

# Parents Rights & Responsibilities

## Quincy Parent Advisory Council to Special Education (QPAC)

### Slide 2 Presentation Goals

The goals of this presentation are:

- To provide an introduction to the special education process, and
- Highlight parents rights and responsibilities within this process,
- To enable collaboration between parents and educators throughout the process.

We will also share with you some tips and resources that will help you effectively participate in the special education process!

### Slide 3 Special Education Laws

The primary federal law effecting special education is the Individuals with Disabilities Education Improvement Act of 2004, know as IDEA. The purpose of IDEA is, “to ensure that all children with disabilities have available to them a free 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 [34 C.F.R. § 300.1].” At the state level there is Chapter 71B of the Massachusetts General Laws, sometimes called Chapter 766, and its Regulations.

There are several related laws that also affect special education. At the federal level they include the Elementary and Secondary Education Act (currently know as No Child Left Behind), the Family Educational Rights and Privacy Act (FERPA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA). At the state level there is the regulations outlining general educational requirements (often called “education reform”), Chapter 688, student records regulations, restraint regulations, the new anti-bullying law, and the regulations that provide rates for independent evaluations.

*Additional Resources:*

- Building the Legacy: IDEA 2004 <http://idea.ed.gov/>
- Massachusetts General Laws Chapter 71B <http://www.mass.gov/legis/laws/mgl/gl-71b-toc.htm>
- Title 603 of the Code of Massachusetts Regulations, Section 28 <http://www.doe.mass.edu/lawsregs/603cmr28.html>
- Special Education Guidance <http://www.doe.mass.edu/sped/advisories/>
- QPAC's Laws and Regulations Handout <http://www.quincypac.org/resources/files/lawsandregulations.pdf>

### Slide 4 Special Education Process

The basic steps in the special education process are:

- Referral: once for an initial evaluation
- Evaluation/Re-evaluation: every 3 years or sooner
- Eligibility: every three years, with evaluation
- IEP Development: every year
- Placement: every year, after IEP development
- Progress Reports: as frequently as regular education
- Dispute Resolution: whenever needed

### Slide 5 Special Education Referral

Referral is the first step in the special education process. A student may be referred for an initial evaluation for special education whenever they are suspected of having a disability that may interfere with their educational progress. Children may be referred as young as 2 ½ years of age and until they graduate with a regular diploma or reach the age of 22.

This referral can come from a parent, or any other person in a care-giving or professional position who is concerned with the student's development. This may include a family member, teacher, doctor, therapist, early intervention provider, or other individual working with the child or family [603 CMR 28.4(1)]. If the student resides in Quincy, the referral should go to the principal of the school the student attends, or would attend if they are enrolled in private school or are home-schooled.

Students who are struggling in school may be offered other instructional practices or general education services before being referred to special education [603 CMR 28.03(3)(a)]. This may include remedial instruction, accommodations through the District/School Accommodation Plan, or literacy services. Students with disabilities may also be offered a 504 Plan. Parents may ask the guidance counselor at their child's school to find out more about these options. A referral, however, cannot be refused in order to try any of these services [M.G.L. c. 71B, § 2].

The district will send the parent written notice of their intent to evaluate within 5 school days of receiving the referral for an initial evaluation. This notice will include a list of the types of assessments they intent to complete and a request for consent. The parent may consent to all, some, or none of the recommended assessments, as well as request other assessments and/or provide input to the assessments. The evaluation may not be conducted without parent's consent [603 CMR 28.04(1)].

*Additional Resources:*

- Is Special Education the Right Service? [http://www.doe.mass.edu/sped/2001/elig\\_drft01.pdf](http://www.doe.mass.edu/sped/2001/elig_drft01.pdf)
- Informed Parent Consent <http://www.taalliance.org/publications/pdfs/all40.pdf>

## **Slide 6 Special Education Evaluation**

An initial evaluation must occur before the initial provision of special education. Once the student is found eligible for, and until they are exited from, special education they will be periodically reevaluated (at least every three years) with parent's consent [603 C.M.R 28.04(3)].

Evaluations are required to: [34 C.F.R. § 300.304]:

- Be racially and culturally nondiscriminatory.
- Be given in the child's native language or communication mode/form most likely to give accurate information, unless it is clearly not feasible to do so.
- Be given so as to most accurately reflect the child's aptitude or achievement rather than reflecting impaired sensory, manual, or speaking skills, unless those skills are what the test measures.
- Be given by trained and knowledgeable personnel, and in accordance with any instructions provided by the producer of the assessments.
- Be comprehensive enough to identify all of the child's special education and related service needs, whether or not commonly linked to their identified disability.
- Include a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information that directly assists in determining the educational needs of the child.

Prior to the Evaluation, the parent can meet with a district representative to express any concerns or provide information on the student's skills or abilities [603 C.M.R 28.04(1)(b)]. They may also discuss the reasons for a referral, the content of the proposed evaluation, and the evaluators that will be used [603 C.M.R 28.04(1)(c)].

*Additional Resources:*

- Evaluation: What Does It Mean for Your Child? <http://www.pacer.org/parent/php/php-c2.pdf>
- Your Child's Evaluation <http://nichcy.org/wp-content/uploads/docs/bp1.pdf>

## **Slide 7 Required Assessments**

Evaluations must include a variety of assessments to assist in determining if a disability is present and the content of the IEP.

Evaluations must include:

- An educational assessment that incorporates a description of the student's progress and potential, and measurements of the student's attention skills, participation behaviors, communication skills, memory, and social relations with groups, peers, and adults [603 C.M.R. 28.04(2)(a)(2)].
- An assessment in all areas related to the child's suspected disability [603 C.M.R. 28.04(2)(a)(1)].
- A review of existing evaluation data, including information provided by parents, results of local or State assessments (such as from the DIBELS or the MCAS), and observations by teachers and related services providers [34 C.F.R. § 300.305(a)]. It must also include documentation on the use of any pre-referral instructional support services provided to the student [603 C.M.R. 28.03(3)(a)]. Data from this review may be used, with parent's permission, in lieu of some or all additional assessments.

The evaluation may also include health, psychological, and/or home assessments, by recommendation or by parent

request [603 C.M.R. 28.04(2)(b)].

### **Slide 8 Evaluation Time Lines**

When evaluating a student for special education, the school district must abide by certain time lines.

- Within 5 school days of the receipt of a referral for an initial evaluation to determine eligibility for special education, the district must send the parent written notice and a request for consent [603 C.M.R. 28.04(1)(a)].
- Within 30 school days of receiving written consent, the district must provide or arrange for the evaluation of the student [603 C.M.R. 28.04(2)].
- Within 45 school days of receiving parental consent, the school district must convene a Team meeting [603 C.M.R. 28.05(1)].
- At least 2 days in advance of this Team meeting, reports of assessment results are available to parents, upon request [603 C.M.R. 28.04(2)(c)].
- Within 10 days of this Team meeting, whenever the student is found not eligible for special education, the parents must receive written notice of the reasons and their rights [603 C.M.R. 28.05(2)(a)(2)].
- Every 3 years, or sooner if the needs of the child warrant it or if a parent or teacher requests, the district must complete a reevaluation. Mid-term evaluations generally cannot occur more than once per year, per area evaluated [34 C.F.R. § 300.303].
- If a child's doctor believes that they will remain at home or in a hospital or nursing home for medical reasons for more than 60 school days in any school year, a Team meeting must occur to consider the child's evaluation and IEP needs [603 C.M.R. 28.04(4)].
- An evaluation must occur before a child is determined to no longer be eligible for special education. This does not apply to students who graduate with a regular diploma or who age out [34 C.F.R. § 300.305(e)].

Evaluation time lines do not apply if the parent repeatedly fails or refuses to produce the child for the evaluation. They also do not apply if the child is enrolled in another district during the evaluation period, and the new district ensures a prompt completion of the evaluation [34 C.F.R. § 300.301(d)]. If consent is received within 30 to 45 school days before the end of the school year, the school district should ensure that a Team meeting is scheduled no later than 14 days after the end of the school year [603 C.M.R. 28.05(1)].

If the Team finds that evaluation information is insufficient to develop an IEP, the evaluation period may be extended, with parental consent. This extended evaluation may last longer than one week but cannot exceed eight school weeks, and the Team may decide to meet at intervals during it. The location of the extended evaluation is not considered a placement [603 C.M.R. 28.05(1)(b)].

### **Slide 9 Independent Education Evaluations**

If a parent disagrees with an evaluation completed by the district, they may request an Independent Education Evaluation (IEE) at public expense. Under Massachusetts law, requests for public funding of IEEs are subject to a sliding scale based on the family's income. Parents may request IEEs in any or all of the areas assessed by the district within 16 months from the date of the evaluation with which the parent disagrees [603 C.M.R. 28.04(5)(c)].

If the parent is requesting an IEE in an area not assessed by the district or chooses not to provide financial documentation, the requirements of federal law apply. The district must either agree to pay for the IEE or, within five school days, proceed to the Bureau of Special Education Appeals for a due process hearing to show that its evaluation was comprehensive and appropriate [603 C.M.R. 28.04(5)(d)].

The parent chooses the person who will conduct their child's IEE. All IEEs conducted at public expense must be given by qualified evaluators who abide by state-set rates, unless the unique circumstances of the student justify a higher rate [603 C.M.R. 28.04(5)(a)]. Whenever possible, it should be completed within 30 days of the parent's request [603 C.M.R. 28.04(5)(e)].

A parent may obtain an IEE at private expense at any time. [603 C.M.R. 28.04(5)(b)]. Within 10 school days from the date the district receives the IEE report, regardless of how it was provided, a Team meeting must be convened to consider it and draft a new IEP, if needed [603 C.M.R. 28.04(5)(f)].

#### **Additional Resources:**

- Administrative Advisory SPED 2004-1: Independent Educational Evaluations [http://www.doe.mass.edu/sped/advisories/04\\_1.html](http://www.doe.mass.edu/sped/advisories/04_1.html)
- Massachusetts Team Evaluation Rates Regulations <http://www.mass.gov/eohhs/docs/dhcfp/g/regs/114-3-30.pdf>

- Frequently Asked Questions About Independent Education Evaluations  
[http://fcsn.org/pti/topics/evaluation/tools/iee\\_faq.pdf](http://fcsn.org/pti/topics/evaluation/tools/iee_faq.pdf)

### Slide 10 Observation Law

The state legislature recently passed a law affirming the rights of parents and their designees (including independent evaluators) to access and observe a child's current and proposed special education program.

Some key elements of the law include [M.G.L. c. 71B, § 3]:

- The district must allow timely access to programs.
- The district must allow access to programs that is of sufficient duration and extent to accomplish the purpose of the visit.
- The district may not condition or restrict observations except when necessary to protect the safety or confidentiality of the children in the program or the integrity of the program.

#### *Additional Resources:*

- Technical Assistance Advisory SPED 2009-2: Observation of Education Programs by Parents and Their Designees for Evaluation Purposes [http://www.doe.mass.edu/sped/advisories/09\\_2.html](http://www.doe.mass.edu/sped/advisories/09_2.html)
- Quincy Public Schools Observation of Special Education Programs, Policy 11.10.1 (page 399)  
<http://quincypublicschools.com/qpsinfo/download/school-committee/policy-manual.pdf>

### Slide 11 Convening the Team

Within 45 school days of receiving consent for evaluation, a Team meeting must be convened. The Team will review evaluation data, determine eligibility for special education, and, if needed, develop an IEP and propose a placement [603 C.M.R. 28.05(1)].

The district must make an effort to ensure the parents are present at the Team meeting. The district should notify parents of the meeting early enough to ensure that they will have an opportunity to attend, and schedule it at a mutually agreed upon time and place [34 C.F.R. § 300.322(a)]. If both the parent and the district agree, alternative means of participation (such as video conferencing and conference calls) may be used [34 C.F.R. § 300.328]. The district must also arrange for interpretation services for the parent, upon request [34 C.F.R. § 300.322(e)].

The Team includes [34 C.F.R. § 300.321]:

- The parents
- The child (when appropriate)
- At least one general education teacher if the child is, or may be, participating in the general education environment
- At least one special education teacher or provider
- A district representative who is knowledgeable about the general education curriculum and the availability of district resources
- An individual who can interpret evaluation results, if any
- An Early Intervention coordinator or provider, with parent consent
- A representative of an agency likely to provide transition services, with parent consent
- Other individuals with knowledge or special expertise regarding the child, including related service providers, at parent or district invitation

With parent and district consent, required Team members may be excused from attending [34 C.F.R. § 300.321(e)].

#### *Additional Resources:*

- Attending Meetings to Plan Your Child's Individualized Education Program <http://www.pacer.org/parent/php/php-c27.pdf>

### Slide 12 What the Parent Receives

Prior to the Team meeting, the district must provide the parent with written notice that includes date, time, location, and the purpose of the meeting. The notice must also identify who will be in attendance, as well as note the parent's right to invite other individuals who have knowledge or expertise regarding their child [34 C.F.R. § 300.322(b)].

At the Team meeting, the parent will receive copies of any assessment reports they have not previously received. Each

report should include a summary of assessment procedures used, results, and diagnostic impression. They should also outline the student's needs and offer explicit means of meeting them. Assessors may recommend appropriate types of placements, but cannot recommend specific classrooms or schools [603 C.M.R 28.04(2)(c)].

The parent will also receive two copies of the proposed IEP [603 C.M.R 28.05(1)]. The district may bring a Draft IEP to the Team meeting. The services and goals proposed in the Draft IEP are preliminary recommendations and will be reviewed and revised by the entire Team, including the parent. The parent may request a copy of the Draft IEP prior to the Team meeting, but is not guaranteed to receive it [71 FR 46678].

If the IEP has not been fully-developed at the meeting, it is recommended that the district provide the parent with a written summary of agreements reached during the meeting, including a completed service delivery grid and a statement of the major goal areas associated with the services. The completed IEP must be issued to the parent within three to five days at their request, but no later than two calendar weeks from the conclusion of the Team meeting.

*Additional Resources:*

- Memorandum on the Implementation of 603 CMR 28.05(7): Parent response to proposed IEP and proposed placement <http://www.doe.mass.edu/news/news.aspx?id=3182>

**Slide 13 Determining Eligibility**

During the meeting, the Team will examine evaluative data to determine if the student is eligible for special education. A student is eligible [603 C.M.R 28.05(2)(a)(1)]:

- If they have one or more of the disabilities, and
- If, as a result of those disabilities, is unable to make effective progress in general education, and
- Requires specially designed instruction and/or one or more related services.

The disability categories that a student may be found eligible under are:

- Autism
- Communication Impairment
- Developmental Delay
- Emotional Impairment
- Health Impairment
- Intellectual Impairment
- Neurological Impairment
- Physical Impairment
- Sensory Impairment (Hearing Impairment, Visual Impairment, or Deaf-Blind)
- Specific Learning Disability

The Team will also decide if, as a result of those disabilities, the student is unable to make effective progress in the general education program. Effective Progress is documented growth in the acquisition of knowledge and skills (including social/emotional development) within the general education program, with or without accommodations, according to chronological age and developmental expectations, the educational potential of the student, and state and local learning standards. The general education program includes preschool and early childhood programs, academic and non-academic offerings, and vocational programs and activities [603 C.M.R 28.02(17)].

Finally, the Team will decide if the student requires special education to make effective progress. Massachusetts regulations define special education as, "specially designed instruction to meet the unique needs of the eligible student or related services necessary to access the general curriculum [603 C.M.R. 28.02 (20)]."

Specially designed instruction is, "adapting the content, methodology, or delivery of instruction to address the unique needs of the child that result from their disability [34 C.F.R. § 300.39(b)(3)]." Related services are developmental, corrective, and other supportive services required to assist a child to benefit from special education [34 C.F.R. § 300.34(a)].

A child cannot be found eligible for special education if the determinant factor is a lack of appropriate instruction in reading or math, or limited proficiency in English [34 C.F.R. § 300.306(b)]. Advancing from grade to grade is not determinative [34 C.F.R. § 300.301(c)].

If the Team determines that the student is not eligible for special education, the parents will receive written notice of the reasons within ten days of the Team meeting. The parent may disagree with this finding, preferably in writing, and submit additional information and/or request one or more Independent Education Evaluations (IEEs). The district may

offer other supportive services to the child, such as literacy services or general education accommodations. If the child is determined to have a disability but not in need of special education, the district may offer a 504 Plan for the student.

*Additional Resources:*

- Disability Definitions <http://www.doe.mass.edu/sped/2001/disdef.pdf>

#### **Slide 14 Special Considerations for Specific Learning Disabilities**

Whenever it is suspected that a child has a Specific Learning Disability (SLD), additional requirements apply.

To determine if the student has an SLD, the Team must establish that the student is not able to demonstrate the necessary processing skills to achieve adequately, for their age or to curriculum standards, in one or more of the following areas:

- Oral Expression
- Written Expression
- Basic Reading Skills
- Reading Comprehension
- Reading Fluency Skills
- Listening Comprehension
- Mathematics Problem Solving
- Mathematics Calculation

As part of the evaluation to determine eligibility, the district may decide to use the discrepancy model to determine if the student exhibits a pattern of strengths and weaknesses in performance and/or achievement, or a multi-tiered instruction process/response to intervention model. In addition, the student must be observed in their natural learning environment to document academic performance and behavior in the area(s) of difficulty.

For any evaluation method used, the Team must ensure that the identified area of difficulty is not primarily the result of cultural factors, an environmental or economic disadvantage, limited English proficiency, or another disability [MA DESE SLD TA 1].

*Additional Resources:*

- Memorandum on Specific Learning Disability - Eligibility Process and Forms <http://www.doe.mass.edu/sped/iep/sld/default.html>

#### **Slide 15 Developing the Individualized Education Program**

Upon determining that the student is eligible for special education, the Team will develop an IEP. The Team must consider [34 C.F.R. § 300.324(a)]:

- The child's strengths.
- The parent's concerns.
- The results of the most recent evaluations.
- The child's academic, developmental, and functional needs.
- The use of positive behavioral interventions, strategies, and supports, if the child's behavior impedes their or others learning.
- The use of Braille, if the child is blind or visually impaired.
- The child's language and communication needs.
- The child's need for assistive technology devices and services.
- The child's need for supplementary aids and services, and program modifications.

The Team must also consider whether the child's disability affects social skills development, or makes them vulnerable to bullying, harassment, or teasing [M.G.L. c. 71B, § 3].

The IEP will include:

- The Team's vision for the student
- The child's present levels of academic achievement and functional performance
- Program and assessment accommodations
- Specially designed instruction and/or related services
- Measurable annual academic and functional goals, with benchmarks or short-term objectives
- An explanation of the extent to which the child will not participate in regular education

- Skills and proficiencies needed to avoid and respond to bullying, harassment, or teasing, if appropriate

*Additional Resources:*

- Writing Guide for the IEP [http://fcsn.org/pti/topics/iep/tools/writing\\_guide.pdf](http://fcsn.org/pti/topics/iep/tools/writing_guide.pdf)
- Developing Your Child's IEP <http://nichcy.org/wp-content/uploads/docs/pa12.pdf>
- Planning Your Child's Individualized Education Program: Some Suggestions to Consider <http://www.parentcenternetwork.org/assets/files/national/all8.pdf>
- Frequently Asked Questions about Annual Goals [http://fcsn.org/pti/topics/iep/tools/annual\\_goals\\_faq.pdf](http://fcsn.org/pti/topics/iep/tools/annual_goals_faq.pdf)
- Related Services <http://www.pacer.org/publications/pdfs/ALL52.pdf>
- Assistive Technology Guide for Massachusetts Schools <http://www.doe.mass.edu/edtech/assistive/ATguide.pdf>
- Technical Assistance Advisory SPED 2011-2: Bullying Prevention and Intervention [http://www.doe.mass.edu/sped/advisories/11\\_2ta.html](http://www.doe.mass.edu/sped/advisories/11_2ta.html)
- The IEP and Bullying <http://www.pacer.org/publications/bullypdf/BP-4.pdf>

**Slide 16 Special Considerations for Students with Autism**

Whenever a student is identified as having autism, including Autistic Disorder, Asperger's Syndrome, Pervasive Developmental Disorder Not Otherwise Specified, Childhood Disintegrative Disorder, and Rett's Syndrome, the IEP Team must also consider and address several additional focus areas [M.G.L. c. 71B, § 3]:

- The verbal and nonverbal communication needs of the child.
- The need to develop social interaction skills and proficiencies.
- The needs resulting from the child's unusual responses to sensory experiences.
- The needs resulting from resistance to environmental change or change in daily routines.
- The needs resulting from engagement in repetitive activities and stereotyped movements.
- The need for positive behavioral interventions, strategies, and supports.
- Other needs resulting from the child's disability.

Skills needed to avoid and respond to bullying, harassment, or teasing must also be considered and addressed [M.G.L. c. 71B, § 3].

A student with autism's access to special education or related services cannot be limited or decreased by their ability to receive services through health insurance, including policies covered by the Act Relative to Insurance Coverage for Autism (ARICA)[M.G.L. c. 32A, § 25].

*Additional Resources:*

- Technical Assistance Advisory SPED 2007-1: Autism Spectrum Disorder [http://www.doe.mass.edu/sped/advisories/07\\_1ta.html](http://www.doe.mass.edu/sped/advisories/07_1ta.html)
- Administrative Advisory SPED 2012-1: The Autism Insurance Law [http://www.doe.mass.edu/sped/advisories/12\\_1.html](http://www.doe.mass.edu/sped/advisories/12_1.html)

**Slide 17 Special Considerations for Students Age 14 and Up**

Children aged 14 and older are entitled to transition services [M.G.L. c. 71B, § 2]. These are a coordinated set of activities that is focused on improving the academic and functional achievement of the child to facilitate their movement to post-school activities, including education, employment, adult services, and independent living. They are based on the child's needs, strengths, preferences, and interests, and may include instruction, services, community experiences, employment opportunities, and the acquisition of daily living skills [34 C.F.R. § 300.43].

Beginning when the child turns 14, or earlier, the Team will discuss the need for transition services yearly and document that discussion on the Transition Planning Form They will also develop post-secondary goals for the IEP and the services needed to assist in reaching those goals, if appropriate. These goals are based upon the results of transition assessments related to training, education, employment, and/or independent living skills [34 C.F.R. § 300.320(b)].

The child must be invited to any Team meeting where such goals and services are discussed. If the child does not attend, other steps must be taken to ensure that their preferences and interests are considered. With parent consent, a representative of any agency that is likely to provide transition services should also be invited [34 C.F.R. § 300.321(b)].

Although evaluations are not required before a child graduates with a regular diploma or ages out of special education, the district is required to provide a summary of the child's academic achievement and functional performance [34

C.F.R. § 300.305(e)].

*Additional Resources:*

- Parent Tips for Transition Planning <http://www.pacer.org/publications/pdfs/ALL14.pdf>
- Age-Appropriate Transition Assessment <http://nstattac.appstate.edu/sites/default/files/assets/pdf/AgeAppropriateTransitionAssessment.pdf>

**Slide 18 Determining Placement**

After the IEP has been developed, the Team will determine the student's placement. Each school district makes available a continuum of placement options to meet the needs of students with disabilities. This includes the regular classroom, resource rooms, substantially-separate classes, special schools, home instruction, and instruction in hospitals and institutions.

When determining placement, the Team will consider all aspects of the student's proposed IEP and identify the appropriate placement to provide the services [603 C.M.R. 28.06(2)]. The placement selected by the Team must be the least restrictive environment consistent with the student's individual needs [603 C.M.R. 28.06(2)(b)]. Students with disabilities must be educated with those who do not have disabilities to the maximum extent appropriate [603 C.M.R. 28.06(2)(c)].

All students receiving special education, regardless of placement, have an equal opportunity to participate in any vocational, supportive, or remedial services available as part of the general education program, as well as any non-academic and extracurricular programs [603 C.M.R. 28.06(5)].

At the request of the parent, the placement meeting may be held at a later date, but should not occur more than ten school days following the meeting to develop the IEP [603 C.M.R. 28.06(2)(e)]. Placement is determined at least annually [34 C.F.R. § 300.116(b)].

**Slide 19 Parent's Response to the IEP and Placement**

Once the parent has received the proposed IEP and placement, they have 30 days to respond. The parent has three response options for the proposed IEP. They may accept the IEP in full, accept portions on the IEP and reject other portions, or reject the IEP in full. The parent also has the opportunity to leave comments. The parent has two response options for the proposed placement. They may consent to the placement or refuse the placement. For the proposed IEP and/or proposed placement, the parent may request a meeting to discuss their reasons for rejection or refusal.

If the parent partially or fully rejects the IEP or refuses the placement, the district will send notice to the Bureau of Special Education Appeals (BSEA) within 5 days. The BSEA will send the parents information on their right to request Mediation or a Due Process Hearing [603 C.M.R. 28.08(3)(b)]. Proposed IEPs and placements that have not been responded to after the 30 days are considered rejected.

Upon receipt of the parent's response, the district will implement all accepted portions of the IEP [603 C.M.R. 28.05(7)]. No part of the IEP can be implemented without written parental consent. The IEP must be accessible to each regular and special education teacher, related services provider, and any other provider who is responsible for its implementation. Each teacher and provider must be informed of their specific responsibilities and the accommodations, modifications, and supports that they must provide [34 C.F.R. § 300.323(d)].

**Slide 20 Monitoring Progress**

Parents will receive regular reports on their child's progress towards meeting annual goals. These progress reports are required to be sent at least as often as report cards or reports for non-disabled students [603 C.M.R. 28.07(3)]. Other ways to monitor progress include reviewing classroom work, report cards, and the results of local and state assessments.

The IEP must be reviewed at least annually to determine whether goals are being achieved. It should also be reviewed, and revised if necessary, to address any lack of expected progress toward the goals or curriculum, the results of any reevaluation, and/or information provided by the parent [34 C.F.R. § 300.324(b)].

The Team is required to convene once per year to review the IEP, but may meet more frequently if an issue arises. This meeting can be a formal reconvene of the entire Team, but can also be an informal meeting with two or three individuals. Minor changes to the IEP, such as revised goals or services, can be made without reconvening the entire Team. Any agreed upon changes can be formalized in an IEP Amendment. Just like the IEP, the Amendment requires

the parent's written consent before being implemented. Amending the IEP through this process does not eliminate the obligation of the Team to review the entire IEP at least once per year [34 C.F.R. § 300.324(a)(4)]. More substantial modifications to the IEP, such as changes of placement, should be made with the entire Team present. The parent may also request that the Team reconvene to address other issues at any time.

*Additional Resources:*

- How Will I Know If My Child is Making Progress? <http://www.pacer.org/publications/pdfs/ALL13.pdf>

### **Slide 21 Resolving Disagreements**

Although the Team is usually able to reach consensus, there may be times of disagreement. Whenever a dispute arises, there are several options for finding resolution. These include Local Resolution, the Problem Resolution System, OCR Complaints, Mediation, Facilitated IEP Meetings, SpedEx, and Due Process Hearings.

*Additional Resources:*

- Resolving Disagreements in Special Education  
<http://www.quincypac.org/resources/files/disputeresolutionguide.pdf>

### **Slide 22 Local Resolution**

A parents who has concerns about any aspect of the provision of special education to their child may choose to resolve it informally through local resolution with the district. Most parents will find this the easiest and fastest way to get their concerns addressed.

This can begin with a call to your child's teacher or service provider. If the concern cannot be addressed after attempts at direct, positive communication with this person, try contacting the Team Chair. If you think that a meeting is needed to address the issue, you may request one at any time. Issues that are unable to be resolved with the Team Chair may be brought to the Team Administrator. Each special education program has a Team Administrator who oversees IEP implementation, and can assist in troubleshooting the problem.

If all other means of direct communication fail to address your question or concern, then contact the Director of Special Education. Your last resort should be to contact the Superintendent. Addressing your concerns locally using this chain of command will help ensure that they are addressed positively and efficiently! And remember, at any time you may opt to use other methods of dispute resolution.

### **Slide 23 Complaints**

Another option for resolving disputes is the Problem Resolution System (PRS), administered by Program Quality Assurance Services (PQA) at the Massachusetts Department of Elementary and Secondary Education (DESE). PRS, which serves as the state's complaint process, may be an appropriate option when the conflict involves compliance, such as whether the district is abiding by the procedures set out within a state or federal education law or is implementing a child's IEP.

Any concerned individual, including a parent or teacher, may contact PQA to file a complaint. The individual is generally referred to the PQA Liaison assigned to the student's school district. This Liaison may discuss the situation, answer questions, suggest steps the individual might take on their own, and/or offer to intervene informally. If the individual follows through with filling a complaint, PQA will investigate. They usually issue a letter of their determination within 60 days. PQA cannot investigate complaints on issues that are or have been the subject of a Due Process Hearing, and the limitation for PRS complaints is within one year of the violation.

If a parent believes that their child may have been discriminated against because of their disability, they may file a Civil Rights Complaint with the Office of Civil Rights (OCR). OCR is a division within the federal Department of Education that enforces Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, among other federal laws.

Any concerned individual may contact OCR to file a complaint. They will investigate the complaint if it is within their authority, and will issue a letter of findings when the investigation is completed. OCR cannot investigate complaints on issues that are being or have been investigated by PQA or are the subject of a Due Process Hearing. The limitation for OCR complaints is within 180 days of the violation.

*Additional Resources:*

- Problem Resolution System <http://www.doe.mass.edu/pqa/prs/>

- State Complaint/Due Process Complaint Comparison Chart <http://www.doe.mass.edu/sped/complaintchart.pdf>
- Office for Civil Rights <http://www2.ed.gov/about/offices/list/ocr/>

## Slide 24 Bureau of Special Education Appeals

The Bureau of Special Education Appeals (BSEA) is an independent department located within the Massachusetts Division of Administrative Law Appeals. The BSEA works with DESE to maintain a number of different dispute resolution options, including Mediation, Facilitated IEP Meetings, SpedEx, and Due Process Hearings.

Mediation is a voluntary, informal dispute resolution process offered through the BSEA. Mediation may be requested by either a parent or the school district whenever there is a dispute about the educational needs of a student with disabilities, such as the appropriateness of goals, services, or placements. PRS complaints may also be mediated. Mediation is offered at no cost by an impartial mediator. The mediator does not decide how to resolve the dispute, but does help participants clarify the issues and underlying concerns, explore interests, discuss options, and collaborate to reach mutually satisfying agreements that address the needs of the student. Both the parent and district must agree to mediation. A mediation session is generally scheduled within 30 days of that agreement, and usually last from 2 hours to a day. Mediators are assigned by region, though a randomly assigned mediator may be requested. If the parties resolve all or some of the issues, they work together with the mediator to put their agreements in writing. If the parties are unable to reach agreement, they may consider other dispute resolution options. Mediation discussions are confidential, and therefore cannot be used as evidence in any subsequent due process hearing or civil proceeding.

Facilitated IEP meetings are a new dispute resolution option offered by the BSEA. They may be requested by either a parent or the district whenever they think that the presence of a neutral third party would assist in the successful drafting of an IEP, such as when the relationship between Team members is strained. Both the parent and district must agree to the Facilitated IEP meeting. Facilitated IEP meetings are offered at no cost by a mediator who serves as a facilitator. The facilitator helps Teams stay directed toward a discussion of the student's needs, make decisions, and reach agreement. They assist the Team with developing and following an agenda, staying focused on writing a satisfactory IEP, building lasting relationships through consensus and open communication, and resolving any disagreements that may arise during the meeting.

SpedEx is another new dispute resolution option offered by the BSEA. It is designed to assure that a child receives a free appropriate public education (FAPE) in the least restrictive environment (LRE). It may be requested by a parent or the district if there is a dispute regarding whether the district's proposed IEP offers FAPE in the LRE. In addition, SpedEx may only be requested after an IEP has been rejected or a hearing request has been filed. SpedEx is offered at no cost. Both the parent and district must agree to participate. During the SpedEx process, the parent and district jointly agree on a SpedEx consultant, who assists in determining an appropriate program. The parties are not bound by the consultant's recommendation but, if they agree, the dispute is considered resolved. Upon agreement, the child is placed in the program recommended by the consultant, who then observes it to assure that FAPE is being provided in the LRE. If the parties do not agree with the SpedEx recommendation, they may pursue other dispute resolution options.

The BSEA also offers Due Process Hearings, a formal dispute resolution option. A Hearing may be requested by either the parent or the district whenever there is a dispute about eligibility, evaluation, placement, IEP, or provision of special education, such as the appropriateness of goals, services, or placements. A Due Process Hearing is requested by filing a written request, and is decided by a Hearing Officer. Prior to and during the Hearing process, the parties are afforded several opportunities for informal resolution. If an agreement is reached, the Hearing request can be withdrawn. Due Process Hearing decisions may be appealed to state or federal court.

### *Additional Resources:*

- Bureau of Special Education Appeals <http://www.doe.mass.edu/bsea/>
- BSEA Mediation Brochure [http://www.doe.mass.edu/bsea/forms/m\\_brochure.pdf](http://www.doe.mass.edu/bsea/forms/m_brochure.pdf)
- Special Education Mediation: A Guide for Parents <http://www.directionservice.org/cadre/pdf/ParentGuide.pdf>
- Facilitated IEP Team Meeting <http://www.doe.mass.edu/bsea/fiep.html>
- Facilitated IEP Meetings: An Emerging Practice <http://www.directionservice.org/cadre/pdf/Facilitated%20IEP%20for%20CADRE%20English.pdf>
- Due Process Hearings <http://www.doe.mass.edu/bsea/process.html>
- Pro Se Guide [http://www.doe.mass.edu/bsea/forms/prose\\_guide.pdf](http://www.doe.mass.edu/bsea/forms/prose_guide.pdf)
- Reference Manual [http://www.doe.mass.edu/bsea/forms/proselitigant\\_manual.pdf](http://www.doe.mass.edu/bsea/forms/proselitigant_manual.pdf)

## Slide 25 Other Rights

There are several other important rights and procedural protections to be aware of. These include: Stay Put, Unilateral Placements, Revocation of Consent, Prior Written Notice, Student Records, Student Discipline, and Age of Majority rights.

Whenever a parent and district disagree about the student's placement or services, the student is entitled to receive the services and remain in the placement that the parent and district last agreed to, via an IEP. This right is known as "stay put [603 C.M.R. 28.08(7)]." Certain exceptions to this apply. The parent and district may agree to change the student's services or placement. A BSEA Hearing Officer may also order that a child's placement be temporarily changed if maintaining the student in the current placement is likely to result in injury to the student or others.

If a dispute arises between a parent and the district regarding the appropriateness of a student's placement, the parent may elect to place the student in a private school. This is called a unilateral placement. If the parent believes that the district should be responsible for the cost of the private school, the parent must inform the district at least 10 school days prior to removing the student and request a Due Process Hearing. A Hearing Officer will determine if the district's program was appropriate, and may require that the district reimburse the parent for all or part of the cost of the private school placement [34 C.F.R. § 300.148].

A parent may revoke consent for any or all service or their child's placement at any time [34 C.F.R. § 300.309(c)]. A parent may also revoke consent for the provision of special education for their child. This revocation must be in writing [34 C.F.R. § 300.300(b)(4)]. Upon receipt of this revocation, the district will send the parent a notice with the date they will discontinue special education for the student. After that date, the student will be considered a regular education student. If the parent has concerns about the student's progress in the future, they may once again refer the student for an initial evaluation.

*Additional Resources:*

- Administrative Advisory SPED 2010-1: Federal Regulation Changes  
[http://www.doe.mass.edu/sped/advisories/10\\_1.html](http://www.doe.mass.edu/sped/advisories/10_1.html)

**Slide 26 Prior Written Notice**

When a child receives special education services, the district must notify the parent in writing before they initiate or change the identification, evaluation, placement, or services of the student or a refuse to take an action that the parent has requested [34 C.F.R. § 300.503]. This right to receive prior written notice is an important one for parents, as it helps them understand why a decision was made.

The notice must include:

- a description of the action proposed or refused
- an explanation of why it is being proposed or refused
- each evaluation procedure, assessment, record, and/or report used to make the decision
- other options that were considered and reasons they were rejected
- other factors relevant to the decision
- how the parent can get a written copy of their rights
- who the parent can contact to obtain assistance in understanding their rights

The notice must also be in simple and commonly understood words, and in both English and the parent's primary language. If they are unable to read in any language or are blind or deaf, the notice should be made orally in English or with the use of a foreign language interpreter, in Braille, in sign language, or via TDD, as appropriate [603 C.M.R. 28.07(8)].

*Additional Resources:*

- Prior Written Notice <http://www.pacer.org/publications/pdfs/ALL43.pdf>

**Slide 27 Student Records**

A student's record consists of their transcript and their temporary school record, which includes health records, tests, evaluations, discipline records and other records pertaining to their special education eligibility or program.

A parent, or student aged 14 and older, may have access to a student's record. This access must be provided as soon as practicable and within 10 days after the initial request. Copies of any information contained within the record must also be provided, upon request. The district may charge a reasonable fee for the copies, unless doing so would

prevent the parent or student from exercising their rights under state and federal law. The parent or student has the opportunity to meet with qualified school personnel to have the records explained. They may also give permission to another individual, such as an advocate or attorney, to inspect, review, and/or interpret the records [603 C.M.R. 23.07(2)].

If the parent or student believes that information within the record is inaccurate, they may add information, comments, data, or any other relevant written material to it. If they believe that adding information is not sufficient to explain, clarify, or correct the objectionable material, they may request in writing that it be deleted or amended [603 C.M.R. 23.08].

*Additional Resources:*

- Student Records: Questions, Answers and Guidelines <http://www.doe.mass.edu/lawsregs/advisory/cmr23qanda.html>
- Student Records in Massachusetts <http://www.clcm.org/edsped.html>

### **Slide 28 Student Discipline**

If a student with a disability misbehaves, they may be suspended from school for up to 10 days. Once they have been removed for more than 10 days in a row, or more than a total of 10 days if there is a pattern of removal, they must receive educational services. The school must notify the parent as soon as the decision is made to remove a student for more than 10 days. The Team must meet within the 10 days to conduct a manifestation determination, to ascertain if the misbehavior was caused by or had a direct relationship to their disability or was the direct result of the school's failure to properly implement their IEP. In making the manifestation determination, the Team will consider relevant information from the student's file, behavioral observations, and any relevant information the parent provides [34 C.F.R. § 300.530].

If the Team determines that the student's behavior was not caused by or directly related to their disability or failure to properly implement the IEP, the student can be disciplined in the same manner and length of time as other students are for the same offense. The Team, however, must determine an interim alternative educational setting where the student will be placed and educational services that will be provided.

If the Team determines that the student's behavior was caused by or directly related to their disability or failure to properly implement the IEP, they must be returned to the last approved placement unless parent and district agree otherwise, or if the student possessed drugs or a weapon or caused serious bodily injury to someone. The student must also be provided a functional behavioral assessment and/or a revised behavioral intervention plan. If the behavior was caused by a failure to properly implement the IEP, the school must take immediate steps to remedy the deficiencies.

If the parent disagrees with a placement decision under these disciplinary provisions or with the manifestation determination, they may request a Due Process Hearing to appeal [34 C.F.R. § 300.532].

*Additional Resources:*

- Discipline of Special Education Students [http://www.doe.mass.edu/sped/IDEA2004/spr\\_meetings/disc\\_chart.pdf](http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_chart.pdf)
- Disciplining Children With Special Needs <http://www.clcm.org/edprotections.html>
- Functional Behavioral Assessment and Positive Interventions <http://www.taalliance.org/publications/pdfs/all12.pdf>

### **Slide 29 Age of Majority**

When a student turns 18, all of the decision-making rights under special education law afforded a parent transfer to the student. This must be discussed with the parent and student at least one year before the student's 18<sup>th</sup> birthday [34 C.F.R. § 300.520]. Certain exceptions to this apply. A court may appoint a legal guardian for the student, such as the parent. The student may also indicate, in writing, that they want to share decision-making with the parent or want the parent to continue to have authority to make educational decisions.

*Additional Resources:*

- Administrative Advisory SPED 2011-1 Age of Majority [http://www.doe.mass.edu/sped/advisories/11\\_1.html](http://www.doe.mass.edu/sped/advisories/11_1.html)
- Age of Majority [http://fcsn.org/pti/topics/transition/tools/handouts/age\\_of\\_majority.pdf](http://fcsn.org/pti/topics/transition/tools/handouts/age_of_majority.pdf)

### **Slide 30 QPAC Tips for Effective Participation**

The special education process is grounded on parent participation. Here are some tips to help you effectively

participate!

### **Know Your Rights and Responsibilities**

Understanding your rights will allow you to participate in the special education process as a knowledgeable partner, as well as eliminate some of the misconceptions that may arise between you and other Team members and help ensure a positive working relationship. It will also enable you to be a better advocate for your child's needs.

#### *Additional Resources:*

- Parent's Notice of Procedural Safeguard <http://www.doe.mass.edu/sped/prb/pnps.pdf>
- A Parent's Guide to Special Education <http://www.fcsn.org/parentguide/parentguide.pdf>
- Questions Often Asked by Parents about Special Education Services <http://www.nichcy.org/InformationResources/Documents/NICHCY%20PUBS/lq1.pdf>
- Questions and Answers about IDEA: Parent Participation <http://www.nichcy.org/InformationResources/Documents/NICHCY%20PUBS/QA2.pdf>
- Building the Legacy: A Training Curriculum on IDEA 2004 <http://nichcy.org/laws/idea/legacy>
- Working Together: A Parent's Guide to Parent and Professional Partnership and Communication Within Special Education <http://www.taalliance.org/publications/pdfs/communicationbook.pdf>

### **Put It In Writing**

Although most requests to the school district are not required to be in writing, it is certainly good practice for them to be so. We recommend that any formal request to the district be submitted in written form. We also suggest that your questions, concerns, and/or suggestions be in writing as well. Putting it in writing can help avoid misunderstandings. It also provides both you and the Team with a record of concerns and requests.

#### *Additional Resources:*

- Communicating With Your Child's School Through Letter Writing <http://www.nichcy.org/InformationResources/Documents/NICHCY%20PUBS/pa9.pdf>

### **Organize Your Records**

You have meeting notices, evaluation reports, and copies of the IEP. How do you organize all these records? One way is to create an IEP binder. An IEP binder is a simple, yet invaluable tool to keep you organized at, and in between, Team meetings.

Creating an IEP binder is easy. All you need is a large, sturdy three-ring binder and hole puncher. You should include in the binder copies of the most recent evaluations, the IEP, progress reports, letters to and from the district, and any and all other relevant information or documentation. Some parents arrange documents in chronological order, while others prefer to use index dividers to further organize by type of document. Use whatever system is easiest for you!

After a while, your IEP binder will become full. Do not throw away any of those records! The documents that no longer fit in your binder should be stored in a file cabinet or similar container. You never know when you may need them!

#### *Additional Resources:*

- Keeping Special Education Records <http://www.pacer.org/parent/php/PHP-c94.pdf>

### **Take a Day (or More)**

It can be tempting to agree to the proposed IEP and placement right there at the Team meeting. Do not! A lot of information was presented and discussed, and you need some time to process it. We suggest that you take the IEP home, along with any assessment reports you received, and put it all aside for the day. The next day give them a good read-through. Did the evaluation identify all of your child's needs? Does the IEP target all of recommendations presented in the evaluation? Is the placement the least restrictive option capable of implementing the IEP? Do you agree with all that is being proposed? If the answer to these questions is yes, go ahead and sign your agreement to the IEP and placement. If the answer is no, make a note of all your questions and concerns. You can request another meeting to address them, and make changes to the IEP if necessary. We recommend that you meet with the Team at least one more time before rejecting the IEP or refusing placement.

And remember, you have 30 days to respond to the proposals, but that does not mean you need to take all 30 days. The sooner you return your responses, the sooner the accepted goals and services can start. So take the time to read through the IEP and assessments, but return your responses as soon as you have decided. Do make sure to always respond to the proposed IEP and placement, if only to note your disagreement. There are mechanisms in place to help you and the Team work through any disputes, but they require your participation to make them successful!

**Act Locally First**

If you have concerns about your child's progress, placement, or the appropriateness of his or her goals or services, we recommend first trying to resolve them locally. Most parents will find this the easiest and fastest way to get their concerns addressed. Resolving your concerns locally will help ensure that they are addressed positively and efficiently! And remember, at any time you may opt to use other methods of dispute resolution.

**Get an Evaluation**

Most disputes in special education involve how to appropriately meet a student's needs. An evaluation is an excellent tool to help clarify the issue. You may generally ask the district to evaluate in any area of suspected disability if it has been more than one year since that area was evaluated. You can request an Independent Education Evaluation (IEE) at public expense if you disagree with an evaluation conducted by the district, and obtain an IEE at private expense at any time.

**Ask for Help**

No doubt you will have questions about special education at some point. There are many places you can go for help. If you have questions about your child's evaluation, IEP, or placement, your child's teacher or Team Chair will be able to provide you with more information. If you have questions about the special education process and understanding your rights within the process, or need additional information, resources, or referrals, QPAC can help you out. Visit our website for contact information: <http://http://www.quincypac.org/>.

If you have questions about a specific requirement under special education law, Program Quality Assurance Services will be able to answer. The PQA Liaison for Quincy is Ellen Convisser, and she can be reached at 781-338-3706. If you think you may need an advocate or other professional to help you navigate the special education process, you can call the Federation for Children with Special Needs at 617-236-7210.