

## Children's Issues Series: Special Education

### **Special Education Q and A's**

#### **When should a special education evaluation be considered?**

Students having certain problems or issues at school and/or at home may be referred for a special education evaluation. Examples of such problems include:

- Not going to school
- Aggressive behavior
- Throwing tantrums, acting up, etc.
- Poor grades and/or failure to make progress in school
- History of behavioral issues and/or disciplinary action

Students with diagnoses that indicate they may need additional supports can be referred for an evaluation. Such diagnoses include:

- Autism Spectrum Disorders (Asperger's Syndrome, Pervasive Development Disorder, Autism)
- Intellectual or developmental disability
- Visual or hearing impairments
- Cerebral palsy
- Mental Health Diagnoses such as Anxiety, Depression, Bipolar Disorder, etc.
- ADHD

#### **What are the age limits for receiving special education services?**

Under the IDEA, individuals are eligible for special education services from age 3 until the student's 22 birthday. **Mass. Gen. Laws Ch. 71B, §1** provides the same state definition of a "school-age" child in Massachusetts.

#### **What is the evaluation process?**

**603 CMR §28.04** outlines the referral and evaluation timeline. First, a parent, caregiver, or youth-serving professional needs to request and submit a **request for evaluation**.

Within **five school days** of receiving a referral, the school district must provide the parents with a notice form requesting their **consent** for the special education evaluation.

Within **thirty school days** of receiving parental consent, the school district must complete the evaluations. Parents or guardians can receive a copy of the evaluations results at least two days prior to the initial Team meeting if the evaluations are requested in writing.

Within **forty-five school days** after receiving parental consent, the school district must convene a Team meeting to review the data obtained from the evaluation and develop an Individualized Education Program ("IEP").

Within **thirty school days** of receiving the proposed IEP and placement, the students parent(s) or legal guardian(s) should accept, reject in part, or reject the proposed IEP and placement.

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Upon receiving parental response, the school district must implement all accepted parts of the IEP without delay.

### **How early can a family begin the process?**

Children should begin to receive special education services promptly at age three, if they are eligible. If the child is involved with an Early Intervention program, the family's developmental specialist should refer to the public school district when the child is two and a half years old. See ([link to EI Q&A](#)) for more information on Early Intervention.

Any family can also request a referral for an evaluation themselves. Under **603 CMR 28.04 (1)(d)** and **603 CMR 28.06(7)**, school districts must evaluate children, upon referral. School districts can accept referrals from the Department of Public Health and other agencies for young children, once a child turns **two and half**. An initial evaluation ensures that if the child is found eligible for special education services, the services begin when the child turns three. If it is so determined, the school district is responsible for developing and implementing an IEP by the child's third birthday. Children ages three and four will be referred to a Head Start program. For more information on Head Start, see ([link to Head Start Q&A](#))

### **What is a Team meeting?**

The Team decides whether a student is eligible to receive special education services, and if so, what the services should consist of. The TEAM must include:

- The parent(s) or guardian of the student
- If the student is over 14 years old, he should be invited to the meeting.
- At least one regular education teacher
- At least one special education teacher or provider
- Someone who can interpret the instructional implications of the educational evaluation results (usually the school psychologist)
- A representative from the school district who has the ability to commit district resources
- An interpreter (for non-English speaking parents)
- Note: multiple roles can be fulfilled the same person

At an initial Team meeting, the Team discusses any concerns about the student and reviews the evaluation results. Based on the results, the Team determines whether the student has a qualifying disability and is eligible to receive special education or services. The Team will decide the quantity of services, type of accommodations, appropriate placement, and program location.

The Team meeting should answer the following questions:

- Does the student have a qualifying disability? If yes → next question.
- Is the student making effective progress in school? If no → next question.
- Is the lack of progress, a result of the disability? If yes → next question.
- Does the student require special services or instruction to make progress? If yes → then the student qualifies for special education.

**For more information** on IEP's and Team meetings, including IEP components, rejection of an IEP and reevaluations, see the [Education Community Notebook](#) prepared

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by the EdLaw Project, or the [Quick Reference Guide on Special Education](#) prepared by EdLaw and CLCM.

### Examples of Accommodations and Services

- Speech/language therapy, occupational therapy, adapted physical education
- Extra time on tests or class work, preferential seating, small group instruction
- Written schedules, templates, graphic organizers
- Breaking down information into smaller chunks ('chunking')
- Assistive technology—audio devices, screen magnifiers and readers, large print keyboards, amplification systems, speech generation devices, etc.

### What is a 'Placement'?

- The student's placement is where his special education services and accommodations will be delivered.
- The law requires that the student receive services in the **least restrictive environment**, meaning that a student will be removed from a general education program only when his needs cannot be met in that environment, even with accommodations and supports in place.
- Examples of placements:
  - Full Inclusion: the student receives almost all of his services in a regular education classroom.
  - Partial Inclusion: the student receives some of his services in a regular education classroom, and some of his services in a special education classroom.
  - Substantially Separate Classroom: the student receives most of his services in a special education classroom.
  - Day School (public/private): the student attends a school for students with special education needs.
  - Residential School: the student attends and resides at a school that provides special education services 24/7.
- Stay Put Rights: if the parent and the school district disagree about a student's placement, the parent has a right to reject the placement. This triggers the student's **stay put rights**, which allow the student to remain at the last agreed upon placement until the disagreement is resolved.

### What is a qualifying disability?

**603 CMR §28.02(7)** defines a qualifying "disability" for the purpose of special education services. The definition includes the following types of disabilities:

- **Autism:** as defined at 34 CFR §300(c)(1). A developmental disability significantly affecting verbal and nonverbal communication and social interaction.
- **Developmental Delay:** the learning capacity of a young child, age 3 to 9 years old, is significantly limited, impaired, or delayed.
- **Intellectual Impairment:** includes mental retardation or other significant impairment or limitation of child's capacity for performing cognitive tasks, functions, or problem-solving.
- **Sensory Impairment:** including hearing and vision impairments.
- **Neurological Impairment:** e.g. difficulties with memory, cognitive functioning, sensory and motor skills, speech, language, organization, information processing, affect, social skills, or basic life functions.

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- **Emotional Impairment:** as defined at 34 CFR §300.8(c)(4). Student exhibits inability to maintain interpersonal relationships, inappropriate feelings, depression, physical symptoms or fears associated with school or personal problems, etc.
- **Communication Impairment:** e.g. impaired articulation, stuttering, language impairment, or voice impairment.
- **Physical Impairment:** e.g. orthopedic impairments, impairments caused by congenital anomaly, cerebral palsy, amputations, fractures.
- **Health Impairment:** includes ADHD, asthma, diabetes, etc.
- **Specific Learning Disability:** a disorder in one or more of the basic psychological processes involved in understanding or in using language. Should meet requirements given at 34 CFR §§300.8(c)(10) and 300.309.

To access these definitions directly, see

<http://www.doe.mass.edu/lawsregs/603cmr28.html?section=02#start>

### **What if a child is found *not* eligible?**

If a child has a disability that is not effecting her progress in school, she may still be eligible for accommodations and services under a 504 Plan. 504 plans are authorized under [§504 of the Rehabilitation Act of 1973](#) and the ADA, while an IEP is authorized by the Individuals with Disabilities Education Act. 504 plans do not provide a specifically designed curriculum like IEPs do, but do provide for accommodations and services. ***504 plans do not provide all of the procedural protections afforded under the IDEA.***

To be eligible for a 504 plan, the child must have a physical or mental impairment that substantially limits one or more major life activities, such as walking, learning, concentrating, communicating, thinking, speaking, etc. A student is evaluated by the school to determine eligibility and to develop a plan. Parental consent is not required but is recommended.

Parents can also dispute the school's finding of no eligibility under the IDEA, MGL Ch 71B, and Sec 504 by notifying the school of their disagreement and going on to dispute resolution – see the section on what parents can do if the school is not meeting their legal obligations.

**For more information** on 504 plans see

<http://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>

### **What are the key components and goals of the Individuals with Disabilities Education Act (“IDEA”)?**

The IDEA is a federal law governing special education. It was originally enacted in 1975 and was most recently revised in 2004. The key goal of the IDEA is to ensure that eligible children with disabilities receive an education that will support their educational advancement, post-secondary education and/or employment, and personal independence.

Under IDEA 2004:

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- Students with a disability must receive a **Free, Appropriate Public Education (FAPE)**, meaning that the eligible children should receive special education services that allow them to access public education. Access to public education should be meaningful and sufficient to confer an educational benefit on the child. In Massachusetts, “**effective progress**” is further defined at 603 CMR §28.02(17) as “documented growth in the acquisition of knowledge and skills, including social/emotional development...according to chronological age and developmental expectations, the individual educational potential of the student, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district”.
- Special education services must be provided through an **Individualized Education Program (IEP)**. Services under the IEP should be individualized to meet the needs of each unique child.
- Students with disabilities must be educated in the **Least Restrictive Environment (LRE)**. To the maximum extent feasible, students should be educated among their typical peers and according to the statewide curriculum framework. The IDEA's preference for the LRE means that students must receive their special education services within a general education classroom whenever possible. Special or separate classes and schooling should only occur when supplementary aids and services, such as resource room or pull-out services, are insufficient to satisfy the child's needs.
- Students that receive special education services have **stay-put rights**. This gives the students the right to remain at their last accepted placement and to receive the same services if their parent or guardian rejects a new placement or a change in services.
- Beginning at age 14 (or earlier), **transition planning** must occur as part of a child's IEP process. This includes a transition assessment to determine appropriate special education services for post-secondary education, employment, vocational training, independent living, or other community experiences. Transition services should be based on the child's needs and interests and facilitate their transition from school to post-secondary activities and services. In Massachusetts, a Ch. 688 referral should also be done for students who will need the services of a state agency after they leave school. 34 CFR 300.43 defines Transition. For more information on transition, refer to the Disability Law Center's online manual, “Planning for Life after Special Education in Massachusetts.” <http://www.dlc-ma.org/manual/index.htm>
- IDEA provides certain protections for students with special education needs, including procedural protections prior to a long term suspension or exclusion from school. See Education Community Notebook or Quick Reference Guide on School Discipline.

### **What options are there if a parent believes the school is not meeting the legal requirements?**

If a student's parent disagrees with whether an IEP provides FAPE in the LRE, there are several options. If the dispute cannot be resolved at the school district level, a parent or guardian may consider the following actions:

- If there is a 504 or other *discrimination* issue, contact the Office of Civil Rights (OCR) at the DOE to file a complaint.  
<http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>

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- Contact Program Quality Assurance (PQA) at the DESE to make a complaint. <http://www.doe.mass.edu/pqa/prs/>
- Request mediation through the Bureau of Special Education Appeals (BSEA). <http://www.doe.mass.edu/bsea/mediation.html>
- File for an administrative due process hearing within the BSEA. If they disagree with the outcome of the hearing, they may appeal it to federal or state superior court under MGL ch. 30A. <http://www.doe.mass.edu/bsea/process.html>

### **Helpful Links:**

[Education Community Notebook](#)

[Department of Elementary and Secondary Education](#)

[Bureau of Special Education Appeals](#)

[Quick Reference Guide on Special Education](#)

State Regulations [603 CMR 28.00](#)

Federal Regulations IDEA 2004