Understanding Basic Rights In Special Education

Parent Training and Information Center

Workshop Goals

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

**Federal**
- Individuals with Disabilities Education Act (IDEA)
  - 20 USC §§ 1400-1487
  - Regulations
    - 34 CFR Part 300

**State**
- Massachusetts Special Education Law
  - MGL Chapter 71B
  - Regulations
    - 603 CMR Section 28.00

What is the purpose of IDEA?

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

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

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What is the Special Education Process?

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[Diagram showing the Special Education Process]
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Who can Refer a Student for an Evaluation? (See 603 CMR 28.04(1))

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

A school district shall do an initial evaluation to which parent has consented in writing.
(See 34 CFR 300.301, 603 CMR 28.04 (2))

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

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

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

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

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

If it’s not in writing, it did not happen......
Which Evaluations are Required?
(See 603 CMR 28.04 (2))

1. Assessment in all areas related to suspected disability
   - Examples of some assessments:
     - functional behavioral assessments (FBA),
     - speech and language,
     - reading,
     - assistive technology,
     - occupational therapy,
     - physical therapy, etc.

2. An educational assessment by school district representative

Which Evaluations are Optional?
(See 603 CMR 28.04(2)(b))

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

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

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

(see 603 CMR 28.05 (1))

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

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

**Who is on the IEP TEAM?**

(See 34 CFR 300.321 and 300.116(a)(1))

**Who can Excuse a Team Member?**

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

- *Attendance of member is not necessary because this person’s area of curriculum or related services is not being modified or discussed in meeting.*
  
  *(34 CFR 300.321(e)(1))*

- *The meeting DOES require this member’s expertise* and member submits, in writing, to parent and IEP Team, input into development of IEP prior to the meeting.

  *(34 CFR 300.321(e)(2))***
What are the Tasks of the Team?
(See 603 CMR 28.05 (1))

Determine eligibility:

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

If found not eligible:
1. Provide the parent with a written determination and notice of their rights (N-2 form) within 10 days

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

Disability?
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No Effective Progress?
due to disability?
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Specialized Instruction? necessary to make Effective Progress
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Related Service(s)? to access the General Curriculum
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IEP

Does the child have a disability?

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

* See technical advisories issued by DESE
**Is child not making effective progress due to the disability?**

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

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

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

Specialized Instruction is special education!

It is modifying the:

- content
- methodology and/or
- performance criteria as appropriate to:
  - address the unique needs of the child and
  - ensure access to the general curriculum

See 34 CFR 300.39(b)(3)

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

- Assistive Technology
- Audiology
- Interpreting
- Occupational Therapy
- Orientation and Mobility
- Parent Training
- Physical Therapy
- Psychological
- Rehabilitation Counseling
- Recreation
- School Nurse/Social Worker
- Health Services
- Speech/Language Pathologist
- Travel Training
- Transportation
- Student can qualify for an IEP if he/she needs one or more related service(s) to make effective progress. (603 CMR 28.05(2)(a)(1))
The Massachusetts Autism Law
(See MGL Ch. 71B sec. 3)

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

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

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

What is the Standard for Services?
(See 34 CFR 300.17; 11. of Ed. v. Rowley, 483 F. Supp. 528 (SD NY 1980))

Free Appropriate Public Education (FAPE):

- **Free** – No cost to parents
- **Appropriate** – Services sufficient to enable student to make meaningful or effective progress according to his/her potential and toward achieving IEP goals.
- **Public** – Provided by public school district or under direction of the public school district
- **Education** – Preschool, elementary and secondary education, including extra curricular and non-academic school activities

What Happens at Close of Team Meeting?

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

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

What is the Content of the IEP?

(see 603 CMR 28.05(4)

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

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

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

(See 603 CMR 25.05(7)

IEP Form:
3 Response Options
1. Accept IEP in Full
2. Reject IEP in Full
3. Reject IEP in Part

Placement Form:
2 Response Options
1. Accept Placement
2. Reject Placement

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

What is Least Restrictive Environment (LRE)?

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

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

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

Therapeutic day or residential treatment programs may be the LRE to meet the unique needs of some students.
Can the Parties Agree to Amend or Modify the IEP After the Team Meeting?

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

Parent consent is still required for all changes to IEP.

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

What Happens once the IEP is signed?

- Progress reports are sent home as often as report cards.
- Annual review: Team reviews IEP and progress of student every year. Parent should determine what goals child has met before creating new IEP.
- Every three years or sooner if necessary, school - with parent consent - conducts a three-year re-evaluation.
- Parents have right to request and receive a copy of school records.
- Parents have an unconditional right to observe child in classroom and/or send in professional to conduct observation.

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

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

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

Parents can reject finding of ineligibility, request an independent education evaluation and request a re-determination of eligibility.
What are Differences between 504 Plans and IEPs?

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

<table>
<thead>
<tr>
<th>REQUIRED for 504 Plan &amp; IEP</th>
<th>NOT Required for 504 Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>• FAPE in LRE</td>
<td>• Written plan</td>
</tr>
<tr>
<td>• Disability Determination</td>
<td>• Progress Reports</td>
</tr>
<tr>
<td>• Evaluations</td>
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<td>• Accommodations based on need</td>
<td>• Discipline protections limited</td>
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<tr>
<td>• Accommodations on Testing</td>
<td>• Transition Planning</td>
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<tr>
<td>• Appeals to BSEA, PRS or OCR</td>
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Options for Resolving Differences

**Procedural Safeguards and “Due Process”**

- **Local Options**
  - Meeting with Special Education Director, Principal, and/or Superintendent
  - IEP Meeting
  - Independent Educational Evaluation

- **Procedural Violations & Enforcement Issues**
  - PRS Problem Resolution Service
    - 781-338-3700
  - OCR*
    - Office for Civil Rights
    - 1-800-368-1019

- **Voluntary Alternative Dispute Resolution**
  - Facilitated IEP Meeting
    - 617-826-7250
  - Mediation
    - 617-626-7291

- **Due Process**
  - BSEA Hearing
    - 617-626-7250

Independent Education Evaluation (IEE)

(See 603 CMR 28.04 (g))

**There are three options to obtain an IEE.**

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

- Fully paid if student eligible for free or reduced price lunch or in custody of a state agency with a surrogate education parent;
- Public Funding of IEE is on a sliding fee scale with partial payment according to family size and income according to Federal Poverty Guidelines
- Parent may request IEE in one, more than one, or all areas assessed by school within 16 months of school evaluation.
Independent Education Evaluation (IEE)
(See 603 CMR 28.04 (5))

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

School shall either:

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

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

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

Review of Full IEP Cycle

Review of Important Timelines

- 5 school days
- 30 school days
- 45 school days
- 30 calendar days

Review of the Six Principles of IDEA

Parent and Student Participation in the Team

Appropriate Evaluation

Individualized Education Program (IEP)

Free and Appropriate Public Education (FAPE)

Least Restrictive Environment (LRE)

Procedural Safeguards (Due Process)

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

Strategies for Success

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

Resources

Federation for Children with Special Needs (FCSN) www.fcsn.org
Mass. Association of Special Education PACs www.fcsn/masspacs
MA Department of Elementary and Secondary Education www.doe.mass.edu
Massachusetts Advocates for Children www.massadvocates.org
Disability Law Center www.dlc-ma.org
Massachusetts Arc www.arcmass.org
NAMI National Alliance on Mental Illness www.naminmass.org
Parent Professional Advocacy League (PPAL) ppal.net/default/
Special Needs Advocacy Network, Inc. (SPAN) www.spanmass.org
Wrights Law Special Education Advocacy www.wrightslaw.com
The Federation is Committed to Serving Families of Children with Special Needs

- **Call Center** send your questions by email through our website at: www.fcsn.org, or call us at: (617) 236-7210 (413) 232-0681 western MA

- **Special Education Webinars and Fact Sheets** of interest to parents and professionals

- **Annual March conference, Visions of Community**

- **Training workshops, Parent Consultant Training Institute, and Planning A Life conferences** for parents and professionals at sites across the state

- See our website www.fcsn.org

- Read our quarterly newsletter, Newsline

- Join us on Facebook, Twitter and YouTube!

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INFORMING, EDUCATING, EMPOWERING FAMILIES

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