



Disability Law Center's Self-Advocacy Materials

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Special Education

This document is designed for people with disabilities. The information is about your legal rights and how to advocate for yourself as a resident in Massachusetts.

Contact us to request this information in an alternative format.

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Funding

DLC receives funding from government grants, private foundations, and individual contributions. For details about our funding and programs, please visit:

<http://www.dlc-ma.org/about/funding/>

The Basics of Special Education Law

You Will Learn About:

- Free and Appropriate Public Education and Least Restrictive Environment
- Eligibility for Special Education
- Your Rights Regarding IEPs and 504s

This document includes general information about legal issues and is intended to be used for informational purposes only. These informational materials should not be taken as legal advice, and do not create an attorney-client relationship. The outcome of any particular matter will depend on a variety of factors. For specific legal problems you would need to contact an attorney.

The Basics of Special Education Law

The special education process is complicated and can be overwhelming. It is important for parents to learn some basics in order to navigate the complex system and ensure that their child is getting the services from the school district that he/she is legally entitled to receive.

In the special education context, there are a number of relevant federal and state laws. Possibly the most important is the Individuals with Disabilities Education Act (“IDEA”), the federal law that protects the educational rights of children with disabilities. Under the IDEA and Massachusetts law, *every student receiving special education services is entitled to receive a free, appropriate public education (“FAPE”) in the least restrictive environment (“LRE”) appropriate for that student.*

What is FAPE?

What constitutes FAPE for your child is very individualized and depends upon your child’s specific educational needs. With that said, for a school district to meet its legal obligations, it must provide your child with an educational program that *is reasonably calculated to enable your child to make progress that is appropriate in light of your child’s circumstances.* Massachusetts law explicitly states that your child’s educational programming must enable him or her to make ‘effective progress’ in the general curriculum. This progress includes academic progress as well as social/emotional progress.

It is important, though, to keep in mind that the law does **not** require the school district to provide your child with the best possible program or services that will maximize your child’s progress.

What is LRE?

A child receiving special education services must be educated with other children who do not have disabilities to the maximum extent appropriate. LRE is a continuum. This means that the more separated a child is from other children without disabilities, the more restrictive the setting is considered. If the nature or severity of your child’s disability is such that, even with the use of supplementary aids and services, education in a regular education classroom cannot be achieved, only then, according to the special education laws, should you and the school consider separate classes or schooling.

How Do I Know if My Child is Eligible for Special Education?

Your child must go through the eligibility determination process. The first step is to ask the school, in writing, to evaluate your child for special education. The school may also identify your child as a student who potentially needs special education services. After the district receives your consent, it must complete evaluations in all areas of suspected disability within 30 school days and must convene a Team meeting within 45 school days to discuss the evaluations and determine eligibility. You are a member of the Team along with the relevant school personnel.

A student who is 3 to 21 years old, and who has not received a high school diploma, is eligible for special education if the student:

- Has a disability; and
- Due to the disability, is unable to progress effectively in regular education without specifically designed instruction or is unable to access the general curriculum without one or more related services.

Related services could include, among other things, speech and language therapy, occupational therapy, physical therapy, counseling services, or parent counseling and training.

If My Child is Eligible for Special Education, What Does the School Have to Do?

The Team, including you and school personnel, must develop an Individualized Education Plan (“IEP”) for your child. The IEP is a legal, written document that includes, among other things, your vision for your child, your concerns, your child’s present levels of educational performance, measurable goals, how your child’s progress will be measured, and all services and accommodations that your child will receive. This includes all related services as well. The IEP development process also includes a decision regarding your child’s placement—regular education (or full inclusion), partial inclusion, a separate classroom, or a school outside of your local public school.

Remember, your child’s IEP, or educational programming, must offer him/her FAPE. The Team must review and revise your child’s IEP at least annually. Also, after the initial eligibility determination, the school district must re-evaluate your child at least once every 3 years. This means that the school must conduct relevant evaluations at least every 3 years. *If you decide to have your child privately evaluated and share that evaluation with the school, the school must meet to discuss and consider the evaluation.*

Once I Receive the Proposed IEP from the School, What are My Rights?

You have the right to accept the IEP, partially accept the IEP, or reject the IEP. You also have the right to accept the proposed placement or reject it. For both decisions, you have 30 days to respond to the school. If you do not respond within 30 days, the school will consider the IEP and placement as fully rejected. In this case, your child will receive none of the services or accommodations in the proposed IEP, and you and the school will need to work to resolve the disagreements.

Does a 504 Plan have the same legal requirements as an IEP?

No, it does not. A 504 Plan originates from Section 504 of the Rehabilitation Act of 1973, a civil rights law that protects people with disabilities from discrimination and ensures equal access to education. The IDEA governs IEPs, not 504 Plans. While a child may have an IEP and a 504 Plan, it is not very common. A 504 Plan is more often used when a child with a disability is not eligible for an IEP, meaning the child is not eligible for special education. A 504 Plan allows for **accommodations** to give a child with a disability an opportunity to benefit from the school's program equal to that of children without disabilities. Unlike an IEP, a 504 Plan does not provide specially designed instruction for a child.

If I Disagree with the School Regarding Special Education Services for My Child, What are My Rights?

Parents sometimes disagree with the school district about eligibility, their child's IEP, and their child's placement. If you find yourself in this situation, it is important to know your rights. You have the right to request a Team meeting to discuss the issue. When such disagreements cannot be resolved at the Team level, you can request mediation or a hearing at the Bureau of Special Education Appeals ("BSEA"). In Massachusetts, the BSEA is the administrative body authorized, by law, to address special education matters. If possible, you likely are best served by, at least, consulting with an experienced advocate or an attorney before proceeding to the BSEA.

When challenging the school district's position, you will almost always need to have strong professional support for your position. This often means you need an evaluation and/or outside providers that support your position. You have the right to obtain an independent evaluation if you are not satisfied with the school district's evaluations. In some circumstances, the school district has to pay for that independent evaluation.

Of course, you can always have your child privately evaluated at your own expense or possibly through your health insurance. Common private evaluations include neuropsychological evaluations, speech and language evaluations, and augmentative and alternative communication ("AAC") evaluations.

When seeking special education services for children, it is incredibly important that parents understand the process, the law, and their rights. A valuable resource in Massachusetts is the Federation for Children with Special Needs, including its Parent Training and Information Center (<https://fcsn.org>).