

## Basic Rights Workshop

Brookline PAC  
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## **I. General Overview of Special Education Law**

### **A. Individuals with Disabilities Education Act**

1. FAPE (free & appropriate public education) = special education & related services
2. Special education = specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability
3. Related services = transportation, and such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education

### **B. Section 504 - note 2009 amendments**

1. Civil rights protection for otherwise qualified individuals with disabilities in programs that receive federal financial assistance

### **C. Americans with Disabilities Act - note 2009 amendments**

1. Similar to Section 504 except no requirement of federal financial assistance - addresses broader issues such as transportation, architecture, employment - services and reasonable accommodation options

### **D. Chapter 71B**

1. Massachusetts special education statute - tracks federal statute in large part

## Section 504

- A. Generally: a civil rights statute for people with disabilities focuses on employment, program accessibility, pre-school, elementary, secondary, post-secondary, health, welfare, social services
1. Prohibits Discrimination - no *otherwise qualified* individual with a *disability* shall solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under **any program or activity receiving federal financial assistance**
    - a. Otherwise qualified - must be able to perform essential functions
    - b. Person with a disability - person with a *physical or mental impairment* that *substantially limits* one or more *major life activities* - or has a record of such impairment - or is regarded as having such an impairment - excludes current illegal substance abuse and sexual behavioral disorders
    - c. Physical or mental impairment - any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, genitourinary, hemic & lymphatic, skin & endocrine or any mental or physical disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities
  - I. Very broad - not based on clinical categories - more functional model

2. Congress notes in 2008/2009 that the definition of disability shall be construed in favor of broad coverage
  3. Does not apply to impairments that are transitory and minor – actual or expected duration of 6 months or less
- d. Substantially limits - subjective test - unable to perform compared to average person or restricted in ability to perform - look at nature & severity of disability; duration, impact of disability
1. need only substantially limit one major life activity
  2. an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active
  3. the determination of whether impairment substantially limits shall be made without regard to ameliorative effects of mitigating measures (ie, medication, medical supplies ..., low vision devices (not ordinary glasses), prosthetics ...
- e. Major life activity – two lists to consider and can fit within either list:
1. major life activity = caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working
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2. major bodily functions = major life activity also includes the operation of a major bodily function including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions

**2. Note definition of program - entities that receive federal funding**

3. Remedies - reasonable accommodation (not a limit in education context) (note accommodation v. modification) services, damages

## II. Eligibility

### A. Definition

1. Child with a disability means a child with mental retardation, hearing impairments, speech or language impairments, visual impairments, serious emotional disturbance, orthopedic



### **III. Evaluations**

#### **A. School Evaluations**

1. Points in time when school evaluations are conducted:
  - a. Initial evaluation - to assess eligibility
  - b. Reevaluation - if conditions warrant, if parent or teacher requests a reevaluation. Limited to once per year unless parties agree otherwise. Must conduct at least every 3 years unless parties agree otherwise.
  - c. Evaluation before change in eligibility/termination of eligibility - must be evaluated prior to determining no longer eligible but not for aging out or graduation

### **IV. TEAM Process**

#### **A. The TEAM - 1414(d)(1)(B)**

1. Parents
2. At least one regular ed teacher if child in reg ed
3. At least one sped teacher
4. School district rep who can provide/supervise education; knows curriculum; & knows resources
5. Individual who can interpret tests
6. At discretion of parents or district, other knowledgeable individuals
7. Child, if appropriate
8. Note exceptions to attendance



## V. IEP

### A. In General

1. Written statement for each child that is developed, reviewed, revised
2. Child's present levels of academic achievement & functional performance
3. Special education & related services to be provided to child
4. Explanation why child will not participate in regular education
5. Statement related to statewide assessments & alternate assessments
6. Time lines for services - duration, frequency
7. ~~Statement of annual goals and need for periodic progress reports~~

### TRANSITION PLANNING FORM (TPF)

Massachusetts requires that beginning when the eligible student is 14 for the IEP developed that year, the school district must plan for the student's need for transition services and the school district must document this discussion annually. This form is to be maintained with the IEP and revisited each year.

<b>Student:</b>	<b>SASID:</b>	<b>Age:</b>
<b>Date form completed:</b>	<b>Current IEP dates from: _____ to: _____</b>	
<b>Anticipated date of graduation:</b>		
<b>Anticipated date of 688 referral, if applicable:</b>		

#### POST-SECONDARY VISION

Write the student's **POST-SECONDARY VISION** in the box below. In collaboration with the family, consider the student's preferences and interests, and the desired outcomes for post-secondary education/ training, employment, and adult living. This section should correspond with the vision statement on IEP 1.

#### DISABILITY RELATED NEEDS

Write the skills (disability related) that require IEP goals and/or related services in the box below. Consider all skills (disability related) necessary for the student to achieve his/her post-secondary vision.

Student: \_\_\_\_\_ Date form completed: \_\_\_\_\_

**ACTION PLAN**

The **ACTION PLAN** should outline how the student can develop self-determination skills and be prepared both academically and functionally to transition to post-school activities in order to achieve his/her post-secondary vision. Indicate how Special Education/General Education, family members, adult service providers or others in the community will help the student develop the necessary skills. **Disability related needs must also be stated on page 1.**

**Develop** the **ACTION PLAN** needed to achieve the **POST-SECONDARY VISION** by outlining the skills the student needs to develop and the courses, training, and activities in which the student will participate. Include information on who will help the student implement specific steps listed below in the Action Plan.

- **Instruction: Is there a course of study or specific courses needed that will help the student reach his/her post-secondary vision?** *Consider the learning opportunities or skills that the student may need. This could include specific general education courses and/or special education instruction, career and technical education, and/or preparation for post-secondary outcomes such as vocational training or community college.*

## **VII. Placement**

### **A. LRE**

1. Least Restrictive Environment (LRE) = to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

### **2. Children in Private Schools**

A. School district may place child in private school

B. Parental Placement - parents may place & seek reimbursement

1. 1412(10)(C) - checks/limits on unilateral placements - notice via TEAM meeting or 10 day written notice of intent to remove

## **VIII. Miscellaneous Procedural Safeguards**

A. Records Access

B. Independent Evaluation - note MA on observations

C. Stay Put

1. Pending resolution of dispute, child stays in then current educational placement

a. Resolution of dispute = hearing request, etc

b. Current educational placement = last agreed upon placement

c. Note exception in discipline

D. Procedural Violations & FAPE

1. Generally, procedural violations will only be deemed to deny a child a free & appropriate public education when it results in some type of educational harm or is egregious.

## **IX. Discipline**

A. 10 School Days or Less Rule

B. 10 School Days or More Rule (k)(1)(B)

C. 45 School Days Rule

D. Manifestation Determination

E. Functional Behavioral Assessment

Family & Community > Special Communities

## 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 Mitnacht  
State Director of Special Education

Date: January 8, 2009

### **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 designees 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.mass.gov/legis/laws/seslaw08/slo80363.htm>. 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**

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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

maliciously to observe a child's education. The Department encourages districts

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



1. **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.

2. **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.
3. **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.<sup>4</sup> 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

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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 Mitnacht, at [mmmittnacht@doe.mass.edu](mailto:mmmittnacht@doe.mass.edu) by June 30, 2009. Thank you for your attention to this important information.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

last updated: January 8, 2009

*Massachusetts Department of  
Elementary & Secondary Education*

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## **X. Dispute Resolution Options**

A. Mediation

B. SpedEx

C. Hearing

1. Resolution Session - convened by district within 15 days - written agreement with 3 day opt out

2. Pre Hearing Conference

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Selected 2008 - 2009 Judicial Decisions  
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1. **Forest Grove School District v. T.A.**, 557 U.S. \_\_\_\_ (2009). IDEA authorizes reimbursement for private special education services when a public school fails to provide a free appropriate public education and the private school placement is appropriate, regardless of whether the child previously received special education services through the public school.
2. **C.G. & B.S. v. Five Town Community School District**, 513 F.3d 279 (1st Cir. 2008). Noting that parental obstructive conduct impeded completion of IEP and is a factor in determining overall appropriateness of IEP.
3. **Lessard v. Wilton-Lyndeborough Cooperative School District**, 518 F.3d 18 (1st Cir. 2008). Holding that the Rowley standard is applicable to transition services. *See also J.L. & M.L. v. Mercer Island School District*, 109 LRP 48649 (9th Cir. 2009).

## Additional Resources on Special Education Law

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### *Websites*

National Association of State Directors of Special Education, [www.nasde.org](http://www.nasde.org). (broad based site with multiple links to statutes, regulations, policy etc. with a focus on school district perspective)

National Center for Learning Disabilities, [www.nclld.org](http://www.nclld.org). (links to legislative policy and interpretation with a focus on ld and on parent perspective)

U.S. Department of Education, [www.ed.gov](http://www.ed.gov). (entry site for Office for Civil Rights page and Office of Special Education Program pages)

Massachusetts Department of Elementary & Secondary Education, [www.doe.mass.edu](http://www.doe.mass.edu). (links to state and national legislation and policy

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advisories and forms)

Council for Exceptional Children, [www.cec.sped.org](http://www.cec.sped.org). (links for legislative and policy initiatives)

National Dissemination Center for Children with Disabilities, [www.nichcy.org](http://www.nichcy.org) (links to federal statutes, regulations, etc.)

Findlaw, [www.findlaw.com](http://www.findlaw.com). (general search engine for statutes, regulations both nationally and statewide)

Center for Law & Education. [www.cleweb.org](http://www.cleweb.org). (links to articles interpreting federal special education law).