



Parent Advisory Group (PAG) Overview of State & Federal Special Education Rights & Laws

This presentation will:

- Provide an overview of rights & laws in special education
- Provide additional links and resources for families

Special Education Laws

- **Federal:**
 - The Individuals with Disabilities Education Act (IDEA)
- **State:**
 - The Massachusetts Public Education Law, Ch. 766 M.G.L. c. 71B, §§ 1 - 16 guarantees a "free and appropriate public education in the least restrictive environment" to all school-aged children (ages 3 to 21) regardless of disability.

<http://www.doe.mass.edu/sped/regs.html>

Related Laws:

- The Massachusetts Education Reform Act of 1993
 - Further amended in 2000
- Section 504 of the Rehabilitation Act
- Chapter 688 of the Acts of 1983
- The Americans with Disabilities Act (ADA)

Resources: Mass Laws about Education

- <https://www.mass.gov/info-details/massachusetts-law-about-education>
 - <https://www.doe.mass.edu/lawsregs/603cmr28.html>

Massachusetts State Regulations

603 CMR 28.00

- The purpose of 603 CMR 28.00 is to ensure that eligible Massachusetts students receive special education services designed to develop the student's individual educational potential in the least restrictive environment in accordance with applicable state and federal laws.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=01>

Definitions:

Schools & Programs:

- **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.
- **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.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Definitions:

Programs:

- **In-district program** shall mean a special education program operated in a public school building or other facility that provides educational services to students of comparable age, with and without disabilities
- **Out-of-district program** shall mean a special education program located in a building or facility outside of the general education environment that provides educational services primarily to students with disabilities and shall include all programs approved under 603 CMR 28.09. Such program may be operated by a private organization or individual, a public school district, or a collaborative.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Definitions:

Certified Special Education Teacher:

- Certified special educator shall mean a person with a teaching certificate or license in an area of special education or a related service provider with appropriate certification or license in his or her professional area. Licensure shall meet the requirements of the Massachusetts Regulations for Educator Licensure and Preparation Program Approval at 603 CMR 7.00 and the requirements for renewal of license at 603 CMR 44.00, as necessary. A certified or licensed special educator may provide, design, or supervise special education services.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Definitions:

Consent:

- Consent shall mean agreement by a parent who has been fully informed of all information relevant to the activity for which consent is sought, in his/her native language or other mode of communication, understands and agrees in writing to the carrying out of the activity, and understands that the granting of consent is voluntary and may be revoked at any time. The consent describes the activity and lists the records (if any) that will be released and to whom

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Definitions:

Disability shall mean one of the following:

- Autism
- Developmental Delay
- Intellectual Impairment
- Sensory Impairment
 - Hearing Impairment or Deaf
 - Vision Impairment or Blind
 - Deafblind
- Neurological Impairment
- Emotional Impairment
- Communication Impairment
- Physical Impairment
- Health Impairment
- Specific Learning Disability

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Definitions:

Eligible Student:

- A person aged three through 21 who has not attained a high school diploma or its equivalent, who has been determined by a 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.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Definitions:

Individualized Education Program (IEP):

- 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.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Definitions:

Special Education

- Specially designed instruction to meet the unique needs of the eligible student or related services necessary to access the general curriculum and shall include the programs and services set forth in state and federal special education law.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Referral & Evaluation

- **A student may be referred for an evaluation by a parent or any person in a caregiving or professional position concerned with the student's development**
 - When a student is referred for an evaluation to determine eligibility for special education, the school district shall send written notice to the student's parent(s) within five school days of receipt of the referral.
 - The notice required by 603 CMR 28.04(1)(a) shall meet all of the content requirements set forth in M.G.L. c. 71B, § 3, and in federal law and shall seek the consent of a parent for the evaluation to occur, and provide the parents with the opportunity to express any concerns or provide information on the student's skills or abilities.
 - School districts shall provide the student's parents with an opportunity to consult with the Special Education Administrator or his/her designee to discuss the reasons for the referral, the content of the proposed evaluation, and the evaluators used.
 - Upon referral, school districts shall evaluate children who are two and a half years of age and who may be receiving services through an early intervention program. An initial evaluation shall be conducted in order to ensure that if such child is found eligible, special education services begin promptly at age three.

Referral & Evaluation

Initial Evaluation

- Upon consent of a parent, the school district shall provide or arrange for the evaluation of the student by a multidisciplinary team within 30 school days. The assessments used shall be adapted to the age of the student and all testing shall meet the evaluation requirements set out in state and federal law. The school district shall ensure that appropriately credentialed and trained specialists administer all assessments.
 - *See link for more details*

Referral & Evaluation

Annual Review & Three-Year Assessment

- The school district shall review the IEPs and the progress of each eligible student at least annually.
- Additionally, every three years, or sooner if necessary, the school district shall, with parental consent, conduct a full three-year reevaluation consistent with the requirements of federal law.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=04>

Referral & Evaluation

Unscheduled Eval for Medical Reasons

- If, in the opinion of the student's physician, an eligible student is likely to remain at home, in a hospital, or in a pediatric nursing home for medical reasons and for more than 60 school days in any school year, the Administrator of Special Education shall, without undue delay, convene a Team to consider evaluation needs and, if appropriate, to amend the existing IEP or develop a new IEP suited to the student's unique circumstances.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=04>

Referral & Evaluation

Independent Education Evaluations

- Upon receipt of evaluation results, if a parent disagrees with an initial evaluation or reevaluation completed by the school district, then the parent may request an independent education evaluation.
 - *See link for more details*

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=04>

The Team Process & IEP Development

Convening the Team:

Within 45 school working days after receipt of a parent's written consent to an initial evaluation or reevaluation, the school district shall: provide an evaluation; convene a Team meeting to review the evaluation data, determine whether the student requires special education and, if required, develop an IEP in accordance with state and federal laws; and provide the parents with two copies of the proposed IEP and proposed placement, except that the proposal of placement may be delayed according to the provisions of 603 CMR 28.06(2)(e)

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

The Team Process & IEP Development

Convening the Team:

Or, if the Team determines that the student is not eligible for special education, the school district shall send a written explanation of the finding that the student is not eligible. The evaluation assessments shall be completed within 30 school working days after receipt of parental consent for evaluation. Summaries of such assessments shall be completed so as to ensure their availability to parents at least two days prior to the Team meeting. If consent is received within 30 to 45 school working days before the end of the school year, the school district shall ensure that a Team meeting is scheduled so as to allow for the provision of a proposed IEP or written notice of the finding that the student is not eligible no later than 14 days after the end of the school year.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

The Team Process & IEP Development

Determinations of the Team:

Eligibility determination. The Team shall examine the evaluative data, including information provided by the parent, and make one of the following determinations:

1) The student is eligible. If the student has one or more of the disabilities defined at 603 CMR 28.02(7) and if, as a result of the disability(ies), the student is unable to progress effectively in the general education program without the provision of specially designed instruction, or is unable to access the general curriculum without the provision of one or more related services, the Team shall determine that the student is eligible.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

The Team Process & IEP Development

Determinations of the Team:

If the student is eligible:

- A. Consistent with state and federal special education law, the Team shall establish whether a student has a disability(ies) as defined in 603 CMR 28.02(7), determine the type(s) of disability(ies) and shall ensure that the student's inability to progress is a result of the disability(ies) and not a result of an inability to meet the school discipline code, limited English proficiency, social maladjustment, or lack of instruction in reading or math.
- B. Once eligibility has been determined, the type of disability of the student shall not be used to provide a basis for labeling or stigmatizing the student. Additionally, the type of disability shall not define the needs of the student and shall in no way limit the services, programs, or inclusion opportunities provided to the student.
- C. If the Team determines that the student is an eligible student, the Team shall develop an individualized education program (IEP).

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

The Team Process & IEP Development

Determinations of the Team:

Eligibility determination. The Team shall examine the evaluative data, including information provided by the parent, and make one of the following determinations:

2) The student is not eligible. If the Team determines that the student is not eligible, the Team chairperson shall record the reason for such finding, list the meeting participants, and provide written notice to the parent of their rights in accordance with federal requirements within ten days of the Team meeting.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

The Team Process & IEP Development

Determinations of the Team:

Evaluation information is inconclusive: If the Team finds the evaluation information insufficient to develop an IEP, the Team, with parental consent, may agree to an extended evaluation period.

The Team Process & IEP Development

Developing the IEP:

Upon determining that the student is eligible for special education, the Team shall develop an IEP using the evaluation data to guide development of goals and objectives for the student.

- A. Parent disagrees with evaluation and seeks an independent education evaluation. If a parent disagrees with the evaluation results, the Team may, with the agreement of the parent, delay writing some or all of the IEP until an independent education evaluation can be completed.
- B. If the Team writes a partial IEP, a parent may consent to the proposed partial program prior to completion of the full IEP. In such case, the partial program shall be implemented immediately.
- C. The IEP shall be completed using the standard IEP format provided by the Department. If the Team members are unable to agree on the IEP, the Team chairperson shall state the elements of the IEP proposed by the school district

The Team Process & IEP Development

Contents of the IEP:

Upon determining that the student requires special education and based upon the evaluative data, the Team shall write an IEP for the student and decide the student's placement. The IEP shall describe the special education and related services that the student requires and shall include all elements required under federal and state law.

- The IEP shall include specially designed instruction to meet the needs of the individual student and related services that are necessary to allow the student to benefit from the specially designed instruction, or may consist solely of related services that are necessary to allow the student to access the general curriculum, consistent with federal and state requirements.

The Team Process & IEP Development

Contents of the IEP:

- The Team shall carefully consider the general curriculum, the learning standards of the Massachusetts Curriculum Frameworks, the curriculum of the district, and shall include specially designed instruction or related services in the IEP designed to enable the student to progress effectively in the content areas of the general curriculum.
- For any student approaching graduation or the age of twenty-two, the Team shall determine whether the student is likely to require continuing services from adult human service agencies. In such circumstances, the Administrator of Special Education shall make a referral to the Bureau of Transitional Planning in the Executive Office of Health and Human Services in accordance with the requirements of M.G.L. c. 71B, § 12A through C (known as Chapter 688).

The Team Process & IEP Development

Contents of the IEP:

- The daily duration of the student's program shall be equal to that of the regular school day, unless the Team states that a different duration is necessary to provide a free appropriate public education to the student. In such case, the Team shall specify the daily duration of the program, and the Team shall state on the IEP the reason for such different duration.
 - *See link for more details*

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

The Team Process & IEP Development

Special Transportation:

- If the Team determines that the student's disability requires transportation or specialized transportation arrangements in order to benefit from special education, the Team shall note on the student's IEP that the student requires special transportation. In such circumstances, transportation is a related service.
 - *See link for more details*

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

The Team Process & IEP Development

Determination of Placement:

At the Team meeting, after the IEP has been fully developed, the Team shall determine the appropriate placement to deliver the services on the student's IEP. Unless the student's IEP requires some other arrangement, the student shall be educated in the school that he or she would attend if the student did not require special education.

- A. Identification by the Team of placement shall proceed in accordance with the options delineated in 603 CMR 28.06.
- B. Lack of an identified placement shall not delay the proposal of the IEP to the parent following the Team meeting.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

The Team Process & IEP Development

Parent Response to Proposed IEP & Proposed Placement

- Immediately following the development of the IEP, and within 45 school working days after receipt of the parent's written consent to an initial evaluation or reevaluation, the district shall provide the parents with two copies of the proposed IEP and proposed placement along with the required notice, except that the proposal of placement may be delayed according to the provisions of 603 CMR 28.06(2)(e) in a limited number of cases.

The Team Process & IEP Development

Parent Response to Proposed IEP & Proposed Placement

- No later than 30 days after receipt of the proposed IEP and proposed placement, the parents shall:
 - Accept or reject the IEP in whole or in part
 - Request a meeting to discuss the rejected portions of the IEP or the overall adequacy of the IEP
 - or if mutually agreed upon, accept an amended proposal
 - and accept or reject the proposed placement

The Team Process & IEP Development

Parent Response to Proposed IEP & Proposed Placement

- Upon parental response to the proposed IEP and proposed placement, the school district shall implement all accepted elements of the IEP without delay.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Parent Involvement

Parental Consent:

In accordance with state and federal law, each school district shall obtain informed parental consent as follows:

- The school district shall obtain written parental consent
 - before conducting an initial evaluation or making an initial placement
 - before conducting a reevaluation
 - before placing a student in a special education placement subsequent to the initial placement in special education.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Parent Involvement

Parental Consent:

In accordance with state and federal law, each school district shall obtain informed parental consent as follows:

- The school district shall obtain consent before initiating extended evaluation services
- A parent may revoke consent at any time. Except for initial evaluation and initial placement
- Parents have the right to observe any program(s) proposed for their child
- A parent may discontinue special education and related services provided to his or her child by notifying the school district in writing that the parent revokes consent to the continued provision of all special education and related services to the child.
- *See link for more details*

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Parent Involvement

Parent right to waive assessments:

Any individual assessment may be waived with the approval of the parents if an equivalent assessment has been recently completed and if the person conducting the school assessment determines that the assessment results are still accurate.

- All efforts shall be made to avoid duplicative or unnecessary testing
- In accordance with federal requirements, if recommended by the school district, parents may agree to waive some or all assessments when the three-year reevaluation is required.

Parent Involvement

Reports to Parents:

Written progress reports for eligible students shall be submitted to parents at least as often as report cards or progress reports for students without disabilities.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Parent Involvement

Parent Advisory Participation:

- Each school district shall create a districtwide parent advisory council offering membership to all parents of eligible students and other interested parties
- The parent advisory council duties shall include but not be limited to: advising the district on matters that pertain to the education and safety of students with disabilities; meeting regularly with school officials to participate in the planning, development, and evaluation of the school district's special education programs.
- The parent advisory council shall establish by-laws regarding officers and operational procedures, and, in the course of its duties, the parent advisory council shall receive assistance from the district without charge, upon reasonable notice, and subject to the availability of staff and resources.

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Parent Involvement

Student Participation & Consent at the Age of Majority:

- When the student reaches 18 years of age, he or she shall have the right to make all decisions in relation to special education programs and services.
- The school district shall have the obligation to obtain consent from the student to continue the student's special education program.
- The parents will continue to receive written notices and information but will no longer have decision-making authority
 - except as provided in 603 CMR 28.07(5)(a) through (c).
 - *see link for more details*

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Parent Involvement

When a Parent Provides Transportation

- If a parent provides transportation to an eligible student requiring special transportation consistent with the requirements of 603 CMR 28.05(5)(b), the school district shall reimburse such parent the prevailing rate per mile for state employees.
 - *See link for details*

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Parent Involvement

Educational Surrogate Parent

- **District Responsibility:** When a student is without parental representation and requires an educational surrogate parent to be appointed in accordance with federal law and regulations, the Department may request assistance from the district responsible for services to the student in identifying a person willing to serve as an educational surrogate parent.
 - *See link for details*

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Parent Involvement

Communications with Parents and Students

- Each district shall ensure that all communications and meetings with parents and students pursuant to 603 CMR 28.00 meet the following standards:
 - Communications shall be in simple and commonly understood words
 - Communications shall be in both English and the primary language of the home, if such primary language is other than English. Any interpreter used to implement this provision shall be fluent in the primary language of the home
 - Where the parents or the student are unable to read in any language or are blind or deaf, communications shall be made orally in English or with the use of a foreign language interpreter, in Braille, in sign language, via TDD, or in writing, whichever is appropriate

Dispute Resolution

- 603 CMR 28.08 outlines a continuum of options for dispute resolution including:
 - Local School District Procedures
 - Department Procedures
 - Bureau of Special Education Appeals
 - Mediation
 - Hearings
 - *See Link for Details*

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Dispute Resolution

Student's Right to IEP Services and Placement

In accordance with state and federal law, during the pendency of any dispute regarding placement or services, the eligible student shall remain in his or her then current education program and placement unless the parents and the school district agree otherwise.

See Link for Details

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Programs and District Responsibility

- 603 CMR 28.09 outlines state approval of public and private day and residential special education school programs
- 603 CMR 28.10 outlines school district responsibilities
- *See link for details*

<https://www.doe.mass.edu/lawsregs/603cmr28.html?section=all>

Federal Law

The Individuals with Disabilities Education Act

IDEA

<https://sites.ed.gov/idea/about-idea/>

The Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA) is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children.

<https://sites.ed.gov/idea/about-idea/>

The Individuals with Disabilities Education Act (IDEA)

The IDEA governs how states and public agencies provide early intervention, special education, and related services to more than 7.5 million (as of school year 2020-21) eligible infants, toddlers, children, and youth with disabilities.

<https://sites.ed.gov/idea/about-idea/>

The Individuals with Disabilities Education Act (IDEA)

The stated purpose of the 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;
- to ensure that the rights of children with disabilities and parents of such children are protected;
- to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

<https://sites.ed.gov/idea/about-idea/>

The Individuals with Disabilities Education Act (IDEA)

The stated purpose of the IDEA is:

- to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;
- to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services;
- to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

<https://sites.ed.gov/idea/about-idea/>

The Individuals with Disabilities Education Act (IDEA)

For more information about IDEA visit:

- <https://sites.ed.gov/idea/>

DESE Parent Information:

- Special Education/IDEA
- Section 504/ADA
- Massachusetts Organizations/Resources
- National Organizations/Resources

<https://www.doe.mass.edu/sped/parents.html>

Parent's Notice of

Procedural Safeguards

- DESE Brochure: Overview of Procedural Safeguards

<https://www.doe.mass.edu/sped/prb/>

Additional Resources:

- **Massachusetts Information on Education Rights**
 - <https://www.mass.gov/info-details/learn-about-education-rights#:~:text=Public%20education%20environment%20for%20children,to%2021>
- **Massachusetts Information on Education Laws**
 - <https://www.mass.gov/info-details/massachusetts-law-about-education>
- **Department of Education - Laws & Regulations**
 - <https://www.doe.mass.edu/lawsregs/>
- **Department of Education - Special Education Information**
 - <https://www.doe.mass.edu/sped/>

Parent Advisory Council (PAC)

Overview of State & Federal Special Education Rights & Laws

