



Fall River Public Schools

Grade: F

Massachusetts Department of
Elementary and Secondary Education
Coordinated Program Review

Summary of
AREAS OF SPECIAL EDUCATION
REGULATORY NONCOMPLIANCE

July 28, 2009

Coordinated Program Review System

The Massachusetts Department of Elementary and Secondary Education (MDESE) is responsible for monitoring local school district compliance with special education law. They do this through their Coordinated Program Review (CPR) System. Each public school district and charter school in Massachusetts receives a comprehensive Coordinated Program Review every six years.

For the CPR, MDESE selects from the complete set of federal and state special education regulatory requirements those **key compliance criteria that research has shown to be most essential in providing programs of high quality for students with special needs.**

A team of two to eight MDESE staff, together with any necessary outside consultants, conducts the CPR over a two to ten day period. During this time the MDESE team interviews administrative, instructional, and support staff across all grade levels; as well as parents and others who ask to be interviewed. A representative sample of student records is reviewed, and classroom and facility observations are conducted.

Upon completion of the CPR, MDESE issues a report of its findings. Where criteria are not fully met, the local district or charter school must propose a Corrective Action Plan to bring those areas into compliance. School district Corrective Action Plans must be approved by MDESE.

MDESE also sends a monitoring team midway through the six-year cycle to complete an onsite special education Mid-Cycle Review (MCR). Again, the review consists of onsite interviews and observations as well as examination of documentation and records. Thus each public school district and charter school in Massachusetts is monitored once every three years for compliance with special education law.¹

Why Noncompliance Matters

Noncompliance can have serious consequences for students, especially when it involves:

1. Student Evaluation - Proper student evaluation is critical because it forms the basis for all educational decisions. Without an accurate assessment of a student's needs, it is impossible to develop an effective plan of instruction and support. The result for the student is failure, while the school district wastes scarce resources on ineffective instruction and services.
2. Progress Reporting - Progress reporting allows parents and schools to keep tabs on a student's growth and, importantly, allows educators to respond quickly when progress is not being made as expected. Without proper progress reporting a student can very easily "fall through the cracks." A student's lack of progress and the district's outlay of funds for services that are ineffective can go undetected for an entire school year, or more.

¹ *Coordinated Program Review Procedures, Mid-cycle Review, Information Package, School Year 2006-2007.* Massachusetts Department of Education. http://www.doe.mass.edu/pqa/review/cpr/midcycle_infopk.pdf

3. Timelines - Before a student can receive needed services s/he must be evaluated; a school team must convene to make decisions about eligibility, educational programming and placement; and those decisions must be put in written form for the parent's signed consent. Regulations require that these activities occur within 45 school (not calendar) days. With intervening weekends, vacation days, holidays, snow days, and professional days, a student can wait as long as two and a half months before receiving badly needed help. Exceeding timelines has an immediate and negative impact on a student's education.
4. Staff Training - It is ultimately school district administrators and instructional staff who ensure that a child's special education rights are protected. For this reason regulations require that school personnel be aware of special education regulatory requirements. If staff do not know what a child is entitled to as a matter of law, critical decisions can too easily be made based on administrative convenience or budget concerns, rather than on the child's needs.
5. IEP Development² - Proper development of the IEP is critical because it is the blueprint that all staff follow when working with a student. A student can be properly evaluated in a timely manner and still not receive an appropriate education if the IEP is not developed correctly. Regulations regarding IEP development include ensuring that instruction and services are tailored to the specific needs of the child, and that the student's goals are expressed in measurable terms so that meaningful progress reporting can occur. Services, accommodations, and modifications listed in the IEP must be provided as a matter of law. Conversely, if something does not appear in the IEP, the district is under no obligation to provide it.
6. Program Evaluation - In addition to monitoring the progress of individual students, schools are required to regularly evaluate the overall effectiveness of their special education programming and administration. This evaluation must include consideration of local and statewide assessment results, drop out rates, and graduation rates for special education students. Such an evaluation only makes good sense since the make up of a district's special education population, and its needs, will change over time. Failure to evaluate overall program effectiveness places students at risk of failure, and the district at risk of wasting scarce financial resources.
7. Team Meeting Participants - All decisions regarding a student's special education program are made by an IEP Team which includes individuals who meet to discuss the student in detail. Regulations specify who must participate on the Team. If any of the required personnel are missing from these Team discussions appropriate decisions may not be made, seriously jeopardizing the student's education.

² The Individualized Educational Program, or IEP, is a written document specific to an individual student that details the content of the student's educational plan, including the services to be provided.

8. Service Locations - Recognizing the harm done by the many years of segregation experienced by students with disabilities prior to enactment of federal special education law, Congress requires that these students be educated alongside their non-disabled peers to the maximum extent appropriate.³ This is referred to as the Least Restrictive Environment (LRE) mandate. The law also requires that the facilities and classrooms used by students with disabilities be at least equal in all physical respects to the average standards of general education facilities and classrooms. Anything less represents disparate, discriminatory treatment.
9. Behavior/Discipline - Congress realizes that in school, the behavioral manifestations of disability are often inappropriately treated as discipline problems. For that reason, the law specifically requires that schools treat behavioral difficulties as educational issues (if the behavior is a result of the student's disability) by responding with appropriate services and supports. The law prohibits schools from punishing children for disability-related behavior.⁴

The Price Students Pay

We include in this report the percentage of students in the district whose disability type entails significant cognitive (intellectual) impairment, along with the most recent MCAS results for students with disabilities and the student population as a whole. This gives us one way to assess whether or not students with special needs are learning at a rate commensurate with their ability.

Students with significant cognitive impairments usually represent a small minority of a district's special education population (approximately 5-15 %.) In most districts 85-95% of students with disabilities do not have significant cognitive impairments and are as intellectually capable as their non-disabled peers. The academic achievement of students with disabilities should therefore be substantially similar the student population as a whole. However, there is typically an extremely wide achievement gap between the two groups. SPEDWatch believes the chief cause of this achievement disparity is school district noncompliance with special education law which denies students the services they need to learn at a rate commensurate with their innate ability.

Important Note

This document summarizes only areas of regulatory noncompliance cited by MDESE. Please use the link provided in the footnotes if you wish to view the district's Coordinated Program Review Report in its entirety.

³ Note that regulations require students to be included in regular education programming to the maximum extent 'appropriate,' not to the maximum extent 'physically possible.' This is an important distinction, intended to safeguard the rights of *all* students to a quality education.

⁴ This does not mean school officials are powerless to intervene. The law gives school officials the right to consider any unique circumstances on a case-by-case basis when contemplating the removal of a student with a disability from school. In addition, school authorities have the right to remove a student from school, even over parental objections, if the student possesses a weapon, possess or uses illegal drugs, or has inflicted serious bodily injury.

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MDESE reviewed this district's compliance with 47 different special education regulatory criteria. The district was found to be in compliance with 12 of these. If we were to grade the district as we typically grade students (percent of questions answered correctly,) Fall River would earn a score of 25% ... an F.⁵

Of the thirteen disability categories recognized by special education law, only Developmental Delay, Intellectual Impairment, and Multiple Impairment allow for the presence of a significant cognitive impairment.⁶ These are disabilities which *may* put academic proficiency out of reach for students. For the 2008-2009 school year Fall River reported the following statistics for their special education population⁷:

- 13 % of Fall River students with disabilities were identified as Developmentally Delayed (ages 3-9 only.)
- 12 % of Fall River students with disabilities were identified as Intellectually Impaired.
- 4 % of Fall River students with disabilities were identified as Multiply Impaired.

The vast majority (84% of all students ages 10-21) of Fall River students with special needs do not have significant cognitive impairments. These students are as intellectually capable as their non-disabled peers of reaching academic proficiency given appropriate special education services. Despite this, the academic achievement gap between Fall River students with disabilities, and the student population as a whole (as measured by MCAS) is enormous.

MCAS Spring 2009

Percent of Fall River Students Scoring Proficient or Better⁸

	All Students	Spec Ed Students	Achievement Gap
Grade 3 Reading	35	10	25 points
Grade 3 Math	33	10	23 points
Grade 4 English	28	7	21 points
Grade 4 Math	28	6	22 points
Grade 5 English	44	15	29 points
Grade 5 Math	31	10	21 points
Grade 5 Science	23	14	9 points
Grade 6 English	40	13	27 points
Grade 6 Math	34	7	27 points
Grade 7 English	47	10	37 points
Grade 7 Math	28	3	25 points
Grade 8 English	64	21	43 points
Grade 8 Math	26	4	22 points
Grade 8 Science	20	3	17 points
Grade 10 English	65	16	49 points
Grade 10 Math	46	11	35 points
Grade 10 Science	47	10	37 points

⁵ Massachusetts Department of Education <http://www.doe.mass.edu/pqa/review/cpr/reports/2009/0095.pdf>

⁶ See 34 CFR 300.8

⁷ See <http://www.doe.mass.edu/InfoServices/reports/enroll/sped09/dd.xls>

⁸ MDESE: <http://profiles.doe.mass.edu/mcas/subgroups2.aspx?linkid=25&orgcode=00950000&fycode=2009&orgtypecode=5&>

Areas of Noncompliance

Text in boxes is SPEDWatch comment. Text between each box is taken directly from Fall River's Coordinated Program Review Report dated July 28, 2009.

Student Evaluation

Proper student evaluation is critical because it forms the basis for all educational decisions. Without an accurate assessment of a student's needs it is impossible to develop an effective plan of instruction and support. The result for the student is failure, while the school district wastes scarce resources on ineffective instruction and services.

At the preschool level there are no assessments administered in any languages other than English. As a result, student assessments are not administered in the language and form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally.

Assessments at the preschool level are more like screenings and not special education assessments. The district does not identify students with emotional impairments at the preschool level. The district's practice is to place students that exhibit social, emotional or behavioral issues in the transitional K-1 classroom without a special education evaluation. The district also has a practice of placing preschool students on ancillary service plans without evaluating for eligibility until kindergarten.

At all levels assessments are not always appropriately selected and interpreted for students who are determined eligible as a result of an emotional impairment or due to behavioral issues. Students are placed in emotional disability/behavioral disability classes without being appropriately assessed in the areas of suspected disability. Often one assessment, the WISC, is used to make this determination. In addition, the district requires a physician's statement for the determination of an emotional impairment, rather than relying on appropriate assessments. Similarly, students are determined to have a cognitive impairment solely as a result of one assessment, the WISC. Assessments at

all levels are not provided and administered in languages other than English and Spanish.

The district routinely makes a finding of eligibility for special education for limited English proficient students whose lack of progress is due to a lack of instruction in reading or mathematics or due to limited English proficiency, but not due to a disability.

Educational assessments, including a history of the student's educational progress in the general curriculum, are not conducted by a representative of the school district.

The district is not currently using the required specific learning disability (SLD) forms or routinely conducting student observations in the classroom settings, as required for determination of eligibility due to a specific learning disability.

Assessments are not always related to the area of suspected disability, but are determined by central office staff.

Summaries of assessments are not always completed two days prior to the Team meeting. In addition, reports of assessment results do not always define in detail and in educationally relevant and common terms, the student's needs, offering explicit means of meeting them.

Students at the Resiliency High School are sometimes placed in special education classes without an evaluation.

If a Team determines that a student is not eligible for special education but may be eligible for accommodation(s) for disability (ies) under Section 504, the student is not referred for consideration by the district for eligibility under that regular education program.

IEP Team Meeting Participants

All decisions regarding a student's special education program are made by an IEP Team which includes individuals who meet to discuss the student in detail. Regulations specify who must participate on the Team. If any of the required personnel are missing from these Team discussions appropriate decisions may not be made, seriously jeopardizing the student's education.

At all levels, general education teachers are not always invited to Team meetings [as required] and when they are invited, they are not always present.

A representative of the school district who acts as a Chairperson and who is knowledgeable about the general curriculum, the availability of resources of the district, is able to discuss an eligible student's appropriate access to the general curriculum, and who has the authority to commit [district] resources is not always present at Team meetings.

At the middle school and high school levels if neither parent attends the Team meeting, the district does not document its use of other methods to ensure parent participation, including individual or conference telephone calls, or video conferencing.

At the middle school and high school levels, the district does not always have someone at the Team meeting who is qualified to interpret evaluation results, particularly with regard to assessments in the area of related services.

Timelines

Before a student can receive services s/he must be evaluated; a school team must convene to make decisions about eligibility, educational programming and placement; and those decisions must be put in written form for the parent's signed consent. Regulations require that these activities occur within 45 school (not calendar) days. With intervening weekends, vacation days, holidays, snow days, and professional days, a student can wait as long as two and a half months before receiving badly needed help. Exceeding timelines has an immediate and negative impact on a student's education.

The district does not determine whether the student is eligible for special education and does not provide to the parent either a proposed IEP and proposed placement or a written explanation of the finding of no eligibility within the required 45 school working days of receipt of the parent's written consent to an initial evaluation or re-evaluation.

At all levels when a student is referred for an evaluation to determine eligibility for special education, the school district does not send written notice to the child's parent(s) within five school days of receipt of the referral.

Re-evaluations are not always conducted every three years at the middle school and the high school levels.

Annual reviews are not held prior to the expiration of the IEP.

The district does not reconvene the Team within ten school days from the time the school district receives a report of an independent educational evaluation to consider the independent educational evaluation and whether a new or amended IEP is appropriate.

IEP Development & Implementation

Proper development and implementation of the IEP is critical because the IEP is the blueprint that all staff follow when working with a student. A student can be properly evaluated in a timely manner and still not receive an appropriate education if the IEP is not developed correctly, or if the services listed therein are not delivered as written. Regulations regarding IEP development include ensuring that instruction and services are tailored to the specific needs of the child, and that the student's goals are expressed in measurable terms so that meaningful progress reporting can occur.

The district does not oversee in an ongoing manner the full implementation of each IEP it proposes which has been consented to by the parent.

At all levels, accepted IEPs are not implemented as written. Students in co-taught classes are pulled out into substantially separate groupings for instruction, in violation of the IEP. Teachers arbitrarily determine whether to implement services in class or pull-out based on regular education teachers' desires.

IEPs for students enrolled in the Resiliency High School are not implemented as written. Some students whose IEPs call for pull-out instruction are not being provided with pull out services, and some students whose IEPs state that they should receive instruction in the general education classes are being pulled out into substantially separate classes. IEP services are based upon program and service provider availability and not the individual needs of the student.

Paraprofessionals are not always implementing instruction under the supervision of an appropriately certified or licensed professional.

At the preschool level, the district has a social worker, however, consultation from evaluators and psychologists are initiated only when the severity is extreme.

IEPs do not address all elements; Present Levels of Educational Performance (PLEP) B sections are typically blank and do not address emotional, social or behavioral issues, IEPs do not contain or identify specially designed instruction, student vision statements are not the vision of the student and do not contain all required information. The district does not always document in the IEP the student's participation in the general curriculum.

English proficient students who come from Puerto Rico with IEPs that require fully inclusive settings and placements are placed in substantially separate classes without revision of the IEP.

The district terminates related services, in particular speech and language services, when students meet IEP goals. Parents are not informed of the termination of services, which is contrary to what has been agreed upon in the IEP.

At the middle school level students do not have IEPs in effect at the start of the school year. At the elementary and high school levels, the district had a high number of IEPs that were not accepted or in effect for eligible students at the beginning of the school year.

Although career/vocational technical education teachers have access to a database for information regarding which students in their classes have IEPs, the teachers were not familiar enough with the database to access the information on specific accommodations for students.

The district does not document monitoring activities for students placed out-of-district.

Progress Reporting

Progress reporting allows parents and schools to keep tabs on a student's growth and, importantly, allows educators to respond quickly when progress is not being made as expected. Without proper progress reporting a student can very easily "fall through the cracks." A student's lack of progress and the district's outlay of funds for services that are ineffective can go undetected for an entire school year, or more.

Individual service providers send progress reports to parents on their own; there is no centralized process or procedure to review the progress reports or the progress of the student. As a result, students are not identified when they are not meeting IEP goals or are unable to access the curriculum and Teams do not reconvene when progress reports indicate a lack of progress.

Progress reports do not always include the student's progress towards reaching the goals set forth in the IEP. At the middle school and high school levels, progress reports were not always found in student records and were not found to be sent to the parent at least as often as parents are informed of the progress of non-disabled students.

IEP goals are often repeated from year to year, which is likely a result of the lack of monitoring and review of progress reports.

Service Locations & Equal Access

For many years public school students with special needs were kept segregated from the general student population. Congress seeks to prevent such segregation by requiring that students be educated alongside their non-disabled peers to the maximum extent appropriate; that the facilities and classrooms used by students with disabilities be at least equal in all physical respects to the average standards of general education facilities; and that these students be given full access to the academic and nonacademic offerings of their districts.

The district lacks resource rooms at the elementary and middle school levels. Students have access to inclusion with minimal supports or sub-separate classrooms only.

The [IEP] Team does not routinely determine the appropriate placement to deliver the services on the student's IEP. The decision regarding placement is not always based on the IEP; placements are based

upon program and service provider availability and not the individual needs of the student. The Team does not always determine placement, placement is often determined by the central office and Team chairpersons must seek approval from central office separate from the Team process.

At all levels programs and placements selected are not the least restrictive environment for students, with consideration given to any potential harmful effect on the student or on the quality of services that he or she needs. Many substantially separate programs have enrollments that exceed the program design and cannot accept additional students into these programs due to high enrollment levels, not student needs.

Students at the elementary and middle school levels are not placed in the least restrictive environment. Substantially separate classes are grouped together for specials and students do not have opportunities to be included with non-disabled peers due to scheduling. In addition, students who have co-taught classes written into the IEPs are removed from the general education classes and placed in substantially separate classes for language arts instruction, contrary to the accepted IEPs. Furthermore, teachers do not permit students in substantially separate classes to have lunch with regular education students.

Special education students at the Viveiros Elementary School do not have equal opportunities to participate in art and music. At the James Madison Morton Middle School, students who are placed in strategies classes for academic support are denied art and music. At the middle school level, special education students do not have equal opportunities to participate in field trips and assemblies, and students with IEPs are automatically placed in academic strategies classes and cannot receive foreign language instruction or band.

Special education students at the Resiliency High School do not have transportation to vocational education and after-school activities and are therefore unable to access these programs and services. In addition, the district places some middle school students at the Resiliency High School and these students do not have access to the district-wide middle school homework program.

At the Morton Middle School, two substantially separate behavior programs are housed in the basement with no other classrooms; location of these classrooms does not maximize the inclusion of such students into the life of the school.

There are signs identifying related services and/or special education classes thereby stigmatizing special education students at the Greene Elementary School, Silvia Elementary School, Talbot Middle School, Letourneau Elementary School, Viveiros Elementary School and Spencer Borden Elementary School

At the Resiliency High School the daily duration of students' programs is not equal to that of the regular school day. Students have shorter school days, which are not documented in their IEPs.

The district has several classes that exceed age span requirements and for which the district has not filed age span waiver requests. The classes that exceed age span requirements include the Excel middle school program, the Resiliency High School substantially separate classes, and a substantially separate class at the Durfee High School.

Non-Participation Justification Statements in the IEPs, at all levels, do not state why the removal is considered critical to the student's program and the basis for its conclusion that education of the student in a less restrictive environment, with the use of supplementary aids and services, could not be achieved satisfactorily.

Behavior and Discipline

Congress realizes that the behavioral manifestations of disability are often inappropriately treated as discipline problems. For that reason, the law specifically requires that schools treat behavioral difficulties as educational issues (if the behavior is a result of the student's disability) by responding with appropriate services and supports. The law prohibits schools from punishing children for disability-related behavior.

Teams do not routinely consider the student's behavior, including positive behavioral interventions and the possible need for functional behavioral assessments for students whose behaviors impede their learning or the learning of others. Students with emotional, social or behavioral issues do not have positive behavioral interventions and supports routinely addressed in their IEPs.

The district lacks behavioral supports district-wide and recommendations for counseling are not carried over because the district does not have enough resources or service providers for Teams to commit needed counseling services on grids.

The district does not consistently notify parents of the decision to take disciplinary action and provide them with the written notice of procedural safeguards, nor does the district ensure that limited English proficient or non-English speaking parents receive this information in a language that they understand.

however, in conducting the workshop on parents' rights the district does not ensure that this information is provided to limited English proficient parents in a language they can understand.

The district does not always obtain written parental consent before conducting an evaluation. In addition, written parental consent is not always obtained before placement of a student in special education.

Other

The district does not conduct child find/outreach activities for older students.

The district does not implement procedures to ensure the effective transition of young children with disabilities and does not participate in transition meetings or transition planning conferences.

Notices of Proposed School District Action (N1) do not address all required information and are not always sent with Evaluation Consent Forms (N1A).

Team meeting notices sent to parents at the middle school and high school levels do not routinely include the name(s) of the general education content area teachers who will be in attendance.

When notices are provided orally or in some other mode of communication, the district does not keep written documentation (1) that it has provided such notice in an alternate manner, (2) of the content of the notice and (3) of the steps taken to ensure that the parent understands the content of the notice.

The district does not routinely provide communications with parents in the primary language of the home when the primary language is other than English. In addition, the district does not use interpreters at Team meetings who are fluent in the primary language of the home and familiar with special education procedures, programs and services.

The district does not translate progress reports, evaluation assessment reports, report cards or any other information that is a part of the special education process.

A large number of limited English proficient parents ... are parents of special education students;

<p>SPEDWatch, Inc. is a grassroots, non-profit, social change movement fighting to secure the educational rights of all Massachusetts schoolchildren with disabilities (ages 3-21.) We are an activist organization. We provide these Coordinated Program Review Summary Reports to familiarize the general public with the high rate of noncompliance with special education law in our public schools, and its human consequences.</p>
