



FEDERATION FOR CHILDREN
WITH SPECIAL NEEDS



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FEDERATION FOR CHILDREN
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Understanding Basic Rights In Special Education

Parent Training and Information Center



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Workshop Goals

- Understand your basic rights under special education law
- Understand basic special education procedures
- So you can better participate in the team process, collaborate with your school team, and become a better advocate for your child

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Special Education Laws

Federal
Individuals with Disabilities Education Act (IDEA)
20 USC §§ 1400-1487

Regulations
34 CFR Part 300

State
Massachusetts Special Education Law
MGL Chapter 71B

Regulations
603 CMR Section 28.00

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What is the purpose of IDEA?

See 20 USC section 1400(d)(1)(A)

“The purpose of IDEA is to ensure that all children with disabilities have available to them a **free and appropriate public education** that emphasizes special education and related services **designed to meet their unique needs** and *prepare them for further education, employment, and independent living.*”

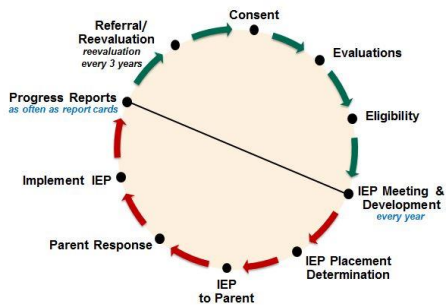
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What is the Special Education Process?





Who can Refer a Student for an Evaluation? (See 603 CMR 28.04(1))

- a parent
- any person in a caregiving or professional position concerning student's development
- A referral can be made at any time

A school district cannot refuse to do an initial evaluation to which parent has consented in writing.
(34 CFR 300.301, 603 CMR 28.04 (2))



Referral for Initial Evaluation (see 603 CMR 28.04(1))

- What might prompt a referral?
- Who may be referred?
- What are school district's child find obligations?



The Consent Form (See 603 CMR 28.04 (1)(a) and (2))

- School shall send the evaluation consent form to parent for signature **within 5 school days** of receipt of referral.
- Upon receipt of the signed parent's consent form, school shall arrange evaluation of student **within 30 school days**.

Tip: Request a copy of evaluation(s) on the consent form.

If it's not in writing, it did not happen.....



Which Evaluations are Required? (See 603 CMR 28.04 (2))

1. Assessment in all areas related to suspected disability

- Examples of some assessments:
 - functional behavioral assessments (FBA),
 - speech and language,
 - reading,
 - assistive technology,
 - occupational therapy,
 - physical therapy, etc.

2. An educational assessment by school district representative



Which Evaluations are Optional? See 603 CMR 28.4(2)(b)

- Comprehensive health assessment performed by a physician
- Psychological assessment performed by a:
 - licensed school psychologist,
 - licensed psychologist, or
 - a licensed educational psychologist
- Home assessment performed by a:
 - nurse,
 - psychologist,
 - social worker,
 - guidance counselor or
 - adjustment counselor



How Will You be Informed of Evaluation Results? (603 CMR 28.04 (2)(c))

- Evaluator shall summarize in written report:
 - procedures used,
 - results,
 - diagnostic impression,
 - student's needs, and
 - offer explicit means of meeting needs.
- Report shall be completed so it is available to parent at **least two days** before Team meeting.
- Parent must put the request for a copy of the report in writing. *Tip: Write the request on the Consent Form.*
- *If it's not in writing, it did not happen.....*



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When will the Team Convene? (see 603 CMR 28.05 (1))

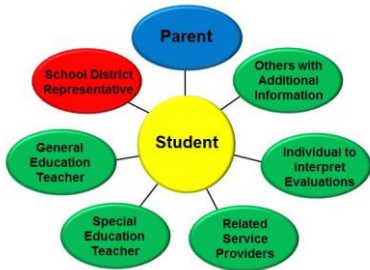
Within 45 school working days of receipt of parent's written consent, the school shall:

- Convene Team to review evaluation data;
- Determine whether student requires special education;
- If yes, develop an IEP and determine placement in accordance with law;
- Provide parent with two copies of IEP



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Who is on the IEP TEAM? (See 34 CFR 300.321 and 300.116(a)(1))





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Who can Excuse a Team Member?

An IEP Team Member can be excused from the meeting if the parent and school agree in writing that :

attendance of member is not necessary because this person's area of curriculum or related services is not being modified or discussed in meeting.

(34 CFR 300.321(e)(1))



the meeting DOES require this member's expertise

And member submits, in writing, to parent and IEP Team, input into development of IEP prior to the meeting.

(34 CFR 300.321(e)(2))

 **What are the Tasks of the Team?**
(See 603 CMR 28.05 (1))

Determine eligibility:

If found eligible:


1. develop an IEP
2. determine placement
3. Hold annual review of IEP and Placement
4. re-evaluate for eligibility every three years

If found not eligible:

1. Provide the parent with a written determination and notice of their rights (N-2 form) within 10 days

 **Who is Eligible for an IEP?**
(see 603 CMR 28.05 (2))



 **1 Does the child have a disability?**

- Autism*
- Developmental Delay
- Intellectual Impairment
- Sensory Impairment
(hearing, vision)
- Neurological Impairment
- Emotional Impairment
- Communication Impairment
- Physical Impairment
- Health Impairment
(ADD, AD/HD, Tourette Syndrome)
- Specific Learning Disability*

* See technical advisories issued by DESE



2

Is child *not* making effective progress due to the disability?

- documented **growth**
- in the **acquisition of knowledge and skills** (including social/emotional development)
- within the **general education program**
- with or without accommodations
- according to **chronological age** and **developmental expectations** and
- the **individual educational potential of the child**

Effective progress is NOT determined by passing grades or being promoted from grade to grade



3

Does child require *specialized instruction* to make effective progress?

Specialized Instruction is special education!

It is modifying the:

- **content**,
- **methodology** and/or
- **performance criteria** as appropriate to:

- address the **unique needs** of the child and
- ensure **access** to the general curriculum

See 34 CFR 300.39(b)(3)



3b

Does child require *related supports and services* in order to *access* general curriculum?

- | | |
|---------------------------|------------------------------|
| •Assistive Technology | •Psychological |
| •Audiology | •Rehabilitation Counseling |
| •Interpreting | •Recreation |
| •Occupational Therapy | •School Nurse/ Social Worker |
| •Orientation and Mobility | •Health Services |
| •Parent Counseling | •Speech/Language Pathologist |
| •Parent Training | •Travel Training |
| •Physical therapy | •Transportation |

Student can qualify for an IEP if he/she needs one or more related service(s) to make effective progress.(603 CMR 28.05(2)(a)(1))



The Massachusetts Autism Law

(See MGL Ch. 71B sec. 3)

With Autism Spectrum Disorder, IEP Team shall consider and specifically address:



1. Verbal and nonverbal communication needs
2. Need to develop social skills and proficiencies
3. Needs resulting from unusual responses to sensory experiences
4. Needs resulting from resistance to changes in environment/routine
5. Needs resulting from stereotypy/repetitive activities
6. Need for positive behavioral interventions, strategies, support
7. Other needs resulting from the disability that impact progress, including social and emotional development

See www.doe.mass.edu/sped/advisories/07_1ta.html



What is the Standard for Services?

(See 34 CFR 300.17 ; Bd. of Ed. v. Rowley 483 F.Supp.528 (SD NY 1980))

Free Appropriate Public Education (FAPE):

- **F**ree = No cost to parents
- **A**ppropriate = Services sufficient to enable student to make meaningful or effective progress according to his/her potential and toward achieving IEP goals.
- **P**ublic = Provided by public school district or under direction of the public school district
- **E**ducation = Preschool, elementary and secondary education, including extra curricular and non-academic school activities



What Happens at Close of Team Meeting?

Parents should receive summary of goal areas and completed service delivery grid describing types and amounts of special education and/or related services being proposed, along with attendance sheet.

- Expect proposed IEP in two calendar weeks.
- If parent prefers **not** wait 2 calendar weeks, school must respond with a completed IEP within 3-5 days of team meeting.

<http://www.doe.mass.edu/news/news.aspx?id=3182>





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What is the Content of the IEP?

(see 603 CMR 28.05(4))

- Parent/student input
- Student's needs (ASD, bullying protection)
- Accommodations, modifications, specially designed instruction and related services
- **Measurable goals & benchmarks used to gauge progress**
- **Service delivery grid**
- Schedule modifications including ESY
- Transportation
- How student will participate in *Standardized Testing*
- Placement

Starting at age 14, the *Transition Planning Form (TPF)* is used as the starting place to draft IEP.



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What are Parent's Response Options to IEP and Placement?

(See 603 CMR 25.05(7))

IEP Form

3 Response Options

1. Accept IEP in Full
2. Reject IEP in Full
3. Reject IEP in Part



Placement Form

2 Response Options

1. Accept Placement
2. Reject Placement

- Do not reject first IEP in full — accept in part/reject in part, at a minimum, so child gains **"stay put" rights to receive special education.**
- Can accept services offered while rejecting failure to offer more services.
- If reject in part, anything not rejected must be implemented immediately.



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What is Least Restrictive Environment (LRE)?

(34 CFR 300.114;603 CMR 28.02 (12))

To maximum extent appropriate, students with disabilities are educated with students who are not disabled.

Removal from general education occurs only when nature or severity of disability is such that education in regular classes with use of supplementary aids and services cannot be achieved satisfactorily.



Therapeutic day or residential treatment programs may be the LRE to meet the unique needs of some students.



Can the Parties Agree to Amend or Modify the IEP After the Team Meeting?

Parents and school may agree to change an IEP without another meeting, after Team meeting. (See 34 CFR 300.324(a)(4)(i))

Parent consent is still required for all changes to IEP.



- All individuals implementing IEP must be informed of changes to IEP and their responsibilities under IEP. (See 34 CFR 300.324(a)(4)(ii))
- IEP must be accessible at all times to everyone implementing IEP. (See 34 CFR 300.323(d)(1))



What Happens once the IEP is signed?

Progress reports are sent home as often as report cards.

Annual review: Team reviews IEP and progress of student every year. **Parent should determine what goals child has met before creating new IEP.**

Every three years *or sooner if necessary*, school - with parent consent - conducts a three-year re-evaluation.

Parents have right to request and receive a copy of school records.

Parents have an unconditional right to observe child in classroom and/or send in professional to conduct observation.

See DESE Advisory SPED 2009-2 Observation of Education Programs by Parents and Their Designees for Evaluation Purposes.





What if Team Decides Student is Not eligible for IEP? (See 603 CMR 28.05(2) (a) 2)

Team Chair notifies parents in writing of determination of ineligibility (N-2 form) within 10 school days of Team meeting.

School district may agree that, although ineligible for an IEP because child is making effective progress, child has a disability and is eligible for accommodates under a Section 504 plan.

Parents can reject finding of ineligibility, request an independent education evaluation and request a re-determination of eligibility.



What are the Differences between 504 Plans and IEPs?

- 504 plan is **not** "special education" under IDEA and MGL Chapter 71B
- Student is determined to be "making effective progress"
- Provides for **accommodations** and **related services** ONLY
- Enables **access** to general curriculum (no modifications of content, methodology or performance criteria)

REQUIRED for 504 Plan/IEP	NOT Required for 504 Plan
<ul style="list-style-type: none"> • FAPE in LRE • Disability Determination • Evaluations • Accommodations based on <i>need</i> • Related Services based on <i>need</i> • Accommodations on Testing • Appeals to BSEA, PQA or OCR 	<ul style="list-style-type: none"> • Written plan • Progress Reporting • Periodic Review • Discipline protections limited • Team decisions & meetings • Transition Planning



Options for Resolving Differences

Procedural Safeguards and "Due Process"

Local Options	Procedural Violations & Enforcement Issues	Voluntary Alternative Dispute Resolution	Due Process
Meeting with Special Education Director, Principal, and/or Superintendent	PQA Program Quality Assurance 781-338-3700	Facilitated IEP Meeting 617-626-7250	BSEA Hearing 617-626-7250
IEP Meeting	OCR* Office for Civil Rights 1-800-368-1019 <i>*if civil rights violation</i>	Mediation 617-626-7291	Resolution Meeting
Independent Educational Evaluation			



Independent Education Evaluation (IEE)

(See 603 CMR 28.04 (5))

There are three options to obtain an IEE.

Option 1: If parent disagrees with an initial evaluation or reevaluation, parent can request an IEE as a **second opinion** in area(s) assessed by school.

- Fully paid if student eligible for free or reduced price lunch or in custody of a state agency with a surrogate education parent;
- Public Funding of IEE is on a sliding fee scale with partial payment according to family size and income according to Federal Poverty Guidelines
- Parent may request IEE in one, more than one, or all areas assessed by school with 16 months of school evaluation.



Independent Education Evaluation (IEE) (See 603 CMR 28.04 (5))

Option 2: If parent requests IEE in an area not assessed by school, student does not meet income eligibility standards, or family chooses not to provide financial income level:

School shall either:

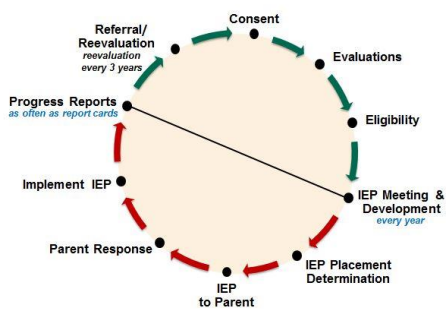
- Agree to pay for IEE, or
- Within 5 school days, file with BSEA and show school evaluation was comprehensive and appropriate.

Option 3: Parent may obtain an independent evaluation at private expense any time.

See DOE Administrative Advisory 2004-1 at www.doe.mass.edu/sped/advisories/04_1

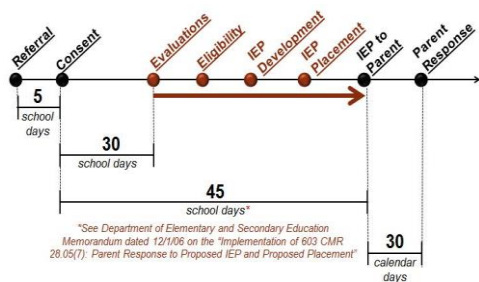


Review of Full IEP Cycle





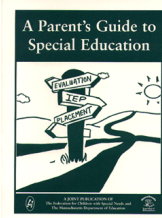
Review of Important Timelines





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Review of the Six Principles of IDEA



- Parent and Student Participation in the Team
- Appropriate Evaluation
- Individualized Education Program (IEP)
- Free and Appropriate Public Education (FAPE)
- Least Restrictive Environment (LRE)
- Procedural Safeguards (Due Process)

<http://www.fcsn.org/parentguide/parentguide.pdf>



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Strategies for Success

- Know your child's Basic Rights under law
- Use effective communication skills with school
- Be prepared to be an active participant in Team
 - What are your child's unique needs?
 - Is your child making progress?
 - Set high expectations for your child!
 - Don't allow IEP goals to stagnate from year to year!
 - Do you need to verify your child's progress with an evaluation?
- Access assistance from FCSN Call Center and other resources
- If you need support, bring support to Team meeting
- Network with your SEPAC and learn all you can from others
- Acknowledge and be grateful to teachers and therapists who make a difference in your child's life
- Three P's – positive, professional, persistent





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Resources

Federation for Children with Special Needs (FCSN) www.fcsn.org

Mass. Association of Special Education PACs www.fcsn/masspac

Parent's Guide www.fcsn.org/parentguide/pgintro.html

MA Department of Elementary and Secondary Education www.doe.mass.edu

Massachusetts Advocates for Children www.massadvocates.org

Disability Law Center www.dlc-ma.org

Massachusetts Arc www.arcmass.org/

NAMI National Alliance on Mental Illness www.naminmass.org

Parent Professional Advocacy League (PPAL) ppal.net/default/

Special Needs Advocacy Network, Inc. (SPAN) www.spanmass.org

Wrights Law Special Education Advocacy www.wrightslaw.com/



 The Federation is Committed to Serving Families of Children with Special Needs

- **Call Center** responds to thousands of parent phone calls and emails per year:
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(800) 331-0688
- Special Education **Webinars** and **Resources Topics** of interest for parents and professionals
- Annual March conference, **Visions of Community**
- **Training workshops, Parent Consultant Training Institute, and Planning A Life conferences** for parents and professionals at sites across the state
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