education Program (IEP) recommended by the Committee on Special Education and such student is determined to have a disability as defined in Education Law Section 4401.

In accordance with the applicable provision of Education Law, a *physically impaired child* eligible to commence such a special proceeding shall be defined as any child determined by the school physician as ineligible for participation in an athletic program on the basis of State Education Department Regulations, the American Medical Association Guide for Medical Evaluation for Candidates for School Sports, or by any standard established by the School District.

(Continued)

Students

SUBJECT: SPECIAL PROCEEDING TO DETERMINE THE PHYSICAL CAPACITY OF STUDENTS TO PARTICIPATE IN ATHLETIC PROGRAMS (Cont'd.)

In accordance with the applicable provision of Education Law, an athletic program shall include intramural activities, interschool activities, extramural activities, and organized practice as defined pursuant to Commissioner's Regulations.

Education Law Sections 3208-a, 4401 and 4402
8 New York Code of Rules and Regulations (NYCRR)
Sections 100.2(k), 135.1 and 200.2(b)(1)
Section 504 of the Rehabilitation Act of 1973,
29 United States Code (U.S.C.) Section 794 et seq.
The Americans With Disabilities Act,
42 United States Code (U.S.C.) Section 12101 et seq.
The Individuals With Disabilities Education Act,
20 United States Code (U.S.C.) Section 1400 et seq.

Adopted: 2/13/01

Reviewed: 10/22/07 – No Changes