

# **RIGHTS OF MASSACHUSETTS YOUTH REGARDING SPECIAL EDUCATION ELIGIBILITY**

**Prepared by the Mental Health Legal Advisors Committee  
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Special education eligibility decisions are made following an evaluation of the child.

## **What happens after the evaluation of the need for special education services is complete?**

The district then convenes a group of qualified professional and the parent. This group is called a team. The team asks three questions:

- 1) The team determines whether the child is a child with a disability.<sup>1</sup> In interpreting evaluation data to determine if a child is a child with a disability, the team must draw upon information from a variety of sources and ensure that this information is documented and carefully considered.<sup>2</sup>
- 2) If the team determines that the child has a disability, it evaluates whether this disability is preventing the child from making progress in school.
- 3) If the team determines that the disability is preventing the child from making progress, it decides if special education is necessary to help the child make such progress.

If so, the child becomes eligible for special education and the school district must develop an IEP for the child.<sup>3</sup>

Team members should complete a written report on their findings and certify in writing whether or not the results show that the child has a disability requiring special education services.

## **What happens if the team determines the child has a disability and needs special education and related services?**

If a determination is made that a child has a disability and needs special education and related services, the team must develop an IEP for the child.<sup>4</sup>

## **What happens if the team determines the child is not eligible for special education services?**

If the IEP team concludes that the student is not eligible for special education services, DESE's advisory dictates the activities that must then occur.<sup>5</sup>

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<sup>1</sup> 20 U.S.C. 1414(b)(4)(a); 34 CFR 300.306(a)(1); 603 CMR 28.04(2)(c).

<sup>2</sup> 34 CFR 300.306(c)(1).

<sup>3</sup> DESE, *IEP Process Guide* 8-9 (2001), <http://www.doe.mass.edu/sped/iep/proguide.pdf>.

<sup>4</sup> 20 U.S.C. 1414(b)(4) and (5); 34 CFR 300.306(c)(2).

## **What alternatives are available if a child is found ineligible for special education services?**

A 504 Accommodation Plan can be useful for a child who is found ineligible for an IEP yet still needs services.<sup>6</sup>

## **How can a parent challenge an eligibility determination?**

If parents disagree with the finding of no eligibility and are unsatisfied with proposed alternatives to an IEP, they have certain due process rights. The Problem Resolution System of the Office of Program Quality Assurance is a way to informally or formally resolve disputes, including disputes such as these ones, through filing a complaint or holding a Problem Resolution Meeting.

Parents may also request to go through an official mediation process with the Massachusetts Bureau of Special Education Appeals (BSEA).

Furthermore, parents may appeal any eligibility determination to the BSEA by requesting a due process hearing.<sup>7</sup>

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<sup>5</sup> DESE, Advisory 2001-4, Finding of No Eligibility for Special Education, [http://www.doe.mass.edu/sped/advisories/01\\_4.html](http://www.doe.mass.edu/sped/advisories/01_4.html).

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

<sup>7</sup> DESE, *Parent's Notice of Procedural Safeguards 7* (2009), <http://www.doe.mass.edu/sped/prb/pnps.pdf>.