



SPEDWatch
Special Education Activism

Gardner Public Schools

Massachusetts Department of
Elementary and Secondary Education
Mid-Cycle Coordinated Program Review

Summary of
AREAS OF SPECIAL EDUCATION
REGULATORY NONCOMPLIANCE

July 29, 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.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 Development and Implementation² - Proper development and implementation 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. Likewise, an appropriate IEP can be developed and the student can still be denied an appropriate education if that IEP is not implemented 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. 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 limited 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

² The IEP, or Individualized Educational Program, 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.

appropriate decisions may not be made, seriously jeopardizing the student's education.

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 could include 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 if 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 considered as intellectually capable as their non-disabled peers. The academic achievement of students with disabilities should therefore be substantially similar to 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 reach their potential.

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 Mid-Cycle 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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Of the thirteen disability categories recognized by special education law, only Developmental Delay, Intellectual Impairment, and Multiple Impairment allow for significant cognitive impairment.⁶ These are disabilities which *may* put academic proficiency out of reach for students.

For the 2006-2007 school year Gardner reported a total special education population of 505 students. The following disability statistics were reported for this same population:

- 88 (17%) Gardner students with disabilities were identified as Developmentally Delayed.⁷
- 52 (10%) Gardner students with disabilities were identified as Intellectually Impaired.
- 8 (1.5%) Gardner students with disabilities were identified as Multiply Impaired.

The vast majority of Gardner students with disabilities do not have significant cognitive impairments. These students are considered to be as intellectually capable as their non-disabled peers of reaching academic proficiency given appropriate educational services. Despite this, the academic achievement gap between Gardner students with disabilities, and its student population as a whole, as measured by MCAS, is enormous.

MCAS Spring 2007- Gardner Percent of Students Scoring Proficient or Better ⁸

	All Students	Spec Ed Students	Achievement Gap
Grade 3 Reading	42	19	23 points
Grade 3 Math	40	14	26 points
Grade 4 English	56	14	42 points
Grade 4 Math	47	24	23 points
Grade 5 English	62	21	41 points
Grade 5 Math	36	6	30 points
Grade 5 Science	38	6	32 points
Grade 6 English	81	66	15 points
Grade 6 Math	49	40	9 points
Grade 7 English	73	29	44 points
Grade 7 Math	33	7	26 points
Grade 8 English	76	21	55 points
Grade 8 Math	31	0	31 points
Grade 8 Science	23	2	21 points
Grade 10 English	79	32	47 points
Grade 10 Math	70	27	43 points

⁵ See entire report at <http://www.doe.mass.edu/pqa/review/cpr/reports/2008/followup/0103.pdf>

⁶ See Code of Federal Regulations at 34 CFR 300.8

⁷ The Developmentally Delayed category is used only for students age 9 and under.

⁸ MDESE <http://profiles.doe.mass.edu/mcas/subgroups2.aspx?district=103&school=&mcasyear=2007>

Areas of Noncompliance

The following text is taken directly from the Gardner Mid-Cycle Coordinated Program Review Report dated July 29, 2008.

Assessments are not always tailored to address all areas of suspected disability. Educational assessments are not always conducted and/or indicated on students' IEPs, as required.

The Evaluation Consent Form (N- 1A) that is sent to parents does not clearly specify which type of assessments will be completed. Specifically, the indicated assessments do not always correspond with the assessments administered and inversely, the assessments administered are not always indicated on the consent form. Additionally, educational assessments are not always administered as required.

At the beginning of the school year, IEPs are not always implemented without delay; specifically, related services are not always implemented, as mutually agreed upon, during the first week of school.

The district does not always ensure full implementation of each student's IEP. Specifically, in the Project Support class at the Elm Street School students are not integrated for homeroom, gym, art etc. as indicated on their IEPs.

Instructional grouping sizes exceed 12 students to 1 certified special educator and 1 aide for eligible students served in substantially separate classrooms for greater than 60% of the day. Specifically, Project Support, the substantially separate class at the Elm Street School contains 16 students with one special education teacher and two aides.

The district does not always include students placed in substantially separate classes in the general education classroom as indicated on their IEP. Specifically, students in the Project Support class at the Elm Street School are isolated for up to 100% of their day.

The Team's decision to place a student with a disability in a substantially separate class is not

always clearly articulated in the Non-participation Justification section of the IEP.

Some students are placed in substantially separate special education classrooms without an IEP. This is not consistent with the intent of the Districtwide Curriculum Accommodation Plan under MGL Chapter 71, 38 Q ¹ / ₂ which states: *"The plan shall be designed to assist the regular classroom teacher in analyzing and accommodating diverse learning styles of all children in the regular classroom and in providing appropriate services and support within the regular education program including, but not limited to, direct and systematic instruction in reading and provision of services to address the needs of children whose behavior may interfere with learning, or who do not qualify for special education services under chapter 71B."* Consequentially, unsubstantiated restrictive placements for students may reflect a lack of appropriate supports in regular education.

Higher administration in the district change some student IEP services based on size or configuration of the agreed upon placement rather than the individual needs of the child. Programs and services proposed by the IEP Team and consented to by the parent/guardian may not be changed at a higher administrative level.

The Administrator [of Special Education] does not hold proper licensure or a current waiver specific to either special education or special education administration.

The district does not always indicate how each student will participate in MCAS. Specifically, IEPs for students taking the alternative MCAS do not delineate methods for assessing a student's knowledge of the indicated subject matter.

Seven of the 26 IEP Team meeting attendance sheets submitted did not have a parent signature. Efforts to include parent participation in meetings, such as

rescheduling or use of a conference call, are not always documented.

IEPs are not always signed by the parent/guardian within 30, 60, 90 days. The district did not provide evidence of their consistent and continued attempts to obtain consent.

The district does not always contact the Bureau of Special Education Appeals (BSEA) for rejected IEPs. Some IEPs are not signed by the parent or guardian well beyond 30 days as stated above. After multiple attempts to secure parental consent the district may consider contacting the BSEA.

Progress reports are not always provided in the primary language of the family.

Special education environments in the district are not always comparable in all physical respects to those provided for regular education students. Specifically, the small physical size of the Academic Learning Lab at the high school is inadequate for its purpose and for the population that it serves. The Lab is also isolated from the general education population.

The district does not always apply the same protections for a student suspected of a disability as those protections afforded to students currently receiving special education services, as required.

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 to familiarize the public with the high rate of noncompliance with special education law in our public schools, and its human consequences.