

RIGHTS OF MASSACHUSETTS YOUTH REGARDING INDIVIDUALIZED EDUCATION PROGRAMS

**Prepared by the Mental Health Legal Advisors Committee
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What is an Individualized Education Program (IEP)?

An IEP is a plan of services to be provided by a school district to a student found eligible to receive special education services.

Who develops the IEP?

An IEP should be developed by the IEP team, a group which includes:

- At least one of the parents.
- At least one of the child's regular education teachers (if the child is currently, or may be in the future, attending regular education classes.)
- At least one of the child's special education teachers, or where appropriate, at least one of the child's special education providers.
- A school district representative who meets all of the following criteria:
 - Is qualified to provide or supervise the provision of special education services;
 - Is knowledgeable about the general education curriculum; and
 - Has the authority to commit the resources of the school district (i.e., can approve services that cost money.)
 - Someone who understands the results of evaluations and how they impact the way in which the student must be taught.
- Whenever appropriate, the student.¹

Resources:

SPEDWatch, Team Meetings, http://www.spedwatch.org/files/Team_Meetings.pdf.

SPEDWatch, Draft IEPs, http://www.spedwatch.org/files/Draft_IEPs.pdf

How long does the school district have to provide the proposed IEP to the parents?

A district must provide parents with two copies of a proposed IEP "immediately following" its development in a Team meeting.² The state Department of Elementary and Secondary Education (DESE) has interpreted this rule to explain that this obligation can be met in one of two ways.

¹ 34 CFR 300.321(a); *see also* SPEDWatch, Team Meetings, http://www.spedwatch.org/files/Team_Meetings.pdf.

² 603 CMR 28.05(7).

- A school district can provide parents with a summary of the team meeting at the end of the meeting and then take up to two calendar weeks to deliver the IEP to the family. BUT, if the parent doesn't agree to wait for this two-week period, the district must deliver the proposed IEP within 3-5 days; or
- The school district which fails to provide the summary of the team meeting at the end of the meeting must deliver the proposed IEP within 3-5 days.³

What should an IEP include?

A good IEP should provide a clear, comprehensive plan for how a child can participate and succeed in the general curriculum. Perhaps one of the most important elements of IEP is extensive input from parents and, if possible, the child about not only what is realistic for the child but also the child's future hopes and dreams.

Overall, the IEP should address the child's particular strengths, weaknesses, concerns and desires. In addition to academic supports, an IEP should address needs outside of the classroom such as positive behavioral interventions, communication support, the assistive technology, the use of Braille for visually impaired students, and other considerations unique to the child.

IEP goals should be measurable, attainable, challenging, positive, and the IEP should specifically outline how they will be achieved.

An IEP should also outline services, supports and an appropriate placement.

Furthermore, a good IEP should determine the most appropriate way for the child to take the MCAS, which all students must take regardless of special education status.⁴

Finally, an IEP for a student age 14 or older must include extensive transition planning for when the student graduates from high school or turns 22.⁵

³ See DESE, Special Education Memorandum on the Implementation of 603 CMR 28.05(7): Parent response to proposed IEP and proposed placement (Dec. 1, 2006), <http://www.doe.mass.edu/news/news.aspx?id=3182>; Ellen M. Chambers, IEP delivery timelines & team meeting summaries (April 2017), <https://drive.google.com/file/d/0B4AZb1DbOSyZ3dFampNSTJtNWIPRVVrRXFiNTBtazY3OGVB/view>.

⁴ The Federation for Special Needs and DESE, *A Parent's Guide to Special Education*, 23, http://www.fcsn.org/parents_guide/pgenglish.pdf.

⁵ For a discussion of transition planning requirements, see DESE, Technical Assistance Advisory SPED 2009-1: Transition Planning to Begin at Age 14 (Sept. 3, 2008), http://www.doe.mass.edu/sped/advisories/09_1ta.html.

What are potential problems in an IEP?

Parents should be aware of several potential pitfalls in the IEP development process. An IEP should not provide a low-level, watered down version of the general education curriculum. It should enable the child to succeed in the general education curriculum, with the same opportunities to do so as children without special education needs.

An IEP team ought to be careful not to limit an IEP only to what they consider realistic. Such a limitation could prevent a child from reaching his full potential and the hopes and dreams he may be capable of realizing.

Moreover, IEP goals should not be vague, immeasurable, or unachievable.

Resources:

Parents may access the forms and notices that an IEP should include at http://www.doe.mass.edu/sped/iep/eng_toc.html

DESE, IEP Process Guide, <http://www.doe.mass.edu/sped/iep/proguide.pdf>

DESE, IEP forms and notices, http://www.doe.mass.edu/sped/iep/eng_toc.html

DESE, Parent's Notice of Procedural Safeguards, <http://www.doe.mass.edu/sped/prb/>

DESE, A Parent's Guide to Special Education, http://www.fcsn.org/parents_guide/pgenglish.pdf

When and how may a parent change an IEP?

If parents are unsatisfied with an IEP in its final stage of development (before services outlined in the IEP begin) they may choose to either fully or partially reject the plan. Sometimes it is a good idea to only reject certain parts of the IEP so that other necessary services may begin.⁶

If a parent rejects all or part of a proposed IEP, a prior IEP, if one exists, remains effective with respect to the disputed services until a subsequent IEP is accepted by both sides or the dispute is otherwise resolved.⁷ School districts cannot unilaterally change services without the consent of parents.

This concept is commonly referred to as the "stay put" provision because it applies to special education placements as well as other services. If a child is in a placement and the school proposes to move the child, the child may not be moved during the pendency of any dispute

⁶ The Federation for Special Needs and DESE, *A Parent's Guide to Special Education*, 25, http://www.fcsn.org/parents_guide/pgenglish.pdf.

⁷ 603 CMR 28.08(7).

between the school district and the parents.⁸ There are exceptions to “stay put” in certain disciplinary proceedings.⁹

If parents are unsatisfied with a child’s progress after the implementation of IEP services, they may consult the child’s special education teacher or ask the IEP Team to meet again and discuss making changes to the IEP.

With respect to any changes to the IEP, parents must receive notification from the school district and provide written consent.¹⁰

In addition, the IEP Team meets at least annually to review a child’s IEP and discuss any possible changes that need to be made, so parents may bring up concerns at these meetings.¹¹

Resources:

DESE, IEP forms and notices,
http://www.doe.mass.edu/sped/iep/eng_toc.html

DESE, A Parent’s Guide to Special Education, http://www.fcsn.org/parents_guide/pgenglish.pdf

DESE, IEP Process Guide,
<http://www.doe.mass.edu/sped/iep/proguide.pdf>

SPEDWatch, “Stay Put”, <http://www.spedwatch.org/files/Stay-Put.pdf>

What if a parent would like an advocate to attend a team meeting?

Parents seeking a special education advocate may contact the Federation for Children with Special Needs for a referral list of advocates within their geographic area. Some advocates on this list are available free of charge because they are still fulfilling training requirements. However, most special education advocates on the Federation’s referral list are professionals who charge from \$40-\$125/hour for their services. The Special Needs Advocacy Network, Inc. also has a referral list predominantly consisting of advocates who charge for their services. Special education advocates are generally not covered by health insurance.

Resources:

FCSN, A Parent’s Guide to Selecting a Special Education Advocate in Massachusetts,
http://fcsn.org/pti/advocacy/advocacy_brochure.pdf

⁸ 603 CMR 28.08(7).

⁹ See SPEDWatch, “Stay Put”, <http://www.spedwatch.org/files/Stay-Put.pdf>.

¹⁰ The Federation for Special Needs and DESE, *A Parent’s Guide to Special Education*, 25,
http://www.fcsn.org/parents_guide/pgenglish.pdf.

¹¹ The Federation for Special Needs and DESE, *A Parent’s Guide to Special Education*, 25,
http://www.fcsn.org/parents_guide/pgenglish.pdf.

What are a student's rights regarding progress reports, annual re-evaluation and 3-year re-evaluation of the IEP?

Parents have a right to stay informed of a child's educational progress under an IEP through several measures including progress reports, annual re-evaluation and 3-year re-evaluation of the IEP.

What are a student's rights regarding progress reports?

Progress reports for children with IEPs must be sent to parents at least as often as parents are informed of a nondisabled child's progress.¹² Progress reports must answer the following two questions for each of the child's measurable annual goals:

- What is the student's progress toward the annual goal?
- Is the progress sufficient to enable the student to achieve the annual goal by the end of the IEP period?¹³

Progress reports should clearly answer these questions by specifying what the student has been working on; listing what the student has achieved; indicating any stumbling blocks to progress; and projecting whether the student will reach the annual goal if progress continues at its current pace.¹⁴

Progress reports should be written in clear language that parents will be able to understand.

If a child displays a lack of progress, the IEP Team should first recommend any refinements to strategies being used in the child's classroom and then, if it becomes necessary, consider revisions to the IEP.¹⁵

What are a student's rights regarding the annual review meeting?

Another important step of the IEP process is the annual review meeting. At the annual review meeting, the Team should review progress made towards the child's goals, adjust the IEP in any necessary section to ensure the information is current, and add new goals for the next IEP period.¹⁶

¹² DESE, *IEP Process Guide* (2001), <http://www.doe.mass.edu/sped/iep/proguide.pdf>.

¹³ DESE, *IEP Process Guide* (2001), <http://www.doe.mass.edu/sped/iep/proguide.pdf>.

¹⁴ DESE, *IEP Process Guide* (2001), <http://www.doe.mass.edu/sped/iep/proguide.pdf>.

¹⁵ DESE, *IEP Process Guide* (2001), <http://www.doe.mass.edu/sped/iep/proguide.pdf>.

¹⁶ DESE, *IEP Process Guide* (2001), <http://www.doe.mass.edu/sped/iep/proguide.pdf>.