



SPECIAL EDUCATION IN MASSACHUSETTS

Under state and federal law, children with disabilities that affect their educational progress are entitled to an academic program individually tailored to meet their unique needs. But, they are only eligible for services if they require 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, 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 that are afforded to 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.

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 caregiving 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.

WHEN MUST THE EVALUATIONS BE COMPLETED AND DISCUSSED?

If a student is referred for a special education evaluation, a school district must send parents a form requesting their permission to test their child within 5 days of receiving the referral. The parents must sign and return the consent forms to the school district in order for the testing to begin. After receiving parental consent the district must proceed with testing. The school district 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 permission to complete the testing. Once the school's tests are complete, a TEAM meeting must be scheduled. The TEAM meeting must be scheduled within 45 school working days of receiving parent's permission to complete testing. The parents can and should request reports or summaries of the results of the tests in advance of the TEAM meeting. After a parental request is made, the school district must make copies of the reports of testing available to parents 2 days before the TEAM meeting.

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 tests:

- ? an educational assessment by a representative of the school district
- ? additional assessments in all areas related to the suspected disability (for example, speech and language, physical therapy, occupational therapy)

Parents also have the right to request, or a school district may recommend any of the following assessments: a psychological assessment, a health assessment, a home assessment, an assessment by a classroom teacher, a medical assessment by a physician, a Braille assessment, and other assessments which may be required. 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. (In the past, state regulations required school automatically to complete some of these assessments; this is no longer the case under the State regulations. *State law, however, requires that the school districts complete all of the above-assessments. Thus, if a Parent would like these assessments completed as part of a child's evaluation, parents should request them and the school district should, by law, perform these assessments.)

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.

WHAT IF THE 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 committee 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 which the school district tested (e.g., school completes speech and language evaluation, parent disagrees with results, parent has right to independent speech and language evaluation.) When seeking an independent evaluation at school committee expense, a parent can proceed either under state or federal law. Parents must share the results of a publicly funded evaluation with the school district. Once an independent evaluation is completed, a new TEAM meeting should 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 provided with this information, the school district must determine whether 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 respond within five days to 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. Again, the professional the parent chooses to complete the independent evaluation must agree to get paid at a rate that is set by the state.

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 private health insurance. If a parent gets an independent evaluation at private expense, the parent generally can choose whether or not to share results with the school district.

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

Once a child is identified as a special education student, a re-evaluation should be completed every three years, or sooner if necessary. Parents (and teachers) can, however, request a re-evaluation at any time, or a TEAM meeting at any time. In addition, a re-evaluation can be completed whenever the TEAM determines that it is necessary to determine whether the child continues to be eligible for special education services, to

determine what the child's present levels of performance and educational needs, to determine whether the child has a continuing need for special education and related services, and/or to determine whether changes to special education and related services are necessary to meet IEP goals or to progress in the general curriculum. In addition, before terminating special education services, a re-evaluation must be completed.

If a child is not identified as a special education student, the school district must seek consent of a parent for a child to be re-evaluated if another referral for special education services is made. Thus, 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 TEAM is a group of individuals and professionals who work with and who know the student, and who are responsible for developing, revising and reviewing the child's individualized education plan (IEP). Every child who is evaluated for special education services and who is a special education student has a TEAM of people who must determine whether the student is eligible for services and if so, what services should be provided as part of the student's individualized education plan (IEP).

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. 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 or other individuals who work with the child or family.

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. The TEAM, as a group, determines whether a child has a disability, whether the child is making progress, and whether the child needs special education, that is, specially designed instruction and/or related services.

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 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.

At the TEAM meeting, the TEAM should decide what, if any, special education needs the child has, whether the child needs any related services in order to benefit from special education or access the general curriculum, and what modifications must be made to the child's regular school curriculum and/or accommodations must be made to allow the child to access the general curriculum. If the TEAM decides that the child needs special education services, any specialized instruction and/or related services should be incorporated into an Individualized Educational Plan (IEP) - a document that details the child's educational needs and the school's plan to meet those needs. The TEAM develops this IEP at the TEAM meeting and the TEAM decides what services go into the IEP. All TEAM members have the right to provide input.

The TEAM also decides the appropriate placement for the child, and how restrictive that placement should be. This could be placement in one of 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. In addition, the TEAM must also consider other special factors, including behavioral interventions and strategies if the child's behavior impedes the child's learning or that of others, the language needs of children with limited English proficiency, the possible need for Braille in cases where a child is visually impaired, the communication needs of a child, including the communication needs of a child who is hearing impaired, and the need for assistive technology devices and services.

Once the TEAM determines that a student needs special education and/or related services, a TEAM meeting should be held at least every year to review the child's IEP and progress.

WHAT HAPPENS AFTER THE TEAM MEETING?

Immediately following 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. At times, at or after a TEAM meeting, a parent requests more or different services than school personnel feel the child needs. After being presented with the IEP, the parent has 30 days to make a decision about it. The parent has the right to accept the services offered by the school, or to request a greater or lesser amount of services. 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. Again, because school districts must have parental consent before the initial provision of special education and related services, 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 rejected services will not be provided, but any services which are not specifically rejected will be delivered to the child. In addition, parents can assert Stay-put with respect to changes in the IEP. (See below.)

IF THE PARENT REJECTS THE IEP, WHAT PROGRAM SHOULD THE CHILD HAVE?

"Stay Put" is another right afforded to children who have IEPs, or who are eligible for special education services. "Stay Put" is the student's right to stay in the last educational placement that the parent and the school agreed upon, at least until a dispute over a new proposed educational placement is resolved, unless the parents and the school district agree otherwise.

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 or to an entire IEP. "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.

HOW DO THE PARENTS AND SCHOOL RESOLVE A DISAGREEMENT 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 Department of Education. 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 or school district may request either mediation or a hearing at the Bureau of Special Education Appeals (BSEA). The BSEA is an administrative division of the Massachusetts Department of Education 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.

As a practical matter, prior to considering a hearing at the Bureau of Special Education Appeals, the parent should have some 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, there should be some support for this position in addition to the parent's 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!!

ADDITIONAL RESOURCES FOR SPECIAL EDUCATION

The following is a list of further resources in special education. While the Children's Law Center is aware that some of the following list of groups do special education work, the decision to seek representation is an individual one. The Children's Law Center does not specifically recommend any of the following resources, and cannot guarantee whether these agencies will provide you with assistance.

Disability Law Center, Inc. Mass. Advocacy Center
11 Beacon Street, Suite 925 100 Boylston Street
Boston, MA 02108 Boston, MA 02116
(617) 723-8455 (617) 357-8431

Federation for Children with Special Needs Department of Education
1135 Tremont Street, Suite 420 Problem Resolution System
Boston, MA 02120 350 Main Street
(617) 236-7210 (ph) Malden, MA 02148
(800) 331-0688 (in MA) (781) 338-3737 (ph)
(617) 572-2094 (fax) (781) 338-3394 (fax)
TTY:
N.E.T. Relay 1-800-439-2370
Bureau of Special Education Appeals
350 Main Street
Malden, MA 02148
(781) 388-3300

Massachusetts Bar Association
Lawyer Referral Service
1-800-392-6164

Please also consider calling your local legal services organization. Some legal services organizations provide representation in the area of special education.

By law, each school district is required to have a Parent Advisory Council (PAC). These organizations are generally made up of parents who have disabled children in the local school district. For this reason many PACs can be a wealth of information about the local district, local advocates, and administrators. Please call your district's administration building for information on how to contact your local PAC.