

QUICK REFERENCE ON SPECIAL EDUCATION: A GUIDE FOR CHILD ADVOCATES IN MASSACHUSETTS

KEY TERMS

- **Individuals with Disabilities Education Act (IDEA):** The federal law requiring public schools to ensure that each child with a disability who is eligible for special education receives a free appropriate public education (FAPE).
- **Free Appropriate Public Education (FAPE):** Federal law guarantees the right to a free appropriate public education to kids with disabilities to access public education. Access must be meaningful and sufficient to confer benefit. Services must be provided through an individualized education program (IEP) that enables the student to make effective progress.
- **Individualized Education Program (IEP):** A written document which must be designed to develop the student's educational potential and details evaluation results, current performance levels, goals based on specific areas of the curriculum, and specific services and accommodations to be provided to the student. Student may also receive accommodations for standardized testing (MCAS); any testing accommodations must mirror the accommodations provided for in other parts of the IEP. The IEP is created at a Team meeting.
- **IEP Team:** The IEP Team must include the parent(s), a representative from the district knowledgeable about and able to commit district resources, an individual able to interpret evaluation results, a special education teacher, a regular education teacher, etc. The parent is an equal and important part of the Team, and if the parent does not agree with proposed services/placement, the Team is not in agreement. A student is invited to participate in the Team meeting at the age of 14.
- **Least Restrictive Environment (LRE):** The LRE requirement ensures that students with disabilities are educated with typical peers to the maximum extent appropriate. Students should only be placed in special classes or separate schools when the nature or severity of the disability requires services beyond supplementary aids and services.
- **Parent:** For purposes of special education decision-making, parent means parent, legal guardian, person acting as a parent, foster parent, or an educational surrogate parent appointed in accordance with federal law. Upon reaching age 18, the student makes special education decisions, unless under guardianship or the student agrees to share decision-making. The Department of Children and Families (DCF) cannot make special education decisions for any child.

DETERMINING ELIGIBILITY FOR SPECIAL EDUCATION

- **Child Find:** Public schools have an affirmative duty to look for, find, and evaluate kids who need special education.
- **Initial Referral:** A parent or any person in a caregiving or professional position can refer a student to be evaluated for special education. Write to the district's special education director to request an evaluation and get proof of delivery.
- **Evaluation:** Within five days of receipt of the referral, the school district must send an evaluation consent form to the parent. This document lists the evaluations proposed by the district to determine the student's special education eligibility. The consent must be signed and returned before the school can perform testing. School must test in all areas related to the suspected disability. The form has a space for parents to request additional testing. Keep a copy and get proof of delivery. After receipt of consent form, the school district has 30 school days to complete the evaluations. Districts must provide parent with copies of evaluation reports at least two days prior to the team meeting, if requested by the parent in writing. Districts must re-evaluate students every three years.
- **Eligibility Determination Team Meeting:** This meeting must be held within 45 school days of the district's receipt of the signed consent form. At the meeting, the Team will review the evaluations and ask the following questions: Does the student have a disability? If yes, is the student making effective progress in school? If no, is the lack of progress a result of the disability? If yes, does the student require specially designed instruction to make progress or require related services to access the general curriculum? If yes, then the student is eligible for special education. **NOTE:** A parent can reject a finding of ineligibility. This must be done in writing within 30 days of the finding of ineligibility.
- **Request for an Independent Evaluation:** If unsatisfied with the district's evaluations, the parent has 16 months to request that the district fund an independent evaluation. If the student is eligible for free/reduced cost lunch, the district must pay in full; otherwise parent submits financial information, and may pay sliding scale fee. The Team shall reconvene within 10 school days of receiving the independent evaluation and consider whether a new or amended IEP is appropriate. If district pays for some or all of the evaluation, the results must be shared with the school.

TRANSITION PLANNING

- When a student on an IEP turns 14, a district must provide the student with transition services and invite them to take part in Team meetings.
- Transition services are activities that prepare students with disabilities to move from school to post-school life. The Team must utilize a Transition Planning Form, which describes the student's post-secondary goals and the skills needed to achieve these goals.
- The district must also complete a 688 referral to the appropriate agency if the student will require services beyond age 22 (DMH, DDS, MRC, etc.).

PLACEMENT

- A special education placement is the type of setting where the student will receive their special education services. Type and specific location of the placement is a Team determination.
- Types of placements: full inclusion, partial inclusion, substantially separate classroom, day school and residential school.
- Placement should be determined after the Team determines what services the student needs to make effective progress.
- A parent must consent to any change of placement. If the parent rejects a placement, the student has stay-put rights and remains at the last accepted placement until the disagreement is resolved.

504 PLANS

- Authorized under Section 504 of the Rehabilitation Act of 1973 and the ADA.
- 504 plans provide accommodations for students with disabilities to ensure equal access to education.
- To be eligible, student must have a physical or mental impairment that substantially limits one or more major life activities.
- Major life activities include walking, learning, concentrating, communicating, thinking, etc.
- 504 plans do not provide specially designed curriculum like an IEP.

RESPONSES TO A PROPOSED IEP

- Accepting the IEP: All services in the proposed IEP and the placement must be immediately implemented. Any newly proposed services will not be implemented until the parent accepts the IEP.
- Rejecting the IEP: No newly proposed services or new placement can be implemented. All previously accepted services and the last accepted placement will continue. For initial eligibility determinations (i.e., development of the first IEP), a rejection is equivalent to refusing special education services.
- Partially accepting/rejecting the IEP: Any accepted services must be immediately implemented. Any rejected services cannot be implemented. Parents must specify in their response which services, reduction in services, or lack of services they are rejecting.

NOTE: Once accepted, the parent is legally considered to be in support of an IEP and cannot later argue that the school district is at fault. A parent can reject a previously accepted IEP if they are unhappy with it. This puts the school on notice that the parent is no longer in agreement.

DISPUTE RESOLUTION OPTIONS

- Department of Elementary and Secondary Education (DESE) Problem Resolution System (PRS): Investigate complaints on school district non-compliance, including general education matters, within one year of the non-compliance.
- U.S. Department of Education Office for Civil Rights (OCR): Investigates complaints for any issues related to race, color, national origin, sex, age, or disability discrimination or retaliation for asserting rights to a safe learning environment within 180 days of the alleged discrimination.
- Bureau of Special Education Appeals (BSEA): Conducts facilitated Team meetings, mediations, or due process hearings for special education disputes within two years of the basis of the complaint.

RELEVANT CASELAW

- Andrew F. v. Douglas County Sch. Dist., 137 S.Ct. 988, 1001 (2017): FAPE requires that “an educational program be reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”
- Fry v. Napoleon Cmty. Schs., 580 US 743 (2017): Suit under Section 504. Exhaustion not required when suit not brought under IDEA and remedy sought is not for denial of FAPE.
- Dracut Schl. Comm. v. Bureau of Special Educ. Appeals of the Massachusetts DESE, et al. 1:09-cv-10966-PBS: Failure to provide appropriate transition services is a denial of FAPE.
- Cedar Rapids Cmty. Schl. Dist. v. Garret F., 526 US 66 (1999): Nursing services during school hours is a related service schools must provide if necessary for student to remain in school.
- Honing v. Doe, 484 U.S. 305 (1988): Discussion of the importance of stay-put and parental participation.
- In Re : Student v. Bay Path Regional Vocational Technical High School, BSEA # 18-05746: School cannot count medically-excused absences towards their attendance policy limit.
- In Re: Taunton Public Schools, BSEA #09-5294: Residential placement is appropriate only when a student requires educational and/or related services during all waking hours in order to make effective progress.
- In Re: Worcester, BSEA #09-3109: District must ensure that home-based services are delivered as well as included in the IEP, even when another agency is providing the services.
- In Re: Boston Public Schools, BSEA# 06-6542: Outlines the standard for joinder of a state agency.
- In Re: Attleboro Public Schools, BSEA #06-0034: A district is obligated to accommodate a student’s absences where the IEP acknowledged a nexus between the student’s disability and attendance.

TIPS FOR ADVOCATES

- Always request a complete copy of the student’s education records by writing to the school principal and special education director. Include a signed release of information. File a complaint with DESE’s Problem Resolution System if school district does not comply with timelines for providing school records.
- A parent should respond to a proposed IEP.
- A parent should reject any proposed reduction or termination of services with which they do not agree in order for the child to continue to receive the services.
- If a special education student is frequently sent home due to behavior, suggest the parent keep a log of dates and times. Students with special needs have extra protections when it comes to school discipline. See Quick Reference Guide on School Discipline.

RELEVANT STATUTES AND REGULATIONS

- Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et. seq.
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C § 794
- M.G.L. c. 71B: Children with special needs
- M.G.L. c. 71B, § 3 Observation guidelines for program evaluations
- M.G.L. c. 71B, § 5: Law governing financial responsibility for out of district placement when student moves from one town to another
- 603 CMR 23.00: Student records
- 603 CMR 28.02: Definitions, including disability definitions
- 603 CMR 28.03(c): Educational services in home or hospital
- 603 CMR 28.04: Referral and evaluation
- 603 CMR 28.05: The Team process and development of the IEP
- 603 CMR 28.06(6): Instructional grouping requirements
- 603 CMR 28.06(9): Educational services in institutional settings
- 603 CMR 28.08: Continuum of options for dispute resolution
- 603 CMR 28.10: School district responsibility (program and fiscal)
- 101 CMR 330.00: Rates for publicly funded evaluations and services

HELPFUL WEBSITES:

- IDEA 2004: <https://sites.ed.gov/idea/>
- DESE’s Problem Resolution System: <https://www.doe.mass.edu/prs/>
- U.S. Department of Education Office of Civil Rights (OCR): www2.ed.gov/ocr
- Bureau of Special Education Appeals: <https://www.mass.gov/orgs/bureau-of-special-education-appeals>
- Wrightslaw Special Education Law and Advocacy: www.wrightslaw.com
- Federation for Children with Special Needs: www.fcsn.org/rtsc/resources-for-everyone/ (including an annotated IEP)

The **Children’s Law Center of Massachusetts (CLCM)** is located at P.O. Box 710, 2 State Street, 2nd Floor, Lynn, MA 01903. Contact and related information available at www.clcm.org, call 781-581-1977 (toll-free 1-888-KIDLAW8), or find us on Facebook. The **EdLaw Project** is supported by the **Youth Advocacy Foundation of the Committee for Public Counsel Services**, located at 75 Federal Street, 6th Floor, Boston, MA 02110. Contact and related information at www.edlawproject.org, call our Helpline at 617-910-5829, or find Youth Advocacy Foundation on Facebook, Instagram, Twitter, and LinkedIn. **Revised April 2022.**