

# EDUCATIONAL SERVICES AVAILABLE TO MASSACHUSETTS YOUTH WITH DISABILITIES

Prepared by the Mental Health Legal Advisors Committee  
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## What kind of educational services are available under the law for youth with disabilities?

Section 504 and the Individuals with Disabilities Education Act (IDEA) are both federal laws that can help secure a range of services for children with special education needs. It is important to know the differences between them when pursuing special education services.

### Resources:

SPEDWatch, IEP or 504 Plan: What difference does it make?,  
[http://www.spedwatch.org/files/IEP\\_v\\_504.pdf](http://www.spedwatch.org/files/IEP_v_504.pdf)

## How can Section 504 be used by students?

Section 504 of the Rehabilitation Act of 1973 covers a broader range of disabilities than IDEA, meaning that more children are entitled to protections under it than are under IDEA.<sup>1</sup> Section 504 protects all people with a disability who 1) have a physical or mental impairment that substantially limits one or more major life activity, 2) have a record of such an impairment, or 3) are regarded as having such an impairment.<sup>2</sup> Section 504 is an anti-discrimination act, meaning that it aims to remove barriers to equality that stand between disabled and non-disabled people. In special education programs, the services and accommodations available under Section 504 aim to bridge these gaps.<sup>3</sup> Any programs that receive federal funding (i.e., all U.S. public schools) are required to recognize Section 504.<sup>4</sup>

Services available under Section 504, often provided through a document known as a 504 plan, should be tailored to individual students with disabilities to meet their educational needs as equally as students without disabilities. Some students protected under Section 504 may not need additional services beyond education in regular classrooms. However, other students might stay in regular education classrooms but need supplementary services or special

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<sup>1</sup> S. James Rosenfeld, Esq., Edlaw, Inc., Section 504 and IDEA: Basic Similarities and Differences 2, [http://www.wrightslaw.com/advoc/articles/504\\_IDEA\\_Rosenfeld.html](http://www.wrightslaw.com/advoc/articles/504_IDEA_Rosenfeld.html).

<sup>2</sup> 29 U.S.C. § 794; 42 U.S.C. § 12102.

<sup>3</sup> 29 U.S.C. § 794; S. James Rosenfeld, Esq., Edlaw, Inc., Section 504 and IDEA: Basic Similarities and Differences 2, [http://www.wrightslaw.com/advoc/articles/504\\_IDEA\\_Rosenfeld.html](http://www.wrightslaw.com/advoc/articles/504_IDEA_Rosenfeld.html).

<sup>4</sup> U.S. Department of Education, Office for Civil Rights, *Free Appropriate Public Education for Students with Disabilities: Requirements Under Section 504 of the Rehabilitation Act of 1973* 1 (2007), <http://www2.ed.gov/about/offices/list/ocr/docs/FAPE504.pdf>.

accommodations. Still others may need to be taken out of the regular education classroom and placed in a special education program with other related services.<sup>5</sup>

### **Resources:**

OCR, Protecting Students With Disabilities, Frequently Asked Questions About Section 504 and the Education of Children with Disabilities,  
<http://www2.ed.gov/about/offices/list/ocr/504faq.html>

### **What is the Individuals with Disabilities Education Act (IDEA)?**

The Individuals with Disabilities Education Act (IDEA) mandates the provision of services to children with a specific range of disabilities. In Massachusetts, the following disabilities may make a child eligible for IDEA services: autism, developmental delay, intellectual impairment, sensory impairment (including hearing or visual impairment, or deaf/blind), neurological impairment, emotional impairment, communication impairment, physical impairment, health impairment, or specific learning disability.<sup>6</sup> In addition to proof of one of these disabilities, evaluators must be able to prove that because of the disability, the child is unable to make effective progress in school without special education services.<sup>7</sup> Progressing effectively is defined in Massachusetts regulation.<sup>8</sup> Children entitled to services under IDEA are required to receive an individualized education program (IEP).

### **What is an IEP?**

An Individualized Education Program or IEP outlines a child's needs and details the special education and related services that he should receive in the most appropriate learning environment. Depending on the child's individual needs, educational services under an IEP include varying combinations of special education and related services, modifications to programs, supplementary services and accommodations, or supports to school staff in both regular education and separate classroom settings.

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<sup>5</sup> U.S. Department of Education, Office for Civil Rights, Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities, <http://www.ed.gov/about/offices/list/ocr/504faq.html>.

<sup>6</sup> DESE, *IEP Process Guide* (2001), <http://www.doe.mass.edu/sped/iep/proguide.pdf>.

<sup>7</sup> DESE, *IEP Process Guide* (2001), <http://www.doe.mass.edu/sped/iep/proguide.pdf>.

<sup>8</sup> *Progress effectively in the general education program* shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the student, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district. The general education program includes preschool and early childhood programs offered by the district, academic and non-academic offerings of the district, and vocational programs and activities. 603 CMR 28.02(17).

## What is FAPE?

Any person with a disability is entitled to what is known as a “free appropriate public education” (FAPE). FAPE provides students with disabilities with the right to an education that meets their needs in the public school setting and is of no cost to them or their families.

FAPE is defined slightly differently in Section 504 than in the IDEA. Section 504 defines FAPE to include special *or* regular education and related services, while IDEA counts only special education and related services.<sup>9</sup>

The Supreme Court has recently addressed what exactly is required for FAPE under the IDEA, holding that a “child’s education program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.”<sup>10</sup> The requirement must be “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>11</sup>

## Should I pursue special education and how would I do so?

If a parent or guardian thinks that a child may have a disability that is preventing him from making effective progress in school, they might first request non-special education classroom accommodations. If these efforts are still not helping the child, it may be advisable to pursue special education services. The first step in this process is to make referral to the school district, which must then pursue a special education evaluation. Parents, guardians, teachers or other school staff all may make referrals for an evaluation. Once a referral has been made, the school must contact the child’s parents to seek consent in writing before the evaluation process may begin.<sup>12</sup> After parents give written consent, the evaluations must be completed within 30 days.<sup>13</sup> The school district also should send a copy of the *Parent’s Notice of Procedural Safeguards* to parents before the process begins.

## Resources:

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

DESE, Eligibility Flow Chart, <http://www.doe.mass.edu/sped/iep/forms/pdf/ED1.pdf>

DESE, A Parent’s Guide to Special Education, [http://www.fcsn.org/parents\\_guide/pgenglish.pdf](http://www.fcsn.org/parents_guide/pgenglish.pdf)

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<sup>9</sup> 34 CFR § 300.17.

<sup>10</sup> *Andrew F. v. Douglas County School District RE-1*, No. 15–827, 2017 WL 1066260 (March 22, 2017), at \*2.

<sup>11</sup> *Id.* at \*12.

<sup>12</sup> The Federation for Special Needs and DESE, *A Parent’s Guide to Special Education* 12, [http://www.fcsn.org/parents\\_guide/pgenglish.pdf](http://www.fcsn.org/parents_guide/pgenglish.pdf).

<sup>13</sup> The Federation for Special Needs and DESE, *A Parent’s Guide to Special Education* 13, [http://www.fcsn.org/parents\\_guide/pgenglish.pdf](http://www.fcsn.org/parents_guide/pgenglish.pdf).

## **How do I advocate for services for my mentally ill child if not child is not displaying problems in school?**

If you feel that your child's mental illness is negatively affecting his education, even if he is not displaying problems in school, then there are steps you can take to advocate for your child. It is important to document the behaviors in the home, and preferable to have this done by a clinician or doctor. You or the clinician must then determine if there is a connection between those behaviors and educational progress, and, if so, explain the relationship. It is also important to look to see if there is really no evidence of behavioral or other problems in school. Reviewing your child's school records may provide you with additional information. It is also possible that your child may be displaying these behaviors in some capacity at school, even if not in the classroom, so it is important to look at other settings, like transportation to and from school, afterschool programming, and homework time at home. Documenting the services tried in the home will also provide evidence as to the need for additional supports during the school day, if the services at home are not effective.

It is important for schools to be aware of a child's mental health needs, even if the child is not displaying problems in school or does not qualify for special education. Teachers and other school staff members can provide a more supportive learning environment if they are aware of special behavioral needs. Parents and guardians should determine what services are available at a child's school, which is responsible for providing them, and how to access them. Mental health services in public schools vary greatly by school and may include in-school programs, services from outside providers (including Community Service Agencies or CSAs), and School-Based Health Centers.<sup>14</sup> Mental health professionals who work with schools may include guidance counselors, social workers, adjustment counselors, and psychologists.

Approaching teachers, school counselors or psychologists, and other school personnel to discuss a child's mental health needs may be useful in getting the appropriate evaluations and in-school services and establishing a mutually beneficial relationship with the school. Parents do not have to disclose any information and should only relay what they feel comfortable discussing. School staff members must keep confidential any information relayed to them by a child's doctor or therapist.<sup>15</sup>

### **Resources:**

HSC Foundation Partnering you're your Child's School: A Guide for Parents  
[http://www.hscfoundation.org/aboutus/publications/partnering\\_with\\_schools\\_english\\_guide.pdf](http://www.hscfoundation.org/aboutus/publications/partnering_with_schools_english_guide.pdf)  
(includes questions parents can ask when advocating for school mental health services)

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<sup>14</sup> Boston Bar Association, *The Parents' How-To Guide to Children's Mental Health Services in Massachusetts* 86 (2d ed. 2009), [http://www.bostonbar.org/docs/default-document-library/bbaguide\\_2011update\\_2.pdf](http://www.bostonbar.org/docs/default-document-library/bbaguide_2011update_2.pdf).

<sup>15</sup> The HSC Foundation, *Partnering with Your Child's School: A Guide for Parents* 6, [http://www.hscfoundation.org/aboutus/publications/partnering\\_with\\_schools\\_english\\_guide.pdf](http://www.hscfoundation.org/aboutus/publications/partnering_with_schools_english_guide.pdf).

### **What should I do if the school tries to dissuade me from advocating for my child?**

Some parents face issues from their school district when trying to advocate on behalf of their children with disabilities. For example, a school district may deny that a child has problems that warrant special education, or may fail to write adequate services into the IEP by claiming that those services are not necessary. The school may refuse to conduct an evaluation, or refuse to consider information from outside consultants. In severe cases, parents have reported some extreme tactics by schools to dissuade them from involvement, including schools filing a 51A suspected abuse report against the parent.<sup>16</sup> The prevalence of these actions is unknown. Seek help from an advocate if you face these issues.

### **What if my school district is saying that, despite my child's disability, he/she is making effective progress?**

One difficulty faced by many parents is determining how the school defines "effective progress." Massachusetts defines "progress effectively" as making "documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general curriculum..."<sup>17</sup> However, this definition can still lead some schools to interpret effective progress too narrowly. While some schools may include things such as attendance, behavior, and social interactions in addition to grades when determining a student's progress, other schools look strictly at test scores and grade completion.

Look at the goals written into your child's IEP. If you think that the goals are appropriate but that your child is not successfully completing those goals, then it will be necessary to show the school that those goals have not been met. Evidence of not progressing can include not performing up to expected levels on standardized, criterion-referenced, or curriculum-based assessments, or failing to earn promotion to the next grade level at the end of the school year.<sup>18</sup>

If you feel that the goals of the IEP are not sufficient because they are not accommodating all aspects of your child's disability, such as social or emotional problems, show how those problems negatively impact your child's ability to successfully access a free and appropriate education.<sup>19</sup> For example, in one case, a student with good grades at grade level material who was tutored at home because of stress around attending school was found to be failing to make effective progress.<sup>20</sup> The reasoning in this case was that the inability to attend school affects progress towards independence and educational progress.<sup>21</sup> The idea that school is supposed to teach students more than academics has been supported in other cases, such as a federal court

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<sup>16</sup> Email from Ellen Chambers, Executive Director, SpedWatch to listserv (Jan. 11, 2010).

<sup>17</sup> 603 CMR 28.02(17).

<sup>18</sup> *See In Re: Canton Public Schools*, 6 MSER 239 (2000).

<sup>19</sup> *See In Re: New Bedford*, 7 MSER 261 (2001).

<sup>20</sup> *See Dighton-Rehoboth Regional School Dt.*, BSEA #06-2145 (2006).

<sup>21</sup> *See Dighton-Rehoboth Regional School Dt.*, BSEA #06-2145 (2006).

case that held that when analyzing educational performance, it is necessary to look not only at academic performance, but also at other aspects of performance, such as behavior and attendance.<sup>22</sup> Although the schools are required to provide the students with an education in the least restrictive environment, “the opportunity to be educated with non-disabled students does not cure a program that otherwise is inappropriate.”<sup>23</sup> Providing evidence of the areas in which your child is lacking, such as independent evaluations, will help to show why you feel your child is not making effective progress.

**Resources:**

SPEDWatch, What Does ‘Effective Progress’ Really Mean?,

[http://www.spedwatch.org/files/Effective\\_Progress.pdf](http://www.spedwatch.org/files/Effective_Progress.pdf)

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<sup>22</sup> See *Mr. and Mrs. I v. Maine School Administrative District*, 416 F. Supp.2d 147,159 (D. Maine 2006) (citing Robert A. Garda, Jr., *Untangling Eligibility Requirements under the Individuals with Disabilities Education Act*, 69 MO. L.REV. 443- 47 at 498-99 (2004)).

<sup>23</sup> See *In Re: Milton Public Schools*, 15 MSER 270 (2009).