



## Marlborough Public Schools

Grade: **D-**

Massachusetts Department of  
Elementary and Secondary Education  
Coordinated Program Review

Summary of  
AREAS OF SPECIAL EDUCATION  
REGULATORY NONCOMPLIANCE

May 22, 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 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.

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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.

# Marlborough Public Schools Grade: D-

Coordinated Program Review  
Report Date: May 22, 2008

MDESE reviewed Marlborough's compliance with 58 different special education regulatory criteria. The district was found to be in compliance with only 37 of these. If we were to grade the district as we typically grade students (percent of questions answered correctly) Marlborough would earn a score of 64% ... a D-.<sup>5</sup>

Of the thirteen disability categories recognized by special education law, only Developmental Delay, Intellectual Impairment, and Multiple Impairment allow for 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 Marlborough reported the following statistics for their special education population:

- 24% of Marlborough students with disabilities were identified as Developmentally Delayed (ages 3-9 only).
- 6 % of Marlborough students with disabilities were identified as Intellectually Impaired.
- 16 % of Marlborough students with disabilities were identified as Multiply Impaired.

The vast majority of Marlborough students with disabilities 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 Marlborough students with disabilities, and the student population as a whole (as measured by MCAS) remains enormous.

## MCAS Spring 2007- Marlborough Percent of Students Scoring Proficient or Better <sup>7</sup>

	<u>All Students</u>	<u>Spec Ed Students</u>
Grade 3 Reading	54	26
Grade 3 Math	63	33
Grade 4 English	52	13
Grade 4 Math	54	16
Grade 5 English	60	28
Grade 5 Math	57	20
Grade 5 Science	48	21
Grade 6 English	65	36
Grade 6 Math	56	22
Grade 7 English	74	46
Grade 7 Math	50	15
Grade 8 English	70	37
Grade 8 Math	42	10
Grade 8 Science	29	8
Grade 10 English	73	27
Grade 10 Math	71	25

<sup>5</sup> See entire report at <http://www.doe.mass.edu/pqa/review/cpr/reports/2008/0170.pdf>

<sup>6</sup> See Code of Federal Regulations at 34 CFR 300.8

<sup>7</sup> MDESE <http://profiles.doe.mass.edu/mcas/subgroups2.aspx?district=170&school=&mcasyear=2007>

## Areas of Noncompliance

*The following text is taken directly from Marlboro Public School's CPR Report dated May 22, 2008.*

The district does not always provide and administer assessments in a language most likely to yield accurate information on what the student knows and can do academically, developmentally and functionally for a student identified as Limited English Proficient, especially for low incidence students. Assessments administered to students that are second language learners are not always selected and administered to reflect the student's aptitude and achievement levels in English and do not always take into consideration progress LEP students have made compared to other LEP students learning a new language, especially students at the lower elementary grade levels. All of the above may therefore result in misidentification of Limited English Proficient students as students with disabilities.

Not all required assessments, such as suspected disability and educational, are always administered or are not always documented.

Transition plans are not always completed at the Phoenix Program.

Regular education teachers have not always been present at IEP Team meetings and ... excusal forms were not always either signed by the parent or did not always indicate the individual being excused and his/her role on the Team.

The district is not always providing the proposed IEP and placement to the parent within the 45-day mandated timeline for eligibility determination.

Progress reports are not always documented.

Annual IEP meetings are not always held on or before their anniversary dates.

The district does not always respond to referrals from Early Intervention in a timely manner. Students sometimes wait a month or more and, instead of getting consent from parents and conducting an evaluation to determine eligibility in the area(s) of suspected disability, the district uses a generic preschool screening and then finds the student eligible. This delay sometimes results in a student beginning services after their third birthday.

[In IEPs] Nonparticipation Justification statements for students requiring services outside of the regular education setting are sometimes missing for students that require them. Also, home based services are

sometimes written under Additional Information and do not include the amount of service provided nor the dates when the services begin or end. The Present Level of Educational Performance B is sometimes left blank or states "See PLEP A". Service delivery grids are not always completed at the Phoenix Program. The IEP sometimes has two types of placements (i.e. full inclusion in PL1 and partial inclusion in PL2) on the same IEP. The review of records also indicates that the parent or the district does not always sign placement pages at the Phoenix program.

Teacher assistants that are on students' IEPs at the high school are not always provided in a timely manner due to staff shortages. The high school also does not always inform parents in writing of alternative methods that may be used to address IEP goals until the personnel issues are resolved.

N1 [School District Proposal To Act] forms are not always tailored to the specific purpose of the meeting. Furthermore, elements of the N1 forms are sometimes not complete, specifically there was not always a description of each evaluation procedure, test, record or report the district used as a basis for the proposed IEP.

Consent forms are not always documented.

[Team] meeting invitations are not always documented

Communications with parents have not always been sent home in the primary language of the home if such primary language is other than English (i.e. IEPs, progress reports, invitations and other notices).

When eligible students are assigned to instructional groupings outside of the general education classroom for 60% or less of the students' school schedule, eighteen sections at the high school exceeded instructional grouping size requirement.

Age span requirements are not always met and ... waivers were not requested from the Department for three instructional groups at the high school and one at the Richer Elementary School.

Three of the [school] handbooks (High School, Intermediate Elementary School, Elementary Schools) do not address the use of the results of the manifestation determination, including information that the student will continue to receive services and will not be suspended if the behavior is a

manifestation of the student's disability. Procedural requirements for students not yet determined eligible for Special Education are not referenced in any of the school handbooks.

Students in the eighth grade at the High School who are on an IEP do not have access to elective courses. (e.g. art, music, cooking, exploratory shop classes).

At Richer Elementary School ... there are special education spaces used at the school that do not maximize the inclusion of students with disabilities into the life of the school.

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.