SCITUATE PUBLIC SCHOOLS

SPECIAL EDUCATION
PROCEDURES MANUAL

UPDATED:
September 2016
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Section I

Scituate Public School’s Procedures for Pre-Referral and Referral for Consideration of Special Education Eligibility

1. **School Referral** – Initially, a student who is struggling in school will be discussed at a meeting with his/her team of teachers and school counselor to determine if difficulties are isolated to one subject area or all subject areas. Cumulative records and any other reports are reviewed and discussed at this meeting. Data Teams at each building look at benchmark assessments to determine students at risk. At this meeting, interventions and supports through RTI, Response to Intervention, will be discussed and implemented. As interventions are provided for 6-8 weeks, data will be collected to monitor progress. Should the student not make the expected gains with general education tiered system of supports, a referral to the building Support Team is made where suggestions for a Curriculum Accommodation Plan or further intensive support strategies are put in place for this student. The progress of the student is then monitored for an additional 6-8 weeks. After the Support Team has made every effort to meet the needs of the student through the Curriculum Accommodation Plan, and these efforts have not been successful, the Support Team will refer the student to the Special Education Team Chair for an evaluation to determine if the student has an educational disability and meets eligibility requirements for Special Education services. Parents are informed and consulted with throughout this process by the school-based teams and when applicable the Special Education Team Chair. (See flow chart for this process below)

**Next Steps** – Once a determination to assess is made, assessments are chosen that are valid, administered and interpreted by trained individuals, free from cultural biases and tailored to the specific area of suspected disability as defined by the Department of Early and Secondary Education. Parent consent is required to move forward with any special education evaluation process.

When interpreting data and making decisions, the Team uses information from a variety of sources, ensures that information obtained from these sources is considered, ensures placement in the Least Restrictive Environment, LRE, and includes information related to enabling the student to access general education.

2. **Parent or Guardian Referral** – The law requires that no instructional support program or any other intervention limits the rights of a parent to refer a student for a special education evaluation. Should a parent or guardian choose to request an evaluation through special education, they are asked to submit concerns in writing and/or fill out a Referral Form detailing their concerns. Parent referrals are not mandated to be in writing, however, we do want to be sure we are addressing the concerns relayed by the parent(s) and that they are documented in the student’s file. The Special Education Team Chair will then review the concerns and conduct a record review in order to determine the specific assessments that will be completed based upon the area of suspected disability as part of the Initial Evaluation process to determine special education eligibility. At the same time, the Rti interventions can be implemented by the school based teams.

3. If a parent/guardian has had an **Independent Evaluation** completed on a student who is not on an IEP and is requesting consideration for eligibility for special education services, the
Independent Evaluation should be submitted to the Special Education Team Chair. Test results and recommendations submitted to the district are reviewed by the appropriate school specialists. In an effort to make appropriate recommendations, the district may choose to perform additional assessments. The district retains the right to complete its own evaluation to determine special education eligibility.

DATA TEAM/ RESPONSE TO INTERVENTION

The Data Team process is an on-going process that occurs throughout the year to monitor ALL students’ progress.

If a student is not making progress at the end of the 6-8 week intervention cycle and after analysis of three data points, the data team has two options:

- Change intervention focus, group size, and/or frequency and monitor progress at more frequent intervals (increased number of data points)
- Make a referral to the Support Team- Refer to Support Team Flowchart located in the DCA
Required and Optional Assessments

Scituate Public Schools administers the required assessments and any additional assessments considered to provide relevant, meaningful information regarding the student’s school performance.

- Assessments in all areas related to the **suspected disability** that can include, but are not limited to, an academic assessment, psychological assessment, an occupational therapy, physical therapy or speech and language evaluation.
- Consideration of any needed assistive technology devices (e.g. touch screen window, Intellikeys keyboard, Braille, and a Brailler)
- Educational Assessment Forms A & B:
  - Educational history assessment conducted by a licensed school adjustment counselor or school guidance counselor
  - Classroom Performance Assessment conducted by the student’s classroom teacher(s).
  - This assessment includes information pertaining to the student’s performance in the district curriculum that is aligned with the Massachusetts Curriculum Frameworks, and the student’s abilities related to attention, behavior, social skills, and memory
- Observation (for eligibility determination of a three year old child) in the child’s home environment or early intervention setting. Evaluations conducted by EI agencies are also considered. Observations are also required for the determination of a specific learning disability. Please see special requirements for determination of a specific learning disability
- A health assessment, conducted by the family physician and paid for by the parents, at the initial evaluation to determine if any medical issues may impact a student’s learning

School personnel or the parents may recommend/request additional assessments. The Team determines the need for such requests based on the student’s current performance and concerns. Scituate Public Schools offers the following optional assessments:

- A psychiatric assessment by a certified and licensed psychiatrist
- A home assessment conducted by a school psychologist, school adjustment counselor or other school faculty as appropriate that may include a home visit with permission from the parent

When a student is re-evaluated to determine eligibility for a specific service or for special education services in general, additional assessments may be conducted at that time. Scituate Public Schools recommends to the parent the need for additional testing, or, in the case where no additional assessments are deemed necessary, informs the parent of the reason for this determination. Parents are also informed of their right to request additional assessments.
Special Education

Administrative Advisory SPED 2004-3: College Testing Information

To: Special Education Administrators, Charter School Leaders, and Other Interested Parties
From: Marcia Mittnacht, State Director of Special Education
Date: January 28, 2004

The purpose of this advisory is to respond to questions the Department of Elementary and Secondary Education has received from school districts about their obligations to provide supporting documentation to the College Board when a student has requested accommodations on College Board tests (e.g., PSAT/NMSQT, SAT or AP). The College Board has recently changed its eligibility requirements for testing accommodations. Districts and parents are reporting that the College Board is rejecting many requests for accommodation because the documentation supporting the request is not sufficient under the new eligibility standards. As a result, parents and students are asking districts to conduct additional evaluations or eligibility assessments to support students' requests for accommodation.

School districts typically have provided the College Board with documentation supporting the student’s request for accommodation when the school district has such documentation on file, consistent with the Massachusetts Student Records Regulations. See 603 CMR 23.00. The Department expects that districts will continue to assist students who apply for accommodations on College Board tests. This advisory is intended to address only the recent changes to the College Board's requirements. The Department has consulted with other state education agencies and with the U.S. Office for Civil Rights.


Parents and school districts report that the College Board is rejecting requests for accommodation on College Board testing for students with disabilities, even when the school district submits documentation that supports a finding of disability and shows a history of the district accommodating the student. In some cases, the College Board is asking that the student provide documentation of specific additional assessments or updated assessment information that the district does not need in order to deliver appropriate special education services to the student.

1. Are school districts required to update assessments or provide additional assessments as requested by the College Board or by the parent in order to support the request of a student with a disability for accommodation on College Board examinations?

School districts are not obligated to provide or pay for updated or additional assessments to support a student’s request for accommodation on College Board examinations if such assessment information does not already exist and is not necessary for the appropriate special educational program for the
student at the time of the request. The parent (or adult student) is responsible for paying for additional assessments that are needed for the sole purpose of supporting the student's request for accommodation on the College Board examinations.

If the parent requests an evaluation or assessment, whether or not the request describes the reason for the request, the school district must respond in accordance with the requirements of state and federal special education law. The district may either agree to conduct such an assessment or may provide notice to the parent that it will not do so, using notice form N2. The district's decision not to conduct the assessment is subject to the due process requirements of the law.

2. Are school districts required to evaluate a student for eligibility for special education if the student wishes to demonstrate such eligibility for the purpose of requesting accommodations on College Board examinations?

If a request for an evaluation is made for the purpose of demonstrating a need for accommodations on College Board tests, and the school district has no reason to believe the student has a disability or needs special education services, then the district can deny the request for an eligibility evaluation. The district must notify the parent or student of its denial using notice form N2. The district's decision not to conduct the evaluation is subject to the due process requirements of state and federal law.

Although there is no legal precedent in Massachusetts addressing this issue, a recent administrative decision in Maryland suggests that the district may refuse to conduct an assessment where eligibility is sought only to support the student's request for accommodation on the College Board exams. (See 40 IDELR 24, September 23, 2003.) In that case, the administrative law judge upheld the district's determination that a student did not have an impairment that substantially limited his learning, and therefore the student was not entitled to have the school conduct an assessment to support his request for accommodation on College Board examinations. Additionally, the administrative law judge noted that no legal precedent establishes that "test taking" is a substantial life activity that must be accommodated (as is required for an appeal under Section 504 of the Rehabilitation Act).

We hope this information is helpful. Questions regarding this advisory may be addressed to Program Quality Assurance Services at 781-338-3700. Additional information on preparing students with disabilities for postsecondary education transitions has been prepared by the U.S.D.O.E. and is available at: http://www.ed.gov/about/offices/list/ocr/transition.html?exp=0
End of the School Year Evaluations

Scituate Public Schools is committed to processing all consents received within thirty (30) to forty-five (45) school working days before the end of the school year no later than fourteen (14) days after the school year has ended. Either an IEP will be written or a finding of no eligibility will be sent to the parent in writing. Evaluations can be completed over the summer in emergency situations. In an effort to maintain compliance and to effectively serve Scituate’s students, the Director of Special Education exercises their discretion in ensuring that no student is denied a free and appropriate public education (FAPE).
Independent Educational Evaluation  
Scituate’s Response to a Parental Request

A parent has the right to disagree with Scituate’s initial evaluation or three-year re-evaluation. If, as a result of this disagreement, the parent requests an independent educational evaluation (IEE), Scituate conducts the following steps:

1. All independent evaluations funded by Scituate are conducted by qualified persons who are licensed or certified and who abide by rate-set fees established by the State Department of Health Care Finance and Policy. Unique circumstances pertaining to the student may allow for a fee that is higher than usual.

2. Scituate Public Schools has established procedures to offer parents a means of participating in an income eligibility program for free or reduced cost IEEs that are equivalent to the type of assessments performed by the school.

3. Rights to a publicly funded IEE (cost shared or funded for students eligible for free or reduced cost lunch) are offered for sixteen months from the date of the evaluation with which the parent disagrees.

4. If the parent is requesting an evaluation in an area not previously assessed by the district or is unwilling to share the appropriate financial documentation, Scituate either pays for the IEE or, within five school days, proceeds to BSEA to demonstrate that Scituate’s evaluation was appropriate and comprehensive.

5. The IEE should be completed with a written report in approximately 30 days from the date the parent requests the testing. The evaluator should send the publicly funded assessment report to the Scituate Public Schools and to the parent. The independent evaluator should recommend appropriate types of placements and services but should not suggest specific classrooms or schools. The IEE report should also include a written summary of procedures, assessments, results and diagnostic impressions as well as educationally relevant recommendations for meeting identified needs of the student.

6. Scituate’s IEP Teams reconvene within 10 days of receipt of the written independent report (whether publicly or privately funded) to consider the report and determine if a new or amended IEP is necessary.
The purpose of this advisory is to clarify school district responsibility under the federal and state special education law for providing a publicly funded independent educational evaluation (IEE) for a student. The federal regulation on IEEs is found at 34 CFR 300.502. The state regulation is found at 603 CMR 28.04(5). The text of these regulations is included at the end of this advisory.

When a student has been referred for a special education evaluation and the school district has obtained consent from the student's parent (or authorization from a hearing officer), the district must assess the student in all areas related to the suspected disability as well as conduct a comprehensive educational assessment. In addition the district may recommend or the parent may request health, psychological and home assessments if warranted. The goal is to provide the evaluation Team with "relevant functional and developmental information about the child,…and information related to enabling the child to be involved in and progress in the general curriculum …that may assist in determining (1) whether the child is a child with a disability under §300.7; and (2) the content of the child's IEP." Parents may obtain an independent educational evaluation of their child by appropriate professionals at their own expense at any time. In addition, federal and state law provide parents with a procedure for obtaining public funding of an IEE if they disagree with the school district's evaluation. This IEE is to be conducted by a qualified examiner who is not employed by the responsible school district. If the parent requests an IEE at public expense, the school district must either pay for the IEE or, within five days, request a determination from the Bureau of Special Education Appeals (BSEA) that the district's evaluation was comprehensive and appropriate. If the BSEA hearing officer decides the district's evaluation was comprehensive and appropriate, the parent still has the right to obtain an IEE but not at public expense.

Massachusetts law elaborates on the basic rules for IEEs. In 2000, the state special education statute (M.G.L. c. 71B, § 3) was amended to allocate costs for IEEs between the district and the parent on a sliding fee basis for income eligible families. For example, if the student is eligible for free or reduced cost lunch, or is a state ward, or the family's income is equal to or less than 400% of the federal poverty guidelines, the district must pay the entire cost of the IEE. The right to this publicly funded
IEE applies for up to 16 months from the date of the evaluation with which the parent disagrees. If a
parent does not wish to provide the necessary financial information to the school district or does not
meet the income eligibility standards, the parent may still request an IEE, but the request is governed
by the federal standard. The federal rules on IEEs include a provision that prohibits Massachusetts
from imposing a limit of 16 months on the parent's right to request an IEE. Consistent with the federal
standard, the school district shall either agree to pay for the IEE or within five school days proceed to
the BSEA to show that its evaluation was comprehensive and appropriate.

Within 10 school days from the time the school district receives the report of the IEE, the Team shall
reconvene and consider the IEE and whether a new or amended Individualized Education Program
(IEP) is appropriate.

The Department has been asked to clarify an issue related to the timing of a publicly funded IEE.
Generally, a parent requesting an IEE will do so well within 16 months of the date of the evaluation
with which the parent disagrees. If more than 16 months have elapsed since the school district
evaluated the student, the original assessment information may be out of date. In that case, if a parent
requests an IEE, the best practice would be for the district to seek consent from the parent to conduct
its own updated assessments and evaluation of the student first, within the timelines required by the
special education regulations. If the parent consents to the evaluations by the district, then once the
district has completed an up-to-date evaluation, if the parent disagrees with it, then the parent has the
right to request an IEE, and the district's obligations with respect to payment for the IEE are as set
forth in the regulations.

Another issue the Department has been asked to clarify concerns a request by a parent for an IEE in an
area of suspected disability that has not been assessed by the school district. Generally, a parent who
disagrees with a school district's evaluation will indicate the reason for the disagreement, although the
school district may not require the parent to do so. If the parent says the district's evaluation was
deficient not because of disagreement with particular assessments, but because the district did not
conduct one or more additional assessments the parent believes are warranted, the question is whether
the school district may complete the additional assessment(s) itself, before the IEE.

There is some ambiguity in state regulation 603 CMR 28.04(5)(d), which says: "If the parent is
requesting an evaluation in an area not assessed by the school district…the school district shall
respond in accordance with the requirements of federal law." The federal law premises the right to a
publicly funded IEE on the parent's disagreement with the school district's evaluation. While one
could view this situation as a disagreement between the parent and the school district about the
evaluation, it is also an opportunity for the district and the parent to work together to identify and
address the student's needs. Under these circumstances, the best practice would be for the school
district to review its evaluation and determine whether the requested assessment(s) would provide
needed additional or new information about the student's disability and if so, offer to conduct the
additional assessment(s) itself with the parent's consent. Once the district has completed the additional
assessment(s), the Team may develop or modify the student's IEP based on the expanded evaluation
and the dispute may be resolved. If, however, the parent disagrees with the district's proposal to
conduct the evaluation or with the now-expanded evaluation, then the parent still has the right to
request an IEE, and the district's obligations with respect to payment for the IEE are as set forth in the
regulations.
SUMMARY

The special education evaluation process requires the school district to assess the student in all areas related to the suspected disability as well as conducting a comprehensive educational assessment. Parents have an opportunity to request publicly funded independent educational evaluations (IEEs) of their child if they disagree with the results of an evaluation by the school district. If the parent requests an IEE at public expense, the school district must either pay for the IEE or, within five days, request a determination from the Bureau of Special Education Appeals (BSEA) that the district's evaluation was comprehensive and appropriate. The federal standard for IEEs is not time limited.

Under Massachusetts law, school districts are required to provide publicly funded IEEs on a sliding fee scale for students whose families meet certain income criteria. This sliding fee scale provision applies to requests for an IEE made within 16 months of a contested evaluation. The application of the sliding fee scale is detailed in Administrative Advisory SPED 2001-3, available at http://www.doe.mass.edu/sped/advisories/01_3.html.

Within 10 school days from the time the school district receives the report of the IEE, the Team shall reconvene and consider the IEE and whether a new or amended Individualized Education Program (IEP) is appropriate.

If a parent requests an IEE more than 16 months after the school district evaluated the student, the best practice would be for the district to seek consent from the parent to conduct its own updated assessments and evaluation of the student first, within the timelines required by the special education regulations.

If a parent requests an IEE in an area not assessed by the school district, the best practice would be for the school district to review its evaluation and determine whether the requested assessment(s) would provide needed additional or new information about the student's disability and if so, offer to conduct the additional assessment(s) itself with the parent's consent.

Parents may obtain an IEE at their own expense at any time.

Thank you for your attention to this memorandum and for assuring that students with disabilities receive appropriate services. If you have any questions or require additional information, please contact Program Quality Assurance Services at the Department of Elementary and Secondary Education (781-338-3700).

Appendix: Federal and State Regulations on Independent Educational Evaluations

Federal regulation (IDEA): 34 CFR 300.502

Sec. 300.502 Independent educational evaluation.
(a) General. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section. (2) Each public agency shall provide to parents, upon request for an independent
educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section. (3) For the purposes of this part-- (i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and (ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with Sec. 300.301.

(b) Parent right to evaluation at public expense. (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either-- (i) Initiate a hearing under Sec. 300.507 to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under Sec. 300.507 that the evaluation obtained by the parent did not meet agency criteria. (3) If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. (4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation-- (1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and (2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) Agency criteria. (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. (2) Except for the criteria described in paragraph (e) (1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(state regulation) State regulation: 603 CMR 28.04(5): 
28.04(5) Independent Education Evaluations. Upon receipt of evaluation results, if the parent disagrees with an initial evaluation or re-evaluation completed by the school district, then the parent may request an independent educational evaluation.

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(a) All independent educational evaluations shall be conducted by qualified persons who are registered, certified, licensed or otherwise approved and who abide by the rates set by the state agency responsible for setting such rates. Unique circumstances of the child may justify an individual assessment rate that is higher than that normally allowed.

(b) The parent may obtain an independent educational evaluation at private expense at any time.

(c) Public funding of independent evaluations - When the parent requests public funding for an independent evaluation, the district shall abide by the following provisions for a sliding fee scale:

(i) If the student is eligible for free or reduced cost lunch or is in the custody of a state agency with an Educational Surrogate Parent appointed in accordance with federal law, then the school district shall provide, at full public expense, an independent educational evaluation that is equivalent to the types of assessments done by the school district. No additional documentation of family financial status is required from the parent.

(ii) If the family financial status is not known, the district shall offer the parent information about the sliding fee scale and the opportunity to provide family income information to determine if the family may be eligible for public funding of all or part of the costs of an independent educational evaluation. Provision of financial information by the family is completely voluntary on the part of the family. The lack of financial information provided by the family will disqualify the family from such additional public funding of all or part of the costs of an independent educational evaluation under 603 CMR 28.04(5)(c) but shall not limit the rights of parents to request public funding under 603 CMR 28.04(5)(d).

(iii) If the family agrees to provide financial information, such information shall include anticipated annual income of the family, including all sources of income and verifying documents. Financial information shall be reviewed by the district, shall be kept confidential during review by the district, shall not be copied or maintained in any form at the district except to note that information was provided and reviewed and met or did not meet sliding fee scale standards. Financial documents shall be promptly returned to the parent(s) upon the district's determination of financial income status.

(iv) The district shall consider family size and family income information in relation to Federal Poverty Guidelines and shall contribute public funds to the costs of the independent educational evaluation according to the following standards:

aa. If the family income is equal to or less than 400% of the federal poverty guidelines, the district shall pay 100% of the costs of an independent educational evaluation.

bb. If the family income is between 400% and 500% of the federal poverty guidelines, the district shall pay 75% of the costs of an independent educational evaluation.

cc. If the family income is between 500% and 600% of the federal poverty guidelines, the district shall pay 50% of the costs of an independent educational evaluation.
dd. If the family income is over 600% of the federal poverty guidelines, the district shall have no obligation to cost-share with the parent.

(v) When the parent seeks and receives public funding for an independent educational evaluation under these provisions, the parent may request independent assessments in one, more than one, or all of the areas assessed by the school district.

(vi) The right to this publicly funded independent educational evaluation under 603 CMR 28.04(5) (c) continues for sixteen (16) months from the date of the evaluation with which the parent disagrees.

(d) If the parent is requesting an evaluation in an area not assessed by the school district, the student does not meet income eligibility standards, or the family chooses not to provide financial documentation to the district establishing family income level, the school district shall respond in accordance with the requirements of federal law. The district shall either agree to pay for the independent educational evaluation or within five school days, proceed to the Bureau of Special Education Appeals to show that its evaluation was comprehensive and appropriate. If the Bureau of Special Education Appeals finds that the school district's evaluation was comprehensive and appropriate, then the school district shall not be obligated to pay for the independent educational evaluation requested by the parent.

(e) Whenever possible, the independent educational evaluation shall be completed and a written report sent no later than thirty (30) days after the date the parent requests the independent educational evaluation. If publicly funded, the report shall be sent to the parents and to the school district. The independent evaluator shall be requested to provide a report that summarizes, in writing, procedures, assessments, results, and diagnostic impressions as well as educationally relevant recommendations for meeting identified needs of the student. The independent evaluator may recommend appropriate types of placements but shall not recommend specific classrooms or schools.

(f) Within ten (10) school days from the time the school district receives the report of the independent educational evaluation, the Team shall reconvene and consider the independent educational evaluation and whether a new or amended IEP is appropriate.

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1 603 CMR 28.04(2) (a) and (b), 34 CFR 300.532.
2 34 CFR 300.532.
3 603 CMR 28.04(5) (b).
4 20 USC 1415(b) (1); 34 CFR 300.502(b) (1), 603 CMR 28.04(5).
5 603 CMR 28.04(5), 34 CFR 300.502(a) (3) (i).
6 603 CMR 28.04(5) (d), 34 CFR 300.502(b).
7 The application of the sliding fee scale is detailed in Administrative Advisory SPED 2001-3 available at [http://www.doe.mass.edu/sped/advisories/01_3.html](http://www.doe.mass.edu/sped/advisories/01_3.html).
8 603 CMR 28.04(5) (c) (vi).
9 34 CFR 300.502(e) (2)
10 603 CMR 28.04(5) (d).
11 603 CMR 28.04(5) (f).
12 If the parent refuses consent to the evaluation(s) proposed by the district, then the district must respond in accordance with the federal rules for IEE.
13 34 CFR 300.502(b) (4).
14 34 CFR 300.502(b).

**Special Education**

*Administrative Advisory SPED 2001-3
Guidance on Using a Sliding Fee Scale for Public Payment of Independent Education Evaluations (IEEs) in Special Education*

To: Special Education Administrators, Directors of Charter Schools, Other Interested Parties

From: Marcia Mittnacht
State Director for Special Education

Date: October 2, 2000

On September 26, 2000, the Board of Education promulgated emergency regulations in several areas of special education in response to outside sections of the FY2001 Budget that required such changes. One of the areas now in regulation is the use of a sliding fee scale for parents requesting public funding of Independent Education Evaluations (IEEs). The new regulatory language may be found at 603 CMR 28.04(5) (c). The Section 28.00 regulations are available by request from the Department at 781-338-6203.

**Key provisions of the sliding scale requirements related to publicly funded IEEs**

1. **General:** All IEEs that are publicly funded, in whole or in part, must meet state requirements using qualified evaluators who abide by the requirements detailed in 603 CMR 28.04(5)(a). The publicly funded IEE described in #1-9 of this section is an "equivalent" IEE, that is, equivalent to the types of assessments done by the school district.

2. **Funding based on eligibility for free or reduced cost lunch:** Any student eligible for free or reduced cost lunch is entitled to receive an equivalent IEE at public expense. No additional financial information is required.

3. **Sliding fee program information:** School districts must offer parents seeking public funding for IEEs information about the sliding fee program.

4. **Provision of financial documentation:** Participation in the sliding fee program other than for students who are eligible for free or reduced cost lunch requires the parents to provide financial documentation. Providing financial documentation to the school district is **completely voluntary** on the part of the parents. If, however, the parents do not agree to provide such documentation, participation in the sliding fee program will not be available to such students.

5. **Federal Poverty Guidelines:** Current Federal Poverty Guidelines are listed **below**. On or before February of each year, school districts must update the Federal Poverty Guideline figures that they are using. Federal Poverty Guidelines are updated each year, published in the Federal Register in their entirety, and may be found on the internet at [http://aspe.hhs.gov/poverty/](http://aspe.hhs.gov/poverty/)
6. **400% of Federal Poverty Guidelines**: Any student whose family income is 400% or less of the federal poverty guidelines is entitled to receive an equivalent IEE. Parents must provide financial documentation to show eligibility.

7. **400-500% of Federal Poverty Guidelines**: Any student whose family income is more than 400% and equal to or less than 500% of federal poverty guidelines is entitled to have the district pay for 75% of the costs of an equivalent IEE. Parents must provide financial documentation to show eligibility.

8. **500-600% of Federal Poverty Guidelines**: Any student whose family income is more than 500% and equal to or less than 600% of federal poverty guidelines is entitled to have the district pay for 50% of the costs of an equivalent IEE. Parents must provide financial documentation to show eligibility.

9. **Over 600% of Federal Poverty Guidelines**: Any student whose family income is more than 600% of federal poverty guidelines is not eligible for public funding under the sliding fee program.

10. **Other options**: Students who are not income-eligible, whose parents do not wish to provide financial documentation, or who are requesting an evaluation in an area not assessed by the school district may still request public funding of an IEE. Upon such request, the school district can either agree to pay for the IEE or must proceed within five school days to the Bureau of Special Education Appeals (BSEA) to show that the evaluation done by the school district is appropriate.

**Federal Poverty Guidelines - Current Figures**

<table>
<thead>
<tr>
<th>Family Size</th>
<th>Poverty Guideline Base Amount</th>
<th>= /&lt; 400% = full public funding of IEE</th>
<th>= /= 400% &amp; = /&lt;500% = 75% public funding of IEE</th>
<th>= /= 500% &amp; = /&lt; 600% = 50% public funding of IEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>8,350</td>
<td>33,400</td>
<td>41,750</td>
<td>50,100</td>
</tr>
<tr>
<td>2</td>
<td>11,250</td>
<td>45,000</td>
<td>56,250</td>
<td>67,500</td>
</tr>
<tr>
<td>3</td>
<td>14,150</td>
<td>56,600</td>
<td>70,750</td>
<td>84,900</td>
</tr>
<tr>
<td>4</td>
<td>17,050</td>
<td>68,200</td>
<td>85,250</td>
<td>102,300</td>
</tr>
<tr>
<td>5</td>
<td>19,950</td>
<td>79,800</td>
<td>99,750</td>
<td>119,700</td>
</tr>
<tr>
<td>6</td>
<td>22,850</td>
<td>91,400</td>
<td>114,250</td>
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<tr>
<td>7</td>
<td>25,750</td>
<td>103,000</td>
<td>128,750</td>
<td>154,500</td>
</tr>
<tr>
<td>8</td>
<td>28,650</td>
<td>114,600</td>
<td>143,250</td>
<td>171,900</td>
</tr>
</tbody>
</table>

For family units with more than 8 members, add $2,900 for each additional member for the base amount.
What the school district should do:

1. Whenever a parent seeks public funding for an IEE, if the student is eligible for free or reduced cost lunch, the school district must inform the parent(s) of the right to an equivalent evaluation at full public expense. If no information is available on the status of the student in relation to the free or reduced cost lunch program, the school district must inform the parent(s) of the option to participate in the sliding fee program.

2. The school district must show the parent(s) the poverty guidelines and explain the requirement for public funding at each level and must describe financial documentation that could be used to demonstrate income eligibility. Appropriate documentation includes tax returns, pay stubs, or other reasonable documentation.

3. The school district must ensure that the parent(s) understands that providing documentation of family financial status is **totally voluntary** on the part of the family.

4. If the parent(s) elects to participate, the district must promptly evaluate provided documents and inform the parent(s) of their status in relation to the sliding fee program and, if appropriate, work with the parent(s) to arrange an IEE that meets state requirements. If the financial documentation indicates the parent(s) is eligible for the sliding fee program, the district must note in the student's record that financial documentation was received, reviewed, and found eligible; the level of eligibility; the date of the review; and the signature of the person who reviewed the documents. No copies should be made of the financial documents and the district should return the financial documents immediately to the parent(s).

5. If the parent(s) does not participate in the sliding fee program, or requests an evaluation in an area not assessed by the school district, the school district must inform the parent(s) promptly either
   - That either the district will pay for the requested evaluation; or
   - That the district believes it has done an appropriate evaluation.

   If the district declines to pay for the requested evaluation, it must further inform the parent:
   - that the district intends to proceed within the next five school days to the BSEA to show that the district evaluation is appropriate;
   - that if the BSEA agrees that the evaluation done by the district was appropriate, the district will not be obligated to publicly fund the IEE; and
   - that the parent will be offered the option to provide information to the BSEA and, regardless of whether or not the parent participates at the BSEA hearing, will be informed of the results of the district's appeal.

The Bureau of Special Education Appeals has indicated that the request for a hearing to show that a district evaluation is appropriate will be conducted in the same manner as any other hearing. However, both parties may agree to accept an advisory process conducted by a hearing officer in an expedited manner as long as both parties agree in advance to accept the final written decision of the hearing officer as binding.

We hope this guidance is helpful. If you have any questions or require additional information, please call Program Quality Assurance Services at the Department of Elementary and Secondary Education (781-338-3700) for assistance.
**Frequency of Reevaluations**

The Scituate Public Schools follows the federal mandate, which requires the reevaluation of students with disabilities every three years or sooner. Parental consent must be secured in writing in order to proceed. Staff is available to discuss the process with parents, either by telephone or in a meeting. The timely mailing and return of the consent form is critical in ensuring that the reevaluation process is not inordinately delayed. Diligence with follow-up calls, emails and notes will prevent any unnecessary problems and allow staff to plan testing schedules within established special education timelines.

**IDEA-Reauthorized Statute**

**CHANGES IN INITIAL EVALUATIONS AND REEVALUATIONS**

**IDEA 2004:**

1. **Adds provision for parental consent for initial evaluation for children who are wards of the state.**
   
   If the child is a ward of the state and not residing with the child’s parent, the agency must make reasonable efforts to obtain the informed consent from the parent of the child for an initial evaluation to determine whether the child is a child with a disability. The agency shall not be required to obtain informed consent from the parent for an initial evaluation if:
   
   - Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;
   - The rights of the parents of the child have been terminated in accordance with state law; or
   - The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

   [614(a) (1) (D) (iii)]

2. **Definition of “Ward of the State:”**
   
   The term “ward of the state” means a child, who, as determined by the state where the child resides, is a foster child, is a ward of the state or is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in Section 602(23).

   [602(36)]

3. **Absence of consent for an initial evaluation.**
   
   If the parent of a child does not provide consent for an initial evaluation, or the parent fails to respond to a request to provide the consent, the LEA may use the due process hearing procedures described in Section 615 to obtain authority for evaluation, except to the extent inconsistent with state law relating to such parental consent. [614(a) (1) (D) (ii) (I)]

4. **Procedures for reevaluation.**
   
   An LEA must ensure that a reevaluation for each child with a disability is conducted in accordance with Sections 614(b) and 614(c) if:
• The LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
• The child’s parents or teacher requests a reevaluation
However, a reevaluation shall occur not more frequently than once a year, unless the parent and the LEA agree otherwise; and at least once every three years, unless the parent and the LEA agree that a reevaluation is unnecessary. {614(a) (2)]

4. Exception to requirements of revaluation before a change in eligibility.
An evaluation is not required before the termination of a child’s eligibility if the termination of eligibility is:
• Due to graduation from secondary school with a regular high school diploma; or
• Because the child exceeds the age of eligibility for a free appropriate public education under state law.

For a child whose eligibility under IDEA terminates under circumstances described above, an LEA must provide the child with a summary of his or her academic achievement and functional performance, including recommendation s on how to assist the child in meeting postsecondary goals.

5. Adds a requirement to evaluate the child’s present levels of academic achievement and the related developmental needs of the child.
As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the Individual Education Program (IEP) team and other qualified professionals, s appropriate, shall, on the basis of that review, and input from the child’s parents, identify what additional data, are needed to determine:
• Whether the child is a child with a disability as defined in Section 602(3);
• The educational needs of the child, or, in the case of a reevaluation of the child, whether the child continues to have such a disability and such educational needs; and
• The present levels of academic achievement and related developmental needs of the child…. [614©(1)(B)(i) and (ii)]
Child Find

Each September/October the Special Education Department coordinates the “Child Find” notification process. A letter is sent to all private schools located within the town of Scituate as well as to all nursery schools and day care centers. Pediatricians and early intervention program staff are also notified annually about preschool screening and are well versed in Scituate’s child identification procedures. There exists a long-standing relationship among all personnel who work with Scituate students due to the small size of the community. Included in the Child Find process is consultation between the district and private schools at private expense.

Scituate’s PAC is very active and accessible to parents. All information pertaining to special education is available electronically through the Scituate Public Schools website. Periodic notices are also placed in the local newspaper, “The Scituate Mariner.”

Screening

1. Kindergarten Screening:
   In accordance with state regulations, a developmental screening is conducted to determine potential academic needs. The results are shared with parents. However, any parents concerned about kindergarten readiness should contact the elementary guidance counselor assigned to their neighborhood school before June.
   Kindergarten children are screened by a Team from the elementary buildings consisting of, but not limited to, the school nurse, school psychologist, school counselor and kindergarten teachers and typically takes place in the spring prior to the start of the kindergarten year. The instrument used is the Early Screening Inventory – Revised (ESI). Each classroom teacher then meets with the Support Team (ST) to review and discuss children who require some monitoring or assistance. The Early Childhood Coordinator is available upon request to attend the review meetings to provide any information available from the preschool years including IEP services, pre-referral activities, screenings or observations if they attended our preschool program. The Team develops pre-referral plans for those children as needed and follows-up in weekly ST meetings.

1. Preschool Pre-referral and Screening Process:
   Preschool pre-referral and screening is available all school year as requested by parents. The tool used in the screening process is the Early Screening Inventory-Revised, ESI.P. While a pediatrician, preschool teacher, family member or friend may suggest a screening, the process is only initiated at the formal request of the parent. They typically call the Early Childhood Coordinator who does a phone intake and sends out the appropriate paperwork to the parents. Once returned, the Coordinator and other related service providers as needed, visit the child in his/her preschool (or in his/her normal environment) to determine if further evaluations are needed. Strategies are provided to the child’s current setting to assist in the areas of concern.

   After the parents receive the written observation report, the Coordinator or related service provider will call them to review the findings of the pre-referral/screening process. This process assists the Team in determining a course of action for the student.
Outcomes include:

- The youngster is within normal range, but we take the time to understand what we learned about his/her learning style and to appreciate and enjoy him/her. If there were areas of vulnerability, we talk about how to know when to worry and give home activities to support development.
- If weaknesses are apparent, but the youngster is not eligible, home activities may be given and a follow-up appointment is scheduled. We would also offer to consult to the child’s preschool program.
- Pre-referral activities could include a bit more diagnostic work in a particular area and/or “skills” groups for a limited time to see how things progress. Additionally, the family and preschool are offered consultation services. Sometimes the Coordinator will schedule a few visits to work in the preschool to assess additional modifications/strategies/services.
- In addition to consultation, we may decide it is time to evaluate, with the written consent of the family.

Extended Evaluation

There may be times when the Scituate IEP Team finds the student eligible for special education services; however the information gleaned from the testing is insufficient to develop a full or partial IEP. With the parents’ consent, the IEP Team may consider an extended evaluation. The Team documents their findings and determines what evaluation time is necessary and the types of information needed to develop an IEP. The Team may choose to meet at intervals during the extended evaluation but definitely meets promptly at the conclusion of the extended evaluation to complete the IEP.

The following elements are important when considering an extended evaluation:

- The extended evaluation cannot be used to deny programs or services recommended by the Team;
- A partial IEP may be written, provided there is sufficient information, and if signed by the parent, must be implemented immediately;
- The extended evaluation period is not used to extend the time to complete the required assessments;
- The extended evaluation may extend longer than one week, but does not exceed eight school weeks;
- The extended evaluation is not considered a placement
Parent and Community Involvement

Scituate Public Schools is committed to the timely referral and evaluation of students suspected of having a special need. As a first step, however, every effort is made to accommodate the student in the regular education classroom. At anytime a parent may choose to bypass the Curriculum Accommodation Plan process and request that the school proceed with an evaluation. Parental consent for an evaluation is sent within five (5) school days from the date of referral. Classroom teachers and special education staff collaborate on determining how to proceed and which evaluations will be completed. All school initiated referrals are brought to the immediate attention of the parents. They are invited to come in to school for a meeting if they require additional information, whether they or school personnel initiate the referral.

Scituate’s regular and special education staff members work diligently to guide parents throughout the referral decision-making process. It is Scituate’s position that all special education referrals will be honored if a parent insists on proceeding with the process. The position of the staff continues to be consistent regarding maintaining positive relationships with parents at all times.

PARENT REFERRAL

To: Building Evaluation Team Chairperson
   Re: Request for Individual Education Plan (IEP) Evaluation.

☐ IEP Evaluation  ☐ Review Current IEP

________________________________________________________
Student’s Name  Age  Date of Birth  School  Grade

Reason for Referral:
Please state below your specific reason(s) for this request. Please mail this form to your child’s school principal. You should receive a written response to your referral no later than 5 school days after this form is received.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Is your child currently under an IEP?  ☐ Yes  ☐ No

Is your child enrolled under the METCO Program?  ☐ Yes  ☐ No
FOR OFFICE USE ONLY

Date Received: ____________
IEP Chairperson Assigned: ____________________________

Evaluation Team Chairpersons:

- **Mona Bonin**
  - Cushing Elementary
  - Hatherly Elementary
  - Jenkins Elementary
  - Wampatuck Elementary

- **Debbie Sullivan**
  - Gates Middle School
  - Scituate High School

- **Jessica Baird**
  - ECC
Identification of Students with Specific Learning Disabilities

Prior to the referral of any student to special education, efforts are made to ensure that all curriculum accommodations are implemented for six to eight week intervals. Scituate employs a Data Team and Support Team (ST) model as first steps. This is a problem-solving mechanism for designing a Curriculum Accommodation Plan (CAP) or to implement tiered systems of support to ensure that a student’s learning difficulties are addressed within the general education environment. Once proposed interventions have been determined to be ineffective, a decision is made to refer a student for a special education evaluation. The parent is contacted to discuss Scituate’s proposal prior to the mailing of an official parental consent form.

Evaluations are chosen based on the area of suspected special need. The classroom teacher completes an educational assessment and the school counselor fills out an educational history. The special education teacher, guidance counselor or school psychologist conducts an observation and completes a formal Learning Assessment. The school psychologist is asked to complete a detailed psychological evaluation and, on occasion, a speech/language, physical therapy and/or occupational therapy evaluation may also be recommended. Completed evaluations are sent to the parent at least forty-eight hours prior to the scheduled IEP meeting.

At the IEP meeting, the Team, including the student’s parents, discusses the observation and evaluation results. Careful consideration is given to the classroom teacher’s report and the special education assessments to determine the existence of a specific learning disability. The Team discusses the forms for determining a specific learning disability carefully, fills out every item and then requires each member to sign off indicating agreement or disagreement with the evaluation findings. A severe discrepancy between ability and achievement that cannot be rectified without special education services or little to no progress with the tiered systems of intervention are documented can be the criterion used to move to the IEP development process. An “eligibility determination” is also completed.

IDEA-2004

Key Points – Specific Learning Disabilities

1. **Definition of a Specific Learning Disability (SLD)**
   IDEA-2004 maintains the definition of SLD found in IDEA 97, and earlier versions of the law.

2. **Evaluation for Specific Learning Disabilities**
   - IDEA-2004 broadens the criteria for SLD evaluation
   - As part of the evaluation process, districts now have the authority to use:
     - A discrepancy model or
     - A research-based intervention model
   - Please note that the evaluation process to determine eligibility in Massachusetts continues to include all required assessments. [603 CMR 28.04: Referral and Evaluation]
3. **The use of IQ testing for SLD identification and eligibility**

IDEA-2004 does not restrict LEAs from administrating IQ tests and using the results of such testing in eligibility decision-making. However, no single test may be used for eligibility determinations. Such determinations should take into consideration all relevant tests and other evaluation materials compiled as part of the evaluation process.

4. **Research-based Intervention**

- Components include:
  - Empirical, scientific research studies
  - Explicit, systematic instruction
  - Targeted areas of need
  - Intense intervention
  - Implementation by trained personnel

- School’s instructional support programs should be based upon research-based interventions

- Response to Intervention (RTI) models are examples of instructional support programs

5. **Resources**

*And Miles to Go...: State SLD Requirements and Authoritative Recommendations*

http://www.nrcid.org/index.html

*Responsiveness to Intervention Symposium*


*Understanding Responsiveness to Intervention in Learning Disabilities Determination*


*R & D Alert: When special Education and General education Unite, Everyone Benefits*

http://www.wested.org/nerrc/Acrobat%20Files/WestEdRTI.pdf

*Mountain Plain Regional Resource Center: Responsiveness to Intervention*

http://www.wested.org/nerrc/Acrobat%20Files/MPEECrti.pdf

*Journal of Education: Response to Intervention: empirically based special service decisions from single-case designs of increasing and decreasing intensity*

http://www.findarticles.com/articles/mi_m0HDF/is_2_38/ai_n6143641
Reporting Assessment Results

When a student is evaluated to determine eligibility in the Scituate Public Schools, the professional completing the assessment shares in writing the results obtained, his/her diagnostic impressions, defines the student’s area(s) of need, and offers a specific means by which the need can be met. The assessor may recommend an appropriate type of placement/program, but cannot recommend a specific location. (e.g. a specific school name)

All assessments are completed prior to the IEP Team meeting and are written in educationally relevant terms using common language. Upon request, parents can retrieve the assessments at their student’s school two days in advance of the IEP Team meeting or the school will mail the assessments home so that parents have an opportunity to thoroughly review all of the assessments before attending the meeting.

Transfer of Parental Rights at Age of Majority, Student Participation and Consent at Age of Majority

A year before a student turns eighteen, the student’s IEP Team informs the student of his/her rights to make all decisions related to special education services upon their eighteenth birthday. This is documented in the student’s IEP. When the student reaches the age of 18, Scituate Public Schools obtains, in the presence of witnesses, consent from the student to maintain special education services. At that time, it is the student who signs the IEP. Parents continue to receive copies of the IEP and other written notices.

Additionally, upon the student’s eighteenth birthday, the parent no longer has decision making authority except in the following circumstances:

- The parent has sought and received guardianship;
- The student agrees to share decision making with the parent or guardian (this is documented in written form);
- The student chooses to delegate continued decision making to the parent (this decision is made in the presence of at least one school representative and one witness and is documented in writing and placed in the student’s record).
Special Education

Administrative Advisory SPED 2011-1
Age of Majority

To: Administrators of Special Education, Directors of Approved Private Schools, and Other Interested Parties

From: Marcia Mittnacht, State Director of Special Education

Date: September 20, 2010

This advisory provides guidance to school districts concerning the transfer of rights under special education law when the student reaches age 18, the age of majority in Massachusetts.

The advisory will address:

1. Notification requirements
2. IEP Documentation requirements
3. Transfer and sharing or delegation of rights

1. Notification requirements:

Federal special education regulations require that at least one year prior to the student reaching age 18 the student and the parent must be informed about the rights that will transfer from the parent to the student upon the student’s 18th birthday. See 34 CFR §§300.320(c) and 300.520. The notification provided to both the parent and the student must explicitly state that all rights accorded to parents under special education law will transfer to the 18 year old student and that the parent will continue to receive all the required notices from the school district and will have the right to inspect the student's records, but will not longer make special education decisions for the adult student. See also state special education regulations at 603 CMR 28.07(5).

The Department recommends that school districts use the Parent's Notice of Procedural Safeguards (PNPS) to satisfy the notification requirement under the federal regulations. The PNPS currently provides the required information in Section 2.2. When the student turns 17 years of age, the school district should mail the annual copy of the PNPS to the parent and to the student accompanied by a cover letter that states that the student will assume all of the rights described in the PNPS once he or she turns 18 years of age. While there is no requirement that the student or the parent acknowledge that they have received this notice, school districts may find it prudent to document the provision of the PNPS and cover letter to both the parent and the student.

School districts may also use the IEP Team meeting conducted for the student who will be turning 17 as the appropriate time to provide such notice, as well as to answer questions that the parent or student may have. If the district chooses to use the IEP meeting for such notice, however, it must have alternate procedures in place to ensure that both the parent and the student receive the notice in the event that either is absent from the IEP meeting.
Notification is not required if the right to make decisions is not being transferred to the student at the age of majority. This will only occur if a court of competent jurisdiction has determined that the student is not competent and has appointed the student’s parent(s) or another individual as a guardian with the authority to make decisions, including educational decisions, for the student. The parent’s stated intent to proceed to court, or the presence of a temporary guardian, does not relieve the school district of its responsibility to notify both the student and the parent about the transfer of rights.

2. IEP Documentation requirements:

Federal regulations also require that the IEP developed for the 17 year old student include "a statement that the child has been informed of the child’s rights under Part B of the Act that will transfer to the child on reaching the age of majority." See 34 CFR §300.320(c). As this Department has previously indicated, such a statement should be included in the section on the IEP entitled "Other Information." 2 School districts are not required to provide detail on the transfer of rights, but must state that the student has been informed that the right to make decisions about his or her special education will transfer to the student when he or she turns 18. Examples of appropriate statements include, but are not limited to:

- (Student's name) has been provided with a copy of the PNPS and has been informed that when he is 18, he will have all of the rights that his parent has now under the special education law.
- (School District) has provided (student's name) with a copy of the PNPS and has explained the transfer of special education rights that will occur when (student) is 18 years of age.

3. Transfer and sharing or delegation of rights

When a student turns age 18, all of the decision-making rights in special education that have been exercised by the parent transfer to the adult student, unless

- a court has appointed a legal guardian for the student, 3 or
- the student indicates that he or she wants to share decision-making with his or her parent (or other willing adult), or
- the student indicates that he or she wants to delegate decision making to his or her parent (or other willing adult).

If the student chooses to share or delegate decision-making, that choice must be documented and witnessed by representatives of the school district. The student may revoke sharing or delegation of decision-making at any time. If any disagreement arises related to special education decision-making, the choice of the adult student shall prevail. See 603 CMR 28.07 (5).

When a student turns age 18, the school district must affirmatively obtain consent from the student to continue the then-current program of special education services. A new IEP does not need to be developed solely because of the transfer of rights as long as the student is willing to continue the existing IEP services. The student, however, has the same rights as the parent formerly held to accept or reject some or all of the IEP services and placement offered by the district. It is not acceptable for the district to wait until a new IEP is developed to seek consent for services from the adult student. Consistent with federal regulations and Department guidance on transition planning, the student should have been invited to attend and participate in IEP
development since the age of 14. 34 CFR 300.322 (b)(2)(B). At a minimum, the student should participate in the IEP development meeting that occurs in the year prior to his or her 18th birthday. With proper notification and participation in IEP development the student should be prepared to assume his or her new responsibilities. Moreover, if required transition planning has occurred and the student has participated in the IEP development meetings, the student’s preferences and interests will already have been considered and included in the IEP. 34 CFR 300.321 (b)(2).

In closing, we hope this information assists school districts in transferring rights from parents to students as they reach the age of majority. If you have any questions or require additional information, please contact Program Quality Assurance Services at the Department (781-338-3700) or at compliance@doe.mass.edu.


2 See IEP Process Guide in regard to IEP page 8, or Directions for Massachusetts IEP Forms.

3 A student is presumed to be competent unless a court has determined otherwise.
Scituate’s Monitoring Practices That Insure Required Participation at All Team Meetings

The evaluation Team is composed of the following members:

- The student’s parents and any other individuals the parent choose to invite
- The student, if he/she is fourteen years old or older and chooses to come
- The Learning Specialist, who acts as the Chairperson, and has the authority to commit the resources of the district
- A Grade Level Teacher, who works directly with the student and is knowledgeable about the general curriculum and available resources in the district
- Any other evaluators who have assessed the student in the area(s) of suspected special need
- Any individuals the Special Education Administrator deems appropriate to assist the IEP team in writing the IEP
- If transition services are going to be discussed at this meeting, the student (age 14 or older) and a representative of the public agency that may be responsible to provide or pay for the transition services will also be invited
- If vocational education needs will be discussed at this meeting, a person knowledgeable about vocational education placement will be invited,

Parents and Team members are notified by telephone with at least two options for times that the team can convene to discuss the testing results. Once a mutually agreed upon time has been established that will accommodate the parents’ schedule, all team members are notified in writing via an invitation, which highlights an attendance sheet, the time, date and purpose of the meeting. Two days prior to the meeting, parents are sent copies of all of the assessments so they can read them in advance of the meeting.

Attendance at Team Meetings

In Scituate, it is expected that all members of the Team attend Team meetings. If a member is unable to attend, the following usually occurs:

- The district informs the parent that a Team member is not able to attend the meeting and the parent is offered another meeting date; or
- The parents and school district agree that the member’s attendance is not necessary or consent to the member’s absence;
  - When this occurs, the parent’s agreement is noted in writing and filed in the student’s special education folder;
  - Additionally, when the above occurs, the absent Team member submits in writing any input he/she has related to the IEP’s development
Encouraging Parent Participation at Meetings

Parents are considered valuable members of the IEP Team. The district ensures that one or both parents of a student will be members of a team that makes placement decisions about their student. Parent feedback is critical throughout this process.

The IEP chairperson notifies the parent through telephone conversation and/or mail about all Team meetings. These meetings are scheduled, as best as possible, at the parent’s convenience in an effort to encourage their attendance and input. The parent is also notified again several days prior to the meeting about the location, time and Team members who will participate.

Procedures When Parents are Unable to Attend a Meeting

If all efforts to include the parent fail, the district may consider other methods to ensure parent participation such as a conference telephone call. If the district, after reasonable efforts, is not able to obtain the parent participation in the Team meeting and decision-making process, the meeting will take place and documentation will be provided regarding the attempts made to facilitate the parent’s participation.

Eligibility Determination/IEP Timelines

Scituate Public Schools special education staff has been well trained regarding the IEP process and accompanying timelines. Within forty-five school working days after receiving the signed consent form for the initial evaluation, unscheduled evaluation, or reevaluation, the school district completes the necessary procedures and activities to determine a student’s eligibility for specialized instruction. Certified and qualified staff conducts evaluations in the areas of suspected special need. Parents are provided with these evaluations at least forty-eight hours prior to the IEP meeting.

It is the responsibility of the IEP Team to determine if a disability exists and if this disability is preventing the student from making effective progress in the general education classroom. If a student does require specialized instruction an Individual Education Plan (IEP) is developed with parental input. The student’s needs are discussed, instructional and/or related services are identified, and a placement determination is made. The completed IEP is then forwarded to the parent within eight to ten school days. For students found to be ineligible for services, a written explanation is provided to the parent within five school days of the IEP meeting.

For some students with disabilities, the Team may refer consideration of eligibility for accommodations and a 504 Accommodation Plan to the building 504 Team. The school Adjustment counselor who is present at the IEP meeting and who also serves on the school’s 504 Team, communicates this recommendation to the 504 Team. This process falls under the auspices of regular education. A finding of no eligibility, however, does not preclude the need for a student having difficulties to be provided with supports and services within the general education program. Scituate has an array of excellent services within general education for those students found ineligible for specialized instruction and/or related services under special education.
Provisions Made When a Student is Eligible for an IEP

After reviewing the entire student’s testing results at the IEP meeting, if the student is deemed eligible to receive special education services, a proposed IEP is developed and two copies are given to the parents. The parents are encouraged to review this proposed plan and provide feedback to the chairperson should they have any questions or concerns. Within eight school days of the IEP meeting, a final copy of the student’s IEP will be mailed home to the parents.

Protocol for Students Who Do Not Qualify for Special Education Services

If after reviewing the testing result the student does not qualify for special education services, the IEP Team will brainstorm ways to help the student through regular education support (e.g. prepare a student accommodation plan). Parents will also receive in writing an explanation of the finding of no eligibility for special education together with the required notice of procedural safeguards and parent’s rights. Written notification will also be provided to the parents of a detailed summary of the discussion and recommendations that took place at the IEP.

Administrative Advisory SPED 2002-2:
Requirement to Review Refusals to Evaluate for Special Education Eligibility

To: Charter School Leaders, Special Education Administrators, Parent Advisory Councils, Parent/Teacher Organizations, and Other Interested Parties

From: Marcia M. Mittnacht, State Director of Special Education

Date: December 10, 2001

This Administrative Advisory provides you with updated requirements regarding initial evaluations. As you know, a school district may not delay or refuse to evaluate a student referred for an evaluation to determine special education eligibility solely because the school district wishes to try an instructional support program or any other type of intervention. (Please refer to Administrative Advisory #2001-5, issued in June 2001.) If the parent or person making a referral has concerns about the student's development or a suspicion that the student may have a disability, school districts must promptly send notice to the parent and seek permission to conduct an initial evaluation to determine if the student is eligible for special education. Therefore, school districts rarely will have occasion to refuse to conduct an initial evaluation for students so referred and may do so only if the parent or other individual making the referral has no suspicion of a disability and is not concerned about the student's development.

Unfortunately, evidence has been provided to us indicating that school districts, in some cases, have refused to conduct an evaluation of a referred student based solely upon some pre-referral practice or an instructional support activity. Therefore, pursuant to a recently negotiated settlement agreement, the Department of Elementary and Secondary Education is requiring the following actions on the part of all school districts:
1. Districts must develop and implement a procedure to immediately review all requests for an initial evaluation that have occurred since April 1, 2000. Districts must identify all cases since that date where an initial evaluation was requested and the student has not yet received an evaluation.

2. Districts must review all such cases identified based upon the procedure in paragraph number 1; immediately notify parents that any previous refusal to evaluate or failure to proceed with an evaluation was inappropriate; and notify parents that the district is, therefore, seeking written consent for an evaluation to determine eligibility for special education. The district must provide full written notice to the parents using form N-1 of the mandated Massachusetts forms. A copy of this memorandum may be enclosed with the request for consent as a partial response to meeting the notice requirements. The only exception to this requirement is for cases where the documentation clearly indicates that the parent or other individual making the referral had no concern about the student's development and no suspicion of a disability.

3. If and when the parent consents to such evaluation, the Department recommends that the school district expedite the evaluation and the initial Team meeting for such students. If an expedited evaluation would plainly compromise the quality of the evaluation, however, the school district should complete the evaluation within the time frame provided in the Department's regulations. The regulations require school districts to complete the evaluation within 30 school working days of the date that consent for the evaluation is received, with the Team meeting to discuss the evaluation results within 45 school working days of that same date. See 603 CMR 28.04(2) and 28.05(1).

4. In every case where the student is evaluated and found to be eligible for special education under the procedures indicated in paragraph numbers 1 and 2, the school district, together with the parent, should consider whether it is appropriate to provide compensatory services for the period of time between the original request for an evaluation and the subsequent finding of eligibility. If the parent requests such compensatory services and the school district declines to provide such services, the school district must provide full written notice using form N-2 of the mandated Massachusetts forms (available as noted above in paragraph number 2). The written notice, in this instance, must include documentation regarding the reasons for not providing compensatory services and must explicitly state that the parents may file a complaint, seek mediation, and/or request a hearing before the Bureau of Special Education Appeals ("BSEA") if the parent so chooses.

The Department will monitor and enforce these activities and compliance with this Administrative Advisory through its monitoring and complaint systems. Questions regarding the contents of this advisory may be addressed to Program Quality Assurance Services at (781)338-3700.
IEP Development and Content

School Teams in Scituate usually choose to develop a draft IEP before the IEP meeting is held to assist with the process of developing a proposed IEP. This draft is presented at the IEP meeting. However, the IEP chairperson makes it clear to the parents and other Team members that it is just a draft and will not be adopted without careful consideration by all Team members. Ideas of all Team members, including the parents, are genuinely considered by Scituate before the IEP is proposed.

The content of the IEP includes measurable, annual goals and objectives/benchmarks for the student, specially designed instruction to meet the individual needs of the Scituate student as well as any appropriate related services. It is understood, that, per the reauthorization of IDEA 2004, benchmarks are only necessary for students with severe disabilities. However, it is also understood that all school Teams in Scituate will continue to write objectives/benchmarks for students who do not have intensive special needs.

An IEP can also include only related services without specially designed instruction. The IEP may contain information pertaining to restraint procedures if appropriate.

If there is a disagreement among the Team members regarding the elements in the IEP, the Team chairperson articulates the elements of the IEP proposed by Scituate Public Schools. Additionally, it is clearly understood that at least one person with authority to commit to the resources of the district will be present at the IEP meeting to approve any services that are described in the proposed IEP and that the IEP will not be changed at a higher administrative level within Scituate.

After the IEP has been fully developed, the Team determines the appropriate placement to deliver the services included in the IEP. The placement recommended by the Team is the Least Restrictive Environment (LRE) and, unless the student’s IEP requires some other arrangement, the student is education in the Scituate school that he/she would attend if the student did not require special education.

At the conclusion of the Team meeting, the parent is provided with a complete draft of the IEP. Then, within eight to ten school days following the meeting, the parent receives a copy of the IEP and two (2) signature pages including the proposed placement form with the required notice. Within 45 school working days after receipt of the parents’ written consent to testing, Scituate provides an IEP to the parents should the child be found eligible.

Annual Review Team Meeting Procedure in the Scituate Public Schools

Prior to the expiration date of a student’s IEP, the IEP Team, meet to review the student’s progress, which include the major service providers, the parent, and a school counselor. If a student is fourteen years or older he/she is invited to become part of the IEP Team. In this meeting, teacher feedback, report cards, progress reports, special reports, student feedback and parent feedback are reviewed and discussed. At the Annual Review, the Team develops an IEP and the parents receive a draft copy of the proposed plan. The proposed plan is discussed and any edits that are agreed upon are made. The final copy of the proposed plan is mailed to the parents within eight to ten school days of the meeting. If this is a reevaluation meeting (3 yr.) the IEP Team then determines whether the
student is eligible to continue to receive specialized instruction through special education or whether he/she has made effective progress and no longer needs special education support.

If the student continues to be eligible to receive special education support, an IEP is developed and the parents receive the final copy of the proposed plan in the mail within eight to ten school days of the meeting.

**Amending the IEP**

The IEP is a fluid document and Scituate Public Schools recognizes that changes to the IEP can occur at any time. In between IEP meetings, Scituate Public Schools and the parent may agree to make changes to the IEP. On occasion, these changes can be made without the reconvening of the Team. The parent and the school may have a conference or a phone call and document, in writing, the changes that are made. The parent is sent a copy of the revised IEP pages to incorporate into the original proposed IEP document, and the amendment forms for signature.

**Key Points for IDEA-2004 Team Meetings**

1. **Required Team Membership:**
   - The following membership roles must be filled at Team meetings:
     - Parent(s) of the student with a disability;
     - The student with a disability from the age of 14 - 22;
     - Not less than one general education teacher (if the child is, or may be, participating in the regular education environment);
     - Not less than one special education teacher;
     - A representative of the Local Education Agency (LEA) who has the authority to commit resources;
     - An individual who can interpret evaluation results; and
     - At the parent or agency’s discretion, other individuals who have knowledge of the student
   
   **Implementation Guidance:**
   - Team members may fill multiple roles at the meeting. (For example, the special education teacher may also be able to interpret evaluation results.)

2. **Attendance not Necessary:**
   - A required member of the IEP Team (by role) does not have to attend an IEP meeting, in whole or in part, if the parent(s) and the LEA agree in writing that the Team member’s attendance is unnecessary because the member’s are of curriculum or related services is not being modified or discussed.
3. **Excusal:**
   - When the IEP meeting involves a modification or discussion of a required Team member’s area of curriculum or related services (by role, most likely the general education or special education teacher), that member may be excused, in whole or in part only if:
     - The parent(s) and the district representative agree to the excusal in writing; and
     - The individual who is filling that role submits written input into the development of the IEP to the parent(s) and IEP Team **prior** to the meeting.

4. **Team Meetings and Amendments to the IEP:**
   - In making changes to a student’s IEP after the annual meeting, the parent and district may agree not to convene a meeting, and instead, develop a written document to amend or modify the student’s IEP
   - Parents shall be provided with a revised copy of the IEP pages with amendments incorporated

5. **Alternative Means of Participation for Team Meetings:**
   - Parents and the district may agree to use alternative means of participation, such as video conferencing and conference calls, to conduct the Team meeting.

**Special Education**

*Administrative Advisory SPED 2001-5:*

**Updating of IEP Process Guide and IEP Form and Notices**

**To:** Charter School Leaders, Special Education Administrators, and Other Interested Parties

**From:** Marcia M. Mittnacht, State Director of Special Education

**Date:** June 11, 2001

During the first year of use of the new *IEP Forms and Notices*, we have found occasion to revise directions, guidance, and forms. Therefore, the two documents entitled *IEP Process Guide* and *IEP Forms and Notices* have been updated. The Department will be sending multiple copies of each of these documents to school districts. We request that these new copies replace the original documents provided in the spring of 2000 in the 3-ring binder entitled "Special Education Reference Manual.” Please discard previously disseminated copies of the *IEP Process Guide* [PDF] and *IEP Forms and Notices* dated April 2000 or June 2000. These documents or forms may also be downloaded from the Department's website [http://www.doe.mass.edu/sped/iep/](http://www.doe.mass.edu/sped/iep/).

These two documents have been updated to clarify school district responsibilities and practices and to conform to changes in Massachusetts Special Education Law and Regulation. School districts have previously been made aware of the majority of the changes through earlier advisories and/or memos. The Department, however, is issuing this memorandum and reissuing these documents not only to capture previous changes and clarifications but also to highlight further explanations in regard to district implementation of the revised IEP process in compliance with current statute and regulation.
Clarification of School District Responsibilities and Practices:
Two important areas of practice that warrant revised information and forms are detailed below. Other areas where information or forms have been revised are reflected in the charts found at the end of this document. The Department recommends a thorough rereading of each document to ensure full understanding and accurate implementation of required practices.

1. Referral:
School districts must ensure a responsive school environment that meets the needs of all students and should implement and document the use of attempted instructional strategies on a case by case basis. A parent's right to refer for a special education evaluation, however, is not limited and should never be delayed because the school district has not fully explored and/or attempted some or all of the available instructional support programs or any other type of interventions. In any case where the parent or person making a referral has concerns about the student's development or a suspicion that the student may have a disability, school districts must promptly send notice and seek permission to conduct an initial evaluation to determine if the student is eligible for special education.

The Department has become aware that some school districts are routinely refusing to complete initial evaluations because they have not had the opportunity to fully implement instructional support strategies. This practice must stop immediately and has never complied with either the Department's directives or the law.

The Department emphasizes that the school district will rarely have occasion to refuse to conduct an initial evaluation and may do so only if the individual circumstances of the student make clear that there is no suspicion of a disability and that there is no concern about the student's development. Under all other circumstances, a referral must be considered as the first step in actually obtaining an initial evaluation. To ensure that the mandated forms are not used inadvertently to support incorrect practice, the Notice of School District Refusal to Act, N 2, has been revised to ensure that refusal to evaluate is not a "standard" practice. The line that read "Refusal to Evaluate" has been removed. School district personnel should carefully read page 6 of the IEP Process Guide, which reviews state statutory and regulatory language in this area, and download an updated copy of form N 2 for immediate use.

2. Educational Placement Determination and Specific Program Location(s):
Educational placement (e.g., the actual location where the student will receive the services on the IEP) is determined after the Team has fully developed the IEP. The Team makes a decision regarding educational placement after appropriate services are identified to ensure that Team members select an educational placement able to deliver the IEP services. The Team must ensure that the specific program location complies with the IEP, least restrictive environment requirements, and requirements related to giving preference to approved programs and programs in Massachusetts.

The school district then works cooperatively with the Team to implement the educational placement determination. We again emphasize that the IEP is developed by the Team to meet the needs of an individual student, that the placement identification follows the development of the IEP, and that it is absolutely inappropriate to write an IEP to fit a specific placement.
We have noted during the past year that confusions exist as to (a) whether the placement decisions of other entities (for example, the Department of Social Services) should be reflected on the placement form, and (b) how to use the form to reflect changes in schools or classrooms but not changes in programs or services during the period of the IEP. We have, therefore, revised the form for Team Determination of Educational Placement, PL 1, to emphasize that this form specifies the educational placement, that is, the placement that the Team has determined is most appropriate to deliver the services on the student's IEP.

In most cases where the student is making effective progress, the educational type of placement of a student will not change during the IEP period. In some cases, however, the specific program location may change. For instance, the Team, at a February annual review meeting, recommends the general education classroom as an educational placement for a fourth grader whose IEP period covers the remainder of the student's fourth grade year and a substantial portion of the student's fifth grade year, the first year in middle school. In this case, the IEP remains the same and the educational placement (e.g., general education classroom) remains the same but the specific program location (e.g., a classroom in the district elementary school to a classroom in the regional middle school) will change. Under these circumstances, the school district needs to indicate both specific program locations on the Team Determination of Educational Placement, PL 1, providing the expected dates for each specific program location, and should not rewrite the IEP to fit new specific program locations. PL 1 has been revised to allow additional space to record multiple specific program locations.

Another example arises for a student who is in the care and custody of the Department of Social Services (DSS) and DSS has placed the student in a residential school for care or custody reasons. The placement in a residential school by DSS should not be reflected as the educational placement on the PL 1 form because it is not an educational placement made by the Team. The PL 1 form should reflect the type of educational placement that the Team has identified as necessary to implement the student's IEP and which will then correspond to the Federal Child Count Settings on Administrative Placement Information form, PL 2. In cases like this, however, the Team must recognize that its authority to identify a specific program location is limited because the Team may not make determination of a specific location that results in a physical relocation of the residence of a student in the care or custody of DSS.

For additional clarification related to the relationship of an IEP, an IEP amendment, an educational placement and a specific program location, please read the following:
IEP Process Guide - pages 12 and 26
IEP Forms and Notices - pages 7 and 8

3. Other Revisions to Information or Forms:
School district personnel should pay specific attention to the following sections of the updated IEP Process Guide and IEP Forms and Notices. Wording changes have been made in response to multiple requests for further information from the Department.

<table>
<thead>
<tr>
<th>Issue: Other Educational Need: Vocational Education</th>
<th>Document: IEP Process Guide</th>
<th>Page #: 16</th>
</tr>
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<tbody>
<tr>
<td>Appropriate Number of IEP Goal Statements</td>
<td>IEP Process Guide</td>
<td>18</td>
</tr>
</tbody>
</table>
Earlier Disseminated Materials:
School districts are also recommended to review these previously disseminated advisories and memorandums that discuss previous changes in Massachusetts Special Education Law and Regulation and earlier clarifications of the revised IEP process in conjunction with the updated *IEP Process Guide* and *IEP Forms and Notices*:

- Administrative Advisory SPED 2001-1 (09/01/00): Changes to Massachusetts Special Education Law
- Memorandum (9/26/00): Changes in Extended Evaluation
- Administrative Advisory SPED 2001-4 (03/15/01): Finding of No Eligibility for Special Education

Changes in Forms and Notices:
Six of the fifteen forms found within *IEP Forms and Notices* have been changed since first being posted on the Department web site in June 2000. The following chart lists all of the forms and notices found within this document and indicates the most current version that school districts should be using.

<table>
<thead>
<tr>
<th>Form:</th>
<th>Form Code:</th>
<th>Revised:</th>
<th>Reason(s) for Change(s):</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPED Eligibility Determination</td>
<td>ED 1</td>
<td>9/01/00</td>
<td>State law change</td>
</tr>
<tr>
<td>Administrative Data Sheet</td>
<td>ADM 1</td>
<td>----------</td>
<td>No changes</td>
</tr>
<tr>
<td>Extended Evaluation Form</td>
<td>EE 1-EE 2</td>
<td>11/16/00</td>
<td>State regulation change</td>
</tr>
<tr>
<td>Annotated IEP Checklist</td>
<td>CKL 1-CKL 5</td>
<td>4/23/01</td>
<td>Updated state regulation citations</td>
</tr>
<tr>
<td>Individualized Education Program</td>
<td>IEP 1-IEP 8</td>
<td>----------</td>
<td>No changes</td>
</tr>
<tr>
<td>Progress Report</td>
<td>PR 1</td>
<td>----------</td>
<td>No changes</td>
</tr>
<tr>
<td>IEP Amendment</td>
<td>IEPA 1-IEPA 2</td>
<td>----------</td>
<td>No changes</td>
</tr>
<tr>
<td>Team Determination of Educational Placement</td>
<td>PL 1</td>
<td>6/11/01</td>
<td>State law change / further clarification of educational placement</td>
</tr>
<tr>
<td>Administrative Placement Information</td>
<td>PL 2</td>
<td>6/11/01</td>
<td>State law change / additional directions for determining level of need</td>
</tr>
</tbody>
</table>
If a form or notice was revised, the date of revision is found within the footer of the form or notice. If no revision was made, then the form or notice is not dated.

Revisions have been or will soon be made in the corresponding foreign language versions of these forms and notices. Please ensure that school district personnel are using updated English and foreign language forms and notices when communicating with parents.

In closing, this memorandum provides an outline of key changes within the *IEP Process Guide* and *IEP Forms and Notices*. School districts immediately should review their current practices and realign their district practices as needed. Staff and parent training are necessary and required components of ensuring correct district practice. Questions regarding the contents of these documents may be addressed to Program Quality Assurance Services at 781.338.3700.

All in all, the first year of implementation of the new *IEP Forms and Notices* has been very successful and we thank you for taking this important step seriously. We additionally thank you in advance for your careful reading, thorough dissemination, and effective training on the revisions and clarifications contained within these materials.

Last updated: June 11, 2001
School Day and School Year Requirements

Scituate Public Schools recognizes that it is often necessary to adjust the school day of a student in special education. Lengthening or shortening the school day may be appropriate for some students and this is depicted on the student’s IEP.

Any decision to alter the student’s school day or placement (e.g., day versus residential) is made by the IEP Team and the reason for the decision is specified in the IEP. If a residential program is recommended, the IEP includes the reason for such a determination. Annual goals and services for the student in a residential program reflect the comprehensive nature of the specified program. Likewise, specialized transportation services are also delineated on the IEP.

If a student is at risk for substantial regression or will have substantial difficulty recouping skills learned over the school year, an extended year is recommended. Scituate Public Schools currently offers extended year services in a number of environments. Students participating in out-of-district programs usually attend out-of-district extended year programs as decided by their IEP Teams. However, students in out-of-district programs are always welcome to participate in in-district programs.

Recreational programs are incorporated into the ESY programming when recommended for students in special education if there are corresponding goals on the student’s IEP. For example, a student with severe social issues may participate in a recreational program with special education support to address the student’s social skill deficits.

Least Restrictive Environment

Every effort is made to ensure that all students with disabilities are educated in the least restrictive environment (LRE). Scituate is strongly committed to a full inclusion model, which involves designing instruction and support services to supplement the regular education program. Only students unable to make effective progress in the least restrictive environment are considered for additional specialized instruction and related services outside of the general education setting. All administrators, teachers, and related service personnel have been well trained in the LRE regulations.

Students in Scituate are placed in programs outside of the district only when their education cannot be delivered satisfactorily within a local school, despite the addition of supplementary aids and services. For students placed out-of-district, the retrieval process is ongoing. Students are monitored through progress reports, site visits, and parental contact. Each year at the IEP meeting, a discussion is initiated by the Out-of-District Coordinator to determine the readiness of each student to return to the district or to a less restrictive setting. The IEP serves as the basis for this discussion and careful consideration is given to the student’s need for a select type of environment, specialized instruction, and related services as well as to the achievement of the IEP goals and benchmarks. Safety can also be a major factor in determining a student’s ability to return to a less restrictive setting. It has been the experience of Scituate’s Out-of-District Coordinator that students placed outside of the district are there because their current placements are the least restrictive settings necessary for them to make effective educational progress.
For students ready to move to LRE, a careful transition process is developed at the IEP Team meeting. Some students participate in a gradual transition, while others return to the district on full-time basis on a targeted date. The Out-of-District Coordinator is the major facilitator in this process and implements weekly monitoring visits and communication to ensure success. Transition planning is always completed collaboratively and in great detail with the parent, outside placement staff, and the student, if appropriate.

**Procedure for Parent Consent for an Evaluation to Occur and Notice of Team Meeting**

The district will seek the consent of a parent for an evaluation of their student that the district deems necessary based upon the performance of the student. The parent will be encouraged to express any concerns they may have or provide information to the IEP Team about the student’s skills or learning profile. The parent can consult with the IEP Team regarding the evaluators who will be used and can meet with these individuals upon request. Parents are notified of Team meetings several days in advance and at a time that is convenient for them. The time, location, participants and purpose of the meeting are shared through telephone conversation and are put in writing to the parents prior to the meeting.

The IEP Team completes as thorough an evaluation as possible on each student. If further evaluations are necessary, the Team will make every effort to conduct these evaluations in a timely manner.

**Obtaining Parental Consent**

Written parent consent must be obtained for the following reasons:

- When conducting an Initial IEP evaluation
- When making an initial placement decision about a student in a special education program
- When conducting a reevaluation of a student who is currently receiving special education support
- When placing a student in a special education placement subsequent to the initial placement in special education
- When initiating extended evaluation services
- To obtain consent to the services proposed on a student’s IEP before providing the services

- All parent consent forms are thoroughly reviewed with parents by the Learning Specialist, who acts as the Chairperson and has the authority to commit the resources of the district.
Procedure When Parents Refuse to Participate in this Process

When the consent of a parent is required and the parent refuses to participate the following will take place:

- Attempts to obtain consent will be made through written communication to the parents including certified letters. All communication is documented.
- The chairperson may call the parents to discuss any concerns they may have, to review the student’s current progress and to review the reasons why the Team believes an evaluation should take place.
- Electronic mail (e-mail) may be sent to the parent
- A home visit by school personnel may be scheduled at the parent’s convenience
- Involvement of other school personnel (e.g. Principal, Metco Coordinator, School Psychologist) may be necessary to ensure parent participation
- Assistance from outside community service agencies or the town truancy officer, with parent consent, may be necessary

*If the school district is unable to obtain parent consent after attempting to follow the above procedures, and the IEP Team feels that the parent’s failure or refusal to consent has resulted in the denial of a free and appropriate education (FAPE) to the student, the district may seek a resolution through Special Education Appeals.

Continuum of Alternative Services and Placements – Including Vocational

Scituate Public Schools offers a continuum of services for students with disabilities who gain admission to select vocational-technical schools. In-district job sites are available for students based on their strengths, needs, preferences, and interests. Through the IEP Team process, vocational options and staff are identified to enable students to explore work opportunities before graduation.

One way this is accomplished is through Scituate High School’s Vocational Life Skills Program. Students with intellectual and Autism Spectrum disabilities participating in this program are afforded multiple opportunities for employment within and outside of the school district. Often times, students complete clerical work provided from several school departments in their classrooms. The Scituate community has been very receptive to offering students with disabilities the opportunity to experience the world of work.
Continuum of Alternative Services and Placements

The district ensures that a continuum of services and alternative placements are available to meet the needs of all students eligible for special education services from the ages of three through twenty-one. Steps are taken to ensure compliance with all elements of the student’s IEP, including vocational education.

Continuum of Services – Vocational

Scituate offers a continuum of services for disabled students who do not gain admission to select vocational-technical schools. In-district job sites are available for students based on their strengths, weaknesses, preferences, and interests. Through the IEP Team process, vocational options and staff are identified to enable students to explore work opportunities prior to graduation. Finally, Scituate staff has been able to identify and place students in supervised internships as another career alternative. The Scituate community has been very receptive to offering students with disabilities the opportunity to experience the world of work.

Special Education

Administrative Advisory SPED 2002-3:
Vocational Educational Services for Students with Disabilities

To: Superintendents, Charter School Leaders, Special Education Administrators, Directors of Career and Technical Education, and other Interested Parties

From: Marcia Mittnacht, State Director for Special Education and Francis Kane, Director of School to Career Services

Date: March 8, 2002

Purpose:
The following advisory clarifies required practice in the provision of vocational educational services and programs for students with disabilities and provides detail on the following major concepts:

1. Vocational education is not exclusively the responsibility of vocational schools.
2. Individualized Education Programs (IEPs) for students with disabilities must address vocational education needs and services based solely on the individual needs of the student.
3. IEP Teams do not have authority to make placements in vocational schools.
4. Public school districts must address needs related to vocational preparation or experience.
5. Vocational schools must provide appropriate education and special education services.
1. Vocational Education is Not Exclusively the Responsibility of Vocational Schools.

Each school district must ensure that students with disabilities have "available to them the variety of educational programs and services available to nondisabled children, including art, music, industrial arts, consumer and homemaking education, and vocational education." (34 CFR §300.305 - emphasis added).

In Massachusetts, the Department's School to Career Cluster approves vocational programs using criteria in Chapter 74 and the Perkins Act definition of vocational and technical education. Yet, the federal special education regulations contain a more expansive definition of vocational education that includes, but is not limited to, these Department-approved vocational programs. Vocational education was specifically included as part of the special education law to ensure that students with disabilities receive, if needed, appropriate, individually-designed vocational educational services to assist them in transitioning from school to adult life and work.

Definitions of Vocational Education:

<table>
<thead>
<tr>
<th>Perkins Vocational and Technical Education Act</th>
<th>Individuals with Disabilities Education Act</th>
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<tbody>
<tr>
<td>&quot;The term vocational and technical education means organized educational activities that (A) offer a sequence of courses that provides individuals with the academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than for careers requiring a baccalaureate, master's or doctoral degree) in current or emerging employment sectors; and (B) includes competency-based applied learning that contributes to the academic knowledge, higher order reasoning and problem solving skills, work attitudes, general employability skills, technical skills, and occupational specific skills, of an individual&quot;.</td>
<td>&quot;Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.&quot; (34 CFR §300.26(b)(5))</td>
</tr>
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</table>

The Massachusetts Special Education regulations also require all school districts to have a variety of program options available specifically for older student with disabilities in order to prepare these students for adult life. "Such options shall include continuing education; developing skills to access community services; developing independent living skills; developing skills for self-management of medical needs; and developing skills necessary for seeking, obtaining, and maintaining jobs. Such programs may have an educational and/or vocational focus . . ." (603 CMR §28.06(4)).

In short, the requirement for students with disabilities to participate in vocational educational experiences is not a requirement related solely to vocational schools in Massachusetts, but rather, is part and parcel of including students with disabilities in the full life of the school.
2. Individualized Education Programs (IEPs) for students with disabilities must address vocational education needs and services based solely on the individual needs of the student.

When considering skill development related to vocational preparation or experience for students with disabilities, IEP Teams do not use the Perkins Act definition for vocational education. The IEP Team does not limit its consideration to Department-approved vocational programs. In fact, IEP Teams, when developing the IEP, are not considering standard approved vocational programs at all, rather, IEP Teams consider the types of skills needed by the student to prepare for vocational activities or experience needed for independence in seeking adult career or work opportunities.

Vocational needs, like needs for math instruction or for reading instruction, should not automatically result in services solely because the student has reached a certain age. For students with disabilities, the IEP is intended to address needs that arise because of the student's disability(ies). Any, all, or perhaps none of the following career exploration and career skill development activities could, therefore, be considered as necessary educational services depending upon the nature of the student's disability and resultant educational needs:

- Career awareness
- Career exploration
- Career guidance and counseling
- Career development
- Cooperative education
- Internships or apprenticeships
- Job shadowing
- On-the-job training
- Work experience

Many students with disabilities will participate in vocational offerings in the same manner their nondisabled peers do because their disabilities do not affect their progress in this area of the general program. In these cases, skill development related to vocational preparation or experience is not identified as an educational need area and these students should continue to have access to vocational or vocationally related programs as appropriate to their interests and needs just as non-disabled students do.

3. IEP teams do not have authority to make placements in vocational schools.

For older students (usually starting at age 14), the IEP Team will consider if the student's disability(ies) affects participation in areas of education directly related to preparation for adult life. The IEP Team may identify that vocational educational services are an area of need by checking "Skill development related to vocational preparation or experience" under Other Educational Needs on IEP page 3. By doing so, IEP Teams are asserting that the student's disability(ies) has an effect in this area. Then, based on assessment information, Teams must describe the impact of the disability and must indicate needed accommodation(s) and/or services. Identification of this educational need is unrelated to admissions to vocational schools.

IEP Teams have no authority to make educational placements to vocational schools. As in all other circumstances, once the IEP is developed, the educational placement should be chosen to implement the identified IEP services required and should be chosen from a full continuum of educational placement options. Placement options include the general education classroom, a resource room, a substantially separate classroom, a separate special education day school or a separate special education residential school (none of these options are synonymous with a vocational school).
If the student is subsequently admitted to a vocational school, that vocational school serves as the "school district" for the student and provides the services in the placement that the Team has identified. If the student is not admitted to a vocational school, then the public school district provides the services and placement identified by the Team.

4. **Public school districts must address needs related to vocational preparation or experience.**

When students have not been admitted to a vocational school, then the public school district must provide any needed vocational educational services that are identified on the student's IEP. School districts must not rely solely on programs and services available within vocational schools to meet the vocational educational needs of students with disabilities.

For instance, if, in a comprehensive high school, an internship program is available to any interested students in grades 11 and 12, and a student's IEP has identified "work experience" as an IEP goal for the student, that student should be considered for participation in the internship program. If supplementary aids and services are necessary for such participation, they should be provided. If, however, no existing programs and services meet the students' unique needs, secondary school personnel will need to create new service options to fulfill the student's need for "work experience." The secondary school is not obligated to create the same work experience program that is present in a vocational school, but rather must consider how to give the student access to meaningful work experience. Work experience may be obtained through working in a school office or in a community program or may be simulated in classroom environment or through any number of other options. It is not permissible; however, to simply ignore this vocational educational need because the student is not enrolled in a vocational school.

5. **Vocational schools must provide appropriate education and special education services.**

Vocational schools must fully and carefully consider the provision of supplemental aids and services to ensure that students with disabilities have access to the same program options available to students without disabilities. The vocational school must ensure that students with disabilities are not removed or excluded from programs within the school solely because of needed curriculum modifications. *This requirement under federal special education regulation pertains to any part of the student's program whether vocational or academic in nature.*

Vocational schools may not assume that a student with a disability must "earn" the right to participate in all of the schools programs and services, rather, the school must assume that the student with a disability participates in the same manner as students without disabilities. It is the responsibility of the IEP Team to determine how the disability affects the student's participation and when or if supplementary aids or services are necessary to assist the student to participate effectively or if removal from one or more of the vocational offerings is necessary.

In closing, we hope this information is helpful to districts and vocational schools in ensuring that local practices are consistent with special education requirements for the provision of vocational education services to eligible students with disabilities. If you have any questions or require additional
information, please contact Program Quality Assurance Services at the Department of Elementary and Secondary Education (781-338-3700).

Thank you for your attention to this memorandum and for assuring that students with disabilities receive appropriate services.

* The term "vocational schools" will be used throughout this advisory to refer to vocational schools, technical schools, and other public selective secondary schools providing vocational education services.

Last updated: March 8, 2002
Procedures for Extended School Year Services for Children with Special Needs in Scituate Public Schools

Why do we need Extended School Year (ESY) services?

“ESY programs are described under state and federal special education requirements and have been further interpreted through case law and through advisories issued by the U. S. Department of Education, Office of Special Education Programs (OSEP).” [Massachusetts Department of Education, Q & A Guide on Special Education Extended School Year Programs 603 CMR 28. 05 (4) (d)]

The regulations for Massachusetts on ESY described in 603 CMR 28.05(4)(d)(1) state: "An extended year program may be identified if the student has demonstrated or is likely to demonstrate substantial regression in his or her learning skills and/or substantial difficulty in relearning such skills if an extended program is not provided. "While all children ‘regress’ each IEP team must determine if the regression would be substantial and if the time it would take for the child to return to the level achieved before the break in service (recoupment) would be considered a greater than usual time believed to be 4-6 weeks for most children.

Who is considered eligible?

At least once a year, a child’s IEP team must consider on an individual basis, ESY services and record on page 6 of the IEP its determination. To ensure compliance and program quality, all IEP members must be adhere to the following requirements as they are stated in the Massachusetts Department of Education Program Quality and Assurance Services statement on ESY:

1. IEP teams must consider providing ESY prior to the break in service by anticipating whether substantial regression and problems with recoupment will occur in the absence of ESY services.
2. The recommended program must be a continuation of the benefits that accrue to a child during the school year.
3. The ESY program must be consistent with the IEP goals and objectives but do not have to be the same services or frequency as the regular school year.
4. ESY must be considered for all children with special needs in all program types.
5. ESY programs may consist of or include recreational programs if educational goals and objective for recreational programs are part of the student’s IEP. Recreational programs that do not correspond to IEP goals or specially designed instruction shall not be considered for ESY programs.
6. Special education service providers must maintain quantitative and qualitative data regarding the child including
   a. Anecdotal records on the rates of learning (regression/recoupment chart)
   b. Anecdotal records on the rate of relearning (regression/recoupment chart)
   c. Records on the child’s attainment of IEP goals and objectives (progress notes)
      i. A form entitled REGRESSION/RECOUPMENT is provided to each chairperson. It is a shared responsibility of the chairperson and other service providers to fill out the form at the designated intervals of three times each school year.
7. ESY may concentrate on areas in which the child may experience regression or skills or programs that are not academic, but are needed so that regression does not occur in academic areas.

8. ESY is to be provided with the same principles of LRE though the district does not have to create an integrated program for summer if one does not exist.

9. Significant regression and recoupment consist of the following inter-related elements:
   a. The loss of performance levels that were attained before a break in service,
   b. The child’s limited learning rate, which lengthens the amount of time the child requires to review and/or relearn previously obtained objectives, and
   c. The fact that the time for that child to accomplish such recoupment is greater than the period of time the school district allows all other children for review and / or relearning. This necessitates the team looking backward at history of regression and recoupment time and look forward to provide a remedy.
   d. Other criteria set forth by the courts in addition to regression/ recoupment criteria to be considered to determine amount of service:
      i. The degree of the child’s impairment
      ii. The parent’s ability to provide structure at home
      iii. The child’s rate of progress
      iv. The child’s specific behavior and/ or physical problems
      v. The availability of alternative resources
      vi. The child’s ability to interact with non-disabled children
      vii. The specific curricular areas in which the child needs continuing attention
      viii. The vocational and transitional needs of the child
      ix. Whether the service requested is ‘extraordinary’ rather than usual in consideration of the child’s condition
   e. Absent evidence of substantial regression or recoupment difficulties, the team must still consider ESY if the following circumstances are present:
      i. There is a lack of progress in meeting short-term objectives over two marking periods, resulting in little or no progress made during the school year
      ii. There are significant regression/recoupment problems over short-term vacation periods or other breaks
      iii. The unique nature of any specially designed instruction or related services due to the disability of the student requires such extended school year programming (IN THIS CASE, THE REGRESSION/RECOUPMENT CHART IS NOT REQUIRED).

If the IEP Team determines eligibility, what steps need to be taken by the Chairperson to ensure services?

- Include services on the child’s IEP as it is written or as an amendment.
- Report to Director of ESY the child’s needs through the form provided, per school, due May
- Prepare a crate of work for the ESY program + PLACE IN FRONT OF STUDENT CRATE sheet (blue) (due last day of school)
What does the Director of Special Education do to ensure services are in place for the ESY program?

- Using the chart provided by each school, staffing will be determined and put in place by early spring.
- Letters will be sent to the parent explaining the program for each child. The letter will include a self-addressed envelope for return of a data sheet by early spring for each child. The data sheet will include information on the child’s allergies, dates of attendances, and emergency information.
- The final day of school, all crates will be collected and distributed to the prescribed program.
- The programs will be set up the days following the end of school and the beginning of ESY services, including transportation.

What services and program options are available?

- Services are determined on an individual basis. Options include:
  - LINK – Learning is New Knowledge – Individual academic work 2x90 min./wk
  - Vocational Life Skills – An extension of the high school Vocational Life Skills Program
  - Bridges – PLC/ILC group in collaboration with Scituate Town Recreation Department incorporating the Young People and Morning Adventure programs
  - Social Thinking – grades 1-6 working on social thinking and academic skills in collaboration with Scituate Town Recreation Department incorporating the Young People and Morning Adventure programs
  - Social/Emotional Programming – Currently for grades 9-12 who are in the high school program supporting social/emotional needs
  - Preschool – An extension of the integrated preschool program
  - WRAP – for student’s whose IEP’s determine the need for further extended school year services

Where are the services provided?

Services are located in the SPS buildings, and for some programs, within the Scituate Recreation programs.

How is the curriculum for the summer program determined and how is it monitored?

The chairperson and IEP team to ensure goals individually creates program and objective of each student are worked on during the ESY program. Monitoring of individual work is done in the form of a checklist and progress notes at the end of the ESY program.

Does a student who attends one year attend the next? If a student did not attend one year, may s/he attend the next?

Each year every child on an IEP is considered for ESY.
Scituate Public Schools
Instructions/Notes for Extended School Year

1. You must fill out a “Student Recommendation Form” and an “Extended School Year Documentation Form” for each child for whom you are recommending the summer program. No student can be recommended for the summer program without these completed forms.

2. If you are not the chairperson, it is your responsibility to provide the chairperson (most likely the special educator) with a completed copy of your section of the Extended Year form before the deadline(s) noted below as they are responsible for submitting the entire Extended School Year Form to Central Office by this date. Please keep a copy for your records. (Please note: If you are the only person recommending services for a particular student, then it is your responsibility to send the form directly to Central Office and provide copies to the chairperson for their summer services file.)

3. You need to fill out the form for all areas in which you are concerned that the student will regress (e.g. Reading and Math, or OT, Reading, and Other). This information should be used to determine what program/services the student will need. You must complete information for at least two time periods. For example, you could collect data in September (after summer break) and November (after Thanksgiving break), or a long weekend and February break.

4. The definition of substantial regression we are using is: requiring an equal number of days following the break as there were days in the break for the students to demonstrate skills at the level they were able to demonstrate on the day before the beginning of the break (i.e. after summer break, students should be at their June levels of performance by mid to late October).

5. Information will be collected once during the school year. The “Student Recommendation Form” and the “Extended School Year Documentation Form” will be collected on. The next date of collection will be on.
Scituate Special Education Services: Preschool through Grade 12+

Introduction

Scituate Public Schools provides a wide range of services to eligible students aged 3 – 22 years with varying special education eligibility areas. These services include, but are not limited to: assessment, eligibility determination, special education services, related service/therapies, and re-evaluation. This document will describe the special education services available to eligible Scituate School students.

Assessment and Re-evaluation

When a student is referred for a special education evaluation, the student is assessed in all areas related to the suspected disability. Additionally, an educational assessment is administered. Included in this assessment is a history of the student’s educational progress in the general curriculum. Optional assessments include but are not limited to a comprehensive health assessment, a psychological assessment, and a home assessment. With parental consent a student is evaluated every three years or sooner if deemed necessary by the Team.

Eligibility determination

The Team shall examine the evaluative data, including information provided by the parent, and make a determination if the student is eligible or ineligible for special education services. If the Team finds the evaluation information insufficient to develop an IEP, the Team, with the parent’s consent, may agree to an extended evaluation period. The extended evaluation period shall not be used to deny programs or services determined to be necessary by the Team nor shall an extended evaluation period be used to allow additional time to complete the required assessments.

Related Services Currently Provided to Eligible Students

For students with special education needs who also require related services, the district will provide or arrange for the provision of support services, which have been determined to be developmental or corrective in nature. The IEP Team has agreed that these services are required to assist the student in benefiting from special education support and/or to assist the student in accessing the general curriculum. Related services provided in the Scituate Public Schools include the following, but are not limited to:

1. Speech and Language Therapy
2. Psychological Consultation – to the Team
3. Therapeutic Interventions
4. Physical Therapy
5. Occupational Therapy
6. Early Identification/Intervention for Children with Disabilities
7. Orientation and Mobility Training
8. Teacher of the Visually Impaired consultation
9. Parent Training
10. Special Transportation
11. Applied Behavior Analysis
12. BCBA Consultation
13. Assistive Technology consultation and devices as required
14. Adapted Physical Education
Early Childhood

Federal and State special education legislation stipulates that public school districts are responsible for providing special education services to eligible preschool children. The level of support provided to preschool children varies depending on their special needs. In Scituate, the majority of preschool children on IEPs presents with developmental delays and require related services such as speech and language therapy, occupational therapy, and physical therapy. These populations of children usually attend community preschools and come to Scituate Public Schools for their therapy services. Other children with more intensive special needs require a separate, publicly funded educational program and are enrolled in Scituate’s integrated preschool program or may attend an out-of-district collaborative or private placement.

Scituate’s Integrated Preschool

In Scituate’s Integrated Preschool, a teacher and two paraprofessionals teach up to five children with special needs and ten typically developing children. Developmentally appropriate activities are offered in a schedule that provides both structure and opportunities for open-ended play. Unique to this preschool is the integration of supports for both children with special needs and children who are developing at a typical pace. By recognizing each child’s special skills, goals can be set to challenge the individual child in order to address his or her learning potential. We adhere to the Early Childhood Program Standards and the Guidelines for Preschool Learning Experiences. The Preschool Team has aligned the curriculum to the Massachusetts Frameworks. We accept referrals from Early Intervention or other agencies at 2.5 years old or sooner to ensure continuity of services. Should a child be eligible for an IEP, the IEP is developed and ready to implement upon the child’s third birthday as mandated by State and Federal regulations. Transition activities are individualized for each child and family. Currently allocated spaces for this program consist of three classrooms located in the Wampatuck Elementary School, and space for the related services as described above in the Therapy Services section.

Early Intervention and Community Preschools

Some children in need of special education services are referred to Scituate Public Schools from federally mandated early intervention agencies. Scituate’s Early Childhood Coordinator works with these early intervention agencies to coordinate their efforts with Scituate to plan the transition of this population of children into special education services on their third birthday. The ECC also works closely with private community preschools, providing consultation to the teachers and teaching assistant on strategies for maximizing the participation of Scituate preschool children with disabilities in their programs.
Learning Centers
Each elementary school has a Learning Center staffed with special education certified teachers and paraprofessionals. Specialized instruction is provided to eligible students and these services may take place in a regular education classroom and/or in a Learning Center. Many students work with special education staff in small groups where they receive support and strategies that enable them to access and progress in the regular education curriculum. These centers provide services to students with a wide range of special education needs and varying disabilities.

Elementary Co-Teaching
Co-teaching is currently offered in all elementary buildings. It is our vision to expand the co-teaching team model grades 4-10 by the year 2016-2017. In this program children on IEPs who need support are integrated with children who are not on IEPs. Two classroom teachers, a general educator and a special educator, instruct the class. In this program students are provided with additional scaffolding and increased individualization due to the support of two teachers.

PLC and ILC
The Primary Learning Center and the Intermediate Learning Center are located in the Hatherly Elementary School. These two programs service students within the district, grades K-6, who present with severe special education needs. The program consists of one special education teacher and paraprofessionals to create 1:2 ratio of adult to students. Should a student require more intensive 1:1 supports, the IEP Team will make that recommendation.

Elementary Therapeutic Program
The program staffing is one Special Educator, one School Adjustment Counselor and paraprofessional supports. The students require supports in the area of social and emotional skills. Students will work on individual academic and social/ emotional IEP goals. Academics will be based off the elementary curriculum. The use of the natural setting in the elementary school and activities to reinforce the social and emotional skills of the students is implemented. The program will be for students in grades K-6 who receive special education services related to an emotional or behavioral disability.

Middle School Co-Teaching
Co-teaching is a model currently used in the Gates Middle School. We are training the Gates Teams in the Co-teaching team model over the next year. In this program children on IEPs who need support are integrated with children who are not on IEPs. Two classroom teachers, a general educator and a special educator, instruct the class. In this program students are provided with additional scaffolding and increased individualization due to the support of two teachers.

Academic Strategies
The Academic Strategies program provides specialized instruction to eligible students who require varying degrees of skill development and academic support. The goal of Academic Strategies is to assist students to become independent learners in the regular education setting. Students are fully enrolled in mainstream classes and attend Academic Strategy sessions as a component of their schedule. Students attending Academic Strategy sessions receive small group remedial instruction. The time spent in Academic Strategy sessions varies for each student. Areas of emphasis are reading
comprehension, written expression, mathematics, and study skills such as note taking, outlining, report writing and test preparation.
As part of the Academic Strategy program special education staff offers support in many regular education classrooms. By participating in mainstream classrooms, Academic Strategy staff is better able to provide specific curriculum support in the Academic Strategy sessions.

**Middle School Therapeutic Program**
Students will work on individual academic and social/ emotional IEP goals. Academics will be based off the high school curriculum. The use of the natural setting in the high school and activities to reinforce the social and emotional skills of the students is implemented. The program staffing includes one special education teacher, one paraprofessional and one Therapeutic School Psychologist. The program will be for students in grades 7-8 who receive special education services related to an emotional or behavioral disability.

**Middle School Intensive Needs Program**
This program is staffed with one special education teacher. The students enrolled within this program are students for whom a possible Fifth Year of studies may be necessary to support them in receiving their high school diploma. Some of the students may be considered by the Team as vocationally bound along with receiving their academic classes with supports.

**Gates Learning Center Program (GLC)**
The Gates Learning Center services students within the district, grades 7-8, who present with severe special education needs. The program consists of one special education teacher and paraprofessionals to create 1:2 ratio of adult to students. Should a student require more intensive 1:1 supports, the IEP Team will make that recommendation. Typically the ILC program feeds into the Gates Learning Center program.

**High School: Grades 9-12**

**High School Co-Teaching**
Co-teaching is currently offered at the high school in specific classes. The high school grade 10 team will be trained in the new co-teaching team model in the 2015 school year to complete our three year vision of team co-teaching in the Scituate Public Schools grades 4-10. In this program children on IEPs who need support are integrated with children who are not on IEPs. Two classroom teachers, a general educator and a special educator, instruct the class. In this program students are provided with additional scaffolding and increased individualization due to the support of two teachers.

**Academic Strategies:**
The Academic Strategies program provides specialized instruction to eligible students who require varying degrees of skill development and academic support. The goal of Academic Strategies is to assist students to become independent learners in the regular education setting. Students are fully enrolled in mainstream classes and attend Academic Strategy sessions as a component of their schedule.
Students attending Academic Strategy sessions receive small group remedial instruction. The time spent in Academic Strategy sessions varies for each student. Areas of emphasis are reading
comprehension, written expression, mathematics, and study skills such as note taking, outlining, report writing and test preparation.

As part of the Academic Strategy program special education staff offers support in many regular education classrooms. By participating in mainstream classrooms, Academic Strategy staff is better able to provide specific curriculum support in the Academic Strategy sessions.

**Vocational Life Skills Program**
The Scituate High School Vocational Life Skills Program enrolls a population of special education students from Scituate and neighboring South Shore school systems whose intellectual and autism spectrum disabilities present them with unique challenges in preparing for adult life. The program curriculum includes; functional academics, pre-vocational experiences that are specific to the vocational training in the community and job placements, and social skills. Students move gradually to increasingly independent vocational opportunities in the community beginning with job coaches and moving to more independence on the job site.

**High School Therapeutic Program**
Students will work on individual academic and social/ emotional IEP goals. Academics will be based off the high school curriculum. The use of the natural setting in the high school and activities to reinforce the social and emotional skills of the students is implemented. The program staffing includes one special education teacher, one paraprofessional and one Therapeutic School Psychologist. The program will be for students in grades 9-12 who receive special education services related to an emotional or behavioral disability.

**High School Intensive Needs Program**
This program is staffed with one special education teacher. The students enrolled within this program are students for whom a possible Fifth Year of studies may be necessary to support them in receiving their high school diploma. Some of the students may be considered by the Team as vocationally bound along with receiving their academic classes with supports.

**Collaborative and Private Special Education Programs**
Students with severe disabilities, who cannot be educated in Scituate Public Schools even with the provision of supplementary aids and services, are served in special education programs located outside of the Scituate Public Schools. This population of students may attend Collaboratives, private day school, or residential programs. The Scituate Public Schools is currently a member of the South Shore Educational Collaborative. An Out-of-District Coordinator closely monitors each student attending an out-of-district school. This Coordinator is actively involved in the re-integration process as out-of-district students fostering the transition back into Scituate Public Schools programs, specialized instruction, and full or partial participation in regular education classroom

**Technology**

In Scituate, children with disabilities are deriving great benefit from adaptive technology, particularly in the areas of new computer hardware and software. The Special Education teachers work collaboratively with outside consultants and our own Assistive Technology Specialist. This collaboration ensures that Scituate is on the cutting edge in terms of technology for students with
severe disabilities. Consultants with expertise in the area of adaptive technology regularly visit Scituate classrooms, observe and assess children working with adaptive technology, and make recommendations to improve the children’s performance. These consultants also train occupational therapists, speech and language teachers, and paraprofessionals to utilize adaptive technology and accompanying software. Students’ access to the general education curriculum is enhanced by hardware such as adapted keyboards, Braille printers, and touch screen monitors. Additionally, children are learning to use a wide-array of software to expand their opportunities to access the general education curriculum.

**Home Services**

For some students the IEP Team may recommend home services. Home services are primarily to assist in the training of parents on how to work with their child’s needs in the home setting. The services are typically short-term and are reviewed at each IEP Team meeting for recommendation of continuation or ending of services per documentation of the child’s needs and growth.

**Scituate Public Schools**

**Home Training Plan**

Name: ____________________ Date: _____________
Teacher: ____________________ Service Provider: ____________________
IEP Chairperson: ______________ Service Supervisor: ______________

Specific Home Objectives as listed from the IEP:
1. ______________________________________________________________________
   ______________________________________________________________________

2. ______________________________________________________________________
   ______________________________________________________________________

3. ______________________________________________________________________
   ______________________________________________________________________

Methodology/Evaluation of Progress:
Objective #1:
____________________________________________________________________________
____________________________________________________________________________

Objective #2:
____________________________________________________________________________
____________________________________________________________________________

Objective #3:
____________________________________________________________________________
____________________________________________________________________________

# Of Hours needed/week: ________ Anticipated # of Weeks: ________
Schedule:
Monday: ________ Tuesday: ________ Wednesday: ________ Thursday: ________ Friday: ________

Next meeting date: ___________________

Signatures:
We agree to participate in the home training sessions and understand that the home training sessions are short term based on student growth and family need for supports in working with their child in the home setting. Data and clinical observations will determine home training needs and continuation:

_________________________________  ________________________________
Parent/Date                        Parent/Date

_________________________________
IEP Chairperson/Date
Participation of Students with Disabilities in MCAS/PARCC

Participation of students with disabilities in state and local testing programs is determined by the IEP Team. It is the policy of the Scituate Public Schools that every student with disabilities will be afforded the right to participate in all state and local testing programs. This mandate of universal participation ensures that students with disabilities have access to the general education curriculum and the learning standards established by the school system in concert with the Massachusetts Curriculum Frameworks.

The specific provisions for testing accommodations or alternative assessment are also determined by the student’s IEP Team. Guidance is provided to the Team via DESE advisories addressing standard and non-standard testing accommodations as well as through the Massachusetts Department of Elementary and Secondary Education “Educator’s Manual for MCAS-Alternative”. Every effort is made to ensure that each disabled student has the opportunity to be tested in the same manner as his/her non-disabled peers. Testing accommodations or alternative testing is only utilized to ensure equal access and non-discrimination due to the existence of a disability.

Students placed outside of the district in Massachusetts approved private schools or in Collaboratives are subject to the same rules and regulations as students who attend the Scituate Public Schools. The Out-of-District Coordinator, who monitors out-of-district placements, is responsible for ensuring that the student’s IEP adequately addresses the testing issues based on disability and identified grade level. She also works closely with the Office of Curriculum and Instruction to ensure that all of Scituate’s out-of-district students participate in MCAS and have results placed on file. Parent notification is also a major focus of Scituate’s reporting system for all students, including those who attend school outside of the district.

For guidance regarding the method of determining any needed testing accommodations and/or alternate assessment for disabled students please see the attached Special Education Advisories. (Administrative Advisory SPED 2002-4-Revised and Advisory SPED 2004-2-AYP and Students with Disabilities.)
The recent release of "Mid-cycle AYP Determinations" for Massachusetts schools and districts has prompted a renewed discussion of the implications of *No Child Left Behind* (NCLB), and the complexity of serving students with disabilities. A central goal of NCLB is for all students to attain proficiency in English language arts (ELA) and mathematics by the year 2014. Schools and districts are expected to meet specific annual performance goals and to demonstrate *Adequate Yearly Progress* (AYP) for all student subgroups, including students with disabilities.

**Generally:** AYP determinations, made separately for ELA and mathematics, are based on meeting targeted goals in each of the following areas:

- MCAS participation rates
- MCAS performance (standard form tests and MCAS Alternate Assessments)
- Changes in MCAS performance results compared to prior years
- Attendance rates for elementary and middle schools and for districts, and graduation rates (competency determination attainment rates until 2006) for high schools.

This advisory will focus on the MCAS performance aspect of AYP for students with disabilities and some of the unique features in the law that may affect AYP for your school or district.

Other informational materials related to the 2003 mid-cycle AYP determinations for schools and districts are available on the ESE website at: [http://www.doe.mass.edu/sda/ayp/cycleIIImid/](http://www.doe.mass.edu/sda/ayp/cycleIIImid/)

**The "1% Rule"**

On December 9, 2003, the federal government released final regulations related to inclusion of students with *significant cognitive disabilities* (SWCDs) in the calculation of school and district AYP determinations. This new rule allows the state to accommodate SWCDs in their AYP calculations by setting different performance expectations for up to 1% of the student population.

The achievement of SWCDs must continue to reflect challenging academic goals that are aligned with the same goals that we hold for "typical" students. Massachusetts accomplishes this through the
MCAS Alternate Assessment program (MCAS-Alt) and the alignment of the MCAS-Alt with state learning standards.\(^1\)

The MCAS-Alt Index

In calculating AYP, schools and districts are awarded points based on each student's MCAS results in a given content area. Massachusetts has developed an alternate "index" for the awarding of points for students taking MCAS-Alt that parallels the index for students taking standard MCAS tests. The two tables below show the comparable award of points for students taking the standard MCAS tests and the MCAS-Alt for the purposes of calculating AYP in relation to performance. The MCAS-Alt index will allow schools to receive recognition for the progress and achievements of SWCDs, even if these students do not reach "proficiency" as defined for a typical student.

At this time, all SWCDs performing at the Awareness, Emerging, and Progressing performance levels on the alternate assessment are considered eligible to be included in the alternate award of points described in Table 2. For district level calculations, when the number of students achieving these performance levels exceeds 1% of the district population, calculations for AYP will be adjusted. District level calculations may reflect up to a maximum of 1% of the district population using the MCAS-Alt Index, with the remainder awarded points according to the MCAS Index shown in Table 1.\(^2\)

**Table 1: MCAS Proficiency Index**

For students taking standard MCAS tests (and MCAS-Alt for students who do not have significant cognitive disabilities)

<table>
<thead>
<tr>
<th>MCAS SCALED SCORE (or MCAS-Alt equivalent)</th>
<th>POINTS AWARDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failing/Warning - Low</td>
<td>0</td>
</tr>
<tr>
<td>Failing/Warning - High</td>
<td>25</td>
</tr>
<tr>
<td>Needs Improvement - Low</td>
<td>50</td>
</tr>
<tr>
<td>Needs Improvement - High</td>
<td>75</td>
</tr>
<tr>
<td>Proficient/Advanced</td>
<td>100</td>
</tr>
</tbody>
</table>

**Table 2: MCAS-Alt Index**

For students with significant cognitive disabilities taking MCAS-Alt (up to 1% of all assessed students in a district)

<table>
<thead>
<tr>
<th>MCAS-ALT SCORE</th>
<th>POINTS AWARDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portfolio not submitted</td>
<td>0</td>
</tr>
<tr>
<td>Incomplete</td>
<td>25</td>
</tr>
<tr>
<td>Awareness</td>
<td>50</td>
</tr>
<tr>
<td>Emerging</td>
<td>75</td>
</tr>
<tr>
<td>Progressing</td>
<td>100</td>
</tr>
</tbody>
</table>

Point totals are reflected in a Composite Performance Index (CPI) for each school and district using indices shown in Tables 1 and 2. A school's or district's Composite Performance Index is calculated by:
1. determining the number of students who took either the standard MCAS test or MCAS-Alt, and those who took MCAS-Alt considered to be SWCDs, up to 1% of the district’s student population;
2. multiplying the number of students who took each assessment by the number of points associated with each performance level in the corresponding proficiency index (Table 1 or 2 above);
3. adding together the point totals from step two, then dividing that sum by the total number of students assessed through both standard MCAS tests and the MCAS-Alt.

The result is a number between 0 and 100 that constitutes the school’s or district’s Composite Performance Index.

The federal "1% rule” allowing states to include SWCDs in making local AYP determinations, and to recognize the progress and performance of these students, represents a significant policy shift for Massachusetts. Previously, students taking the MCAS-Alt and performing at the levels reflected in Table 2 had been counted only as Warning/Failing in the state's accountability system. It is our belief that this policy and the flexibility for calculating AYP will ensure that schools are appropriately acknowledged for their efforts on behalf of SWCDs, as well as continuing to ensure high standards and high expectations for all students.

We hope this information is helpful. Additional information on NCLB and AYP can be found on the Department's website at: http://www.doe.mass.edu/nclb/

Thank you in advance for your careful reading of this advisory and for ensuring that students with disabilities receive appropriate services.

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1 The Department publication titled the Resource Guide to the Massachusetts Curriculum Frameworks for Students with Significant Disabilities (2001) has been widely disseminated in Massachusetts, and outlines a "continuum of learning” along which students can address the state’s learning standards at appropriately challenging levels.

2 The US Department of Education has placed a 1% cap on the number of students in each district (though not in individual schools) that can be counted for AYP using the "MCAS-Alt Index" (shown in Table 2). The 1% cap does not restrict the number of students who can take the MCAS-Alt, as determined by their IEP Teams. The MCAS-Alt Index does not apply to students who are able to demonstrate at or above grade level using the alternate assessment, or to students who do not appear to have disabilities affecting their cognitive skills.

Last updated: December 26, 2003
Special Education

Administrative Advisory SPED 2002-4 - REVISED:
Special Education Students in Out-of-District Placements - Participation in MCAS Testing and High School Graduation Standards

To: Superintendents, Charter School Leaders, Special Education Administrators, Directors of Educational Collaboratives, Directors of Approved Public and Private Special Education Schools and other Interested Parties

From: David P. Driscoll, Commissioner of Education

Date: October 7, 2002

This advisory relates to all Massachusetts students who are receiving a publicly funded education in an out-of-district day or residential school, having been placed in the school by a Massachusetts school district under the special education law. The purpose of this advisory is to clarify the responsibility for these students' participation in the MCAS (Massachusetts Comprehensive Assessment System) testing program and the standards for award of a high school diploma starting with the class of 2003.

Participation in the MCAS Assessment Program

All publicly funded students at the grade levels being tested, including students in charter schools, in institutional school programs, in educational Collaboratives and in private special education schools, participate in the MCAS program. This requirement of universal participation ensures that all students will have the opportunity to learn the material covered by the academic learning standards in the Massachusetts curriculum frameworks.

The Department of Elementary and Secondary Education has made an effort to identify all schools, including those out of state, that are providing publicly funded education to Massachusetts students, so that the students may be included in the MCAS program. The Department of Elementary and Secondary Education asks Massachusetts school districts to identify the students they have placed in out-of-district programs and the location of the programs. The Department then arranges for the out-of-district schools to receive testing materials and administer the MCAS tests.

Beginning in FY 2001, the MCAS test results for students in out-of-district programs have been included in the results for the sending Massachusetts school districts as well as provided to each out-of-district program. In accordance with the Special Education Regulations, 603 CMR 28.06(3) and 28.09, the sending school district is responsible for ensuring that each student it has placed in an out-of-district program participates in MCAS, as follows:

1. The school district monitors the provision of services to and the programs of individual students placed out-of-district. 603 CMR 28.06(3) (b).
2. The school district enters into a written contract with each out-of-district placement to ensure that the student(s) the school district has placed in the program receive all appropriate services, including assessment services. 603 CMR 28.06(3) (f).
3. Day and residential school programs approved by the Department under 603 CMR 28.09 are required to have "written procedures outlining how such schools will ensure that enrolled students also participate in state assessment programs in accordance with the assessment participation information provided on the student's IEP." 603 CMR 28.09(9)(d). The sending school district may obtain a copy of the school's written procedures for student assessment.

4. The school district's authority and responsibility covers not only approved day and residential special education schools, but also unapproved programs for which the district has met the requirements of 603 CMR 28.06(3)(e) for placement of publicly funded students. The district may choose to delegate the task of ensuring participation in the MCAS program to the unapproved program using the written contract required under 603 CMR 28.06(3)(f).

Award of the High School Diploma

Under the special education law, a student with a disability who requires special education is entitled to receive publicly funded special education until s/he turns twenty-two or "attains a high school diploma or its equivalent," whichever comes first. General Laws c. 71B, s.1. Starting with the high school graduating class of 2003, satisfaction of the requirements of the competency determination - performance at the level of 220 or better on the grade 10 MCAS in English language arts and mathematics - is a condition for high school graduation or receipt of a high school diploma. General Laws c. 69, s. 1D. These two laws provide the framework for the award of the high school diploma to students who are receiving publicly funded education in an out-of-district special education program, as follows:

1. At least one year in advance of a probable graduation date, the sending public school district has the responsibility to convene a Team meeting for annual review of the IEP. At this meeting, the public school must indicate whether the student is expected to meet high school graduation standards and communicate the likelihood of graduation to the parent at the meeting and in the IEP that is proposed for the student. For students in out-of-district placements, the Team meeting at which this discussion takes place should include a representative of the out-of-district program so that there is a common understanding among the public school, the out-of-district program, the parent, and the student, of the likelihood of graduation.

2. The standards for award of the high school diploma include requirements set by the district and state standards including, as of 2003, the competency determination standard. However, by choosing to send a student to an out-of-district program, the public school district is accepting the out-of-district program as sufficient to meet local requirements that are necessary for graduation in addition to the competency determination.

3. For programs approved by the Massachusetts Department of Elementary and Secondary Education in accordance with 603 CMR 28.09 (the "approved" private and public day and residential programs), the sending public school district shall assume that the approved special education school has aligned the school curriculum with the state curriculum frameworks consistent with 603 CMR 28.09(9)(b).

4. For unapproved programs, the sending public school district is responsible to ensure that the curricular program of the unapproved school is sufficient to allow the student to make effective progress toward Massachusetts state standards.

5. Beginning with the high school graduating class of 2003, the granting of a "high school diploma" for students served in out-of-district placements signifies, at a minimum, the
successful completion of the state competency determination through the MCAS grade 10 testing program in English language arts and mathematics.

6. All students who receive a publicly funded special education program must be provided with an opportunity to participate in the MCAS testing program (or alternate assessment) according to the federal special education law and MCAS administration guidelines published by the Department of Elementary and Secondary Education.

7. As in the past, any school, including a public school, an educational collaborative, a private special education school, or other out-of-district education agency may issue a certificate to a publicly funded student. The certificate may recognize achievement, attendance, course completion, or participation.

8. A publicly funded student who receives a certificate from a private special education school or other out-of-district education program in 2003 or thereafter, but who has not received a high school diploma or its equivalent, is entitled to continue receiving publicly funded special education services as long as the student continues to meet the eligibility criteria for such services. The right to continued services ends when the student turns 22 or receives a high school diploma or its equivalent, whichever comes first.

9. Beginning with the high school graduating class of 2003, a certificate issued to a publicly funded student by an out-of-district program may only be called a "diploma" and indicate "high school graduation" if the student has met the state MCAS competency determination standard.
   a. In these circumstances, either the sending school district or the out-of-district program, or both jointly, may award a high school diploma to the student.
   b. If the high school diploma is awarded by the out-of-district program, then the diploma shall indicate that the student has met state standards for high school graduation, and that the diploma is awarded "by the [Name of out-of-district School or Program,] according to the standards of the Commonwealth of Massachusetts."
   c. A student who earns the high school diploma from the out-of-district placement is also entitled, upon request, to receive a diploma from the sending school district indicating that the student met state and local graduation standards under the auspices of the school district.

In closing, we hope this information is helpful to public and private special education school administrators in ensuring that local practices are consistent with requirements for the participation in MCAS testing and high school graduation standards for eligible students with disabilities. If you have any questions or require additional information, please contact Program Quality Assurance Services at the Department of Elementary and Secondary Education (781-338-3700). Thank you for your attention to this memorandum and for assuring that students with disabilities receive appropriate services.

Last updated: October 7, 2002
Section IV

Transition

Scituate Public Schools begins considering transition and future goals for students ages fourteen and older. The course of study for each individual student is discussed and finalized at the IEP meeting. Post-secondary plans, activities, and transition services are discussed annually in great detail beginning with the first IEP in which the student turns fourteen. The IEP Team, with student input, considers the student’s needs, interests, preferences, abilities, etc. The transition services and the student’s course of study must be directly linked to the vision statement on IEP 1 and the appropriate goals on IEP 4. A state mandated Transition Form is also completed and included in the student’s special education file.

For any student approaching graduation or the age of twenty-two, the IEP Team must consider the need for continuing services from adult human service agencies. Special education staff, in collaboration with the Director of Special Education, makes a 688 Referral to the Department of Developmental Services (DDS) for all students remaining in school until age twenty-two. Typically, this process is begun at the IEP meeting of the student’s eighteenth year. The district also has procedures for providing a summary of the student’s academic achievement and functional performance, including recommendations on assisting the student in meeting postsecondary goals, for students whose eligibility terminates because of graduation or because the student ages out.

Follow-up to secure adult services is a critical component of the transition process in order to ensure that each student is receiving the services determined by the adult agency. The IEP Team is required to reconvene if the identified agency fails to meet its obligation. It is the responsibility of the IEP Team to identify alternative strategies to meet the IE transition goals.

Scituate also provides transition planning for students who are changing grade levels and /or schools. Students leaving the Early Childhood Program are carefully transitioned into kindergarten. Transition planning also occurs between elementary and middle school (grade 6 to 7) and from middle school to high school (grade 8 to 9).
EI Transition Procedures

The Early Childhood Coordinator cultivates a strong and mutually respectful working relationship with our referring EI provider, The ARC of the South Shore. She is in phone contact with the director and asks them to notify their staff that referrals for children with more intensive needs who will need a program would be better served with earlier referrals and that she is available for early referrals for any family who prefers this service.

In some instances, the case managers contact the Coordinator directly to inform her if a referral is on the way and sometimes the parent calls directly. Once a referral is received, the Coordinator calls the family to let them know the information has arrived and that the Coordinator will be at the scheduled 90-day meeting. This will be the first opportunity for them to meet. Typically the first visit is a home with the child’s EI case manager. At that time a general transition plan is developed.

Before the child turns three, the Coordinator sees the child several times in different settings, and once the evaluation is formally initiated; other school staff is included as appropriate. Children may also visit the program transitionally, again, as deemed appropriate by the EI providers, family and school staff.

By the time the Team convenes for the IEP, the family appears more comfortable with the Team members, satisfied that the people around the table know their child and that when we say they are a part of the Team, we mean it.

We often accept EI or outside assessments as part of the initial evaluation and find it useful to reconvene the Team once the child has been in school for 6-8 weeks. The family is afforded an early sense of how things are going, the child’s teacher and therapists will know the youngster well and we can fine-tune the IEP if needed.

If a family has refused or delayed an EI referral, there may be a gap in services and the child may enter the system through preschool screening and evaluation. When a child is referred late, we make every effort to complete the transition in time to ensure continuity of services with as little disruption as possible.
Special Education

Technical Assistance Advisory SPED 2009-1: Transition Planning to Begin at Age 14

To: Middle and High School Principals, Administrators of Special Education, and Other Interested Parties

From: Marcia Mittnacht
State Director of Special Education

Date: September 3, 2008

The purpose of this advisory is to highlight a recent law passed by the Massachusetts Legislature. On August 6, 2008, the Massachusetts Legislature approved Chapter 285 of the Acts of 2008, which amends Section 2 of c.71B (the Massachusetts special education statute) by adding the following paragraph:

Beginning age 14 or sooner if determined appropriate by an individualized education program team, school age children with disabilities shall be entitled to transition services and measurable postsecondary goals, as provided under the federal Individual with Disabilities Education Act, 20 USC sec. 1400, et sec. 1

The transition services that school districts are required to provide under Chapter 285 continue to be defined by the federal IDEA 2004. IDEA 2004 defines transition services as a "coordinated set of activities designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities." 2 Under IDEA 2004, transition planning must take place for the student who is 15 years of age and, if needed, the IEP Team must include appropriate goals related to postsecondary training, education, employment, and independent living skills in the student's IEP. 3

However, with the passage of Chapter 285, in Massachusetts transition planning must now begin when the student is 14 years of age. Therefore, Massachusetts now requires that beginning when the eligible student is 14, the school district must plan for the student's need for transition services and the school district must document this discussion annually. School districts must use the Transition Planning Form (28M/9) developed by the Department of Elementary and Secondary Education (Department). If needed, appropriate goals must be reflected in the IEP that is developed for the student who is 14 years of age. The student must be invited to all IEP meetings where the Team discusses the student's transition planning.

The Department has developed a training module on the transition planning process that schools may use to assist staff in understanding this process. In particular, middle school staff may find the training module helpful.
The Department expects districts to conduct training as needed and to initiate transition planning for all 14 year olds eligible for special education during the course of the 2008-2009 school year. Therefore, by the end of this school year all students with disabilities aged 14 years or older should have a completed Transition Planning Form that will be updated annually. The Department will begin monitoring of transition planning for 14 year olds as of the 2009-2010 school year.

C: Superintendents of Schools Charter School Leaders


234 CFR. § 300.43 (2006).

3See Administrative Advisory SPED 2006-1 at: http://www.doe.mass.edu/sped/advisories/06_1.html


5See Module Four at: http://www.doe.mass.edu/sped/cspd/mod4.html
Special Education

Technical Assistance Advisory SPED 2013-1:
Postsecondary Goals and Annual IEP Goals in the Transition Planning Process

To:
Middle and High School Principals, Administrators of Special Education, General and Special Educators, and Other Interested Parties
From:
Marcia Mittnacht, State Director of Special Education
Date:
September 14, 2012

The purpose of this advisory is to:

a. highlight the central role of appropriate measurable postsecondary goals and annual IEP goals in the transition planning process for students with IEPs, ages 14-22.

b. provide guidance to school districts concerning the inclusion of postsecondary goals in the Transition Planning Form (TPF) (28M/9) and the inclusion of postsecondary goals and annual goals in the IEP.

Background

According to Massachusetts G.L. c. 69, §1,

It is hereby declared to be a paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children... including a school age child with a disability... the opportunity to reach their full potential and to lead lives as participants in the political and social life of the commonwealth and as contributors to its economy [emphasis added].

The Individuals with Disabilities Education Act (IDEA) states

Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities [emphasis added].

Furthermore, one of the purposes 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 [emphasis added].

**Therefore, the ultimate goal of all professional endeavors in special education is to prepare students with disabilities for adult life.**

As expressed in a 2012 report from the Massachusetts Board of Elementary and Secondary Education's Task Force on Integrating College and Career Readiness,

Every child deserves an education that nurtures their dreams and lays out a navigable pathway to accomplish them.

Commissioner Mitchell Chester has identified "preparing students for college and careers" as one of five top Department of Elementary and Secondary Education’s priorities. The Department’s overarching goal is to "prepare all students to succeed in the world that awaits them after high school." All students deserve a world-class education that prepares them for postsecondary opportunities, career training options, economically viable careers, and healthy, productive lives.

A growing body of research indicates that teaching students with disabilities to be self-determined increases their chances of achieving positive adult outcomes. This research aligns with findings in the areas of college and career readiness, student motivation, and student learning plans. Self-determination can be understood as "a combination of skills, knowledge, and beliefs that enable a person to engage in goal-directed, self-regulated, autonomous behavior. As such, self-determination includes an understanding of one’s strengths and limitations, together with a belief of oneself as capable and effective." Students who are self-determined are "causal agents in their own lives."

**Therefore, the more students are engaged in planning their own futures, the more promising those futures are likely to be.**

In Massachusetts, transition planning for students with disabilities begins at age 14 (or earlier if deemed appropriate by the IEP team). From the age of 14, students should be active participants in their own transition planning, to the maximum extent possible. Planning is driven by the student’s needs, taking into account his/her "strengths, preferences, and interests." If a student who is 14 or older does not attend his/her IEP meeting, steps must be taken to ensure that the student’s preferences and interests are considered. Since parents are experts regarding their own children, working in close partnership with the families of all students will enable school professionals to more fully understand each student’s personal assets, challenges, inclinations, and hopes for the future.

As much as possible, efforts in transition planning should be conducted in concert with whole-school initiatives. For example, whole-school adoption of social and emotional learning (SEL) curricula could increase students’ self-determination by helping them to recognize and manage their emotions, make responsible decisions, and demonstrate caring and concern for others. Using the Massachusetts Model for Comprehensive School Counseling Programs, guidance counselors can collaborate with general and special education teachers to promote students’ individualized college and career planning. Through Connecting Activities, schools and businesses can connect to provide students with structured work-based learning experiences that support both academic and employability skill attainment.
Postsecondary Goals

A key way to capture students with disabilities' preferences and interests is to include postsecondary goals on the TPF and IEP. Postsecondary goals are those goals that a student hopes to achieve after leaving secondary school (i.e., high school). All transition planning is informed by and flows from these postsecondary goals; a truly individualized process uses postsecondary goals - which are an expression of each student's desired future outcomes - as the foundation for the development of the IEP.

Students' postsecondary goals should be recorded on page one of the TPF in the "Post-Secondary Vision" box. The TPF is intended to be a flexible, brainstorming document used by the IEP team to record the transition discussion. Once the TPF is complete, the IEP team documents the transition plan in a more formal manner on the IEP and should transfer the postsecondary goals to the Vision Statement on IEP 1.

IDEA requires that postsecondary goals:
(1) be appropriate,
(2) be measurable (i.e. countable),
(3) be annually updated,
(4) be based upon age-appropriate transition assessment, and
(5) express the student's future intentions in each of the areas of education/training, employment, and - if appropriate - independent living.

Therefore, each student's TPF and IEP should detail at least two and possibly three postsecondary goals in this general format:

- Following high school, [STUDENT NAME] intends to pursue a bachelor's degree at a four-year college.
- [STUDENT NAME] plans to work at [NAME/TYPE OF BUSINESS] after graduating from high school.
- After exiting high school, I plan to live with my friend and use the public bus to get to my job, the supermarket, and the gym.

Additional examples of possible postsecondary goals are available at [Link to PDF document]. IEP teams are by no means limited to using these examples but should create individualized postsecondary goals for each student, always remembering that postsecondary goals are those that a student hopes to achieve after leaving secondary school and are appropriate, measurable, annually updated, and based upon age-appropriate transition assessment.

Annual IEP Goals

Separate and distinct, yet closely related to postsecondary goals in the transition planning process, are "annual IEP goals related to the student's transition services needs," also required by IDEA.

Annual IEP goals for students 14 or older are developed from two streams of information: (a) the student's postsecondary goals and (b) the student's disability-related needs. Both of these streams are founded upon age-appropriate transition assessment, which is an "ongoing process of collecting data..."
on the individual's needs, preferences, and interests as they relate to the demands of current and future working, educational, living, and personal and social environments." Transition assessment, both formative and summative, is an essential part of understanding who the student is, where the student wants to go, what strengths the student can capitalize on, and what challenges the student needs to overcome. As with every part of the transition planning process, the student should be involved - as much as possible - in the assessment process and in the development of annual IEP goals. Families, also, are key partners in the creation of these goals.

When developing annual IEP goals for Transition, the team should discuss and complete the TPF before completing the IEP form. The team refers to the student's postsecondary goals and asks:

   a. What skills, strengths, interests, personal attributes, and accomplishments does the student currently have that will contribute to his/her postsecondary success?
   b. What skills and strengths will the student need to acquire in order to achieve his/her desired postsecondary outcomes?
   c. Given the student's disabilities, what supports and services will be necessary for the student to make progress towards achieving his/her postsecondary goals?

To answer these questions, the team may rely on formal and informal transition assessments such as input from the student, his/her family, and others who know the student well; student transcripts; MCAS results; teacher notes; previous IEPs; achievement tests; functional behavioral assessments; life skills and/or interest inventories, etc. Additional examples of possible transition assessments are available at [http://www.doe.mass.edu/sped/advisories/transition-assessments-example-sheet.pdf](http://www.doe.mass.edu/sped/advisories/transition-assessments-example-sheet.pdf), [http://www.doe.mass.edu/sped/advisories/transition-assessments-example-sheet.docx](http://www.doe.mass.edu/sped/advisories/transition-assessments-example-sheet.docx).

Discussing and mapping out the Action Plan on page two of the TPF can also help the team to fully understand and articulate the intersection between the student's postsecondary goals, the student's skills and disability-related needs, and the supports and services that the student requires in order to achieve his/her desired postsecondary outcomes.

On page one of the TPF, the team documents the student's disability-related skills that require IEP goals and/or related services.

Next, the team should turn to the IEP form to complete Present Levels of Educational Performance A & B and to write annual IEP goals that are skill-based and are related to the student's transition services needs. In other words, a clear and direct link should exist between the student's annual IEP goals and his/her postsecondary goals as delineated in the Vision section of the TPF and IEP.

For example:

- A student who wishes to work in a bank and has language-based learning disabilities and social skills deficits may require annual IEP goals that will enable her to improve her reading comprehension and math skills, and to develop customer service skills.
- A student who wishes to attend a four-year college and who has Asperger's Syndrome may require annual IEP goals that will help him to develop his self-advocacy skills and avail himself of college disability support services.
- A student who wishes to have a job and a busy social life, and who has multiple disabilities, may require annual IEP goals that will help her to use her cell phone, access public transportation, and improve her personal care skills.
A student with a health impairment who wishes to become a pastry chef may require annual IEP goals that will help him to research culinary schools, take charge of his own healthcare needs, and improve his organizational skills.

Additional examples of possible annual IEP goals are available at [http://www.doe.mass.edu/sped/advisories/goals-example-sheet.pdf](http://www.doe.mass.edu/sped/advisories/goals-example-sheet.pdf) and [http://www.doe.mass.edu/sped/advisories/goals-example-sheet.docx](http://www.doe.mass.edu/sped/advisories/goals-example-sheet.docx). IEP teams are by no means limited to using these examples but should create individualized annual IEP goals for each student, keeping in mind that annual IEP goals should be directly linked to the student's postsecondary goals.

In the final step, the team completes the IEP form, enumerating any required transition services and supports which flow from the postsecondary goals and the annual IEP goals, as well as any other necessary information.

**Conclusion**

According to IDEA, transition services are a "coordinated set of activities... within a results-oriented process," so as to facilitate a student's "movement from school to post-school activities." Through the active inclusion of students in their own transition planning, and through the use of student-centered postsecondary goals and annual IEP goals founded upon age-appropriate transition assessment, IEP teams can actualize a dynamic, coordinated, and student-driven transition process, affording students with disabilities "the opportunity to reach their full potential and to lead lives as participants in the political and social life of the commonwealth and as contributors to its economy."  

120 USC §1400(c) (1).

220 USC §1400(d) (1) (A).


34 CFR §300.43(a)(2).

1234 CFR §300.321(b)(2).

http://www.doe.mass.edu/bullying/SELguide.pdf

http://www.doe.mass.edu/ssce/mscamodel.html

http://www.doe.mass.edu/connect/


1734 CFR 300.320 (b)(1).

1834 CFR 300.320(a)(2)(i) and http://www.nsttac.org/content/what-indicator-13


2034 CFR 300.43(a)(1).

G.L. c.69 §1.

Last updated: September 17, 2012
The Chapter 688 Referral form has been revised. The new referral form is available on the ESE website for district use.

School systems must refer all students with severe disabilities, who may be eligible for adult services, through the Chapter 688 referral process. For this reason, use of the new referral form is mandatory and should begin immediately. All previous referral forms should be discarded.

I continue to encourage districts to use "A Guide to Chapter 688: Massachusetts' Transitional Planning" brochure and the Chapter 688 page on the Department's website to aid in Team decision making and the referral process.

For more information, call the Bureau of Transitional Planning (BTP) at 617-573-1600.

Last Updated: December 14, 2009
Scituate’s Procedure to Monitor the Content and Frequency of Progress Reporting

Progress reports are provided to parents to document their student’s progress toward meeting the goals of the IEP. These progress reports are completed as often as progress is reported on regular education students. Thus, progress reports are sent home when report cards are sent home.

Progress report includes information about the student’s progress toward attaining the annual goals/benchmarks of the student’s IEP. If the goals have not been achieved, determination is made as to whether the student’s progress is sufficient to enable the student to achieve the goals by the end of the IEP period.

Parents often request information about their child’s progress throughout the school year through telephone conversations with school personnel. School personnel are always willing to accommodate parents by gathering data regarding their student’s progress through telephone, email, or Grade Level Team meetings. Thus, parents can contact their student’s school at any time to receive progress updates.

Progress Reports (Out of District)

Students with disabilities, who attend out of district placements, receive four progress reports each school year. The Out-of-District Coordinator establishes a chart each September, which designates the names of the students, the out of district contact persons, and accompanying phone numbers. When received, progress reports are checked off, carefully reviewed to ensure growth in IEP goals and benchmarks, logged, and filed in each student’s folder. Typically, the out of district contact person sends home the parent’s copy of the progress report. Follow-up with the outside placement contact person is completed if problems or concerns are noted. The Progress Report chart is carefully monitored on a regular basis and calls to out of district placement person are made if progress reports are delayed or missing.
**IEP Implementation and Monitoring**

Scituate Public Schools is committed to the timely implementation of each special education student’s IEP. If there is a delay or interruption of services, the Director of Special Education will inform the parent in writing and offer compensatory services. Principals and in some cases the Director of Special Education sign off on each IEP attesting to Scituate’s commitment to the timely delivery of all special education services.

When an IEP be accepted in whole, the entire IEP is then implemented upon receipt of consent. Should the IEP be accepted in part, the accepted components are implemented upon receipt of consent, however the IEP is sent into BSEA indicating the rejected components. The IEP chairperson will contact the family to reconvene the IEP Team to discuss the rejected components to see if a resolution can be made. Should the IEP be rejected in full the IEP is sent into BSEA indicating the rejection. The IEP chairperson will contact the family to reconvene the IEP Team to discuss the rejections to see if a resolution can be made.

According to federal requirements, the school district must have an IEP in effect for each eligible student at the beginning of each school year.

Regular educators and all SPED service providers have copies of student’s IEP’s and/or daily access to them. Confidentiality is carefully monitored and the Log of Access inside each SPED student’s folder must be signed at all times.

IEP implementation is monitored by each chairperson and all service providers must write regularly scheduled progress reports to be sent to parents. Communication among all Team members is frequent and well documented.

**IEP Implementation, Accountability and Financial Responsibility**

The district ensures that all IEP’s, in-district and out-of-district, are fully implemented upon parent consent. A good faith effort is made to assist the student in achieving the goals and benchmarks of his/her IEP without expense to the student’s program. However, if a student is referred to a local neurologist for an evaluation that the parents have consented to, the chairperson or Director of Special Education will ask the parents to access their private insurance for this service. If their private insurance does not cover this service, or the parents are reluctant to contact their insurance provider, the district will provide this service at no expense to the parents.
Procedure for the Evaluation of Special Education Programs and Services

Special education programs and services are evaluated on a regular basis to determine their effectiveness. The focus of these programs is to assist students with identified disabilities to achieve the goals of their IEP’s in the least restrictive environment. The district uses information gathered at annual IEP review meetings, three-year reevaluation meetings and through supervised observations of teachers and tutors to measure the effectiveness of special education programs and identify programs, services and administrative areas that need improvement or need further development. As an additional evaluation method, the district reviews students’ local and statewide testing results (e.g. MCAS and ERB testing), drop-out rates and graduation rates for special education students.
Section VI

Confidentiality of Personally Identifiable Information

Scituate Public Schools protects the confidentiality of any personally identifiable information that is collected, used, or maintained in accordance with federal and state law. Specifically, the principal of each school insures that student records are under her/his supervision are kept physically secure, that authorized school personnel are informed of student and record issues of confidentiality, and that personnel are educated as to the importance of privacy and confidentiality. Additionally, Scituate’s web-based computerized IEP system is electronically secure.

Transfer of Student Records

Scituate Public Schools recognizes the importance of obtaining/sending the school records of children who are transferring to new school districts. Our district makes every effort to obtain the school records, including the IEPs of children transferring to Scituate Public Schools. Similarly, for students transferring to districts outside of the Commonwealth, Scituate promptly responds to any requests for records from the receiving school district.

Education Laws and Regulations

603 CMR 23.00
Student Records

Section:

23.01: Application of Rights
23.02: Definition of Terms
23.03: Collection of Data: Limitations and Requirements
23.04: Personal Files of School Employees
23.05: Privacy and Security of Student Records
23.06: Destruction of Student Records
23.07: Access to Student Records
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23.09: Appeals
23.10: Notification
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Most Recently Amended by the Board of Education: August 15, 2006
23.01: Application of Rights

603 CMR 23.00 is promulgated to insure parents' and students' rights of confidentiality, inspection, amendment, and destruction of student records and to assist local school systems in adhering to the law. 603 CMR 23.00 should be liberally construed for these purposes.

(1) These rights shall be the rights of the student upon reaching 14 years of age or upon entering the ninth grade, whichever comes first. If a student is under the age of 14 and has not yet entered the ninth grade, these rights shall belong to the student’s parent.

(2) If a student is from 14 through 17 years of age or has entered the ninth grade, both the student and his/her parent, or either one acting alone, shall exercise these rights.

(3) If a student is 18 years of age or older, he/she alone shall exercise these rights, subject to the following. The parent may continue to exercise the rights until expressly limited by such student. Such student may limit the rights and provisions of 603 CMR 23.00 which extend to his/her parent, except the right to inspect the student record, by making such request in writing to the school principal or superintendent of schools who shall honor such request and retain a copy of it in the student record. Pursuant to M.G.L. c. 71, section 34E, the parent of a student may inspect the student record regardless of the student’s age.

(4) Notwithstanding 603 CMR 23.01(1) and 23.01(2), nothing shall be construed to mean that a school committee cannot extend the provisions of 603 CMR 23.00 to students under the age of 14 or to students who have not yet entered the ninth grade.

23.02: Definition of Terms

The various terms as used in 603 CMR 23.00 are defined below:

Access shall mean inspection or copying of a student record, in whole or in part.

Authorized school personnel shall consist of three groups:

(a) School administrators, teachers, counselors and other professionals who are employed by the school committee or who are providing services to the student under an agreement between the school committee and a service provider, and who are working directly with the student in an administrative, teaching counseling, and/or diagnostic capacity. Any such personnel who are not employed directly by the school committee shall have access only to the student record information that is required for them to perform their duties.

(b) Administrative office staff and clerical personnel, including operators of data processing equipment or equipment that produces microfilm/microfiche, who are either employed by the school committee or are employed under a school committee service contract, and whose duties require them to have access to student records for purposes of processing information for the student record. Such personnel shall have access only to the student record information that is required for them to perform their duties.

(c) The Evaluation Team which evaluates a student.
Eligible student shall mean any student who is 14 years of age or older or who has entered 9th grade, unless the school committee acting pursuant to 603 CMR 23.01(4) extends the rights and provisions of 603 CMR 23.00 to students under the age of 14 or to students who have not yet entered 9th grade.

Evaluation Team shall mean the team which evaluates school-age children pursuant to M.G.L. c. 71B (St. 1972, c. 766) and 603 CMR 28.00.

Parent shall mean a student’s father or mother, or guardian, or person or agency legally authorized to act on behalf of the student in place of or in conjunction with the father, mother, or guardian. Any parent who by court order does not have physical custody of the student, is considered a non-custodial parent for purposes of M.G.L. c. 71, § 34H and 603 CMR 23.00. This includes parents who by court order do not reside with or supervise the student, even for short periods of time.

Release shall mean the oral or written disclosure, in whole or in part, of information in a student record.

School-age child with special needs shall have the same definition as that given in M.G.L. c. 71B (St. 1972, c. 766) and 603 CMR 28.00.

School committee shall include a school committee, a board of trustees of a charter school, a board of trustees of a vocational-technical school, a board of directors of an educational collaborative and the governing body of an M.G.L. c. 71B (Chapter 766) approved private school.

Student shall mean any person enrolled or formerly enrolled in a public elementary or secondary school or any person age three or older about whom a school committee maintains information. The term as used in 603 CMR 23.00 shall not include a person about whom a school committee maintains information relative only to that person’s employment by the school committee.

The student record shall consist of the transcript and the temporary record, including all information recording and computer tapes, microfilm, microfiche, or any other materials regardless of physical form or characteristics concerning a student that is organized on the basis of the student’s name or in a way that such student may be individually identified, and that is kept by the public schools of the Commonwealth. The term as used in 603 CMR 23.00 shall mean all such information and materials regardless of where they are located, except for the information and materials specifically exempted by 603 CMR 23.04.

The temporary record shall consist of all the information in the student record which is not contained in the transcript. This information clearly shall be of importance to the educational process. Such information may include standardized test results, class rank (when applicable), extracurricular activities, and evaluations by teachers, counselors, and other school staff.

Third party shall mean any person or private or public agency, authority, or organization other than the eligible student, his/her parent, or authorized school personnel.

The transcript shall contain administrative records that constitute the minimum data necessary to reflect the student’s educational progress and to operate the educational system. These data shall be limited to the name, address, and phone number of the student; his/ her birthdate; name, address, and phone number of the parent or guardian; course titles, grades (or the equivalent when grades are not applicable), course credit, grade level completed, and the year completed.
23.03: Collection of Data: Limitations and Requirements

All information and data contained in or added to the student record shall be limited to information relevant to the educational needs of the student. Information and data added to the temporary record shall include the name, signature, and position of the person who is the source of the information, and the date of entry into the record. Standardized group test results that are added to the temporary record need only include the name of the test and/or publisher, and date of testing.

23.04: Personal Files of School Employees

The term student record does not include notes, memory aids and other similar information that is maintained in the personal files of a school employee and is not accessible or revealed to authorized school personnel or any third party. Such information may be shared with the student, parent or a temporary substitute of the maker of the record, but if it is released to authorized school personnel it becomes part of the student record subject to all the provisions of 603 CMR 23.00.

23.05: Privacy and Security of Student Records

(1) The school principal or his/her designee shall be responsible for the privacy and security of all student records maintained in the school.

(2) The superintendent of schools or his/her designee shall be responsible for the privacy and security of all student records that are not under the supervision of a school principal, for example, former students' transcripts stored in the school department's central administrative offices or student records of school-age children with special needs who have not been enrolled in a public school.

(3) The principal and superintendent of schools shall insure that student records under their supervision are kept physically secure, that authorized school personnel are informed of the provisions of 603 CMR 23.00 and M.G.L. c. 71, § 34H and are educated as to the importance of information privacy and confidentiality; and that any computerized systems employed are electronically secure.

23.06: Destruction of Student Records

(1) The student’s transcript shall be maintained by the school department and may only be destroyed 60 years following his/her graduation, transfer, or withdrawal from the school system.

(2) During the time a student is enrolled in a school, the principal or his/her designee shall periodically review and destroy misleading, outdated, or irrelevant information contained in the temporary record provided that the eligible student and his/her parent are notified in writing and are given opportunity to receive the information or a copy of it prior to its destruction. A copy of such notice shall be placed in the temporary record.

(3) The temporary record of any student enrolled on or after the effective date of 603 CMR 23.00 shall be destroyed no later than seven years after the student transfers, graduates, or withdraws from the school system. Written notice to the eligible student and his/her parent of the approximate date of destruction of the record and their right to receive the information in whole or in part, shall be made at the time of such transfer, graduation, or withdrawal. Such notice shall be in addition to the routine information letter required by 603 CMR 23.10.
(4) In accordance with M.G.L. c 71, section 87, the score of any group intelligence test administered to a student enrolled in a public school shall be removed from the record of said student at the end of the school year in which such test was so administered.

23.07: Access to Student Records

(1) Log of Access. A log shall be kept as part of each student's record. If parts of the student record are separately located, a separate log shall be kept with each part. The log shall indicate all persons who have obtained access to the student record, stating: the name, position and signature of the person releasing the information; the name, position and, if a third party, the affiliation if any, of the person who is to receive the information; the date of access; the parts of the record to which access was obtained; and the purpose of such access. Unless student record information is to be deleted or released, this log requirement shall not apply to:

(a) authorized school personnel under 603 CMR 23.02(9)(a) who inspect the student record;

(b) administrative office staff and clerical personnel under 603 CMR 23.02(9)(b), who add information to or obtain access to the student record; and

(c) school nurses who inspect the student health record.

(2) Access of Eligible Students and Parents. The eligible student or the parent, subject to the provisions of 603 CMR 23.07 (5), shall have access to the student record. Access shall be provided as soon as practicable and within ten days after the initial request, except in the case of non-custodial parents as provided in 603 CMR 23.07 (5). Upon request for access, the entire student record regardless of the physical location of its parts shall be made available.

(a) Upon request, copies of any information contained in the student record shall be furnished to the eligible student or the parent. A reasonable fee, not to exceed the cost of reproduction, may be charged. However, a fee may not be charged if to do so would effectively prevent the parents or eligible student from exercising their right, under federal law, to inspect and review the records.

(b) Any student, regardless of age, shall have the right pursuant to M.G.L. c. 71, section 34A to receive a copy of his/her transcript.

(c) The eligible student or the parent shall have the right upon request to meet with professionally qualified school personnel and to have any of the contents of the student record interpreted.

(d) The eligible student or the parent may have the student record inspected or interpreted by a third party of their choice. Such third party shall present specific written consent of the eligible student or parent, prior to gaining access to the student record.

(3) Access of Authorized School Personnel. Subject to 603 CMR 23.00, authorized school personnel shall have access to the student records of students to whom they are providing services, when such access is required in the performance of their official duties. The consent of the eligible student or parent shall not be necessary.
(4) Access of Third Parties. Except for the provisions of 603 CMR 23.07(4)(a) through 23.07(4)(h), no third party shall have access to information in or from a student record without the specific, informed written consent of the eligible student or the parent. When granting consent, the eligible student or parent shall have the right to designate which parts of the student record shall be released to the third party. A copy of such consent shall be retained by the eligible student or parent and a duplicate placed in the temporary record. Except for information described in 603 CMR 23.07(4)(a), personally identifiable information from a student record shall only be released to a third party on the condition that he/she will not permit any other third party to have access to such information without the written consent of the eligible student or parent.

(a) A school may release the following directory information: a student's name, address, telephone listing, date and place of birth, major field of study, dates of attendance, weight and height of members of athletic teams, class, participation in officially recognized activities and sports, degrees, honors and awards, and post-high school plans without the consent of the eligible student or parent; provided that the school gives public notice of the types of information it may release under 603 CMR 23.07 and allows eligible students and parents a reasonable time after such notice to request that this information not be released without the prior consent of the eligible student or parent. Such notice may be included in the routine information letter required under 603 CMR 23.10.

(b) Upon receipt of a court order or lawfully issued subpoena the school shall comply, provided that the school makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.

(c) A school may release information regarding a student upon receipt of a request from the Department of Social Services, a probation officer, a justice of any court, or the Department of Youth Services under the provisions of M.G.L. c. 119, sections 51B, 57, 69 and 69A respectively.

(d) Federal, state and local education officials, and their authorized agents shall have access to student records as necessary in connection with the audit, evaluation or enforcement of federal and state education laws, or programs; provided that except when collection of personally identifiable data is specifically authorized by law, any data collected by such officials shall be protected so that parties other than such officials and their authorized agents cannot personally identify such students and their parents; and such personally identifiable data shall be destroyed when no longer needed for the audit, evaluation or enforcement of federal and state education laws.

(e) A school may disclose information regarding a student to appropriate parties in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. This includes, but is not limited to, disclosures to the local police department and the Department of Social Services under the provisions of M.G.L. c. 71, section 37L and M.G.L. c. 119, section 51A.

(f) Upon notification by law enforcement authorities that a student, or former student, has been reported missing, a mark shall be placed in the student record of such student. The school shall report any request concerning the records of the such child to the appropriate law enforcement authority pursuant to the provisions of M.G.L. c. 22A, section 9.

(g) Authorized school personnel of the school to which a student seeks or intends to transfer may have access to such student’s record without the consent of the eligible student or parent,
provided that the school the student is leaving, or has left, gives notice that it forwards student records to schools in which the student seeks or intends to enroll. Such notice may be included in the routine information letter required under 603 CMR 23.10.

(h) School health personnel and local and state health department personnel shall have access to student health records, including but not limited to immunization records, when such access is required in the performance of official duties, without the consent of the eligible student or parent.

(5) Access Procedures for Non-Custodial Parents. As required by M.G.L. c. 71, § 34H, a non-custodial parent may have access to the student record in accordance with the following provisions.

(a) A non-custodial parent is eligible to obtain access to the student record unless:

1. the parent has been denied legal custody or has been ordered to supervised visitation, based on a threat to the safety of the student and the threat is specifically noted in the order pertaining to custody or supervised visitation, or
2. the parent has been denied visitation, or
3. the parent’s access to the student has been restricted by a temporary or permanent protective order, unless the protective order (or any subsequent order modifying the protective order) specifically allows access to the information contained in the student record, or
4. there is an order of a probate and family court judge which prohibits the distribution of student records to the parent.

(b) The school shall place in the student’s record documents indicating that a non-custodial parent’s access to the student’s record is limited or restricted pursuant to 603 CMR 23.07(5)(a).

(c) In order to obtain access, the non-custodial parent must submit a written request for the student record to the school principal.

(d) Upon receipt of the request the school must immediately notify the custodial parent by certified and first class mail, in English and the primary language of the custodial parent, that it will provide the non-custodial parent with access after 21 days, unless the custodial parent provides the principal with documentation that the non-custodial parent is not eligible to obtain access as set forth in 603 CMR 23.07 (5)(a).

(e) The school must delete all electronic and postal address and telephone number information relating to either work or home locations of the custodial parent from student records provided to non-custodial parents. In addition, such records must be marked to indicate that they shall not be used to enroll the student in another school.

(f) Upon receipt of a court order that prohibits the distribution of information pursuant to G.L. c. 71, §34H, the school shall notify the non-custodial parent that it shall cease to provide access to the student record to the non-custodial parent.
23.08: Amending the Student Record

(1) The eligible student or the parent shall have the right to add information, comments, data, or any other relevant written material to the student record.

(2) The eligible student or the parent shall have the right to request in writing deletion or amendment of any information contained in the student record, except for information which was inserted into that record by an Evaluation Team. Such information inserted by an Evaluation Team shall not be subject to such a request until after the acceptance of the Evaluation Team Educational Plan, or, if the Evaluation Team Educational Plan is rejected, after the completion of the special education appeal process. Any deletion or amendment shall be made in accordance with the procedure described below:

   (a) If such student or parent is of the opinion that adding information is not sufficient to explain, clarify or correct objectionable material in the student record, either student or parent shall present the objection in writing and/or have the right to have a conference with the principal or his/her designee to make the objections known.

   (b) The principal or his/her designee shall within one week after the conference or receipt of the objection, if no conference was requested, render to such student or parent a decision in writing, stating the reason or reasons for the decision. If the decision is in favor of the student or parent, the principal or his/her designee shall promptly take such steps as may be necessary to put the decision into effect.

23.09: Appeals

(1) In the event that any decision of a principal or his/her designee regarding any of the provisions contained in 603 CMR 23.00 is not satisfactory in whole or in part to the eligible student or parent, they shall have the right of appeal to the superintendent of schools. Request for such appeal shall be in writing to the superintendent of schools.

(2) The superintendent of schools or his/her designee shall within two weeks after being notified of such appeal (longer should the appellant request a delay) review the issues presented and render a written decision to the appellant, stating the reason or reasons for the decision. If the decision is in favor of the appellant, the superintendent of schools or his/her designee shall promptly take such steps as may be necessary to put the decision into effect.

(3) In the event that the decision of the superintendent of schools or his/her designee is not satisfactory to the appellant in whole or in part, the appellant shall have the right of appeal to the school committee. Request for such appeal shall be in writing to the chairperson of the school committee.

(4) The school committee shall within four weeks after being notified of such appeal (longer should the appellant request a delay) conduct a fair hearing to decide the issues presented by the appellant.

   (a) School officials shall have the burden of proof on issues presented by the appellant.

   (b) The appellant shall have the right to be represented by an advocate of his/her choosing, to cross-examine witnesses, to present evidence, to make a tape or other recording of the proceedings, and to receive a written decision within two weeks after the hearing.
(c) If the appeal concerns statements by an employee of the school committee, such person(s) shall have the right to be present and to have an advocate of his/her own choosing.

(5) Nothing in 603 CMR 23.00 shall abridge or limit any right of an eligible student or parent to seek enforcement of 603 CMR 23.00 or the statutes regarding student records, in any court or administrative agency of competent jurisdiction.

23.10: Notification

(1) At least once during every school year, the school shall publish and distribute to students and their parents in their primary language a routine information letter informing them of the following:

(a) The standardized testing programs and research studies to be conducted during the year and other routine information to be collected or solicited from the student during the year.

(b) The general provisions of 603 CMR 23.00 regarding parent and student rights, and that copies of 603 CMR 23.00 are available to them from the school.

(2) In those school systems required under M.G.L. c. 71A to conduct a bilingual program, all forms, regulations, or other documents regarding 603 CMR 23.00 that a parent receives or is required to receive shall be in the language spoken in the home of the student, provided that it is a language for which the school system is required to provide a bilingual program.

23.11: Monitoring

The Department of Elementary and Secondary Education may, pursuant to a request by an eligible student or parent or on its own initiative, conduct reviews to insure compliance with 603 CMR 23.00. The school committee and the specific school(s) involved shall cooperate to the fullest extent with such review.

23.12: Severance Clause

The provisions of 603 CMR 23.00 are severable and should any section be found upon judicial review to exceed the authority of the State Board of Education, the remaining sections shall not be affected.

**Regulatory Authority:**
603 CMR 23.00: M.G.L. c. 71, 34D, 34E.

last updated: September 18, 2006
Family Educational Rights and Privacy Act (FERPA)

Family Policy Compliance Office (FPCO) Home
The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children’s education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
  - School officials with legitimate educational interest;
  - Other schools to which a student is transferring;
  - Specified officials for audit or evaluation purposes;
  - Appropriate parties in connection with financial aid to a student;
  - Organizations conducting certain studies for or on behalf of the school;
  - Accrediting organizations;
  - To comply with a judicial order or lawfully issued subpoena;
  - Appropriate officials in cases of health and safety emergencies; and
  - State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

For additional information or technical assistance, you may call (202) 260-3887 (voice). Individuals who use TDD may call the Federal Information Relay Service at 1-800-877-8339.

Or you may contact us at the following address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-5920
Notice of Procedural Safeguards

All parents who have children on IEPs in the Scituate Public Schools shall be mailed a hard copy of the Procedural Safeguards in the September/October month of each school year.

Dear Parents:

You are receiving this Notice of Procedural Safeguards (Notice) because your son or daughter (student) has been referred for an evaluation or is currently receiving special education services. If your student is eligible for special education, the school district must provide a free appropriate public education commonly referred to by the acronym FAPE. In order to provide a FAPE the school district must work in partnership with you. You will be a member of the IEP team that will consider your student’s unique needs and develop an individualized education program or IEP, for your student.1 The IEP must provide instruction that is tailored to your student’s unique needs and includes sufficient support services to enable your student to make meaningful educational progress and to assist your student in acquisition of knowledge and skills, including those necessary for social and emotional development according to appropriate chronological and developmental expectations. Any special education services identified for your student must be provided at public expense with no cost to you. All students in the Commonwealth’s public education system, including students with disabilities, are entitled to the opportunity to learn the material that is covered by the academic standards in the Massachusetts curriculum frameworks. Massachusetts also provides an individual right to FAPE for its resident students with disabilities who attend private schools at private expense, and who seek public special education services.

Both State and federal laws contain rules that school districts must follow when deciding if a student is eligible for special education and, if so, what services the student will receive. These laws also provide detailed procedures for ensuring that the student receives a FAPE during the entire time he or she is eligible for special education. Special education is a highly complex and regulated area of education law. The detail in the law is intended to protect your student and to help ensure that he or she receives appropriate educational services. You can get additional help in understanding the special education process from your school guidance office, the Massachusetts Department of Elementary and Secondary Education (ESE), organizations for parents of students with disabilities, and private special education organizations. Information from these sources will help you work in partnership with your school district to make sure that your student receives appropriate educational services. The ESE publishes extensive information for parents and school districts on its Internet Websites. A Table of the ESE Websites is included at the end of this Notice.

This Notice provides you with important information about your right to be involved in planning your student’s special education. Procedural safeguards are the specific rules that make sure that you know what the school district is proposing to do (“receive notice”), agree with the school district’s plan (“give parental consent”) and have a range of opportunities for resolving disagreements with the school district (“due process”). Procedural Safeguards in the law also provide additional protections outlined in this document.

We hope this Notice will be of assistance to you as you take an active role in your student’s educational experience.

This document, the Parent’s Notice of Procedural Safeguards, answers the following questions:

1 See the IEP Process Guide for information on how a student’s IEP is developed and implemented.
1. **What is “prior written notice” and when do you receive it?**
   
   The school district must provide you with a written notice when it proposes, or refuses, to take steps to identify your student, to evaluate your student, to provide special services to your student, or to change your student’s program. Federal regulations call this a “prior written notice.” The written notice must:

   - Describe **what** the school district proposes or refuses to do;
   - Explain **why** the school district is proposing or refusing to take the action;
   - Describe **how** the school district decided to propose or refuse to take the action, including telling you about each evaluation procedure, assessment, record, or report that your school district used to make its decision; and
   - Describe any other options that your student's individualized education program (IEP) Team considered and the reasons why those options were rejected.

   School districts will provide this information to you using forms developed by the ESE and available on the ESE Web site or their own forms containing the same information.

   You will receive prior written notice when the school district: proposes to conduct an initial evaluation or reevaluation; proposes a new or amended IEP; proposes a change in placement, including a proposed change in placement for disciplinary reasons; or proposes to end special education services.

   You will also receive a notice if the school district makes a finding of no eligibility for special education services or refuses a request you have made related to evaluations or provision of special education to your student. Notices from the school district must be provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, your school district must ensure that the school’s notice is translated for you orally or by other means (e.g., by sign language), and that you understand the content of the notice.

   The school district will also give you written notice and request your consent – or written permission – before the school district asks to use public health insurance (MassHealth or Medicaid), to pay for a student’s special education services for the first time.

   When you are given prior written notice, you will also be given a copy of this Notice of Procedural Safeguards, or if you have already received this Notice during the current school year, you will be told how you can obtain another copy. You will also be given information about whom you can contact for help in understanding federal and state special education laws.

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You will receive this Notice at least once each year if your student is identified as eligible for special education. You can also request a copy from your school district at anytime or from the ESE. This document is available on the ESE Web site at [http://www.doe.mass.edu/sped/prb](http://www.doe.mass.edu/sped/prb).
2. What is parental consent?
34 CFR §300.9 and 603 CMR 28.07 (1)

The school district may not give your student a special test or special service unless you agree and give your written “parental consent.” The school district must contact you and clearly explain what it is proposing to do for your student. The school district will then ask you to sign your name on the consent form to show that you agree to the school’s proposal. This is giving “parental consent.”

Giving your consent is voluntary. You may take back, or revoke, your consent at any time. If you wish to revoke consent you must do so in writing. The withdrawal of consent will only apply to future action by the school district not to something that has already happened. Your school district may not use your refusal to consent to one service or activity as a reason to deny you or your student any other service, benefit, or activity.

Your consent is not required before your school district may review existing data as part of your student’s evaluation or reevaluation, give your student a test or other evaluation that is given to all students without consent such as the MCAS or classroom tests that are part of the general education program, or share information with federal or state educational officials.

2.1 When will a school district ask for your consent?
34 CFR §§ 300.300, 300.154 and 603 CMR 28.07(1)

A school district will ask for your parental consent in the following circumstances:

To authorize the initial evaluation to determine if the student is eligible for special education
The school district cannot conduct an initial evaluation of your student to determine whether your student is eligible to receive special education and/or related services without first obtaining your consent. If your student is referred for an evaluation, the school district must ask for your consent to the evaluation within five school days.

To approve initial services
If, after the initial evaluation has been completed, the Individualized Education Program (IEP) Team has decided that your student is eligible for special education, the IEP Team will propose special education and related services and a placement for your student. You are a member of the IEP Team and must give your consent before your school district can provide special education and related services to your student for the first time. If you do not consent, the school district cannot provide special education and related services to your student. You can accept or reject the whole proposal or part of it. The IEP or any part that you accept must begin as soon as you accept it.

To make a change in services, placement or reevaluation
Once you have agreed to an IEP for your student, the school district must obtain your consent before the school district may change the services or the placement of your student, or conduct a reevaluation. If you refuse to give your consent, you have an obligation to engage with the district in active discussion to resolve your disagreement. If you have given consent to services in the past and now want to revoke consent and withdraw your student from services, you must do so in writing. The school district may not request a hearing at the Bureau of Special Education Appeals (BSEA) to obtain authority to provide educational services or to reevaluate your student without your consent.

To access public health insurance (MassHealth or Medicaid) benefits for the first time
The school district is allowed to use public health insurance (MassHealth or Medicaid) to pay for some special education services included in a student’s IEP for students covered by public health insurance. Before the school district accesses MassHealth for the first time, the school district must give you written

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2 You also have the right to observe your student in his or her current program and observe a proposed program prior to your student’s placement. For further information see the ESE document “Observation of Education Programs by Parents”.

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notice that it is going to seek this reimbursement, and get your voluntary consent in writing for it. The notice will tell you that special education services are always provided at no cost to you or your family; will make clear that your consent will not lead to any changes in your child’s MassHealth benefits or eligibility; will describe what information about your student will be shared in order to access MassHealth; remind you that your consent can be withdrawn at any time; and make clear that there will be no changes to your student’s special education services or program if you withdraw or do not provide consent. If you move or your student becomes enrolled in another district, then the new school district will ask you to provide consent again.

To excuse members of the IEP Team from attending a Team meeting

Members of the IEP Team may be excused from attending a Team meeting if you agree in writing in advance of the meeting. If the Team will be discussing the excused Team member’s area, then the excused member must provide his or her input in writing before the Team meeting. If you do not agree to excuse the Team member he or she must attend the IEP Team meeting.

2.2 When will the student be asked for consent?
34 CFR §300.520 and 603 CMR 28.07 (5)

Under Massachusetts’ law a student has reached adulthood upon his or her eighteenth (18th) birthday. When a student turns age 18, therefore, all of the decision-making rights that you have as a parent transfer to your adult student, unless a court has appointed a legal guardian for your student or your student indicates in writing that he or she wants to share decision-making with you or wants you to continue to have authority to make decisions about his or her educational program. The school district must discuss with you and your student the impact of this transfer of rights at least a year before the student’s eighteenth birthday. As the parent of an adult student with a disability, you will continue to receive all the required notices from the school, and you will continue to be able to inspect your student’s educational records, even if your student makes his or her own educational decisions.

2.3 When will a special education surrogate parent give consent? 34 CFR §300.519 (g) and 603 CMR 28.07 (7)

If a student is in the custody of the Department of Children and Families, or the student’s parents or guardian cannot be identified or located or have had their parental rights terminated, the ESE has a responsibility to ensure there is an adult with no conflicting interests to make special education decisions on behalf of the student. This person is called a special education surrogate parent. The ESE determines if it is necessary to appoint a special education surrogate parent for the student. If appointed, a special education surrogate parent has the same rights and responsibilities as a parent in special educational matters for the student.

2.4 How do I withdraw consent?
34 CFR §300.300(b)(4) and 300.9

If you have given consent to special education and related services and now wish to revoke your consent, you must do so in writing. You may withdraw your consent to all special education and related services, to a specific service or to placement or to the district’s use of MassHealth or Medicaid benefits for your student. Once the school district receives your letter, the district will send you a notice stating the change, if any, in educational placement and services that result from your revocation of consent. Once you withdraw your consent to all special education and related services, the school district is no longer required to make FAPE available or to have an IEP meeting or develop an IEP for your student. School districts are not required to amend your student’s record to remove references to special education services as a result of your revocation of consent.
3. **Is the School District Required to Evaluate a Student Upon Request By a Parent? 34 CFR §300.301 and 603 CMR 28.04**

A student must receive a complete and comprehensive evaluation to determine if the student has a disability and is eligible for special education and, if eligible, to assist in determining appropriate special education and related services that may be necessary. Parents who have a concern about their child's development or have a suspicion about a possible disability may refer their child for an initial evaluation. Special words need not be used in making a referral for an initial evaluation. Upon receipt of such a request for an initial evaluation, the school district must send notice to the parent and must seek the parent's consent to conduct an evaluation. (A school district will rarely have occasion to refuse to conduct an initial evaluation and may do so only if the parent or other individual making the referral has no suspicion of disability or is not concerned about the student's development).

Where appropriate, the school district may also provide the parent with information concerning other supportive services that may better suit a particular student’s needs. However, a school district may not refuse to evaluate a student who has been referred for an evaluation as described above, on the basis of a pre-referral program or in order to try other instructional support activities or for any other reason. Additionally, the law provides for periodic reevaluations to ensure that the student is benefiting from and continues to require special education. The parent’s consent will always be required prior to these reevaluations.


An Independent Educational Evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your student.

You have the right to request an IEE of your student at public expense if you disagree with the school district’s evaluation. If you request an IEE, the school district must provide you with information about where you may obtain an IEE and about the state requirements that apply to IEEs.

4.1 **When is an Independent Educational Evaluation conducted at public expense?**

In Massachusetts, under state law, you will receive an IEE at full or shared public expense if you meet income eligibility requirements. Students who are eligible for free or reduced cost meals are entitled to an IEE at public expense. Other students are eligible for a shared cost IEE according to a sliding fee scale. Sharing your financial information with the school district is completely voluntary on your part. If you choose to share such information, the school district must immediately notify you in writing whether or not you are eligible for full or partial funding of an IEE and proceed to fund the IEE based on eligibility. Your right to a publicly funded IEE through income eligibility will extend for 16 months from the date of the school district’s evaluation with which you disagree.

If you do not meet income eligibility requirements or choose not to disclose financial information, the district must consider your request for a publicly funded IEE under federal law. Within 5 days, the district may either agree to provide an IEE at public expense or request a hearing at the Bureau of Special Education Appeals (BSEA) to demonstrate that the evaluation conducted by the district was comprehensive and appropriate. More details regarding IEEs are available in the ESE Administrative Advisories 2004-1 and 2001-3 available from your local school district and on the ESE Web site [http://www.doe.mass.edu/sped/advisories/?section=admin](http://www.doe.mass.edu/sped/advisories/?section=admin).

*You are entitled to only one IEE of your student at public expense each time your school district conducts an evaluation. You may have independent evaluations conducted at your own expense at any time.*
4.2 The results of IEEs must be considered within 10 days by the school district

If you obtain an IEE of your student at public expense or you share with the school district an evaluation of your student that you obtained at private expense, your school district must convene a Team meeting within ten school working days after receiving the evaluation information. The Team will consider the evaluation results and determine what, if any, changes should be made to your student’s IEP.

5. When can you see your student’s student records?
34 CFR 300.611 and 603 CMR 23.00

The student record consists of your student’s transcript and temporary school record and includes health records, tests, evaluations, discipline records and other records pertaining to your student’s special education eligibility or program. Personally identifiable information about your student is confidential and may not be disclosed to anyone other than teachers and educational officials without your consent.

You and your student (if your student is 14 or older) have a right to look at any and all of the student’s records within 10 days of your request and before any IEP meeting or due process hearing. You may also have copies of the information upon request for a reasonable charge limited to the cost of reproduction. You may not be charged for costs associated with the search for and retrieval of your student’s records.

In addition, you can meet with professionally qualified school personnel to have the records explained. You may also have your representative (advocate, consultant, or attorney) inspect, review, and interpret your student’s record if you give your specific, written informed consent. All of the rights associated with the student record are contained in the Massachusetts Student Record Regulations 603 CMR 23.00. Those regulations can be found at http://www.doe.mass.edu/lawsregs/603cmr23.html or by requesting a copy of the regulations from the school district or ESE.

Generally only the parent, eligible student, authorized school personnel, and state and federal education officials are allowed to see the student record without the specific, informed, written consent of the parent or adult student. The school district may be required to provide some information to state and federal officials as the result of a court order or in response to a health and safety or law enforcement issue. Helpful information about these and other student records issues can be found at http://www.doe.mass.edu/lawsregs/advisory/cmr23qanda.html.

6. How can parents and schools resolve disputes?
34 CFR 300.151, 300.506 – 300.518 and 603 CMR 28.08

State and federal special education laws provide many opportunities for parents to be involved in educational planning for their student who has a disability. If parents and school districts disagree about changes relating to the identification, evaluation, or educational placement of a student with a disability, or the FAPE services provided to a student with a disability, the laws provide a menu of ways to resolve the disagreement. Your student shall remain in his or her current education program and placement during any dispute regarding placement or services, unless you and the school district agree otherwise or your student’s placement is changed as a result of discipline.

Following are alternatives ways that you and your school district can resolve disagreements.

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3 If a student’s parents revoke their consent for special education services after such services have been initially provided, school districts are not required to amend the student’s records to remove references to special education services.

4 The school district can only limit access to the student record if it has received a legal document such as a restraining order or a divorce or custody decree that restricts access to information about the student’s.
6.1 Bring the dispute to the attention of local public school officials

As a first step to resolve your dispute, you may contact your school Principal, the Administrator of Special Education or your Superintendent to ask for help. It is a good practice to write a letter explaining the situation about which you are concerned.

6.2 Use the ESE Problem Resolution System

If you feel that you need help from outside of your school district, you may contact the ESE, Office of Program Quality Assurance Services (PQA) at 781-338-3700 to use the state “Problem Resolution System” described at http://www.doe.mass.edu/pqa/prs/. You can file a complaint with PQA about any violation of state or federal education law or obtain help from PQA staff to resolve the problem informally. If you want a formal investigation by PQA, you will have to submit your complaint in writing. PQA staff will assist you in preparing and submitting the complaint. Your written complaint should include: a statement of your concerns, your attempts to resolve your concerns, the actions by the school you believe would resolve your concerns and your signature and contact information. If your complaint is about a specific student, you should provide the student’s name and residential address and the name of the school. The issues that you are complaining about, however, must have occurred no more than one year before PQA receives your complaint. If you choose to file a formal complaint with the PQA Problem Resolution System, you must also send a copy of your written complaint to the school district that is the subject of the complaint. PQA will resolve your complaint within 60 days and send you a copy of the findings and decision.

Filing a formal complaint with PQA will not prevent you from using other methods, such as conversations with your local school district, mediation, or a due process hearing at the Bureau of Special Education Appeals (discussed below) to resolve your complaint. If you request a due process hearing, however, a complaint that you file through the problem resolution system will be set aside until the due process hearing is completed.

5 For a comparison of how the problem resolution system resolves a complaint with how a complaint is resolved through a due process hearing see: http://www.doe.mass.edu/sped/docs.html.
6.3 Ask for a neutral mediator to be appointed.

Mediation\(^6\) is a service provided by a neutral individual who is trained in special education law and in methods of negotiation. Mediation can be scheduled whenever the parents and schools have a disagreement about special education matters, even if a complaint was made through the PQA Problem Resolution System. The mediator helps the parent and school district talk about their disagreement and reach a settlement that both sides can accept. Discussions during mediations are confidential and nothing that is said by either party can be used later if the dispute becomes the subject of a formal hearing or court proceeding. Once an agreement is reached, it will be put in writing, both sides will sign it, and it may be enforced by a court.

Mediation can be set up by contacting the BSEA at 617-626-7291. The mediator will schedule a meeting with you and the school district within 30 days of the request for mediation. Meetings will be held at a convenient time and place. Participation is voluntary, therefore both the school district and the parents must agree to participate in mediation. There is no fee for the service.

Additional information about how mediation works is available from the BSEA 617-626-7250 and can be found in their publications “Frequently Asked Questions about Mediation”\(^7\) and the “Explanation of Mediation”\(^8\).

6.4 Request a due process hearing and participate in a resolution meeting

If you and the school district have been unable to work out your disagreement, then you are entitled to have a neutral and impartial hearing officer listen to both sides of the dispute, hear testimony, examine evidence, and make a decision. This hearing is convened by the BSEA and is called a due process hearing. The BSEA hearing officer is trained in special education law and must not have any personal or professional connection to you or anyone else who is involved in the disagreement.

The due process hearing will consider disputes about eligibility; evaluation; IEPs; educational placement decisions, including those resulting from discipline; FAPE; provision of special education; or procedural protections of state and federal law for students with disabilities. You must file for a hearing within two years of when you knew, or should have known\(^9\) about the events that form the basis for your complaint. This time period can be extended if you can show that you were prevented from filing for a hearing because the school district misrepresented that it had resolved the issue in your complaint or if the district withheld certain required information from you.

Either you or your school district can file a written due process hearing request\(^10\) with the other party and send a copy to the BSEA to obtain a due process hearing. The BSEA has developed a hearing request form\(^11\) that you may use, or you can write your own letter instead of using the form, but you must be sure to include your student’s name and residential address (or contact information if the student is homeless); the name of your student’s school; a description of the problem you are concerned about, including specific facts relating to the problem; and a proposed solution to the problem. Note that the hearing will be limited to the issues that are identified in the complaint.

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\(^9\) The phrase “or should have known” reminds you that you have a responsibility to be aware of your student’s program.


You must send your due process hearing request to the school district (or other party to the complaint) and a copy to the BSEA. If the due process complaint does not provide enough information, the opposing party may challenged its sufficiency within 15 days. The BSEA will decide whether the complaint is sufficient within 5 days of the challenge. Additional information may be added to the complaint if the opposing party agrees or if the hearing officer gives permission. If additional issues are added to the complaint at a later time, however, the hearing timetable begins all over again.

If there is no challenge to the sufficiency of the complaint, then the hearing process continues. If the school district has not already sent a prior written notice to you about the issue that you are complaining about, then within 10 calendar days of receiving your due process hearing request, the school district must send you a written response to the complaint.

Note: If the school district has filed the due process hearing request, the parent must respond within 10 calendar days of receiving the hearing request, and specifically address the issues that the school district raised.

After you file a due process hearing request, the school district has 30 days to work with you to resolve the disagreement before the due process hearing may occur.\(^{12}\)

The school district is required to set up a resolution meeting within 15 calendar days of receiving your due process complaint.\(^{13}\) The school district will determine with you which members of the IEP Team must attend the meeting. Someone from the school district who can make decisions about your student’s program must attend the meeting. The school district’s lawyer may not attend unless you have a lawyer who is attending the meeting.

You must participate in the resolution meeting unless you and the school district agree, in writing, not to have the meeting or if you and the school district decide to use the mediation process. If the school district cannot get you to participate in the resolution meeting, it can ask the hearing officer to dismiss your complaint.

If you are willing to meet, but the school district refuses or delays the resolution meeting more than 15 days after receiving notice of your hearing request, then you can ask the hearing officer to proceed with the hearing process. If you meet, but the school district has not resolved the due process complaint to your satisfaction within 30 days of your filing the complaint, then the due process hearing may go forward.

The resolution process ends when one of the following events occurs:

- When you and the school district agree, in writing, to end the resolution period;
- At the end of the 30 day resolution period;
- At the end of mediation; or
- When you and an official of the school district sign a document that spells out your agreement that resolves your dispute. This is a “settlement agreement” and can be enforced by a state or federal court. Note that if you and the school district enter into an agreement as a result of a resolution meeting, either you or the school district may void the agreement within 3 business days of the time that both you and the school district signed the agreement.

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\(^{12}\) If you and the school district agree to mediation, you may agree to continue the mediation after the 30 day period.

\(^{13}\) No resolution session is required if the school district has requested the due process hearing.
6.5 Present your evidence to an impartial hearing officer during a due process hearing

When you file a due process complaint, the BSEA will set a hearing date, assign a hearing officer, and send you detailed information about the hearing process and a list of free or low-cost attorneys and advocates whom you may contact for help.

During the due process hearing you and the school district will each present evidence and provide the testimony of witnesses to an impartial hearing officer from the BSEA. At any due process hearing, including a hearing relating to disciplinary procedures, you may:

- be accompanied, advised and represented by a lawyer and/or advocate;
- have your student present at the hearing;
- have the hearing open to the public;
- present evidence such as documents and reports;
- request, or require through subpoena, witnesses to come to the hearing and answer questions;
- see any evidence that is to be used at the hearing at least five business days ahead of time and ask the hearing officer to keep out any evidence that you have not seen; and
- obtain a written or, at your option, electronic, word-for-word record of the hearing findings of fact and decision at no cost to you. To obtain a written record of the hearing, you must make your request in writing.

Additional information about due process hearings can be obtained from the BSEA at 617-626-7250 and from the BSEA Web site: http://www.mass.gov/dala/bsea.

Hearings are conducted according to the Massachusetts Administrative Procedure Act\textsuperscript{14} and the BSEA Hearing Rules.\textsuperscript{15} The hearing officer must issue a final decision within 45 days of the end of the resolution period described above unless the hearing officer has granted extensions of time at the request of either party. The hearing officer will send a copy of the decision to you and to the school district. Both the parents and the school district must abide by the decision of the hearing officer.

A hearing officer’s decision on whether your student is being offered a FAPE must be based on a finding that your student’s special education rights were violated or a determination that the school district failed to fulfill its other obligations to your student under the special education laws and regulations. If you have complained about a violation of the special education procedures (such as failure to hold a proper team meeting, poor record keeping, or failure to follow timelines) a hearing officer may find that your student did not receive FAPE only if the failure to follow the procedures:

- Interfered with your student’s right to a FAPE;
- Significantly interfered with your ability to be involved in decisions about your student’s education; or
- Deprived your student of an educational benefit.

The decision of the hearing officer is a final agency decision and cannot be reconsidered by the BSEA or changed by the ESE. Hearing decisions are public\textsuperscript{16} and are available on the BSEA Web site at http://www.doe.mass.edu/bsea/decisions.html.

\textsuperscript{14} M.G.L. c.30A
\textsuperscript{15} http://www.mass.gov/anf/docs/dala/bsea/hearing-rules.doc
\textsuperscript{16} Hearing decisions are published after redacting information that would allow the student to be readily identified.
6.6 Appeal a hearing decision to a state or federal court

If either the parent or the school district disagrees with the decision of the hearing officer, they can seek review of that decision in state or federal court. Any such request for review must be filed within 90 days of the decision.

6.7 Attorneys’ fees

Each party is responsible for paying its own attorney’s fees unless the court decides otherwise. If you obtain a favorable result in a written hearing decision or court proceeding, the court may decide that the school district should pay your reasonable attorneys’ fees. Note, however, that you will not be able to obtain these fees for the time spent litigating your case after the district made a settlement offer if:
- the district made a written offer of settlement 10 or more days before the hearing,
- you did not accept the offer within 10 days, and
- the outcome of the hearing was no better than the settlement offer.

If the school district obtains a favorable decision, a court could order your attorney to pay the school district’s legal expenses if the court finds that your attorney filed a complaint or continued to litigate after learning that the complaint had no basis in fact, was unreasonable, was frivolous, or was pursued for an improper purpose. A court may also order you or your attorney to pay legal expenses if your request for a due process hearing or subsequent cause of action was presented for an improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

7. What are your responsibilities if you place your student in a private school and you believe your school district should reimburse you for the tuition?

There are some occasions when a parent believes that the public school is not providing a FAPE to the student and the parent decides to place the student in a private school. A parent may enroll his or her student in private school at private expense at any time. If, however, the parent believes that the public school should be responsible for the costs of the student’s education in the private school, the parent must tell the school district of objections to the student’s IEP and program, reject the IEP, inform the school district of his or her intent to remove the student and enroll the student in a private school, and request a hearing by the BSEA. A parent must inform the school district before removing the student from the public school either orally at the last Team meeting before the removal or in writing at least 10 business days before removing the student from school.

The school district is not required to pay for a student to attend a private school if the school district has made a FAPE available to the student. Disagreements between parents and the school district about whether the student’s program provides a FAPE and requests for financial reimbursement for the cost of a private program may be resolved through due process procedures discussed earlier in this document. The hearing officer will determine whether the school district made a FAPE available to your student. If the hearing officer finds that the school district did not provide your student with a FAPE, that you followed the above steps, and that the private school placement was appropriate, the hearing officer, after considering all of the circumstances surrounding the removal of the student, may require the school district to reimburse you for all or part of the cost of the private school placement.

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17 A BSEA Hearing Officer may not award attorney’s fees.
8. What must be done to plan for your student’s transition from high school? 34 CFR §300.43

Planning for your student’s transition from school to post-school opportunities will facilitate your student’s ability to successfully participate in activities such as post-secondary education, work, and community and adult life. Planning for transition must be based on your student’s strengths, preferences, interests, and needs, must begin when your student is 14, and must be discussed each year at a Team meeting. The school district must discuss your student’s transition needs with you and your student and must consider the goals for your student after he or she completes school by graduating with a regular high school diploma or reaching the age of 22. School districts must use the Transition Planning Form to record the results of this annual discussion. The student’s IEP must include measurable post-secondary transition goals, objectives and services based upon an appropriate assessment of his or her disability and transition needs.

Graduation with a regular high school diploma is a change of placement and ends the student’s eligibility for special education. The school district must inform you if and when the district expects your student to graduate with a regular high school diploma. This discussion should take place during the Team meeting no less than 1 year in advance of the student’s graduation.

9. How may a school discipline a student with a disability? 34 CFR §300.530

Public schools must have procedures and standards in place to assure a safe learning environment for students. Schools are expected, and high schools are required, to publish their rules of conduct so that students know how they are expected to behave. If a student misbehaves and violates the school code of conduct, the school may discipline the student. Discipline must be fair and even-handed.

In general, any student may be suspended or removed from school for disciplinary reasons for a short time, which is no more than 10 days. Before any removal or suspension the student must be told what he or she is accused of having done and must be given a chance to tell his or her side of the story. During a short disciplinary removal, the school is not required to provide instruction to a disabled student unless it does so for non-disabled students. Once a student with a disability has been removed from the school placement for more than 10 cumulative days during the school year the student must receive educational services that will allow the student to continue to participate in the general education curriculum and to progress toward the goals set out in his or her IEP. School officials must consult with at least one of the student’s teachers to determine what services are necessary. These services must begin on the 11th school day of a student’s disciplinary removal during the school year and continue during the disciplinary removal.

Schools must follow special disciplinary rules for students with disabilities who have been found eligible for special education. The special education disciplinary rules also apply to some students who have not yet been found eligible for special education. If, prior to the conduct in question, the parent has put his or her concern that the student’s has a possible disability in writing to supervisory or administrative personnel or the student’s teacher; if the teacher or other staff has expressed concerns about the student’s pattern of behavior directly to the director of special education or other supervisory personnel, or if the student has been referred for an evaluation that has not yet been completed these special rules apply. The special education disciplinary rules do not apply if the parent has refused to consent to the evaluation, if the student has previously been found to be not eligible for special education, or if the parent has revoked consent to special education and related services.

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18 The student should be invited to attend the Team meeting to discuss postsecondary goals and transition.
19 http://www.doe.mass.edu/sped/28MR/28m9.doc
20 The special education disciplinary rules also apply to some students who have not yet been found eligible for special education. If, prior to the conduct in question, the parent has put his or her concern that the student’s has a possible disability in writing to supervisory or administrative personnel or the student’s teacher; if the teacher or other staff has expressed concerns about the student’s pattern of behavior directly to the director of special education or other supervisory personnel, or if the student has been referred for an evaluation that has not yet been completed these special rules apply. The special education disciplinary rules do not apply if the parent has refused to consent to the evaluation, if the student has previously been found to be not eligible for special education, or if the parent has revoked consent to special education and related services.
These special disciplinary rules apply as soon as a student is removed from his or her current education placement for more than 10 days in a row, or if a student is removed for disciplinary reasons for more than a total of 10 days in any school year and there is a pattern of removal for comparable behaviors. The school must notify you as soon as the decision is made to remove your student from his or her education placement for more than 10 days and provide you with a copy of this Notice.

The student’s IEP Team must meet within 10 days of the school’s decision to impose the discipline. At this meeting, called a “manifestation determination,” you and other members of the IEP Team will determine if the misbehavior was caused by or had a direct relationship to the student’s disability, or was the direct result of the school’s failure to provide the services required by the student’s IEP. In making the manifestation determination, you and other members of the IEP team must consider relevant information from your student’s file, including your student’s IEP, your and the teachers’ observations of your student’s behavior, and any relevant information you provide.

If the team determines that the student’s behavior was not caused by or directly related to the student’s disability or the failure to properly implement the IEP, then a student with a disability can be disciplined in the same manner and for the same length of time as other students are disciplined for the same offense. The IEP Team, however, must determine the interim alternative educational setting (IAES) where the student will be placed and the educational services that will be provided. An IAES is a setting other than the student’s current placement that enables the student to continue to receive educational services according to his or her IEP. School personnel may consider the student’s unique circumstances in determining whether a change in placement is appropriate for a student with a disability.

If the Team determines that the student’s behavior was caused by or directly related to the student’s disability or the failure to properly implement the IEP, then the student must be returned to the last approved IEP placement unless you and the IEP Team decide on a different placement. The student must also be provided a functional behavioral assessment. A functional behavioral assessment or FBA is a comprehensive assessment of behavior that provides the IEP Team with information about the student’s behavior and identifies behavioral intervention services and program modifications that are designed to address the behavioral violation so it does not recur. If the student has already had a functional behavioral assessment and has a behavioral intervention plan, then the IEP Team should determine if any changes should be made to the behavioral intervention plan. If the behavior was caused by the failure to properly implement the IEP, the school must take immediate steps to remedy the deficiencies.

Note that if your student possessed or used a weapon or drugs, or caused serious bodily injury to another person on school property or at a school event your student may be placed by the principal in an IAES for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the student’s disability. The IEP Team will determine the IAES and the appropriate educational services that will be provided to the student while he or she is in the IAES.

9.1 Appeal of a disciplinary decision

If a parent disagrees with any decision regarding placement of his or her student under the disciplinary provisions or disagrees with the manifestation determination, or if the school district believes that maintaining the current placement of the student is substantially likely to result in an injury to the student or to others, either the parent or the school district may appeal the decision by requesting a hearing with the BSEA, as described earlier in this document.

The BSEA will convene a hearing on a disciplinary placement or manifestation determination on an expedited schedule. During the appeal of a disciplinary placement or manifestation determination, the student must remain in the IAES until the hearing officer makes a decision or the disciplinary period is completed, unless the parent and the school district agree to a different placement.

21 http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_chart.doc
22 Placement is determined by the IEP Team and is the location where IEP services are provided.
10. Where can the laws and regulations and other useful information be found?

10.1 Laws and Regulations

You can find the full text of the state Special Education law in Massachusetts General Law Chapter 71B. The state law is popularly known as “Chapter 766.” The state special education regulations are found in the Code of Massachusetts Regulations (CMR) at 603 CMR 28.00. The law and the regulations and other helpful resources are on the ESE Web site.²⁴

The federal special education law is the Individuals with Disabilities Education Act, known as “IDEA.” The federal statute is located in the United States Code at 20 U.S.C. § 1400. The implementing regulations for IDEA may be found in the Code of Federal Regulations (CFR) at Chapter 34, Section 300. A copy of the federal statute and regulations and explanatory information can be found on the U.S. Department of Education Web site at http://idea.ed.gov.

10.2 Individualized Education Program process guide and forms

A general overview of how the special education process works (taken from the IEP guide prepared by the USDOE) can be found at http://www.doe.mass.edu/sped/iep.

For the ESE explanation of the how an IEP is developed, consult the IEP Process Guide and the standard IEP forms available on the ESE Web site: http://www.doe.mass.edu/sped/iep.

10.3 Table of abbreviations

Many common special educational phrases are abbreviated by acronyms composed of the initial letters of the phrase. For your convenience the acronyms and phrases used in this document are listed below:

- **BSEA:** Bureau of Special Education Appeals
- **CFR:** Code of Federal Regulations
- **CMR:** Code of Massachusetts Regulations
- **ESE:** Massachusetts Department of Elementary and Secondary Education
- **FAPE:** Free Appropriate Public Education
- **FBA:** Functional Behavioral Assessment
- **IAES:** Interim Alternative Educational Setting
- **IDEA:** Individuals with Disabilities Education Act
- **IEE:** Independent Educational Evaluation
- **IEP:** Individualized Education Program
- **PQA:** Program Quality Assurance Services

10.4 Table of Web sites

The ESE publishes extensive information for parents and school districts on its internet Websites. These Websites include pertinent laws, agency policies and useful documents that explain the special education process.

Autism Spectrum Disorder: http://www.doe.mass.edu/sped/advisories/07_1ta.html

²⁴ http://www.doe.mass.edu/sped/laws.html
Bureau of Special Education Appeals
http://www.doe.mass.edu/bsea/decisions.html
http://www.mass.gov/anf/docs/dala/bsea/hearing-rules.doc
http://www.mass.gov/anf/docs/dala/bsea/hearing.doc
http://www.mass.gov/anf/docs/dala/bsea/mediation-brochure-2012.doc
http://www.mass.gov/anf/docs/dala/bsea/
Consent to Access MassHealth (Medicaid):
http://www.doe.mass.edu/sped/advisories/13_1.html
http://www.doe.mass.edu/sped/28m13.pdf (Mandated Form 28M/13)
Discipline:
http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_chart.doc
Individuals with Disabilities Education Act:
http://idea.ed.gov/
The Basic Special Education Process under IDEA:
http://www.doe.mass.edu/sped/iep/process.doc
Individualized Education Program:
http://www.doe.mass.edu/sped/iep
Individual Education Program Process Guide:
http://www.doe.mass.edu/sped/iep/proguide.pdf
Independent Educational Evaluation:
http://www.doe.mass.edu/sped/advisories/?section=admin
Observation of Education Programs by Parents and Their Designees for Evaluation Purposes:
http://www.doe.mass.edu/sped/advisories/09_2.html
Parent’s Notice of Procedural Safeguards:
http://www.doe.mass.edu/sped/prb.
PQA Problem Resolutions System compared to BSEA Due Process Complaint:
http://www.doe.mass.edu/sped/complaintchart.doc
Program Quality Assurance Services Problem Resolution System:
http://www.doe.mass.edu/pqa/prs
Special Education Laws and Regulations:
http://www.doe.mass.edu/sped/laws.html
Special Education Surrogate Parent:
Special Education Transition Planning Form:
http://www.doe.mass.edu/sped/28MR/28m9.doc
Student Records Regulations:
http://www.doe.mass.edu/lawsregs/603cmr23.html
Student Records Questions and Answers
http://www.doe.mass.edu/lawsregs/advisory/cmr23qanda.html?section=
Transition Planning:
http://www.doe.mass.edu/sped/cspd/mod4.html#

PNPS 2009 (updated 8/2013)
State and District Responsibilities for Educational Surrogate Parents: Procedural Guidelines

If a student is without parental representation and requires an educational surrogate parent to be appointed in accordance with federal law and regulations, DESE will be notified and the district will assist in identifying a person willing to serve as the educational surrogate parent. If a person is identified by the district and willing to serve, they cannot be employed by the district or any state or local agency involved in the care of the student. In addition, every effort must be made to avoid any conflict of interest with regard to the selection process. Upon assignment by DESE, the educational surrogate parent has all the rights and responsibilities of a parent in making decisions regarding eligibility and special education services for the student. The educational surrogate does not receive financial reimbursement from the district except for reasonable expenses related to his/her responsibilities as an educational surrogate parent for a student enrolled in the district.

The department will provide notice of appointment to the district and any state agency having custody of the student.

Dispute Resolution

If a parent has made an official hearing request to the BSEA, Scituate will convene a meeting with the parents within 15 days of receiving notice of the parents’ request for hearing. The purpose of the meeting is to try to resolve the dispute. Present in attendance are the Team members to include a representative with decision-making authority. Scituate will not bring a lawyer to this dispute resolution session unless the parent does. If the parent brings a lawyer without informing the district, the meeting will not occur and another meeting will be scheduled to include legal counsel from both or neither parties. This resolution session may be waived if the district and the parents agree in writing to do so or if the parties agree to instead participate in mediation.

Should the dispute be resolved in the resolution session, the parents and the Director of Special Education sign a legally binding agreement that is enforceable in state or federal court. Any party may void this agreement within three business days of the signing.

Notice to Special Education Appeals

Within five calendar days of receiving a notice that a parent is requesting a hearing or has rejected an IEP (to include a proposed placement), or a finding of no eligibility for special education, Scituate sends a copy of the notice to Bureau of Special Education Appeals (BSEA). A copy of the IEP or Notice informing the parent of a finding of no eligibility is also forwarded to the BSEA.
Special Education

Guidance on Appointment of Educational Surrogate Parents

To: DSS Staff, Superintendents, Charter School Leaders, Special Education Administrators, Directors of Educational Collaboratives, Directors of Approved Public and Private Special Education Schools and other Interested Parties

From: Lewis H. Spence, Commissioner, Department of Social Services
       David P. Driscoll, Commissioner, Department of Elementary and Secondary Education

Date: November 4, 2002

Representatives of the Department of Elementary and Secondary Education (ESE) and the Department of Social Services (DSS) have met several times over the recent past to discuss the needs of children in DSS care or custody who are eligible for special education services and require the appointment of educational decision-makers, i.e., educational surrogate parents. The agencies agreed to disseminate memoranda to our respective constituencies to promote a shared understanding of who has authority to make special education decisions for children in DSS care or custody.

This memorandum will:

1. Clarify the circumstances under which ESE will assign an educational surrogate parent (ESP) to children in the care or custody of DSS;
2. Define the relationship between such children and their ESPs when the child attains the age of majority (18 years of age) under Massachusetts law; and
3. Address the issue of judicial appointments of special educational decision-makers.

The memorandum reflects the current policy of the Massachusetts Department of Elementary and Secondary Education's Educational Surrogate Parent Program. We are distributing the memorandum to all DSS staff and to public and private school officials who provide educational services to publicly funded students.

Please note that a revised referral form requesting appointment of an educational surrogate parent is attached.

I. Background: The Framework for the Educational Surrogate Parent Program

The Educational Surrogate Parent Program (ESP Program) exists in response to federal special education law, the Individual with Disabilities Education Act (IDEA). The IDEA requires States to implement procedures to protect the rights of children entitled to special education services who are in the custody of a state agency (a “ward of the state”), or whose parent or guardian cannot be identified or located.
The primary mission of DSS is to protect children who have been abused or neglected in a family setting. In carrying out this mission, DSS may remove a child from his or her home and place the child in foster, group or residential care, until the child can be returned home safely or another permanent living arrangement, such as an adoptive home, can be provided. Although, in most cases, DSS receives custody of a child through a Care and Protection (C&P) petition alleging parental abuse or neglect, it may also obtain custody through a Child in Need of Services (CHINS) petition, based on the child's behavior, or as a result of a private custody dispute. Children also enter DSS care through voluntary agreements between their parent(s) and the agency.

ESE is the state agency responsible for assigning a person to act in special education matters on behalf of a child in certain circumstances in which DSS has obtained care, custody or guardianship of the child. The term used to describe these individuals is "Educational Surrogate Parent," or ESP. The ESP Program recruits and trains volunteers to act as decision-makers in special education matters for those students, ages 3 - 22, whose parents are unable or unavailable to fulfill their responsibilities in this regard. Neither a parent's lack of expertise in special education issues nor lack of fluency in English is a basis to seek appointment of an ESP for a student. An ESP has the same rights and responsibilities as a parent for purposes of special education decision-making. This means that the ESP has authority to, among other things, review the child's educational records, consent to special education evaluation, accept or reject an Individualized Education Program (IEP), request an independent evaluation and request mediation or a hearing to resolve special education disputes.

ESE operates its ESP Program under contract with a private vendor, which acts as its agent for this purpose. The ESP Program matches eligible students with ESPs. Once a match is made, the ESP Program issues an appointment letter to the ESP formalizing the relationship between the individual and the student. The ESP Program sends copies of the appointment letter to the responsible school district(s), the child's DSS worker and to other identified professionals involved with the student. The assigned ESP then has authority to provide consent for evaluations and make other decisions regarding special education matters.

Federal law is clear about who can be appointed an ESP for decision-making in special education matters. An individual having special education decision-making authority must:

1. Be older than 18 years of age;
2. Not be an employee of a public agency involved in the care or education of the specific student;
3. Have no interest that might conflict with the interests of the student; and
4. Have adequate knowledge and skills to represent the student.

Since DSS workers are "involved in the care...of the specific student" and there are potential conflicts of interest, DSS employees cannot be appointed ESPs. As such, they may not make special education decisions for children in DSS care or custody. However, this provision does not bar DSS workers from referring a child for a special education evaluation if the child appears to be a student who may have educational disabilities. In cases where referral for evaluation is appropriate, the DSS worker should simultaneously refer the child to the ESP program for immediate appointment of an ESP if appropriate under this memorandum.
II. When an Educational Surrogate Parent Should be Appointed for a Child in Placement

The determination of whether an ESP should be appointed for a DSS-involved child turns on whether the child is in the care or custody of DSS, and if in DSS custody, the reason for the placement. Even where DSS has custody, the agency may permit the parent to continue in a decision-making capacity for special education purposes, assuming there are no protective concerns.

- A child is in the "care" of DSS if the child is placed outside of the home by DSS pursuant to a Voluntary Placement Agreement (VPA). The parent should continue to be the child's education decision-maker. As such, no referral to the ESP Program is necessary.
- A child is in the "custody" of DSS when the court issues an order transferring custody from the parent or guardian to DSS. The majority of children in DSS custody are in custody due to either the initiation of a CHINS petition or a Care and Protection (C&P) proceeding. In general, if a child is in DSS custody due to child-related issues (for example, CHINS cases) as distinct from parental fitness issues (i.e., Care and Protection proceedings), DSS will permit the parent to continue to function as the child's educational decision-maker in matters regarding special education. Hence, an ESP is not required and no referral to the ESP Program is required.
- ESPs are required for children who are in custody for protective reasons. In these cases, the DSS worker should make a referral promptly to the ESP Program if the child is a special education student when s/he enters DSS custody or the worker has made a referral to the responsible school district to determine the child's eligibility for special education services.
- Unusual circumstances may occur that would warrant departure from the general principles outlined here and the appointment of an ESP. In such cases, a referral may be made to the ESP Program with an explanation of the basis for the requested appointment. The ESP Program will consider these requests on an individualized basis after consultation with the child's DSS worker or other appropriate DSS representative.

As noted earlier, a DSS worker may refer a child for a special education evaluation if the worker believes the child has a disability that interferes with the child's progress in school. If the child needs an ESP, the worker should refer the child to the ESP program at the same time using the attached referral form. If the child is eligible for an ESP and there is none immediately available, the Director of the ESP Program may authorize the school district to proceed with the child's initial evaluation. ESE has authorized the ESP Program director to take this action to avoid delay in the commencement of the child's initial evaluation. As soon as possible, the ESP Program will assign an individual to be the ongoing ESP for all other decision-making related to special education for the child, including participation in the initial Team meeting.

When referring a child to the ESP Program, DSS workers are strongly encouraged to suggest individuals meeting the eligibility criteria discussed earlier whom they know are interested and available to act as the child's ESP.

Once an ESP is appointed for a child, the DSS worker should make sure that the ESP Program or the ESP is informed in a timely manner anytime the child changes his or her placement and/or address.

It is important to underscore that the appointment of an ESP does not preclude parents from participating in their child's education. In most cases, the parent(s) can and should be encouraged to
attend their child's Team meetings, as well as other school meetings, and to work with the ESP on behalf of their child. This is particularly appropriate when the child is expected to return home.

III. Foster Parents as Educational Decision-Makers

Appointment as ESP for Children in Protective Cases

If a child is in DSS custody as a result of a C&P petition or Probate Court action brought for protective reasons, the child is placed in a foster home and the foster parent agrees, DSS generally will request that the foster parent be appointed as the child's ESP. If the foster parent is qualified to assume the role of ESP (see the four criteria that appear on page 3), the ESP program will appoint the foster parent to act as the child's ESP. In some instances, as explained below, the foster parent may be the child's special education decision-maker without needing a referral to, and appointment by, the ESP Program.

Long Term Foster Care: Foster Parent "Acting as a Parent" in Protective Cases

The federal special education law recognizes that foster parents may form "ongoing, long-term parental relationships" with the children in their care. In such circumstances, a foster parent need not be appointed as an ESP but, instead, may be deemed to be "acting as a parent" for special education purposes.

A foster parent is deemed to have a long-term relationship with a child who is the subject of a C & P petition or other protective proceeding if: 1) the child has been placed in the foster parent’s home for at least six months; 2) the foster parent is willing and able to assume special education decision-making responsibilities; 3) the foster parent has no interests that conflict with those of the child. In these circumstances, no referral to the ESP Program is necessary.

Foster parents may obtain information and other assistance regarding special education decision-making by contacting the Federation for Children with Special Needs at (800) 331-0688.

Important Note:

A foster parent is not viewed as "acting as a parent" when the child's actual parent continues in that role. A foster parent may be deemed to be "acting as a parent" for special education decision-making only in the following circumstances: 1) the child is in DSS custody as a result of a C&P petition or other protective action; and 2) the child has been placed with the foster parent for at least six months; and 3) DSS and the foster parent agree that the foster parent will make special education decisions for the child. The foster parent may not be deemed "acting as a parent" for special education purposes in cases in which the child is in foster care as a result of a voluntary placement agreement, a Probate Court action initiated for non-protective reasons or a CHINS petition, and the parent has continued to act as the child's special education decision-maker.

IV. Appointment of Special Education Advisors for Students over the Age of Eighteen Who Continue to Be Involved with DSS

In Massachusetts, a student who has reached the age of majority (eighteen years of age) is an adult according to law. An 18-year-old student is presumed competent to make his or her own decisions.
This presumption of competency applies to students age 18 and older who are in the care of DSS. Such students are no longer eligible for an appointed ESP.

However, students 18 and older in DSS care may request continued assistance with special education decision-making if they had an appointed ESP at the time of their 18th birthday. In such cases, the ESP serving the student on his/her 18th birthday may continue to serve the student as a "special educational advisor." This arrangement is contingent on the willingness and availability of the assigned ESP to serve in the new role. The responsibilities of a special educational advisor are to assist the student in understanding any proposed special education program and to advise the student of his/her rights in making special education decisions. The authority to make such decisions, however, remains with the student.

If an adult student in DSS care would like an appointed ESP to continue to assist him or her in special education matters, the student should make that request in writing to the ESP Program. The ESP Program will verify in writing the change from the existing ESP appointment to an appointment as a special educational advisor, assuming that the ESP is willing and available to serve the student in the new role.

The student's special educational advisor will retain his/her status as advisor until the student is no longer eligible to receive special education services. If the student and/or the special educational advisor choose(s) to discontinue their relationship before that time, the student will not be eligible for appointment of another special educational advisor.

On occasion, DSS has custody, or is the guardian, of an individual 18 or older who was in DSS care or custody before turning 18 and has been adjudicated incompetent. In such cases, an ESP will be appointed as soon as the DSS worker provides documentation to the ESP program of the guardianship appointment or continued custody. An adult student who has been adjudged incompetent will continue to have the right to an appointed ESP until the student is no longer eligible to receive special education services or the custody/guardianship is terminated, whichever comes first.

V. Judicial Appointments of Educational Decision-Makers

From time to time, judges in the Juvenile, and Probate and Family Courts appoint individuals to act on a child's behalf in various education matters. Such appointments are usually contained in written orders. Depending on the language of the order, the individual may or may not have authority to be the child's ESP for special education purposes. If the order specifies that the individual is appointed as the child's decision-maker for special education purposes, the individual may be presumed to have the appropriate authority. Upon request, and provided a copy of the order is sent to the ESP Program, the ESP Program will confirm the appointment and notify the appropriate school officials and DSS. If the individual is appointed by the court as the child's "educational advocate" or to a similar role, the ESP Program will not consider the individual to be an ESP for the child until such time as the ESP program determines that the individual meets the appointment requirements outlined on pages 3-4 of this memorandum. Once ESP appointment requirements are met, the ESP Program will recognize the individual as the child's ESP and issue an appointment letter with copies to appropriate school officials and DSS. Should the individual be unwilling or unable to meet appointment requirements, the ESP Program will appoint a different person as the child's ESP, if needed.

It should be noted that if a court appoints a guardian ad litem (GAL) or educational advocate with special educational decision-making authority and the parent had been making special educational
decisions for the child, the parent no longer has the right to consent to evaluations, to sign IEPs, or to ask for mediation or a hearing to resolve special education disputes. By appointing the GAL or educational advocate and conferring special education decision-making authority on that person, the court effectively takes away from the parent any authority s/he may have had to act on behalf of her/his child in this area.

VI. Obtaining Additional Information

Questions regarding the ESP program should be directed to Michelle Poulin, Program Director, at (508) 792-7679. Questions regarding DSS-related issues should be directed to Susan Stelk, DSS Education Coordinator at (617) 748-2340.

Cc: Marcia Mittnacht, State Director of Special Education, ESE
    Michelle Poulin, Director of Educational Surrogate Parent Program
    Susan Stelk, Education Coordinator, DSS

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1 As of this writing, the address and telephone number of the ESP Program is 167 Lyman Street, P.O. Box 1184, Westboro, MA, 01581; tel: 508-792-7679; fax: 508-616-0318.

2 It is also important to emphasize that this restriction only applies to special education matters. It does not restrict the authority of DSS workers in regular education matters.

3 Some consented-to "23 C" petitions filed in the Probate Court may also fall into this category. In these cases, a VPA has preceded the Probate Court action.
Parents’ Right to Request an Independent Observation of Student Programming

In response to the Technical Assistance Advisory SPED 2009-2: Observation of Education Programs by Parents and/or Their Designees for Evaluation Purposes, the Scituate Public Schools is issuing the following procedures.

A. **Receiving and Responding to Observation Requests:**
   - Both verbal and written forms of requests are accepted.
   - Parents’ request to observe their child(ren) or a potential placement must be made at least five days in advance with the Director of Special Education or Designee and/or Principal.
   - When a parent requests an observation of a special needs student or program, they will seek approval from the Director of Special Education and the building principal before it is processed. Such approval may only be withheld for those reasons outlined within law and DESE regulations.
   - The Special Education Director or designee and/or Principal will work with the classroom teacher and the observer to set up the specifics of the observation (including, but not limited to, scheduling and placement of the observer in the classroom).
   - If the request is from a parent designee and the school has no prior knowledge of the designee, the school will confirm with the parent that the designee is acting on his or her behalf. Written confirmation is preferred, but not required. Verbal confirmation is acceptable.
   - If the designee will review the student’s records, the school **must obtain written** permission from the parent.

B. **Timely Access:**
   - The Special Education Director or designee shall contact the parent(s) for initial scheduling conversation within five (5) days of receipt of parents’ request.
   - The observation should be scheduled within a week of the request if the observation will only take one hour.
   - If the observation will take longer, it may take longer than a week to schedule the observation within reason.
   - Timely access does NOT mean that a school district must allow observations on demand, or that parents or designees may unilaterally set a schedule for observations.
   - The Principals can designate certain periods of the year, such as during MCAS testing or the first and last couple of weeks of school, as times in which observations are not generally scheduled.

C. **Sufficient Duration and Extent:**
   - Both academic and non-academic components of a program can be observed.
   - The number, frequency, and duration of the observation will be determined on an individual basis in accordance with the law and regulation. The start and end time of observation periods and a schedule of observation periods and a schedule of observation periods will be stated in advance.
   - In order to minimize classroom or student disruption, the length of the individual observation periods may be limited.
D. **Conditions or Restrictions on Observations:**

- The observation law states that districts may not condition or restrict program observations except when necessary to protect:
  - The safety of the children in the program during the observation. (e.g. The school staff may have concerns about the unsafe behaviors of a student who becomes agitated when observed by individuals the student does not know and may decide that a shorter observation than that proposed by the observer is appropriate);
  - The integrity of the program during the observation (e.g. classroom routine may be affected by visitors; therefore using a simple introduction of the observer may be needed, such as “…to learn more about the 5th grade.” Or “…to learn more about math.”); and
  - Children in the program from disclosure by an observer of confidential or personally identifiable information he or she may obtain while observing the program. (Staff must be mindful of removing materials from plain view, such as IEPs record books, etc… that may be part of a student record so that the program observer will not see them).

- The number of observers at any one time will be limited.

- The observer will be informed that he/she is not to interfere with the educational environment of the classroom. If his/her presence presents a problem, he/she will be asked to leave. This notice is particularly important, since the presence of parents can influence both the performance of their child(ren) and those of others.

- **The observer will be asked to submit his/her report of the observation in advance of any follow-up TEAM meeting.**

- The observer will be informed that he/she is there to evaluate the appropriateness of a specific educational program to meet the needs of an individual child. He/she is not there to evaluate a teacher’s ability to perform his or her contractual job duties.

- The observer will be instructed where to sit by the teacher in a place that will not interfere with the class. If he/she is seated at the teacher’s desk, the teacher should make sure that he/she does not have access to confidential material that concerns other children. This includes limiting access to grade books, papers, IEP’s, etc.

- **School staff will not answer questions from the observer during the observation. A meeting with the Chairperson can be scheduled at a later time to make any clarifications or answer questions from the observer.**

- The observer will be instructed regarding the disclosure of confidential or personally identifiable information relating to other children. A waiver must be signed by the observer prior to the observation.

- The Principal may exercise their discretion at any time to reschedule or terminate an observation in the event of a building emergency or a disruption that impacts the physical or emotional well-being of the children in the school or the program being observed.

- A school administrator, or designee, also will observe at the same time and take notes as to what is observed, paying particular attention to note anything that is non-typical concerning the period. This observation summary will be placed in the student’s file and provided to the parent(s) prior to any follow-up TEAM meeting.
Forms Required:
- Third Party Release
- Privacy and Disclosure Agreement
Special Education

**Technical Assistance Advisory SPED 2009-2:**
Observation of Education Programs by Parents and Their Designees for Evaluation Purposes

To: Superintendents, Principals, Administrators of Special Education, and Other Interested Parties

From: Marcia Mittnacht
State Director of Special Education

Date: January 8, 2009

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**Introduction**

The legislature recently amended section 3 of G.L. c. 71B, the state special education law, to require school committees, upon request by a parent, to grant timely and sufficient access by parents and parent-designated independent evaluators and educational consultants (both of whom are referred to in this guidance as "designees") to a child’s current and proposed special education program so that the parent and named designee can observe the child in the current program and any proposed program. The law, referred to in this advisory as "the observation law," limits the restrictions or conditions that schools may impose on these observations. The purpose of the law is to ensure that parents can participate fully and effectively in determining the child’s appropriate educational program. The observation law can be found at [http://www.malegislature.gov/Laws/SessionLaws/Acts/2008/Chapter363](http://www.malegislature.gov/Laws/SessionLaws/Acts/2008/Chapter363). It is effective January 8, 2009.

Long-standing "best practice" related to parent and designee observation in many Massachusetts schools will likely be unchanged with the implementation of this law. School staff and parents and their designees have successfully collaborated for many years to achieve timely and sufficient access to programs for observations that have helped parents and their designees better understand the school programs that serve students with disabilities. In so doing, they have safeguarded the confidentiality interests of students and minimized disruption in the classroom and school. By codifying a parent’s program observation right, the legislature has made clear that local practices that unreasonably restrict or unduly delay observations are no longer acceptable.

Before issuing this guidance, Deputy Commissioner Karla Baehr and other Department staff met with a focus group of stakeholders, representing superintendents, principals, special education administrators, parents, advocates, and independent education evaluators, to identify particular areas of concern or confusion. School districts are encouraged to use this guidance to develop and/or review their policies and practices to assure alignment with the observation law. The Department will receive comments and questions on the implementation of the law and this guidance through June 30, 2009. Based on that feedback, we will determine whether additional guidance or any other action by the Department is necessary to assist in implementing the observation law.
Key Elements of Observation Policies and Procedures

A. Receiving and Responding to Observation Requests

School districts need to implement an efficient and effective process to consider and respond to observation requests so that parents and designees obtain timely access to education programs. The observation law does not address the manner in which a parent or designee makes a request to observe a child’s education program. The Department encourages districts that have permitted verbal requests for observations to continue that practice. For school districts that require written requests, the Department cautions against requiring detail beyond identifying the student at issue, the nature of the request and contact information. The Department also cautions against delaying the process due to incomplete written information that can be clarified through discussion. Consistent with the requirement of timely access discussed below, the Department encourages verbal (as opposed to written) communication with the parent or designee to review the request, resolve any issues, and schedule the observation.

If the request is from a parent designee and the school has no prior knowledge of the designee, it is reasonable for the school to confirm with the parent that the designee is acting on his or her behalf. Districts may require written confirmation of the parent’s designation, but are not required to do so. However, if the designee will review the student’s records, as is often the case, the school must obtain written permission from the parent for the record review consistent with section 23.07(4) of the Student Records Regulations.

The observation law uses the terms "parent-designated independent evaluators and educational consultants" to identify persons whom the parent designates to observe the child and the child’s program on the parent’s behalf. We interpret the term “independent evaluators” to refer to those individuals who conduct independent evaluations as provided under federal and state special education laws. See, 30 C.F.R §300.502; 603 C.M.R. §28.04(5). We read the term "educational consultants" to refer to individuals who advise parents on the child’s needs and program options and, typically, review the child's educational records. In most cases, independent evaluators and educational consultants will have an education or related professional background and educational evaluation experience. However, apart from the language governing independent evaluators in footnote 1, special education law does not set forth credentials or licensing requirements that parent designees must meet. We caution districts against setting such requirements or requesting resumes of designees. Such policies could be considered an unlawful condition or restriction on the right of parents and their chosen designees to access the child’s program for the purpose of evaluation.

B. Timely Access

The obligation to provide "timely access" to the program for purposes of observation is a core component of the observation law. District policies and practices should be evaluated against this principle.

Just as the special education law requires individualized education programs for students, district policies and practices should recognize that different observation requests may require more planning and observation time than others depending on the complexity of the student needs being evaluated, the program(s) to be observed, the program schedule, and the schedule of the parent or designee. Best practices suggest that these issues are resolved most efficiently.
and effectively when discussed with the observer, beginning with timely communication from the school to the observer when the request is made. For example, timely access following a request to observe a specific classroom which the parties agree can be achieved in an hour, in most circumstances should be able to be scheduled within a week of the request. In other instances, such as when a designee needs to observe the current and proposed programs, including periods of unstructured time to observe the student's interactions and responses, the observation may take longer to schedule.

It is also important to note that the timely access requirement does not mean that a school district must allow observations on demand, or that parents or designees may unilaterally set a schedule for observations. As noted, school administrators may take a reasonable period of time to inform school staff and plan the logistical aspects of an observation. Additionally, the Department believes it is reasonable for district policies and practices to designate certain periods of the year, such as during MCAS testing in the child's classroom or the first or last couple of weeks of school, as times in which observations are not generally scheduled.

C. Sufficient Duration and Extent

The observation law requires that school districts permit access to programs that is of "sufficient duration and extent" to accomplish the purpose of the visit, i.e., evaluation of the child's progress in the current program and/or the proposed program's ability to allow the child to make adequate progress. The law also states that program access must be allowed to both academic and non-academic components of the program(s) if requested.

School districts and parents have reported that, typically, observations are between one and four hours. While useful as a general rule, the Department recommends that district policies and practices specify that the duration and extent of observations will be determined on an individual basis. Districts should avoid rigid adherence to defined time limits regardless of the student's needs and settings to be observed. The complexities of the child's needs, as well as the program or programs to be observed, should determine what the observation will entail and what amount of time is needed to complete it. Discussion between school staff and the parent or designee is a good starting point for resolving the issue.

The law is clear that a district may not arbitrarily limit observations to certain academic classes if such limitations would not allow an observer to evaluate fully whether a program is or would be appropriate for the identified student with disabilities. For example, a student with an emotional impairment may have goals relating to how the student interacts with others in both formal and informal settings. If requested, the parent's designee should be allowed to observe the student in a formal teaching setting as well as a more informal or less structured setting such as recess, the lunch room, or participation in a school club.

D. Conditions or Restrictions on Observations

The observation law states that districts may not condition or restrict program observations except when necessary to protect:

1. the safety of the children in the program during the observation;
2. the integrity of the program during the observation; and
3. children in the program from disclosure by an observer of confidential or personally identifiable information he or she may obtain while observing the program.

The law makes clear that schools may not restrict or place conditions on observations unless they are necessary to address specific concerns about the impact of the observations on the program itself or the children in it. We recommend that districts consider the need for these conditions or restrictions on an individual basis and that principals discuss them with the program observer in planning the school visit. It is also important to add that while principals must exercise their authority consistent with the observation law, they remain responsible for the management and operation of the school (subject to the supervision and direction of the superintendent). See, M.G.L. c. 71, §59B. As such, they may exercise their discretion at any time to reschedule or terminate an observation in the event of a building emergency or a disruption that impacts the physical or emotional well-being of the children in the school or the program being observed. We expect that these cases will be limited.

4. Safety: The Department believes that decisions regarding the need to restrict or place conditions on program observations for safety reasons should be made on an individual request basis by building administrators and the child's teacher(s) and service providers, if relevant, based on their professional judgment concerning the needs of the child or children within the program. These decisions should be made carefully and not for the convenience of the school. For example, school staff may have concerns about the unsafe behaviors of a student who becomes agitated when being observed by individuals the student does not know and may decide that a shorter observation than that proposed by the observer is appropriate. Every effort should be made to work with program observers to develop ways to address issues of concern.

Schools have inquired about criminal offender record information (CORI) policies, adopted pursuant to M.G.L. c. 71, §38R, and their application to program observation by parents and their designees. Our view is that the CORI law, which requires districts to conduct CORI checks of employees, volunteers, and transportation providers who have direct and unmonitored contact with children, has limited application to parent and designee observations because program observers typically do not have direct and unmonitored contact with children. That said, if a district has adopted a policy that requires CORI checks of all building visitors, a district may interpret the policy to apply to program observers as well. However, if CORI checks are required of all visitors, the district must ensure that they are conducted in an expeditious manner so that parents and designees have timely access to the program(s) they wish to observe.

5. Program Integrity: We recognize that the classroom routine is affected on some level when any visitor enters the classroom, whether that person is the principal, another teacher, or an individual from outside the school environment. That fact in and of itself is not a basis for denying or restricting access to a classroom. The Department encourages districts to consider the program activities the observer wishes to evaluate and to work with the teacher and the observer on how to avoid or minimize disruption in the students' routines. Some schools report that a simple introduction of the observer as present, for example "to learn more about the 5th grade" or "to learn more about math" alleviates concerns the students may have. Other classrooms, because of the complexities of the students' needs, including behaviors, may require more specific planning to maintain the program environment.
6. **Confidentiality/Personally Identifiable Information**: The observation law permits districts to condition or restrict observation if necessary to protect children from disclosure by the observer of confidential or personally identifiable information he or she may obtain while observing the program.

As noted earlier, if the designee will review the student’s records as well as observe the program, the designee must have received written consent from the parent. Therefore, there should be no issue concerning the observer’s right to obtain the information concerning the student at issue. With respect to other students, staff must be mindful of removing materials from plain view (for example, IEPs, record books, assessments) which may be part of a student record so that the program observer will not see them. Similarly, school staff should not provide identifying information about students other than the student at issue when discussing the class with the observer.

In our view, the language regarding confidentiality and privacy does not provide a legal basis for districts to require either that parents or designees surrender personal notes of their observations or share their notes with school staff. These notes allow observers to recall more accurately the components of the program they observed as well as the student’s performance. Allowing parents and designees to retain their notes, if any, will enhance the parent’s ability to participate more effectively in decision making about their child’s program.

Parents and designees are generally knowledgeable about and sensitive to issues of student confidentiality and privacy. While this is so, we believe it is reasonable to ask observers to sign a statement that in the event that they obtain personally identifiable or confidential information during the course of an evaluation/observation, they will not disclose it (except when it is the information of the student being evaluated, in which case it will be used consistent with the parent’s authority and direction).

E. **Conclusion**

As noted earlier, many districts have worked well with parents and their designees to provide access to programs so that parents can make informed decisions about their child’s special education programs and services. Where parents have not had successful experiences with program observations, the legislature has now made clear its expectations in this area. While we are confident that many districts’ policies and practices align with the spirit and letter of the observation law, we expect that all districts will review and revise their policies and practices as necessary to ensure that result. We hope that this guidance is helpful in that regard and invite you to send any comments you may have to me, Marcia Mittnacht, at mmmittnacht@doe.mass.edu by June 30, 2009. Thank you for your attention to this important information.

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1 In Massachusetts, publicly funded independent evaluations must be conducted "by qualified persons who are registered, certified, licensed or otherwise approved and who abide by the rates set by the state agency responsible for setting such rates..." Section 28.04(5) of the Massachusetts Special Education Regulations. On the other hand, educational consultants who conduct program observations may or may not be registered, certified, licensed or otherwise approved by a responsible entity.
2 In agreeing to fund an independent evaluation, the school district may require evidence that the independent evaluator meets the criteria set forth in footnote 1. See, Section 28.04(5). Presumably, this inquiry would occur before the publicly funded independent evaluator requests the opportunity to observe the child in the program or proposed program.

3 Districts may develop information resources for parents to assist them in choosing independent evaluators and educational consultants as one means of developing positive relationships with parents and the community of independent evaluators and educational consultants so that observations can proceed most effectively.

4 The Student Records Regulations define "student record" as "the transcript and the temporary record, including all information - recording and computer tapes, microfilm, microfiche, or any materials - regardless of physical form or characteristics concerning a student that is organized on the basis of the student's name or in a way that such student may be individually identified and that is kept by the public schools of the Commonwealth." 603 C.M.R. §23.02.
Scituate PAC:
Scituate Special Education Parents Advisory Council:

In addition to parents participating in the special education process on behalf of their child, they may also participate in Scituate’s Special Education Parent Advisory Council (Scituate Pac). The Scituate Pac helps to guide the special education services provided to all eligible students in Scituate.

In Scituate, the Scituate Pac allows parents of students with disabilities the opportunity to discuss common areas of interest and to advise the school committee and Director of Special Education about issues relating to special education and the students with disabilities in the district. The Scituate Pac also welcomes the participation of parents of children without disabilities.

Ongoing collaboration and discussion occur between the Scituate Pac chairpersons and the Director of Special Education. Collaborative projects have emerged as a result of these efforts such as the various speakers presented each month at the Scituate Pac meetings provided both by independent speakers and Scituate faculty, both special education and general education faculty co-presenting on several issues such as Executive Functioning Skills, Anxiety, and Transitions to name a few.

The Scituate Special Education Parents’ Advisory Council, or Scituate PAC, is a volunteer organization comprised primarily of parents of children with special needs. Its purpose is to promote understanding and respect for children with special needs in Scituate and to support their education within the Scituate schools. It also provides information and support to parents of children who receive these services.

Scituate PAC is active in promoting its mission. Scituate PAC:

- Sponsors educational forums led by recognized experts in the field. Recent subjects have ranged from ADD, effective advocating for children, siblings of special needs children, estate planning, and organizational issues of special needs children in school.

- Meets with the Director of Special Education, Dianna Mullen and teacher representatives from the Scituate schools to share information and find ways to work together. The needs of children who receive special education frequently differ from those of other students and this forum allows for an important exchange of information and insights.

We maintain a conference calendar at the Scituate Special Education website listing upcoming conferences, lectures, and workshops. You will see notices of our educational forums in the SPS Virtual Backpack.

We invite you to join The Scituate PAC, to attend one of our educational forums and meetings, to call us for information, or to network with a parent who faces issues similar to yours. Raising a child who has special needs and supporting them as they make their way through school can be challenging and at times, isolating. Consider joining an organization of other parents who deal with similar challenges and who are working to support the education of special needs children, and all children, in the
Scituate schools. The Scituate PAC needs your support to meet those challenges. For more information call Dianna Mullen, Director of Special Education at 781-545-8759 X 322
Section VIII

Description of Building Principal Responsibilities Relating to Instructional Support, Home or Hospital Educational Services, and Students with special Needs

Consultation with the Director of Special Education

The school principal is responsible for instructional practices for students’ individual needs and makes certain that all students have the necessary instructional support. Specific reading and mathematics instruction, curriculum support, assistance with organizational skills, social and emotional support, as well as consultative services for classroom teachers, are included in this instructional support. Additionally, the principal ensures that students for whom English is a second language receive the appropriate support so that they can effectively progress through the general curriculum.

Ongoing consultation with the Director of Special Education occurs regarding instructional support services required by students with and without special needs. Problem solving and brainstorming often transpire between the principal and the Director of Special Education when a student appears to be unduly challenged. These discussions frequently continue with the building Data Teams and building Support Team (ST). Discussions and efforts on behalf of students are documented and placed in the ST file. For students referred for special education services, the school principal makes certain that instructional support strategies are provided and utilized as part of the evaluation data to be reviewed by the Team. A curriculum accommodation plan is on file at each school building.

The principal is also vigilant to ensure that all efforts have been made to meet the needs of diverse learners in the general education program. Regular education teachers are offered professional development opportunities in analyzing and accommodating diverse learning styles of all children in the regular education classroom. In addition to differentiated instruction, principals ensure that teachers are able to provide direct and systemic instruction in reading to those students who require this service and that consultative services are provided to teachers who need support with children whose behavior is interfering with learning. Professional development opportunities focus on differentiated instruction, methods of collaboration among teachers, tutors, and other support staff, pre-referral activities, teacher mentoring, and parent involvement.

Working closely with the Director of Special Education, the principal coordinates the delivery and supervision of special education services in their building.
Scituate’s Procedures for Educational Services in the Home or Hospital

Eligibility

The District will provide educational services to a student who is confined to the home or hospital for medical reasons for a period of not less than fourteen school days in a school year. The purpose is to provide students receiving a publicly-funded education with the opportunity to make educational progress even when a physician determines that the student is physically unable to attend school. Home/hospital educational services are not intended to replicate the total school experience. The number of tutoring hours provided to the student will be based upon the District’s recommendations of what is required to minimize educational loss and taking into account the medical needs of the student. The District determines if credit will be awarded for work completed during tutoring.

If a chronic or acute medical condition that is not temporary in nature appears likely to adversely impact a student’s educational progress, the Building Principal and/or his or her designee will initiate a referral to determine eligibility for special education services.

The District requires students who seek home/hospital instruction to provide the Principal with a Department of Elementary and Secondary Education Physician’s Statement form (form 23R/3) that is completed and signed by the Student’s attending physician. The District may seek parental permission to speak with the physician in order to clarify the student’s medical availability to receive educational services, to gather additional information and to develop a transition plan to return the student to a school setting. Students who do not provide a fully-completed and signed form will not be provided with tutoring.

This form is available in the School Counseling office or by downloading it at http://www.doe.mass.edu/sped/28mr/28r3.doc.

The completed form must be returned to the Director of School Counseling who will then facilitate the tutoring services. The Director of School Counseling will generate a tutoring contract agreement for signature by the parent/guardian, outlining the stipulations of the tutoring services.

These educational services are not considered special education services unless the student has been determined eligible for such services and the support includes services on the student’s IEP. Home/hospital services may be provided in a number of ways including:

a. Providing services directly to the student using school employees;
b. Contracting with the hospital to provide the needed service;
c. Contracting with another school district to provide services; or
d. Contracting with another agency to provide services

For additional information please refer to the DESE Question and Answer Guide, March 2005

Requesting a Student’s Work

School Counselors will notify classroom teachers and department chairs when tutoring services have been arranged.
The classroom teachers will provide work directly to the tutor within 2 school days of notification of tutoring services.

**Completed Assignments**
Assignments must be returned as each chapter or unit is completed.
Completed work will be placed in the mailbox of the appropriate classroom teacher’s mailbox indicating student’s name and course.
Teachers will not provide the tutor with additional chapters or units until the previous work is complete.
Passing in an entire semester or year’s work at one time is not acceptable.

**Grading**
The student may be graded on a Pass/Fail basis or at a different course level at the discretion of the principal and the department chair.
The teacher will be responsible for grading completed assignments. If the teacher is no longer at Scituate High School, the department chair will assume the grading responsibility.
Chapter and unit tests given by the tutor will be graded by the classroom teacher.
Mid-year and final exams must be taken at Scituate High School under the supervision of a school counselor, department chair, or building administrator.
When tutoring services continue during the summer months, the tutor will submit completed work directly to the department chairperson who will then forward the work to the classroom teacher for grading in September.
Classroom teachers are responsible for communicating the student’s grade to the school counselor within two weeks of receiving completed student work.
Physician’s Statement for Temporary Home or Hospital Education

School District Name: Scituate Public Schools
School District Address: 606 Chief Justice Cushing Highway, Scituate, MA 02066
School District Fax #: 781-545-2569

Physician’s Statement for Temporary Home or Hospital Education
603 CMR 28.03(3)(c)

Student Information:

Student Name: ___________________________ DOB: _______________
Address: __________________________________________________________________________

Physician’s Information:

Physician’s Name: ___________________________ Telephone #: _______________
Type of Physician: ____________________________________________________________________
Address: ____________________________________________________________________________

The student will require educational services ☐ at home and/or ☐ at a hospital:
☐ for more than 14 days.
☐ for recurrent periods of less than 14 days, that will accumulate to more than 14 days
in the
school year.

The school district should consider the following medical information when planning instructional
services:

The student’s health during this period(s) ☐ will affect / ☐ will not affect the provision of full
educational services. If services will be affected, please explain why and how services will be
impacted.

The student is expected to return to school on ____________________________.
(MM/DD/YY)

_________________________ ________________________
Physician’s Signature Date
To: Superintendents, Charter School Leaders, Special Education Administrators, Directors of Collaboratives, Directors of Approved Special Education Schools and other Interested Parties

From: David P. Driscoll
Commissioner of Education

Date: October 4, 2002

This advisory explains two amendments to the Massachusetts special education law, General Laws chapter 71B, that were passed by the Legislature and signed into law by the Governor in July 2002. These amendments were enacted through outside sections of the FY 2003 state budget (St. 2002, c. 184) and they are in effect now. Please share this information with relevant staff members and see to it that procedures in your district, school or program are revised as necessary to comply with the new provisions of state law.

Providing Services to Students in the Home or Hospital

G.L. chapter 71B, section 2 has been amended by section 81 of St. 2002, c. 184 as follows:

The third paragraph of section 2 of chapter 71B of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by adding the following sentences:- Children in public schools shall be entitled to teaching at home and in the hospital if the child's physician determines the child will have to remain at home or in a hospital for more than 14 school days in any school year. Children in non-public schools shall be entitled to home and hospital services when deemed eligible under this chapter. An expedited evaluation, which shall be limited to a child's physician statement unless there is a clear indication of the need or unless the parents request additional evaluations, shall be conducted and services provided to eligible students by the school district within 15 calendar days of the school district's receipt of the child's physician statement. [Emphasis added.]

The first two sentences do not change existing state law and practice, represented in the special education regulations, 603 CMR 28.00. The final sentence of this section, however, which is highlighted for your convenience, is a new provision. To assist school officials in carrying out this new law, we provide the following guidance:

1. As previously, students who have been found eligible for special education, whether they are currently enrolled in public or non-public schools, are entitled to receive publicly-funded educational tutorial services that address the student's general and special education needs.
when they are out of school for medical reasons. For detailed information, please refer to the Department of Elementary and Secondary Education's Question and Answer Guide on the Implementation of Educational Services in the Home or Hospital that was revised and reissued in January 2002. The Guide is based on the regulatory provisions at 603 CMR 28.03(3)(c) and 28.04(4). This Guide can be viewed on the Department's website at: http://www.doe.mass.edu/pqa/ta/hhep_qa.html.

2. New practice in this area will pertain to students who have not yet been evaluated for special education eligibility and who are not enrolled in the public schools but rather are enrolled in a non-public school at private expense (hereafter: private school students).

3. As previously, a parent who wishes to obtain publicly-funded special education services for a private school student who has not yet been found eligible for special education must request that the public school district in the community where the student resides conduct an evaluation to determine special education eligibility.

4. As previously, the public school district is required by law to do a complete evaluation. The school district has 45 school working days from the date of the parent's consent to conduct an evaluation including all required assessments and to convene a Team and determine if the student is eligible for special education. (603 CMR 28.05(1))

5. New language now requires that if a parent of a private school student requests an evaluation to determine eligibility for special education and presents a physician's statement, then an immediate review of the physician's statement is required. This review may lead to an expedited determination regarding special education eligibility in certain circumstances.

(a) If the statement provides sufficient detail to affirm that the student has a chronic or serious health condition, and the parent does not request additional evaluations, then the school district must determine if there is sufficient information available to consider if the student has a "health impairment" according to the definition provided under 603 CMR 28.02(7)(i) and cited in (c) below. If the district believes there is sufficient assessment information to make such a determination then it must convene a Team within 15 days of the receipt of the physician's statement and the request from the parent.

- Use of this provision for an expedited consideration of eligibility is limited to consideration of eligibility because of a health impairment that adversely affects educational performance.
- The district may determine that the physician's statement contains insufficient detail related to the student's health and its effect on the student's educational performance. In such case, the existing timelines set forth in 603 CMR 28.05(1) (and, in this advisory, #4 above) shall prevail.

(b) If the district convenes an expedited Team meeting, the school district must invite a representative of the student's private school to participate as a Team member and to bring information about the student's educational status to the Team meeting.

(c) The Team then has the responsibility to consider if the student has a disability consistent with the following definition:
**Health Impairment** - A chronic or acute health problem such that the physiological capacity to function is significantly limited or impaired and results in one or more of the following: limited strength, vitality or alertness including a heightened alertness to environmental stimuli resulting in limited alertness with respect to the educational environment. The term shall include health impairments due to asthma, attention deficit disorder or attention deficit with hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia, if such health impairment adversely affects a student's educational performance. (603 CMR 28.02(7)(i))

(d) The Team may make a determination of the student's eligibility or ineligibility for special education based on the information available. If the private school student is determined to be eligible for special education because of a "health impairment," the Team shall develop an IEP at the meeting and upon parental consent, the district shall provide appropriate services. See # 1 above for more information.

(e) The Team may make a determination that additional evaluation is necessary to make a determination of eligibility. In such case, the school district must complete the additional assessments and schedule a Team meeting within 30 school working days of receipt of consent from the parent for the additional assessments. The Team convening at this time must determine whether the student is or is not eligible for special education. Such determination is not limited to a disability consisting of a health impairment. This timeline then conforms to the standard evaluation requirements set forth in 603 CMR 28.05(1).

**New Requirement Related to Development of the IEP**

G.L. chapter 71B, section 3 has been amended by section 83 of St. 2002, c. 184 as follows:

Section 3 of chapter 71B of the general laws, as appearing in the 2000 Official Edition is hereby amended by inserting after paragraph 18 the following new paragraph: If a student's individual education plan necessitates special education services in a day or residential facility or an educational collaborative, the IEP team shall consider whether the child requires special education services and supports to promote the student's transition to placement in a less restrictive program. If the student requires such services, then the IEP shall include a statement of any special education services and supports necessary to promote the child's transition to placement in a less restrictive program.

This provision is consistent with existing federal law that requires the IEP Team to consider how to support the student's ability to receive special educational services in the least restrictive environment (LRE). The federal law, in defining LRE, requires that "to the maximum extent appropriate, children with disabilities…are educated with children who are nondisabled; and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (34 CFR 300.550(b)(1-2))

This LRE provision, read in concert with the federal provisions on the IEP, is intended to result in a complete and careful consideration of the necessary supports for a student to be successful in a less
restrictive program. The federal required content for the IEP includes: "A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child…to be educated and participate with other children with disabilities and nondisabled children…" (34 CFR 300.347(a)(3))

The new provision of the Massachusetts special education law furthers LRE by requiring the Team to consider, for any student placed in a day or residential special education facility or in an educational collaborative, what is necessary to "promote…transition" to a less restrictive program. The Department, therefore, provides the following guidance:

When developing an IEP that will result in the student's initial placement out-of-district or convening for an annual review of the program of any student who has been placed out-of-district, the Team must actively consider if any special education services or supports for the student or school personnel are necessary to help the student transition to a less restrictive program. If the Team concludes that certain services are necessary to promote the student's transition, the Team shall include a goal statement on IEP-4 related to preparation for transition to a less restrictive program and identify all necessary services on IEP-5 on the service delivery grid of the IEP.

This is a change in the elements that are to be discussed by the Team during the development of the IEP. Therefore, all IEP Team chairpersons should be made aware of this new requirement. No changes to the IEP form itself are necessary, as the outcomes of such a discussion can be documented appropriately on the existing IEP form.

In closing, we hope this guidance is helpful in understanding the impact of these new statutory requirements and in ensuring that local practices are consistent with the law. If you have any questions or require additional information, please contact Program Quality Assurance Services at the Department of Elementary and Secondary Education (781-338-3700).

Thank you for your attention to this memorandum and for assuring that students with disabilities receive appropriate services.
1. What is the Intent of the Massachusetts Regulations on Educational Services in the Home or Hospital?

The Massachusetts regulation requiring educational services in the home or hospital is 603 CMR 28.03(3)(c). It reads as follows:

Upon receipt of a physician's written order verifying that any student enrolled in a public school or placed by the public school in a private setting must remain at home or in a hospital on a day or overnight basis, or any combination of both, for medical reasons and for a period of not less than fourteen school days in any school year, the principal shall arrange for provision of educational services in the home or hospital. Such services shall be provided with sufficient frequency to allow the student to continue his or her educational program, as long as such services do not interfere with the medical needs of the student. The principal shall coordinate such services with the Administrator for Special Education for eligible students. Such educational services shall not be considered special education unless the student has been determined eligible for such services, and the services include services on the student's IEP.

The intent of this regulation on home or hospital instruction is to provide a student receiving a publicly funded education with the opportunity to make educational progress even when a physician determines that the student is physically unable to attend school. While it is impossible to replicate the total school experience through the provision of home/hospital instruction, a school district must provide, at a minimum, the instruction necessary to enable the student to keep up in his/her courses of study and minimize the educational loss that might occur during the period the student is confined at home or in a hospital.

Although the regulation on home/hospital instruction is included in the Special Education Regulations (603 CMR 28.00), home/hospital instruction is not considered "special education" unless the student has been found eligible for special education. In other words, home/hospital instruction typically is considered a regular education service, since it is in the interest of both the individual student and the school to make it possible for the student to keep up with schoolwork while s/he is unable to attend school for medical reasons.

The Special Education Regulations also include a provision relating specifically to students who are likely to be confined to home or hospital for medical reasons for more than 60 school days in any school year. Please see regulation 603 CMR 28.04(4), discussed in Question #4, below.

Please note that the requirements and guidance discussed in this Question and Answer Guide are separate and distinct from those relating to the approval of parent requests for "home education" or...
home schooling programs, which are governed by General Laws Chapter 76, § 1. The Department of Elementary and Secondary Education’s Home Education Advisory provides guidance on the Massachusetts law governing home schooling programs.

2. Who is Entitled to Educational Services in the Home or Hospital?

Public school students. A public school student who, due to documented medical reasons, is confined to home or a hospital for not less than fourteen (14) school days during the school year, is entitled to receive home/hospital educational services as described under 603 CMR 28.03(3)(c). In this context "public school student" means a student who is enrolled in a public school district or a charter school, or a student who is being educated with public funds in an educational collaborative or an approved private day or residential special education school. (Please see Question #8, below, for more detail about students in approved private day and residential special education schools.) The requirement for a school district to provide home/hospital instruction to a public school student who is being educated at public expense is not dependent upon the student’s eligibility for special education.

Private school students. A student who is enrolled in a private school at private expense ("private school student") is entitled to receive publicly-funded home/hospital instruction as a special education service if s/he has been found to be a student with a disability who requires special education. Mass. General Laws Chapter 71B, § 1 defines "school age child with a disability" as follows:

- a school age child in a public or non-public school setting who, because of a disability consisting of a developmental delay or any intellectual, sensory, neurological, emotional, communication, physical, specific learning or health impairment or combination thereof, is unable to progress effectively in regular education and requires special education services, including a school age child who requires only a related service or related services if said service or services are required to ensure access of the child with a disability to the general education curriculum. G.L. Chapter 71B, § 1 (emphasis added).

A private school student who has been evaluated and has been found eligible for special education is entitled to receive home/hospital educational services as outlined in Question #9, below. For both public school students and private school students, the justification for any needed home or hospital instruction must be documented by a student’s personal physician. A school district that receives a request for home instruction from someone other than a physician, or from a physician who is not personally responsible for a student’s care, is not obligated to provide instruction under 603 CMR 28.03(3)(c). In this case, the responsible school district should inquire further with the student’s parent or guardian to determine the student’s status and any additional information or action that is needed. For example, the school district may need to proceed under the compulsory attendance law if it determines that a student between ages 6 and 16 is not attending school, is not being otherwise educated in a manner approved by the school district, and is not medically unable to attend school.

Determining eligibility. As required under M.G.L. c. 71B, § 2, if a parent of a private school student requests an evaluation to determine the student’s eligibility for special education and presents the school district with a physician’s statement, then the school district must immediately review the physician’s statement to determine if there is sufficient information available to consider if the student has a "health impairment" according to the definition provided under 603 CMR 28.02(7)(i). If there is sufficient information in the physician’s statement, then the school district should convene the Team within 15 days to make an expedited determination of eligibility and begin provision of services. Please refer to Administrative Advisory SPED 2003-1 for additional information about these requirements.
3. How Can Home or Hospital Education Services Be Accessed?

Once the student's personal physician (for example, a pediatrician, internist, medical specialist or psychiatrist) determines that a student's medical condition will require either hospitalization or home care for not less than 14 school days, the physician must notify the school district responsible for the student in order to begin the home/hospital instruction process. The student's physician must complete a Department of Elementary and Secondary Education form 28R/3 (or equivalent signed statement) and submit it to the student's building principal or other appropriate program administrator. At a minimum the physician's signed notice must include information regarding:

- the date the student was admitted to a hospital or was confined to home;
- the medical reason(s) for the confinement;
- the expected duration of the confinement; and
- what medical needs of the student should be considered in planning the home or hospital education services.

Students with chronic illnesses who have recurring home/hospital stays of less than 14 consecutive school days, when such recurrences have added up to or are expected to add up to more than 14 school days in a school year, are also eligible for home or hospital educational services if they are requested and the medical need is documented by the physician.

Home and hospital educational services under 603 CMR 28.03(3)(c) must begin without undue delay after the school district receives written notice from the student's physician that such services are necessary. Please note that there is no required 14-day waiting period before home or hospital instruction can commence if it is likely that the student will be absent from the school-based program for 14 school days or more in the school year.

Whenever a student is likely to miss 14 school days or more for health-related reasons, the Department strongly recommends that the school district expedite the delivery of educational services as well as any evaluation or Team meetings that may be necessary, in order to minimize the negative impact on the student's educational progress. (See also Question #10, below.)

4. What Requirements Apply if the Student is Likely to Be Confined to Home or a Hospital for More Than 60 School Days?

If, in the judgment of the student's physician, a student with an IEP is likely to remain at home, in a hospital, or in a pediatric nursing home for medical reasons and for more than sixty (60) school days in any school year, the Administrator of Special Education is required, without undue delay, to convene a Team meeting to consider evaluation needs and, if appropriate, to amend the existing IEP or develop a new IEP suited to the student's unique circumstances. (See 603 CMR 28.04(4).) The Department recommends that the Administrator of Special Education convene the Team meeting within 10 school days after the school district is notified that the student is likely to remain at home or in the hospital for more than sixty days. This provision applies to all eligible students, including private school students who have been determined to need special education.

5. How Should Home or Hospital Services Be Delivered?

School districts may provide home/hospital services in a number of ways, including:
providing the services directly to the student using district employees;
contracting with the hospital to provide the needed services;
contracting with another school district to provide the services; or
contracting with another agency to provide the services.

Home/hospital instruction is typically one-to-one or small group instruction that is provided on an individualized schedule, for less than a full school day or a full school week. The school district should determine the number of instructional hours per day or per week based on the educational and medical needs of the individual student. School districts may not preset the number of instructional hours per week provided to students who must remain at home or in the hospital; the decision must be individualized. Based on the student's medical status, the student's physician may determine that the number of instructional hours should be reduced. In addition, the amount of instructional time deemed necessary by a district may be guided by the instructional approach used in a one-to-one home or hospital setting as compared to the instructional approach normally implemented in the student's school-based program. However, such a reduction in instructional time must be based on the educational benefit received by the student given the reduced teacher-student ratio. Service delivery, including the time of day the services are to be delivered, should be determined in the best interests of the student and in consideration of the medical circumstances of the student.

When planning and delivering home or hospital educational services, the school district should carefully consider all aspects of a student's educational program while attending school, including any current IEP services, Section 504 plans and instructional accommodations, as well as the student's general education services.

6. Is the Academic Content of Instruction and the Certification of Staff Any Different for Home or Hospital Instruction Than for School-Based Instruction?

Instruction that is provided in the home or hospital for public school students under 603 CMR 28.03(3)(c) must include the same academic content as that provided in the student's regular school-based program. While teacher certification requirements apply to the teachers who are providing the instruction, the teachers do not have to be certified in all subject areas. However, in all cases the school district must be able to demonstrate that the assigned staff member effectively provides the necessary instruction to the student. Teachers who provide home/hospital instruction to public school students must coordinate the instructional content, approach and student progress with the student's teachers at school.

For both public school students and private school students, special education and/or related services that are provided in a home or hospital setting under this provision must be delivered (or closely supervised) by staff certified or appropriately licensed to deliver such services.

7. May A School District Require That a Parent or Other Responsible Adult be in the Home While the District’s Instructor is Working With the Student?

If a district requires that an adult is present during homebound instruction, the district should take reasonable steps to ensure that this policy does not conflict with its obligation to provide instruction. A district could likely avert a potential conflict by arranging for instruction at a time (such as late afternoon or evening) when an adult would be at home with the student. If a district were unable to send an instructor at a time when an adult was at home, it would be permissible for the district to send a staff member to accompany the instructor. If a district is unable to arrange for instruction
during hours when an adult will be at the home or to send a staff member to accompany the
instructor, the district should propose a reasonable alternative to the student's parent that would
ensure that the student receives instruction while satisfying the district's legitimate concerns about
safety and liability.

8. Under what Circumstances are Educational Collaboratives and Public and
Private Day and Residential Special Education Schools Approved Under 603 CMR
28.09 Required to Provide Home or Hospital Instruction?

If the school district continues to pay the costs of the placement in order to hold the enrollment status
of the student in a educational collaborative program or a public or private special education school
during the student's confinement to home or a hospital, the respective collaborative or public or
private school must provide at no additional cost to the school district appropriate educational and
special educational services. These services must be provided consistent with requirements of 603
CMR 28.03(3)(c) regarding educational services in a home or hospital, subject only to the limitations
outlined in Question #5, above.

If the student is not expected to remain in the placement after the student's confinement to home or
hospital, the school district must ensure in another way that the student receives appropriate
educational and special educational services or, if appropriate, reconvene the Team consistent with
603 CMR 28.04(4) and consider evaluation needs and/or revisions to the IEP taking into account the
services the student needs while s/he is unable to attend school for medical reasons.

9. How Do These Requirements Apply to a Student Who is Enrolled in Private
School at Private Expense and Needs Home/Hospital Instruction for Medical
Reasons?

As is stated above in answer to Question #1, although the regulation requiring home/hospital
instruction is included in the Special Education Regulations (603 CMR 28.00), home/hospital
instruction is not considered "special education" unless the student has been found eligible for special
education. State law (G.L. Chapter 71B) requires school districts to provide special education to
eligible students who are attending private school at the parent's expense or other private expense
("private school students"). Since home/hospital instruction can be a regular education or special
education service, this has led to some confusion about the appropriate provision of home/hospital
instruction for private school students.

- If the private school student already has an IEP under which the school district is providing
  special education services, then during the 14+ school days that the physician says the student
  will be out of school for medical reasons, the school district must provide the specially
designed instruction and/or related services described on the student's current IEP, modified
as necessary to accommodate the student's medical needs. If the student's medical condition is
likely to affect the ability of the student to maintain effective school progress, the student's
parent may request that the Administrator of Special Education convene a Team meeting to
consider further evaluation of the student and, if appropriate, to amend the existing IEP or
develop a new IEP. Modifications to the IEP can include home or hospital instruction. The
Administrator of Special Education is required to convene a Team meeting without undue
delay for any student with an IEP who, in the judgment of the student's physician, is likely to
remain at home or in a hospital for more than 60 school days in any school year. This
requirement is found in the Special Education Regulations at 603 CMR 28.04(4) and is discussed in Question #4, above.

- If the private school student does not have an IEP and will be confined to home or a hospital for medical reasons, s/he may be eligible for special education services if the student's medical condition is determined to be a health impairment that adversely affects the student's educational performance. Under these circumstances, the parent is entitled, at any time, to request and receive an evaluation of the student by the public school district to determine if the student's medical condition meets special education eligibility requirements. If a physician indicates to a school district that the student has a medical or health condition that is likely to lead to extended school absence(s) or an inability to maintain effective educational progress, the school district shall treat such information as a referral for an evaluation to determine eligibility for special education. In such case, the school district shall, within five school days, send written notice to the student's parent seeking consent for such evaluation to occur (603 CMR 28.04(1)(a)). A Team may find a student eligible for special education based on a chronic or acute health impairment or other disability, as defined in 603 CMR 28.02(7), that adversely affects the student’s educational performance. Please see Question #10, below.

Under Massachusetts law, a private school student who has been determined to be a "school age child with a disability" as defined in G.L. Chapter 71B, § 1, is entitled to receive publicly-funded special education services in accordance with an IEP developed by the school district of residence. The school district may not refuse to evaluate the student because s/he is enrolled in private school or because s/he is currently out of school for medical reasons. The Department recommends that the Administrator of Special Education make every effort to expedite assessment(s) and the Team meeting so that services may be provided in a timely fashion. If the student is evaluated and determined to be a student who is eligible for special education, the student will be entitled to receive home/hospital instruction according to the IEP.

- If the private school student does not have an IEP and the parent does not wish to refer the student for a special education evaluation, the parent may contact the school district of residence, providing documentation from the student's physician that the student is confined to home or hospital for medical reasons for not less than 14 school days during the school year. The school district may, at its discretion, provide home/hospital instruction to the student, using the district's resources to provide the instruction, but it is not required to do so unless the student is evaluated and found to be eligible for special education. Please see Question 2 above for additional information on determining eligibility of private school students based on a physician’s statement.

Please note that the public school district is under no obligation to be familiar with nor to use the private school's curriculum, textbooks, or related education materials, but shall provide home or hospital services designed to maintain the private school student's progress in general curriculum areas when such services have been included on the IEP. Consequently, if a private school student will be absent from school for medical reasons for an extended period of time, the student's parent should always contact the private school to find out what tutoring services or other home/hospital instruction the private school will provide to help the student keep up with his or her schoolwork. The administrators and teachers in the private school are most knowledgeable about the private school’s curriculum and the coursework that the student is covering in class, and they are in the best position to design and provide tutoring or other home/hospital instruction that will enable the student to keep up with school assignments. Depending on the circumstances, the private school itself may have an obligation to provide accommodations or services to the student under federal civil rights laws,
Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, or under the contract of enrollment between the school and the parents.

10. Are Students With Chronic or Acute Health Issues Always Eligible for Special Education?

The answer depends on the facts of the individual case. Any student with a medical or health condition that is likely to lead to extended school absence(s) or inability to maintain effective educational progress is a reasonable candidate to be referred to the public school district for initial evaluation to determine special education eligibility. Such referrals should take place as soon as it is known that a student's health condition is chronic or acute and is likely to have a negative educational impact, rather than delaying referral or action until the student is absent for significant periods of time or has begun to experience educational failure.

If assessment information indicates that the student's educational progress will be adversely affected as a result of a chronic or acute medical condition that is not temporary in nature, then the Team will likely determine that the student is eligible for special education. An eligibility determination is an individualized decision that depends on the facts of each case. In most cases, if the Team determines the student is eligible, the type of disability as recognized by federal and state special education law will be a "health impairment" (see 603 CMR 28.02(7)(i)). In some cases, the assessments may indicate other types of disability, such as "emotional impairment" or "neurological impairment."

If the student has been evaluated and found eligible for special education, the Team will write an IEP describing the special education and related services that the student needs and the school district will provide. If the student will be out of school for medical reasons for an extended period of time, it is appropriate to include on the IEP educational tutoring as a related service that the student needs in order to access the general curriculum while s/he is in the home or hospital setting. The IEP may be tailored to address expected time periods when the student is unable to attend school, if that is deemed appropriate to meet the unique needs of the individual student.

Additional questions or concerns about the provision of home or hospital educational services for students who are unable to attend school should be directed to the Department of Elementary and Secondary Education, Program Quality Assurance Services, at (781) 338-3700.

last updated: March 2, 2005
Communication in the Primary Language of the Home

Procedure for Supporting English Language Learners (ELL) in the Scituate Public Schools

Every effort is made to accommodate parents whose primary language is other than English. Scituate staff initially communicates with parents via their student and the school counselor to determine what language supports will be necessary. Scituate has employed both interpreters and translators, depending on the needs and requests of the parents. Funds are set aside annually to pay for this service.

At this time, Scituate uses the MATSOL to evaluate a student’s primary language when this is in question.

Procedure for Supporting English Language Learners (ELL) in the Scituate Public Schools

A student whose primary language is not English and is determined to be in need of further instruction in English will be evaluated by the ELL teacher to determine what level of intervention is appropriate. Some students need direct instruction, while others may only require consultation services. If the student is provided with ELL instruction and does not make effective progress, he/she may be referred for a special education evaluation. This evaluation can be administered in English or in the student’s native language. When the appropriate assessments have been completed, the IEP Team convenes to determine whether the student is eligible to receive specialized instruction through special education. If the student is found to have a disability, he/she is entitled to the same special education services offered to native English speaking students.
Section IX

Involvement in the General Curriculum

The district has taken significant steps to align the general education curriculum with the Massachusetts Curriculum Frameworks. Students with disabilities are full participants in the general curriculum and are provided essential learning opportunities that prepare them to reach the state graduation standards. Accommodations and modifications to a student’s program are made when appropriate through the IEP process. The IEP chairperson, who is familiar with the general curriculum and the student’s learning profile, will discuss with the IEP Team how the student will appropriately access the general curriculum. This is thoroughly documented throughout the student’s IEP.

Instructional Grouping Requirements for Students Aged 5 and Older

Scituate Public Schools determines appropriate group size and support for students receiving services outside of the general education classroom. All instructional groups are compatible with the methods and goals stated in each student’s IEP.

For instructional groupings outside of the general education classroom, group composition does not exceed 8 students to one special education teacher or 12 students to a teacher and an aide. Similar ratios are maintained for eligible students served in substantially separate settings (more than 60% of the student’s schedule).

Group sizes rarely, if ever, exceed 8 students to one teacher or 12 students to a teacher and an assistant. Scituate Public Schools understands that the Director of Special Education and the certified special educator may decide to increase the instructional group by no more than two students provided that the students have comparable instructional needs. If this occurs, parents of the students in the group are notified of the decision to increase group size and the reason for such a decision. Additionally, DESE is also notified. Such increase in instructional groupings is only in effect for one year and every effort is made to decrease the group size as soon as possible.

Age Span Requirements

The ages of the youngest and oldest student in any instructional grouping do not differ by more than 48 months. If the district believes a larger age span is justified, a written request for approval is submitted to the Commissioner of Education. Only after approval is granted may the age requirements span beyond 48 months.
Section X

**Procedures for Out-of-District Placements**

Scituate adheres to all of the policies and procedures identified by the Massachusetts Department of Elementary and Secondary Education as they pertain to Out-of-District placements. A monitoring plan is on file for each student, attached to a log sheet documenting phone calls, correspondence, and site visits. Scituate’s Out-of District Coordinator is responsible for ensuring that every out-of-district student is afforded full procedural protection.

Each out-of-district placement is pursued based on the LEE regulations as well as the approval of the Massachusetts Department of Elementary and Secondary Education (603 CMR 28.09). A legal and binding contract is signed with each program in accordance with the requirements of 28.06(3)(f)(1-5). A copy of each contract is maintained in the special education office. Every September contracts are renewed for each student placed out of district. Exceptions to this mandate are students who attend collaborative programs located in public schools attended by typical students.

In rare instances, Scituate may have to place a student in an unapproved program in order to meet all of the provisions of the IEP. In such instances, Scituate adheres to the DESE guidelines as outlined in the August 6, 2001 memorandum, “Out-of-District Placements in Unapproved Programs” and the forms, “Notification of Intent to Use an Unapproved Program 603 CMR 28.06 (3)(e)(4).” If a student is placed out of state in a program not approved by DESE, the Assistant Director of Special Education would ensure that such school has approval by the host state and a copy of this approval would be placed in the student’s SPED file.
The Massachusetts special education regulations require school districts to enter into a written contract (sometimes known as a "placement agreement") with out-of-district public and private agencies for every eligible student placed by the school district. 603 C.M.R. § 28.06(3)(f). Out-of-district programs are defined under 603 C.M.R. § 28.02(14). This advisory explains the contract requirements and provides guidance on additional contract elements that the Department of Elementary and Secondary Education recommends for consideration by the contracting parties.

The special education regulations specify the minimum terms that such a contract must contain. Among other terms, the contract must provide for:

- the out-of-district program's agreement to provide the services on the Individualized Education Program ("IEP") for the student in compliance with the law and the elements of the IEP;
- the out-of-district program's completion and issuance of written student progress reports;
- the school district's access to any or all records necessary to ensure appropriate monitoring and evaluation of the education of the student in the out-of-district program;
- the out-of-district program's agreement to abide by the Massachusetts Student Record Regulations;
- the out-of-district program's agreement to provide access to the school district and/or the Department of Elementary and Secondary Education to conduct announced and unannounced site visits and to review any or all documents relating to the provision of special education services at public expense;
- the out-of-district program's agreement to ensure provision of all the substantive and procedural rights held by eligible students;
- the out-of-district program's assurance that it is and will be in compliance with all other applicable requirements of Massachusetts special education regulations and applicable policy statements and directives issued by the Department; and
- the out-of-district program's assurance that it does not discriminate on the basis of race, color, religion, sexual orientation, and national origin and does not discriminate against persons with disabilities.
The Department's role with respect to the precise terms of such contracts is limited to determining compliance by school districts with 603 C.M.R. § 28.06(3)(f) and to approving public and private special education programs under 603 C.M.R. § 28.09. The Department does not approve contract terms or participate in the negotiation of such terms.

**Compliance with 603 C.M.R. § 28.09**

The Department anticipates that contract provisions will differ depending on whether a student is placed in a Department-approved or in an unapproved out-of-district program. If a school district is placing a student in an unapproved program, the district must ensure that the program meets requirements relating to health and safety, appropriately certified educational staff, educational facilities and materials, and all requirements consistent with those found under 603 C.M.R. § 28.09 and §18.00. The specifics of these requirements are generally described under 603 C.M.R. § 28.09 and §18.00 and are detailed in the Department’s Application Procedures for Department of Elementary and Secondary Education Approval of a Massachusetts Public or Private Day or Residential Special Education School Program. This program approval document is available from the Department’s Program Quality Assurance Services unit (PQA) and also is available on the Department’s Web site at [http://www.doe.mass.edu/pqa/](http://www.doe.mass.edu/pqa/).

If a student is placed in a program approved by the Department of Elementary and Secondary Education, however, the school district need not make these inquiries with the program. If the program has received approval, the Department will monitor these issues generally on a program-wide basis and the school district must ensure that these matters are implemented with respect to the individual placement(s) made by that district. This is consistent with 603 C.M.R. § 28.06(3)(a) (“the Department shall determine that programs approved under § 28.09 of these regulations have appropriate policies, procedures, and appropriately credentialed staff”). Program approval sought and received by out-of-state programs either from the Department of Elementary and Secondary Education in Massachusetts or in other states will also be acceptable to meet these additional requirements.

**School District Monitoring of Placements and Records**

In contrast to the Department's role with respect to approved programs and the requirements in section 28.09, school districts remain responsible for monitoring “the programs of individual students enrolled in the approved programs.” 603 C.M.R. § 28.06(3)(a) and (b). The Department anticipates that such monitoring will include careful review of student progress reports, announced and unannounced site visits, a review of documentation sufficient to verify and evaluate the full implementation of education services at public expense, and all other activities necessary to ensure that the student’s education and program comply with federal and state law. While the parties may negotiate some reasonable terms regarding the implementation of these requirements, the contract language to which the parties agree must not impede the school district’s ability to monitor the placement of individual students and may not purport to limit the Department’s authority, function, and role.

**Provision of Services**

With respect to the services specified on a student’s IEP, 603 C.M.R. § 28.06(3)(f)(1) states that the "out-of-district placement shall comply with all elements of the IEP for the student.” While providing certain services specified on an IEP may require negotiation, the Department does not expect out-of-district programs to agree to provide all services specified on IEPs yet to be developed. The provision
of services specified on future IEPs should be handled through a simple amendment to the original contract as opposed to an open-ended provision that may require a program potentially to provide services inconsistent with its approval status with the Department of Elementary and Secondary Education and the pricing of the program by the Commonwealth.

**Pricing of and Payment for Private Out-of-District Programs**

As specified in 603 C.M.R. §§ 28.06(3)(e)(4) and 28.09(3)(a), the Operational Services Division ("OSD") of the Executive Office of Administration and Finance establishes the rates for all placements in approved and unapproved private special education school programs made by school districts at public expense. These requirements are described under 808 C.M.R. 1.00 (setting of prices for placements in private programs for special education). School districts are not authorized to establish, agree upon, or pay tuition for an approved or unapproved private placement of any type without a rate having been set by OSD. Typically, approved program rates will be available from OSD well in advance of the placement of the student. However, such rates may change and the contract may not be used to limit the ability of private programs to seek rate adjustments consistent with the requirements of law and regulation. The parties may negotiate other terms related to payment provided that such terms comply with all federal and state laws including the timely placement of students served in out-of-district programs.

**Optional Elements that May Be Included in the Contract**

Public and private out-of-district programs in most instances serve students with the most complex disabilities. The Department’s Program Quality Assurance Services unit receives many inquiries regarding the complex circumstances of individual students, particularly as they intersect with regulatory requirements for which the Department has oversight responsibilities. The Department has observed that the lack of clear, written communication of expectations between the parties involved in out-of-district placements may result in unintended noncompliance with state and federal special education requirements.

Communication and planning are essential to the successful partnership between a school district and a public or private out-of-district placement. Drafting and negotiating the school district/out-of-district contract affords the parties an opportunity to discuss and consider additional items, beyond those required by the regulations, that define respective responsibilities and expectations. Parties benefit by discussing issues sooner rather than later, even if they decide not to incorporate these or other optional provisions in a contract. The Department recommends, therefore, that school districts and out-of-district special education programs use the contracting process as a vehicle to clarify and address each party's expectations. Students’ rights to a free, appropriate, public education (FAPE) and their needs for a predictable environment are best served when potential areas of confusion or conflict are identified and addressed in advance.

For these reasons, the Department recommends, but does not require, the consideration of the following additional elements for inclusion where deemed appropriate by the parties in a contract required under 603 C.M.R. 28.06(3)(f):

- responsibility to conduct unscheduled Team meetings, re-evaluations and 3-year re-evaluations (school district has legal responsibility, but certain aspects described below could be delegated to the out-of-district public or private program);
- responsibility for developing IEPs in a timely fashion (school district has legal responsibility for notice to parents and convening the Team meetings);
• issuing of proposed IEPs with proper notice of procedural safeguards and notice of parents’ rights (school district has legal responsibility and out-of-district public or private school has obligation to keep itself current regarding parents’ rights and offer parents’ rights education via the public school special education parent advisory council (PAC) or private school parent group);
• chairing IEP Team meetings (school district has legal responsibility, but meeting management responsibilities could be delegated to out-of-district public or private school provided that an administrative representative of the district with power to commit the district’s resources is in attendance at every Team meeting, and where Team members are unable to agree on the IEP, the school district’s administrative representative states the proposed elements of the IEP);
• special considerations for parent communications in instances where parents are limited English-proficient or require accommodations to ensure their understanding of all required communications to and from the program;
• information regarding methods of reaching responsible school district officials when the public school district is not in session or when the usual contact person is unavailable;
• information-sharing concerns (e.g., out-of-district public or private school notifications to school district should include not only student-specific incidents but also changes in major policies/procedures/practices, and major changes in program and staff. Note that out-of-district public or private approved special education schools are required to notify the Department of Elementary and Secondary Education of planned and unplanned major program changes on PQA Forms 1 and 3; and it is recommended that responsible school districts be similarly notified.);
• responsibilities for health-related services, or other services not a part of the student's IEP;
• responsibilities for communications regarding student discipline issues (this includes but is not limited to matters related to a program's overall code of conduct and behavior management systems, restraint policies and procedures consistent with applicable state regulations, suspension and termination policies and procedures);
• responsibilities for and appropriate follow-up to student discipline problems, (i.e., conducting functional behavioral assessments and manifestation determinations, proposing or changing behavioral intervention plans and "interim alternative educational settings," incident reporting to the local school district and Department of Elementary and Secondary Education including reports of physical restraints. (school district has legal responsibility to convene the IEP team and take the lead, but out-of-district public or private school will likely first notice signs of problems; certain aspects of these federally required processes could be delegated to out-of-district public or private school);
• specific procedures for addressing situations when out-of-district public or private school is considering discharge or termination of the student for any reason;
• mechanisms for transition and change-in-placement planning, including change in decision-making authority at age 18, decision-making in regard to high school graduation and issuance of high school diploma or certificates of course completion, achievement, attendance, or participation. (See Department of Elementary and Secondary Education Special Education Advisory 2002-4 for further guidance on these matters.);
• the provision and funding of transportation for the student to and from home and to and from school-sponsored activities; and
• responsibility for the payment of incidental expenses unrelated to the school district’s obligation to pay the tuition established by OSD.
Elements that Should Not Be Included in the Contract

The written contract between a school district and an out-of-district special education program pursuant to 603 CMR 28.06(3)(f) is intended to address the placement of students consistent with federal and state special education requirements. The contract should not include elements or parties unrelated to the specific intent of this regulation. The required contract may not be used as a mediation agreement or a settlement agreement. School districts should not include the following items in contracts under 603 CMR 28.06(3)(f):

- matters related to the relationship or obligations of other public or private agencies;
- matters related to the payment or receipt of a rate different than that approved by OSD or agreement to maintain an OSD rate beyond effectiveness;
- disclaimer of responsibilities that by law or regulation must remain with the school district;
- matters that appear to abridge the rights of a parent or student;
- a commitment for placement of an eligible student beyond a single calendar year;
- any requirement for specific educational or related service methodologies;
- any cost share arrangement with the parent or other entity; and
- any other matters that are inconsistent with state or federal law.

In closing, we hope this information is helpful to school districts and out-of-district public and private special education programs in carrying out their obligations relating to the provision of special education and related services to eligible students with disabilities. If you have any questions or require additional information, please contact Program Quality Assurance Services at the Department of Elementary and Secondary Education (781-338-3700).

Thank you for your attention to this memorandum and for assuring that students with disabilities receive appropriate services.

C: Superintendents of Schools
Charter School Leaders

last updated: June 21, 2002

MONITORING PLAN

STUDENT: ______________________________________

SCHOOL YEAR: ________________________________

THE SPED PLACEMENT SPECIALIST WILL:

- Will make at least two site visits each year
- Make phone contact with the program liaison at least two times per year
- Make phone contact with the parents at least two times per year
- Review and follow-up (if necessary) upon receipt of written progress reports
- Interview the student once a year if appropriate

**MONITORING LOG**

Student: ________________________________

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<tr>
<th>Date</th>
<th>Phone Contact</th>
<th>Site Visit</th>
<th>Comments</th>
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Special Education

Out-of-District Placements in Unapproved Programs

To: Special Education Administrators
From: Marcia M. Mittnacht, State Director of Special Education
Date: August 6, 2001
Re: Out-of-District Placements in Unapproved Programs
--NOTICE OF CHANGE IN PRACTICE--
Effective September 2001 (Corrected Memorandum)

This memorandum alerts school districts and private schools serving students at public expense to changes in the process formerly known as "sole source of care." The changes make the Department of Elementary and Secondary Education's process consistent with current regulations, reduce paperwork for school districts, and should expedite the placement process for those students who cannot be served in their public school districts or an approved program. These changes apply to all out-of-district placements in unapproved programs, whether day or residential.

I remind districts that responsibility for monitoring individual out-of-district placements rests primarily in the hands of the local school district, whether the placement is made to an approved or unapproved setting. I also want to remind school districts that the state special education regulations clearly state that placement for special education purposes in an "unapproved school" should only occur as a last resort and never should occur without notification to the Department of Elementary and Secondary Education. Massachusetts is fortunate to have more approved private schools, both day and residential, to serve special education students than almost any other state in the nation. Additionally, we have a wide selection of approved public day programs for special education students. The use of unapproved programs by school districts should be minimal and reserved only for the small number of students who cannot be served in an approved program.

School districts must conduct a thorough search for approved programs for students needing out of district placements prior to any consideration of using unapproved programs. Such a search must be conducted initially and updated at least annually when the student's IEP is reviewed. If a school district is unable to serve an individual student’s needs in the district and is also unable to locate an approved program for this student, the school district may place the student out-of-district in an unapproved program if it complies with the regulations governing such a placement. These regulations are found at 603 C.M.R. § 28.06(3). Please note that the changes in the Department's process are closely aligned with these regulations and you should review the regulatory requirements. The Department's process, previously referred to as "sole source of care approval," will now be called "authorization for pricing."

As of September 1, 2001, school districts no longer must file an application for a sole source of care waiver with the Department. School districts, however, must notify the Department of each proposed placement of a student in an unapproved private day or residential program prior to placement. This notification must comply with 603 C.M.R. § 28.06(3)(e)(4). Notification submitted by a school district must include the following five items:

1. Notification of intent to place a student in an unapproved program, using form 28M3;
2. If applicable, Application for Funding of Special Education Placement and any required documentation, using form 28M4;
3. Pricing forms consistent with the pricing requirements of the Operational Services Division ("OSD") of Administration and Finance;
4. A copy of the contract or information on the terms of the contract consistent with 603 CMR § 28.06(3)(f); and
5. Documentation of the district's plan for monitoring the student's program in the unapproved placement.

Effective September 1, 2001, school districts should send notification to the Department at:

**Attention:**

Coordinator, Placement/Pricing Authorization  
Program Quality Assurance  
Department of Elementary and Secondary Education  
75 Pleasant Street  
Malden, MA 02158

The Department may request additional documentation in specific cases. The Department may deny authorization for pricing if the proposed placement is not made in compliance with the state regulations regarding special education. For instance, placement in unapproved settings prior to notifying the Department and the setting of a rate for the placement violates the special education regulations. Such a placement also may result in denial of state funding for the placement and would be cited as an area of non-compliance in a Coordinated Program Review.

Once notification of a proposed placement from a school district is received, the Department will review the notification for compliance with 603 C.M.R. § 28.06(3)(e). If complete, the Department then will forward the pricing forms to OSD. OSD will review the price authorization request and take action appropriate under its regulations (808 C.M.R. § 1.00). Students may not be placed in unapproved programs nor may public funds be used for payment of tuition or other expenses prior to OSD's authorization of a price for a particular student in a particular unapproved program." 

In addition to notifying the Department of proposed placements in unapproved programs, the district must maintain in the student's record the documentation described in detail in 603 C.M.R. § 28.06(3)(e). This documentation includes the following.

- Documentation demonstrating a comprehensive search for placement in an approved setting;
- Documentation of an evaluation of the appropriateness of the unapproved program;
- For schools located in Massachusetts, documentation of the unapproved school's approval from the local school committee to operate under G.L. c. 76, § 1; and
- A copy of the information sent to the Department, including a copy of the contract between the school district and the out-of-district placement.

The Department has the right to request and to review such documentation at any time. The Department may conduct random, unannounced monitoring visits for the purposes of reviewing documentation maintained locally in the student's record for any student attending an unapproved program. Additionally, during scheduled Coordinated Program Reviews the Department's Program Quality Assurance unit will review the required documentation maintained at the school district level.
Reimbursement

We note that state reimbursement for special education services is scheduled to change in school year 2002-2003, with the possibility of preliminary activity during school year 2001-2002. Although details of such reimbursement program are not yet in place, a preference for funding of approved programs will be addressed in any implementing regulations. Funding of unapproved programs may be affected and the procedures outlined in this memorandum will change as necessary. We strongly recommend if your district makes placements to a particular unapproved school on a regular basis that you directly recommend to the school that it apply for approval in Massachusetts. Applications for approval of special education schools may be obtained from and sent to:

Attention:

Coordinator, Placement Approvals
Program Quality Assurance
Department of Elementary and Secondary Education
75 Pleasant Street
Malden, MA 02158

last updated: August 6, 2001
Notification of Intent to Use an Unapproved Program
603 CMR 28.06(3)(e)(4)

Directions: As of 10/1/06, this single form replaces the previously mandated 28M3 and 28M4 forms. A school district must complete and submit all three pages of this form and obtain prior approval from the Department when it intends to place a student in an unapproved program. School districts are required to send the Department the Notification of Intent to Use an Unapproved Program form on an annual basis. School districts are required to enter into a contract annually for the purpose of placing a student into an unapproved program.

Section I: Student Information

Student’s First Name:_____________  MI: ____  Last Name: ______________

Date of Birth: ___/___/______  Male/Female _______  Disability: ______________

SASID Number:______________________

Date of Current IEP:  /  to  / (MM/YY to MM/YY)

Section II: School District Information

School District Name: ___________________________  School District Code: _______

School District Contact Person: ________________________________

Contact Address: _____________________________________________

Telephone: (____) _______  E-mail: ____________________________

Section III: Justification

The school district shall, in all circumstances, first seek to place a student in a program approved by the Department pursuant to the requirements of 603 CMR 28.09. Preference shall also be given to approved programs located within the Commonwealth of Massachusetts if the choice of such program is consistent with the needs of the student and choice of such program complies with LRE requirements. (603 CMR 28.06(3)(d)).

Briefly describe why the student is being placed in an unapproved setting. Include any and all steps taken to ensure:

1) that the school district first sought placement in an approved program; and 2) that preference was given to approved programs in the Commonwealth of Massachusetts.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
Section IV: Student Placement Information

Circle One:  Day School OR Residential

Circle One:  Initial Placement OR Renewal OR Termination

FOR THIS APPLICATION:
Proposed Placement Start Date:  /_____/_____
Proposed Placement End Date:  /_____/_____

FOR PREVIOUS APPLICATION (if applicable):
Initial placement date at unapproved school:  __________
Authorized annual tuition for the prior IEP period:  __________

Section V: Special Education Placement Information

Agency Name:  ________________  Primary Contact Person:  ________________

Agency Address:  ____________________________

Agency Telephone:  (______)  E-mail:  ____________________________

School/Program Name:  ________________  Program Code:  __________
(4 digits)

School/Program Address:  ____________________________

School/Program Telephone Number:  (______)  E-mail:  ____________________________

Section VI: Public School District Special Education Administrator’s Statement of Assurances

I hereby certify the following:

1) The student has a current, signed IEP AND PLI.
2) All available approved programs have been pursued and those facilities have indicated that they cannot serve this student.
3) All required documentation as indicated on the attached checklist has been completed and will be maintained in this student’s record, including a separate monitoring plan developed by the sending public school district.
4) The unapproved program can provide the program and services in this student’s IEP in appropriate settings by appropriately credentialed staff.
5) The unapproved program (if in MA) has local school committee approval, or approval of the host state.
6) The school district is responsible for ensuring that this student participates in MCAS testing (on demand or alternate) as required.
7) SIMS data will be updated upon Department approval for the placement.
Section VII: Private School Special Education Administrator’s Statement of Assurances

I hereby certify that the price to be charged by this facility is the lowest rate charged to any other purchaser of equivalent services, and the school will abide by Department regulations, including, but not limited to 603 CMR 28.06(3)(f)(1-5).

Print Name of Special Education Administrator/Private School

Date: MM/DD/YY

DEPARTMENT OF EDUCATION ACTION:

Date Form Received: _____/_____/_____  DOE Support Staff Member Initials: ______________
Application Complete: YES/NO

Additional Information Requested: ________________  Additional Information Received: _______

Department of Education Staff Signature: ________________  Date Approved: _____/_____/_____
# Required Documentation Assurance Checklist

*(Documentation is to be kept on file locally for review by the Department of Education when the Department completes the next scheduled Coordinated Program Review, and will be made available to the Department at other times upon request)*

<table>
<thead>
<tr>
<th>Required Documentation Assurance Checklist</th>
<th>Check box to indicate completion.</th>
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<tr>
<td><strong>Comprehensive Search for an Available Program approved by DOE</strong> –</td>
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<tr>
<td>• <strong>For initial placements:</strong> Justification and accompanying documentation should demonstrate a comprehensive search for placement options in approved settings and reasons why such settings are unable to provide services.</td>
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<td>• <strong>For renewals:</strong> Justification and accompanying documentation should demonstrate why the unapproved program continues to be appropriate.</td>
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<td><strong>Evaluation of the Appropriateness of the Unapproved Program</strong>-</td>
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<td>Detailed documentation (including the documentation of site visits) should demonstrate a thorough evaluation of the unapproved program to ensure the following:</td>
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<td>• That the program can appropriately implement the student’s IEP in a safe and educationally appropriate environment.</td>
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<td>• That the facility can and will provide the student with all rights that are accorded to the student under federal and state special education law.</td>
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<td>• That the school staff has the appropriate special education certification, licensure or registration.</td>
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<td><strong>Approval to Operate the Program</strong>-</td>
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<tr>
<td>• <strong>For in-state programs:</strong> Copy of the local school district’s approval to operate a private school in Massachusetts.</td>
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<tr>
<td>• <strong>For out-of state programs:</strong> Copy of the host state’s approval to operate a private school or, if the host state does not have an approval process, then documentation from the program of its reputable accreditation.</td>
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<tr>
<td><strong>Pricing Information on Unapproved Program</strong>-</td>
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<td>• <strong>For in-state programs:</strong></td>
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<tr>
<td>1. Notice of Proposed Placement, Form N 1</td>
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<td>2. Completed Pricing Forms from the Operational Services Division (OSD) of Purchased Services within the Executive Office for Administration and Finance</td>
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<td>3. Signed Written Contract for the Placement</td>
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<tr>
<td>• <strong>For out-of state programs:</strong></td>
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<tr>
<td>1. Notice of Proposed Placement, Form N 1</td>
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<tr>
<td>2. Statement Setting Tuition Rate by the Host State</td>
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<td>3. Signed Written Contract for the Placement</td>
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<td><strong>District Monitoring Plan</strong>-</td>
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<td>• Documentation of school district plan to ensure that the unapproved program is implementing the IEP.</td>
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<tr>
<td>(The school district must also place all actual monitoring documentation in student file for review by the Department.)</td>
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Note to School District: As required under 603 CMR 28.06(3)(e)(4)(ii), the Department will notify the school district within ten days of receipt of this form if there are any objections to the unapproved program.

Mail form to: Attn: Private School Supervisor
Massachusetts Department of Education
Program Quality Assurance Services
350 Main Street
Malden, MA 02148

Massachusetts Department of Education / Use of An Unapproved Program Notification
Page 161 of 224
Mandated Form - 28M/3 Revised 10/1/06
Educational Services in Institutional Schools (ESIS)

Scituate Public Schools assumes full responsibility for students with disabilities residing in institutional settings. Evaluations, Team meetings, and required services are the sole responsibility of the school district. Scituate’s protocol for monitoring students in institutional schools is the same as that for any student who attends an out-of-district placement. Scituate understands its responsibility for contracting for services not provided by the institutional school, ensuring that progress reports are completed and holding at least annual IEP meetings. Communication with parents, institutional staff, and contracted service providers is ongoing.

Students with Disabilities in Private Schools at Private Expense

Scituate’s Out-of-District Coordinator maintains a list of students with disabilities who attend private schools at parents’ expense. This list is updated and reviewed monthly. Parents of students with IEP’s are notified in writing four to six weeks prior to an annual review to determine if services and an IEP are still desired and if they are, to set up a mutually convenient date and time to meet. Students requiring a three-year reevaluation are identified at least three months before the reevaluation due date. Their parents are sent a letter and asked to contact the Out-of-District Coordinator to discuss the reevaluation process and to determine the types of evaluations to be completed. If parents are in agreement with the reevaluation process, a consent form is sent out immediately. All efforts are made to ensure that a representative from the student’s private school participates at the Team meeting. Please see attached Administrative Advisory SPED 2007-2 for further explanation of district requirements for private school students.

Initial evaluations and three-year reevaluations are conducted in the same manner for students attending private schools at private expense as they are for public school students. These students are afforded all of the same rights and privileges as students attending Scituate Public Schools. Annually in June, the Out-of-District Coordinator notifies school-based staff of their obligation to inform the SPED office of any students with disabilities who have transferred to private schools at private expense. Records are subsequently forwarded to the Out-of-District Coordinator who adds these students to the tracking list.

Every effort is made to schedule and deliver special education services to students who attend private schools at private expense at a convenient time and location. Additionally, the Out-of-District coordinator provides monitoring and consultation services to private school staff. Often times, parents and school staff are seeking assistance in the area of program modifications and accommodations rather than direct services. For any student found to have a disability, and unable to make effective progress without SPED services; an IEP must be written. Parents may choose to accept, decline, or reject the proposed services. Scituate is committed to ensuring that all parents are fully informed of their rights under the special education law and regulations.

For non-Massachusetts residents attending private schools in Massachusetts, the school districts where the private schools are located must conduct child find, evaluate, and determine proportionate share
services for all non-resident students according to the requirements of IDEA-2004. Please see attached the Special Education Administrative Advisory SPED 2007-2 section III A-I.

Special Education

Administrative Advisory SPED 2007-2:
IDEA-2004 and Private School Students (Updated July 2008)

To: Special Education Administrators, Educational Collaborative Directors, and Other Interested Parties

From: Marcia Mittnacht
State Director of Special Education

Date: May 4, 2007 (updated July 2008)

The Massachusetts Department of Elementary and Secondary Education is issuing this advisory in response to correspondence and instruction from the U.S. Department of Education's Office of Special Education Programs (OSEP) about Massachusetts' efforts to reconcile state and federal obligations for serving eligible students attending private schools in Massachusetts at private expense ("private school students" or "parentally-placed private school students"). This advisory describes all requirements and procedures regarding parentally placed private school students. Please note that this advisory replaces previously issued guidance, formerly 2006-3R and 2006-5, now withdrawn.

Requirements in the federal Individuals with Disabilities Education Improvement Act (IDEA-2004) for providing special education services to eligible private school students differ from those in Massachusetts' law. As described more fully below, state law requires districts to create Individualized Education Programs (IEPs) for all eligible Massachusetts students that provide for genuine opportunity to participate in the public school program, whereas federal law requires that districts spend a proportionate share of their federal grant on services for eligible private school students using service plans. Also, state law assigns responsibility to the district where the student lives rather than the district where the private school is located, as is now required under federal law.

The Massachusetts Department of Elementary and Secondary Education has been working with school officials, representatives of private schools, and OSEP to ensure that our requirements for serving eligible private school students in Massachusetts are responsive to federal and state special education laws and meet the needs of private school students while minimizing administrative burdens for schools and districts. The purposes of this Advisory are to inform special education administrators and other interested parties about the state and federal requirements (Part I below); explain how they differ (Part II); and describe the procedures that school districts must follow regarding child find, evaluation, consultation, and proportionate share calculations to demonstrate compliance regarding all private school students who attend schools located within the geographical...
boundaries of Massachusetts school districts (Part III).

I. State and Federal Requirements to Provide Special Education Services to Parentally Placed Private School Students

Massachusetts’ special education law applies to all Massachusetts residents, regardless of where they attend school. It requires school districts to offer special education and related services to all students who reside in the district, including parentally-placed private school students. Special education and related services must be designed to meet the needs of eligible students and must provide students with a genuine opportunity to participate in the public school special education program. The school district must provide or arrange for evaluation, determine eligibility, propose an Individualized Education Program (IEP), and make services available to all eligible students who reside in the district, regardless of where they attend school.

Under state law, services described in the IEP that are funded with state or local funds must be provided in a public school facility or in another public or neutral site. Schools may provide services at the private school if only federal funds are used. Special education and related services for private school students must be comparable in quality, scope, and opportunity for participation to those provided to public school students with disabilities, and must be described in a properly developed IEP. Eligible private school students have individual rights and full access to the state due process procedures.

Federal special education law (IDEA-2004) also requires school districts to provide special education services to private school students, although the federal requirements do not require the same higher standard and individual entitlement mandated in state law. Under IDEA-2004 school districts must conduct child find activities and evaluations to determine students’ eligibility for special education. In contrast to state law that requires all eligible students to have an IEP, federal law requires school districts to expend only a proportionate share of the federal money districts receive under Part B of IDEA to provide services to parentally-placed private school students. "Proportionate share" means that the district must spend on services for private school students who attend a private school in the district an amount that represents the same proportion of its federal grant as these private school students represent within the population of disabled students served by the district as a whole.

Following consultation with the private schools school districts must determine which services to provide with that proportionate share of funds. Districts provide these services to eligible private school students through an "individual services plan" instead of an IEP, and private school students do not have an individual entitlement to services under federal law. The federal due process protections, including the entitlement to an IEP and the right to a hearing, do not extend to private school students under IDEA-2004. Also, residents of other states attending private school in Massachusetts are entitled to services according to federal law and do not have an individual entitlement to services based upon state law.

II. Reconciling the Differences Between State and Federal Requirements for Private School Students

The federal and state special education requirements have been easy to reconcile in the past because complying with the higher standard of individual entitlement under Massachusetts'
law allowed school districts to meet the federal proportionate share requirement for providing special education services to eligible private school students. Also, school districts have consulted with the private schools, as required by federal law, because districts invite private school representatives to participate in the Teams that develop the IEPs for all private school students residing in the district.

A significant change to federal law under IDEA-2004, however, concerns responsibility for providing special education services to eligible private school students who attend school in a district other than the one in which they live. Federal law now requires that the district where the private school is located - rather than the district of residence - fulfill the requirements for child find and for proportionate share services. This change is intended to improve private school students' access to special education services by eliminating some of the logistical obstacles to student participation, as well as simplifying school districts' consultation with private schools. Now the district where a private school is located must meet federal special education requirements for all students who attend a private school located in the geographic boundaries of the district, regardless of where those students live.

State law, however, still requires the school district where the student resides to provide special education and related services under Massachusetts' higher standard and as described in an IEP. Massachusetts residents must continue to receive full special education services, including evaluation and IEPs, as appropriate, from the district in which they live. Therefore, when an evaluation for special education eligibility is requested for a Massachusetts resident who attends a private school, the student must be referred to the district of residence. State law requires the district of residence to evaluate all students who live in the district who are referred for evaluation, regardless of where they attend school.

For non-Massachusetts residents attending private schools in Massachusetts, the school districts where the private schools are located must conduct child find, evaluate, and determine proportionate share services for all non-resident students according to the requirements of IDEA-2004. The section below describes more specifically how districts may comply with the state and federal special education requirements for private school students who live in or attend a school located in the district.

III. Activities to Demonstrate Compliance with State and Federal Requirements for Special Education Services for Parentally Placed Private School Students

A. Child Find. School districts must conduct child find activities for all students attending school in the district, regardless of whether students attend public or private school and regardless of where they live, including students who live outside of Massachusetts but attend private schools in Massachusetts. Child find activities for private school students must be comparable to those conducted for students in public schools and must include providing private schools located in the district with information about how students can access publicly funded evaluation and special education services. These requirements are largely unchanged in IDEA-2004, and so districts already should be conducting these child find activities in all private schools located in the districts’ geographic area.

Students who live in one Massachusetts district but attend school in another should still be referred to the district of residence for evaluation and services. This child find requirement is consistent with state law and is current practice in all Massachusetts
districts.

B. Evaluation and Determination of Eligibility. As required by state law, Massachusetts school districts must evaluate and provide special education and related services to all eligible parentally-placed private school students who reside in the district, regardless of whether the students attend a private school located in that district or in another district. Also, IDEA-2004 requires that a school district must determine eligibility of out-of-state residents who attend a private school located in the district's boundaries if the students are referred for evaluation by the private school or the parents. The Massachusetts school district where the private school is located may conduct its own evaluation in a manner consistent with the requirements of state and federal law or may accept a prior evaluation conducted by the student's out-of-state district of residence if the evaluation information is current enough.

Eligibility for all students attending school in Massachusetts is determined using criteria based on the definitions of disability included in Massachusetts state law. Districts must report all eligible private school students to the Massachusetts Department of Elementary and Secondary Education according to Student Information Management System (SIMS) requirements, regardless of where they live. All eligible private school students, including out-of-state residents attending private school in Massachusetts, must receive a State Assigned Student Identifier (SASID).

C. Consultation. IDEA-2004 requires that public school districts ensure that private schools have opportunities to engage in "timely and meaningful" consultation about services provided to eligible private school students. This requirement is consistent with the private school consultation requirements under the No Child Left Behind Act (NCLB). Consultation requirements for Massachusetts resident students may be met in part through districts' current practice of working with representatives of the private schools as members of the Team developing students' Individualized Education Programs (IEPs). School districts also must engage in additional consultation with private school representatives about the special educational needs of eligible out-of-state resident students attending Massachusetts private schools.

Consultation must include the following:

- the child find process, including how parents, teachers, and private school officials will be informed of the process;
- the determination of the proportionate share of federal funds available to serve parentally-placed private school students with disabilities, including the determination of how the proportionate share of those funds was calculated; and
- how the consultation process will take place among representatives of the school district, private school, and parents.

Consultation about out-of-state residents who attend private school in Massachusetts must also include the following:
how, where, and by whom special education and related services will be provided, including a discussion of types of services - direct services and alternate service-delivery mechanisms, as well as how such services will be apportioned if funds are insufficient to serve all students - and how and when these decisions will be made; and

how, if the school district representatives disagree with the views of the private school officials on any aspect of services for eligible out-of-state residents, the district will provide to the private school officials a written explanation of the reasons why the LEA chose not to adopt the recommendations of the private school officials. 20

D. Determination of Proportionate Share. IDEA-2004 requires that school districts spend a proportionate share of their federal Part B grant on providing special education and related services, including direct services, to parentally-placed private school students with disabilities enrolled in private schools located in the district.21 "Proportionate share" is an amount that represents the same proportion of the district's federal grant as the proportion of eligible private school students represent within the entire population of disabled students served by the district.22 All Massachusetts districts must calculate the proportionate share and demonstrate upon request that they have spent this amount of federal funds on eligible parentally-placed private school students who are enrolled in private schools located in the district.

To calculate proportionate share, the district must know:

the total IDEA Part B funds received by the district under Fund Code 240 in a fiscal year;
2. the number of eligible parentally-placed private school students attending private school in the district, which includes
   a. students who live in the district and attend private school in the district;
   b. students who live in another Massachusetts district but attend a private school in the district;23 and
   c. out-of-state students who attend a private school located in the district; and
3. the number of eligible public school students who live in the district.

The proportionate share may be calculated and documented using the worksheet provided in Attachment A to this advisory. Following is an example of a proportionate share calculation:

A public school district (Anytown District) has four (4) eligible private school students enrolled in private schools within the geographic boundaries of the district. Two (2) are district residents, one (1) lives in another Massachusetts town,24 and one (1) lives in another state. The public school also serves 396 eligible public school students who reside in and are enrolled in the district.

Anytown district also serves five (5) resident students who are enrolled in private
schools located in other districts, as required by state law. These students are, however, not included in Anytown district’s proportionate share calculation. Rather, these students must be included in the proportionate share computation for the districts in which the private schools they attend are located.

The total number of eligible public and private school students enrolled in public or private schools in Anytown district is 400. This includes the four private school students referred to above, and 396 eligible public school students. The district’s proportion of eligible parentally-placed private school students to all eligible students is 4:400 or 1%.

Anytown district received $123,000 under Fund Code 240, its federal Part B entitlement grant. Because the proportion of private school students with disabilities is 1% of all students with disabilities, the “proportionate share” of the federal special education funds is 1% of the total grant of $123,000, or $1,230.

Anytown district must spend at least $1,230 of its federal grant on services for parentally-placed private school students who are attending private schools in the district in order to meet its proportionate share obligation under IDEA-2004. In this case, although there are four (4) private school students counted in the proportionate share calculation, only three (3) of them are being served by Anytown district. The fourth student receives services from the district where he/she lives, consistent with Massachusetts law. Therefore, the $1,230 must be spent on services for one or more of the three (3) private school students attending private schools in Anytown district and served by Anytown district.

As noted above, for the purposes of calculating proportionate share, students who attend private schools located in a district other than the one where they live are not included in the calculation of, or spending of, proportionate share funds by the district of residence. This is true even though the district of residence creates the students’ IEPs, provides special education and related services to them, and reports them to the Department. These students must be included in the proportionate share calculation of the district where the private schools they attend are located.

To make sure that districts have correct information about private school enrollment to compute proportionate share accurately, districts of residence must report the numbers of eligible students attending private schools in other towns to the districts where those private schools are located. This communication should be limited to the number of students attending the private school outside of the district of residence, and may not include personally identifiable information about those students.

E. **Expenditure of Proportionate Share.** Under the federal law, school districts determine which services to provide with the proportionate share of federal funds following consultation with representatives of the private schools located in the district and parents of eligible students. The district may use the entire federal proportionate share on only one eligible student or may decide to allocate an amount for services for more than one or all of the students. Because Massachusetts state law requires school districts to provide services according to an IEP to eligible Massachusetts residents who attend private schools, districts may not limit their spending of special education funds for Massachusetts residents to only services that
can be provided with the proportionate share. Regardless of the higher standard for Massachusetts residents attending private school, all districts must still calculate proportionate share and be able to demonstrate how they have spent sufficient federal funds on special education services for private school students.

Because out-of-state residents attending private schools in Massachusetts do not have an individual entitlement to services, eligible out-of-state student may not necessarily receive proportionate share services and, in such cases, will not receive special education services from the Massachusetts district where the private school is located. The Department recommends that the district make available the data it has used in calculating proportionate share and information demonstrating whether its proportionate share obligation has been met. The district may use the attached form (Attachment A) to document its calculation of and spending of the proportionate share of federal funds. Also, appended to this advisory (Attachment B) is a sample letter that districts may use to notify parents of eligible non-Massachusetts residents attending private schools here of the districts' decision not to make services available because the required federal proportionate share obligation has been met.

F. Development of Services Plans. If the school district provides services to non-Massachusetts residents attending private schools in Massachusetts, either using proportionate share funds for that student or other resources at its own election, the district is required to develop an individual services plan for the student describing the types of services it will provide and where services will be delivered. A sample services plan is included as Attachment C. Services plans must describe the specific special education or related services that the district where the private school is located will provide to the student, but are not the same as IEPs. Unlike the process for creating an IEP, the district does not need to convene a Team to create the plan. Districts may offer a representative of the student's private school the opportunity to participate in meetings at which the services plan is discussed, but are not required to do so as long as the private school has been consulted about the services as described in Section III.C. above. Also, services plans do not confer an individual entitlement to special education and related services.

Additionally, IDEA-2004 does not require that a parent provide written consent to a services plan. Though a parent may refuse services proposed in a services plan, out-of-state residents are not entitled to due process protections to challenge the sufficiency of the proposed services or the districts' actions.

G. Providing or Contracting for Services. Massachusetts resident students with disabilities who are attending private schools, either within or outside of their community of residence, are entitled to equitable opportunities to participate in the publicly funded special education program as required by state law. To carry out this responsibility and reconcile state and federal requirements for private school students attending private schools outside of their community of residence, school districts must make reasonable efforts to provide students with access to services in the community where they go to school. Reasonable efforts include the following:

- Provide IEP services on site at the private school. Districts may use federal funds to provide services on site at the private school in order to improve access to services for the student. Because Massachusetts state law
requires school districts to provide services according to an IEP to eligible Massachusetts residents who attend private schools, districts may not limit their spending of special education funds for Massachusetts residents to only services that can be provided with the proportionate share and may allocate additional federal funds to provide services at the private school. Private school organizations in the state have indicated that the majority of private schools would welcome the opportunity to facilitate students' access to services and will work cooperatively with you to do so.

- **Provide IEP services at a public or neutral site convenient to the private school.** Districts may use any combination of state, federal, and local funds to provide services at a public school or at another public or neutral site close to the private school that the student attends.

- **Contract with others to provide the IEP services at an appropriate site.** Districts may contract with the public school district where the private school is located to provide services to the student. The district where the private school is located also may be able to help you identify local service providers (individuals, community agencies, or other organizations) and neutral sites where services can be provided in that community. Additionally, educational collaboratives may be a key resource for providing services because they routinely serve students across many districts' geographic areas. An educational collaborative may be able to serve the student in a location convenient to the private school that the student attends.

For students attending private schools outside of the district of residence, if, after making reasonable efforts to provide services to the private school student in the community where the private school is located, the district determines that no such arrangements are feasible, the district may serve the student in the district. The district may need to provide the student with transportation in order to ensure that the student has access to the necessary services.

**H. Due Process Protections.** Under state law, eligible private school students who are Massachusetts residents and/or adults acting on their behalf are entitled to use the Department of Elementary and Secondary Education's Problem Resolution System. If a private school student is having difficulty working with the district of residence to obtain an evaluation or necessary services, then the student, the parent, the private school or another interested party can seek assistance from the Department in resolving the problem. Also, students residing in Massachusetts and their parents are entitled to file a request for hearing or mediation with the Bureau of Special Education Appeals on any matter related to evaluation or special education services. Under federal law, due process is not available to private school students who do not reside in Massachusetts, except for complaints related to child find.

**I. Memorandum on Providing Data for Private School Students** - July 2008

We hope this guidance assists special education administrators and other interested parties in understanding these requirements and in ensuring that local practices are consistent with state and federal law. A summary chart of the obligations of districts is included as Attachment D.

If you have any questions or require additional information, please contact Program Quality Assurance Services at the Department of Elementary and Secondary Education (781-338-
If you have any questions about appropriate submission of data in relation to these students, please contact data collection at (781) 338-3282. Thank you for your cooperation and your service to students.

11. This term includes students in parochial or independent schools, but does not include students placed by their parents in private special education schools who are seeking public tuition for such programs. This advisory does not address the different requirements that apply in the latter circumstance.
12. M.G.L. c. 71B, Section 3.
13. St. 1999, c. 127, Section 258; 603 CMR 28.03(1)(e).
14. 603 CMR 28.03(1)(e)(3).
15. 603 CMR 28.03(1)(e)(4).
16. Additional information regarding the state’s entitlement to special education and related services for private school students is found in Special Education Guidance on Providing Special Education Services for Students Attending Private Schools at Private Expense issued in February 2000. This guidance document is available on the Department’s website at http://www.doe.mass.edu/sped/2000/guidanceexpnse.html.
18. These general provisions, which were included in IDEA-1997 and the 1999 regulations, are also included in IDEA-2004, codified at 20 U.S.C. § 1400 et seq. and 34 CFR Part 300. Please note that additional citations to federal law in this memorandum will be to the federal regulations, unless otherwise indicated.
20. 34 CFR §§ 300.132(b), 300.137-300.139.
21. 34 CFR § 300.140.
22. 34 CFR § 300.131(f).
23. 34 CFR § 300.131.
24. 34 CFR § 300.131(f).
25. 34 CFR § 300.131.
27. See 603 CMR 28.02(2).
28. Any out-of-state student seeking public special education services must receive a SASID and be reported for the year during which evaluation was conducted or services were sought, regardless of whether or not the student is offered special education services. 34 CFR § 300.132(c).
29. 34 CFR § 300.134(d-e).
30. The federal regulations regarding expenditure of proportionate share funds make clear that state and local funds may be used to supplement but not supplant the required expenditure of federal funds. 34 CFR § 300.133(d). This means that districts are required to expend the proportionate share of federal funds for private school students, rather than spend funds from any source in that amount for this population of students. Districts must maintain proportionate share documentation (both calculation and spending documentation) for review by the Department of Elementary and Secondary Education upon request.
31. 34 CFR § 300.133(a).
32. Students who live in the district (District A) but attend private school in another district (District B), are not counted in the calculation of the proportionate share by District A; rather, they must be counted by District B. District A must notify District B of the number of District A residents who attend private schools located in District B.

33. Students who live in one Massachusetts district, but attend private school in another district must be counted for the proportionate share in the district where they attend private school, even though they are served by the district where they live.

34. As noted above, the school district cannot include the costs of conducting child find activities and evaluating students in determining whether the district has met its proportionate share obligations under federal law. 34 CFR § 300.131(d).


36. See Part C above.

37. Students served in the district may receive services at the public school or in another public or neutral setting.

38. The cost of transportation may be included in calculating whether the district has met the proportionate share obligation. 34 CFR § 300.139(b)(2).


40. [http://www.doe.mass.edu/bsea/](http://www.doe.mass.edu/bsea/).

last updated: August 1, 2008
Section XI

**Behavioral Interventions**

When a student’s behavior impedes their learning or the learning of others, the Team needs to consider the student’s behavior and the ability of the student to follow the school discipline code. Writing a Behavior Intervention Plan, BIP, may be an appropriate step for the Team to take before considering other options. This plan should clearly identify the behavior, the function of the behavior, and interventions that will be taken in an attempt to diminish the behavior, including positive behavioral interventions and who is responsible for the implementation of the plan. **Positive reinforcements/interventions** are critical to this process since the goal is to extinguish the behavior. These reinforcements need to be periodically reviewed and adjusted as needed.

If a student is placed on a BIP, the plan is shared with all staff members working with the student. Staff members are made aware of the identified target behaviors to be addressed and the interventions that will take place if the student exhibits any of these behaviors. Positive reinforcements and encouragement are provided when appropriate to support the student in extinguishing the behavior.

Behavioral plans are reviewed and updated depending upon the outcome and effectiveness of the proposed interventions. A copy of the plan is placed in the student’s cumulative record. If the student is on an IEP, a copy of the plan would also be placed in the IEP folder. A functional Behavioral Assessment, FBA, would be completed if the IEP Team, building principal, special education administrator or parent deems it appropriate.
Restraint:

Should a student require any physical restraint, the Scituate Public Schools has a Physical Restraint Procedure and follows the guidelines set forth by the Massachusetts Department of Secondary and Elementary Education in 603 CMR 46.00: Physical Restraint.


PROGRAM AND SAFETY STANDARDS FOR APPROVED PUBLIC OR PRIVATE DAY AND RESIDENTIAL SPECIAL EDUCATION SCHOOL PROGRAMS

603 CMR 18.00:

Program and Safety Standards for Approved Public or Private Day and Residential Special Education School Programs

Section:
18.01: Authority, Scope and Purpose
18.02: Definitions
18.03: Requirements for Daily Care
18.04: Physical Facility and Equipment Requirements
18.05: Required Policies and Procedures
18.06: Effective Date

18.01: Authority, Scope and Purpose

(1) 603 CMR 18.00 is promulgated pursuant to MGL c. 71B, §10. 603 CMR 18.00 governs the program and safety standards for day and residential special education schools operated by public and private entities and serving publicly funded students.

(2) The requirements set forth in 603 CMR 18.00 are in addition to, or in some instances clarify or further elaborate, the program approval standards set forth in 603 CMR 28.09.

(3) Some approved special education schools may have a residential component with a current license from the state agency responsible for licensing programs providing residential services to children pursuant to 102 CMR 3.00. At the discretion of the Department, some of the requirements in this section may be met through obtaining a license under 102 CMR 3.00. However, the special education school's educational component remains fully subject to these regulations, as deemed appropriate by the Department of Elementary and Secondary Education.
18.02: Definitions

(1) *Approved private special education school or approved program* shall mean a private day or residential school, within or outside Massachusetts, that has applied to, and received approval from, the Department according to the requirements specified in 603 CMR 28.09.

(2) *Approved public special education school* shall mean a program operated by a public school or an educational collaborative providing full day or residential special education services to eligible students in a facility serving primarily students with disabilities. Such program shall be approved when it has applied to, and received approval from, the Department according to the requirements specified in 603 CMR 28.09.

(3) *Consent* shall mean agreement by a parent who has been fully informed of all information relevant to the activity for which agreement is sought, in his/her native language or other mode of communication, that the parent understands and agrees in writing to the carrying out of the activity, and understands that the granting of consent agreement is voluntary and may be revoked at any time. The agreement describes the activity and lists the records (if any) which will be released and to whom. In seeking parental consent, a public education program shall not condition admission or continued enrollment upon agreement to the proposed use of any restraint.

(4) *Day* shall mean calendar day unless the regulation specifies school day, which shall mean any day, including a partial day, that students are in attendance at school for instructional purposes.

(5) *Department* shall mean the Massachusetts Department of Elementary and Secondary Education.

(6) *District or school district* shall mean a Massachusetts municipal school department or regional school district, acting through its school committee or superintendent of schools; a county agricultural school, acting through its board of trustees or superintendent/director; and any other Massachusetts public school established by statute or charter, acting through its governing board or director.

(7) *Eligible student* shall mean a person aged three through twenty-one (3-21) who has not attained a high school diploma or its equivalent, who has been determined by an IEP Team to have a disability(ies), and as a consequence is unable to progress effectively in the general education program without specially designed instruction or is unable to access the general curriculum without a related service. An eligible student shall have the right to receive special education and any related services that are necessary for the student to benefit from special education or that are necessary for the student to access the general curriculum. In determining eligibility, the school district must thoroughly evaluate and provide a narrative description of the student's educational and developmental potential.

(8) *Emergency termination* shall mean removal of a student from a program due to an unplanned circumstance, including a student endangering his/her physical health or safety or endangering the physical health or safety of others.

(9) *Individualized Education Program (IEP)* shall mean a written statement, developed and approved in accordance with federal special education law in a form established by the Department that...
identifies a student's special education needs and describes the services a school district shall provide to meet those needs.

(10) *Parent* shall mean father, mother, guardian, person acting as a parent of the child, or an educational surrogate parent appointed in accordance with federal law. For students in the Department of Children and Families care or custody, an Educational Surrogate Parent's authority to act as a parent is limited to special education decision-making. When the father and mother are not living together, the parent shall be the father or mother with legal custody of the child for the purposes of educational decision-making. In the absence of any court decree to the contrary, legal authority of the parent shall transfer to the student when the student reaches eighteen (18) years of age.

18.05: Required Policies and Procedures

(1) **Admissions.**

(a) No school, or program operated by a school, shall enroll eligible students under the provisions of 603 CMR 28.00 unless approved to do so by the Department.

(b) Prior to admission, the school shall provide to the parents and the local school district a written copy of the school's policies and procedures, including:

1. The school's statement of purpose;

2. The type of services provided;

3. Admission criteria;

4. Parents' rights as described in 18.05(4);

5. Health care, including provisions for emergency health care and/or hospitalization as described in 18.05(9);

6. Planning for both foreseen and emergency terminations as described in 18.05(6), (7);

7. Methods of behavior support, violence prevention, discipline, management of harmful behavior by a student to himself/herself or others, and proper use of restraints as described in 18.05(5);

8. Activities related to daily living skills;

9. Contractual obligations with regard to payment for services. The school shall inform in writing any party, other than a local school district, responsible for placement of a student that said party is financially responsible for any costs incurred as a result of any placement not made pursuant to the requirements of 603 CMR 28.00;

10. Clothing requirements;
11. A description of normal daily routines;

12. Any specific treatment strategy employed by the facility;

13. A description of any normally occurring religious practices;

14. Visiting hours and other procedures related to communication with students and the facility as described in 18.036(9);

15. Name and telephone number of a staff person whom the parents may contact on an ongoing basis;

16. A description of a procedure which the parents or student may use to register complaints regarding the student's education and care at the facility.

17. A copy of the approved school calendar.

(c) No student shall be placed in any approved special education school until the local school district or the parent provides documentation from a licensed physician of a complete physical examination of the student not more than twelve (12) months prior to the admission. In the event of emergency placements, the school shall make provisions for a complete examination of the student within 30 days of admission. The results of all physical examinations shall be made part of the student's health record.

(2) Admission Interview.

(a) Prior to admission, and upon request, the director of the school or designee shall be available to the parents, the student and the public school for an interview.

(b) The interview shall include an explanation of the school's purpose and services, policies regarding parent and student rights including student records, the health program including the procedures for providing emergency health care, and the procedure for termination of a student.

(c) The interview shall allow the opportunity for the student and parents to see the facilities, to meet staff members, and to meet other students enrolled.

(3) Placement Preparation for Residential Students.

(a) The school shall establish procedures to prepare the staff and students in the living unit for the new student's arrival and shall provide staff with appropriate information to receive the new student and assist in his/her adjustment.

(b) Upon admission, the school shall designate and prepare sleeping quarters for the student and space for the student's personal belongings.
(c) The school shall assign at least one staff member to help orient a newly admitted student to the facility and to explain the opportunities and programs available.

(4) **Parental Involvement.**

(a) The school shall have a written plan for involving parents, and shall have a Parents' Advisory Group. The Parents' Advisory Group shall advise the school on matters that pertain to the education, health, and safety of the students in the program.

(b) The school shall have a procedure for assuring that it is informed by a parent or guardian of any changes in a student's legal status and of the results of all judicial and administrative proceedings concerning the student, and for disseminating this information to appropriate personnel.

(5) **Behavior Support.**

(a) Each school shall provide a written statement of the rules, policies and procedures for the behavior support of students. The statement shall contain a description of the safeguards for the emotional, physical and psychological well-being of the population served; measures for positive responses to appropriate behavior; and definition and explanation of behavior management procedures used in the facility including, where applicable:

1. Methods of assessing and monitoring students’ progress in the program;

2. The type and range of restrictions a staff member can impose for behavior which is unacceptable;

3. The type of restraint used in an emergency; the array of interventions used as alternatives to restraint; and the controls on the misuse and abuse of restraint;

4. The use of the behavioral support strategy of time-out;

5. Any denial or restrictions of on-grounds program services.

(b) Students shall participate in the establishment of such rules, policies and procedures whenever feasible and appropriate.

(c) Prior to admission, the school shall provide students and parents with a written copy of its behavior support policy.

(d) The school shall inform parents and students of any significant changes in the behavior management procedures.

(e) No student shall be subjected to abuse or neglect, cruel, unusual, severe or corporal punishment, including the following practices:
1. Any type of physical hitting or pain inflicted in any manner upon the body;

2. Requiring or forcing the student to take an uncomfortable position such as squatting or bending or requiring or forcing the student to repeat physical movements when used as punishment;

3. Punishments which subject the student to verbal abuse, ridicule or humiliation;

4. Denial of visitation or communication privileges with family;

5. Denial of sufficient sleep;

6. Denial of shelter, bedding, food or bathroom facilities.

(f) The goal of behavior support shall be to maximize the growth and development of the student and to protect the group and the individuals in it.

(g) The school shall directly relate consequences to the specific misbehavior and shall apply such consequences without prolonged delay.

(h) Day educational programs approved under 603 CMR 28.09 shall develop a policy on the use of physical restraint and administer physical restraint in accordance with the requirements of 603 CMR 46.00. Residential educational programs approved under 603 CMR 28.09 shall comply with the requirements contained in 102 CMR 3.00 except for the school day, during which the requirements of 603 CMR 46.00 shall apply for students enrolled in such programs. Educational programs within a program or facility subject to M.G. L.c.123 or Department of Mental Health Regulations shall comply with the restraint requirements of M.G.L.c.123, 104 CMR 27.12 or 104 CMR 28.05, as applicable.

(i) Any behavior support policy which results in a student being separated in a room apart from the group or program activities shall include, but not be limited to, the following:

1. Guidelines for staff in the utilization of such an area;

2. Persons responsible for implementing such procedures;

3. The duration of the procedures including procedures for approval by the chief administrative person or his/her designee for any period longer than 30 minutes, except that during the school day in a residential educational program, and in an day educational program approved under 603 CMR 28.09, the duration of the procedures shall be governed by 603 CMR 46.00;

4. Requirement that students shall be observable at all times and in all parts of the room, and that the staff shall be in close proximity at all times;

5. A procedure for staff to directly observe the student at least every fifteen minutes;
6. A means of documenting the use of such area including, at a minimum, length of time, reasons for this intervention, who approved the procedure, and who directly observed the student at least every fifteen minutes.

(i) Time out rooms shall not be locked.

(ii) Any room or space used for the practice of separation must be physically safe and appropriate to the population served by the facility

18.06: Effective Date

The effective date of 603 CMR 18.00, as amended, is January 1, 2016.

603 CMR 46.00:
Prevention of Physical Restraint and Requirements If Used

Section:
46.01 Authority, Scope, Purpose and Construction
46.02 Definitions
46.03 Use of Restraint
46.04 Policy and Procedures; Training
46.05 Proper Administration of Physical Restraint
46.06 Reporting Requirements
46.07 Effective Date

46.01: Authority, Scope, Purpose and Construction

(1) Authority. 603 CMR 46.00 is promulgated by the Board of Elementary and Secondary Education pursuant to M.G.L. c. 69, § 1B, and c. 71, § 37G.

(2) Scope. 603 CMR 46.00 governs the use of physical restraint on students in publicly funded elementary and secondary education programs, including all Massachusetts public school districts, charter schools, virtual schools, collaborative education programs, and the school day of special education schools approved under 603 CMR 28.09, as provided in 603 CMR 18.05(5)(h). Educational programs in facilities operated by the Department of Youth Services, the Department of Mental Health, the Department of Public Health, or County Houses of Correction shall be governed by the restraint, seclusion, and time-out requirements of such agencies.

(3) Purpose. The purpose of 603 CMR 46.00 is to ensure that every student participating in a Massachusetts public education program is free from the use of physical restraint that is inconsistent with 603 CMR 46.00. Physical restraint shall be used only in emergency situations of last resort, after other lawful and less intrusive alternatives have failed or been deemed inappropriate, and with extreme caution. School personnel shall use physical restraint with two goals in mind:

(a) To administer a physical restraint only when needed to protect a student and/or a member of the school community from assault or imminent, serious, physical harm; and
(b) To prevent or minimize any harm to the student as a result of the use of physical restraint.

(4) Construction. Nothing in 603 CMR 46.00 shall be construed to limit the protection afforded publicly funded students under other state or federal laws, including those laws that provide for the rights of students who have been found eligible to receive special education services. Nothing in 603 CMR 46.00 precludes any teacher, employee or agent of a public education program from using reasonable force to protect students, other persons or themselves from assault or imminent, serious, physical harm.

46.02: Definitions

As used in 603 CMR 46.00, the following terms shall have the following meanings:

Commissioner shall mean the commissioner of the Department of Elementary and Secondary Education appointed in accordance with G.L. c.15, §1F, or his or her designee.

Consent shall mean agreement by a parent who has been fully informed of all information relevant to the activity for which agreement is sought, in his or her native language or other mode of communication, that the parent understands and agrees in writing to carrying out of the activity, and understands that the agreement is voluntary and may be revoked at any time. The agreement describes the activity and lists the records (if any) which will be released and to whom. In seeking parental consent, a public education program shall not condition admission or continued enrollment upon agreement to the proposed use of any restraint.

Department shall mean the Department of Elementary and Secondary Education.

Mechanical restraint shall mean the use of any device or equipment to restrict a student’s freedom of movement. The term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional, and are used for the specific and approved positioning or protective purposes for which such devices were designed. Examples of such devices include: adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; vehicle safety restraints when used as intended during the transport of a student in a moving vehicle; restraints for medical immobilization; or orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

Medication restraint shall mean the administration of medication for the purpose of temporarily controlling behavior. Medication prescribed by a licensed physician and authorized by the parent for administration in the school setting in not medication restraint.

Parent shall mean a student’s father, mother, or legal guardian or person or agency legally authorized to act on behalf of the student in place of or in conjunction with the father, mother, or legal guardian.
Physical escort shall mean a temporary touching or holding, without the use of force, of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is agitated to walk to a safe location.

Physical restraint shall mean direct physical contact that prevents or significantly restricts a student’s freedom of movement. Physical restraint does not include: brief physical contact to promote student safety, providing physical guidance or prompting when teaching a skill, redirecting attention, providing comfort, or a physical escort.

Principal shall mean the instructional leader or headmaster of a public education school program or his or her designee. The board of directors of a charter school or virtual school, or special education school or program approved under 603 CMR 28.09, shall designate in the restraint prevention and behavior support policy who will serve as principal for purposes of 603 CMR 46.00.

Prone restraint shall mean a physical restraint in which a student is placed face down on the floor or another surface, and physical pressure is applied to the student’s body to keep the student in the face-down position.

Public education programs shall mean public schools, including charter schools, virtual schools, collaborative education programs, and the school day of special education schools approved under 603 CMR 28.09, as provided in 603 CMR 18.05(5)(h), and school events and activities sponsored by such programs. The term “programs” may be used in 603 CMR 46.00 to refer to “public education programs.” For purposes of 603 CMR 46.00, public education programs shall not include the educational services provided within Department of Youth Services, Department of Mental Health, Department of Public Health, and County Houses of Correction operated or contracted facilities.

School Working Day shall mean a day or partial day that students are in attendance at the public education program for instructional purposes.

Seclusion shall mean the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Seclusion does not include a time-out as defined in 603 CMR 46.02.

Time-out shall mean a behavioral support strategy developed pursuant to 603 CMR 46.04(1) in which a student temporarily separates from the learning activity or the classroom, either by choice or by direction from staff, for the purpose of calming. During time-out, a student must be continuously observed by a staff member. Staff shall be with the student or immediately available to the student at all times. The space used for time-out must be clean, safe, sanitary, and appropriate for the purpose of calming. Time-out shall cease as soon as the student has calmed.

46.03: Use of Restraint

(1) Prohibition.

(a) Mechanical restraint, medication restraint, and seclusion shall be prohibited in public education programs.
(b) Prone restraint shall be prohibited in public education programs except on an individual student basis, and only under the following circumstances:

1. The student has a documented history of repeatedly causing serious self-injuries and/or injuries to other students or staff;
2. All other forms of physical restraints have failed to ensure the safety of the student and/or the safety of others;
3. There are no medical contraindications as documented by a licensed physician;
4. There is psychological or behavioral justification for the use of prone restraint and there are no psychological or behavioral contraindications, as documented by a licensed mental health professional;
5. The program has obtained consent to use prone restraint in an emergency as set out in 603 CMR 46.03(1)(b), and such use has been approved in writing by the principal; and,
6. The program has documented 603 CMR 46.03(1)(b) 1 - 5 in advance of the use of prone restraint and maintains the documentation.

(c) Physical restraint, including prone restraint where permitted, shall be considered an emergency procedure of last resort and shall be prohibited in public education programs except when a student’s behavior poses a threat of assault, or imminent, serious, physical harm to self or others and the student is not responsive to verbal directives or other lawful and less intrusive behavior interventions, or such interventions are deemed to be inappropriate under the circumstances.

(d) All physical restraints, including prone restraint where permitted, shall be administered in compliance with 603 CMR 46.05.

(2) Physical restraint shall not be used:

(a) As a means of discipline or punishment;

(b) When the student cannot be safely restrained because it is medically contraindicated for reasons including, but not limited to, asthma, seizures, a cardiac condition, obesity, bronchitis, communication-related disabilities, or risk of vomiting;

(c) As a response to property destruction, disruption of school order, a student's refusal to comply with a public education program rule or staff directive, or verbal threats when those actions do not constitute a threat of assault, or imminent, serious, physical harm; or

(d) As a standard response for any individual student. No written individual behavior plan or individualized education program (IEP) may include use of physical restraint as a standard response to any behavior. Physical restraint is an emergency procedure of last resort.

(3) Limitations on use of restraint. Physical restraint in a public education program shall be limited to the use of such reasonable force as is necessary to protect a student or another member of the school community from assault or imminent, serious, physical harm.

(4) Referral to law enforcement or other state agencies. Nothing in these regulations prohibits:

(a) The right of any individual to report to appropriate authorities a crime committed by a student or other individual;
(b) Law enforcement, judicial authorities or school security personnel from exercising their responsibilities, including the physical detainment of a student or other person alleged to have committed a crime or posing a security risk; or

(c) The exercise of an individual's responsibilities as a mandated reporter pursuant to G.L. c. 119, § 51A. 603 CMR 46.00 shall not be used to deter any individual from reporting neglect or abuse to the appropriate state agency.

46.04: Policy and Procedures; Training

(1) Procedures. Public education programs shall develop and implement written restraint prevention and behavior support policy and procedures consistent with 603 CMR 46.00 regarding appropriate responses to student behavior that may require immediate intervention. Such policy and procedures shall be annually reviewed and provided to program staff and made available to parents of enrolled students. Such policy and procedures shall include, but not be limited to:

(a) Methods for preventing student violence, self-injurious behavior, and suicide, including individual crisis planning and de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student;

(b) Methods for engaging parents in discussions about restraint prevention and the use of restraint solely as an emergency procedure;

(c) A description and explanation of the program’s alternatives to physical restraint and method of physical restraint in emergency situations;

(d) A statement prohibiting: medication restraint, mechanical restraint, prone restraint unless permitted pursuant to 603 CMR 46.03(1)(b), seclusion, and the use of physical restraint in a manner inconsistent with 603 CMR 46.00;

(e) A description of the program’s training requirements, reporting requirements, and follow-up procedures;

(f) A procedure for receiving and investigating complaints regarding restraint practices;

(g) A procedure for conducting periodic review of data and documentation on the use of physical restraints as described in 603 CMR 46.06(5) and (6);

(h) A procedure for implementing the reporting requirements as described in 603 CMR 46.06;

(i) A procedure for making reasonable efforts to orally notify a parent of the use of restraint on a student within 24 hours of the restraint, and for sending written notification to the parent within three school working days following the use of restraint to an email address provided by the parent for the purpose of communicating about the student, or by regular mail to the parent postmarked within three school working days of the restraint; and,
(j) If the program uses time-out as a behavioral support strategy, a procedure for the use of time-out that includes a process for obtaining principal approval of time-out for more than 30 minutes based on the individual student’s continuing agitation.

(2) Required training for all staff. Each principal or director shall determine a time and method to provide all program staff with training regarding the program’s restraint prevention and behavior support policy and requirements when restraint is used. Such training shall occur within the first month of each school year and, for employees hired after the school year begins, within a month of their employment. Training shall include information on the following:

(a) The role of the student, family, and staff in preventing restraint;

(b) The program's restraint prevention and behavior support policy and procedures, including use of time-out as a behavior support strategy distinct from seclusion;

(c) Interventions that may preclude the need for restraint, including de-escalation of problematic behaviors and other alternatives to restraint in emergency circumstances;

(d) When behavior presents an emergency that requires physical restraint, the types of permitted physical restraints and related safety considerations, including information regarding the increased risk of injury to a student when any restraint is used, in particular a restraint of extended duration;

(e) Administering physical restraint in accordance with medical or psychological limitations, known or suspected trauma history, and/or behavioral intervention plans applicable to an individual student; and

(f) Identification of program staff who have received in-depth training pursuant to 603 CMR 46.03(3) in the use of physical restraint.

(3) In-depth staff training in the use of physical restraint. At the beginning of each school year, the principal of each public education program or his or her designee shall identify program staff who are authorized to serve as a school-wide resource to assist in ensuring proper administration of physical restraint. Such staff shall participate in in-depth training in the use of physical restraint. The Department recommends that such training be competency-based and be at least-sixteen (16) hours in length with at least one refresher training occurring annually thereafter.

(4) Content of in-depth training. In-depth training in the proper administration of physical restraint shall include, but not be limited to:

(a) Appropriate procedures for preventing the use of physical restraint, including the de-escalation of problematic behavior, relationship building and the use of alternatives to restraint;

(b) A description and identification of specific dangerous behaviors on the part of students that may lead to the use of physical restraint and methods for evaluating the risk of harm in individual situations in order to determine whether the use of restraint is warranted;
(c) The simulated experience of administering and receiving physical restraint, instruction regarding the effect(s) on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;

(d) Instruction regarding documentation and reporting requirements and investigation of injuries and complaints;

(e) Demonstration by participants of proficiency in administering physical restraint; and,

(f) Instruction regarding the impact of physical restraint on the student and family, recognizing the act of restraint has impact, including but not limited to psychological, physiological, and social-emotional effects.

46.05: Proper Administration of Physical Restraint

(1) Trained personnel. Only public education program personnel who have received training pursuant to 603 CMR 46.04(2) or 603 CMR 46.04(3) shall administer physical restraint on students. Whenever possible, the administration of a restraint shall be witnessed by at least one adult who does not participate in the restraint. The training requirements contained in 603 CMR 46.00 shall not preclude a teacher, employee or agent of a public education program from using reasonable force to protect students, other persons or themselves from assault or imminent, serious, physical harm.

(2) Use of force. A person administering a physical restraint shall use only the amount of force necessary to protect the student or others from physical injury or harm.

(3) Safest method. A person administering physical restraint shall use the safest method available and appropriate to the situation subject to the safety requirements set forth in 603 CMR 46.05(5). Floor restraints, including prone restraints otherwise permitted under 603 CMR 46.03(1)(b), shall be prohibited unless the staff members administering the restraint have received in-depth training according to the requirements of 603 CMR 46.043(3) and, in the judgment of the trained staff members, such method is required to provide safety for the student or others present.

(4) Duration of restraint. All physical restraint must be terminated as soon as the student is no longer an immediate danger to himself or others, or the student indicates that he or she cannot breathe, or if the student is observed to be in severe distress, such as having difficulty breathing, or sustained or prolonged crying or coughing.

(5) Safety requirements. Additional requirements for the use of physical restraint:

(a) No restraint shall be administered in such a way that the student is prevented from breathing or speaking. During the administration of a restraint, a staff member shall continuously monitor the physical status of the student, including skin temperature and color, and respiration.

(b) Restraint shall be administered in such a way so as to prevent or minimize physical harm. If, at any time during a physical restraint, the student expresses or demonstrates significant
physical distress including, but not limited to, difficulty breathing, the student shall be released from the restraint immediately, and school staff shall take steps to seek medical assistance.

(c) If a student is restrained for a period longer than 20 minutes, program staff shall obtain the approval of the principal. The approval shall be based upon the student’s continued agitation during the restraint justifying the need for continued restraint.

(d) Program staff shall review and consider any known medical or psychological limitations, known or suspected trauma history, and/or behavioral intervention plans regarding the use of physical restraint on an individual student.

(e) After the release of a student from a restraint, the public education program shall implement follow-up procedures. These procedures shall include reviewing the incident with the student to address the behavior that precipitated the restraint, reviewing the incident with the staff person(s) who administered the restraint to discuss whether proper restraint procedures were followed, and consideration of whether any follow-up is appropriate for students who witnessed the incident.

46.06: Reporting Requirements

(1) Circumstances under which a physical restraint must be reported. Program staff shall report the use of any physical restraint as specified in 603 CMR 46.06(2).

(2) Informing the principal. The program staff member who administered the restraint shall verbally inform the principal of the restraint as soon as possible, and by written report no later than the next school working day. The written report shall be provided to the principal for review of the use of the restraint. If the principal has administered the restraint, the principal shall prepare the report and submit it to an individual or team designated by the superintendent or board of trustees for review. The principal or director or his/her designee shall maintain an on-going record of all reported instances of physical restraint, which shall be made available for review by the parent or the Department upon request.

(3) Informing parents. The principal or director of the program or his/her designee shall make reasonable efforts to verbally inform the student's parent of the restraint within 24 hours of the event, and shall notify the parent by written report sent either within three school working days of the restraint to an email address provided by the parent for communications about the student, or by regular mail postmarked no later than three school working days of the restraint. If the school or program customarily provides a parent of a student with report cards and other necessary school-related information in a language other than English, the written restraint report shall be provided to the parent in that language. The principal shall provide the student and the parent an opportunity to comment orally and in writing on the use of the restraint and on information in the written report.

(4) Contents of report. The written report required by 603 CMR 46.06(2) and (3) shall include:

(a) The name of the student; the names and job titles of the staff who administered the restraint, and observers, if any; the date of the restraint; the time the restraint began and ended; and the
name of the principal or designee who was verbally informed following the restraint; and, as applicable, the name of the principal or designee who approved continuation of the restraint beyond 20 minutes pursuant to 603 CMR 46.05(5)(c).

(b) A description of the activity in which the restrained student and other students and staff in the same room or vicinity were engaged immediately preceding the use of physical restraint; the behavior that prompted the restraint; the efforts made to prevent escalation of behavior, including the specific de-escalation strategies used; alternatives to restraint that were attempted; and the justification for initiating physical restraint.

(c) A description of the administration of the restraint including the holds used and reasons such holds were necessary; the student's behavior and reactions during the restraint; how the restraint ended; and documentation of injury to the student and/or staff, if any, during the restraint and any medical care provided.

(d) Information regarding any further action(s) that the school has taken or may take, including any consequences that may be imposed on the student.

(e) Information regarding opportunities for the student's parents to discuss with school officials the administration of the restraint, any consequences that may be imposed on the student, and any other related matter.

(5) Individual student review. The principal shall conduct a weekly review of restraint data to identify students who have been restrained multiple times during the week. If such students are identified, the principal shall convene one or more review teams as the principal deems appropriate to assess each student’s progress and needs. The assessment shall include at least the following:

(a) review and discussion of the written reports submitted in accordance with 603 CMR 46.06 and any comments provided by the student and parent about such reports and the use of the restraints;

(b) analysis of the circumstances leading up to each restraint, including factors such as time of day, day of the week, antecedent events, and individuals involved;

(c) consideration of factors that may have contributed to escalation of behaviors, consideration of alternatives to restraint, including de-escalation techniques and possible interventions, and such other strategies and decisions as appropriate, with the goal of reducing or eliminating the use of restraint in the future;

(d) agreement on a written plan of action by the program.

If the principal directly participated in the restraint, a duly qualified individual designated by the superintendent or board of trustees shall lead the review team’s discussion. The principal shall ensure that a record of each individual student review is maintained and made available for review by the Department or the parent, upon request.
(6) Administrative review. The principal shall conduct a monthly review of school-wide restraint data. This review shall consider patterns of use of restraints by similarities in the time of day, day of the week, or individuals involved; the number and duration of physical restraints school-wide and for individual students; the duration of restraints; and the number and type of injuries, if any, resulting from the use of restraint. The principal shall determine whether it is necessary or appropriate to modify the school’s restraint prevention and management policy, conduct additional staff training on restraint reduction/prevention strategies, such as training on positive behavioral interventions and supports, or take such other action as necessary or appropriate to reduce or eliminate restraints.

(7) Report all restraint-related injuries to the Department. When a physical restraint has resulted in an injury to a student or program staff member, the program shall send a copy of the written report required by 603 CMR 46.06(4) to the Department postmarked no later than three school working days of the administration of the restraint. The program shall also send the Department a copy of the record of physical restraints maintained by the principal pursuant to 603 CMR 46.06(2) for the 30-day period prior to the date of the reported restraint. The Department shall determine if additional action by the program is warranted and, if so, shall notify the program of any required actions within 30 calendar days of receipt of the required written report(s).

(8) Report all physical restraints to the Department. Every program shall collect and annually report data to the Department regarding the use of physical restraints. Such data shall be reported in a manner and form directed by the Department.

### 46.07 Effective Date

The effective date of 603 CMR 46.00, as amended, is January 1, 2016.

Per Massachusetts State Regulation 603 CMR 46.00, parents have the right to consent or waive restraint procedures of their child as defined below:

“Consent shall mean agreement by a parent who has been fully informed of all information relevant to the activity for which agreement is sought, in his or her native language or other mode of communication, that the parent understands and agrees in writing to carrying out the activity, and understands that the agreement is voluntary and may be revoked at any time. The agreement describes the activity and lists the records (if any) which will be released and to whom. In seeking parental consent, a public education program shall not condition admission or continued enrollment upon agreement to the proposed use of any restraint.

- **Procedures Regarding Restraint in Behavior Plans:**
  - Parents/Guardians will be fully informed of all information relevant to the activity for which agreement is sought, in his or her native language or other mode of communication, that the parents/guardians understand and agrees in writing to carry out
  - Parents/Guardians will be provided the right to consent or waive a restraint component of a developed behavior
  - A form will be signed by the parents/guardians indicating whether they consent or waive the restraint component of the child’s behavior plan
- This form will be kept on file. The parents/guardians can revoke consent at any time, in writing.

**Anti-Bullying:**

Pursuant to the Anti-Bullying law, Scituate Public Schools has developed a policy and procedure to address this concern. The Special Education Department has also added the procedure of writing in goals and objectives for students receiving IEP services for whom being a target or being an aggressor may be an issue.

**District Anti-Bullying Policy Link:**
http://z2policy.ctspublish.com/masc/DocViewer.jsp?docid=257&z2collection=scituate#JD_JICFB

The IEP Team shall consider for all students receiving IEP services whether or not they are vulnerable of being a victim of or perpetrator of bullying. The Team shall then address concerns should the answer be yes to either question through goals in the IEP and services to address these concerns. The N1 shall indicate the Team has addressed these concerns through by the following written statement:

* With guidance from the Special Education Technical Assistance Advisory SPED 2011-12: Bullying Prevention and Intervention, the following statement indicates our consideration of your child’s disability and the potential impact that has on your child’s social interactions with peers with regard to ‘being at risk of being bullied or exhibiting bullying behaviors’
Special Education

Technical Assistance Advisory SPED 2011-2: Bullying Prevention and Intervention

To:
Superintendents, Charter School Leaders, Principals, Administrators of Special Education, Directors of Approved Special Education Private Schools, Directors of Educational Collaboratives, and Other Interested Parties

From:
Marcia Mittnacht, State Director of Special Education

Date:
February 11, 2011

Introduction

The purpose of this advisory is to provide guidance to address changes to Massachusetts educational practice relating to students with disabilities stemming from enactment of the bullying prevention and intervention law. This advisory covers the following topics:

- The Massachusetts Bullying Prevention and Intervention Law
- Leadership and Schoolwide Efforts
- Evaluating Social Skills Development
- Skills and Proficiencies Students Need to Respond to Bullying, Harassment, or Teasing
- Implications for the Individualized Education Program (IEP)
- Students with Disabilities under Section 504

I. The Massachusetts Bullying Prevention and Intervention Law

In May 2010, Governor Patrick signed into law comprehensive legislation to address bullying in public and non-public schools. Chapter 92 of the Acts of 2010 (An Act Relative to Bullying in Schools) requires school leaders to create and implement strategies to prevent bullying, and to address bullying and retaliation promptly and effectively if they occur. Sections 7 and 8 of the law have specific implications for the IEP process and for students with disabilities.

Section 7 states: Whenever the IEP Team evaluation indicates that a student’s disability affects social skills development, or when the student's disability makes him or her vulnerable to bullying, harassment, or teasing, the IEP must address the skills and proficiencies needed to avoid and respond to bullying, harassment, or teasing. (G.L. c. 71B, §3, as amended by Chapter 92 of the Acts of 2010.)

Section 8 states: For students identified with a disability on the autism spectrum, the IEP Team must consider and specifically address the skills and proficiencies needed to avoid and respond to bullying, harassment, or teasing. (G.L. c. 71B, §3, as amended by Chapter 92 of the Acts of 2010.)
In August 2010, the Department released a Model Bullying Prevention and Intervention Plan for districts to use in creating their local plan. The Model Plan is organized in a format that parallels the Behavioral Health and Public Schools Framework. School districts are encouraged to approach the special requirements related to students with disabilities in Section 7 and Section 8 of the bullying prevention and intervention law in the same whole school context as they approach the development of their local plan for bullying prevention and intervention.

II. Leadership and School wide Efforts

Strong leadership and school wide climate improvement efforts are essential and must go hand-in-hand with individual student supports if schools are to address effectively the prevention of bullying of students with disabilities. This integrated approach consists of school wide efforts, as outlined in the Model Plan, and the individual student supports provided through the IEP process that will build students' skills and proficiencies to avoid and respond to bullying. It will require communication, coordination, and cross-training between general and special education staff, and between staff and parents, to ensure that the school wide efforts address the needs of students with all types of disabilities.

Efforts to review bullying prevention and intervention policies with an understanding of the needs of students with disabilities and explicit ways of including all students in the school wide bullying prevention and intervention curriculum will foster supportive and safe school environments. These efforts also will support IEP Teams as they meet to address the needs of individual students. Additionally, an effective social skills curriculum that must be part of all schools' bullying prevention efforts will support the needs of most students with disabilities, as well as students without disabilities. By combining whole-school efforts with those taking place on behalf of individual students with disabilities, schools and districts can reduce the threat of bullying of and by this population, and continue to make progress toward school safety and the effective inclusion of all students in their school communities.

III. Evaluating Social Skills Development

Since disabilities can affect multiple aspects of a student's life, the student's individual evaluation must be comprehensive in order to identify areas affected by the disability and to allow for appropriate supports to ensure student success. During the evaluation process, the IEP Team must gather relevant data and information related to the student's social skill development. Massachusetts regulations require initial evaluations to include: "an assessment of the student's attention skills, participation behaviors, communication skills, memory, and social relations with group, peers, and adults." Similarly, federal IDEA regulation 34 CFR 300.304 (c)(4) requires that "the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities." (Emphasis added.) Generally speaking, this means that well planned evaluations will contain the information that IEP Teams need to address the special requirements of the bullying prevention and intervention law for students with disabilities.

Sections 7 and 8 of the bullying intervention and prevention law refer to three groups:

Students with disabilities

- on the autism spectrum;
• when the disability affects social skills development; and
• when the disability may result in a vulnerability to bullying, harassment, and teasing.

The Department recommends that IEP Teams for these students carefully consider the supports needed to build each student's social skills and proficiencies to avoid and respond to bullying, harassment, or teasing.

IV. Skills and Proficiencies for Students

The Department reviewed a wide range of information on available skill building programs and offers this list from The Collaborative for Academic, Social, and Emotional Learning (CASEL). CASEL has reviewed current research and identified specific skills and proficiencies needed to avoid or respond to bullying, harassment, and teasing. The skills and proficiencies that a school district may incorporate into its general curriculum, or that an IEP Team may identify in the student's IEP, may include but are not limited to the following core categories identified by CASEL:

• **Self-Awareness:** accurately assessing one's feelings, interests, values, and strengths/abilities, and maintaining a well-grounded sense of self-confidence.
• **Self-Management:** regulating one's emotions to handle stress, control impulses, and persevere in overcoming obstacles; setting personal and academic goals and then monitoring one's progress toward achieving them; and expressing emotions constructively.
• **Social Awareness:** taking the perspective of and empathizing with others; recognizing and appreciating individual and group similarities and differences; identifying and following societal standards of conduct; and recognizing and using family, school, and community resources.
• **Relationship Skills:** establishing and maintaining healthy and rewarding relationships based on cooperation; resisting inappropriate social pressure; preventing, managing, and resolving interpersonal conflict; and seeking help when needed.
• **Responsible Decision-making:** making decisions based on consideration of ethical standards, safety concerns, appropriate standards of conduct, respect for others, and likely consequences of various actions; applying decision-making skills to academic and social situations; and contributing to the well-being of one's school and community.

V. Implications for the Individualized Education Program (IEP)

Because the IEP serves as a vehicle for improving the educational experience and achievements of a student with disabilities, the IEP Team uses a variety of information sources, including evaluations, assessment information, and its discussions of the student's present level of educational performance and social acumen, to inform the development of the IEP. The IEP Team's discussion focuses comprehensively on the student's educational needs and on the student's overall involvement in the school, including participation in the general curriculum and in extracurricular and other nonacademic activities. In this process, the IEP Team considers the student's disability and the impact of the disability on the student's interaction and communication with others.

• For all three groups of students with disabilities named in the bullying prevention and intervention law, the IEP Team must consider how the student's disability affects his/her learning the skills and proficiencies needed to avoid and respond to bullying, harassment, or teasing. Many students will receive support in developing appropriate...
skills and proficiencies through general instruction. In such cases, the Team should include in the IEP any supports the student needs to learn the needed skills through the existing curriculum. As appropriate, the Team should include in the IEP needed accommodations to the general education program, or goals and objectives and special education services related to student's learning the necessary skills.

- Because of the nature of Autism Spectrum Disorders (ASD), progress in positive social skill development is already a likely focus within the IEP of every student with ASD. Social skills instruction should be at the student’s skill level and appropriate for his/her age. The focus of the IEP in relation to the bullying intervention and prevention law will be to aid the student in accessing social and emotional learning to handle more effectively challenges in his/her academic, social, and communication realms.

- IEP Teams should consider ways that the age-appropriate instruction on bullying prevention and intervention incorporated into the school’s general curriculum already assists a student with a disability in these areas and should reflect this discussion in the IEP. As noted earlier, the IEP should address those skills and proficiencies that the Team has determined the student would be unlikely to learn solely within the general curricular program, or any supports the student needs to make learning possible in the general curricular program.

- IEP Teams should consider whether modifications or services are needed for students with all types and severities of disabilities to be involved and progress in the school’s or district’s bullying prevention and intervention program that is incorporated into the school’s or district’s general curriculum. Also, Teams should ensure that students can participate fully in all procedures related to the reporting and investigation of bullying incidents. The district must ensure that the IEP Team includes a member of the school's staff who is knowledgeable about the school's bullying prevention and intervention general education curriculum when those issues are discussed at a Team meeting.

- Incorporated within the Team meeting process and the Team’s discussion of a student's skills and proficiencies to respond to bullying, harassment, or teasing may also be education for families about the district's bullying prevention and intervention plan, the general education curriculum the school is using to instruct all students about bullying prevention and intervention, and the reporting mechanisms that are in place within the school.

School districts are not required to reconvene IEP Team meetings for currently eligible students solely to discuss the law's new requirements for bullying prevention or intervention. However, each time the IEP Team convenes, the Team should consider whether the student has been involved in any bullying incident, and use that information to inform its discussion of the student's needs. Additionally, the district should convene the IEP Team if the parent or any staff member believes that the student is at risk of being bullied or is exhibiting bullying behavior and such risk or behavior is directly tied to the student’s disability. In many cases, effective school special education practices will have already identified social skills instruction and other bullying prevention measures in eligible students' IEPs.

The following are sample considerations that the Team may include in a student's IEP, as appropriate:

- Provide instructional personnel or supplementary aids and services during identified periods of the school day (e.g., lunch, recess, study hall, bus) when the student requires additional support.
Identify a "safe" adult to whom the student can go for support when feeling vulnerable or targeted.

Provide additional counseling for skill-building supports to prevent or respond to bullying.

Provide a communication skills/social pragmatics skills group.

Provide a Functional Behavioral Analysis and develop a Behavioral Intervention Plan that identifies target or aggressor behaviors, identifies antecedents to these behaviors, and proposes interventions for teaching the student to reduce and/or avoid these behaviors.

Teach appropriate responses to bullying, harassment, and teasing.

Provide opportunities for the student to develop and practice a safety action plan.

Identify skills or accommodations necessary for school success — educationally and socially.

These considerations are illustrative of several ways that the Team may address a student's identified needs. Teams must consider the individual circumstances and needs of each student in order to ensure that the skills and proficiencies needed to address and respond to bullying, harassment, and teasing are supported in the IEP. IEP Teams cannot prevent or respond to bullying alone; the Team's efforts to help individual students develop the necessary skills and proficiencies to prevent or respond to bullying must also be supported and informed by the broader bullying prevention and intervention initiatives taking place at the school and district level.

A Department resource document entitled "Addressing the Needs of Students with Disabilities in the IEP and in School Bullying Prevention and Intervention Efforts" is available at http://www.doe.mass.edu/bullying/considerations-bully.html for IEP Teams and districts to consult as they serve Massachusetts students with disabilities. In addition, the Department publishes links to other bullying prevention and intervention resources on its website at http://www.doe.mass.edu/bullying/.

VI. Students with Disabilities under Section 504

Students with disabilities who are eligible for aids and services under Section 504 of the Rehabilitation Act of 1973, as amended, must have access to bullying prevention and intervention programs, activities, and protections. Pursuant to Section 504, no student with a disability may be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any of a school's programs. This includes the district or schoolwide bullying prevention and intervention curricula, programs, services, or initiatives. Under Section 504, schools must ensure that any 504-eligible student, regardless of the nature or severity of the student's disability, receives a free appropriate public education. Schools must provide services and/or accommodations in academic, non-academic, and extra-curricular programs and activities in such a manner as is necessary to afford the student equal access and opportunity.

Closing

In closing, the Department acknowledges the challenges faced by schools and families when dealing with the issues of bullying, harassment, and teasing of all students and, most particularly, students with disabilities. The Department is continuing to develop resources for schools to use to implement the requirements of the bullying prevention and intervention law, and to support districts' and schools' comprehensive efforts to ensure safe and supportive learning environments for all students.
Resources focusing on bullying prevention and intervention are available on the Department's website at http://www.doe.mass.edu/bullying/. Working together, we can help to ensure that all students are able to access a free and appropriate education in a safe, civil, and supportive learning environment.

1 http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter92
2 http://www.doe.mass.edu/ssce/bullying/ModelPlan.pdf
3 http://bhps321.org/

4 The bullying prevention and intervention law requires the Department to publish guidelines for implementing social and emotional learning curricula by June 30, 2011. This timeline is contained in Section 16 of the bullying prevention and intervention law: http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter92.


6 The Collaborative for Academic, Social, and Emotional Learning (CASEL - www.casel.org) is an organization formed in 1994 that provides national and international leadership to enhance scientific research on social and emotional learning (SEL) and to expand the effective practice of SEL in schools. SEL is defined by CASEL and in the bullying prevention and intervention law (Section 16), as the process by which children acquire the knowledge, attitudes, and skills necessary to recognize and manage their emotions, demonstrate caring and concern for others, establish positive relationships, make responsible decisions, and constructively handle challenging social situations.

7 Sections 7 and 8 of the bullying prevention and intervention law do not apply to a student identified as a student with a disability under Section 504, because Sections 7 and 8 apply solely to students eligible for special education services under c. 71B.

8 Section 504 applies to programs or activities that receive federal financial assistance. 34 CFR 104.4.

9 Bullying conduct may also constitute harassment under Section 504 and violate a student's civil rights. For more information, see October 26, 2010 Dear Colleague letter from U.S. Department of Education, Office for Civil Rights, at: http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html

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Bullying Prevention and Intervention Resources

Addressing the Needs of Students with Disabilities in the IEP and in School Bullying Prevention and Intervention Efforts

Issued: February 11, 2011

I. Leadership
II. Training And Professional Development
III. Access To Resources And Services
IV. Academic And Non-academic Activities
V. Policies And Procedures For Reporting And Responding To Bullying
VI. Collaboration With Families
Appendix

This resource document contains tools to assist schools and IEP Teams to prevent bullying of students with disabilities and to enable Teams to comply with special education-related provisions of the law. The document is organized according to the Behavioral Health and Public Schools Framework. The Framework sections are used in the Model Bullying Prevention and Intervention Plan and in this document so that whole school approaches and individual supports for particular students can be aligned with each other. This will help to include students with disabilities in the school- and district-wide bullying prevention and intervention initiatives from which all students should benefit. These Framework sections are leadership, training and professional development, access to resources and services, academic and non-academic activities, policies and procedures for reporting and responding to bullying, and collaboration with families.

The Department is making this document available to all educators - general and special education teachers, administrators and student support staff - in recognition of the collaboration between special education and general education that is necessary to address proactively and effectively the needs of students with disabilities relative to bullying. By bridging whole-school efforts with those taking place on behalf of individual students with disabilities, we can begin to eliminate the threat of bullying for this vulnerable population and continue to make progress toward the long-term goal of safely and effectively including all students in their school communities.

First, the document provides assistance in the form of questions to help Teams determine which students are covered by the new law and what their needs may be. Second, the document provides questions for schools to consider in order to enable the broader bullying prevention and intervention initiatives taking place at the school and district level to support the efforts of IEP Teams to help individual students develop necessary skills and proficiencies. These questions, organized by each Framework section, are titled Whole School Considerations, to help educators begin a planning process about the role of the entire school community in supporting students with disabilities. A third set of guiding questions in each Framework section, titled Questions for IEP Teams, is written primarily for those who are directly involved in the IEP development process - special education directors, Team chairpersons, general and special educators, parents, service providers, and others. They provide guidance for Team members as they develop IEPs that will help individual students build the skills and proficiencies necessary to avoid and respond to bullying, teasing, and harassment as required by the new bullying prevention and intervention law. The Framework informs the IEP development process as it helps Teams to holistically address all of a student's needs.
Determining whether a student is covered by Sections 7 and 8 of the bullying prevention and intervention law and identifying his or her needs

IEP Teams must determine whether the sections 7 and 8 provisions of the Massachusetts bullying prevention and intervention law apply to eligible students. The provisions apply if the student’s disability (a) is on the autism spectrum, or (b) affects social skills development, or (c) makes the student vulnerable to bullying, harassment, or teasing.  

For students on the autism spectrum, protection under the law will be automatic. For students in the other two categories, the Team must make a determination as to whether the student’s disability affects social skills development or renders the student vulnerable to bullying, harassment, or teasing. Teams should be aware that students with emotional impairments, developmental delays, health impairments, communication disorders, and neurological impairments are likely to have a disability that affects their social skills development. However, Teams should carefully evaluate whether students with any type of impairment have delays in social skills development or are otherwise vulnerable to bullying, harassment, or teasing because of their disability.

The questions below are designed to help the Team to determine whether the student has a disability that renders him/her vulnerable to bullying, harassment, or teasing. In addition, the questions will help to identify a student’s specific needs and inform the process of developing specific goals and objectives for the student. In preparation for consideration of these questions at the Team meeting, it may be helpful to provide the student and parent with a bullying prevention and intervention survey, consisting of these questions, which should be modified to the student’s developmental level. In addition, the school could conduct an individual interview about the student’s social experiences at school.

Questions to Consider:

- Does the student feel safe at school? If not, why not?
- Is the school aware of the student being a target of bullying? Do educators believe the student could potentially become a target? Why?
- Are parents aware of any incidents of bullying against the student? When? Where? What was the nature of the bullying? Did the bullying occur in school (if so, where? e.g., hallway, cafeteria), out of school, on a transportation vehicle, or was it cyberbullying? When the parent addressed the question with the student, did the student understand that bullying had taken place?
- Does the student have a clear understanding of what bullying is and is he or she able to identify bullying attempts (as well as teasing and harassment)?
- Does the student display particular verbal or nonverbal behavior that makes him/her more vulnerable to bullying?
- Does the student engage in behavior that might be identified as bullying? Is there concern that any new or emerging behavior might be identified in this way?
- Given the specific nature and extent of the student’s disability, is the student able to conform to the school’s code of conduct relative to bullying prevention and intervention?
- Is the student able to access the general education curriculum, including the bullying prevention and intervention curriculum?
- Does the student have sufficient self-advocacy skills to obtain help/know what to do if he/she is bullied?
• What particular skills does the student need to develop to guard against becoming a target or to stop aggressive behaviors directed toward him/her?
• Does the student have friends at school/in the community who would report bullying or defend the student if the student is subjected to bullying?
• Is the student socially isolated? Does the student spend time physically removed from his or her peers? What has been done to integrate the student into the social life of the school during the school day and during extracurricular activities?
• Does the student have someone she/he trusts at school to whom she/he may report bullying?
• Does the student have an aide? If so, is this aide present during high-risk time periods (e.g., recess, lunch)?
• Are there times of day with less adult supervision and less structure where bullying is more likely to occur? Are there places in the building where bullying is more likely to occur?
• Is there a Behavioral Intervention Plan for the student and, if so, is it being followed? Does it need to be amended to include new information regarding bullying prevention and intervention strategies?

Using The Framework To Develop The IEP

After the IEP Team has identified a student's needs, the Team could use the Framework outlined below to guide a discussion of what goals, objectives services, supports, instruction, and accommodations should be included in the student's IEP. Using the Framework to guide the IEP development process is a helpful way of ensuring that all of a student's needs are taken into account and that the IEP, with appropriate accommodations, is aligned with the school's and district's broader efforts to prevent and intervene in incidents of bullying. In addition, using the Framework helps to ensure that the necessary adjustments to the school environment needed to support and reinforce the student are addressed.

In considering what goals may be appropriate for an individual student, the Department's Technical Assistance Advisory SPED 2011-2: Bullying Prevention and Intervention referred to the Collaborative for Academic, Social, and Emotional Learning (CASEL) for current research on specific skills and proficiencies needed to avoid bullying, harassment, and teasing. As the IEP Team moves through the process outlined below, it may wish to consider overarching goals from the core categories identified by CASEL: Self-Awareness, Self Management, Social Awareness, Relationship Skills, and Responsible Decision-making.

The approaches in this document are informed by current research on bullying prevention and intervention as well as by research and practice from those who work with students with disabilities, including students with autism and other disabilities that affect social skills development. By no means are these lists exhaustive; rather, they are illustrative of the types of matters Teams should be considering. (See Appendix for detailed descriptions of how and why these strategies are key to addressing specific bullying risks as well as to developing general skills that will reduce the student's vulnerability to bullying over time.)
I. Leadership

Whole School Considerations

- Does leadership convey to the school community that an inclusive school-wide culture and the explicit teaching of civility and tolerance are essential to prevent bullying, particularly bullying of students with disabilities?
- Does leadership ensure that all educators - general and special education - have a sense of shared responsibility to help students with disabilities feel connected to and part of the school community, and ensure that there are sufficient opportunities for communication between general and special education staff to allow for coordinated implementation of IEP goals relative to bullying prevention and intervention?
- Do all educators - general and special education - share responsibility for: 1) helping students with disabilities feel connected to and part of the school community; and 2) assisting with the implementation of IEP goals relative to bullying prevention and intervention?
- Are staff, parents, and other experts knowledgeable about the particular needs of students with disabilities, including the students themselves, involved in ongoing planning and discussions about the needs of this population relative to bullying prevention and intervention?
- Do the school’s bullying prevention and intervention protocols reflect the needs of students with disabilities, including assisting them to make reports about bullying?
- Do incident reports track numbers of involved students with disabilities along with other data suggested by the Model Plan?
- Are parents and their students with disabilities surveyed to assess services and information that might be useful and concerns that might not be known to staff?
- Are educators and staff surveyed to determine professional development needs and particular concerns about bullying prevention and intervention for students with disabilities?

Considerations for IEP Teams:

Does the school leadership need to:

- approve staffing arrangements necessary to monitor the student throughout the day?
- inform members of the staff to be vigilant about the student’s safety?
- create opportunities for general and special education staff to consult together about the student?

Sample IEP Provisions to Consider - These provisions might be included in the Additional Information section of the IEP or in the Accommodations section of Present Levels of Educational Performance (PLEP) A or PLEP B.

- Provide instructional personnel or supplementary aides and services during identified periods of the school day (lunch, recess, study hall, bus, free times) when the student requires additional support or instruction in order to respond to or avoid bullying.
- Inform leadership, particularly those with disciplinary responsibilities, of disability-related IEP accommodations to the student code of conduct for a particular student.
• Identify any and all staff within the building (guidance counselor, nurse, cafeteria workers, bus drivers) whom leadership should inform to pay particular attention to the student with regard to bullying prevention and intervention.

II. Training and Professional Development

Whole School Considerations

• Does training for all staff in the school include the following points of understanding?
• Students with disabilities can form successful relationships with other students and participate fully in school activities when provided with sufficient supports and opportunities for interactions.
• Students with autism spectrum disorder and students with other disabilities affecting communication and social skills are vulnerable targets for bullying because they often lack the skills necessary to understand social cues. Sometimes these students are viewed as atypical or "odd" when they engage in "quirky" behaviors. Unable to understand when they are in a bullying situation, they can have difficulty protecting themselves and require specialized teaching, supports, and services to help deal with the problem.
• Students with emotional impairments, such as attachment, post-traumatic stress, and impulse control disorders, can be at risk for being both targets and aggressors. Some are easily persuaded to participate in bullying behavior. Others may adopt a "strike first" posture due to having been bullied or excluded in ways that have not been evident to adults. It is important to be alert to signs of stress and communicate openly with parents to identify underlying causes of behavior for these students.
• Disability awareness among staff and students will increase understanding and empathy for students with social, emotional, communication, and behavioral differences and motivate them to intervene if a student with a disability is involved in bullying. This includes helping staff and students understand that unusual and disruptive behaviors, including noises, rocking, and pacing, may be meeting a student's internal needs and are not addressable by behavioral interventions.
• Students with disabilities must be taught to avoid and respond to teasing and harassment as well as bullying. Staff may need to be trained on the differences among these three categories so they can teach students how to respond accordingly.

Considerations for IEP Teams:

• Is there a need for specialized training or consultation for staff who will be working with the student?

Sample IEP Provisions to Consider - These provisions might be included in the Additional Information section or Section A of the Service Delivery Grid.

• Provide training to staff (either the entire staff or selected staff members involved with the particular student) on strategies or approaches necessary to avoid and/or respond to bullying.
• Provide ongoing consultation to the student's classroom teachers, or other direct service providers, from a professional (either in- or out-of-district) with expertise in avoiding
and/or responding to bullying in the context of the student's particular needs and disabilities.

- Provide specific training and consultation to staff related to the student's particular disability.

### III. Access to Resources and Services

#### Whole School Considerations

- Does the school offer a range of flexible individualized supports and services (including individual and group counseling, social skill building, pragmatics groups, friendship groups, etc.) that are specifically designed to address issues related to bullying and to help students with disabilities participate in the school community?
- Are educators, specialists, and providers who interact with a student given time and opportunity to communicate regularly with each other so they can collaborate effectively and ensure that each knows and can reinforce in the classroom and throughout the day the specific skills the student is working on, adjust the school environment to meet the student's needs, and be alerted in a timely way should a bullying incident occur?
- Do specialists and providers require particular skills in order to provide consultation to educators and to help students avoid becoming targets and/or aggressors?
- Do group and individual services supporting students' safety plans teach the steps of safety planning?
- Are individual and small group interventions used in order to balance skill acquisition with opportunities for generalization?
- Do services use a range of approaches, adapted to a particular student's needs and known to be effective with this population, including repetition, role play, providing an array of scenarios to enhance generalization, and videotaping appropriate responses?

#### Considerations for IEP Teams

- Is there a need for additional counseling or skill-building?
- What supports and services outside of the classroom are necessary to build the student's skills and proficiencies to avoid bullying?
- Do referrals need to be made to outside agencies with particular expertise?

#### Sample IEP Provisions to Consider

- These provisions might be included in the Additional Information section, the Transportation section, or Section C of the Service Delivery Grid.

- Provide a social skills group to help the student develop social competencies and gain skills necessary to identify a potential bullying situation and to respond appropriately. There are multiple types of social skills groups, and Teams should consider which of the following options are needed for the individual student:
  - Specifically designed social skills group
  - Social lunch group *(See Appendix #3.)*
  - Social recreation group *(See Appendix #3.)*
- Provide a communication skills/social pragmatics skills group. This group might serve several purposes:
  - Help the student understand who to go to with a problem related to bullying, how to say what the problem is, and when to tell someone.
• Help the student develop the ability to express what she/he wants and needs, using both verbal and non-verbal expressions, as a way to avoid becoming a target when interacting with peers and to report bullying incidents to an adult.

• Provide direct one-to-one instruction using the specific techniques of a Social Story\textsuperscript{10}, role plays\textsuperscript{11}, and/or other strategies identified by the IEP Team to teach the student how to respond in bullying situations. (Note that these techniques require specialized training and a small group setting with students of similar abilities and needs.) (See #1 in the Appendix.)

• Provide direct one-to-one instruction by a school psychologist, speech and language pathologist, or other appropriate professional to help the student learn how to increase pragmatic skills (instruction in the social use of language) to reduce his/her vulnerability to bullying; such skills can include distinguishing between friendly overtures and attempts to bully, learning to read the nonverbal aspects of communication, and learning to discern and respond appropriately to bullying situations. (See #2 in the Appendix.)

• Provide school-based counseling with the school psychologist, guidance counselor, or other appropriate professional, that uses cognitive-behavioral approaches that have shown promising success in addressing all domains of social functioning.

• Provide a Functional Behavioral Analysis and develop a Behavioral Intervention Plan that identifies target or aggressor behaviors and antecedents to these behaviors, and proposes interventions for teaching the student to reduce and/or avoid these behaviors.

• To the extent that the student is receiving Applied Behavioral Analysis (ABA) services, consider having the student's target or aggressor behaviors addressed by these services.

• Provide assertiveness and/or self-advocacy training.

• Provide a bus monitor if a student is routinely a target or aggressor on the school bus.

IV. Academic and Non-academic Activities

Whole School Considerations

• Is the bullying prevention and intervention curriculum designed with the needs of students with disabilities in mind? (Refer below to discussion of the specialized instruction, modifications, and accommodations that IEP Teams should use to ensure students with disabilities can access the bullying prevention and intervention curriculum.)

• Is the emotional impact of the bullying prevention and intervention curriculum recognized? For many students with disabilities, discussing bullying may feel highly personal and uncomfortable. Educators should consider the potential emotional response to this material and collaborate with IEP Teams to consider accommodations that go beyond those listed in the IEP.

• Does instruction focus on understanding of and tolerance for disabilities? Instruction in each grade should teach about all types of disabilities, including those that are hidden or affect communication, social and behavioral skills, in order to focus on respect and acceptance for differences and promote the development of empathy for students with all disabilities.

• Are educators prepared to help students report? Educators should be mindful that many students with disabilities will need special assistance in recognizing and reporting when they are in a bullying situation. In addition, monitoring and check-ins with students may be necessary in order to ensure that bullying incidents are addressed.

• Are students adequately supported during unstructured times? Opportunities for bullying increase during unstructured times, such as nonacademic and recreational activities, and in specialty classes, such as art and gym. Communication and collaboration among staff is
critical for ensuring that students with disabilities are supported during these times.

Considerations for IEP Teams

- **Have all of the student’s needs for modifications and accommodations to access the general education bullying prevention and intervention curriculum been addressed?**
- **Is the student being provided with opportunities to build social skills and self-advocacy skills in the classroom and during unstructured parts of the day (e.g., lunch, recess, etc.)?**
- **Are the student’s non-academic strengths (music, art, sports, etc.) being used as ways to bolster the student’s self-esteem and social skills?**
- **What supports does the student need, and what corresponding changes need to take place in the activity the student is joining, for the student to participate successfully, without fear of bullying?**

Sample IEP Provisions to Consider - **These provisions might be included in PLEP A, in the Testing Accommodations section, in Section B or Section C of the Service Delivery Grid, or in the Additional Information section.**

- Modify the school's bullying prevention and intervention curriculum so that it is in a form that the student can understand. Review the curriculum with the student and ensure that the student understands the bullying prevention and intervention program that is in place in the school. Choose a setting and format that will be comfortable for the student, establish goals and ideas to reinforce concepts (and communicate these to parents), and re-teach each school year. Build the plan according to the student's strengths, teaching one concept at a time and using visual strategies/social stories/role-plays. Create a basic curriculum for the student that pulls the main concepts out of the school's bullying prevention and intervention curriculum and uses a vocabulary appropriate to the student's level.12
- Provide supported and monitored opportunities for the students to practice developing social skills in a larger group setting within the general school population. This helps to reinforce the skills introduced and practiced in the small group setting.
- Instruct the student on how to use relaxation techniques to maintain self-control. In particular, teach strategies to remain relaxed and focused on the known facts of the incident despite feeling upset about the words and actions of the aggressor.
- Reinforce strategies to teach the student how to address bullying in a safe way, including walking away after they have responded to a bullying situation and accessing their "home base" or their "safe person."
- Provide specialized instruction to the student that includes the following components:
  - practice
  - reinforcement
  - extra practice
  - explicit instructions
  - generalization
- Develop a specific Behavioral Intervention Plan and ensure that classroom teachers are aware of specific strategies that they are to use.
• Construct assignments creatively based on a student's strengths and how she/he learns best; allow him/her to use his/her strengths to aid other students, thereby forming the basis for friendship and developing self-esteem and self-confidence.
• Allow extra time/consideration when completing communication-based assignments that encourage the student to express himself/herself.
• Provide non-academic and extracurricular opportunities for the student to demonstrate his/her strengths, practice social skills, and develop self-esteem.

V. Policies and Procedures For Reporting And Responding To Bullying

Whole School Considerations

• Does school policy address the need for students with disabilities to experience the school as safe and supportive, have a clear understanding of what bullying is, know how to respond when incidents of bullying occur, and feel comfortable making reports of bullying?
• Is there a policy that adults check-in with students with disabilities to gather accurate information regarding safety issues?
• Does the policy direct adults identified as a student’s "safe person" by the Team to be responsible for communicating the student's needs to the Team and/or school staff?
• Are general education staff responsible for collaborating with IEP Teams when a bullying incident occurs so that they understand any special considerations for the student(s) involved?
• Does the policy direct the principal or designee to consult with the IEP Team and/or "safe person" so that bullying investigations involving a student with disabilities consider specific supports that students may need to communicate effectively?
• Does the policy direct school personnel to consult with the IEP Team to consider the role a student's disability may have played in the behavior before disciplining or reporting an incident to the police?
• Is there a policy in place to consider with the IEP team any adjustments to the school environment that may be necessary (including increased adult supervision at transition times and in locations where bullying occurred) to enhance a student's sense of safety after being the target of a bullying incident?

Considerations for IEP Teams

• Has the student received specialized instruction on the relevant policies and procedures contained in the school's bullying prevention and intervention plan?
• Have the necessary modifications been made for the student to be able to report bullying in a way that is consistent with his/her communication skills?
• Has a safety plan been developed for the student, if needed?

Sample IEP Provisions to Consider - These provisions might be included in the Additional Information section or in the Accommodations section of PLEP A or PLEP B.

• Provide direct instruction in all of the relevant policies and procedures contained in the school's bullying prevention and intervention plan.
Modify the form that is used to report bullying to address communication, cognitive, or other barriers resulting from the student's disability.

Identify specific individuals to whom the student knows she/he can immediately report incidents of bullying. Also, ensure that the student knows that every adult is an available reporter.

Identify a "home base" (a place in the school where the student feels safe) with the student's input. (See #4 in the Appendix.)

Appoint a "safe person" chosen by the student and parents to perform several related functions. (See #4 in the Appendix.)

Develop a "safety plan" that includes the following:
- "Checking in" with the student on a regular basis to determine if the student is feeling safe from bullying, has witnessed any episodes of bullying that are troubling him/her, or has engaged in any behaviors that might be seen as bullying.
- Ensuring that necessary adjustments to the school environment, as determined by the Team, are made. Specific places, situations, and students identified by the student as potentially high-risk or vulnerable will be shared as well. Increased supervision, accompanied by an aide or a fellow student, or other such plans will be considered.
- Communicating with all staff who have contact with the student the specifics of the IEP as they relate to bullying prevention and intervention, including the skills the student is working on, the special considerations when a bullying incident occurs, and the specific scripts the student is to use when confronted by bullying incidents.
- Identify issues to be considered in the event a student with a disability is involved in a bullying incident, including:
  - Concern about further exclusion from the social group.
  - Changing the seat of the aggressor rather than the target.
  - Concern about stigma, arising from unique needs related to their disability.
  - Difficulty with self-advocacy.
- Other issues reflecting the social, communication, and other needs.
- Identify any necessary modifications to the code of student conduct that are appropriate based on the student's disabilities.

VI. Collaboration with Families

Whole School Considerations

- Does the school recognize the essential role of families in reinforcing/coordinating the school's bullying prevention and intervention efforts for students with disabilities?
- Does staff communicate regularly with parents about the specific skills and strategies to avoid bullying that have been developed for their child (e.g., specific vocabulary being used in the curriculum) in order to foster improved coordination and reinforcement of learning at home?
- Does the school collaborate with the Special Education Parent Advisory Council regarding bullying prevention and intervention initiatives?
- Does the school/district offer education programs for parents to share information about specific strategies and approaches known to be effective in preventing and intervening effectively in bullying with this student population?
Considerations for IEP Teams

- Does the student’s family need to receive training on the school’s bullying prevention and intervention plan or on disability-specific strategies for helping the student build the skills and proficiencies necessary to prevent and respond to bullying?
- Has the school established frequent and regular communication with parents regarding adjustments in the school environment to ensure safety, if that is in the student’s IEP?

Sample IEP Provisions to Consider - These provisions might be included in the Additional Information section or in Section A of the Service Delivery Grid.

- Provide training and/or consultation to the student’s family on the following:
  - The school’s bullying prevention and intervention plan.
  - The school’s bullying prevention and intervention curriculum and strategies to support the student’s mastery of the curriculum inside and outside of school.
  - Strategies and approaches for helping to build the student's social skills.
  - Strategies to help the student understand Internet safety and develop skills to avoid being a target of cyberbullying or an intended or unintended aggressor or participant in cyberbullying.
- Use the Team meeting process as an opportunity to educate families about the district’s bullying prevention and intervention plan, the general education curriculum the school is using to instruct all students about bullying, and the reporting mechanisms that are in place within the school.

Appendix

Sample Best Practices For Teaching Students with Disabilities about Bullying Prevention and Intervention

1) Role Playing and Social Stories

*Role Playing*: For role playing to be effective, it should be conducted by a professional in a small group setting such as a social skills group with students of similar needs. Role plays should provide explicit concrete instruction, model appropriate responses, and allow students to rehearse. Role plays should provide an opportunity to follow up with supportive feedback to students and opportunities for practicing. Role plays can be used to teach students: 1) how to respond to bullying with "I" statements (e.g., "I need you to stop." or "I am leaving now."); 2) how to walk away before bullying occurs; and 3) how to identify bullying, harassment, or teasing with negative intentions; and 4) how to tell an adult. These activities should be practiced in small group settings, using a variety of scenarios with different types of bullying behavior.

*Social Stories*: A Social Story™ describes a situation, skill, or concept in terms of relevant social cues, perspectives, and common responses in the first person, in a specifically defined style and format that includes an introduction, body and conclusion. It answers "wh" questions: who is involved; where and when a situation occurs, what is happening, how it happens and why. *The goal of a Social Story™ is to share accurate social information in a patient and reassuring manner. It is a helpful tool, and often the story needs to be read repeatedly for it to be understood by the student. Training is required for staff to use this strategy and should involve working with an educator or other educational professional who already is using Social Stories. This should be followed by practicing with the student(s) under the supervision of the experienced educator.*
2) Pragmatic Instruction and Speech Therapy

Using language to communicate effectively is the basis of pragmatics. It is instruction in the social use of language. Students with disabilities often do not notice - or notice but misinterpret - the nonverbal aspects of what other people are communicating to them, including facial expression, vocal expression, body language, gestures, volume, pauses, and so forth. Instead, these students may miss the context and hear only the words that are spoken. This also includes difficulties in areas of expressive communication such as filtering thoughts before they are spoken and socializing for the sake of interpersonal connection rather than for conveying information. This type of instruction is used to give specific information to students and then practice the "give and take" of conversation in multiple settings with many different people. Providing direct instruction to learn how to increase pragmatic skills to distinguish between friendly overtures and bullying, harassment, or teasing attempts can assist students to reflect back on their day to discuss social interactions and decide whether the interaction was friendly or mean-spirited.

3) Social Groups

Social Skills Groups: These are small groups of students with similar needs working with a qualified instructor on skills that are important to develop social competencies.

Social Lunch Groups: These can be ways for students to connect, but are not to be used in place of a social skills group; the "lunch bunch" group can be a short, comfortable, quiet time away from the confusing cafeteria to have lunch with other students and an understanding staff member who facilitates the interactions. The best situation would be for other students (with and without disabilities) to be involved, not just the student and a staff member; these are students whose adult relationships are usually fine, and the lunch time would be an opportunity to connect in a casual way with other students. There should always be the goal of working towards eating in the lunch room successfully. Use non-disabled peers as models, have staff around to make sure there is no bullying during lunch, and use any other strategies that the Team decides are important to make the lunch time successful.

Social Recreation Groups: This type of group is not skills based but is a way for students to connect and practice skills while doing something fun together.

4) "Home Base" and "Safe Person"

"Home Base": This is a location in the school selected by student and school staff where the student can go when not feeling safe. ("Safe" and "unsafe" feelings would need to be defined and taught.) This location should be a place where the student can be supervised and monitored by school staff. Some examples could include the School Adjustment Counselor's office, the main office, the resource room, or the nurse's office.

"Safe Person": This is a designated person in the school who the student can talk to and process social situations that are troubling, confusing, or agitating, including bullying, that may not be readily understood by the student. This person should be familiar to the student and have a trusting relationship already established. This needs to be a person chosen with the student and parents who understands the student and can help him or her de-escalate a situation or calm down and resume the normal school day routine. This does not need to be a specialist or a teacher but can be a staff member who knows and understands this student and can help him or her interpret confusing situations. The
Safe Person must be familiar with practices known to be helpful when working with students with disabilities that affect communication and social awareness.

1This document was developed in collaboration with the Massachusetts Advocates for Children (MAC). The Department would like to thank MAC for its contributions.

2http://bihps321.org/viewframeworkall.asp


4The following sections in the law are specific to students with disabilities: Section 7: Whenever the evaluation of the Individualized Education Program (IEP) Team indicates that the student has a disability that affects social skills development or that the student is vulnerable to bullying, harassment or teasing because of the student’s disability, the IEP shall address the skills and proficiencies needed to avoid and respond to bullying, harassment, or teasing. Section 8: Whenever an evaluation indicates that a student has a disability on the autism spectrum... the IEP Team... shall consider and shall specifically address...... the skills and proficiencies needed to avoid and respond to bullying, harassment or teasing.

5See Technical Assistance Advisory SPED 2011-2: Bullying Prevention and Intervention

6Decisions about the specifics of who would interview the student, whether the interview would be with the student alone or with parent(s), and the type of communication (verbal, visual) necessary should be made in consultation with the parent and the staff member who is most familiar with the student and his/her particular disability. The goal should be to establish an atmosphere of trust, comfort, and privacy that will enable the student to articulate any concerns.

7The Collaborative for Academic, Social, and Emotional Learning (CASEL - www.casel.org) is an organization formed in 1994 that provides national and international leadership to enhance scientific research on social and emotional learning (SEL) and to expand the effective practice of SEL in schools. SEL is defined by CASEL and in the bullying prevention and intervention law (Section 16), as the process by which students acquire the knowledge, attitudes, and skills necessary to recognize and manage their emotions, demonstrate caring and concern for others, establish positive relationships, make responsible decisions, and constructively handle challenging social situations.

8MGL c. 71B, § 3.

9Defined as small groups of students with similar needs working with a qualified instructor on skills that are important to develop social competencies. A trained professional for social skills groups may be an experienced Speech and Language Pathologist but is not limited to that profession.

10A Social Story™ describes a situation, skill, or concept in terms of relevant social cues, perspectives, and common responses in a specifically defined style and format. The goal of a Social Story™ is to share accurate social information in a patient and reassuring manner. Specialized training is required to use this technique appropriately.

11For Role Playing to be effective, it should be conducted by a trained professional (see note 4 above) in a small group setting like a social skills group with students of similar needs.
Given the nature of the bullying prevention and intervention curriculum, it is likely to evoke a highly personal and potentially emotional response to the material contained therein. Thus, the IEP Team should not expect that the adaptations typically made to academic curricula will necessarily be sufficient to address the student's needs related to bullying prevention and intervention.

Discipline procedures for students with disabilities are governed by the Individuals with Disabilities Education Act (IDEA), which should be considered in conjunction with state laws regarding student discipline. See 34 CFR 300.530 - 300.537. DESE regulations require that disciplinary actions taken against an aggressor who bullied a student balance the need for accountability with the need to teach appropriate behavior. 603 CMR 49.06(2) (b). School officials are not required to notify local police of the aggressor's conduct under 603 CMR 49.06, Notification to Law Enforcement, if school officials determine that the incident can be handled appropriately within the school. 603 CMR 49.06(2).

* See The Grey Center for Social Learning and Responsibility (Carol Grey); [http://thegraycenter.org/](http://thegraycenter.org/)

Last updated: March 4, 2011
Definitions:

Functional Behavior Assessment (FBA):
A systematic method of assessment for obtaining information about the purposes (functions) a behavior serves for a person; results are used to guide the design of an intervention for decreasing the maladaptive behavior and increasing appropriate behavior. FBAs are not required to be completed by Board Certified Behavior Analysts. Brief FBAs are encouraged to be completed by school psychologists with the consultation of BCBAs as needed. On a case-by-case basis, FBAs should be determined to be conducted by BCBAs (i.e. severity prevents or BCBAs are current Team members).

Types of FBAs (ordered least to most invasive):
1. Brief Functional Assessment: A Brief FBA is an indirect analysis of the purposes (functions) of behavior typically consisting of three parts (1) descriptive assessment, (2) structural analysis, and (3) functional analysis. Descriptive assessments include data collected via record review, interviews, checklists, and parent/provider questionnaires and rating scales. An initial descriptive analysis is completed. A structural analysis evaluates the environmental (antecedent/establishing operations and consequences) correlated with conditions the behavior. Findings are then summarized in a functional analysis including hypothesized functions and recommendations.
   a. Following the completion of the Brief FBA a Behavior Support Plan (BSP) is developed or current BSP is revised.
      - BSPs are developed and implemented to modify variables that maintain the target behavior.
      - Must include identified reinforcers for behaviors
         ● Conduct Formal Reinfcerer Assessment (if necessary)
      - BSPs or behavior change programs should meet the seven defining dimensions of applied behavior analysis: applied, behavioral, analytic, technological, conceptually systematic, effective, and generality (Baer, Wolf, and Risley 1968, 1987).
   b. Following the implementation of the BSP behavior plan treatment efficacy should be monitored and evaluated. An evaluation criterion is student/behavior specific and depends on rates and severity of maladaptive behavior. Data is continuously collected on student performance, monitored, reviewed, and evaluated. Continuation or modification of the BSP is determined. Further analysis of behavior may be required (see below- Intensive Functional Assessment Protocol).

2. Intensive Functional Assessment: An Intensive FBA includes both an indirect and direct analysis of the purposes (functions) of behavior. The same steps and protocol are completed as in a Brief FBA (as stated above) with the addition of direct data collection methods. Direct methods for data collection include direct observation of the behavior and the recording of situational factors surrounding the target behaviors. Antecedent-Behavior-Consequence (ABC) data is collected as the behavior is observed in real time by the evaluator. Direct assessment data should be collected until a pattern emerges that demonstrates a functional relationship between the student’s behavior and
his/her environment. The duration of this measure depends on how often the behavior occurs and the frequency of observation. If the behavior is not directly observed during the time allotted for evaluation indirect methods maybe used alternatively.

**When to consider a Functional Behavior Assessment (FBA):**
- When a student is not responding to interventions
- When it is unclear as to why the behavior is occurring
- When a student’s behaviors require a behavior plan
- When antecedents and/or reinforcers cannot be readily identified
- When a student is suspended multiple times or has a high number of discipline referrals
- When a pattern of trend seems to be forming
- When a student seems to engage in the same behavior regardless of consequence
- When consequences and/or rewards seem ineffective
- When a student does not appear to care or be affected by attempts to address the behavior

**Why to consider a Functional Behavior Assessment (FBA):**
- Provides more information about students’ behavior
- Helps identify factors regarding behaviors that may not be obvious
- Provides data trends and patterns
- FBA can be simple or intensive
- Helps identify the root causes, functions, and reinforcers of behaviors
- Provides data for developing an appropriate and effective behavior plan

**Step 1: Identify/pinpoint target behaviors to (1) increase and (2) decrease:**
Operationally define behaviors (see below three criteria for defining behaviors) include:
- A title or brief description of behavior (must be observable and measurable)
- Topography of behavior (what does it look like? i.e. physical movements involved)
- Frequency, length or duration, or intensity measures of behavior
- Include brief rational of importance (social validity, interference with academics/social, etc.)

**Three Important Criteria for Defining Behavior: Objectivity, Clarity, Completeness**
1. **Objectivity:** refers to observable characteristics of the behavior or to events in the environment that can be observed.
   - Example: The number of Math problems completed.
   - Non-example: Doing math in his head. Or time spent “acting up”.
2. **Clarity:** The behavior is defined clear enough for another person unfamiliar with the behavior could measure it consistently.
   - Example: A tantrum is defined as two or more of the following behaviors occurring within 5 seconds and lasting at least 10 seconds: screaming, shouting, whining, stomping feet, throwing things, or slamming doors.
   - Non-example: Count each time the student seems depressed.
3. **Completeness:** The boundaries of the behavior are clearly delineated so that responses can be easily included or excluded. This usually includes a time frame for measurement as well.
   - Example: a new episode of tantrums is counted if there is at least 10 minutes of calm between behaviors.
- Non-example: Keep track of how often the student seems happy.

**Step 2: Collaborate with Team***
- Discuss/Evaluate: behavior definitions, current supports/accommodations
- Determine if further evaluation is necessary and what type of FBA (SEE BELOW)
  - Brief Functional Behavior Assessment (Brief FBA)
  - Intensive Functional Behavior Assessment (Intensive FBA)
*This step is not required for requests submitted by parents, Director of Special Education, or Board Certified Behavior Analyst (skip to Step 3)

**Step 3: Submit formal request for a Functional Behavior Assessment**

**Step 4: Submit formal documentation and consent to parents/guardians**

**Step 5: Receive formal consent**

**Step 6: Conduct assessment and complete formal write up of findings within designated time**

**Step 7: Conduct a Team Meeting to discuss results and begin development/revision of Behavior Support Plan (BSP)**

**Step 8: Implement BSP, collect data, and monitor student progress**

**Step 9: Evaluate efficacy of BSP and revise as necessary.**
- An evaluation criterion is student/behavior specific and depends on rates and severity of maladaptive behaviors.
- This is a continuous process. Data is continuously collected on student performance, monitored, reviewed, and evaluated. The Behavior Support Plan should be modified as necessary. Further evaluation may be necessary.

The differences between a Behavior Support Plan, BSP, and Behavior Intervention Plan, BIP:
A BIP is more restrictive than a BSP and often includes safety protocols such as restraint and protective equipment. BIPs are often utilized after BSPs alone have been minimally effective at decreasing maladaptive behaviors. If a student requires a BIP any relevant information from a BSP would be embedded in the BIP (combined).
Procedure for Suspension of Students with Disabilities

Link to Scituate Policy on Suspension and Expulsion:
http://z2policy.ctspublish.com/masc/DocViewer.jsp?docid=251&z2collection=scituate#JD_JIC

Students who are suspended for ten days or fewer will be informed by an administrator of the charges against them, and provided an opportunity to respond. If a student is suspended, she/he may not appear on school grounds for any purpose during the school day or participate in or attend any extra-curricular activities during the period of suspension. His/her parents will be notified. If a student appeals a suspension, a hearing with the Principal will be held as quickly as possible. A student on suspension will be readmitted to school only after a conference between the school administration, the student, and the parent or guardian has been held.

Students who are suspended for more than ten days will have the right to a formal hearing with representation at the student’s expense and with the right to present evidence.

Procedures for Expulsion of Students

Expulsion is herein defined as the permanent expulsion of a pupil from (1) attending a public school in Scituate and (2) participating in any school associated activity.

Expulsion is a legal procedure which requires action by the Principal. The Principal, acting alone, may expel students for drug violations, weapons possession, or assault on a faculty or staff member.

The Scituate School Committee shall not permanently exclude a pupil from its public schools for alleged misconduct without first giving the student and parents or guardians an opportunity to be heard. Such hearing shall be in accordance with the procedures established by the Committee.

- Mass. Gen. Laws Ch.71 sect. 37H
- Mass. Gen. Laws Ch. 71, 37H 1/2
- M.G.L. c.76 s.17
- M.G.L. c. 222
Placement in Disciplinary Procedures
Under IDEA 2004: Section 615(k)
(To be read in conjunction with state law under M.G.L. c.71, §§ 37H & 37H1/2)

A Principal may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a student with a disability who, after a disciplinary hearing, has been found to have violated a school code of conduct.

**Student with a disability violates a school code of conduct.**

**Removal not more than 10 days**
Principal may exclude a student with a disability from the current placement without obligation to provide FAPE. This includes suspension, removal and assignment to an IAES. Disciplinary decision same as for students without disabilities.

- Notify parents of decision to take disciplinary action, not later than the date the decision is made, and of procedural safeguards under IDEA.

**Removal Exceeds 10 Days**
Notify parents of decision to take disciplinary action not later than the date the decision is made, and of procedural safeguards under IDEA. Obligation to provide FAPE continues.

**Manifestation Determination**
Within 10 school days of the decision to change placement, the district, the parent, and relevant members of the IEP Team review relevant information and make a manifestation determination.

**Yes** – Student’s conduct is a manifestation of the disability.
- Conduct FBA and implement BIP if none exists or review present BIP and modify as necessary.
- Time period for placement expires
- Hearing Officer makes a determination within 10 school days of the hearing.
- Order a change in placement to an appropriate IAES for not more than 45 school days if determined that current placement is substantially likely to result in injury to the child or others.

**No** – Student’s conduct is not a manifestation of the disability.
- Apply relevant disciplinary procedures applied to students without disabilities.
- Provide educational services that enable the student to participate in general education curriculum and progress toward goals on IEP. Any IAES must be determined by the TEAM.
- Yes – May remove student to IAES for up to 45 school days. The IAES must be determined by the Team.
- Yes – Special Circumstances: does the offense fall under “special circumstances” related to weapons, illegal drugs, controlled substances, or serious bodily injury?

**Appeal to BSEA**
A parent may request a hearing on a manifest determination or placement decision. A district may request a hearing if concerned current placement is substantially likely to result in injury to child or others. The hearing must occur within 20 school days from the date of request.

- While appeal is pending, parent and district agree to another placement OR student remains in disciplinary placement.
- Return student to the placement from which the child was removed.

**Conduct FBA and implement BIP if none exists or review present BIP and modify as necessary.**

**Yes** – Student’s conduct is a manifestation of the disability.
- Conduct FBA and implement BIP if none exists or review present BIP and modify as necessary.
- Time period for placement expires
- Hearing Officer makes a determination within 10 school days of the hearing.
- Order a change in placement to an appropriate IAES for not more than 45 school days if determined that current placement is substantially likely to result in injury to the child or others.

**No** – Student’s conduct is not a manifestation of the disability.
- Apply relevant disciplinary procedures applied to students without disabilities.
- Provide educational services that enable the student to participate in general education curriculum and progress toward goals on IEP. Any IAES must be determined by the TEAM.
- Yes – May remove student to IAES for up to 45 school days. The IAES must be determined by the Team.
- Yes – Special Circumstances: does the offense fall under “special circumstances” related to weapons, illegal drugs, controlled substances, or serious bodily injury?

**Manifestation Determination**
Does the conduct have a direct and substantial relationship to the disability? Or is it the direct result of the district’s failure to implement the IEP?

**No** – Student’s conduct is not a manifestation of the disability.
- Apply relevant disciplinary procedures applied to students without disabilities.
- Provide educational services that enable the student to participate in general education curriculum and progress toward goals on IEP. Any IAES must be determined by the TEAM.
- Yes – May remove student to IAES for up to 45 school days. The IAES must be determined by the Team.
- Yes – Special Circumstances: does the offense fall under “special circumstances” related to weapons, illegal drugs, controlled substances, or serious bodily injury?
Procedure for Recording Suspensions

Scituate Public Schools closely monitors special education students who are suspended from school. The following procedures are followed when a student receiving special education services is suspended.

1. Students receiving special education services and their parents receive advanced written notice regarding the school’s Code of Conduct.

2. Within the Code of Conduct, procedural safeguards are included and explained.

3. Scituate Public Schools understands that students in special education may be suspended up to 10 days in any school year.

4. If a student in special education has been suspended for 10 days, any subsequent suspensions must include a provision of special education services for the student during the time of suspension.

5. When a student on an IEP is suspended, the school principal or assistant notifies the Director of Special Education.

6. Often times, this notification is followed by a written summary of the reason for the suspension.

7. The suspended student’s IEP chairperson is informed of this suspension through the principal’s office and the student’s behavior/infraction is often discussed at the Support Team (ST).

8. When the number of suspensions approaches six to eight days, and it appears that a pattern has developed regarding suspensions, the IEP Team reconvenes to determine if the behavior(s) are a manifestation of the student’s disability and if an amendment to the IEP is necessary. This consistently occurs prior to any suspension beyond 10 consecutive days or 10 cumulative days.
**Procedural Requirements of Students with Undetermined Eligibility for Special Education**

If prior to any disciplinary action, the district has knowledge that a student may have a disability, the district will protect the rights of the student until and unless the student is determined not to be eligible. Reasons why the district may have prior knowledge that the student may have a disability could include the following:

- The parents have expressed concern to the school personnel in writing
- The parents may have requested that their child be evaluated
- A school staff member may have expressed concern that the student has a disability

There can be exceptions to the prior knowledge stipulation. These include:

- The parent has not consented to a request to evaluate the student;
- The parent has refused special education services;
- An evaluation of the student has resulted in a finding of no eligibility.

If the district has no evidence to suggest that the student has a disability, and the parent has requested an evaluation following the disciplinary action, the district will make every effort to expedite the evaluation process to determine eligibility consistent with federal requirements. If the student is found to be eligible, he/she will receive all rights afforded students in special education following the finding of eligibility. All procedures are thoroughly documented.
Section XII

Equal Opportunity

In accordance with FAPE (Free Appropriate Public Education), Scituate Public Schools offers students with disabilities the opportunity to access all educational, nonacademic, extracurricular, and ancillary services. Full inclusion programming is also available to all SPED students based on each of their Individual Education Programs. Additional, it is the practice of the Director of Special Education to fund staff to provide additional support for students with disabilities who would otherwise be unable to participate in extracurricular activities independently. Equal access for all students is a mandate which Scituate implements throughout its grade level continuum of PreK-12+. 
To: Superintendents of Schools, Charter School Leaders, Special Education Administrators, Other Interested Parties

From: David P. Driscoll
Commissioner of Education

Date: November 20, 2001

In the summer of 2000, the Massachusetts special education law, Mass. Gen. Laws Chapter 71B, was amended to change the special education standard of services from the current "maximum possible development" (sometimes referred to as "maximum feasible benefit") to the federal standard, "free appropriate public education" ("FAPE"). The change is effective as of January 1, 2002. This memorandum is intended to help school officials, parents and other interested parties understand the effect of the change and apply the FAPE standard, consistent with state and federal law.

The FAPE standard has been part of the federal special education law since 1975, and it is well-established in educational practice and case law. In amending the Massachusetts special education law to align it with the federal standard, the Legislature indicated its intent was to ensure that our public education system provides high standards for all students, including students with disabilities. The Education Reform Act underscores the Commonwealth's commitment to assist all students to reach their full educational potential. Improving educational outcomes for students with disabilities is a goal of the state and federal special education laws, and improving educational outcomes for all students, including students with disabilities, is central to education reform.

"Free appropriate public education" is defined in Mass. Gen. Laws Chapter 71B, § 1, effective January 1, 2002, as follows:

Special education and related services as consistent with the provisions set forth in 20 U.S.C. 1400 et seq. [the federal Individuals with Disabilities Education Act, or IDEA], its accompanying regulations, and which meet the education standards established by statute or established by regulations promulgated by the Board of Education.

Under the federal Individuals with Disabilities Education Act, at 20 U.S.C. § 1401(8), the term "free appropriate public education" is defined as:

special education and related services that - (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the state involved; and (D) are provided in conformity with the individualized education program.
The United States Supreme Court has interpreted the term "free appropriate public education" as the provision of publicly-funded individualized instruction with sufficient support services to permit the student to benefit educationally from the instruction. This education must be provided in the least restrictive environment. Subsequent federal cases have held that this access to education for students with disabilities must be "meaningful." The decisions also note that the key to any student's meaningful special education is the development of the Individualized Educational Plan ("IEP") that is tailored to meet the unique needs of the student.

The FAPE standard for delivery of special education services requires the school district to provide personalized instruction tailored to the student’s needs, with sufficient support services to permit the student to make meaningful educational progress. The special education and related services are to be provided in conformity with the student’s IEP and consistent with state requirements. Applying the federal FAPE standard in individual cases, courts have ordered school districts to provide an extensive array of special education services, including private day and residential placements as well as related services.

The central principles and requirements of state and federal special education law in Massachusetts will be unaffected by the change to the FAPE standard in January 2002. For example, the following elements are unchanged:

- **Massachusetts education standards.** Both the state and federal definitions of FAPE (quoted on page 1) refer to special education and related services that meet state education standards. The state standards include not only the requirements of the Special Education Regulations (603 CMR 28.00) but also the learning standards that Massachusetts has established through the state curriculum frameworks. All students in the Commonwealth’s public education system, including students with disabilities, are entitled to the opportunity to learn the material that is covered by the academic standards in the Massachusetts curriculum frameworks.

- **Eligibility for special education.** The change to the FAPE standard will not affect eligibility for special education, since the standard relates to services provided after a student has been determined to be eligible for special education. Eligibility criteria are defined in the special education statute and regulations. Eligible students are those who, because of a disability, are unable to progress effectively in the general education program without specially designed instruction or who are unable to access the general curriculum without a related service. To determine a student’s eligibility, the school district evaluates the student and convenes a Team to meet and review the evaluation information and make a determination of eligibility in accordance with the Special Education Regulations, 603 CMR 28.00.

- **Individualized evaluation and educational plans.** State and federal law continue to require school districts to focus on the unique needs and strengths of the individual student through the Team evaluation and IEP process. The change to the FAPE standard maintains that focus. State and federal law have required, and will continue to require, the school to provide a program that will benefit the student educationally.

- **Procedural rights and responsibilities.** The change in the standard does not affect the procedural safeguards provided under the law. These safeguards include the requirement for parental notice and consent before changing a student’s special education services or placement; the right of parents to obtain an independent evaluation of their child; and the right of parents and school districts to seek resolution of disputes through mediation and administrative hearings. A current IEP that has been accepted by the parent continues to represent an agreement for services between the parent and the school district. The change in the standard on January 1, 2002 does not change existing IEPs.
Least restrictive environment. The requirement to provide special education and related services to students with disabilities in the “least restrictive environment” has been part of the state and federal special education laws since they were first enacted. This requirement continues in effect even after January 1, 2002.

The change to the FAPE standard may or may not have an impact on costs over time, since court decisions make clear that FAPE is not a minimal or trivial standard. Most states have been operating under the FAPE standard for years, and many states besides Massachusetts have been struggling with the high costs of special education. In Massachusetts, the Legislature and the Governor have sought to provide fiscal relief to local communities through a combination of a new special education reimbursement program and substantially increased funding for schools through Chapter 70 and other programs. The U.S. Congress has indicated that it will revisit funding for the states when it addresses reauthorization of the federal special education law.

We do not yet know whether and how the enactment of the FAPE standard may affect decisions in special education appeals cases, either at the administrative level (through the Bureau of Special Education Appeals) or in court. While hearing officers and judges must decide cases under the applicable legal standard, a review of decisions in Massachusetts and in other states indicates that the outcome depends on many factors, including the complexity and severity of the student’s disability, the student’s academic progress, and the need to assess what is the least restrictive environment in which the student can receive appropriate education.

The vast majority of IEPs are written, accepted, and implemented without dispute, with educators and parents working together in the best interests of the students. Each year, over 150,000 IEPs are written for special education students in Massachusetts, and fewer than 1% result in requests for mediation or an administrative hearing before the Bureau of Special Education Appeals. Disputes over IEPs are rare and even when they arise; most are resolved by parents and educators at the local level. This will continue to be so under the FAPE standard.

The change in the Massachusetts special education standard to FAPE is not expected to result in major changes in IEPs or placements. It remains to be seen whether the change has an impact on costs. In some individual cases, over time, school districts, parents, and hearing officers may make decisions about services or placements based at least in part on the FAPE standard. The Department of Elementary and Secondary Education will be reporting to the Legislature each year on special education, and we will include data and observations related to the change in the standard in subsequent reports.

In conclusion, the federal Individuals with Disabilities Education Act was amended in 1997, specifically to raise expectations and increase educational achievement of students with disabilities. The Department of Elementary and Secondary Education believes that the change to the FAPE standard in Massachusetts should help educators and parents to focus on providing programs and services that are of high quality and that will improve student achievement.

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Continuum of Services – Vocational

Scituate offers a continuum of services for disabled students who do not gain admission to select vocational-technical schools. Our Vocational Life Skills Program provides in-district and out-of-district job site for students based on their strengths, weaknesses, preferences, and interests. Through the IEP Team process, vocational options and staff are identified to enable students to explore work opportunities prior to graduation. The Scituate and surrounding communities have been very receptive to offering students with disabilities the opportunity to experience the world of work.

Transportation

Scituate Public Schools provides special transportation for students with disabilities attending both in-district and out-of-district placements should the IEP Team deem this necessary due to the extent of their disability and inability to access transportation through the general transportation of students. The IEP Team determines the need for this related service as well as any additional accommodations that may be required, such as a monitor or a wheelchair van. Regular bus transportation with a monitor is also offered to students with disabilities if the IEP Team determines that this option is more appropriate than a van. For parents who choose to transport disabled students ordinarily entitled to special transportation, Scituate reimburses them at the state approved mileage rate. Forms are provided to parents and submitted monthly to the SPED office for reimbursement and reporting purposes.

Scituate adheres to all laws and regulations established by the Commonwealth of Massachusetts and DESE regarding the bidding process, safety standards, specialized vehicles, etc. Currently, Scituate Public Schools has a contract with three transportation companies as well as providing transportation through our own special education vans for students. The Director of Special Education and Out-of-District Coordinator coordinates all transportation for students with disabilities. Communication with the company’s transportation coordinator is frequent and well documented.

Transportation arrangements are made in a timely manner and with strict adherence to the one hour traveling time limit. Every fall, Scituate conducts in-service training for all of the drivers who transport Scituate students with disabilities. The Out-of-District Coordinator conducts the training for van drivers and the Director of Business coordinates the training for school bus drivers.

The Director of Special Education and the Out-of-District Coordinator maintain a transportation folder for all communications and correspondence with the transportation company. Issues, concerns etc. are also recorded on students’ monitoring plans when appropriate.
Use of Paraprofessional Services

Scituate Public Schools employs paraprofessionals to provide support to students in and out of the classroom. Paraprofessionals are appropriately trained to assist in providing special education or related services.

Paraprofessionals offer support to students in the classroom, working alongside special or general education teachers.

Paraprofessionals are closely supervised by certified/licensed special and general education teachers. Paraprofessionals are attentive to IEP goals and objectives and collect data on a regular basis pertaining to student performance. Because of their level of training, Paraprofessionals may implement instructional support activities under the direct supervision of a licensed special education teacher. Paraprofessionals implement support of instruction under the supervision of an appropriately certified or licensed professional. Paraprofessionals are evaluated by the building principal with input from the special and general educators working with them.

Protocol and Criteria for the Determination of Paraprofessional Services

This year a committee of special education and general education teachers came together to assist the Director of Special Education in the formalization of criteria and processes for determining paraprofessional services on students’ Individual Education Plans, IEPs. The committee reviewed several surrounding district procedures along with sending out a survey to all teachers, administrators and paraprofessionals, as well as information provided by DESE in the Special Education Technical Assistance Advisory SPED 2014-3: Identifying the Need for Paraprofessional Support. In review of the information gathered, they were able to develop a process for the IEP Teams to use when determining if paraprofessional services are required and for how much time. As with all services considered for a student with special education needs, these services are determined through data gathering. Our process of determination of services as stated on the following pages is data driven.

Procedures:

- For Initial and Re-evaluation IEP Meetings – the “Consideration of Student Need for Instructional Assistance” form, (Yellow) is completed by the evaluation Team members and the classroom teacher. This form documents all pre-referral and current strategies tried and to what extent they did or did not work for the student in the general education setting. The information is based on the observations conducted during the evaluation period. Both the classroom teacher and special educator sign off on this form.
  - Frequency/comparison data is collected using the Excel Data Collection Form, (Blue). This is a data form that compares frequency of adult support required by the student being considered for an IEP and/or Paraprofessional supports with a same age/sex peer in the classroom. It is to be conducted in a minimum of two (2) thirty minute sessions within the thirty day period of evaluation.
For Annual Review IEP Meetings – the “Cover Sheet of Data from Current IEP” form, (Pink) is completed by the special education liaison. The liaison and the principal sign off on this data form.

- Frequency/comparison data is collected using the Excel Data Collection Form, (Blue). This is a data form that compares frequency of adult support required by the student who has IEP services and a same age/sex peer in the classroom. It is to be conducted by the liaison and/or Team member conducting observations for the evaluation process. A paraprofessional can also take the data as one data point entry. By having multiple data collectors you are assuring data reliability. It is to be conducted one (1) time per term in multiple settings where the paraprofessional services are being implemented.

- An optional data collection form can be used by the liaison to “dip stick” the level of need for paraprofessional services through the year. This is called the “ABC Observation” form, (White).
  - Antecedent – What happened before the student response
  - Behavior – The student’s response to the “mand” or request/direction
  - Consequence – What was the support level required for the student to successfully complete the required task

This form is also a good tool to use when developing the IEP goals and benchmarks the paraprofessional services will be required to support. It helps to see where and what the student is requiring support.

Eligibility Criteria:
- The IEP Team will consider the data to determine paraprofessional supports in the general education settings for a particular subject/activity, time of day, transition or across a student’s school day if:
  - Disruptive Behavior Concerns: The student required a 60% or more higher rate of adult support as compared to peer data
  - Academic Support Concerns: The student required a 70% or more higher rate of adult support as compared to peer data

With training being provided by the Special Education Department and Liaison consultations, all paraprofessionals work with all students. With this in mind, FDK paraprofessionals can support students with IEPs. A second para will not be assigned unless there is a significant need for 1:1 supports of a student in that particular class.

All data will be collected and considered at each IEP Team meeting to determine the need, level, frequency, goals, and benchmarks related to the paraprofessional supports of a student. Without the completion of the data, paraprofessional supports cannot be considered by the IEP Team.