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Many federal laws affect children with disabilities

- Individuals with Disabilities Education Act (IDEA): federal special education law, most recently reauthorized in 2004 (effective 7-1-05)
- Section 504 of the Rehabilitation Act of 1973
- Title II of the Americans with Disabilities Act of 1990 (recently amended by ADA Amendments Act of 2008 – affects Section 504 as well)
- Family Educational Rights and Privacy Act (FERPA)
- Part C of IDEA (Early Intervention)

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Many state laws also affect children with disabilities

- M.G.L. c. 71B (“Chapter 766”) - state special education law
- M.G.L. c. 71B, 12B (“Chapter 688”) - transitional services (turning 22)
- Massachusetts Education Reform Act
- Statutes governing other agencies (DDS, DMH, etc.)

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- # Sources of special education law

(Links available on Massachusetts Department of Elementary and Secondary Education (“DESE”) website, at <http://www.doe.mass.edu/lawsregs/>)

- **Federal:**
 - IDEA
 - Regulations promulgated thereunder (34 C.F.R. Part 300; revised 8/14/06 & 12/1/08)
 - Decisinal law (federal and state courts and state agencies applying federal law)
 - [OCR rulings]
- **Massachusetts:**
 - M. G. L. c. 71B
 - Regulations promulgated thereunder (603 CMR 28.00)
 - Decisinal law (federal and state courts and state agencies applying state law)
 - [DESE advisories]

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History

- Grew out of civil rights movement of 1960's - concern with access
- 1966 and 1970 federal laws established grant programs, but not individual entitlements
- Massachusetts' Chapter 766, 1972 (effective 1974)
- Becomes model for EAHCA (1975) and EHA (1976), now IDEA (1997, 2004)

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Relationship between federal and state laws

- A state that accepts federal funding for special education must comply with IDEA.
- Thus, state special education law and regulations cannot conflict with IDEA,
- IDEA has been interpreted by the U.S. Supreme Court as providing a federal minimum standard or “basic floor.”
- A state can grant more extensive rights (substantive and/or procedural) if it chooses. Under IDEA 2004, state must identify such rights in writing to local educational agencies (“LEAs” – school districts).
- Example: Massachusetts formerly used “maximum feasible benefit” standard; changed to federal standard (“free appropriate public education,” or FAPE) effective January 1, 2002.

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IDEA is still not fully funded

- In 1975, Congress promised to reach full funding (i.e., 40% of cost of special education) by 1981.
- Has never happened. In 2004, level was less than 19%.
- IDEA 2004 (Sec. 611(i) authorizes an increase each year, 2005-2011 (“glide path”), but not mandatory.

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Overview of special education process

- Referral
- Evaluation (initial + every 3 years)
- TEAM meeting; determination of eligibility
- For eligible students, development of Individualized Education Program (“IEP” – goals, services) and determination of placement
- Appeal to BSEA: hearing or mediation
- Appeal to court

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Referral for special needs evaluation

- By parent or guardian, or
- By “any person in a caregiving or professional position concerned with the student’s development” (603 CMR 28.04(1) – broader than federal law, which says parent, state agency, or LEA)
 - Teacher or other school personnel
 - Physician
 - Psychologist, therapist, social worker
 - Day care provider
 - Court personnel
 - Etc., etc.

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When should you refer your child?

- When a disability that interferes or may interfere with educational progress is known or suspected
- Ages 3-22 (can refer a child as early as age 2-1/2)
- Can refer private school student
- It is a good idea (though not required) to make referral in writing
- Obtain independent evaluation first?
- Try pre-referral activities first?

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“Instructional support” required in regular education

- Curriculum accommodation plan: developed by district to meet needs of diverse learners; principal implements (603 CMR 28.03(3)(a))
- Instructional support may include:
 - remedial instruction
 - consultative services for teachers
 - reading instruction for elementary students
 - services for linguistic minority students
 - other services consistent with effective educational practices

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Pre-referral activities

- “Prior to referral” for special education evaluation, principal must ensure that all efforts have been made to meet child’s needs within regular education (M.G.L. c. 71B, sec. 2); efforts to be documented in student’s file.
- But school district may not refuse to perform a special needs evaluation in order to try other supportive services first (M.G.L. c. 71B, sec. 2).
- “Screening” by a teacher or specialist “to determine appropriate instructional strategies for curriculum implementation” does not equal evaluation.

Referral triggers request for parents' consent to evaluation

- School district must send consent form within 5 school working days of receiving referral (603 CMR 28.04(1)(a))
- School district can't refuse to evaluate
- Consent form must specify the assessments the district proposes to conduct (true for re-evaluations as well)

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Types of assessments

- Required:
 - Educational: educational history, overall progress, current standing (info from current teacher); should discuss attention, participation, communication, memory, social relations, educational and developmental potential (603 CMR 28.04(2)(a)(2))
 - Assessment in all areas related to suspected disability (603 CMR 28.04(2)(a)(1))

Types of assessments, cont'd

- Optional:
 - Psychological
 - Health
 - Home
 - [Other, if needed in another “area related to the suspected disability” - e.g., speech/language, occupational therapy, physical therapy)]
- Requirement that the Team review existing evaluation data in advance for re-evaluations, and if appropriate for initial evaluations, to determine what additional data are needed (20 U.S.C. sec. 1414(a)(1), 34 C.F.R . sec. 300.305); review may occur without meeting

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Response to consent form

- Parents may consent to some or all of the proposed assessments
- Parents may request additional assessments
- Parents may request that district accept independent evaluator's report in lieu of performing its own assessment (district need not agree)
- Parents may impose conditions
- Consent to initial evaluation is not consent to initial provision of services

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Return of consent form triggers 30-day evaluation period

- Mass.: Assessments must be completed within 30 school working days of receipt of consent (603 CMR 28.04(2))
- Timeline added by IDEA 2004: within 60 (calendar) days of receiving parental consent, or within time established by the state
- Can state's timeline be longer than 60 days?

Time frame for evaluations, cont'd

- When child changes districts during the evaluation period, the deadline does not apply to the new district, as long as new LEA is making sufficient progress to ensure prompt completion, and parents and new LEA agree to a specific date for completion.
- Deadline also does not apply if parents repeatedly fail or refuse to produce child for evaluation.

When evaluations are required

- Initially
- Under Mass. Law, at least every three years thereafter (“sooner if necessary,” 603 CMR 28.04(3))
- IDEA 2004 says at least once every 3 years unless parents and LEA agree that re-evaluation is unnecessary
- IDEA 2004 limits frequency of evaluation to once per year unless parents and LEA agree otherwise
- “Unscheduled evaluations for medical reasons” when a physician states that student is likely to be unable to attend school for more than 60 school days in any school year (603 CMR 28.04(4))

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Re-evaluations, continued

- Must re-evaluate before determining that a child is no longer eligible (20 U.S.C. sec. 614(c)(5)).
 - Exception: child is aging out or graduating (in which case, summary and recommendations must be prepared).
- Section 504 regulations: re-evaluate initially and before “any subsequent significant change in placement.” 34 C.F.R. sec. 104.35(a).

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Standards for school assessments

- Performed by individuals with appropriate training and credentials
- Use a variety of assessment tools and strategies, including parent-provided info
- Use technically sound instruments
- In child's native language, not racially or culturally discriminatory

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What school assessment reports should contain

- Summary of procedures used, results, and diagnostic impression
- Define student's needs in detail in “educationally relevant and in common terms”
- Offer “explicit means of meeting” the child's needs (603 CMR 28.04(2)(c))
- May recommend appropriate types of placements (but not specific placements)

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School assessment reports, cont'd

- You have the right to receive copies at least two days in advance of TEAM meeting
- You should request copies (do in writing)
- Prudent to submit in advance copies of any documents you want TEAM to consider at the meeting

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TEAM meeting

- Meeting to review evaluation results, determine eligibility and, if eligible, determine placement and services (develop IEP)
- Must take place and IEP, if applicable, be provided within 45 school working days after district's receipt of consent to evaluation (i.e., within 15 school working days after completion of evaluation)

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Who is on the TEAM?

- Parents
- At least one regular education teacher (if child is or may be in regular ed)
- At least one special education teacher or provider
- School district representative with knowledge and authority
- An individual who can interpret instructional implications of evaluation results (may be one of the foregoing)

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TEAM members, cont'd

- At parents' or district's discretion, "other individuals who have knowledge or special expertise regarding the child"- may include providers of related services
- If appropriate, the child. Student to be invited beginning with meeting to develop IEP to be in effect when he/she turns 14 – this is Mass. law, which differs from federal (16). Child's attendance is not mandatory (until 18 – even then, can delegate or share decisionmaking with parents).

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TEAM members, cont'd

- Attendance of a TEAM member can be excused (20 U.S.C. sec. 1414(d)(1)(C):
 - If the individual's area is not being modified or discussed, and parents and LEA agree in writing that the individual is excused
 - If the individual's area is being modified or discussed, but the individual submits written input to parents and LEA prior to meeting, and parents and LEA agree in writing to excuse.

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TEAM members, cont'd

- You are entitled to receive advance notice of TEAM meeting attendees (34 C.F.R. sec. 300.322(b)(1)(i))
- Prudent to notify district if you plan to bring anyone else
- Whom should parents consider bringing?
 - Independent evaluators
 - Outside service providers
 - Advocate or attorney?
- Facilitated IEP meeting option through BSEA

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Other considerations for TEAM meetings

- Scheduling
- Tape recording - discuss in advance
 - District has right to “require, prohibit, limit, or otherwise regulate” use of recording devices
 - But policy that prohibits or limits use must be uniformly applied, and must provide exceptions where necessary (disabled parent, e.g.)
- Note taking
- Draft IEPs: US DOE says that, if district has prepared one, a draft IEP should be given to parents in advance of the Team meeting (71 Fed. Reg. 46678, Aug. 14, 2006 – commentary on 34 C.F.R. sec. 300.322(b))

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TEAM meetings, cont'd

- LEA to encourage consolidation of IEP meetings with re-evaluation meetings whenever possible (20 U.S.C. sec. 1414(3)(E)).
- Parents and LEA may agree that meetings can be held by “alternative means, such as video conferences and conference calls,” (20 U.S.C. sec. 1414(f); also applies to “resolution session” and mediation under Sec. 1415).

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Tasks of the TEAM

- Determine eligibility (initially, then at least every three years after student is found eligible); review of progress at least annually, in other years
- If eligible, develop IEP (identify needs, consider accommodations and methodologies, develop goals, determine services) and determine placement

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Three requirements for eligibility

- The student has a disability or disabilities, consisting of one or more of the types of impairment set out in state/federal law.
- The student is not making effective progress in school as a result of the disability or disabilities.
- The student requires specially designed instruction in order to make effective progress in the general curriculum, and/or (in MA) requires a related service to access the general curriculum.

• • • **First eligibility requirement: existence of a disability**

- Ten categories of impairments under state law (603 CMR 28.02(7)) (see also federal regs, 34 C.F.R. sec. 300.8(c)):
- Autism (verbal and nonverbal communication and social interaction)
- Developmental Delay (ages 3-9; cognition, language, physical, social, emotional, adaptive and/or self-help)
- Intellectual Impairment

Categories of impairment, cont'd

- Sensory Impairment (hearing, vision, or both)
- Neurological Impairment
- Emotional Impairment
- Communication Impairment (expressive and/or receptive)
- Physical Impairment
- Health Impairment (includes ADD, ADHD)
- Specific Learning Disability

What is a “specific learning disability”?

As of 2001, MA adopts federal definitions:

- A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written
- that may manifest itself in an imperfect ability to listen, think, speak, read, write, write, spell, or do mathematical calculations (34 C.F.R. sec. 300.8(a)(10)).

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Specific learning disabilities, cont'd

- LEA may no longer be required to “take into consideration whether a child has a severe discrepancy between achievement and intellectual ability” in reading, math, etc. (20 U.S.C. sec. 1414(b)(6)(A)).
- Now, states must adopt criteria that “permit the use of a process based on the child’s response to scientific, research-based intervention,” 34 C.F.R. sec. 300.307(a)(2), and “may permit the use of other alternative research-based procedures,” sec. 300.307(a)(3).

Specific learning disabilities, cont'd

- TEAM may determine that a child has a specific LD, under 34 C.F.R. sec. 300.309, if:
- The child, when provided with appropriate learning experiences and instruction, does not achieve adequately for age or to meet state-approved grade-level standards in one of eight areas (related to reading, math, written and oral expression, listening comprehension), or

Specific learning disabilities, cont'd

- The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of those areas when using a process based on the child's response to scientific, research-based intervention (this is part of an overall increased emphasis on scientifically-based instructional practices in IDEA 2004; see, e.g., 20 U.S.C. secs. 1401(c)(5)(E),(F), 1414(d)(1)(A)(i)(IV)); or

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Specific learning disabilities, cont'd

- The child exhibits a patterns of strengths and weaknesses in performance, achievement, or both, in relation to age, state-approved grade-level standards, or intellectual development, that the Team determines is relevant to the identification of a learning disability; and
- Not primarily due to another cause (sensory impairment, mental retardation, emotional disturbance, cultural or economic factors, LEP)

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Specific learning disability, cont'd

- Team must consider data to ensure that underachievement is not due to lack of appropriate instruction
- Specific documentation required when the Team concludes that a student has a specific learning disability (34 C.F.R. sec. 300.311)
- Certification of agreement by each team member (or separate statement, if all do not agree)

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Required documentation of SLD

- Does student have SLD?
- Basis for determination
- Relevant behavioral observations
- Educationally relevant medical findings
- Statement as to which of the criteria in 34 C.F.R. sec. 309 the student meets
- Determination re other potential causes
- Child's response to scientific, research-based intervention, if applicable

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Emotional impairment

- The student exhibits one or more of the following five characteristics, “over a long period of time and to a marked degree that adversely affects educational performance” (603 CMR 28.02(7)(f)):
 - An inability to learn that cannot be explained by intellectual, sensory, or health factors;
 - An inability to build or maintain satisfactory relationships with peers or teachers;

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Emotional impairment, cont'd

- Inappropriate types of behavior or feelings under normal circumstances;
- A general pervasive mood of unhappiness or depression; or
- A tendency to develop physical symptoms or fears associated with personal or school problems.
- Student not to be found disabled due solely to disciplinary violations, court/Department of Children and Families (“DCF”) involvement, or because student is “socially maladjusted.”

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Second eligibility requirement: failure to make effective progress

- Failure to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program (603 CMR 28.02(17))
 - with or without accommodations
 - according to chronological age and developmental expectations; the individual educational potential of the child; and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.
- Causal link to disability

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Failure to make effective progress, cont'd

- Advancing from grade to grade is not determinative
- If supports and services are already in place (e.g., on re-evaluation), determine whether child could continue to make effective progress without them
- Importance of “effective progress” in determining appropriateness of services and placement

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Third eligibility requirement: need for special education

- Child needs specially designed instruction in order to progress effectively in the general curriculum, and/or
- Child needs related service(s) to access the general curriculum.
- In Massachusetts, need for related service alone is enough to qualify for IEP (not so in all states).

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What is “special education”?

- Specially designed instruction, at no cost to parents, to meet the unique needs of the eligible student with a disability, and/or
- “Related services” necessary to access the general curriculum, if considered special education under state standards.
- 20 U.S.C. sec. 1401(29), 34 C.F.R. sec. 300.39603 CMR 28.02(20).

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What is “specially designed instruction”?

- Specially-designed instruction means adapting, as appropriate to the needs of an eligible child . . . , the content, methodology, or delivery of instruction--
 - (i) To address the unique needs of the child that result from the child's disability; and
 - (ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

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Specially designed instruction, cont'd

- May be provided in any of a number of contexts (regular ed classroom, pull-out, separate classroom, private special education school, etc.).
- Continuum of placements required

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What are “related services”?

- Audiology
- Counseling services (by social workers, psychologists, guidance counselors, etc.)
- Early identification and assessment of disabilities
- Medical services
- Occupational therapy

Related services, continued

- Orientation and mobility services
- Parent counseling and training
 - Assist parents in understanding child's special needs
 - Help parents to acquire skills to implement IEP
- Physical therapy
- Psychological services
- Recreation
- Rehabilitation counseling services

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Related services, continued

- School health services
- Social work services
- Speech-language pathology services
- Transportation
- Any other developmental, corrective, or supportive services required to assist a child with a disability to benefit from special education

• If child is found not eligible (or no longer eligible)

- Determination of no special needs, with reasons, in writing within 10 days
- If district agrees student has a disability, consider eligibility under Section 504 (though definitions of disability are different)
- Parents can submit additional information and/or request a new evaluation in future
- Student who was formerly eligible, but is found no longer eligible, has stay-put rights if parents reject finding of no special needs

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If child is eligible, TEAM develops IEP

- Individualized Education Program: educational plan and binding contract
- Normally, IEP developed and placement determined at same meeting as determination of eligibility; separate placement meeting, within 10 school days after IEP meeting, permissible in some circumstances (603 CMR 28.06(e))
- “Extended evaluation” (up to 8 weeks) an option where existing info insufficient

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Special considerations for students on the autism spectrum

- M.G.L. c. 71B, sec. 3, effective 7/6/06, requires that, for any child on the autism spectrum (including children with Asperger's, PDD, etc.), the Team must consider and “specifically address” each of the following 7 factors:
 - Verbal and nonverbal communication needs;
 - Need to develop social interaction skills/proficiencies;
 - Needs resulting from unusual responses to sensory experiences;
 - Needs resulting from resistance to change in environment/routines;
 - Needs resulting from stereotypy/repetitive activities;
 - Need for positive behavioral interventions, strategies, support;
 - Other needs resulting from the disability that have an impact on progress in the general curriculum, including social and emotional development.

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Contents of IEP

(blank forms available at

<http://www.doe.mass.edu/sped/iep/>)

- Parent/student input (“Concerns,” “Vision”)
- Identification of areas of need (General Curriculum, Other Educational Needs)
- How child’s disabilities affect progress
- Necessary accommodations
- Necessary types of specially designed instruction (content, methodology, performance criteria)

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Contents of IEP, cont'd

- Current performance levels
- Measurable annual goals (“challenging, yet attainable” within this IEP period)
- Benchmarks/objectives (what student needs to do to complete goal; required under Mass. law, though not under IDEA 2004 except for students who take alternate assessments)
- Service delivery grid (service, setting, frequency, type of personnel); services are to be “based on peer-reviewed research to the extent practicable” (20 U.S.C. sec. 1414(d)(1)(A)(i) (IV)).

Contents of IEP, cont'd

- Schedule modification? (Longer or shorter school day or school year)
- Extended school year if student has demonstrated or is likely to demonstrate substantial regression in learning skills or substantial difficulty in relearning such skills, if ESY not provided (603 CMR 28.05(4)(d)(1))
- District may not limit ESY services to particular categories of disability, nor may it “unilaterally limit the type, amount, or duration” of ESY services (34 C.F.R. sec. 300.106(a)(3)).

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Contents of IEP, cont'd

- Transportation
- State or district-wide assessment info (including MCAS), including accommodations for same
- Transition planning and services
 - Transition planning must begin with IEP that will be in effect when student turns 14 (under MA law); must be updated at least annually thereafter

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Transition planning, goals, and services

- IEP for students 14+ must include a post-school vision statement and “appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills.” (20 U.S.C. sec. 1414(d)(1)(IA)(i)(VIII)(aa))
- Transition planning form must be completed (available at http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/iep.html#tpform). Must include statement of post-secondary vision, statement of disability-related needs, and action plan to meet those needs.

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Transition services

- IEP must provide transition services necessary to meet the postsecondary goals. Transition services are to be:
 - coordinated
 - results-oriented
 - focused on improving the student's academic and functional achievement
 - to facilitate the student's movement from school to post-school activities (which may include post-secondary education, vocational education, employment (including supported employment), continuing and adult education, adult services, independent living, community participation).

Transition services, cont'd

- Transition services are to be based on individual strengths, preferences and interest; may include “instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.” 20 U.S.C. sec. 1401(34)(C).
- District must ensure that options are available for older students (esp. 18-21), including continuing education and developing independent living skills, vocational skills, skills for community access, medical self-management skills (603 CMR 28.06(4)).

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Transition goals and graduation

- Transition services are part of district's FAPE obligation.
- *Dracut Public Schools*, BSEA #08-5330, 15 MSER 78 (3/13/09): district failed to provide appropriate transition services for a student with Asperger's Syndrome, ADHD, and anxiety disorder, where district failed to address student's need for pragmatic language instruction, social skills, training, travel training, meaningful vocational skills.
- Can a student remain eligible for special education if he/she has passed MCAS and met local graduation requirements, but not made sufficient progress on his/her IEP goals and objectives?

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Standard for services

- State must ensure that district provides “free appropriate public education” (FAPE) to each eligible child
- Services to be provided, to maximum extent appropriate, in the “least restrictive environment”: removal from regular ed environment only to occur when the nature or severity of the child’s disability is such that “education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily” (20 U.S.C. sec. 1412(a)(5)(A)).

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What is FAPE?

- Statutory definition (20 U.S.C. sec. 1401(9)): special education and related services that --
 - Have been provided at public expense and under public supervision and direction, without charge
 - Meet standards of state educational agency
 - Include an appropriate preschool, elementary or secondary education , under state standards
 - Are provided in conformity with child's IEP.

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FAPE: must be individualized.

- Must meet the unique needs of the child.
- Determination of services must not be based solely on type of disability.
- No blanket reduction or elimination of services due to type of disability or change in law.

FAPE: need “meaningful benefit”

- Judicial decisions have interpreted FAPE to require:
 - “Meaningful benefit” to the child
 - “More than trivial” benefit not enough
 - “Significant learning” required
 - Must permit student to make “meaningful educational progress” (“effective results,” “demonstrable improvement,” measurable success)

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Meaningful benefit, cont'd

- Under FAPE, courts have ordered “an extensive array of special education services,” including private day and residential placements.
- Services must still be appropriate to meet child’s needs
- Continuum of services still required

FAPE: importance of child's potential

- In determining whether a proposed IEP provides FAPE, gauge in relation to the child's potential
- IDEA 97 & 2004: emphasis on “having high expectations” for children with disabilities and ensuring access in general curriculum “to the maximum extent possible”

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Importance of potential, cont'd

- State Education Reform Act: a paramount goal to extend to all children, including those with disabilities, “the opportunity to reach their full potential”
- Chapter 71B: special education must be designed “to develop the educational potential” of children with disabilities
- State regulations: to ensure students receive services designed to develop individual educational potential in LRE

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FAPE: access to general curriculum

- Goal: child with disabilities to meet the educational standards applicable to all children
- “General curriculum” distinguished from “general education”; base on Curriculum Frameworks, regardless of setting
- IDEA 2004 has strengthened focus on measurable results and functional performance

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FAPE: impermissible considerations

- Disability category, without more
- Cost of services
- Caseloads or schedules of service providers
- Openings or availability of classrooms or programs
- Administrative convenience
- Conflicting school district policies or procedures

Continuum of placements

(for students aged 6-21)

- Full inclusion program (pulled out of regular education for 0-20% of time)
- Partial inclusion program (pulled out 21-60% of time)
- Substantially separate public school program (pulled out more than 60%)
- Public day school (educational collaboratives)
- Private day school (approved)
- Private residential school (approved)

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Continuum, cont'd

- Home-based program
- Hospital program
- Unapproved private school (“sole source”) (603 CMR 28.06(3)(e))
- Programs for children in facilities of other agencies (DYS, DMH, DPH, prisons, etc.)
- Programs for older students (job/life skills; Inclusive Concurrent Enrollment (ICE) at community colleges)

• Team Determination of Type of Educational Placement

- One-page Placement Consent Form (PL-1), indicating type of placement as well as specific placement
- Parents must participate in determining specific placement (not just program type) – district must send a representative to the Team meeting who is authorized to make decisions about placement
- Need to respond both to this form and to the IEP
- For children ages 3-5, form indicates type of program (inclusive or not); if inclusive, percentages for inclusion are 0-39%, 40-79%, and over 80%

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Responding to the IEP

- Parents have 30 calendar days within which to respond to IEP and placement form
- IEP response options
 - Accept in full
 - Reject in full
 - Accept in part, reject in part
- Placement form response options

Refusal or revocation of consent to services

- If parents refuse to consent to services, or revoke their consent in writing at any point after child has begun receiving services, district may not use mediation or due process hearing procedures. 603 CMR 28.08(3)(c); 34 C.F.R. sec. 300.300(b)(4)(eff. 12-31-08).
- In that event, district will not be required to convene Team meetings, develop IEPs, etc., and will not be consider in violation of obligation to provide FAPE.

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Right to unilateral placement

- When a dispute exists regarding placement, parents may place student in a private program at their own expense and seek reimbursement from the school district
- Parents not held to same standard as LEA in selecting placement (*Florence County School Dist. Four v. Carter*, 510 U.S. 7 (1993)).
- Student need not have been receiving special education prior to removal (*Forest Grove Sch. Dist. v. T.A.*, #08-305, 6/22/09).

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Right to unilateral placement, cont'd

- Risks and benefits of unilateral placement
- Hearing officer's analysis: is the district's proposed placement appropriate? Can it be made appropriate with modifications? If not, is the private school appropriate?
- Notice requirement: give notice either at the last Team meeting before the student is removed from public school, or 10 business days (2 weeks) prior to removal

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Right to unilateral placement, cont'd

- Notice, whether given at Team meeting or in writing, must include (see 20 U.S.C. sec. 1412(a)(10)(C):
 - Parents' rejection of the placement proposed by the district (can withdraw assent previously given)
 - Intent to enroll student at private school as of x date, at public expense
 - Statement of parents' concerns about district's proposed program.
- Method of delivery of notice

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Independent evaluations

- Key to every special ed case in which there is a dispute about eligibility, program, placement, or services
- Key characteristics of an independent evaluator:
 - Qualified (appropriate degree, licensure, experience)
 - Integrity/independence
 - Willingness to follow through

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Independent evaluations, cont'd

- Parents have right to private evaluation at own expense at any time
- Parents have right to observe any program proposed for their child, 603 CMR 28.07(1)(a)(3); recent amendment to M.G.L. c.71B, sec. 3 requires districts to grant timely and sufficient access by parents and parent-designated independent evaluators and educational consultants to observe current and/or proposed programs.
- TEAM must reconvene to consider any independent evaluation report within 10 school days, 603 CMR 28.04(5)(f).

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Right to observation

(M.G.L. c.71B, sec. 3)

- Observers “shall be afforded access of sufficient duration and extent to enable them to evaluate the child’s performance in a current program and/or the ability of a proposed program to enable the child to make effective progress.”
- Right to observe includes “both academic and non-academic aspects” of program.

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Right to observation, cont'd

- Conditions or restrictions may only be imposed if necessary to:
 - ensure “safety of children in a program,”
 - ensure the “integrity of the program while under observation,” or
 - “protect children in the program from disclosure by an observer of confidential and personally identifiable information.”
- Further explanation in DESE Technical Assistance Advisory 2009-2 (at http://www.doe.mass.edu/sped/advisories/09_2.html)

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Independent educational evaluations at school district's expense

- Parents may request IEE after school performs its evaluation, if parents disagree with any school assessment or request an evaluation in an area not assessed by the district.
- 114.3 CMR 30.00 sets allowable fees (“rate-setting rates”) for publicly-funded evaluations; constitutes “full compensation” (?)

• • • **State right to independent evaluation**

- Under state law (603 CMR 28.04(5)(c):
 - Sliding scale based on income; family must furnish financial info
 - District pays entire cost (subject to rate-setting) if family income is less than or equal to 400% of federal poverty level (currently, 400% for family of 4 = \$88,200/year); district pays nothing if income greater than 600%; 50% and 75% options for incomes in between
 - 16-month time limit
- If family qualifies financially and parents request evaluation in an area that the district assessed, district has no discretion to refuse request for IEE.

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Federal right to independent evaluation

- If parents not financially eligible, or decline to provide financial info, or request evaluation in area not assessed by school, follow federal procedure
- No sliding scale, no time limit
- District must either agree to pay or commence BSEA hearing process within 5 school days, show that its evaluation was “comprehensive and appropriate”

Stay-put rights

- Importance of stay-put (right to placement pending appeal) (20 U.S.C. sec. 1415(j), 34 C.F.R. sec. 300.518, 603 CMR 28.08(7))
- During the pendency of any dispute regarding placement or services, the student remains in last agreed-upon program and placement, unless parents or district agree otherwise.
- Certain exceptions, including in the school discipline context (district may remove student from placement for up to 10 school days for violating a code of student conduct; up to 45 school days for certain serious offenses).

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School discipline

- Students on IEPs have particular rights if district seeks to remove student from placement for more than 10 school days
- Except in the case of certain serious offenses, if behavior is determined to be a manifestation of the student's disability, the student may not be removed from his/her placement
- Even if behavior is not a manifestation, a special education student who is removed from his/her placement is still entitled to FAPE. 20 U.S.C. sec. 1412(a)(1)(A).

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Resolution of disputes

- If a dispute arises regarding eligibility, programs, services, compliance with IEP, etc., try to resolve informally first
- If that is not possible, resort to DESE's Bureau of Special Education Appeals (BSEA)
 - Hearing process, including resolution session (within 15 calendar days of district's receipt of hearing request)
 - Mediation (both sides must agree to participate)

Administrative complaints (DESE's Program Quality Assurance unit ("PQA"), U.S. Department of Education's Office for Civil Rights ("OCR")) – will suspend investigation if hearing request is pending

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Resolution of disputes, cont'd

- Exhaustion requirement
- BSEA statistics
- Differences between mediation and hearing
- Appeal available from BSEA hearing officer's decision to state or federal court
- Fee shifting statute

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Selected resources

- Sources for laws and regulations
 - www.doe.mass.edu - Massachusetts Department of Elementary and Secondary Education website. Includes texts of state special education law and regulations, special education advisories (policy directives), blank forms used in IEP process, links to federal law sites.

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Resources, cont'd

- www.ed.gov - federal Department of Education website. “Publications” section includes texts of IDEA, Section 504, federal special education regulations, policy documents.
- www.ideapractices.org - “enhanced” version of the federal regulations, and more
- www.specialedlaw.net
- www.wrightslaw.com

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Resources, cont'd

- Sources of decisional law
 - Mass. DESE website (Special Education and Special Education Appeals sections)
 - Individuals with Disabilities Education Law Reporter
 - Massachusetts Special Education Reporter (www.landlaw.com)
- Kotin, Crabtree & Strong, LLP: www.kcslegal.com - includes quarterly MSER commentaries, links to other sources

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Resources, cont'd

- Advocacy organizations:
 - www.masspac.org (Mass. Ass'n of Special Education Parent Advisory Councils) - includes list of advocates and educational consultants, access to listserv; local PACs also a resource
 - www.fcsn.org (Federation for Children with Special Needs)
 - www.massadvocates.org (Massachusetts Advocates for Children)
 - www.arcmass.org (Association of Retarded Citizens of Mass. - broader than just MR)

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Resources, cont'd

- Sources of information about programs: the Massachusetts Ass'n of 766-Approved Private Schools (MAAPS - 781-245-1220, or www.spedschools.com) publishes a directory including a profile of each member school, and a cross-index by disability. Many (not all) approved schools are listed.
- Mass. DESE website has basic info on all.

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Resources, cont'd

- Advocacy organizations:
 - www.masspac.org (Mass. Ass'n of Special Education Parent Advisory Councils) - includes list of advocates and educational consultants, access to listserv
 - www.fcsn.org. (Federation for Children with Special Needs)(617-236-7210, (800) 331-0688
 - www.massadvocates.org (Massachusetts Advocates for Children)(617-357-8431; Helpline: x224)
 - www.arcmass.org (Association of Retarded Citizens of Mass. - broader than just MR)

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Resources, cont'd

- Www.massddnetwork.org (Network of Developmental Disabilities Council, Disability Law Center, Institute on Community Inclusion)
- www.massfamilyties.org (Mass. DPH project)
- www.familyvillage.wisc.edu
- www.familyeducation.com
- www.nichcy.org/index.html (Nat'l Information Center for Children & Youth with Disabilities)

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Resources, cont'd

- Www.communitygateway.org/mfofc/ (Mass. Families Organizing for Change)
- www.npnd.org (National Parent Network on Disabilities)
- www.matp.org/index.html (Mass. Assistive Technology Partnership)

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Resources, cont'd

- In addition, there are specific websites concerning almost every disability. Two examples: www.ldonline.com (re learning disabilities) and www.nldline.com (re nonverbal learning disabilities)
- There may be a support group in the community.