



# Fitchburg Public Schools

Grade: F

Massachusetts Department of  
Elementary and Secondary Education  
Coordinated Program Review

Summary of  
AREAS OF SPECIAL EDUCATION  
REGULATORY NONCOMPLIANCE

November 5, 2008

## 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.<sup>1</sup>

## 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.

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<sup>1</sup> *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](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 Development<sup>2</sup> - Proper development 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. 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.

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<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

## 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.

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<sup>3</sup> 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.

<sup>4</sup> 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 58 different special education regulatory criteria. The district was found to be in compliance with 26 of these. If we were to grade the district as we typically grade students (percent of questions answered correctly,) Fitchburg would earn a score of 45% ... an F.<sup>5</sup>

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.<sup>6</sup> These are disabilities which *may* put academic proficiency out of reach for students. For the 2006-2007 school year Fitchburg reported the following statistics for their special education population:

- 14 % of Fitchburg students with disabilities were identified as Developmentally Delayed (ages 3-9 only.)
- 14 % of Fitchburg students with disabilities were identified as Intellectually Impaired.
- 1 % of Fitchburg students with disabilities were identified as Multiply Impaired.

The vast majority of Fitchburg students with special needs (at least 85% of those aged 10-22) 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 Fitchburg students with disabilities and their student population as a whole (as measured by MCAS) is enormous.

## MCAS Spring 2007

### Percent of Fitchburg Students Scoring Proficient or Better <sup>7</sup>

	All <u>Students</u>	Spec Ed <u>Students</u>	Achievement <u>Gap</u>
Grade 3 Reading	48	30	18 points
Grade 3 Math	59	37	22
Grade 4 English	44	11	33
Grade 4 Math	38	11	27
Grade 5 English	40	10	30
Grade 5 Math	33	11	22
Grade 5 Science	28	13	15
Grade 6 English	51	17	34
Grade 6 Math	37	11	26
Grade 7 English	52	14	38
Grade 7 Math	30	4	26
Grade 8 English	60	20	40
Grade 8 Math	28	7	21
Grade 8 Science	10	3	7
Grade 10 English	50	10	40
Grade 10 Math	46	19	27

<sup>5</sup> Massachusetts Department of Education <http://www.doe.mass.edu/pqa/review/cpr/reports/2008/0097.pdf>

<sup>6</sup> See 34 CFR 300.8

<sup>7</sup> MDESE:

<http://profiles.doe.mass.edu/mcas/subgroups2.aspx?linkid=25&orgcode=00970000&fycode=2007&orgtypecode=5&>

## Areas of Noncompliance

*The following text is taken directly from the Fitchburg Public Schools' CPR Report dated November 5, 2008.*

With the exception of Spanish, the district does not assess students who are limited English proficient in their native language or use alternate assessments. In addition, the district uses only a survey and does not use technically sound instruments to assess in social and emotional domains. Social and emotional assessments are not routinely administered and interpreted by trained individuals and are not tailored to assess specific areas of educational need.

The district does not consider the need for or conduct assistive technology assessments, nor does the district have staff or procedures for assessing adaptive physical education needs. Psychological assessments are not routinely conducted for students referred with behavioral, social and emotional needs, and student observations are not conducted at the preschool level.

Assessment reports do not define in detail and in educationally relevant and common terms, the student's needs, offering explicit means of meeting them.

Student records do not include all of the required documentation when determining if a student has a specific learning disability. For example, only one person signed the required written document, and while the form had checked off that an observation had been completed, the records did not include the relevant behavior observed or the name of the staff observing the student.

Students sharing decision making authority [with their parents] are co-signing IEPs; however, students who are assuming full responsibility for educational decisions are not signing their IEPs at age 18. In addition, the district does not send the "Notice of Proposed district Action" (N1 notice) to students who are 18 years old and older.

Team meetings are held without parents in attendance at the middle and high school levels, and the district does not document attempts to involve parents in Team meetings. With the exception of Spanish, translators are not provided if needed. The district does not have procedures or document parent excusals of Team members from Team meetings.

There is not always a person who can commit resources at Team meetings, especially during annual reviews. As a result Team meetings need to be reconvened to approve or consider services. In addition, regular education teachers do not routinely attend Team meetings at the middle and high school levels.

The district does not conduct assessments within 30 school days or hold Team meetings within 45 school days. In addition, dates are consistently inaccurate on required forms such as Notice of Proposed School District Action (N1), Evaluation Consent (N1A), Meeting Invitation (N3), and IEPs.

Parents do not receive reports on the[ir] student's progress towards reaching the goals set forth in the IEP at least as often as parents are informed of the progress of nondisabled students. In addition, progress reports do not include written information on the student's progress towards the annual goals in the IEP.

[Note: In Fitchburg's MDESE Mid-Cycle Report issued in 2005 the following text appears regarding progress reporting: "*This is an area of continuing non-compliance, as the district was cited on this matter in the April 2002 CPR report. The records indicate that some Team meetings are held in place of providing a progress report to the parent(s) and progress reports do not always include information on the progress towards the annual goals .Some progress reports just state that the student "improved" or "worked hard."* In addition, there is no evidence of the Team reconvening when the progress reports indicate lack of progress.

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Annual reviews are not routinely held prior to the expiration dates of the former IEPs. IEPs are frequently dated by the month and year and not the day, thus resulting in difficulties tracking and monitoring mandated timelines. The district is inappropriately using IEP amendment forms to indicate a change of diagnosis or disability category without reviewing or revising the IEP. The district also issues amendments that are not aligned with the IEP. For example, an amendment will propose the addition of a related service but will not include goals, objectives or indicate the frequency and duration of the service.

The district does not conduct outreach for older students.

IEPs do not address all required elements. IEPs do not contain age specific considerations on Present Levels of Educational Performance (PLEP B); IEPs do not always contain goals or objectives; vision statements are not developed with the student's input and frequently do not address student preferences, interests, adult living, postsecondary and working environments. IEPs do not identify specialized instruction, and assistive technology, adaptive physical education, and counseling services and supports are not routinely considered and written in IEP service delivery grids.

IEP service delivery grids do not accurately reflect the service provider. Service delivery grids indicate that licensed teachers will be delivering services when in fact primary service providers are related service assistants and paraprofessionals.

IEPs are changed at a higher administrative level within the district.

IEPs and placements are proposed several months after the Team meeting, thus delaying parents' ability to accept and implement services.

The district does not consistently consider the least restrictive environment for special education

students at the intermediate and secondary levels. All such students receive instruction in a regular education classroom for science, social studies and electives, consideration is not given to any potential harmful effect on the student or on the quality of services that he or she needs as only very limited consultation support is available to the general education content area teachers. Aides are usually not available in these classes, resulting in limited instructional accommodations and supports.

At South Street Elementary, IEP services are not fully implemented. Speech language services are provided by speech and language assistants and not by speech language pathologists, as indicated in the IEPs.

When the district has interruptions in services due to a lack of personnel, parents are not notified and alternate methods to meet IEP goals are not proposed by the district.

Teachers are not provided with IEPs at Crocker and South Street Elementary schools, but are provided with limited information from the district's computerized IEP program. As a result, teachers are not informed of their specific responsibilities related to the implementation of students' IEPs and the specific accommodations, modifications, and supports that must be provided.

The district does not consistently send written notice to parents within five days of receiving a referral for an evaluation.

Observations are not conducted as part of an evaluation after receiving parental consent for them.

The district does not convene a meeting to try to resolve dispute[s] within 15 days of receiving notice that a parent has made an official hearing request to Special Education Appeals.

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Assessment reports and IEPs are not routinely translated for parents who do not speak English.

The district provides resource room and special education supports only in math and English language arts at the middle and high school levels for students not in substantially separate classes. The district does not provide services or supports (co-teaching, inclusion, teacher consultation or paraprofessional supports) for other content areas. Adequate services are not provided in the areas of adaptive physical education, speech language therapy, counseling and inclusion support. Lastly, students who could successfully participate in prevocational job training and employment opportunities within the community have limited to no access due to a lack of supports and service.

Special education classrooms have outdated and limited computers that cannot run current programs for special education students when required pursuant to the IEPs. In addition, assistive technology is not routinely considered when developing IEPs, and when assistive technology is written into the IEP, the district has difficulty implementing assistive technology services.

The district has several students in private schools at private expense; however, reevaluations were not conducted and IEPs were not developed annually. IEPs did not consistently contain parent signatures indicating that IEPs were accepted.

The district exceeds group size requirements. The district includes 1:1 aides in their ratios for substantially separate classes; however, when the aide leaves the class with the student for a service or inclusion class, the class size is out of compliance. When teacher substitute coverage is unavailable, which is reported to be frequent, instructional aides are placed in teacher roles. Lastly, substitutes are not provided for 1:1 and substantially separate classroom aides during periods of extended absence. This practice compromises the district's ability to provide required services and supports set forth in IEPs and meet group size requirements.

The district routinely exceeds age span requirements and does not file waivers with the Department.

Teams do not routinely consider positive behavioral interventions for students whose behaviors impede their learning or the learning of others.

The district does not provide educational services to eligible students who have exceeded 10 days of suspension.

While the district conducts manifestation determinations after 10 days of suspension, a second manifestation determination is not conducted until the student is suspended an additional 20 days.

The district does not have the required staff to implement IEPs in the areas of speech language services, counseling services or adaptive PE.

Special education teachers in program at the BF Brown Arts Vision School do not hold appropriate licensure or approved waivers from the Department.

Paraprofessionals are not appropriately trained for the duties for which they are responsible. Supervision of paraprofessionals has not been conducted for two years. Paraprofessionals design instruction and are responsible for the behavior development classes at Academy Middle School. Paraprofessionals also design instruction at the elementary and preschool levels. At all levels, paraprofessionals are routinely writing progress reports.

Paraprofessionals are also responsible for transporting and job coaching responsibilities within prevocational community settings without appropriate training.

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Regular education teachers have not received training in state and federal special education requirements. New staff, particularly at Academy Middle School, have not received any of the required training. In addition, staff district-wide have not received training in analyzing and accommodating diverse learning styles of all students for several years.

The following spaces are problematic:

**Fitchburg High School** – All self-contained classes for emotional and behavioral disabilities are positioned in one wing located directly above the gym. Students are not integrated with general education students and the noise level and visual distractions exceed that of general education classes.

**Academy Pilot School** has a special education hallway where the placement of classrooms 200, 202, and 206 prevent inclusion into the life of the school.

**Crocker Elementary School** has occupational therapy delivered on a stage.

**South Street Elementary School** has four special education classes (three autism classes, one SLD class) on the first floor wing, preventing integration with general education peers.

**BF Brown Arts Vision School** has special education wings for grades 6-7 in the basement and third floor. Speech services are provided in an area marked “toilet.” Occupational therapy services are delivered in a former locker room with urinals. Physical therapy is located in a former storage space; however, the library was observed to be empty and accessible. The special education technical education class has a high number of special education students enrolled. Due to its popularity, students cannot safely use the equipment. As a result, the facilities are not comparable to general education technical education classes that have smaller enrollments.

**McKay Elementary School** conducts occupational therapy and physical therapy in hallways.

**Reingold Elementary School** delivers related services in hallways and open spaces.

[NOTE: Despite the fact that the Fitchburg Public Schools were found to be out of compliance with 55% of the regulatory criteria examined, the Massachusetts Department of Elementary and Secondary Education finds that Fitchburg has an Administrator of Special Education who ensures compliance with all federal and state special education laws.]

SPEDWatch, Inc. is a grassroots, non-profit, civil rights 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 as a way to familiarize the public with the high rate of noncompliance with special education law in our public schools, and its human consequences.