



FEDERATION FOR CHILDREN
WITH SPECIAL NEEDS

INFORMING, EDUCATING, EMPOWERING FAMILIES



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**BASIC RIGHTS
In Special Education**

Produced by the Parent Training and Information project at the Federation for Children with Special Needs, supported in part by grant #H328M09005 from the U.S. Department of Education, Office of Special Education Programs and the Massachusetts Department of Elementary and Secondary Education.

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Parent Training and Information Center

800-331-0688

www.fcsn.org/pti

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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

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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

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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.

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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)



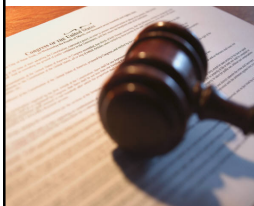
*Parents Guide to Special Education www.fcsn.org

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

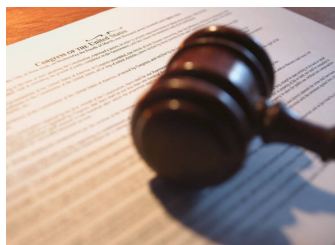
Section 504 of the Rehabilitation Act of 1973

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>





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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

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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.

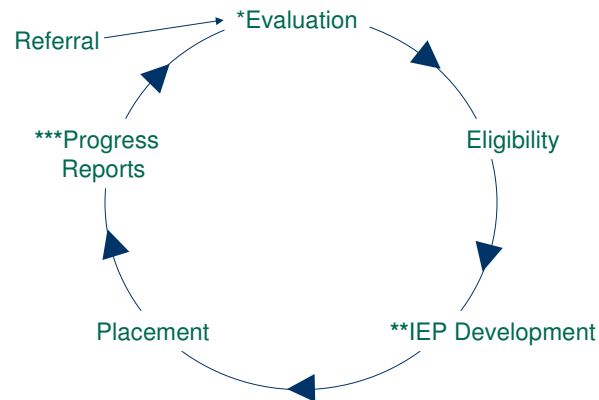
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Special Education: The Full IEP Process



* Every 3 years

**Updated once per year

*** As often as report cards

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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.

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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:

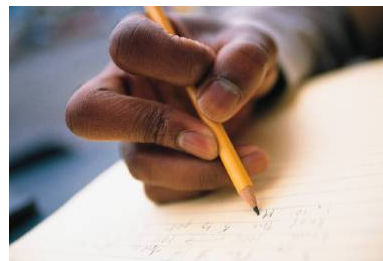
•Evaluations/assessments

- 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]



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



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



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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



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Questions of Eligibility:

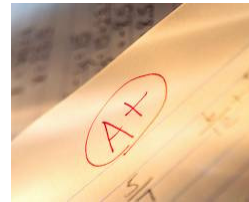
3) Does the Child Require Specialized Instruction to Make Effective Progress?

**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.



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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}

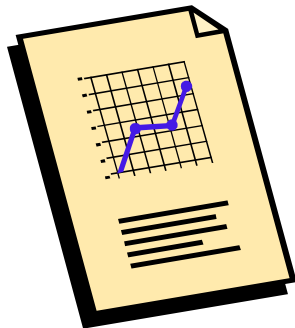
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Continued Eligibility: Re-Evaluation



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]

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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

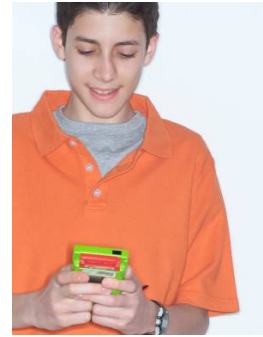
The student must be invited to that Team meeting.

•Transition Planning Form

www.doe.mass.edu/sped/28MR/28m9.pdf

•Chapter 688 Referral

www.doe.mass.edu/sped/688/brochure.pdf



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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]



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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]



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Nonacademic/ Extracurricular Activities

Each school must take steps to:

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

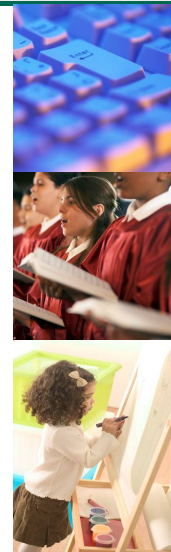
Provide nonacademic and extracurricular services and activities for children with disabilities

Afford children with disabilities an equal opportunity for participation

[IDEA 2004: CFR 300.117]

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Nonacademic/ Extracurricular Activities

Examples include:

- Field Trips
- Counseling services
- Athletics
- Transportation
- Health services
- Recreational activities
[IDEA 2004: CFR 300.107]
- Special interest groups or clubs sponsored by the school district
- Referrals to agencies that provide assistance
- Employment of students (both by the school district and assistance in making outside employment available)

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



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.

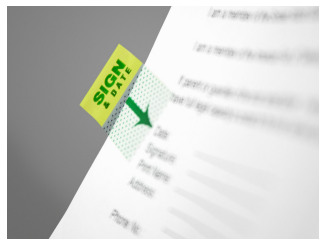
Services begin: If parents agree with the proposed IEP, the services begin immediately once it is signed and returned to the district.



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.



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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]



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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.

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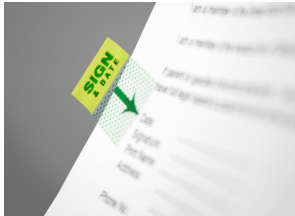
Amending or Modifying the IEP

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.

Resolving Differences:

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.”

Resolving Differences:

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



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****



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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/>
Parent's Guide <http://www.fcsn.org/parentguide/pgintro.html>