



CHILDREN'S LAW CENTER  
OF MASSACHUSETTS

# SPECIAL EDUCATION IN MASSACHUSETTS

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## INTRODUCTION

Under state and federal law, children with disabilities that affect their educational progress have rights to academic programming designed to meet their unique needs. They only are eligible for special education services if they need specially designed instruction in order to make effective progress and/or if they need related services in order to access the general curriculum.

Special education involves federal and state law. Massachusetts' laws governing this entitlement, often referred to as "Chapter 766," can be found in the Massachusetts General Laws Chapter 71B; the related regulations are found in the Code of Massachusetts Regulations, Chapter 28 of title 603. The major federal law governing special education is the Individuals with Disabilities Education Act, (IDEA) found at Title 42 of the United States Code, part 1400; the federal regulations are at Title 34 of the Code of Federal Regulations, Part 300. The following is a guide to the rights of children with disabilities who are entitled to special education, and some important terms that should help you to understand special education in Massachusetts. This packet of information is intended to be a guide only; you should consult an attorney for specific information concerning your child's case.

Please note that the IDEA was most recently reauthorized as the "Individuals with Disabilities Education Improvement Act of 2004." Most of its provisions are in effect beginning July 1, 2005. New federal regulations should be issued in the Summer of 2005 and should provide additional guidance on how the law will be implemented. Massachusetts law is still in effect and may give children additional rights. This packet does its best to incorporate provisions of both state and federal law applicable to special education.

## WHEN IS A STUDENT ELIGIBLE FOR SPECIAL EDUCATION SERVICES?

A student is eligible for special education or related services, **if**

1. the child is aged 3 to 21, **and**
2. the child has a **disability** consisting of one or more of the following impairments:
  - autism
  - developmental delay
  - intellectual impairment
  - sensory impairment (hearing, vision)
  - neurological impairment
  - emotional impairment
  - communication impairment
  - physical impairment
  - health impairment (includes ADD/ADHD)
  - specific learning disability **and**
3. as a result of the disability, the child is **unable to make effective progress** in the general education program, **and**
4. the child requires **specially designed instruction** in order to make effective progress **and/or** the child requires **related services** in order to benefit from special education or in order to access the general curriculum.

## **WHO CAN REFER A STUDENT FOR A SPECIAL EDUCATION EVALUATION?**

Schools have a duty to identify and assess the needs of children who may be eligible for special education services. However, a student may be referred for a special education evaluation by a **parent**, any **person in a care giving position**, or **any person in a professional position** who is working with that child. This can be a doctor, a teacher, a day care provider, a coach, etc.

## **WHO IS AUTHORIZED TO ACT AS A PARENT?**

The term “**Parent**” includes: 1) a natural, adoptive, or foster parent (unless state law prohibits foster parents from acting as parents); 2) a legal guardian (except where the child’s legal guardian is the state); 3) an individual acting in the place of a natural or adoptive parent (including but not limited to grandparent, stepparent, or other relative) with whom the child is living; 4) a person who is legally responsible for the child’s welfare; or 5) a surrogate parent appointed under the statute.

There are special rules for children who are “**Wards of the State.**” A “ward of the state” is defined as a child who is in foster care or is in the custody of a public child welfare agency who does not have a foster parent who meets the definition of “parent” described above.

A “**Surrogate Parent**” is an individual who is assigned by the state or the court overseeing the child’s care, to act in place of the parents. The individual assigned cannot be an employee of the state department of education, the local school district, or any other agency that is involved in the education or care of the child. Surrogate parents can be appointed when: 1) no parent can be located; 2) the child is a ward of the state; and 3) the child is an unaccompanied homeless youth as defined by the McKinney-Vento Homeless Assistance Act. A surrogate parent should be assigned within 30 days of the determination that a child needs one.

Note: there are specific rules relating to issues of domestic violence, restraining orders, and non-custodial parents, please check the regulations for these provisions

## **HOW SOON MUST THE EVALUATIONS BE COMPLETED AND DISCUSSED?**

If a student is referred for a special education evaluation, a school district must request parental consent for the evaluation **within 5 days** of receiving the referral. Generally, school districts do this by sending parents a form requesting permission to test the child. The parents must provide written consent before the school district can begin testing. The school district also must consult with parents about the content of the testing and the evaluators being used.

The school district must complete its assessments **within 30 school working days of receiving parental consent for testing**. Once the school's tests are complete, an educational Team meeting must be scheduled. This Team meeting must be scheduled **within 45 school working days of receiving parental consent for testing**. The parents can and should request (in writing) reports or summaries of the results of the tests in advance of the Team meeting. After a request is made, the school district must make copies of the reports of testing available to parents **2 days**

**before** the Team meeting. Note that assessments **MUST** include not only a description of the evaluator's findings, but also **WRITTEN**, specific and detailed recommendations designed to address the child's special needs and to assist the child in improving his or her access to the general curriculum.

### **WHAT KIND OF TESTING MUST THE SCHOOL DISTRICT PERFORM?**

The school must assess a child in all areas related to their suspected disability(ies), and must provide the following assessments:

- ◆ an **educational assessment** by a representative of the school district
- ◆ a **psychological assessment**,
- ◆ a **health assessment**
- ◆ a **home assessment**
- ◆ an **assessment by a classroom teacher**
- ◆ a **medical assessment by a physician**
- ◆ a **Braille assessment** (if warranted)
- ◆ additional assessments in **all areas related to the suspected disability** (for example, speech and language, physical therapy, occupational therapy)

Parents should carefully review the consent forms that are sent to them, and in consultation with any of their child's care-givers, add to the form any assessments that they believe may help clarify their child's disability.

Some parents may also wish to request **early intervention assessments** for children age 3 and younger, or **functional behavior assessments** for children whose behavior is interfering with their learning in school or at home.

### **MUST A PARENT CONSENT TO THE PROPOSED EVALUATIONS?**

No. The school district must try to obtain informed parental consent before performing its first evaluation for a child with suspected disabilities. The parent does not need to consent to any or every evaluation proposed by the district; the parent can consent only to certain evaluations. In addition, parental consent to an evaluation does not obligate the parent to agree to services or placement of the child in special education. **Note, however**, if a parent refuses or fails to respond to a request for consent to an initial evaluation, the district can file for a due process hearing in order to obtain consent from a hearing officer.

### **WHAT IS INVOLVED IN THE EVALUATION PROCESS?**

The child is evaluated in order to provide the child's educational Team with information to identify whether the child has a disability and if so, what services would allow the child to access the general curriculum. When evaluating a child, school districts must use a variety of assessment tools and strategies to gather relevant functional and developmental information,

including information provided by the parents, and information related to enabling the child to progress in the regular curriculum. Evaluative techniques used cannot discriminate based on race or culture and must be administered in the language and form most likely to yield accurate information. A child shall not be determined to be disabled if the determinant factor is limited English proficiency and lack of instruction in reading or math.

**Note:** assessments MUST include not only a description of the evaluator's findings, but also WRITTEN, specific and detailed recommendations designed to address the child's special needs and to assist the child in improving his or her access to the general curriculum.

### **WHAT IF A PARENT DISAGREES WITH THE RESULTS OF THE SCHOOL'S ASSESSMENTS?**

If a parent *disagrees* with *all or part* of the school district's assessments, the parent has the right to request an independent evaluation at school district's expense. The evaluation can be completed by a qualified professional whom the parent chooses, but the professional must agree to get paid at a rate that is set by the state. In addition, the parent is only entitled to independent evaluations in areas in which the school district tested (e.g., if the school completed a speech and language evaluation and the parent disagrees with its results, the parent has right only to an independent speech and language evaluation.)

When seeking an independent evaluation at school committee expense, a parent can make the request under either state or federal law. Parents must share the results of a school funded evaluation with the district. Once an independent evaluation is completed, a new Team meeting must be held to discuss the results.

#### **Independent Evaluation Rights Under Massachusetts Law**

Under Massachusetts law, parents whose children are eligible for free or reduced cost lunch are entitled to an independent evaluation that is fully funded by the school district. If child is not eligible for free or reduced cost lunch, parents may still be able to get an independent evaluation at school committee expense, however they must provide the school district with documentation of their income. Once it has this information, the school district must determine if the family is eligible for either total or partial funding of an independent evaluation under a sliding scale. School districts must keep family financial information confidential, and must return all documentation to families.

The district must decide and respond to the parent's request for an independent evaluation within five days of the parent's request, either by seeking income information from the family, if applicable, or agreeing to fund the evaluation. The parent must request an independent evaluation within 16 months of the date of the evaluation with which the parent disagrees.

#### **Independent Evaluation Rights Under Federal Law**

Parents can also request an independent evaluation under federal law. Under federal law, within five days of receiving a request for an independent evaluation, a school district must take action by either 1) agreeing to pay for the evaluation; or 2) filing for a hearing at the Bureau of Special

Education Appeals (BSEA) to show that the district should not have to pay for an independent evaluation because its evaluation was both comprehensive and appropriate. Unless the BSEA finds that the district's evaluation was comprehensive and appropriate, the district must pay for the evaluation. For families that do not qualify for a publicly funded evaluation under Massachusetts law, it may be worthwhile to proceed under federal law.

### **Independent Evaluations at Private Expense**

A parent can always get an independent evaluation at private expense, or through a parent's health insurance (including MassHealth.) Usually the parent will need a referral from a primary care or other physician. If a parent does get an evaluation at private or insurance expense, generally the parent can decide whether or not to share results with the school district.

### **HOW OFTEN MUST A SPECIAL EDUCATION CHILD BE RE-EVALUATED?**

If a child is a special education student, a re-evaluation should be completed every three years, unless the parent and the district agree otherwise. Because a child's needs can change quickly, we recommend that all special education students receive a complete re-evaluation every three years. In addition, a re-evaluation must be completed whenever 1) the school district determines that the child's educational achievement or functional performance warrants it; 2) the child's parent or teacher makes a request for re-evaluation; 3) there is a question about whether the child continues to be eligible for special education; 4) the Team needs to determine child's present levels of performance and educational need, and/or 5) the Team needs information about what changes to special education services are necessary to meet IEP goals or progress. In addition, before ending special education services, a re-evaluation must be completed that justifies removing the child's services. Note, however, that unless the parties agree otherwise, and unless the parent is using the parent's independent evaluation rights, the school district does not need to perform a re-evaluation more than once per year.

If a child has been previously evaluated for special education but has not been found eligible for services, if the school district receives a NEW referral for special education, the school district must try to obtain the consent of a parent for a child to be re-evaluated. In addition, if the parent, at a later date has new concerns regarding the child's progress or behavior, the parent can ask for another set of assessments.

### **WHAT IS A SPECIAL EDUCATION TEAM?**

A child's special education Team is a group of individuals and professionals who work with and know the student, and who are responsible for developing, revising and reviewing the child's Individualized Education Program (IEP). Every child who is evaluated for special education services, and/or who is a special education student, has an IEP Team that must determine if the student is eligible for services and if so, what services the student needs and the setting in which these services will be provided.

By law, the **Team** must be comprised of the following people:

- the parent(s)
- at least one regular education teacher
- at least one special education teacher or service provider
- a school official with the authority to commit resources
- a professional who is qualified to interpret and explain test results
- a representative of any agencies that may be responsible for transition services
- the student, if age 14 or over, and
- any other person(s) the parent or school district wishes to invite.

**A Team meeting cannot be held without a parent/guardian unless the parent/guardian consents.** Once a child is 14, s/he has a right to be present at a Team meeting, although s/he is not required to attend.

The parent or child can invite other people, including advocates, attorneys, outside psychologists, doctors, counselors, other professionals who work with the child or family, and/or other supportive individuals.

Under federal law, the presence of some of these individuals can be excused for all or part of a Team meeting if that particular Team member's input is not needed because the member's area of curriculum is not being modified or discussed in the meeting. Even if the member's area of curriculum IS being discussed, that person may also be excused if the parent agrees, in writing, and the member submits input in writing to the parent and the Team.

## **WHAT HAPPENS AT A TEAM MEETING?**

At an initial Team meeting and at every re-evaluation Team meeting thereafter, the results of any assessments should be discussed. When reviewing a child's initial or continuing eligibility for services, the Team must determine whether

- 1) the child meets the definition(s) of disability described by the IDEA;
- 2) the child's disability results in the child's failure to make effective progress in the general curriculum; and
- 3) the child needs special education and/or related services to make such progress.

If the answer to all three questions is yes, then the student is eligible for special education. (Please also see attachment entitled "Special Education Eligibility/Initial and Reevaluation Determination.") Once the Team determines that a child needs special education, that child has the right to a **Free Appropriate Public Education** in the **Least Restrictive Environment**.

The right to a **Free Appropriate Public Education** generally means that children who have disabilities, including disabled children who have been suspended or expelled from school, have the right to be educated at public expense, in a manner appropriate to meet their unique needs.

**Least Restrictive Environment** refers to the right of students with disabilities to be educated as much as possible with children who do not have disabilities.

### **WHAT IF A PARENT DISAGREES WITH A TEAM DECISION ABOUT A CHILD'S ELIGIBILITY FOR SPECIAL EDUCATION SERVICES?**

A parent is not required to consent to the Team's decision that the child is eligible for services.

If the Team finds that the student is NOT eligible for special education or related services, the Team should offer reasons and evaluation results that justify the finding, and the parent can reject the Team's conclusions. The parent should write a short letter rejecting the finding.

If the Team finds that the student IS eligible for special education or related services the Team should continue with the process and write an IEP (see below.) The parent can disagree either with 1) the initial finding of eligibility, 2) the services offered, or 3) the proposed placement where the child will receive the services. Please see page 8 for a description of the responses a parent can have to a proposed IEP.

### **WHAT IS AN INDIVIDUALIZED EDUCATION PROGRAM?**

The Individualized Education Program (IEP) is a written statement that has specific information about the child including:

- the child's current levels of achievement and functional performance;
- how the child's disability affects the child's involvement and progress in the general education curriculum;
- recent testing and evaluation results;
- measurable annual academic and functional goals so that the child can make progress in the general education curriculum;
- a description of how the child's progress toward meeting the annual goals will be measured;
- the special education and related services that will be provided;
- the date, location, frequency, and duration of services;
- accommodations necessary for standardized and district-wide testing; and
- any other pertinent information.

Beginning at age 16, the IEP also must contain appropriate measurable educational goals for after high school that are based on age-appropriate assessments related to training, education, employment, and, where appropriate, independent living skills. The IEP also must contain and provide transition services, including courses of study, that the child will need to reach those goals.

A new IEP is drafted at least once a year, or more frequently, if necessary. The IEP should be modified when the needs of the child dictate or the child's behaviors impede their educational progress, and the parent consents to the modification.

When developing the IEP, the IEP Team must consider the strengths of the child, the concerns of the parents, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. The Team must also consider special factors in the following situations: 1) if the child's behavior impedes the child's learning or that of others, the Team must consider the use of positive behavioral interventions, supports, and other strategies; 2) if the child is of limited English proficiency, the language needs of the child; 3) if the child is blind or visually impaired, the appropriateness of Braille instruction; 4) if the child is deaf or hard of hearing, the child's language and communication needs including opportunities for direct instruction; 5) the child's need for assistive technology devices and services.

All Team members have the right to provide input into the IEP.

### **HOW IS THE CHILD'S EDUCATIONAL PLACEMENT DETERMINED?**

The Team also decides the appropriate **placement** for the child, and how restrictive that placement should be. The child's placement could be any number of settings, for example, placement in a regular education classroom with aids and supports, placement in a resource room in a public school, placement in a private day school, or placement in a residential school.

It is important to remember that **placement is a Team decision** and depends on the unique needs of the student. It is not a decision that is left up to a school administrator or special education director. It is a violation of the law for an administrator or special education director to overturn the decision of the Team.

Once the Team determines that a student needs special education and/or related services and the child's placement, a Team meeting should be held at least every year to review the child's IEP and progress, and ensure that the child is in the least restrictive setting in which s/he can make progress.

### **WHAT HAPPENS AFTER THE TEAM MEETING?**

Immediately after the development of the IEP, and within **45 school working days** of receiving consent from the parent to evaluate the student, the school district must provide the parent with **2 copies** of the IEP.

After being presented with the IEP, the parent has **30 days** to make a decision about it. The must make separate decisions about services **and** placement.

The parent has the right to

- accept all or part of the services offered by the school;
- reject all of part of the services offered by the school;
- reject the omission of services that the parent thinks the child needs but that are not included in the proposed IEP; and/or
- accept or reject the proposed placement.

If the parent agrees with the services proposed by the school, the parent may accept the services as offered by signing the IEP and marking the “accept” option on the IEP. Remember, the parent has 30 days to make the decision, and may want to consult with other professionals such as therapists, doctors, or counselors before making the decision.

If the parent disagrees with the services that are proposed in the IEP, there are a number of options, including:

- The parent may reject the IEP in full. If the IEP is rejected in full, the child will continue to receive the last agreed upon special education services. Because school districts must have parental consent before the initial provision of special education and related services, if this is the first IEP provided to the child, the child will not receive any special education or related services that may be called for in the IEP.
- If the parent disagrees with the school’s evaluations, the parent may postpone a decision on the IEP and request an independent evaluation. Until the independent evaluation is completed and another Team meeting is held, the child will receive the services detailed in the last agreed upon IEP. If this is the first IEP, the child will not receive any special education or related services that may be called for in the IEP.
- The parent may reject the IEP in part. The parent may reject services that are proposed in the IEP and/or reject the omission of services that the parent believes the child needs. The rejected services will not be provided, but any services which are not specifically rejected will be delivered to the child.

The parent’s decision about the child’s proposed placement is separate from the parent’s decision about the child’s proposed services. The parent may accept one while rejecting the other.

## **WHAT IS THE EFFECT OF THE PARENT REJECTING ALL OR PART OF THE PROPOSED IEP SERVICES OR PLACEMENT?**

### **The child’s program after an IEP is rejected**

Unless the parents and the school district agree otherwise, the student has a right to stay in the last educational placement and with the last educational services that the parent and the school agreed upon, at least until a dispute over a new proposed educational placement is resolved. This is called the child’s right to “Stay Put.”

For example, if a student is receiving speech and language therapy two times per week, the school may propose an IEP which reduces the speech and language services to once per week. If the parent does not agree with this reduction, the parent may reject that portion of the IEP and the child should, under his or her right to “Stay Put,” continue to receive speech and language two times per week until the parent and school can agree upon the amount of services, or until a hearing officer resolves the dispute. This can apply to individual services, to an entire IEP, or to a placement. “Stay Put” guarantees that the child remains in his or her last agreed upon educational placement until a new Individualized Educational Plan is agreed upon or ordered.

## **WHAT ARE THE SCHOOL DISTRICT'S OBLIGATIONS IF THE PARENT DOES NOT RESPOND TO A PROPOSED IEP?**

If a parent fails to respond to an IEP within 30 days, the school district does not have a responsibility to provide the special education or related services that are contained within the IEP. In addition, the school cannot later be held responsible for failing to provide to the child a Free and Appropriate Public Education in the form of the proposed services.

## **WHAT ARE THE RIGHTS OF PARENTS AND STUDENTS UNDER IDEA?**

### **1) Parents of a child with a disability must be allowed to:**

- Examine and have copies of their child's school records, including evaluations, IEPs, discipline reports, progress reports, MCAS testing results, attendance, etc.;
- Be notified in writing of and participate in IEP meetings;
- Obtain independent evaluations and assessments of the child;
- Consent to or reject changes in placement and services;
- Have copies of all evaluations 48 hours prior to the eligibility meeting (requests for these evaluations should be in writing).
- File a complaint about any matter occurring within the last two years relating to the identification, evaluation, or educational placement of, or the provision of FAPE to their child.

### **2) Schools must provide prior written notice to parents, in their native language, and in some cases, obtain parental consent in the following circumstances:**

- Before evaluating or assessing the child;
- Before changing a child's identification as a child with or without a disability;
- Before changing or refusing to change a child's placement;
- Before convening annual, emergency, and/or manifestation determination IEP meetings regarding the child

### **3) The prior written notice must include:**

- a description of the district's proposed or refused action(s);
- an explanation of why the district proposes or refuses to take the action and a description of each evaluation, assessment, record and/or report that was used as a basis for the decision;
- a description of other options that the Team considered and the reasons why those options were rejected;
- a description of factors relevant to the school district's decision;
- a statement that the parents have due process rights, and the means by which the parent can obtain a copy of their rights;
- sources for the parents to contact to obtain assistance in understanding their rights;

- 4) **Parents must be given written notice of their rights.**
- 5) **States must create and pay for a clear and impartial process by which parents, students and schools can file complaints and requests for mediation for the resolution of disputes.**

### **HOW DO THE PARENTS AND SCHOOL RESOLVE DISAGREEMENTS OVER AN IEP?**

If a parent rejects an IEP in full or in part, the school district should send a notice of the disagreement to the state Department of Education (DOE). The DOE should then notify the parents of their rights and how they might be able to resolve the disagreement. Generally, if the parent and school cannot agree on services for the child, the parent may request either **mediation** or a **hearing** at the Bureau of Special Education Appeals (BSEA). The BSEA is an administrative division of the Massachusetts DOE that resolves disputes between parents and school districts over special education issues. (See referral information at the end of this packet.) Again, until a new placement is ordered or agreed upon, the child should “**Stay Put**” in the last agreed upon educational placement. Note also that in limited circumstances, school districts can also file for hearing against parents.

As a practical matter, prior to considering a hearing at the Bureau of Special Education Appeals, the parent should have evidence that the child needs the services the parent desires. For example, if a parent feels that a child can only learn to read if she has one-to-one reading instruction, the parent should have some independent professional who supports this belief. That support could be the results of an independent evaluation, the recommendation of a reading specialist, the results of the school’s evaluation, or other evidence. Both the hearing and mediation processes are intended to be accessible to families without legal representation. The hearing process is more adversarial and formal than the mediation process. At a hearing, similar to a court trial, the parents have a right to present documents and witnesses in support of their position.

Most importantly, special education is an entitlement. Children with disabilities in Massachusetts who are eligible for special education are guaranteed educational services which will provide for them a free and appropriate public education. Enclosed are some sample letters and a request for hearing form that may be helpful in negotiating the special education process in Massachusetts.

Best of luck in obtaining appropriate services for your child!!

#### **NOTE**

**For information on the rights of Special Education Students who have been suspended or expelled, please refer to our brochure “Protections for Special Education Students who are being Disciplined by School Officials.”**