BASIC RIGHTS
In Special Education

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Parent Training and Information Center
800-331-0688
www.fcsn.org/pti

Workshop Goals

The Basic Rights workshop will help you:

• Learn about special education law
• Learn the process—how special education law plays out in your school
• Understand your rights so you can effectively collaborate with your professional partners and become a more effective advocate for your child
Workshop Outline

The Law:
• Federal and State Special Education Laws
• Additional Federal and State Education Laws
• Disability-Related/Civil Rights Laws

General Education Supports:
• Early Intervening

Steps in the IEP Process:
1. Referral/Evaluation/Eligibility
2. IEP Development
3. Placement
   - Resolving Differences
   - Resources

Understanding Special Education Law

• A law or statute is passed by the legislative branch and signed by the executive branch of government.

• Regulations are written to guide implementation of the law.

• School districts develop policies and practices which must be in keeping with the law and in compliance with regulations.

*Note: Federal and State laws each have corresponding regulations. State laws and regulations can have more protections.
Special Education Law

Federal
Individuals with Disabilities Education Improvement Act
(IDEA 2004)
IDEA 2004 is the Federal Special Education Law.
http://idea.ed.gov/download/finalregulations.html

No Child Left Behind
(NCLB)
http://www.ed.gov/nclb/landing.jhtml

State
Massachusetts Special Education Law
Previously referred to as “Chapter 766”
http://www.doe.mass.edu/sped/

IDEA
Individuals with Disabilities Education Act

Individuals with Disabilities Education Act of 2004:
Improving educational results for children with disabilities is an essential element of our national policy of ensuring quality of opportunity, full participation, independent living, economic self-sufficiency for individuals with disabilities
The Six Principles of IDEA

1. Parent and Student Participation
2. Appropriate Evaluation
3. Individualized Education Program (IEP)
4. Free and Appropriate Public Education (FAPE)
5. Least Restrictive Environment (LRE)
6. Procedural Safeguards (Due Process)

The Big Picture in Federal Education Law: NCLB

The No Child Left Behind Act 2001 (NCLB)

Guiding Principles under NCLB are:
1. Statewide assessment system (MCAS)
2. Evidence Based Research for Teaching and Highly Qualified Teachers
3. Local Control of Funding and Curricula
4. Parent and Professional Partnerships

Contact Parent’s PLACE at FCSN for more information

www.pplace.org
State Law: Education Reform

Massachusetts Education Reform Act

- Massachusetts Curriculum Frameworks
- Local School District Curriculum Frameworks
- MCAS & MCAS ALT

Additional Federal Laws: Civil Rights

Section 504 of the Rehabilitation Act of 1973
Commonly referred to as “Section 504”
http://www.ed.gov/about/offices/list/OCR/index.html?scr=mr
617-223-9662

Americans with Disabilities Act (ADA)
http://www.usdoj.gov/crt/ada/adahom1.htm
The McKinney-Vento Homeless Assistance Act

- Schools must immediately enroll homeless children in school, even if they do not have the documents usually required for enrollment, such as school records, medical records, or proof of residency.
- Homeless children are allowed to stay in their previous schools, even if they no longer live in the district.
- Schools must provide free transportation for homeless children, whether the children live within the school district or outside the district.
- Homeless children do not have to apply for free school meals. Homeless shelter directors or education liaisons can authorize free meals.

- All schools have a Homeless Education Liaison who works with homeless families and school staff, shelter workers, and other service providers.
- The liaison helps homeless families:
  - enroll their children in school
  - get school services (IEP/504)
  - get copies of immunizations or medical records
  - learn about their rights
  - coordinate school transportation services
  - www.massresources.org

General Education Supports:

What is Early Intervening? It is Not Special Education

Early Intervening is a response to intervention (RTI)
- RTI website:
  - The school district will make every effort to help a child before making a referral to special education.
    - Academic and Behavioral Support to succeed in the general education environment
    - Students may receive education and behavioral evaluations, services, supports, including scientifically-based literacy instruction.
      [IDEA 2004: CFR 300.226]

Parents can request a special education evaluation during RTI.
The Special Education Evaluation Process:

**Timelines for Evaluations**

**Referral:** Parent or professional identifies a child as possibly needing special education and related services.

**Consent:** Within 5 school days of the receipt of a referral, the school district notifies the parent and asks for written consent to evaluate.

**Evaluation:** Within 30 school days of written parental consent, credentialed trained specialists complete the evaluation.
During the Evaluation Process:

Parents have a chance to talk to the special education administrator or his/her representative to discuss:

- Concerns and/or information about the child
- Reasons for the referral
- Content of the evaluation
  - Agree to some or all of the proposed assessments
  - Ask for additional assessments
  - Ask the school to accept an outside evaluation
- Who the evaluator will be & their credentials

[603 CMR 28.04 (1)(c)]

Evaluations/Reevaluations

⭐ Evaluation data drives the eligibility process.

Evaluations include:
- Evaluations/assessments
  - academic, developmental, and functional
- Information from parents
- Current local, state, and classroom-based evaluations
- Observations by teachers and related service providers
**Referral and Evaluation:**

*School districts cannot refuse to do an initial evaluation*

Evaluations continue to be required prior to a finding of no eligibility

Parents may request one evaluation per year in any area of disability or suspected disability.

Language of evaluations must be:
- provided in the child’s native language or
- other method of communication
- in the method most likely to provide accurate information
  *unless it is clearly not feasible to do so*

[IDEA 2004: CFR 300.304]

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**Required Evaluations**

• **Specialist Evaluations**
  in all areas related to a suspected disability.

Examples:
- functional behavioral assessments,
- assistive technology,
- vocational evaluations

• **Educational Evaluations**—
  includes information about educational history and progress in the curriculum.

Psychological is not required.
Eligibility Requirements

1. Does the child have a disability? What type?

2. Is the child not making effective progress in school due to the disability?

3. Does the child require specialized instruction to make effective progress or require related services in order to access the general curriculum?

Questions of Eligibility:

1) Does the Child Have a Disability? What Type?

- Autism
- Developmental Delay
- Intellectual Impairment
- Sensory Impairment: Hearing/Vision/Deaf-Blind
- Neurological Impairment
- Emotional Impairment
- Communication Impairment
- Physical Impairment
- Health Impairment
  - AD/HD
  - Tourette syndrome
- Specific Learning Disability: New evaluation procedures
  [IDEA 2004: CFR 300.8 (10)]  www.doe.mass.edu/sped/iep/sld
Federal Definition of Autism:

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (300.8(1)(i))

MA Autism Law

When a child has a diagnosis of: Autism Spectrum disorder …the IEP team shall consider and shall specifically address the following needs

1. The verbal and nonverbal communication
2. Develop social skills/proficiencies
3. Unusual responses to sensory experiences
4. Resistance to environmental change or change in daily routines
5. Engagement in repetitive activities/ stereotyped movements
6. Positive behavioral interventions, strategies and supports to address any behavioral difficulties resulting from autism spectrum disorder
7. And other needs resulting from the child’s disability impacting progress in the general curricula including social and emotional development

www.doe.mass.edu/sped/advisories/07_1ta.html
Questions of Eligibility:

2) Is the Child Not Making Effective Progress in School Due to the Disability?

Effective progress is documented growth:

1. in knowledge and skills (including social-emotional skills)
2. in the general education program
3. with or without accommodations
4. according to the chronological age and developmental expectations
5. according to the individual educational potential of the child
6. according to the learning standards of the MA Curriculum Frameworks and the school district’s curriculum.

*IS not determined by passing from grade to grade*

Questions of Eligibility:

3) Does the Child Require Specialized Instruction to Make Effective Progress?

Specially Designed Instruction *is* Special Education.

*It is:*

Modifying the content, the methodology or the performance criteria as appropriate to the needs of a child

• To address the unique needs of the child
• To address the child’s needs related to the disability
• To ensure access to the general curriculum
• In order to meet educational standards.
Questions of Eligibility:

3) Or Does the Child Require a Related Service in Order to Access the General Curriculum?*

- Assistive technology
- Audiology
- Counseling
- Interpreting
- Medical
- Occupational therapy
- Orientation and mobility
- Parent counseling and training
- Physical therapy
- Psychological
- Rehabilitation counseling
- Recreation
- School Nurse/ Social Worker
- Health Services
- Speech and Language Pathologist
- Transportation
- Other services with the exception of a medical device that is surgically implanted

*Note: Your child can qualify for an IEP even if he/she only needs one or more related service(s) (603 CMR 28.02(18) 34 CFR 300.24)

Continued Eligibility: Re-Evaluation

District must reevaluate once every 3 years, unless the parent and the district agree that it is not needed.

Reevaluation can take place sooner, but not more often than once per year.

Formal evaluations are required before a student can be discharged from IEP services. [IDEA 2004: CFR 300.303]
IEP Process: Prior to the Team Meeting:

Make a **written request** for copies of evaluation reports **including recommendations.**

603 CMR 28.04 (2)(C)

• You have a right to receive copies at least **2 days** prior to the team meeting. 603 CMR 28.05(1)
• Provide in advance any reports you wish the Team to review for the meeting.

The IEP Team Membership:

1. Child with a disability, if appropriate
2. Parents
3. A special education teacher
4. A regular education teacher
5. **District representative who is knowledgeable about district resources** 300.321 (4)(iii)
6. An individual who can interpret and explain the evaluation results

Other Individuals who may be invited by parent/school:
- Related Service Providers
- Experts
- Family Support System
- Respite Provider
   [IDEA 2004: CFR 300.321]
The IEP Team Membership:

Student Invited at Age 14

The Transition planning discussion takes place at age 14 in Massachusetts.

The student must be invited to that Team meeting.

- Transition Planning Form
  www.doe.mass.edu/sped/28MR/28m9.pdf
- Chapter 688 Referral
  www.doe.mass.edu/sped/688/brochure.pdf

The IEP Team Membership:

You have a right to know who will attend the Team as members.

As a courtesy, let the school district know if you are bringing someone.

Alternatives to physical meetings are allowed such as videoconferences, conference calls or virtual meetings. [IDEA 2004: CFR 300.328]
IEP Team Membership:

An IEP Team Member does **Not Have to Attend:**
*If* the parent of a child with a disability and the school agree, in writing, that

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

[IDEA 2004: CFR 300.321]

An IEP Team Member **May Be Excused:**
When the meeting **DOES** require a particular member’s expertise

*If* the parent and the school agree in writing

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

[IDEA 2004: CFR 300.321(e)-(ii)]

IEP Process:

**At the Team Meeting**

**Within 45 school days of the parent’s written consent,** the Team meets to decide:

**Eligibility:** Determine eligibility

**IEP Services:** If the child is eligible for special education, the team develops an IEP Plan

**Placement:** The team next discusses and determines placement for the child
Team Decision: Not Eligible

- Parents are notified in writing within 10 school days.

- The school district may agree that the child has a disability and offer a Section 504 plan.

- Parents can reject the finding of no eligibility then request an independent evaluation and request a re-determination of eligibility.

- A child dropped from an IEP has stay-put rights if parents request mediation or a hearing.

For Your Reference: 504 Plans vs IEPs

**504 Plan / IEP Require:**
- Team decisions
- Evaluation
- Appeals made to BSEA
- Accommodation on standardized testing
- Related Services

**504 Plan does NOT Require:**
- Written plan
- Progress reporting
- Transition planning
- Discipline protections
Placement

What is the Least Restrictive Environment?

To the greatest extent possible, in the classroom where the child would be enrolled if they did not have a disability.

Changing to a more restrictive environment should only be discussed after supplementary aids and services have been tried and the child has not met with success.

[IDEA 2004: CFR 300.114]

Nonacademic/Extracurricular Activities

Each school must take steps to:

Provide **supplementary aids and services** determined appropriate and necessary by the child’s IEP Team

Provide nonacademic and extracurricular services and activities for children with disabilities

Afford children with disabilities an equal opportunity for participation

[IDEA 2004: CFR 300.117]
Nonacademic/Extracurricular Activities

Examples include:

- Field Trips
- Counseling services
- Athletics
- Transportation
- Health services
- Recreational activities

[IDEA 2004: CFR 300.107]

Timelines:
At the Close of the Team Meeting

- Parents should receive at least a summary of their child’s goal areas and a completed service delivery grid describing the types and amounts of special education and/or related services being proposed.
  - If parents receive the above in hand at the close of the meeting they can expect the full proposed IEP no more than two calendar weeks.
  - If parents prefer to not wait 2 calendar weeks for the IEP, the district must respond to such requests with a completed IEP within 3-5 days of the team meeting.
**Timelines: After the Team Meeting**

*Parents decide:* Parents need to respond to the proposed IEP services and placement within 30 calendar days of the receipt of the IEP.

*Services begin:* If parents agree with the proposed IEP, the services begin immediately once it is signed and returned to the district.

**Parent Responses to the IEP**

**IEP Response Options**
- Accept IEP in Full
- Reject IEP in Full
- Reject IEP in Part

**Placement Form Response Options**
- Accept Placement
- Reject Placement

*TIPS:*
- Do not reject your first IEP in full—accept something
- You can reject the lack of services.
- Portions not rejected are accepted and implemented.
- You may reject an IEP at any time.
IEP Implementation

The school district has a responsibility to ensure that the child’s IEP is accessible to:

- every teacher,
- special education teacher, and
- any other service provider working with the child.

Each teacher and provider is informed of their responsibilities on the IEP including how to apply the IEP in their class:

- specific accommodations,
- modifications, and
- supports that must be provided as written in the IEP

[IDEA CFR 300.323]

After Services Begin

**Progress reports:** Parents receive progress reports as frequently as report cards.

**Annual review:** At least annually, the team reviews and rewrites the IEP.

**Reevaluation:** Every three years the school reevaluates the child unless the parent and school agree that re-evaluation is not necessary.
Amending or Modifying the IEP

After the Annual IEP Meeting

Amend or modify IEP: Parents and school districts may agree to change an IEP without a meeting, without redrafting the entire IEP.

[IDEA 2004: CFR 300.324 (a)]

Parent consent is still required for all changes to the IEP

*Note: These changes must be provided in writing to all individuals implementing the IEP

Resolving Differences:

Independent Educational Evaluations (IEE)

If the parent disagrees with the Team about eligibility, program, placement, or services, the parent should request an IEE in any or all areas assessed.

- Parents need to request the IEE within 16 months of the school’s evaluation.

- There is a right to only one IEE in each area of disability or suspected disability each year.
Independent Educational Evaluations (IEE)

If the parent requests an IEE:

- the parent chooses an independent evaluator. (The school district only pays the rate set by the state.)
  - The district may provide additional funds based on the “unique circumstances of the child” requiring additional hours of testing.
- there is a state voluntary cost-sharing program for parents with a sliding scale fee based on income. The family is asked to provide financial information.

*Within 5 days the district either:
  - agrees to pay or
  - initiates a hearing through BSEA to show that their evaluation was “comprehensive and appropriate.”

IEE Team Meeting

The Team reconvenes to consider an independent evaluation within 10 school days of receiving the report.

The Team meets to:

- consider the results and
- discuss how to include the results in the IEP.

This is a good opportunity to informally resolve any areas of disagreement.

If this meeting is unsuccessful, the next step is an appeal through the Bureau of Special Education Appeals (BSEA). *Note: The parent can pay or use insurance for an independent evaluation at any time.
Resolving Differences:

**Due Process Rights**

At the BSEA there are a number of options:

1. **Facilitated IEP** 781-338-6443
2. **Mediation** (can be requested at any time)
3. **Advisory Opinion**
4. **Resolution Meeting**
5. **Pre-hearing conference calls/ Settlement Agreements**
6. **Hearing**
7. **SpedEX** 781-338-6402

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Resolving Differences:

**If the IEP Process is Not Followed or Services are NOT Provided as Agreed**

**Contact the**

Massachusetts Department of Elementary and Secondary Education
Program Quality Assurance (PQA) to file a written complaint

781-338-3700

**This is different than filing with BSEA**
Resources

Federation for Children with Special Needs (FCSN) www.fcsn.org
Parent Training & Information Center at FCSN http://fcsn.org/pti/
MA Department of Elementary and Secondary Education www.doe.mass.edu
MA PIRC at FCSN-Parent’s PLACE www.pplace.org
Family TIES at FCSN www.massfamilyties.org
Disability Law Center www.dlc-ma.org
Massachusetts Arc http://www.arcmass.org/
Massachusetts Advocates for Children www.massadvocates.org
Mass. Association of Special Education PACs www.masspac.org
Parent Professional Advocacy League (PAL) http://ppal.net/default/