

# A Guide to Federal and State Special Education Requirements in Massachusetts

**Cautionary and Explanatory Notes:** (1) Citations in this Guide are to the state special education regulations effective 9/1/00. All federal requirements are in effect. (2) The reader is strongly urged to consult the actual language of each citation. This Guide is an introductory reference, not a substitute for reading and understanding the legal requirements themselves. (3) Each Chapter is numbered separately, e.g.: 1-1 means Chapter 1, Page 1, *and so on*.

The full set of federal regulations, plus additional technical assistance information, may be found on the internet at: <http://idea.ed.gov/download/finalregulations.html>

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## ***Chapter 1 - Authority, Scope & Purpose of Special Education Laws***

<b><i>Consult generally:</i></b>			
State Regulations:	603 CMR 28.00	State Statute:	M.G.L. Chapter 71B
Federal Regulations:	34 CFR 300	Federal Statute:	20 U.S.C. §1400 <i>et seq.</i>
<i>See Chapter 2 for references to definitions of words and key terms.</i>			

Notes	Topic	Federal Cite	State Cite
<b>HISTORY &amp; AUTHORITY FOR SPECIAL EDUCATION LAW</b>			
<u>Federal:</u>  Understanding laws, regulations, and legal citations.  Federal special education law	<p>Federal laws passed by the U.S. Congress and signed by the president, known as statutes, are given a Public Law number (indicating the session of Congress) and a permanent title and section location in the U.S. Code (U.S.C.). Major education laws authorize the U.S Dept. of Education to promulgate administrative regulations to further define the program created by statute. After promulgation, such regulations have the full force of law and are codified in the Code of Federal Regulations (CFR).</p> <p><u>Public Law 105-17, the 1997 amendments to the Individuals with Disabilities Education Act (known as “IDEA-97”)</u>, grew out of several earlier special education statutes and amendments.</p> <p>In 1975, P.L. 94-142 first required that states accepting federal money under the Act, provide a free appropriate public education (FAPE) to students with disabilities in the least restrictive environment. It required that each student’s educational plan be individualized to meet his or her needs, and developed with parental involvement.</p>	<p><u>Statute:</u> P.L. 105-17</p> <p>20 U.S.C. Chapter 33 §1400 <i>et seq.</i></p> <p><u>Regulations:</u> 34 CFR Part 300</p>	
<u>State:</u>	State laws passed by the Massachusetts General Court (Legislature) and signed by the governor are given a session law number reflecting		<u>Statute:</u> c. 766 of

Notes	Topic	Federal Cite	State Cite
Understanding laws, regulations, and legal citations.	the order of enactment in that calendar year. Permanent laws are also assigned to a chapter and sections in the Massachusetts General Laws (MGL). Many education laws are found in Chapters 69-76 of the M.G.L. The Mass. Board of Education promulgates administrative regulations to further define programs created by statute. All education regulations are codified in the Code of Massachusetts Regulations (CMR), in Title 603 of the CMR.		the Acts of 1972.  MGL c.71B  <u>Regulations:</u> 603 CMR 28.00
Massachusetts' special education law	Massachusetts' first major special education law was Chapter 766 of the Acts of 1972 [session number], codified as MGL c.71B.		
<b>PURPOSES OF IDEA - 97</b>			
General findings	The Congress noted that disability is a normal part of the human experience. Congress affirmed the need for higher expectations of student performance, preparation of students for employment and independent living, more comprehensive coordination of supports with other agencies, high quality professional development, incentives for whole-school approaches, and pre-referral interventions.	20 U.S.C. Chapter 33 §1400(b)	
(1) Early intervention and provision of services	The Congress encouraged that appropriate interventions be done early. A different section of IDEA, Part C-Early Intervention, covers disabled infants and toddlers ages birth-3. The Massachusetts Dept. of Public Health administers the Early Intervention program, which had been independently created by state statute in 1983.	34 CFR 303 [regs for Part C of IDEA-97]	MGL c.111G
(2) Participation in the general curriculum	IDEA-97 and the 1999 federal regulations enhance the participation of children with disabilities in the general curriculum, through several improvements in the IEP process.	300.344 300.346 300.347	
(3) Education with non-disabled children	The Congress found that integrated education generally produces better outcomes, but only if placements in regular classrooms include needed supports and accommodations.	300.347	
(4) Higher	IDEA-97 requires:		

Notes	Topic	Federal Cite	State Cite
expectations and accountability	<ul style="list-style-type: none"> <li>state performance goals;</li> <li>inclusion of students with disabilities in general assessments; and</li> <li>regular progress reports to parents.</li> </ul>	300.137 300.138 300.347(a)(7)	
<b>PURPOSES OF M.G.L. CHAPTER 71B &amp; ITS REGULATIONS</b>			
Statute	<p>The state law requires that districts identify, evaluate, determine services and provide programs for school age children who---because of their disabilities---are unable to progress effectively in regular education and require special education to develop their individual educational potential.</p> <p>Another purpose is to provide a planning process (often referred to as “Chapter 688”) for certain severely disabled young adults to determine adult service needs.</p>		MGL c.71B §§1-3  MGL c.71B §§ 12A-C
Regulations	<p>The regulations provide detail on how to provide special education in accordance with applicable state and federal laws.</p> <p>They also set forth the standards for approval of day and residential schools (public and private) seeking to provide services to publicly-funded eligible students.</p> <p><i>The current regulations go into effect on September 1, 2000.</i></p>		28.01-.08  28.09

## Chapter 2 - Definitions of Key Words & Terms

### Consult generally:

State Regulations:	603 CMR 28.02	State Statute: M.G.L. Chapter 71B, §1
Federal Regulations:	300.3 - 300.30; also, Analysis and Appendix A.	

Citations are not always definitions. Some citations are provided here because although no actual definition is provided the term is described or used in an informational context.

*“Analysis” refers to the commentary preceding the regulations, and “Appendix A” to the Notice of Interpretation following the regulations. Both were published accompanying the Federal Regulations in the 3-12-99 Federal Register.*

WORD OR TERM	FEDERAL CITE	STATE CITE	COMMENT OR CROSS-REFERENCE
<b>A</b>			
Administrator of special education		Ch. 71B, § 3A	
Age of majority	300.347(c); 300.517	Ch. 231, § 85P	The age of majority is age 18 in Mass. See also, "Transfer of Rights"
Approved private special education school or program		28.02(1)	See also, 28.09 re procedures
Approved public special education school		28.02(2)	See also, 28.09 re procedures
Assessments [relating to evaluations]	300.532	Ch. 71B §§ 3, 7	See also, Evaluations
Required		28.04(2)(a); also statute, paras 4-7.	Also, must assess need for Braille if student is blind.
Optional		28.04(2)(b); also statute, paras 4-7.	
Assistive technology device	300.5;		See also, 300.308(b)
Assistive technology service	300.6		
Audiology	300.24(b)(1)		"Related Service"
<b>B-C</b>			
Bureau of Special Ed Appeals (BSEA)		28.08(3)	See also, Due process.
Certified special educator		28.02(3);]	See also, 603 CMR 7.00 re certification requirements; MGL c. 71, §38G
Child with a disability		Ch. 71B, §1	See also, Disability; Eligible Student
Complaint procedures	300.660-.662		
Confidentiality of information	300.560-.577	Ch. 71B, §3, para.11	
Consent	300.500(b)(1)		See also, 300.505
Continuum of alternative placements	300.551		See also, Placements
Controlled substance	300.520(d)(1)		
Counseling services	300.24(b)(2)		"Related Service"
Curriculum Frameworks		Ch. 69, s1E	See also, 28.02(17) re "progress effectively in gen'l education program"

WORD OR TERM	FEDERAL CITE	STATE CITE	COMMENT OR CROSS-REFERENCE
<b>D</b>			
Day; business day; school day	300.9	28.02(4)	
Direct services	300.370(b)(1)		
Disability Definitions or use of word "Disability"	300.7	28.02(6)	
Autism	300.7(c)(1)	28.02(6)(a)	Mass. defers to federal definition
Blind (see also, Visual Impairment, below)		28.02(6)(d)2; Ch.71B, Sec.3, 5th para.	See also, MGL Ch. 69B (3rd para from end) re Braille materials
Communication impairment		28.02(6)(g)	See also, Speech or language impairment, below.
Deaf-blindness	300.7(c)(2)	28.02(6)(d)3	One type of "sensory impairment" in Mass. regs
Deafness	300.7(c)(3)	28.02(6)(d)1	One type of "sensory impairment" in Mass. regs
Developmental delay - ages 3-9	300.7(b)	28.02(6)(b)	See also, 300.313
Emotional impairment/disturbance	300.7(c)(4)	28.02(6)(f)	
Health impairment [fed: "Other health..."]	300.7(c)(9)	28.02(6)(i)	
Hearing impairment	300.7(c)(5)	28.02(6)(d)1	One type of "sensory impairment" in Mass. regs
Intellectual impairment		28.02(6)(c)	
Mental retardation	300.7(c)(6)	28.02(6)(c)	One type of "intellectual impairment" in Mass. regs
Multiple disabilities	300.7(c)(7)		
Neurological impairment		28.06(e)	
Orthopedic impairment	300.7(c)(8)	28.02(6)(h)	One type of "physical impairment" in Mass. regs
Physical impairment		28.02(6)(h)	
Sensory impairment		28.02(6)(d)	Includes: hearing, vision, deaf-blind.
Specific learning disability	300.7(c)(10); 300.541	28.02(6)(j)	
Speech or language impairment	300.7(c)(11)	28.02(6)(g)	See also, Communication impairment, above.
Traumatic brain injury	300.7(c)(12)	28.02(6)(e)	One type of "neurological impairment" in Mass. regs
Visual impairment, including blindness	300.7(c)(13)	28.02(6)(d)2	One type of "sensory impairment" in Mass. regs
Discipline	300.520-.528		See also, MGL Ch. 76, §§16-18 re general standards re: exclusion of students.
Authority of hearing officer	300.521(d))		But see also, Analysis at p. 12624 re use of IEP team
Authority of school personnel	300.52		
Change in placement	300.519		See also, Analysis at p. 12618, 12624; pp. 12553-4.
Controlled substance; illegal drug; weapon	300.520(d)(1-3)	Ch. 71, §37H	See also, 300.520(a)(2)(i); and Analysis at p. 12619.
Expedited hearings	300.528		See also, Analysis at p. 12630 summarizing placement rules
FAPE when removed for more than 10 days	300.121(d)(1)		See also, Analysis at p. 12618, 12554.
Functional behavioral assessment (FBA)	NOT defined in law		See also, 300.520(b)(1)(i)
Interim alternative educational setting	300.522; 300.520(a)(2)		See also, Analysis at p. 12620-24.
Manifestation determination review	300.523-.524		See also, Analysis at p. 12625.
Placement during appeals	300.526		See also, Stay-put



WORD OR TERM	FEDERAL CITE	STATE CITE	COMMENT OR CROSS-REFERENCE
Student not (yet) eligible for sped	300.527		
Substantial evidence	300.521(e)		
Suspended or expelled	300.121(d)(1)		See also, Discipline
Transfer of records to law enforcement and courts			See Analysis at pp. 12631-32, re FERPA standards for records release/disclosure
Dispute Resolution		28.08	See also, Due Process, Mediation, BSEA
District (or School district)		28.03, generally	See also, Out-of-District Program
Parent's school district		28.03(4) [responsibility]	
Program school		28.02(16)	Includes: Charter, vocational, Metco, & school choice
Resident school district		28.02(19)	
Due process	300.500-.517	28.08, generally	See also, Mediation.
Problem Resolution System		28.08(2)	DOE's Program Quality Assurance Unit issues guidelines & procedures.
Hearing [also, Fair Hearing]	300.505-.512	28.08(3), (5), (6).	See also, Bureau of Special Education Appeals.
Attorneys fees	300.513		
Child's status during proceedings	300.514	28.08(7)	See also, MGL Ch. 71B, §3, ¶ 14 re placement . See also, Stay-put
<b>E</b>			
Early identification and assessment	300.24(b)(3)		"Related Service"
Education records	300.560(b)		
Eligible student	300.7(a)-(b)	28.02(7)	
EDGAR	300.30		List of terms defined in "Ed Dept General Administrative Regulations"
Education records (also, Student Records)	300.560	603 CMR 23.00	
Educational program requirements		28.09(9)	
Equipment	300.11		
ESIS		28.06(9); Ch. 71B, §§10, 11A, 12	Educational Services in Institutional Settings
Evaluation	300.500(b)(2); 300.530-.536		See also, 300.320. Also, Analysis at pp. 12606, 12634, 12578, 12636.
Extended evaluation period		28.05(2)(b)	
Independent educational evaluation [IEE]	300.502	Ch.71B, §3, para.10; 28.04(5);	
Re-evaluation of eligibility and progress	300.536	28.04(3)	
When LD is suspected	300.540-.543		
Functional behavioral assessment (FBA)			See, Discipline
Extended school year (ESY) services	300.309(b)	28.05(4)	
<b>F-G-H</b>			
Fair hearing	300.507-.509		See also, Due Process
Free appropriate public education (FAPE)	300.13; 300.121; 300.300		See also, 300.300(a)(3); and 300.121..
General curriculum/general ed program	300.347(a)(1)(i)	Ch. 71B, §1. And: 28.02(17)	
Graduation	Not defined in law.		See also, Transitional plan. N.B. Expected grad. = change in placement.

WORD OR TERM	FEDERAL CITE	STATE CITE	COMMENT OR CROSS-REFERENCE
<b>I-J-K</b>			
Illegal drug	300.520(d)(2)		See also, Controlled substance
Incident reporting		28.09(12)	
Inclusion	Not defined in law.	28.06(7)(d)	See also, Least Restrictive Environment.
Independent educational evaluation (IEE)	300.503(a)(3)(i)	Ch. 71B, §3; 28.04(5)	300.502. See also, Evaluation
Individualized education program (IEP)	300.340-.350		
Adaptations, modifications, accommodations	300.342(b)		See Analysis at p. 12595.
Annual review		Ch. 71B, §2, last ¶.	
Benchmarks, or Short term objectives	300.347(a)(2)		See Appendix A at p. 12471; and Analysis at pp. 12592, 12594, 12598.
Partial IEP		28.05(2)(b)3; 28.05(3) and (7)	
IEP TEAM	300.16; 300.552	28.02(21)	See also, Meeting, Team
In-district program		28.02(8)	
Individualized family service plan (IFSP)	303.340(b)		See also, Part C of IDEA [Early Intervention]: 34 CFR 303
Institutional settings [state facilities] (ESIS)		28.06(9); Ch. 71B, §§ 10,11A, 12	Including: DMH, DPH, DYS, county houses of correction
Instructional grouping requirements		28.06 (6)	.
Instructional support		28.03(3)(a)	See also, Pre-referral
<b>L-M</b>			
Least restrictive environment (LRE)	300.550-.553	28.02(11), 28.06(2)(a)	
Local educational agency (LEA)	300.18	28.02(7)	See also, District
Manifestation determination	300.523		See also, Discipline
Maximum feasible benefit (MFB) and Maximum possible development (MPD)		Ch. 71B, §§ 2, 3	MFB is not defined in statute. The statute refers to "maximum possible development" in §§2 and 3; and to "maximum extent feasible" in §3.
Mediation	300.506 [standards]	28.08(4)	See generally, Complaint Procedures, Due Process, Dispute Resolution
Medical services	300.24(b)(4)	See also, 28.03(3)(c)	"Related Service"
Meeting	300.501(b)(2)		
<b>N-O</b>			
Native language	300.19		See also, Notice
Non-academic services	300.306		partial list - equal opportunity to participate
Notice	300.503-.504	28.02(12)	See also, Procedural Safeguards
Occupational therapy	300.24(b)(5)		"Related Service"
Orientation and mobility services	300.24(b)(6)		"Related Service" for students with visual impairments <i>only</i> .
Out-of-district program		28.02(13)	See also, District, above.
<b>P-Q</b>			
Parent	300.20	28.02(14)	See also, generally, 28.07, "Parent & Student Involvement"
Educational surrogate parent	300.20(a)(4)	28.07(7)	
Foster parent	300.20(b)		

WORD OR TERM	FEDERAL CITE	STATE CITE	COMMENT OR CROSS-REFERENCE
Parent counseling and training	300.24(b)(7)		"Related Service"
Personally identifiable information	300.500(b)(3); 300.572		See also, Confidentiality
Physical education (see also, Special education)	300.26(a)(1)(ii); 300.26(b)(2)	Ch. 71, §3	State law requires physical education for all students in all grades unless injurious.
Physical therapy	300.24(b)(8)		"Related Service"
Placement(s)	300.551-.554	28.06, generally; 28.05(6)	
Pre-referral		Ch. 71B, §2 28.03(3)(a)	DOE prefers the term "instructional services" to emphasize that strategies are for any students with problems before/during/after referral.
Private schools	300.400-.487		See also, MGL Ch. 76, §1, re local approval of private schools.
Approval of special education schools		28.09	Chapter 9 of state regs covers public & private special education schools.
Procedural safeguards	300.500-.517	28.04; 28.05; 28.07	
Program schools			
Progress effectively in the general ed program		28.02(17)	
Psychological services	300.24(b)(9)		"Related Service"
Public agency	300.22		
Qualified personnel	300.23		See also, Certification of Education Personnel, below.
<b>R-S</b>			
Recreation	300.24(b)(10)		"Related Service"
Referral	see also, Notice	28.04(1)	
Rehabilitation counseling services	300.24(b)(11)		"Related Service"
Related services	300.24	28.02(18)	
School age child with special needs	300.7(c)(2) [Child w/Disability]	Ch. 71B, §1	See also, Eligible Child.
Secondary school	300.25		
School health services	300.24(b)(12)		"Related Service"
Social work services in schools	300.24(b)(13)		"Related Service"
Special education	300.26	Ch. 71B, §1; 28.02(20)	
Speech language pathology services	300.24(b)(14); 300.26(a)		
State(wide) Advisory Council (or Panel)	300.650-.653	Ch. 15, §1G	
Stay put	300.514	28.08(7)	
Student records		603 CMR 23.00	See also, Educational Records. See MGL Ch. 71, §34.
Substantial evidence	300.521(e)		
Supplementary aids and services	300.28		
Support services	300.370(b)(2)		
<b>T</b>			
Team	300.16; 300.552	28.02(21)	See, IEP Team, above
Members	300.344, 300.552; 300.540	28.02(21)	
Presence of attorneys			Discussed in Appendix A, Q 29

WORD OR TERM	FEDERAL CITE	STATE CITE	COMMENT OR CROSS-REFERENCE
Transfer of rights	300.347(c); 300.517	28.08(5)	See also, "Age of majority"
Transition	300.29		
Transition service: needs & services	300.347		Must start no later than age 14
Transitional plan: Turning 22 law/Ch. 688		Ch. 71B, §§ 12A-C	"Turning 22 law" covers from 2 years prior to end of eligibility. Definitions in §12A.
Bureau of Transitional Planning [BTP]		Ch. 71B, §12C	BTP is in state's Executive Office of Health & Human Services
Transportation	300.24(b)(15)	28.05(5), 28.06(8), 28.07(6)	Federal: "Related Service"
Travel training	300.26(b)(4)		
<b>U-V-W-X-Y-Z</b>			
Unapproved programs		28.06(3)(e).	
Vocational education	300.26(b)(5)		
Weapon	300.520(d)(3)		

<b>RELATED PROGRAMS &amp; LAWS</b>			
Law or Program	Federal Cite	State Cite	Comment or Cross-Reference
Americans with Disabilities Act	42 USC §§12101 et seq.		Major civil rights law enacted in 1990; education provisions generally track US DOE's Sec. 504 regulations.
Architectural access laws	29 USC §792	MGL Ch. 22, §13A	Fed: Sec. 502 of Rehabilitation Act established ATBCB. State also has Architectural Access Board.
Early intervention [EI] services (birth-age 3)	20 USC §§ 1431-1445 [Part C of IDEA-97]	MGL Ch.111G	Administered in Mass. by Dept. of Public Health.
Education Reform (Mass.)		MGL Ch. 69, §1 (goals)	Education Reform Act was Chapter 71 of the Acts of 1993. Permanent provisions were incorporated as amendments to appropriate chapters of the general laws, primarily MGL Chapters 69-71.
FERPA [Family Educational Rights & Privacy Act]	20 U.S.C. 1232g; 34 CFR 99		
Office for Civil Rights (OCR) of US DOE	34 CFR 104		Enforces Section 504 in educational settings. See, Sec. 504, below.
Rehabilitation Act (federal)	29 USC §791 et seq.		Also known as Vocational Rehabilitation Act. Creates & funds VR & independent living programs. Includes Section 504.
Section 504 of the Rehabilitation Act	29 USC §794; 34 CFR 104.3		Section 504 is a provision of the Rehabilitation Act of 1973. Regulations pertaining to education are issued by US DOE.

## Chapter 3 - School Districts' Responsibilities: Administration & Personnel

***Consult generally:***

State Regulations: 603 CMR 28.03  
Federal Regulations: 34 CFR Part 300

State Statute: M.G.L. Chapter 71B, §§3, 3A, 6,7,8

*See Chapter 2 for references to definitions of words and key terms.*

Notes	Topic	Federal Cite	State Cite
<b>DISTRICTS' ADMINISTRATIVE RESPONSIBILITIES</b>			
Child find	<ul style="list-style-type: none"> <li>Conduct outreach to find potentially eligible children in several categories; and</li> <li>Screen children ages 3-4, and all of age to enter kindergarten, re: need for special education evaluation.</li> </ul>	300.125 300.451	MGL c.71B §3  28.03(1)(d)
Child count	Submit annual report to DOE on number of eligible students receiving special education.	300.750-.754	MGL c.71B §6
Maintenance of effort	"Maintain effort" from one year to the next, in terms of expenditures from state and local funds for special education. There are very limited exceptions.	300.154	
Accessibility	Ensure that facilities are physically and programmatically accessible.	300.756	28.03(1)(b)
SE Administrator	Appoint an administrator of special education. This must be a full-time person when the district has more than 4,000 students. Districts may agree to share an administrator.		MGL c.71B §3A
Young children	Evaluate young children to ensure that, if eligible, special education services are available when the child turns three. An IEP or an Individual Family Support Plan (IFSP) must be in effect by the 3 <sup>rd</sup> birthday.	300.121(c)  300.342(c)	28.04(1)(d)

Notes	Topic	Federal Cite	State Cite
Provide services	Provide special education and related services to all eligible children with disabilities. Services must be based on each child's unique needs (not on his disability), and placements must be in the least restrictive environment appropriate to meet such needs.	34 CFR Part 300, <i>throughout.</i>	MGL c.71B §2 28.03(1)(a) 28.06(2)(a)
District Special Ed Plan	Prepare and keep current "Special Education Plan" and "Special Education Policies and Procedures." These must be made available to DOE upon request.	300.110-.113	
Caution	Readers are reminded that requirements of many other federal and state laws pertaining to education (e.g., bi-lingual, vocational) and to civil rights (e.g., race/ethnicity, gender, architectural access and disability) will impact the design and delivery of services to many students with disabilities.		
<b>RESPONSIBILITIES OF THE PRINCIPAL</b>			
Offer instructional supports to all in need	Establish "pre-referral" mechanisms. Document (in student records) use of instructional supports prior to special education referral. Ensure data is shared when student is evaluated for special education eligibility.		MGL c.71B §2  28.03(3)(a)
When medical problems preclude attendance	Arrange for educational services for students absent for medical reasons for 14+ days in a school year. If student is eligible for special education, coordinate with Administrator of Special Education.		28.03(3)(b)
Title 1	Some federal special education funds may be used to carry out Title I schoolwide programs, under specified circumstances and provided that students with IEPs receive all needed services.	300.234	

Notes	Topic	Federal Cite	State Cite
<b>GENERAL RULES RELATED TO ASSIGNMENT OF PROGRAM &amp; FISCAL RESPONSIBILITIES</b>			
<i>Consult the chart at the end of this chapter for an overview of the assignment of district fiscal and programmatic responsibility based on residency and enrollment.</i>			
Key definitions	Section 28.02 of the State Regulations defines: <ul style="list-style-type: none"> <li>• “Parent’s school district”</li> <li>• “Resident school district”</li> <li>• “Program school.”</li> </ul>		28.02 (15) (19) (16)
When parents are separated or divorced.	When parents live in different districts, usually the two districts jointly share program and fiscal responsibility. The exception is when the parents are divorced or separated <u>and</u> one has sole physical custody.		28.03(4)(e)
When student lives with other relatives	Responsibility is split when students are living with [non-parent] relatives, but not as the result of DSS placement. The student’s resident district has program responsibility and the parent's district is financially responsible.		28.03(4)(d)
DOE will assign LEA responsibilities when needed.	A district or involved agency may request that DOE assign responsibility(ies) to one or more districts, when: <ul style="list-style-type: none"> <li>• a student is without services;</li> <li>• has no parent or an institutionalized parent;</li> <li>• is awaiting adoption; or</li> <li>• information about parent location or status is lacking or is in dispute.</li> </ul> Specific documentation must accompany such requests.		28.03(4)(f-h)
“Program” schools	Particular provisions apply to “program schools.” These are: charter schools, vocational schools, and schools attended under “school choice” or Metco programs.		28.03(4)(i) 28.02(16) [definition]

Notes	Topic	Federal Cite	State Cite
<b>PARENTAL MOVES</b>			
In-state moves for students in out-of-district placements – fiscal responsibility	If the parents move on or after April 1, the district responsible prior to the move remains fiscally responsible for the remainder of that fiscal year and for the entire next fiscal year. The new district assumes program responsibility immediately upon the move.		MGL c.71B §5 [as amended in 1999]
In-state moves – program responsibility	For within-state moves, a “new” school district must provide IEP services (as developed by the former district) in a “comparable setting” until a new IEP is developed and accepted.		28.03(1)(c)(1)
Move into Mass. from another state	The LEA must determine either to implement the IEP with which the student arrives, or to re-evaluate eligibility and/or services. In the latter case, it must provide notice immediately.		28.03(1)(c)(2)
<b>DOE ROLES &amp; RESPONSIBILITIES</b>			
Waivers	A district may request from DOE, in writing, a waiver of any state regulatory requirement that does not conflict with law.		28.03(6)
Enforcement	DOE has the authority to enforce special education requirements, including but not limited to the withholding of funds.		23.03(7)

**On the next page is a**

**Chart summarizing Responsibility based on Residency and Enrollment**  
based on 603 CMR §28.03(4)

**Please note:** The chart does not provide detailed funding information nor does it substitute for the regulations themselves. Please address requests for formal assignment of responsibility to the Department of Education, Office of Special Services.



<b>CHILD'S SPECIAL ED. PLACEMENT</b>	<b>CHILD'S RESIDENCE</b>	<b>PARENT'S RESIDENCE</b>	<b>ASSIGNMENT REGULATION</b>	<b>PROGRAM RESPONSIBILITY</b>	<b>FISCAL RESPONSIBILITY</b>
Any, including out-of-district placements	With parents (or guardian) including residing with one parent who has sole physical custody of the child.	With child	28.03(4)(a)	Resident district	Resident district
Any, including out of district day schools	DSS Foster home	Does not apply	28.03(4)(a)	Resident district	Resident district
Any, including out of district day schools	Student is eighteen or older and has established own residence.	Does not apply	28.03(4)(a)	Resident district	Resident district
Out-of-district residential	Approved special education school, hospital, or pediatric nursing home	Identify district(s) of both parents, if known*	28.03(4)(b)	Parent's district(s)	Parent's district(s)
In-district placement	Approved special education residential school – placed by DSS	Identify district(s) of both parents, if known*	28.03(4)(d)(4)	Parent's district(s) (with the right to attend school where child is located)	Parent's district(s)
Out-of-district day school	Approved special education residential school – placed by DSS	Identify district(s) of both parents, if known*	28.03(4)(b)	Parent's district(s)	Parent's district(s)
Any	Residential facility operated by DMH, DPH, DYS, or DOC	Identify district(s) of both parents, if known*	28.03(4)(c)	Parent's district(s)	Parent's district(s)
Any program except out-of-district residential	A group home funded by state agency, foster homes of state agencies other than DSS, a relative's home not funded by an agency, other living situations not covered by 28.03(4)(a-c)	Identify district(s) of both parents, if known*	28.03(4)(d)(1-3)	Resident district (with the right to bill for services to the parent's district for in-district services)	Parent's district(s) (with the obligation to pay directly for out-of-district day school programs)

\* If parents are divorced or separated and one parent has sole physical custody, then the district of the parent with physical custody serves as the "parent's district."

## Chapter 4 - Referral & Evaluation of the Student with a Disability

***Consult generally:***

State Regulations: 603 CMR 28.04 (1)-(5)  
Federal Regulations: 300.530 - .543

State Statute: M.G.L. Chapter 71B, §§ 2,3

*See Chapter 2 for references to definitions of words and key terms.*

Notes	Topic	Federal Cite	State Cite
<b>BEFORE THE REFERRAL</b>			
Instructional supports	The principal is required to have instructional support practices and accommodations available for ALL children. The principal must document the results in the student's file.		MGL c.71B §2 28.03(3)(a)
<b>THE INITIAL REFERRAL</b>			
Provide notice within 5 days	Any concerned person can refer.  The district must send written notice to the parents within 5 days. The notice must seek consent and invite input re parental concerns and information.		28.04(1)
Notice requirements	Federal notice requirements are very detailed and apply to any actions that the district proposes or refuses.  The language must be understandable to the parent.	300.503 (content) 300.504 (safeguards) 300.505 (consent)	
<i>Caution</i>	Do not begin special educational prior to completing the evaluation.	300.531	

Notes	Topic	Federal Cite	State Cite
<b>THE INITIAL EVALUATION</b>			
Procedures and timeframe	Federal procedures and requirements re types and purposes of assessments are detailed. The evaluation must be sufficiently comprehensive to identify all the child's special education and related services needs. No single procedure may be used to determine eligibility. Mass. requires evaluation in 30 days from consent of parent.	300.532-.533	MGL c.71B §§3 & 7  28.04(2)
Assessments	Assessments are required regarding: (1) the [suspected] disability; and educational status & progress in the general curriculum. Results of district-wide and state-wide tests, including but not limited to MCAS, should be used for this assessment. Generally, assessments should be in any areas necessary to determine eligibility, to reveal how the disability impacts educational progress, in order to assemble information needed to develop an appropriate IEP.	300.532(f)-(g) 300.533  300.344 300.346 (a)(1)(iii)	28.04(2) (a)&(b)  MGL c.71B §3
Specific assessments related to disability	Certain assessments are required when assessing to determine if a student has a Specific Learning Disability. An assessment related to use of Braille is required for students with visual impairments or who are blind.	300.540-.543  300.346(a)(2) (iii)	MGL c.71B §3
Considerations in specific circumstances	When child has limited English proficiency. When child is deaf or hard of hearing. When behavior impedes child's learning or that of others, assessments must define the problem and propose strategies including positive behavioral interventions.	300.532(a)(2)  300.346(a)(2)	
Young children	Begin evaluation at age 2½ so services start by age 3. Use of early intervention observations and evaluation information is recommended, to avoid over-testing.	300.121(c) 300.347 (a)(1)(ii)	28.04(1)(d) 28.04(2)(a) 2(i)-(ii)
	Review existing data and determine if additional data are needed.	300.533	

Notes	Topic	Federal Cite	State Cite
Information for Assessor(s)	Assessor(s) may recommend type of placement but not specific placement(s). Reports on assessments (summaries and recommendations), must be completed and in writing, before the Team discusses. These must be given to parents at least 2 days before meeting if they so request.		28.04(2)(c)
Extended evaluation	Extended evaluation requirements are detailed in regulation. Extended evaluation may not be used to simply extend initial timelines.		28.05(2)(b)
<b>ANNUAL REVIEWS OF PROGRESS</b>			
	Reviews must occur at least annually to assess the student's progress towards the annual goals (or any lack thereof), and to revise the IEP as appropriate.	300.343(c)	28.04(3)
<b>3-YEAR RE-EVALUATIONS</b>			
Purpose	Re-examine every three years whether student is: (1) still disabled, and (2) still needs specially designed instruction.	300.536 300.533	28.04(3)
	Reassessment of ongoing disability is not required if parents agree.	300.533(d)	28.07(2)
Reevaluation may be sooner	Re-evaluate in less than three years if "conditions warrant" or parent or teacher requests.	300.536(b)	
Medical reasons.	Medical condition, documented by physician, causing student to be out 60+ schooldays may trigger need for unscheduled evaluation.		28.04(4)
<b>BEHAVIORAL ASSESSMENTS</b>			
Initial	Should be done as part of initial evaluation, when needed to prepare behavioral intervention plan (BIP).	300.520(b)	

Notes	Topic	Federal Cite	State Cite
Following disciplinary removal	<p>If BIP is not part of student's IEP and student is to be removed for 10+ days for disciplinary offense, the Team must meet to develop a functional behavioral assessment plan, followed by development of a BIP.</p> <p>A manifestation determination review may also be needed.</p>	<p>300.520(b)</p> <p>300.523</p>	
Expedited evaluations	Certain procedural protections are available for children not yet eligible for special education who have engaged in dangerous/serious behaviors.	300.527(d)(2)	
<b>INDEPENDENT EDUCATIONAL EVALUATIONS</b>			
General information	<p>A parent has a right to an IEE if s/he disagrees with results of the district's evaluation or re-evaluation.</p> <p>District may ask reasons for objection but may not demand answer and may not delay.</p> <p>District must provide complete information to parent regarding where IEE may be obtained.</p>	<p>300.502</p> <p>300.502(a)(2)</p>	29.04(5)
When does school district pay for IEE?	<ul style="list-style-type: none"> <li>If parent requests public funding, district may pay.</li> <li>If student is eligible for free or reduced-cost lunch, district must pay for an equivalent IEE for up to 16 months after the evaluation with which the parent disagrees; and it may not appeal its obligation to pay in such case.</li> </ul>	300.502(b)(2)	<p>28.04(5)(d)</p> <p>28.04(5)(c)</p>
	<ul style="list-style-type: none"> <li>If student is not income eligible, and/or requests evaluation in an area not assessed by the school district, district must either pay for IEE or seek BSEA hearing to show that its evaluation was comprehensive and appropriate.</li> </ul>		
Parent-initiated IEE	Parents have an unlimited right to a privately-funded IEE.	300.502(c)	28.04(5)(b)
Evaluators	Independent evaluators must abide by state requirements.	300.502(e)	28.04(5)(a)

Notes	Topic	Federal Cite	State Cite
30 days to IEE report	The IEE should be completed within 30 days. A written report must be sent to both parents and district, when the IEE has been publicly-funded.		28.04(5)(e)
10 days to Team consideration	The Team must reconvene to consider IEE results and recommendations, within 10 school days of getting the report.		28.04(5)(f)
<b>PAYING FOR ASSESSMENTS &amp; SERVICES</b>			
LEA obligation	If services are on an accepted IEP and another agency does not pay for the services, the district is obligated to pay for such services.	300.142(b)(2)	
Medicaid-eligible children	Medicaid is the payor of first resort. Medicaid's obligation to pay precedes that of the LEA.	300.142(a)(1) & (e)	
Parents – public insurance	Parents may not be required to sign up for or enroll child in public insurance programs. Parents may not be required to incur out-of-pocket expenses or other costs. See detail in regulations.	300.142(e)	
Parents – private insurance	District responsibilities when asking parents to use private insurance are detailed in regulation.	300.142(f)	

## **Chapter 5 - The Team – Eligibility, Development of the Individualized Education Program, and Placement**

### ***Consult generally:***

State Regulations: 603 CMR 28.05

State Statute: M.G.L. Chapter 71B, §3

Federal Regulations: 300.340-.461; Appendix A

*See Chapter 2 for references to definitions of words and key terms.*

Notes	Topic	Federal Cite	State Cite
<b>INTRODUCTION &amp; OTHER RESOURCES</b>			
<p>This area is governed largely by federal law. <b>Appendix A</b> supplements the federal regulations with narrative recommendations relating to the development of the IEP. It includes 40 Questions and Answers describing many IEP requirements, with citations to the regulations and suggestions about implementation.</p> <p>The reader is directed also to a separate DOE document entitled “<b>The IEP Process Guide.</b>” The Guide contains an annotated IEP checklist, Massachusetts’ mandated forms for the IEP, and templates for letters and formal notices.</p>			
<b>DETERMINATION OF ELIGIBILITY FOR SPECIAL EDUCATION</b>			
Initiation of the process	The entire process is initiated with a referral for an evaluation to determine if the student is eligible for special education services. <i>Requirements are described in Chapter 4 of this Guide.</i>	300.530-.543	28.04(1)-(5)
45 days to meeting	The Team must convene within 45 days of receipt of the parent’s written consent to the proposed evaluation.	300.342(b) 300.343(b)	28.05(1)
Determine eligibility	The Team’s first responsibility is to examine the evaluative data, for the purpose of determining eligibility for special education.	300.530-.536	28.05(2)
If eligible.....	If the student is determined eligible, then the Team develops an IEP at the same meeting.	300.340-.350	28.05(2)(a)1

Notes	Topic	Federal Cite	State Cite
If not eligible....	If the student is determined <u>not eligible</u> , then the Team provides written notice and the parent's rights statement to the parent. <u>Note:</u> A child with a disability who needs a related service only, is not eligible.	300.7(a)(2)(i)	28.05(2)(a)2
Extended evaluation	May be used when results of initial evaluation are inconclusive. May not be used simply to extend initial timelines.		28.05(2)(b)
If parent disagrees with evaluation results	If the student has been found eligible, but the parent disagrees with evaluation results, the Team with parent agreement may delay writing some or all of the IEP until an Independent Educational Evaluation (IEE) has been completed.		28.05(3)
<b>THE IEP TEAM</b>			
Composition	Detailed regulations specify team members for IEP development, discussion of transition services, for evaluating for specific learning disabilities, and for determining placement.	300.344-.345; 300.348 300.540 300.552	
LEA representative	One LEA representative on the Team must have the authority to commit agency resources and be able to ensure that services in the IEP are actually provided.	300.344(a)(4)	
The Team's job	The Team must collect and examine all relevant information in order to make individualized determinations related to the student's needs.	300.347(a) 300.533	28.05(2)-(6)
Key dates	An IEP must be in effect at the beginning of each school year. The IEP must be consented to in writing <i>before</i> any special education and related services are provided. There must be no delay in implementing an accepted IEP.	300.342(a)&(b)	28.05(7)(b)
Preparations to maximize parent attendance	Notify parents in advance, to schedule at a mutually agreed-upon time and place. Requirements for ensuring parental participation are detailed.	300.345	



Notes	Topic	Federal Cite	State Cite
Student participation	Information on student participation at any age. Requirements when Team is considering transition to adult life.	300.344(a)(7) 300.345(b)(2)&(3)	
Drafts	School personnel may come with evaluation findings and proposed recommendations (including drafts) of IEP content, but all final decisions are made at the Team meeting, not before.	App. A, Q 32	
<b>WHAT MUST BE INCLUDED IN THE IEP?</b>			
Massachusetts' IEP	Massachusetts' state-mandated Individual Education Program form includes all required state and federal elements. <i>For greater detail on these elements, please refer to the IEP Process Guide for Massachusetts.</i>	300.347	28.05(4)
What is special education?	It is <u>instruction specially designed to meet the unique needs</u> of a child with a disability.	300.26	28.02(20)
What are "related services"?	They are a broad range of developmental, corrective and supportive services that <u>assist a child to benefit</u> from special education. <i>Consult list in definition.</i>	300.24	
What are supplementary aids and services?	These are aids/services/supports (which are not "specially designed instruction" or related services) which enable eligible students to be educated to the maximum extent possible with nondisabled students.	300.28	
Special factors	Special considerations must be addressed and incorporated in the IEP in relation to: behavior, limited English proficiency, use of Braille, and communication needs of deaf or hard of hearing students. Other special factors are also delineated.	300.346	MGL c.71B, §3
Other Factors: Extended program	Factors relating to identifying a longer or shorter school day or school year are described.	300.309	28.05(4)(d)
Physical education	Physical education must be made available to every child, wherever placed. If the Team determines that "specially designed	300.307 300.26(b)(2)	

Notes	Topic	Federal Cite	State Cite
	PE” is necessary, it must be specified in the IEP.	(definition)	
Participation in state and district assessments	The presumption is that all students should participate in general assessments of student achievement (including MCAS). The IEP describes how each student participates.	300.138(a) 300.347(a)(5)	
Transition and Requirements related to older students	Transition-related issues must be considered no later than certain ages, and incorporated as appropriate in the IEP: <ul style="list-style-type: none"> <li>For students 14 and older, a “vision statement” and documentation of transition needs.</li> <li>For students 16 and older, vision statement + statement of transition services.</li> <li>For students at age 17, transfer of rights is expected at age 18.</li> <li>Expected graduation.</li> <li>For students within two years of reaching high school graduation or age 22, need for ongoing support services from state human services agencies.</li> </ul>	300.29 300.122 300.346 300.503 300.348  300.347(c); 300.517 300.122 (a)(3)(iii)	28.07(5)       28.05(4)(c)
Transportation	Requirements related to providing transportation are detailed.	300.24 (15) 300.456(b)	28.05(5) 28.06(8)
<b>PLACEMENT DETERMINATION</b>			
Rules	After the IEP has been developed, the Team determines the appropriate type of placement to deliver the services on the IEP. <i>Consult the regulations and Chapter 6 regarding placements.</i>	300.552	28.05(6) 28.06
In-district placements	If an in-district setting can deliver the IEP services, the Team identifies such setting.		28.06(2)(b)
Separate placement meeting	If the student requires hard-to-provide services, the district may schedule a separate meeting within 15 days of the IEP meeting to explore possible placement options.	300.501(c) 300.552	28.06(2)(c)

Notes	Topic	Federal Cite	State Cite
<b>IMPLEMENTATION &amp; MONITORING OF THE IEP</b>			
Copy to parent	The LEA must provide the parent with a copy of the IEP, with required notices and at no cost, immediately following its development.	300.345(f)	28.05(7)
Start services after consent	As soon as the parent responds to the proposed IEP, the district must implement all approved elements “without delay.”	300.343(b)	28.05(7)(b)
School personnel must know contents of IEP	The district must ensure that each teacher, related services provider, and other service provider has access to the IEP and is fully informed of his/her specific responsibilities and of the accommodations/modifications and supports that must be provided according to the IEP.	300.342(b)	
A good faith effort	The district must provide the agreed upon services and make a good faith effort to assist the student to reach the goals on the IEP.	300.350	
<b>REVIEW &amp; REVISION OF THE IEP</b>			
Annual review	The district must initiate and conduct meetings annually to review the IEP and make revisions as necessary.	300.343(c)	28.04(3)
Failure to provide transition services	If an agency fails to provide transition-related services in the IEP, the LEA must reconvene the Team to develop alternate strategies.	300.348	
3-year review	In addition to the annual reviews, a reevaluation should be conducted every 3 years. <i>(See Chapter 4.)</i>		28.04(3)
<b>OTHER ISSUES</b>			
Record IEP meetings?	Federal law does not address this issue. The US DOE in Appendix A, however, provides a framework for analysis.	App. A, Q 21	
Attorneys at IEP meetings?	Attendance of lawyers is discouraged. Generally, attorneys fees will not be allowed for their presence at IEP meetings.	App. A, Q 29	

## Chapter 6 - *Services & Placements for Students with Individual Education Programs*

### *Consult generally:*

State Regulations:	603 CMR 28.06	State Statute:	M.G.L. Chapter 71B, §§2, 11, 12
Federal Regulations:	300.550; 300.519-.529 (discipline)		

*Provisions regarding **Discipline** as they relate to placements are found at the end of this Chapter.*

*See Chapter 2 for references to definitions of words and key terms.*

Notes	Topic	Federal Cite	State Cite
<b>GENERAL RULES &amp; GOVERNING PRINCIPLES</b>			
Team role	Placement decisions must be made by a group knowledgeable about the child, about the meaning of the evaluation data, and about the placement options. Parents must be included in the placement-decision group.	300.552  300.501(c)	28.06(2)
Service needs drive placement decision	School districts must have available a continuum of alternatives. The decision on placement is based on the student's needs as described in the IEP.	300.551	MGL c.71B, §2 28.06(2)
Least restrictive environment (LRE)	Consideration must first be given to in-district settings. Child may be removed only if the nature or severity of the disability is such that education in regular classes---with the use of supplementary aids and services---cannot be accomplished. No removal may be made solely because of needed modifications in the general curriculum.	300.550-.551  300.552(e)	28.06(2)(b)&(c)3  MGL c.71B, §1  28.06(2)(a)
Equal opportunity to participate	Eligible students have equal opportunity to participate in all academic, non-academic and extracurricular programs.	Americans with Disabilities Act	28.06(5)
High school graduation	Graduation from high school with a regular diploma is a change in placement requiring written notice.	300.122 (a)(3)(iii)	
Instructional groupings	Particular requirements govern the size and composition of groups, the number of educators, etc.		28.06(6) & (7)

Notes	Topic	Federal Cite	State Cite
Young children ages 3-4	Districts must ensure that developmentally appropriate programs for preschoolers are available.		28.06(7)
Options for older students	Districts must offer an array of options for eligible students aged 18 through 21.		28.06(4)
Preference to “Approved” programs	When a placement is made out-of-district, preference must be given to “approved” programs which meet the standards in Chapter 9 of the State Regulations.		28.06(3)(d)
<b>PARTICULARS REGARDING CERTAIN PLACEMENTS</b>			
In-district placements	If an in-district setting can deliver the IEP services, the Team must identify an in-district placement.		28.06(2)(b)
Separate placement meeting	If the IEP developed for the student cannot be provided in an in-district setting, the district may schedule a separate meeting within 15 days of the IEP meeting to consider placement options.	300.503 300.522	28.06(2)(c)
Charter schools	Eligible students who attend public charter schools retain all special education rights. Charter schools in Massachusetts are public school districts.	300.312	MGL c.71,§89
District responsibility for students in institutional settings	Students in institutional programs under the control of DMH, DMR, DPH, DYS, and County Houses of Correction, remain the responsibility of their public school districts. The student’s district must cooperate with DOE’s Educational Services in Institutional Settings (ESIS) regarding services.		28.06(9)
<b>GENERAL RESPONSIBILITIES REGARDING ALL OUT-OF-DISTRICT PLACEMENTS</b>			
District responsibility	School districts retain key responsibilities for students placed out-of-district. Responsibilities include ensuring services, monitoring the student’s program, developing a contract with the placement, and maintaining documentation of activities.	300.400-.402	28.06(2)&(3)
Transportation time	Time for transport to any out-of-district placement must not exceed one hour each way, without Team agreement.		28.06(8)

Notes	Topic	Federal Cite	State Cite
<b>ADDITIONAL REQUIREMENTS FOR PLACEMENTS INTO UNAPPROVED PROGRAMS</b>			
“Sole source” requirements	Before placing a student into <i>any unapproved</i> program, a district must document its search, evaluation of proposed facility, etc. The district must notify DOE in advance of its intention to use an unapproved setting.		28.06(3)(e)
Local approval	If a district places a student into an unapproved private school <i>in Mass.</i> , it must ensure that the local school committee of the city/town in which the private school is located has approved the school.		MGL c.76 §1 28.06(3)(e)3
Out-of-state schools	If a district places a student in a private school <i>outside Mass.</i> , it must ensure that the program has been approved by the host state or (if there is no such process) is reputably accredited.		28.06(3)(e)5
DOE review	DOE will review documentation periodically and at its discretion. It can take enforcement action in cases of non-compliance.		28.06(3)(e)6 28.03(7)
<b>WHEN CHILDREN ARE PLACED BY THEIR PARENTS RATHER THAN BY LOCAL DISTRICTS</b>			
When parents are, or are not, likely to receive public funding	Reasons are set forth for when parents may be entitled to reimbursement and when they may not, as well as circumstances when reimbursement may be reduced or denied through an appeals process. <ul style="list-style-type: none"> <li>• Districts should ensure parents know of the requirements.</li> <li>• Parents should inform districts of their intention to remove their child from the public school.</li> <li>• Parents should make their child available for evaluations by the district if requested.</li> </ul>	300.403	
Right to services in private schools	Massachusetts law confers an individual entitlement to special education services for eligible students enrolled in private schools by their parents at private expense. <i>Note: Massachusetts requirements exceed federal requirements in this area.</i>	300.450-.462	28.03(1)(e)

Notes	Topic	Federal Cite	State Cite
<b>DISCIPLINE &amp; PLACEMENTS</b>			
General reference	<i>In addition to the discipline provisions in the regulations, the reader may wish to consult the US DOE's Analysis of Comments preceding the Final Regulations, and Q&amp;As 38-40 in Appendix A, both published in the <u>Federal Register</u> on March 12, 1999.</i>	300.519-.529  <i>Federal law governs.</i>	<i>There are no state regulations in this area.</i>
Longer removals require different actions, depending on the problem	<p><u>Short Term Removals</u>: Schools can remove a child for up to 10 school days at a time for any violation of school rules as long as there is not a pattern of removals and so long as such discipline is consistent with discipline applied to students without disabilities.</p> <p><u>Longer Removals</u>: A child with a disability cannot be long-term suspended or expelled from school for behavior that was a manifestation of his or her disability (exceptions noted below). Prior to a change in placement, a manifestation determination must be conducted. <u>Services (FAPE) must continue for children with disabilities who are long-term suspended or expelled from school</u>, whether or not the conduct causing the discipline related to their disability.</p> <p>School personnel may remove a child who brings a gun or other <u>dangerous weapons</u> to school or who knowingly possess <u>illegal drugs</u> or sells/solicit sale of controlled substances (not including cigarettes and alcohol).</p> <p>Schools may request a hearing officer to remove a child for up to 45 days if keeping the child in his or her current placement is substantially <u>likely to result in injury</u> to the child or to others.</p>	<p>300.524(a) 300.121(d)</p> <p>300.523-.524</p> <p>300.121(d) 300.520(a)</p> <p>300.520(a)(2)</p> <p>300.521</p>	
"Change in placement" defined	<p>A change of placement in the disciplinary context triggers specific procedures. It occurs when a child is----</p> <ul style="list-style-type: none"> <li>removed for more than 10 consecutive school days, <u>or</u></li> <li>subjected to a series of removals that constitute a pattern.</li> </ul>	300.519	



Notes	Topic	Federal Cite	State Cite
<p>Manifestation determination review</p> <p>Requirements are multiple &amp; detailed</p>	<p>School officials must conduct a “manifestation determination” review whenever:</p> <ul style="list-style-type: none"> <li>• removal constitutes a change of placement;</li> <li>• removal is for behavior relating to weapons or use of illegal drugs; or</li> <li>• the district is seeking a hearing officer’s order to place a child in an interim alternative educational setting because of behavior that is substantially likely to result in injury to self or others.</li> </ul> <p>The review is to determine if the behavior was related to the disability. The regulations outline detailed requirements for the review and follow-up by the Team and the district.</p>	300.523-.524	
District rights to use interim alternative educational setting	Regardless of the results of the manifestation determination, the district may unilaterally place the student in an interim alternative educational setting, as determined by the Team, for up to 45 calendar days, or longer upon order of a hearing officer. Circumstances and requirements are specified in regulation.	300.522	
Authority of hearing officer	Hearing officers have statutory authority to remove students with disabilities from the current educational placement in certain specified circumstances.	300.521-.522	
Appeal rights	A parent may appeal a removal decision, or a manifestation decision, to the BSEA. “Stay put” provisions.	300.525-.526 300.524(c)	
Reporting crimes	Districts can report crimes committed by students w/ disabilities.	300.529	



## Chapter 7 - Parent & Student Involvement

***Consult generally:***

State Regulations: 603 CMR 28.07

State Statute: M.G.L. Chapter 71B, §3

Federal Regulations: 300.345-.350; 300.500-.517

*Consult Chapter 5 regarding parent and student involvement in the IEP process.*

*See Chapter 2 for references to definitions of words and key terms.*

Notes	Topic	Federal Cite	State Cite
<b>GENERAL PRINCIPLES</b>			
Congress legislated stronger parent involvement	The U.S. Congress amended IDEA in 1997 to strengthen the role of parents, and to expand opportunities for parents and educators to work in new partnerships.	Appendix A, Section II	
Parents are partners	The parents are to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child.	Appendix A, Question 5	
Students aged 14 and older	Special education centers on the student from the beginning, but direct student involvement in planning should start at or before age 14. Decision-making authority usually transfers to the student at age 18.	300.344(b) 300.345(b)(2)  300.517	28.07(5)

Notes	Topic	Federal Cite	State Cite
<b>MEETINGS INVOLVING THE CHILD</b>			
Notice	Parents must be notified in advance of meetings involving their child, about identification, eligibility, placement, and the provision of FAPE.	300.501	
Opportunity to participate	Parents must be part of the group or team that: <ul style="list-style-type: none"> <li>determines what additional data are needed as part of an evaluation;</li> <li>determines eligibility for special education;</li> <li>makes decisions on educational placement.</li> </ul>	300.344(a)(1)  300.533 300.534(a)(1) 300.501(c)	
Requirements for IEP meetings	Meetings should be scheduled to be convenient to attend. Written notice should include purpose, time, location, and who will be attending the meeting. <i>Other requirements related to IEP meetings are in Chapter 5.</i>	300.345	
What is not a "meeting"?	Parents need not be invited to informal, unscheduled conversations or preparatory activities.	300.501(a)	
<b>COMMUNICATION IS REQUIRED OF ALL PARTIES</b>			
Information exchange goes in both directions	Parents' concerns and parents' information and data must be considered in developing and reviewing IEPs.	300.343(c)(iii) 300.346(a)(1)(i) & (b)	
Progress reports	Districts must regularly submit written progress reports at least as often as parents are informed of their non-disabled children's progress. Regulations detail the content of progress reports.	300.347(a)(7)	28.07(3)
Private school enrollment – public funding	Parents are expected to inform the district in advance if they plan to enroll their child in a private school when they will be seeking public funding for such program.	300.403	

Notes	Topic	Federal Cite	State Cite
<b>PRIOR NOTICE REQUIREMENTS</b>			
Written notice	Notice must be provided whenever the district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE. Notice requirements are detailed in regulation.	300.503	
If English is not the language of the home	The notice must be in language understandable to the general public, and in the parent's native language or other mode of communication.	300.503(c)	
<b>PROCEDURAL SAFEGUARDS NOTICE REQUIREMENTS</b>			
Procedural safeguards notice	Parents are entitled to receive a notice of their rights at specific times.  The federal regulation lists the many required contents of this notice. Massachusetts has incorporated these requirements in its "Parents' Rights Brochure."	300.504(a) 300.501(a)  300.504 (b) & (c)	
<b>INFORMED CONSENT</b>			
When required	The regulations provide significant detail on: when consent is required, what "informed" consent means, and situations when consent is not required.	300.500 300.505	28.07(1)(a)
Refusal to consent, or lack of response.	The regulations further detail district obligations when parents do not consent, whether through: refusal to consent, revocation of consent, or lack of action or participation.	300.345(d) 300.505(b)-(c) 300.500	28.07(1)

Notes	Topic	Federal Cite	State Cite
<b>OTHER PROVISIONS PERTAINING TO INFORMED PARENTAL INVOLVEMENT</b>			
Access to records	Parents may review all educational records pertaining to their child.	300.501(a)(1)	
Right to waive assessments	A parent may give permission to waive a recently-conducted individual assessment, or assessments of the 3-year re-evaluation.	300.533(d)	28.07(2)
Placement decisions	Parents have the right to be members of any group that makes decisions on educational placement of their child.	300.501(c)	
Parents & IEPs	Parents have a right to a copy of the IEP “immediately” following its development. The regulations provide detail on parental options for response.	300.345(f)	28.05(7)
Annual review	Parents must be invited annually to participate in a formal IEP Team review of the student’s progress.	300.343(c)	28.04(3)
Concerns at other times	Parents may request revisions to the IEP at any time if they feel services in the IEP are not being provided.	300.350(c)	
Parent involvement in disciplinary actions	<i><u>Note:</u> Federal rules pertaining to discipline of students with disabilities are complex and detailed.</i>	300.519-.529	
	The parents’ role in developing behavior intervention plans, in considering misbehavior in relation to the child’s disability, and in placements, are detailed.	300.525-.526 300.520(b)-(c)	
	Regulations also include appeal rights and student protections.	300.527	
Parent-provided transportation	Requirements when parents voluntarily transport eligible students between school and home.		28.07(6) 28.05(5)(b)

Notes	Topic	Federal Cite	State Cite
<b>EDUCATIONAL SURROGATE PARENTS</b>			
When and how appointments are made	<p>A surrogate is appointed to represent the interests of a child with a disability in the educational decision-making process, when no parent is known or can be located, or when the child is a ward of the state.</p> <p>The regulations provide detail on requirements.</p> <p>In Massachusetts, the Educational Surrogate Parent Program provides centralized services on such appointments, while local districts are responsible to assist in identifying willing and qualified volunteers to serve as Educational Surrogate Parents.</p>	<p>300.515</p> <p>300.20(4)</p>	28.07(7)
<b>INVOLVEMENT OF THE STUDENT</b>			
Congressional intent	Special education should prepare students for post-school and adult life, including further education, employment and independent living.	Appendix A, Section III	
Invite the student to IEP meetings	The student must be invited to IEP meetings <i>if</i> one purpose of the meeting is to consider transition needs. The district must ensure that student preferences and interests are considered.	300.344(b)	
Students aged 14 and 16	“Transition planning” activities must begin no later than age 14. A statement of “needed transition services” must also be in all IEPs of students beginning no later than age 16.	<p>300.347(b)(1)</p> <p>300.347(b)(2)</p>	
Earlier student involvement is encouraged	For younger students, a child with a disability may attend “if appropriate.” The notice of the meeting must advise parents that they may invite the child to participate.	300.345(b)(2)-(3)	
Students 18 and older	The age of legal majority is 18 in Mass. At age 18, the student is an adult and makes all decisions, including educational decisions. The state regulations provide detail on options.	300.517	28.07(5)
One year before	The regulations require informing the parent and student one year	300.347(c)	

Notes	Topic	Federal Cite	State Cite
age 18.	in advance of the rights which will transfer at age 18.		
Caution and advice re: legal guardianship	<u>Comment:</u> <i>Some parents will be well advised to explore the appropriateness of seeking legal guardianship for adult children who are known or suspected significantly to lack functional capacity and competency due to cognitive or emotional disability. Regardless of severity of disability, guardianship never “happens automatically.” Because the standards and procedures for competency determinations, and the scope of an individual guardianship, are within the province of probate law and the courts, not education law or personnel, parents with questions and concerns should seek informed legal counsel.</i>		
<b>PARENT &amp; STUDENT INVOLVEMENT IN ADVISORY COUNCILS; PUBLIC INVOLVEMENT IN DEVELOPMENT OF POLICIES &amp; PROCEDURES</b>			
District responsibility	Districts must ensure methods for parent involvement in accessing information and learning about rights and responsibilities.		28.07(4)
State advisory council	The state maintains a Special Education Advisory Council, with the majority of members being parents. Required activities and responsibilities are detailed.	300.150 300.650-.653	MGL c.15, §1G
Public participation in policy development	Proposed major changes in policies and procedures must be made available for public review, with advance notice, public hearings, and a public comment period.	300.148 300.280-.284	

## ***Chapter 8 - Dispute Resolution***

***Consult generally:***

State Regulations: 603 CMR 28.08  
Federal Regulations: 300.506-513; 300.660-.662

*See Chapter 2 for references to definitions of words and key terms.*

Notes	Topic	Federal Cite	State Cite
<b>BASIC INFORMATION</b>			
	All complaint resolution procedures must be widely disseminated, including to advocacy organizations.	300.660-.662	28.08(4)
	Mediation is encouraged but not required.	300.506	
<b>OVERVIEW OF PROBLEM RESOLUTION PROCEDURES</b>			
Local	Local districts are encouraged to offer informal local options for resolving differences.		28.08(1)
State complaint system through DOE's PQA	DOE's Program Quality Assurance (PQA) unit administers a Problem Resolution System, to receive, review and resolve concerns from the public regarding students who allegedly are not receiving education services or being afforded the procedural protections required by law.	300.661	28.08(2)
	Any individual or organization may file a formal complaint about an alleged violation that has occurred during the previous year.	300.662	
If a complaint is validated...	The state determines appropriate corrective action for instances of non-compliance.	300.660(b)	
Bureau of Special Education Appeals	The Bureau of Special Education Appeals [BSEA] (located with DOE) administers the "due process" system, which includes a		28.08(3)

Notes	Topic	Federal Cite	State Cite
Section 504 appeals	<p>statewide voluntary mediation program, and fair hearings.</p> <p>A parent or a district can request mediation and/or a hearing on eligibility, evaluation, placement, IEP, provision of special education, and/or procedural protections.</p> <p>BSEA can also consider appeals related to Section 504 of the Rehabilitation Act on issues including eligibility, evaluation, placement, provision of FAPE, and/or reasonable accommodations.  <i>Note: Section 504 complaints may also be filed with the U.S. Dept. of Education's Office of Civil Rights.</i></p>	300.506-.507	28.08(3)(a)
<b>MEDIATION</b>			
Federal law encourages use of mediation	<p>Federal requirements regarding mediation are detailed.</p> <p>BSEA must inform parents of the availability of mediation whenever a request for due process is made, and must advise about free and low-cost legal services.</p> <p>A mediation request may be made at any time, or concurrently with a request for a hearing.</p> <p>Mediation must be scheduled within 30 days of a request. The district's representative must possess authority to settle on behalf of the district.</p>	<p>300.506</p> <p>300.507(a)</p>	<p>28.08(3)</p> <p>28.08(4)(a)</p>
<b>DUE PROCESS HEARINGS</b>			
Parent request for a hearing	When parents initiate the hearing request, they are asked to provide a statement of the problem and a proposed resolution. Parents' failure to do so, however, cannot be used to deny or delay their	300.507(c)	



Notes	Topic	Federal Cite	State Cite
	request for a hearing.		
.	The district must forward a request for hearing within 5 days of a parent's request or parent's notice of a rejected finding of no eligibility or a rejected IEP.		28.08(3)(b)
BSEA hearing procedures are formal	BSEA conducts hearings according to the state's Administrative Procedures Act [APA] and regulations. There are a number of detailed requirements.	300.509	28.08(5) + 801 CMR 1.00 [APA]
Stay-put	The general rule is that the student's placement is maintained during the dispute unless the parties agree otherwise. There are limited exceptions.	300.514	28.08(7)
Implementing the decision	The hearing officer's decision must be implemented <i>immediately</i> and may not be administratively reconsidered.	300.510(d)	28.08(6)
Court appeal	The parent may appeal the hearing officer's decision into court.	300.512	28.08(6)
<b>OTHER PROVISIONS RELATING TO DISPUTES OR POTENTIAL DISPUTES</b>			
Denial of FAPE	If a parent's refusal or revocation of consent means the student is denied FAPE, the district must seek resolution through the BSEA.	300.505 (b)-(c)	28.07(1)(b-c)
Non-compliance with BSEA decision	If a party believes that a BSEA decision is not being implemented, s/he may file a motion seeking a hearing and relief.		28.08(6)(b)
Attorneys fees	Courts may, in their discretion, award reasonable attorney fees to parents when they win their case.	300.513	
Issues & problems with non-educ'l agencies, and public & private insurance	The district may not allow the failure of another entity (e.g., state human service agencies and other non-educational payors or providers) to deny or delay provision of educational or related services in the IEP.	300.142	
Educational surrogate parents	The district and DOE have responsibilities to assign a qualified "educational surrogate parent" to students who do not have parent representation.	300.515	28.07(7)

Notes	Topic	Federal Cite	State Cite
18 year olds are legal adults	A student at age 18 is legally an adult under state law and has the right to make special education decisions.	300.517	28.07(5)
<b>DISPUTES ABOUT DISCIPLINE</b>			
Dealing with behavioral problems can cause disputes.	<p><i>See Chapters 6 (Placement) and 5 (IEP Process) regarding disciplinary issues and problems.</i></p> <p><i>Following are some provisions relating to dispute resolution.</i></p> <p>When a student has behavioral issues, the IEP team must evaluate thoroughly.</p> <p><i>Manifestation determination:</i> When it is unclear whether a behavior is a manifestation of student's disability and when a district is considering a removal that constitutes a change in placement, it must notify the parent and convene the IEP Team and "other qualified personnel" to conduct a special review.</p> <p><i>District responsibility:</i> The district must take immediate steps to correct any "deficiencies" in the IEP and/or placement that are identified during a manifestation determination review.</p>	<p>300.346 (a)(2)(i)</p> <p>300.523</p> <p>300.523(f)</p>	
Expedited due process hearings	<p><i>"Expedited due process"</i> hearings are available through the BSEA. Such hearings must result in a decision being mailed to the parties within 45 days of the request being received by the BSEA.</p> <p>No exceptions or extensions are allowed to the 45-day deadline.</p>	300.528	
<b>PROCEDURAL SAFEGUARDS – SUMMARY</b>			
	General due process procedures for parents and students, including: consent, student records, participation in meetings, independent education evaluations, notice, etc.	300.500-.517	

Notes	Topic	Federal Cite	State Cite
	Specific procedures regarding: <ul style="list-style-type: none"> <li>• discipline;</li> <li>• evaluations and eligibility determinations;</li> <li>• ensuring the “least restrictive environment”;</li> <li>• confidentiality of information, including access rights of parents and students, amendments of information in the student record, etc.</li> </ul>	300.519-.529 300.530-.543 300.550-.556 300.560-.577	
<b>MONITORING DISTRICTS’ OVERALL PERFORMANCE</b>			
Each district is monitored for program compliance	The state is responsible for ensuring that each local district or provider is professionally supervised and meets all legal requirements. DOE’s Program Quality Assurance (PQA) unit conducts full program monitoring according to a regular schedule. The state has the authority to withhold special education funds from districts found out of compliance the law.	300.600	28.03(7)
Data collection	The state must collect and aggregate data re: children receiving special education and related services.	300.750-.756	28.03(5)(b)
	The state must collect and examine data to determine if students with disabilities are disproportionately suspended and expelled.	300.146	

## Chapter 9 - Approval of Public & Private Special Education Programs & Schools

<b><i>Consult generally:</i></b>			
State Regulations:	603 CMR 28.09	State Statute:	M.G.L. Chapter 71B, §§ 4, 9
Federal Regulations	34 CFR 300.400-402; 300.550-.554		
<i>See Chapter 2 for references to definitions of words and key terms</i>			

Notes	Topic	Federal Cite	State Cite
<b>BASIC PRINCIPLES PERTAINING TO APPROVAL</b>			
Obtaining approval	To be “approved” to enroll publicly-funded students, both in-state and out-of-state educational programs must meet all DOE requirements. Department review and approval. Definitions of approved <i>public</i> and <i>private</i> special education schools and programs.	300.400-.402  300.551 300.554	28.09   28.02(1)&(2)
Out-of-state programs	Approval requirements for out-of-state schools/programs.  Once approved, the out-of-state program may accept students, without additional documentation, for the next 3 years. It then must seek renewal.		28.09(1)(a)
Probation	When DOE places a program on probationary status --- reasons and rights.		28.09(4)
<b>OBLIGATIONS OF APPROVED PROGRAMS TO PROVIDE INFORMATION TO DOE &amp; THE PUBLIC</b>			
	Information about all aspects of the program and program documentation must be kept on site, and always available for review by DOE.		28.09(5)(a)-(b)

Notes	Topic	Federal Cite	State Cite
Substantial changes	A school must give ample advance notice to DOE of any proposed substantial changes to program and/or physical plant, specifying the impact of the changes on education programs.		28.09(5)(c)
Policies & procedures	Approved programs must keep on site and make available to any interested party, specific and detailed program information and documentation on various policies and procedures. Certain information must be posted.		28.09(6) & (11)
<b>PROTECTIONS FOR STUDENTS IN APPROVED PROGRAMS</b>			
Requirements for serious incidents	In case of serious injury or death of a student, criminal activity or other serious incident affecting student well-being, the school must immediately engage in certain required actions.		28.09(12)(a)
	General requirements for incident reporting are detailed.		28.09(12)(b)
	Requirements related to conducting research, allowing observations, or publicity.		28.09(12)(c)
Suspension & termination requirements	The school may not remove a student during the school day without ensuring that a responsible adult takes charge of the student.		28.09(12)(d)
	The circumstances and requirements related to an approved program terminating the enrollment of a student are detailed.		28.09(12)(e)
<b>DISTRICT PARTICIPATION IN ALL OUT-OF-DISTRICT PLACEMENTS</b>			
Requirements of public school districts placing students in approved programs	The requirements of public school districts placing students in out-of-district programs are detailed.	300.349-.350	28.06(2) & (3)
	The regulations ensure that districts remain involved with and oversee the services provided to the students for whom they are responsible. The relationship between the placing school district and the accepting approved program is also specified through contract.	300.401	

Notes	Topic	Federal Cite	State Cite
<b>EDUCATIONAL REQUIREMENTS FOR APPROVED SCHOOLS</b>			
	Detailed requirements govern the types and qualifications of staff in approved programs.		28.09(7)
Teacher knowledge	Teaching staff must be familiar with general curriculum expectations and learning standards of the Mass. Curriculum Frameworks.		28.09(9)(b)
Staff training	A written plan must specify staff orientation and training. Required amount and subjects are detailed.		28.09(7)(f)
Instructional grouping	Instructional grouping requirements for approved programs are detailed.		28.09(7)(e); 28.06(6)-(7)
Facilities & equipment	The requirements for providing appropriate facilities, equipment, materials, etc., for the student population are detailed.		28.08(8)
Learning time	Approved programs must meet student learning time requirements.		28.08(9)(a)
LRE	School must have flexible procedures to maximize student capacity to return to less restrictive environments.		28.09(9)(c)
Assessment procedures	Schools must have procedures re: participation in statewide assessments, provision of accommodations, and alternate assessments.		28.09(9)(d)
Student records	Files must be complete, current, and managed according to the Mass. Student Records Regulations.		28.09(10)
<b>STARTING NEW PROGRAMS IN MASSACHUSETTS</b>			
Eligibility is broad...	Individuals, school districts, collaboratives, and charitable and proprietary organizations may apply to DOE to establish and/or operate an approved special education school in Mass.		29.09(2)
...detailed information is required	All prospective new programs must describe program justification and must provide detailed information on expected students, staffing, policies, procedures, and physical space.		29.09(2) (b) & (c)

Notes	Topic	Federal Cite	State Cite
Additional requirements for residential schools	Residential school applicants must also show: <ul style="list-style-type: none"> <li>• That they have started Mass.'s residential care licensing process through the Office for Child Care Services; and</li> <li>• How they will fully coordinate the 24-hour services with educational services.</li> </ul>		28.09(2)(a)  102 CMR 3.00 [OCCS Residential Licensing]
Review and approval	DOE will consult with other state agencies, and may conduct site visits or request other information, in reviewing new applications. DOE may deny the proposal, or may grant approval which is: temporary, provisional, or full.		28.09(3)
<b>UNAPPROVED PROGRAMS</b>			
	<i>See Chapter 6: "Placement Types and Service Options," re: responsibilities of placing districts.</i>	300.349-.350	28.06(3)
Approved programs are preferred	When making an out-of-district placement, a district must give preference to approved, over unapproved, programs when an approved program can provide the services in the IEP.		28.06(3)(d)
Private schools need local approval	All private schools in Massachusetts, regardless of approval from the Department for special education services, must obtain approval from the local school committee of the city/town in which the private school is located		28.06(3)(e)3-4  MGL c.76, §1