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Understanding Special Education

Anyone with school age children has likely had some exposure to special education; whether by having a child on an Individual Education Plan, or perhaps by having a friend whose child receives some special education services in or outside the classroom. For some people, special education can even be somewhat of a polarizing issue, but all parents want what is best for their children; and some children need additional assistance to progress academically and socially. Furthermore, federal and state laws determine when a student is eligible for special education services and dictate the services that schools must provide to eligible students. The Individuals with Disabilities Education Act (IDEA), is the federal special education law that applies to students and parents in every state. Massachusetts General Laws Chapter 71B provides additional rights and benefits to students and parents in Massachusetts.

What is Special Education?

Special education is specially designed instruction, at no cost to parents, which meets the unique needs of the student. Schools are required to modify the content, method, and delivery of instruction to meet the unique needs of a child who is eligible for special education services.

When is a Student Eligible?

A student is eligible for special education services if all 3 of the following are true:

- The student has one or more disabilities;
- The student is not making effective progress in school as a result of the disabilities; and
- The student requires special education to make effective progress.

The law requires schools to identify students who may have a disability. In addition, parents or other adults involved with the student can make a referral for an evaluation at any time. If the parents did not make the referral, the school must contact the parent within 5 school days of receiving the referral, asking for written permission to begin the evaluation. The school may not refuse a referral in order to try other services; however, since a referral can be made at any time, parents may first want to speak with their child's teacher to see if the issues can be resolved by accommodations in the classroom, such as changing seats, or having a vision screening.

What are the Basic Principles?

The laws governing special education are based upon six fundamental principles:

1. Parent and Student Participation:

Parents have the right to participate in all special education planning and decision-making. Students age 14 or older (or younger if appropriate) are also entitled to participate.

2. Free and Appropriate Public Education (FAPE):

Public schools must provide appropriate special education services, sufficient to enable the child to progress, at no cost to the parents. These services must be provided at the preschool, elementary and secondary school levels, and must include extra-curricular and non-academic school activities. In addition, students have the right to receive special education services even when they are unable to attend school (such as when they are hospitalized or at home). Services may also be provided for students who are enrolled at private schools. Federal law does not provide entitlement to such services; however, under Massachusetts law, students in private schools who meet eligibility requirements have a right to special education services.

3. Appropriate Evaluation:

Evaluation for special education services must include an initial evaluation, a 3-year reevaluation, individualized assessments, and a variety of tools and strategies, including information provided by the parents. Parents have specific rights with regard to the evaluation. Parents have the right to consent or refuse the evaluation. Parents also have the right to an Independent Educational Evaluation (IEE), if they disagree with the results of the evaluation performed by the school. In addition, parents have the right to appeal a finding that the student is not eligible for special education services. Evaluations must be completed within 30 school days of the parents' written permission for the evaluation.

4. Individualized Education Program (IEP):

Within 45 working days of the school's receipt of written parental permission for the evaluation, a Team Meeting must be held to discuss the evaluation, determine eligibility, and complete an Individualized Education Program (IEP), for an eligible student. Within 30 days of receiving the IEP, the parents must sign and return it before services can begin. The IEP is a written plan that provides an explanation of how the student's disability affects his or her ability to learn. The IEP must identify specific, measurable annual goals, and list the services that will be provided to the student. Beginning at age 14, the IEP must also include planning for the student's transition to adult living. Parents have specific rights with regard to the IEP. Parents have the right to accept or reject the proposed IEP in part or in full, and they can withdraw consent at any time to any service or program. The IEP Team must include:

- The parents;
- At least one special education teacher;
- At least one of the child's regular education teachers if the child is in regular education;
- A district representative who knows the district's curriculum and resources;
- An individual who can interpret tests;
- The child, if between the ages of 14 and 22, or younger if requested by the parents; and
- Any other individuals, invited by the parents or the school.

The IEP Team must meet at least once per year to review the IEP.

5. Least Restrictive Environment (LRE)

Whenever possible, students should be educated in the same environment and classroom they would have attended if not disabled. A student cannot be removed from the regular classroom as a result of modifications that need to be made to the curriculum or supplementary aids that need to be provided. Students may only be removed from the regular classroom if the disability is such that education in the regular classroom with the use of special services cannot be satisfactorily achieved.

6. Procedural Safeguards

There are many safeguards in place to protect the rights of children who are eligible for special education services. All information needed to make decisions about services must be provided to parents in writing. Parents have the right to inspect and review their child's educational records. If, at any time, the school believes that a child no longer requires special education services, it must request parental consent for a complete reevaluation prior to taking any action to end special education services. If parents disagree with the school system, they have the right to request mediation, ask for an impartial due process hearing, and bring a civil action in an appropriate State or Federal court to appeal a final hearing decision. The child has the right to remain in his or her present educational placement, unless the parent and the public agency agree otherwise, while administrative or judicial proceedings are pending.

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Nothing in this article is intended to provide legal advice. If you have a legal issue, seek advice from an attorney.