

# Prior Written Notice

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# Parent's Notice of Procedural Safeguards

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Dear Parents:

You are receiving this Notice of Procedural Safeguards (Notice) because your son or daughter (student) has been referred for an evaluation or is currently receiving special education services. If your student is eligible for special education, the school district must provide a free appropriate public education commonly referred to by the acronym FAPE. In order to provide a FAPE the school district must work in partnership with you. You will be a member of the IEP team that will consider your student's unique needs and develop an individualized education program or [IEP](#), for your student. The IEP must provide instruction that is tailored to your student's unique needs and includes sufficient support services to enable your student to make meaningful educational progress and to assist your student in acquisition of knowledge and skills, including those necessary for social and emotional development according to appropriate chronological and developmental expectations. Any special education services identified for your student must be provided at public expense with no cost to you. All students in the Commonwealth's public education system, including students with disabilities, are entitled to the opportunity to learn the material that is covered by the academic standards in the Massachusetts curriculum frameworks. Massachusetts also provides an individual right to FAPE for its resident students with disabilities who attend private schools at private expense, and who seek public special education services.

Both [State and federal laws](#) contain rules that school districts must follow when deciding if a student is eligible for special education and, if so, what services the student will receive. These laws also provide detailed procedures for ensuring that the student receives a FAPE during the entire time he or she is eligible for special education. Special education is a highly complex and regulated area of education law. The detail in the law is intended to protect your student and to help ensure that he or she receives appropriate educational services. You can get additional help in understanding the special education process from your school guidance office, the Massachusetts Department of Elementary and Secondary Education (ESE), organizations for parents of students with disabilities, and private special education organizations. Information from these sources will help you work in partnership with your school district to make sure that your student receives appropriate educational services.

This Notice provides you with important information on your right to be involved in planning your student's special education. Procedural safeguards are the specific rules that make sure that you know what the school district is proposing to do ("receive notice"), agree with the school district's plan ("give parental consent") and have a range of opportunities for resolving disagreements with the school district ("due process"). Procedural Safeguards in the law also provide additional protections outlined in this document.

We hope this Notice will be of assistance to you as you take an active role in your student's educational experience.

This document, the Parent's Notice of Procedural Safeguards, answers the following questions:

1. [What is "prior written notice" and when do you receive it?](#) ..... Page 2
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You will receive this Notice at least once each year if your student is identified as eligible for special education. You can also request a copy from your school district at anytime or from the ESE. This document is available on the ESE Web site at <http://www.doe.mass.edu/sped/prb>.

<b>1. WHAT IS PRIOR WRITTEN NOTICE AND WHEN DO YOU RECEIVE IT?</b>	<b>34 CFR §300.503</b>
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The school district must provide you with a written notice when it proposes, or refuses, to take steps to identify your student, to evaluate your student, to provide special services to your student, or to change your student’s program. Federal regulations call this a “prior written notice.” The written notice must:

- Describe **what** the school district proposes or refuses to do;
- Explain **why** the school district is proposing or refusing to take the action;
- Describe **how** the school district decided to propose or refuse to take the action, including telling you about each evaluation procedure, assessment, record, or report that your school district used to make its decision; and
- Describe any other options that your student's individualized education program (IEP) Team considered and the reasons why those options were rejected.

School districts will provide this information to you using forms developed by the ESE and available on the ESE Web site or their own forms containing the same information.

You will receive prior written notice when the school district: proposes to conduct an initial evaluation or reevaluation; proposes a new or amended IEP; proposes a change in placement, including a proposed change in placement for disciplinary reasons; or proposes to end special education services.

You will also receive a notice if the school district makes a finding of no eligibility for special education services or refuses a request you have made related to evaluations or provision of special education to your student. Notices from the school district must be provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, your school district must ensure that the school’s notice is translated for you orally or by other means (e.g., by sign language), and that you understand the content of the notice.

When you are given prior written notice, you will also be given a copy of this Notice of Procedural Safeguards, or if you have already received this Notice during the current school year, you will be told how you can obtain another copy. You will also be given information about whom you can contact for help in understanding federal and state special education laws.

<b>2. WHAT IS PARENTAL CONSENT?</b>	<b>34 CFR §300.9 AND 603 CMR 28.07 (1)</b>
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The school district may not give your student a special test or special service unless you agree and give your written “parental consent.” The school district must clearly explain what it is proposing to do for your student and will ask you to sign your name on the consent form to show that you agree to the school’s proposal. This is giving “parental consent.”

Giving your consent is voluntary. You may take back your consent at any time. If you do, however, the withdrawal of consent will only apply to future action by the school district not to something that has

already happened. Your school district may not use your refusal to consent to one service or activity as a reason to deny you or your student any other service, benefit, or activity.

Your consent is not required before your school district may review existing data as part of your student's evaluation or reevaluation, give your student a test or other evaluation that is given to all students without consent such as the MCAS or classroom tests that are part of the general education program, or share information with federal or state educational officials.

## **2.1 WHEN WILL A SCHOOL DISTRICT ASK FOR YOUR CONSENT?**

**34 CFR §300.300 AND  
603 CMR 28.07(1)**

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A school district will ask for your parental consent in the following circumstances:

### **To authorize the initial evaluation to determine if the student is eligible for special education**

The school district cannot conduct an initial evaluation of your student to determine whether your student is eligible to receive special education and/or related services without first obtaining your consent. If your student is referred for an evaluation, the school district must ask for your consent to the evaluation within five school days.

### **To approve initial services**

If, after the initial evaluation has been completed, the Individualized Education Program (IEP) Team has decided that your student is eligible for special education, the IEP Team will propose special education and related services for your student. You must give your consent before your school district can provide special education and related services to your student for the first time. If you do not consent, the school district cannot provide special education and related services to your student. You can accept or reject the whole proposal or part of it. The IEP or any part that you accept must begin as soon as you accept it.

### **To make a change in services, placement or reevaluation**

Once you have agreed to an IEP for your student, the school district must obtain your consent before the school district may change the services or the placement of your student, or conduct a reevaluation. If you refuse to give your consent, you have an obligation to engage with the district in active discussion to resolve your disagreement. If you and the district are unable to resolve your disagreement and the district believes that your refusal denies your student a free appropriate public education (FAPE), the school district must request a hearing at the Bureau of Special Education Appeals (BSEA) to obtain authority to provide educational services or to reevaluate your student without your consent.

### **To excuse members of the IEP Team from attending a Team meeting**

Members of the IEP Team may be excused from attending a Team meeting if you agree in writing in advance of the meeting. If the Team will be discussing the excused Team member's area, then the excused member must provide his or her input in writing before the Team meeting. If you do not agree to excuse the Team member he or she must attend the IEP Team meeting.

## **2.2 WHEN WILL THE STUDENT BE ASKED FOR CONSENT?**

**34 CFR §300.520 AND  
603 CMR 28.07 (5)**

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Under Massachusetts' law a student has reached adulthood upon his or her eighteenth (18<sup>th</sup>) birthday. **When a student turns age 18**, therefore, all of the decision-making rights that you have as a parent transfer to your adult student, unless a court has appointed a legal guardian for your student or your student indicates in writing that he or she wants to share decision-making with you

or wants you to continue to have authority to make decisions about his or her educational program. The school district must discuss with you and your student the impact of this transfer of rights at least a year before the student's eighteenth birthday. As the parent of an adult student with a disability, you will continue to receive all the required notices from the school, and you will continue to be able to inspect your student's educational records, even if your student makes his or her own educational decisions.

## **2.2 WHEN WILL AN EDUCATIONAL SURROGATE PARENT GIVE CONSENT?**

**34 CFR §300.519 (g))  
603 CMR 28.07 (7)**

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If a student is in the custody of the Department of Social Services, or the student's parents or guardian cannot be identified or located or have had their parental rights terminated, the ESE has a responsibility to ensure there is an adult with no conflicting interests to make special education decisions on behalf of the student. This person is called an educational surrogate parent. The ESE determines if it is necessary to appoint an educational surrogate parent for the student. If appointed, an educational surrogate parent has the same rights and responsibilities as a parent in special educational matters for the student.

## **3. WHAT IS AN INDEPENDENT EDUCATIONAL EVALUATION?**

**34 CFR §300.502 AND  
603 CMR 28.04(5)**

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An Independent Educational Evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your student.

You have the right to request an IEE of your student at public expense if you disagree with the school district's evaluation. If you request an IEE, the school district must provide you with information about where you may obtain an IEE and about the state requirements that apply to IEEs.

### **3.1 WHEN IS AN INDEPENDENT EDUCATIONAL EVALUATION CONDUCTED AT PUBLIC EXPENSE?**

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In Massachusetts, under state law, you will receive an IEE at full or shared public expense if you meet income eligibility requirements. Students who are eligible for free or reduced cost meals are entitled to an IEE at public expense. Other students are eligible for a shared cost IEE according to a sliding fee scale. Sharing your financial information with the school district is completely voluntary on your part. If you choose to share such information, the school district must immediately notify you in writing whether or not you are eligible for full or partial funding of an IEE and proceed to fund the IEE based on eligibility. Your right to a publicly funded IEE through income eligibility will extend for 16 months from the date of the school district's evaluation with which you disagree.

If you do not meet income eligibility requirements or choose not to disclose financial information, the district must consider your request for a publicly funded IEE under federal law. Within 5 days, the district may either agree to provide an IEE at public expense or request a hearing at the Bureau of Special Education Appeals (BSEA) to demonstrate that the evaluation conducted by the district was comprehensive and appropriate. More details regarding IEEs are available in the ESE Administrative Advisories 2004-1 and 2001-3 available from your local school district and on the ESE Web site <http://www.doe.mass.edu/sped/advisories/?section=admin>.

You are entitled to only one IEE of your student at public expense each time your school district conducts an evaluation. You may have independent evaluations conducted at your own expense at any time.

### **3.2 THE RESULTS OF IEEs MUST BE CONSIDERED WITHIN 10 DAYS BY THE SCHOOL DISTRICT**

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If you obtain an IEE of your student at public expense or you share with the school district an evaluation of your student that you obtained at private expense, your school district must convene a Team meeting within ten school working days after receiving the evaluation information. The Team will consider the evaluation results and determine what, if any, changes should be made to your student's IEP.

### **4. WHEN CAN YOU SEE YOUR STUDENT'S STUDENT RECORDS?**

**34 CFR 300.611 AND  
603 CMR 23.00**

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The student record consists of your student's transcript and temporary school record and includes health records, tests, evaluations, discipline records and other records pertaining to your student's special education eligibility or program.

You and your student (if your student is 14 or older) have a right to look at any and all of the student's records within 10 days of your request and before any IEP meeting or due process hearing.<sup>1</sup> You may also have copies of the information upon request for a reasonable charge.

In addition, you can meet with professionally qualified school personnel to have the records explained. You may also have your representative (advocate, consultant, or attorney) inspect, review, and interpret your student's record if you give your specific, written informed consent. All of the rights associated with the student record are contained in the Massachusetts Student Record Regulations 603 C.M.R.23.00. Those regulations can be found at <http://www.doe.mass.edu/lawsregs/603cmr23.html> or by requesting a copy of the regulations from the school district or ESE.

Generally only the parent, eligible student, authorized school personnel, and state and federal education officials are allowed to see the student record without the specific, informed, written consent of the parent or adult student. The school district may be required to provide some information to state and federal officials as the result of a court order or in response to a health and safety or law enforcement issue. Helpful information about these and other student records issues can be found at <http://www.doe.mass.edu/lawsregs/advisory/cmr23qanda.html>.

### **5. HOW CAN PARENTS AND SCHOOLS RESOLVE DISPUTES?**

**34 CFR 300.151, 300.506 -300.518 AND  
603 CMR 28.08**

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State and federal special education laws provide many opportunities for parents to be involved in educational planning for their student who has a disability. If parents and school districts disagree about changes relating to the identification, evaluation, or educational placement of a student with a disability, or the FAPE services provided to a student with a disability, the laws provide a menu of ways to resolve the disagreement. Your student shall remain in his or her current education program and placement during any dispute regarding placement or services, unless you and the school district agree otherwise or your student's placement is changed as a result of [discipline](#).

Following are alternatives ways that you and your school district can resolve disagreements.

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<sup>1</sup> The school district can only limit access to the student record if it has received a legal document such as a restraining order or a divorce or custody decree that restricts access to information about the student's.

## **5.1 BRING THE DISPUTE TO THE ATTENTION OF LOCAL PUBLIC SCHOOL OFFICIALS**

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As a first step to resolve your dispute, you may contact your school Principal, the Administrator of Special Education or your Superintendent to ask for help. It is a good practice to write a letter explaining the situation about which you are concerned.

## **5.2 USE THE ESE PROBLEM RESOLUTION SYSTEM**

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If you feel that you need help from outside of your school district, you may contact the ESE, Office of Program Quality Assurance Services (PQA) at 781-338-3700 to use the state "Problem Resolution System" described at <http://www.doe.mass.edu/pqa/prs/>. You can file a complaint with PQA about any violation of state or federal education law or obtain help from PQA staff to resolve the problem informally. If you want a formal investigation by PQA, you will have to submit your complaint in writing. PQA staff will assist you in preparing and submitting the complaint. Your written complaint should include: a statement of your concerns, your attempts to resolve your concerns, the actions by the school you believe would resolve your concerns and your signature and contact information. If your complaint is about a specific student, you should provide the student's name and residential address and the name of the school. The issues that you are complaining about, however, must have occurred no more than one year before PQA receives your complaint. If you choose to file a formal complaint with the PQA Problem Resolution System, you must also send a copy of your written complaint to the school district that is the subject of the complaint. PQA will resolve your complaint within 60 days and send you a copy of the findings and decision.

Filing a formal complaint with PQA will not prevent you from using other methods, such as conversations with your local school district, mediation, or a [due process hearing](#) at the Bureau of Special Education Appeals (discussed below) to resolve your complaint.<sup>2</sup> If you request a due process hearing, however, a complaint that you file through the problem resolution system will be set aside until the due process hearing is completed.

## **5.3 ASK FOR A NEUTRAL MEDIATOR TO BE APPOINTED.**

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[Mediation](#)<sup>3</sup> is a service provided by a neutral individual who is trained in special education law and in methods of negotiation. Mediation can be scheduled whenever the parents and schools have a disagreement about special education matters, even if a complaint was made through the PQA Problem Resolution System. The mediator helps the parent and school district talk about their disagreement and reach a settlement that both sides can accept. Discussions during mediations are confidential and nothing that is said by either party can be used later if the dispute becomes the subject of a formal hearing or court proceeding. Once an agreement is reached, it will be put in writing, both sides will sign it, and it may be enforced by a court.

Mediation can be set up by contacting the BSEA at 781-338-6443. The mediator will schedule a meeting with you and the school district within 30 days of the request for mediation. Meetings will be held at a convenient time and place. Participation is voluntary, therefore both the school district and the parents must agree to participate in mediation. There is no fee for the service.

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<sup>2</sup> For a comparison of how the problem resolution system resolves a complaint with how a complaint is resolved through a due process hearing see: <http://www.doe.mass.edu/sped/docs.html>

<sup>3</sup> A description of the mediation process can be found on the ESE Web site at <http://www.doe.mass.edu/bsea/mediation.html>

Additional information about how mediation works is available from the BSEA 781-338- 6400 and can be found in their publications "[Frequently Asked Questions about Mediation](#)"<sup>4</sup> and the "[Explanation of Mediation](#)."<sup>5</sup>

#### **5.4 REQUEST A DUE PROCESS HEARING AND PARTICIPATE IN A RESOLUTION MEETING**

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If you and the school district have been unable to work out your disagreement, then you are entitled to have a neutral and impartial hearing officer listen to both sides of the dispute, hear testimony, examine evidence, and make a decision. This hearing is convened by the BSEA and is called a due process hearing. The BSEA hearing officer is trained in special education law and must not have any personal or professional connection to you or anyone else who is involved in the disagreement.

The due process hearing will consider disputes about eligibility; evaluation; IEPs; educational placement decisions, including those resulting from discipline; FAPE; provision of special education; or procedural protections of state and federal law for students with disabilities. You must file for a hearing within two years of when you knew, or should have known<sup>6</sup> about the events that form the basis for your complaint. This time period can be extended if you can show that you were prevented from filing for a hearing because the school district misrepresented that it had resolved the issue in your complaint or if the district withheld certain required information from you.

Either you or your school district can file a written [due process hearing request](#)<sup>7</sup> with the other party and send a copy to the BSEA to obtain a due process hearing. The BSEA has developed a [hearing request form](#)<sup>8</sup> that you may use, or you can write your own letter instead of using the form, but you must be sure to include your student's name and residential address (or contact information if the student is homeless); the name of your student's school; a description of the problem you are concerned about, including specific facts relating to the problem; and a proposed solution to the problem. Note that the hearing will be limited to the issues that are identified in the complaint.

You must send your due process hearing request to the school district (or other party to the complaint) and a copy to the BSEA. If the due process complaint does not provide enough information, the opposing party may challenge its *sufficiency* within 15 days. The BSEA will decide whether the complaint is sufficient within 5 days of the challenge. Additional information may be added to the complaint if the opposing party agrees or if the hearing officer gives permission. If additional issues are added to the complaint at a later time, however, the hearing timetable begins all over again.

If there is no challenge to the sufficiency of the complaint, then the hearing process continues. If the school district has not already sent a [prior written notice](#) to you about the issue that you are complaining about, then within 10 calendar days of receiving your due process hearing request, the school district must send you a written response to the complaint.

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<sup>4</sup> <http://www.doe.mass.edu/bsea/mediation.html?section=faq>

<sup>5</sup> [http://www.doe.mass.edu/bsea/forms/m\\_brochure.doc](http://www.doe.mass.edu/bsea/forms/m_brochure.doc)

<sup>6</sup> The phrase "or should have known" reminds you that you have a responsibility to be aware of your student's program.

<sup>7</sup> Information on the due process hearing request can be found at:

<http://www.doe.mass.edu/bsea/process.html?section=1>

<sup>8</sup> <http://www.doe.mass.edu/bsea/forms/hearing.doc>

**Note:** If *the school district* has filed the due process hearing request, *the parent must respond* within 10 calendar days of receiving the hearing request, and specifically address the issues that the school district raised.

After you file a due process hearing request, the school district has 30 days to work with you to resolve the disagreement before the due process hearing may occur.<sup>9</sup>

The school district is required to set up a resolution meeting within 15 calendar days of receiving your due process complaint.<sup>10</sup> The school district will determine with you which members of the IEP Team must attend the meeting. Someone from the school district who can make decisions about your student's program must attend the meeting. The school district's lawyer *may not* attend unless you have a lawyer who is attending the meeting.

You must participate in the resolution meeting unless you *and* the school district agree, in writing, not to have the meeting or if you and the school district decide to use the [mediation process](#). If the school district cannot get you to participate in the resolution meeting, it can ask the hearing officer to dismiss your complaint.

If you are willing to meet, but the school district refuses or delays the resolution meeting more than 15 days after receiving notice of your hearing request, then you can ask the hearing officer to proceed with the hearing process. If you meet, but the school district has not resolved the due process complaint to your satisfaction within 30 days of your filing the complaint, then the due process hearing may go forward.

The resolution process ends when one of the following events occurs:

- When you and the school district agree, in writing, to end the resolution period;
- At the end of the 30 day resolution period;
- At the end of mediation; or
- When you and an official of the school district sign a document that spells out your agreement that resolves your dispute. This is a "settlement agreement" and can be enforced by a state or federal court. Note that if you and the school district enter into an agreement as a result of a resolution meeting, either you or the school district may void the agreement within 3 business days of the time that both you and the school district signed the agreement.

## **5.5 PRESENT YOUR EVIDENCE TO AN IMPARTIAL HEARING OFFICER DURING A DUE PROCESS HEARING**

When you file a due process complaint, the BSEA will set a hearing date, assign a hearing officer, and send you detailed information about the hearing process and a list of free or low-cost attorneys and advocates whom you may contact for help.

During the due process hearing you and the school district will each present evidence and provide the testimony of witnesses to an impartial hearing officer from the BSEA. At any due process hearing, including a hearing relating to disciplinary procedures, you may:

- be accompanied, advised and represented by a lawyer and/or advocate;
- have your student present at the hearing;
- have the hearing open to the public;
- present evidence such as documents and reports;

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<sup>9</sup> If you and the school district agree to mediation, you may agree to continue the mediation after the 30 day period.

<sup>10</sup> No resolution session is required if the school district has requested the due process hearing.

- request, or require through subpoena, witnesses to come to the hearing and answer questions;
- see any evidence that is to be used at the hearing at least five business days ahead of time and ask the hearing officer to keep out any evidence that you have not seen; and
- obtain a written or, at your option, electronic, word-for-word record of the hearing findings of fact and decision at no cost to you. To obtain a written record of the hearing, you must make your request in writing.

Additional information about due process hearings can be obtained from the BSEA at 781-338-6400 and from the BSEA Web site: <http://www.doe.mass.edu/bsea/process>

Hearings are conducted according to the Massachusetts Administrative Procedure Act<sup>11</sup> and the BSEA [Hearing Rules](#).<sup>12</sup> The hearing officer must issue a final decision within 45 days of the end of the resolution period described above unless the hearing officer has granted extensions of time at the request of either party. The hearing officer will send a copy of the decision to you and to the school district. Both the parents and the school district must abide by the decision of the hearing officer.

A hearing officer's decision on whether your student is being offered a FAPE must be based on a finding that your student's special education rights were violated or a determination that the school district failed to fulfill its other obligations to your student under the special education laws and regulations. If you have complained about a violation of the special education procedures (such as failure to hold a proper team meeting, poor record keeping, or failure to follow timelines) a hearing officer may find that your student did not receive FAPE *only if* the failure to follow the procedures:

- Interfered with your student's right to a FAPE;
- Significantly interfered with your ability to be involved in decisions about your student's education; or
- Deprived your student of an educational benefit.

The decision of the hearing officer is a final agency decision and cannot be reconsidered by the BSEA or changed by the ESE. Hearing decisions are public<sup>13</sup> and are available on the BSEA Web site at <http://www.doe.mass.edu/bsea/decisions.html>.

## **5.6 APPEAL A HEARING DECISION TO A STATE OR FEDERAL COURT**

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If either the parent or the school district disagrees with the decision of the hearing officer, they can seek review of that decision in state or federal court. Any such request for review must be filed within 90 days of the decision.

## **5.7 ATTORNEYS' FEES**

**34 CFR §300.517**

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Each party is responsible for paying its own attorney's fees unless the court decides otherwise. If you obtain a favorable result in a written hearing decision or court proceeding, the court<sup>14</sup> may

<sup>11</sup> M.G.L. c.30A

<sup>12</sup> [http://www.doe.mass.edu/bsea/forms/hearing\\_rules.doc](http://www.doe.mass.edu/bsea/forms/hearing_rules.doc)

<sup>13</sup> Hearing decisions are published after redacting information that would allow the student to be readily identified.

<sup>14</sup> A BSEA Hearing Officer may not award attorney's fees.

decide that the school district should pay your reasonable attorneys' fees. Note, however, that you will not be able to obtain these fees for the time spent litigating your case after the district made a settlement offer if

- the district made a written offer of settlement 10 or more days before the hearing,
- you did not accept the offer within 10 days, and
- the outcome of the hearing was no better than the settlement offer.

A court could order you or your attorney to pay the school district's or state agency's legal expenses if the court finds that your attorney filed a complaint or continued to litigate after learning that the complaint had no basis in fact, was unreasonable, was frivolous, or was pursued for an improper purpose.

**6. WHAT ARE YOUR RESPONSIBILITIES IF YOU PLACE YOUR STUDENT IN A PRIVATE SCHOOL AND YOU BELIEVE YOUR SCHOOL DISTRICT SHOULD REIMBURSE YOU FOR THE TUITION? 34 CFR §300.148**

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There are some occasions when a parent believes that the public school is not providing a FAPE to the student and the parent decides to place the student in a private school. A parent may enroll his or her student in private school at private expense at any time. If, however, the parent believes that the public school should be responsible for the costs of the student's education in the private school, the parent must tell the school district of objections to the student's IEP and program, reject the IEP, inform the school district of his or her intent to remove the student and enroll the student in a private school, and request a hearing by the BSEA. A parent must inform the school district before removing the student from the public school either orally at the last Team meeting before the removal or in writing at least 10 business days before removing the student from school.

The school district is not required to pay for a student to attend a private school if the school district has made a FAPE available to the student. Disagreements between parents and the school district about whether the student's program provides a FAPE and requests for financial reimbursement for the cost of a private program may be resolved through due process procedures discussed earlier in this document. The hearing officer will determine whether the school district made a FAPE available to your student. If the hearing officer finds that the school district did *not* provide your student with a FAPE, that you followed the above steps, and that the private school placement was appropriate, the hearing officer, after considering all of the circumstances surrounding the removal of the student, may require the school district to reimburse you for all or part of the cost of the private school placement.

**7. WHAT MUST BE DONE TO PLAN FOR YOUR STUDENT'S TRANSITION FROM HIGH SCHOOL?**

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Planning for your student's transition to post secondary opportunities must begin when your student is 15, and must be discussed each year. The school district must discuss your student's transition needs with you and your student and must consider the goals for your student after he or she completes school by graduating with a regular high school diploma or reaching the age of 22. School districts must use the [Transition Planning Form](#)<sup>15</sup> to record the results of this annual discussion. Your student's IEP must include measurable post-secondary transition goals, objectives and services based upon an appropriate assessment of his or her disability and transition needs.

Graduation with a regular high school diploma is a change of placement and ends the student's eligibility for special education. The school district must inform you if and when the district expects your student to graduate with a regular high school diploma. This discussion should take place during the Team meeting no less than 1 year in advance of the student's graduation.

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<sup>15</sup> <http://www.doe.mass.edu/sped/28MR/28m9.doc>

Public schools must have procedures and standards in place to assure a safe learning environment for students. Schools are expected, and high schools are required, to publish their rules of conduct so that students know how they are expected to behave. If a student misbehaves and violates the school code of conduct, the school may discipline the student. Discipline must be fair and even-handed.

In general, any student may be suspended or removed from school for disciplinary reasons for a short time, which is no more than 10 days. Before any removal or suspension the student must be told what he or she is accused of having done and must be given a chance to tell his or her side of the story. During a short disciplinary removal, the school is not required to provide instruction to a disabled student unless it does so for non-disabled students. Once a student with a disability has been removed from the school placement for more than 10 cumulative days during the school year the student must receive educational services that will allow the student to continue to participate in the general education curriculum and to progress toward the goals set out in his or her IEP. School officials must consult with at least one of the student's teachers to determine what services are necessary. These services must begin on the 11<sup>th</sup> school day of a student's disciplinary removal during the school year and continue during the disciplinary removal.

Schools must follow special disciplinary rules for students with disabilities who have been found eligible for special education.<sup>16</sup> A chart depicting the operation of these disciplinary rules can be found on the ESE Web site.<sup>17</sup> These special disciplinary rules apply as soon as a student is removed from his or her current education placement<sup>18</sup> for more than 10 days in a row, or if a student is removed for disciplinary reasons for more than a total of 10 days in any school year and there is a pattern of removal for comparable behaviors. The school must notify you as soon as the decision is made to remove your student from his or her education placement for more than 10 days and provide you with a copy of this Notice.

The student's IEP Team must meet within 10 days of the school's decision to impose the discipline. At this meeting, called a "*manifestation determination*," you and other members of the IEP Team will determine if the misbehavior was caused by or had a direct relationship to the student's disability, or was the direct result of the school's failure to provide the services required by the student's IEP. In making the manifestation determination, you and other members of the IEP team must consider relevant information from your student's file, including your student's IEP, your and the teachers' observations of your student's behavior, and any relevant information you provide.

If the team determines that the student's behavior *was not* caused by or directly related to the student's disability or the failure to properly implement the IEP, then a student with a disability can be disciplined in the same manner and for the same length of time as other students are disciplined for the same offense. The IEP Team, however, must determine the interim alternative educational setting (IAES) where the student will be placed and the educational services that will be provided. An IAES is a setting other than the student's current placement that enables the student to continue to receive educational services according to his or her IEP. School personnel may consider the student's unique circumstances in determining whether a change in placement is appropriate for a student with a disability.

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<sup>16</sup> The special education disciplinary rules also apply to some students who have not yet been found eligible for special education. If, prior to the conduct in question, the parent has put his or her concern that the student's has a possible disability in writing to supervisory or administrative personnel or the student's teacher; if the teacher or other staff has expressed concerns about the student's pattern of behavior directly to the director of special education or other supervisory personnel, or if the student has been referred for an evaluation that has not yet been completed these special rules apply. The special education disciplinary rules *do not* apply if the parent has refused to consent to the evaluation or if the student has previously been found to be not eligible for special education.

<sup>17</sup> [http://www.doe.mass.edu/sped/IDEA2004/spr\\_meetings/disc\\_chart.doc](http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_chart.doc)

<sup>18</sup> Placement is determined by the IEP Team and is the location where IEP services are provided.

If the Team determines that the student's behavior was caused by or directly related to the student's disability or the failure to properly implement the IEP, then the student must be returned to the last approved IEP placement unless you and the IEP Team decide on a different placement. The student must also be provided a functional behavioral assessment. A functional behavioral assessment or FBA is a comprehensive assessment of behavior that provides the IEP Team with information about the student's behavior and identifies behavioral intervention services and program modifications that are designed to address the behavioral violation so it does not recur. If the student has already had a functional behavioral assessment and has a behavioral intervention plan, then the IEP Team should determine if any changes should be made to the behavioral intervention plan. If the behavior was caused by the failure to properly implement the IEP, the school must take immediate steps to remedy the deficiencies.

Note that if your student possessed or used a weapon or drugs, or caused serious bodily injury to another person on school property or at a school event your student may be placed by the principal in an IAES for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability. The IEP Team will determine the IAES and the appropriate educational services that will be provided to the student while he or she is in the IAES

### **8.1 APPEAL OF A DISCIPLINARY DECISION**

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If a parent disagrees with any decision regarding placement of his or her student under the disciplinary provisions or disagrees with the manifestation determination, or if the school district believes that maintaining the current placement of the student is substantially likely to result in an injury to the student or to others, either the parent or the school district may appeal the decision by [requesting a hearing](#) with the BSEA, as described earlier in this document.

The BSEA will convene a hearing on a disciplinary placement or manifestation determination on an expedited schedule.<sup>19</sup> During the appeal of a disciplinary placement or manifestation determination, the student must remain in the IAES until the hearing officer makes a decision or the disciplinary period is completed, unless the parent and the school district agree to a different placement.

## **9. WHERE CAN THE LAWS AND REGULATIONS AND OTHER USEFUL INFORMATION BE FOUND?**

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### **9.1 LAWS AND REGULATIONS**

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You can find the full text of the state Special Education law in Massachusetts General Law Chapter 71B. The state law is popularly known as "Chapter 766." The state special education regulations are found in the Code of Massachusetts Regulations (CMR) at 603 CMR 28.00. The law and the regulations and other helpful resources are on the ESE Web site.<sup>20</sup>

The federal special education law is the Individuals with Disabilities Education Act, known as "IDEA." The federal statute is located in the United States Code at 20 U.S.C. § 1400. The implementing regulations for IDEA may be found in the Code of Federal Regulations (CFR) at Chapter 34, Section 300. A copy of the federal statute and regulations and explanatory information can be found on the U.S. Department of Education Web site at <http://idea.ed.gov/>.

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<sup>19</sup> See BSEA Hearing Rule II.C. Expedited Hearing. [http://www.doe.mass.edu/bsea/forms/hearing\\_rules.doc](http://www.doe.mass.edu/bsea/forms/hearing_rules.doc) p.6.

<sup>20</sup> <http://www.doe.mass.edu/sped/laws.html>

## 9.2 INDIVIDUALIZED EDUCATION PROGRAM PROCESS GUIDE AND FORMS

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A general overview of how the special education process works (taken from the IEP guide prepared by the USDOE) can be found at <http://www.doe.mass.edu/sped/iep>.

For the ESE explanation of the how an IEP is developed, consult the IEP Process Guide and the standard IEP forms available on the ESE Web site: <http://www.doe.mass.edu/sped/iep>

## 9.3 TABLE OF ABBREVIATIONS

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Many common special educational phrases are abbreviated by acronyms composed of the initial letters of the phrase. For your convenience the acronyms and phrases used in this document are listed below:

BSEA:	Bureau of Special Education Appeals
CFR:	Code of Federal Regulations
CMR:	Code of Massachusetts Regulations
ESE:	Massachusetts Department of Elementary and Secondary Education
FAPE:	Free Appropriate Public Education
FBA:	Functional Behavioral Assessment
IAES:	Interim Alternative Educational Setting
IDEA:	Individuals with Disabilities Education Act
IEE:	Independent Educational Evaluation
IEP:	Individualized Education Program
PQA:	Program Quality Assurance Services

## 9.3 TABLE OF WEB SITES

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Bureau of Special Education Appeals

<http://www.doe.mass.edu/bsea/decisions.html>  
[http://www.doe.mass.edu/bsea/forms/hearing\\_rules.doc](http://www.doe.mass.edu/bsea/forms/hearing_rules.doc)  
<http://www.doe.mass.edu/bsea/forms/hearing.doc>  
<http://www.doe.mass.edu/bsea/mediation.html>  
[http://www.doe.mass.edu/bsea/forms/m\\_brochure.doc](http://www.doe.mass.edu/bsea/forms/m_brochure.doc)  
<http://www.doe.mass.edu/bsea/mediation.html?section=fag>  
<http://www.doe.mass.edu/bsea/process.html>

Discipline: [http://www.doe.mass.edu/sped/IDEA2004/spr\\_meetings/disc\\_chart.doc](http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_chart.doc)

Individuals with Disabilities Act: <http://idea.ed.gov/>.

Individualized Education Program: <http://www.doe.mass.edu/sped/iep>

Independent Educational Evaluation: <http://www.doe.mass.edu/sped/advisories/?section=admin>

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

PQA Problem Resolutions System compared to BSEA Due Process Complaint

<http://www.doe.mass.edu/sped.docs.html>

Program Quality Assurance Services Problem Resolution System: <http://www.doe.mass.edu/pqa/prs>

Special Education Laws and Regulations: <http://www.doe.mass.edu/sped/laws.html>

Special Education Transition Planning Form: <http://www.doe.mass.edu/sped/28MR/28m9.doc>

Student Records Regulations: <http://www.doe.mass.edu/lawsregs/603cmr23.html>

Student Records Questions and Answers

<http://www.doe.mass.edu/lawsregs/advisory/cmr23qanda.html?section>.

## Understanding Your Prior Written Notice

People often confuse two notices they receive for IEPs. Both notices are described in the new **IDEA Part 300, Subpart C--Services**.

One notice, is the *Notice of Meeting*, which by law must be sent to you "early enough to ensure that they "(parents)" will have an opportunity to schedule and attend the meeting at a mutually agreeable time and place." It is found at **Sec.300.345 Parent participation**.

This notice is supposed to list all the people who will attend the meeting. Some districts might still say it is only an "invitation" to the meeting and those people do not all have to be there. (If parents are concerned that all team members must be present in order to address all needs as a team, they might notify the district far in advance of this need. Then the district can arrange such a team meeting.) IDEA says the parents will be informed of "who will be in attendance." You also have the right to ask for persons of your choice to attend the meeting.

The second notice is written after an IEP meeting and describes all special services for the child. This document is called **Prior Notice**. This is not a new document, but many people, including professionals seem to not be aware of its role in the IEP process. It is found at **Part 300, Subpart C--Services at 300.503**. The document should include the information described below:

- You must receive **Prior Notice** before any change in placement takes effect. It must include all services and placements. It should include a list of all suggestions put on the table for consideration, whether each idea was accepted or rejected, and the rationale for acceptance or rejection. This requirement encourages effective communication and offers an excellent way to document the disposition of each item.
- If your district is not used to keeping such a **Prior Notice** format, you might ask them if they will do so. If they choose not to do so, you might want to keep such a record yourself during the meeting. At the end of the meeting, you could request that it be attached to the IEP as part of your official input into the minutes of the meeting. It then becomes part of the IEP. This written record clarifies each item discussed and its eventual disposition. While it is informal documentation, it serves as a powerful tool in seeing that all proposals are considered and their disposition is noted in writing.

## Sample Prior Notice Form

The column on the left is where you enter each suggestion. Then check off "Accepted" or "Rejected", and list the team's rationale for accepting or rejecting. Also, for those items that the team accepts you might want to note who will initiate and when.

I am very proud of a district that not only allowed parents to keep this record, but the parents were asked for it after the meeting so that it could all be incorporated into their new Prior Notice form! It helped the administrator leading the meeting to be sure everything was listed and addressed.

While the district writes the actual reason for accepting or rejecting a proposal, I encourage parents to write on their form their understanding of why something was accepted or rejected. Such information can be invaluable in clarification of communication.

### Proposals

Item for Discussion	Accept	Reject	Reason for Accepting or Rejecting
Counseling	X		To increase confidence and self esteem
Teacher training in MSSL	X		For meaningful inclusion & reading success
Pull Out for Reading		X	Not necessary. Teacher training in MSSL this summer
Computer for writing assignments	X		To assure completion of assignments and improve writing skills.

### Action for Accepted Proposals

Accepted Proposal	Initiation Date	Person Responsible
Counseling	9/5/99	Counselor
Teacher training in MSSL	10/23/99	Special Ed. Director
Computer for writing	12/1/99	Spec.Ed Dir.& Principal

It's very easy to make a table like this on a word processor program. Use the landscape layout so the paper runs horizontally, and you will be able to get both tables side-by-side, whereas, I didn't have room for that on this site.

Please understand, you do not fill in all the blanks neatly as you go along. Many items will be put on the table and not settled until later in the meeting. Tell the team that you would like to see that everyone's ideas are considered by the team, and you also wish to track the disposition of each item.

You might ask if anyone objects to you, or a friend, keeping track of the discussion this way. Parents may choose to read out loud their recommendations from their parent attachment, uninterrupted, while someone else writes each item as it's put on the table for consideration. Then you can be sure all your concerns are listed, as well as all other proposals.

## Clarifying Communication with Letters

Our children often require innovative teaching strategies and great energy on the part of teachers. Too often, teachers receive attention only when things are going wrong. It's imperative that parents recognize the importance of positive communication when things are going really well for their child. Teachers need those pats on the back just as much as a child does. Teachers are absolutely thrilled to receive an attractive handwritten note of genuine thanks and recognition.

Our son had a teacher who received such a heartfelt note and she told him that in 23 years of teaching, she had not received such a note. She was going to put it in her "special treasures box". We also made sure such teachers were recognized in writing in front of peers and administrators. It's wonderful to see such efforts recognized by parents and a professional's peers.

In other instances, *letters of understanding* are excellent tools to document conversations and to clarify positions. When people communicate, sometimes there are misunderstandings regarding what took place and future expectations. School administrators, special ed personnel, teachers and parents can misunderstand exactly what is asked of them or what the expectations are.

A letter of understanding is a very useful clarification tool and becomes especially important when verbal communication doesn't seem to be working.

What this letter accomplishes:

- Allows for true misunderstandings to be resolved quickly.
- Keeps a reasonable timeline, or if necessary, a deadline to resolve misunderstandings.
- Allows for clarification of the issues as you see them.
- Invites clarification of issues from the other person's standpoint.
- Can keep the issues focused, not generalized.
- Shows you are keeping the lines of communication open for all participants.
- Gives you an excellent documentation record for your file.
- Calls for accountability of verbal conversations in person or on the phone.
- Lays out the problems as you see them and places on record the date of your concern.
- Provides an excellent record laying the basis for more formal complaints if you should need to go on to the State Department of Education, Office of Civil Rights, or U.S. Department of Education.
- Demonstrates that you have tried to resolve issues at the local level, and with whom you spoke.

The letters should always be polite and as brief as possible. Individually number your specific concerns and repeat any important conversations you had with another party or comments you heard another party make. This provides the other party with an opportunity to correct your understanding.

How friendly the letter should be depends on the circumstances. If this is a new situation I would be very polite and invitational in discussing issues. If it's a long standing issue, you may have to be more firm.

I would include a date by which you request a response. (Your child does not have more months or years to waste.) This type of letter calls for answers, with a built-in timeline. It should not include irate words that bruise people's egos. An irate person is a person out-of-control. This approach is counterproductive in the long run. If you feel a lot of anger, I recommend a draft letter, let it sit 48 hours, then tear it up and start from scratch.

Remember, the purpose of your letter is to accomplish what's best for your child. With this approach, anyone can come on board and do what's needed, without feeling they're in a win/lose situation. We want everyone to be winners, especially your child.

## Sample Letter of Understanding

Date \_\_\_\_\_

Dear \_\_\_\_\_

I appreciated your taking the time to visit with me on (date). I am still confused on a few issues and would appreciate your clarifying any points I might have misunderstood. My goal is to see great communication and networking in addressing the needs of my son/daughter, (your child's name). The following is my understanding of our phone conversation:

1. You believe it isn't possible for my child to change teachers because if she does, others will want to do the same thing.
2. That even though my child is eleven years old and struggles to read her sister's second grade books, her reading comprehension tests show she is on grade level. I am really puzzled by this statement and wonder which is incorrect, the sister's second grade school books are not second grade books, or (your child's name) testing perhaps was not in-depth enough to truly give us an accurate picture of my daughter's true performance.
3. That although other children laugh at her and isolate her socially, we cannot institute a mentorship or give her a designated school job because then everyone would want the same thing. I am puzzled and would like to know how the children all have the same thing when my daughter is illiterate and her peers are not.
4. That it's appropriate for my child to spend three hours on homework each night because she needs to "learn responsibility". I would truly like the district's definition of the word "responsibility"? Perhaps this is an area causing some of the confusion.
5. That while my child has Attention Deficit Disorder, her real problem is that "she doesn't pay enough attention". I am really puzzled here. I understood that the diagnosis in itself meant an "inability or inconsistency in attention".

If this is not your understanding of our conversation, I would appreciate it if you would clarify your position on these points. I truly want to work in a positive way and in a team spirit, and I hope that is still possible.

Please let me hear from you soon, say in two weeks, if I have misunderstood you. Again, thank you for the phone call and, as members of the IEP team, we look forward to working with you on "Joanie's" behalf.

We can be reached at (phone) and our address is \_\_\_\_\_.

Sincerely,

## Understanding Your Prior Written Notice

### One of Two Powerful Documents to Take to the IEP

Also see [Parent Attachment](#)

(Don't leave home without them!)

People often confuse two notices they receive for IEP's. Both notices are described in the new IDEA Part 300, Subpart C--Services.

One notice, is the **Notice of Meeting**, which by law must be sent to you "early enough to ensure that they "(parents)" will have an opportunity to schedule and attend the meeting at a mutually agreeable time and place." It is found at **Sec.300.345 Parent participation.**

This notice is supposed to list all the people who will attend the meeting. There used to be confusion when a district would say this notice is only an "invitation" to the meeting and those people listed do not all have to be there. IDEA states that the parents will be informed of "who will be in attendance," in the Notice of Meeting.

If parents believe the meeting is to address serious concerns that require input from all team members, then they might notify the district far in advance of this need. Then the district can arrange the meeting for a time when all members can be present.

Of course there are occasions when quick decisions need to be made for minor adjustments to the IEP that may require the minimum number of people. You also have the right to ask for persons of your choice to attend the meeting.

The second notice is written after an IEP meeting and describes all special services for the child. This document is called **Prior Notice** and is the subject of this article. This is not a new document, but many people, including professionals seem to not be fully aware of its importance in the IEP process. It is found at **Part 300, Subpart C--Services at 300.503 of IDEA.** The document should include the information described below:

- You must receive **Prior Notice** before any change in placement takes effect. It must include all services and placements. It should include a list of all suggestions put on the table for consideration, whether each idea was accepted or rejected, and the rationale for acceptance or rejection.

This requirement encourages effective communication and offers an excellent way to document the disposition of each item.

- If your district is not used to keeping such a **Prior Notice** format, you might ask them if they will do so. If they choose not to do so, you might want to keep such a record of disposition yourself during the meeting. At the end of the meeting, you could request that it be attached to the IEP as part of your official input into the minutes of the meeting. It should then become part of the IEP, since the law requires a full and accurate record of the meeting, and that includes your parent input.

This written record clarifies each item discussed and its eventual disposition. While it is informal documentation, it serves as a powerful tool in seeing that all proposals are considered and their disposition is noted in writing.

- If you would like to use a very simple form to track these proposals at meetings you can go [here](#), **but first set your printer by going to Page Setup and set on Landscape.**

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Information at this site is not to be construed as legal advice. Rather it is designed to help parents utilize advocacy strategies that help empower them to be equal participants in the education process.

Source: <http://www.geocities.com/Athens/Oracle/1580/priornotice.html>

## Sample Letters: Requesting Prior Written Notice

By: National Dissemination Center for Children with Disabilities (NICHCY) (2002)

### What is prior written notice, and why would I want it?

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There are certain times when the school must put in writing its decisions about your child's education and the reasons for those decisions. This written communication is called *prior written notice*. You have the right to receive prior written notice, whenever the school wants to (or refuses to):

- evaluate your child,
- change your child's disability identification,
- change your child's educational placement, or
- change the way in which your child is provided with FAPE.

The school system is supposed to automatically provide you with prior written notice in any of these events. In practice, though, sometimes the school may tell you its decision over the telephone, in a meeting, or in a one-on-one conversation. If you want the notification in writing, you may ask the school system to provide it. And it is best that you put your request in writing.

For example, you may have asked for an IEE at public expense. The school system may tell you on the phone that it has denied your request. You may ask for prior written notice of this denial. The school must then put its decision in writing and explain the reasons for the decision. This information can be helpful if you pursue the IEE through a due process hearing. You will then have in writing the school system's reasons for denying the IEE.

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This information is copyright free.

Readers are encouraged to copy and share it, but please credit the National Dissemination Center for Children with Disabilities (NICHCY). NICHCY Parent Guides are published in response to questions from individuals and organizations that contact us. We encourage you to share your ideas and feedback with us!

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Excerpted from **Communication with Your Child's School Through Letters**. National Dissemination Center for Children with Disabilities. [www.nichcy.org](http://www.nichcy.org) (2002). Washington, D.C.: Academy for Educational Development.

<http://www.ldonline.org/article/14625?theme=print>; ©2008 WETA. All Rights Reserved.

**See reverse side for sample letter**

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## Sample Letter 7: Requesting prior written notice

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Today's Date (include month, day, and year)

Your Name  
Street Address  
City, State, Zip Code  
Daytime telephone number

Name of Person to Whom You Are Writing  
Title  
Street Address  
City, State, Zip Code

Dear (name),

At our meeting (or) during our phone conversation on (date), we discussed my child's (evaluation, eligibility, placement, IEP, services, etc.). I requested (\_\_\_\_\_). . . and was denied (or) I was told the school intends to (\_\_\_\_\_). . . but I have never received any information about this decision in writing. In accordance with the IDEA regulations, I am requesting prior written notice regarding (be very specific about the issue/decision you want the school to respond to. Bullet or number the items.)

According to the IDEA, at 34 CRF §300.503, prior written notice must include the following:

1. A description of what the school is proposing or refusing to do;
2. An explanation of why the school proposes or refuses this action;
3. A description of any other options the school considered and the reasons why those options were rejected;
4. A description of each evaluation procedure, test, record, or report the school used as a basis for this decision;
5. A description of any other relevant factors that went into this decision;
6. Information on how I can obtain a copy of procedural safeguards available to me under the law and a full explanation of the safeguards, and
7. Information on sources I can contact for help in understanding IDEA's regulations.

I look forward to receiving a detailed response to my request as soon as possible. Thank you for your assistance.

Sincerely,

Your name

cc: the principal, supervisor, or special education administrator  
other members of the meeting

## Two Powerful Documents to Take to the IEP

Parent Attachment (described here) and [Prior Notice Record of Proposals](#)

(Don't leave home without them!)

A team, comprised of various school officials, experts, and yourself, will prepare the IEP. As a parent, you are a member of that team and your opinion is as important as any other team member. In fact, the federal government acknowledges that you are truly the expert on your child with knowledge you alone have. You need to go to the meeting well-informed and ready to lay out for consideration some options of your own. Know what can work and decide what options won't be acceptable. Then review your child's evaluations and prepare to write a parent attachment. Normally, you'll request an opportunity to read this attachment at the beginning of the IEP meeting.

### The Parent Attachment

This document reflects all your specific concerns and your judgment of what your child needs. The plain truth is, schools are well aware that they cannot be held accountable for anything that is not in writing. If an item appears in the IEP and is not initiated they can be found in noncompliance. So they try to generalize as much as possible and write as little as possible. It is no secret that their attorneys advise them on these strategies. Unfortunately, such strategies tend to demolish the "Individualized" in Individualized Education Program.

They also tend to skimp on any parent input when writing the minutes of the meeting. When that happens, your input disappears. To counter such strategies it is up to you, the parent to see that plenty of input does appear in the record of the meeting. Using a parent attachment is one strategy that can work.

To skirt any district suggestion that "attachments are not legal" you can do the following. **As the last item on your attachment state that you understand IDEA considers your input to the meeting as important. Therefore you are requesting that the Parent Attachment be included as part of your official input to the official IEP document.** To date, I have not seen a refusal. You see, the law requires a full and accurate record be kept of each IEP meeting. It would not be a full and accurate record if part of your input was refused by not documenting it.

It is wise to write this paper after you have reviewed all evaluations and testing, and have had time to reflect on what you think would be best for your child. It

is also wise to keep it in bullet format, so that each bullet addresses one specific point, or request. If your bullets, or points, are focused it will not only assist you to keep on track at the meeting it will also make it easier for the rest of the team to understand your concerns and to address them individually.

I find that when a parent is well-informed about what's needed, it's much easier to get those needs met. It shouldn't be that way, but I understand the reality out there in many situations. Frequently, if the school doesn't point out a need, it's not going to be in the IEP. Hopefully, you'll have done some research on what can help your child's particular disabilities. With access to the net, an abundance of information is now available.

### **Joanie's PLP & the Parent Attachment**

The following brief example is just to give you the idea of how these documents work together.

#### **"A Picture of Joanie:" (Your own PLP)**

Joan is a happy, outgoing, 12 year old with an average I.Q. and a tremendous interest in art and a great love of animals. She attends to tasks reasonably well, and takes pride in a job well done. She has acceptable fine motor control, but does have serious difficulty with large motor control. Her awkwardness has caused her embarrassment in front of her peers who do not appear to understand her disabilities.

Her self-esteem is quite low and she worries about people staring at her. She's performing at the 4th grade level in math, having made a whole year's progress this year with the extra teacher assistance and computer-assisted assignments.

Her reading level is at 2nd grade level, with difficulties in decoding, encoding, but some strength in comprehension. She particularly enjoys social studies because there's more movement and less paperwork than in other classes. With more hands-on activities, she's not so pressured by her deficit in reading. Oral assignments and oral tests have encouraged her also. Joanie dreams of one day owning her own car, having a job, and moving to an apartment. She would like to volunteer at a zoo and work with animals when she's grown up. She dreams of going to college and getting a degree in animal husbandry.

**(Sample Parent Attachment)**

**Joan Doe's IEP Meeting, (Date)**

These are our concerns regarding our daughter's education:

- Joan's walking gait causes numerous problems physically. Request physical therapy continue, at least 1/2 hr./week.
- Her self-esteem is poor, and we request special emphasis be placed on her area of strength which is art. We request the district actively support a mentorship for her next year in this area, either in school or in the community. We will support that program in any way we can.
- We also request a counselor who can help Joan deal with peer teasing. Her obvious reading deficit also sets her apart from peers. We are asking for intensive instruction by a teacher trained in multi-sensory teaching who can help Joan make true progress in reading. If the district doesn't have someone with these qualifications, we ask the district to provide a qualified tutor to teach her reading during the school day.
- We would like to offer our assistance in helping to put on a seminar for the whole student body on disability sensitivity. Public education will hopefully build support for Joanie and others with disabilities.
- Joan's learning style is both visual and kinesthetic; Joan does learn differently, but she's entitled to a teacher who knows how to reach her. Multi-sensory teaching is good for all students and we believe it's a reasonable request and absolutely essential for Joanie's academic success.
- Joan's I.Q. is in the average range and there's no excuse for her not to be making measurable, substantial progress. We expect all short-term objectives will be tested with measurable instruments and progress will be reported to us on a quarterly basis. We are willing to take responsibility for reminding the teachers of these meeting dates.
- Homework may need modification if the time involved is more than 1 1/2 hours a night.

Get the idea? Now you can go into the meeting armed with both a total picture of your child, reflecting all the strengths and needs. You also have a written list of requests that you have pondered over and had plenty of time to work on in an unpressured, non-stressful environment. You'll feel much more in control, as you can focus on these two papers in front of you. Be sure to ask the leader of the meeting, before it starts, to let you lead off by reading your Parent Attachment. Otherwise, it can get lost in the shuffle. Once you read it out loud,

and every person has a copy in front of him, you can always come back to it later on.

Do not sign anything, or leave the meeting, until you can check off every point you have written down. Was each item addressed? Was a decision made regarding each item? Sometimes, one of your items becomes moot when something grand and wonderful happens, and you can actually cross it off and initial as "no longer needed". (Yes, I actually see that happen.) In fact, once you start using this method you'll likely see a lot less resistance than before. These poor folks often see "irate" parents, and they know how to handle that, because an irate parent is not in control of the situation. When you can come into the meeting with your priorities written down in a businesslike manner, then you'll begin to feel in control and will know you are a driving force at that meeting.

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This site is not to be construed as legal advice and should not take the place of competent legal advice. It simply explains the law in terms parents can understand so they can plan effective routes of advocacy.

Source: <http://www.geocities.com/Athens/Oracle/1580/priornotice.html>

### Parent Record of Proposals

Child's Name \_\_\_\_\_ Date \_\_\_\_\_

Proposal	Accept	Reject	District's Reason for Decision	Who	When

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**Source: Special Needs and Special Gifts--Dedicated to parents of children with special needs and others who believe that all children can learn.**

[http://www.specialneedsadvocate.com/write\\_a\\_portrait.htm](http://www.specialneedsadvocate.com/write_a_portrait.htm)

### **Write a Portrait**

To become an effective advocate for your child you must learn how to be on an equal footing in IEP meetings. You must be able to articulate your concerns and thoughts, which means careful preparation. Such preparation, while time consuming, will pay off handsomely. Preparation will give you a head start on getting your concerns and recommendations documented and considered by the other IEP team members.

The written record of the meeting is what counts if there is ever a dispute about what was said or what happened during an IEP meeting. While the district takes the official minutes, you as the parent are entitled to have your input included in the record. The best way to ensure your concerns and recommendations are in the record are to take them to the meeting in writing. You can then ask to read it out loud and request it be included with the minutes as part of your parent input to the meeting. The following strategies can assist you in accomplishing this task.

Both the U.S. Department of Education and a State Department of Education have told me of a new way to write a present level of performance that describes the whole child, his strengths, weaknesses, and needs. Rather than one PLOP here and one there, this new approach can offer a total picture of the whole child. Parents can adopt this technique, thus helping the team see their child in a new way.

Through experimentation, and trial and error, I refined this idea and developed the "Portrait" as a way for parents to present crucial information to the IEP in a concise, thoughtful manner. Only we "write" the portrait, rather than "paint" the portrait. By writing a portrait, you can see that no strengths, weaknesses, or needs, as you know them, are overlooked by the team. While the team will write the official present levels of performance, such input from a parent is very powerful. IDEA recognizes that parents have unique knowledge of their child, knowledge that is crucial to successful planning of placement and services.

There has been considerable positive feedback from administrators regarding a parent writing a portrait for presentation at an IEP meeting. They have expressed their appreciation to parents for presenting such a concise, informative document that spells out their concerns and unique insight on their child.

### **Writing "A Portrait"**

Writing what amounts to a portrait of your child is a powerful tool for parents to use. Such a document can help keep the team directed towards your child's strengths, weaknesses, and educational needs. It is important to get your child front and center quickly at an IEP meeting. By reading your "Portrait" at the very beginning of the meeting you will immediately see the focus shift to its appropriate place, the needs of your child.

### **Benefits for both parents and the district**

Such parent documentation can help keep districts in compliance with the law, since all information, including parent input, is to be carefully considered. Since parents are equal participants, a written record of parent input can clarify issues and concerns, and reduce the level of confusion sometimes present at a meeting. Parents can request that this document becomes part of their official parent input to the meeting by making that request in writing, at the end of their "Portrait". Districts have been very cooperative in this effort to see that parent input is treated as equal in importance to district minutes.

As a parent, I know how very difficult it can be to tie down your parental concerns to specifics. But as you go through this exercise you may find your vision of your child and his or her needs come into sharper focus. You may be surprised at how much you learn about your child as you create your portrait. You will be better prepared at the meeting to ask those all important questions regarding how your child's needs will be met. Your knowledge of his or her strengths, weaknesses, likes, dislikes, fears, and dreams, is unique and very necessary to the total picture of the child.

## Step One: Document all of your child's needs in writing

Since the team is required to address all of the child's needs, it is necessary to assemble all of the pertinent information you have, including the last multi disciplinary evaluation, any medical or therapist's evaluations, information from good articles or books that pertain to your child's disability and possible needs, and your own invaluable knowledge of the needs. As you thumb through all this information, pick out all the needs you think are pertinent at this time. Write down each one as you find it. Since this is detailed work, it is best to do this exercise before you write your portrait. Think of it as assembling the essential materials before you start painting. If you try to skip this step, you may get bogged down in the details and "not see the forest for the trees" when it is time to complete the portrait.

## Step two: Paint the background

Think of the background of your portrait as would an artist. You want to show the overall colors that will set the scene for the details. For your portrait, you will write a description of your child, his personality and nature, how the disability impacts education and/or social skills, and describe any fears or frustrations. Weave into the background just a few education specifics at this time.

You will likely find it very difficult to accomplish the next step, which is to cut it down to no more than one third of a page! The shorter you make it the greater the impact will be on the team. They are more likely to pay attention. Now you will have to slash and burn, but it will be with purpose. You must choose only the most important facts. Remember, each of us has just so long an attention span.

## Step Three: Insert your list of needs

This is your opportunity to see that the team considers each and every need documented in all your reports, evaluations, research, and personal observations. This is where you go into great detail. Do not worry about the length of the list. Do not worry about whether everyone will pay attention throughout your reading of this portion. The important thing is to get it into the written record of the meeting for consideration. Number each need. By numbering each need each team member, including you, can track what needs have been addressed and what ones have not been addressed. You have a quick reference tool, in writing.

Parents often find reading read articles and books on the relevant disability or disabilities helpful when assembling this list of needs. Such a book or article can put into words what we as parents often know but have difficulty putting into words. After all, we are not professionals. As you read pick out those things that make you think "That's Johnny!" and "Yep, that is him!" or "It is like they wrote the book about Johnny!" Of course not everything will apply, as no two children are alike. Parents must be very careful to select only those characteristics that really describe their child. This exercise can help add the appropriate details onto your portrait canvas.

## Step Four: Summing it up

It is important to end the portrait on a positive note. This is a great place to write a brief description of your child's dreams for the future, what he or she wants to become, whether the child wants to go to college, live independently, etc. Include your dream for your child as well. Again, keep this paragraph very brief if you want to keep the team's attention. Often parents want to include a statement that they want to see their child become a successful, adult with a career, and able to live independently.

## Points to remember

- Be sure to take enough copies for everyone on the team to have their own copy.
- Keep yourself on task by reading the entire Portrait uninterrupted.
- Write on the document that you wish the Portrait to become part of the written record, as it is part of your parent input to the meeting.
- Do not list any recommendations in this document. The portrait is simply your assessment of present levels of performance.
- Write a second document of Recommendations for Team Consideration and present it when the team reaches the point of considering what services and placement are needed. (Trying to mix the two into one document dilutes the effectiveness of both.)
- Remember to take plenty of copies so each person can follow along and digest the information as you read it out loud.

Included here is a model portrait. This portrait is a real portrait by parents who have given their hearty permission to share it with other parents as a model. After difficulty getting a team to see this child's disability and related needs, the parents wrote this Portrait of, (for the sake of privacy), Michael.

The portrait empowered the team by bringing together many pieces of the puzzle that until then had not made a lot of sense. This added understanding led to a great meeting, serious planning, and meaningful services and placement.

Everyone appeared relieved to finally realize the wide scope of "Michael's" difficulties. The teacher was delighted when offered continuing education in this area. Previously unrecognized communication needs and social skills needs were addressed. Therapists understood the broader range of needs in the area of speech and language. Development of social skills and necessary supports were initiated. A meeting that started out with resentment and frustration on both sides became a dream meeting with problem solving, sharing, and mutual agreement. Now the team truly is a team, sharing success right alongside this little boy.

[Click here for a sample portrait](#)

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Information at this site is not to be construed as legal advice. If you need legal advice be sure to find a lawyer competent in the area of special education law.

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**See Attached for Sample Portrait**

## **A Portrait of Michael**

### **IEP Meeting (Date)**

Michael is a very caring, sensitive child. He is excited about turning seven years old this summer. He has a strong average verbal I.Q. and a high average performance I.Q. His written language output is impacted by his slow motor skills and a compulsion to make his work appear perfect. This results in many erasures and false starts on his papers.

If we consider the stronger, performance IQ as the more indicative of his true ability, he shows a 17 point or greater discrepancy in the areas of Reading Comprehension, Oral Language, Broad Written Language, Written Expression, Understanding Directions, Spelling, and Writing Fluency.

If we consider the full scale I.Q. of (XXX), there is a 17 point or greater discrepancy in writing fluency, broad written language, written expression, and spelling.

While he is very motivated to make friends, he has a hard time knowing how to appropriately interact with the few children who will play with him. He has a serious deficit in social skills that impact him both at school and at home. These problems include:

#### Social Skills

1. He lacks understanding of social cues and tends to engage in one sided interactions.
2. He has problems inferring the intentions of others.
3. He has difficulty appropriately initiating a conversation or maintaining a give-and-take conversation.
4. He has great difficulty recognizing the emotions others are feeling as he does not read nonverbal social cues, such as facial expressions or body language.
5. He does not know how to appropriately respond to others' feelings.
6. The independent speech/language pathologist states that Michael can recognize a social situation, but has no clue as to how to problem solve in social settings.
7. He can have very rigid expectations of what other people should do in a seemingly prescript social setting. He is improving slightly in this area.
8. He has great difficulty understanding when others use figures of speech and abstract concepts. He understands only concrete information.
9. He is very protective of personal space and does not understand how to appropriately enforce the space when he feels the need.
10. He requires a long processing time and may not respond in the time usually allotted by peers for a response.
11. He does not understand unwritten rules, and that what may be the rule in one setting does not apply to all settings. This can cause problems in change of teachers or change of classrooms as well as in peer interactions.
12. The rules he does understand he applies rigidly, both to himself and to others.
13. When extremely frustrated or over stimulated, Michael will present as catatonic until he calms down.
14. Indicators that his state is imminent are subtle and easily missed by adults, much less by his peers.

These social deficits have resulted in his being puzzled and hurt when rebuffed by other children. He does not understand why they do not want to play with him. There have also been some unhappy incidents on the playground at school. Unless social skill deficits are addressed intensively, with adult coaching for understanding, implementation, and generalization, we have serious concerns about his future self-esteem. Without step by step instruction and coaching, at school as well as at home, Michael may be at risk as an adult seeking higher education and/or a profession or vocation. The ability to successfully interact socially is a prerequisite to success as an adult. We are concerned that teachers be trained to sort out behaviors that result from an incompetency related to the disability, rather than view all misbehavior as noncompliance.

#### Sensory Issues

15. Michael has always been very sensitive to noises, especially "sharp" noises, or loud background noises.
16. He is very sensitive to maintaining his personal space, which is very obvious when he is stressed out or overwhelmed.
17. He is very sensitive to many tastes and has just a few foods he will eat. He is very gradually improving in this area.

## Learning

18. Difficulty or slowness in retrieving specific answers to questions. Recalls large chunks of information more efficiently, giving the appearance of efficient memory skills.
19. Needs plenty of time to retrieve such information. Sometimes needs cuing to successfully retrieve information
20. Motor difficulties that require OT services. (OT eval ....date)
21. Poor organizational skills.
22. Poor planning skills.
23. Difficulty in breaking large tasks into manageable chunks.
24. Difficulty with sustained attention (Psych ed eval...date)
25. Difficulty with exerting mental control (Psych ed eval...date)
26. Difficulty with concentration (Psych ed eval ...Date)
27. Difficulty adapting to new situations (Psych Ed eval...Date)
28. Pragmatic skill difficulties requiring speech/language therapy. (Speech/language eval...date)
29. Relative weakness in visual processing speed may make the task of comprehending novel information more time consuming and difficult. (Psych ed eval,...date)
30. Detecting essential details in visually presented material and differentiating them from nonessential materials. (Psych ed eval, ...date)
31. Responding to questions about common events, objects, places, and people. (Psych ed eval,..Date)
32. Weakness in understanding number concepts, including unite and geometric measurement and simple one-step word problems.(Psych ed eval,...date)

## Strengths

- Can organize visual information analyzing part-whole relationships when information is presented spatially. (Psych ed eval,...date)
- Ability to detect essential details in visually presented material and to differentiate them from nonessential details. (Psych ed eval...date)
- Numerical operations (Psych ed eval,...date)
- Completing nonverbal tasks
- Vocabulary (Psych ed eval, ...date)
- Replicating a three dimensional figure from a two dimensional visual cue such as a picture.
- Creating imaginative stories and expressing them verbally
- Appreciates obviously silly and absurd humor
- Is very caring about family members, friends, and even strangers
- Is very tender hearted

## Future Hopes

We hope Michael will keep his enthusiasm for learning. We want him to be a productive, independent member of society. We wish for him to have a great support network of good friends, and hope that by the time he is an adult, Michael will have the ability to read social situations realistically and problem solve appropriately.

We respectfully request this Portrait of Michael be included in the written record of this meeting as part of our parent input.

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Michael's parents and Judy Bonnell give permission to reproduce this page for reference purposes only.

# Navigating the Special Education System in Massachusetts

## Resources

### *Introduction*

This article is meant to provide an overview of the special education system and to outline how to get help. To receive a more thorough, basic understanding of the system, parents may attend a free “Basic Rights” workshop sponsored by the Federation for Children with Special Needs. To find out about a “Basic Rights” workshop in your area, visit <http://www.fcsn.org/pti/workshops/home.php>.

### *Parent training and information*

If you have a question regarding navigation of the special education system or you need help finding a special education advocate, call Parent Training and Information at the Federation for Children with Special Needs at the following numbers:

Boston	(617) 236-7210 or (800) 331-0688
Worcester	(508) 798-0531
Western Massachusetts	(413) 323-0681 or (866) 323-0681

### *Advocacy and legal advice*

A parent may wish to hire a special education advocate or a lawyer to help him/her navigate the special education system or to represent his/her child at a team meeting or at due process. When asked, the Federation for Children with Special Needs will refer a parent to an advocate or a lawyer. Many advocates and lawyers are expensive. Some advocates and lawyers offer their services on a sliding scale basis. Special education advocates-in-training must represent a small number of clients for free in order to receive their Certificates of Completion. At certain times of the year, advocates-in-training will be available to represent clients for free. Call the Federation for Children with Special Needs for information about hiring an advocate or a lawyer.

The following are legal resources. Some of these resources may provide free or reduced-cost legal advice:

Disability Law Center, Boston, Mass.	(617) 723-8455 or (800) 872-9992
Disability Law Center, New Bedford, Mass.	(508) 996-8576 or (800) 244-9023
Disability Law Center, Northampton, Mass.	(413) 584-6337 or (413) 586-6024

Massachusetts Bar Assn. Lawyer Referral (Dial a Lawyer - 1st Wednesday of every month)	(617) 542-9103 or (800) 392-6164
Mental Health Legal Advisors Committee	(617) 723-9130
Volunteer Lawyers Project	(617) 423-0648
Ed Advocate is In (2 <sup>nd</sup> and 4 <sup>th</sup> Saturday of every month; sponsored by Parent Professional Advocacy League)	(508) 767-9725

### *Special education regulations*

#### **State regulations**

To download a copy of the State of Massachusetts Special Education Regulations, visit: [www.doe.mass.edu/sped/regs.html](http://www.doe.mass.edu/sped/regs.html)

#### **Federal regulations**

To download a copy of IDEA 2004 (Individuals with Disabilities Education Act 2004), visit: <http://www.nichey.org/Laws/IDEA/Pages/copies.aspx>

### **The Process**

#### *Pre-referral and referral*

Parents, teachers, social workers, psychologists, physicians, or any other person who has a concern about how a child is learning may request an evaluation from a child's school. If someone other than a parent refers a child for evaluation, the parents must be notified within five (5) days.

During the pre-referral process, a school program may try to adjust its teaching methods and make small modifications informally before making an official referral for evaluation. This pre-referral process may last for four to six weeks.

Parents may bypass the pre-referral process by officially requesting an evaluation from the school system.

Parents may call the Federation for Children with Special Needs to ask to receive a sample letter regarding requesting an evaluation from a school system.

#### *Evaluation*

No evaluation may be given without the written consent of a parent. Parents are entitled to meet with the chairperson of the evaluation team to discuss their concerns before assessments are given. The assessments must be completed within thirty (30) school working days after the parents provide consent. If a parent disagrees with the evaluation,

he/she may request an independent evaluation. The school system will pay for these on a sliding scale basis and according to the rate setting of the state. Also, a parent may obtain an independent evaluation at his/her own cost. All independent evaluations must be considered at the team meeting.

A thorough evaluation including recommendations stating what a student will need in order to receive a free and appropriate education is essential for advocating for appropriate special education services in Massachusetts.

### ***Team meeting***

After evaluations are completed, the parents, school personnel, and others chosen by the school or the parents meet. This is called a team meeting. The team will discuss the evaluations and determine if the child is eligible for special education services. If the child is deemed eligible to receive special education services, the team writes the Individualized Education Plan (IEP).

### ***Individualized Education Plan (IEP)***

The team will write a plan to meet the child's individual educational needs. The IEP will also include accommodations and related services that a child may need in order to gain access to the general curriculum. Related services may include, but are not limited to, counseling, psychological services, social work services, social skills training, speech therapy, and occupational therapy. Once the IEP is written, the team will also determine the placement of a student.

To download a blank IEP form, visit:  
[www.doe.mass.edu/sped/iep](http://www.doe.mass.edu/sped/iep)

### ***Decision***

If the parent accepts the IEP in full, the student should begin receiving the services outlined in the IEP right away. If the parent rejects the IEP in part, the student should receive services right away pertaining to the accepted portion of the IEP, but will not receive services pertaining to the rejected portions. If the parent rejects the IEP, the services that the child was receiving prior to the proposed IEP will remain in effect during the appeals process.

### ***Appeals process***

When a parent rejects an IEP in full or in part, he/she should receive information from the Department of Education regarding his/her due process rights.

A parent may elect to go to mediation if both the parent and the school agree to go to mediation.

A parent may also choose to initiate a formal hearing through the Bureau of Special Education Appeals. A parent may appeal a BSEA decision to the State Superior or Federal District Court.

### ***Noncompliance***

If a school system denies a parent his/her rights or is noncompliant with a signed IEP, parents may place a concern with the Department of Education Program Quality and Assurance. For information about Program Quality and Assurance, visit:

<http://www.doe.mass.edu/pqa/prs/>

### ***Section 504 of the Rehabilitation Act of 1973***

Section 504 is a civil rights law that states that no handicapped individual may be excluded from, or be denied benefits of, or be subjected to discrimination under any program receiving federal financial assistance. Programs that receive federal financial assistance include, but are not limited to, public and private schools and colleges, mass transit systems, hospitals, and clinics.

Even if a student is not eligible to receive services under the state special education law, if he/she has a documented physical or mental impairment, he/she may be entitled to accommodations and related services under Section 504.

### ***Feedback on this article***

If you would like to send us feedback on this article via email, e-mail Irene Tanzman at [irene.tanzman@valueoptions.com](mailto:irene.tanzman@valueoptions.com).

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