



Newton Public Schools

Grade: **F**

Massachusetts Department of
Elementary and Secondary Education
Coordinated Program Review

Summary of
AREAS OF SPECIAL EDUCATION
REGULATORY NONCOMPLIANCE

September 5, 2007

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.

Newton Public Schools

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MASSDE reviewed this district's compliance with 58 different special education regulatory criteria. The district was found to be in compliance with 34 of these. If we were to grade the district as we typically grade students (percent of questions answered correctly,) Newton Public Schools would earn a score of 59% ... an F.⁵

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 2005-2006 school year Newton reported the following statistics for their special education population:

- 1 % of Newton students with disabilities were identified as Developmentally Delayed (ages 3-9 only.)
- 2 % of Newton students with disabilities were identified as Intellectually Impaired.
- 1 % of Newton students with disabilities were identified as Multiply Impaired.

The vast majority of Newton 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 Newton students with disabilities, and the student populations as a whole (as measured by MCAS) is enormous.

MCAS Spring 2006 Percent of Newton Students Scoring Proficient or Better ⁷

	<u>All Students</u>	<u>Spec Ed Students</u>
Grade 3 Reading	78	47
Grade 3 Math	76	44
Grade 4 English	68	33
Grade 4 Math	66	30
Grade 5 English	81	46
Grade 5 Math	72	32
Grade 5 Science	75	48
Grade 6 English	84	47
Grade 6 Math	75	39
Grade 7 English	81	48
Grade 7 Math	69	28
Grade 8 English	90	64
Grade 8 Math	65	20
Grade 8 Science	52	17
Grade 10 English	87	61
Grade 10 Math	86	62

⁵ Find entire report at <http://www.doe.mass.edu/pqa/review/cpr/reports/2007/0207.pdf>

⁶ See 34 CFR 300.8

⁷ MASSDE website <http://profiles.doe.mass.edu/mcas/subgroups2.aspx?district=207&school=&mcasyear=2006>

Areas of Noncompliance

The following text is taken directly from Newton Public Schools' CPR Report dated September 5, 2007.

Required educational assessments are not always completed. Observation reports were not always found in files where parents have signed consent for observations.

IEPs do not consistently contain individualized measurable goals related to postsecondary training, education, and employment, and, where appropriate, to independent living skills based on age-appropriate transition assessments. Where IEPs lack transition services, including courses of study needed to reach related goals, student records did not contain documentation of discussions indicating that Teams have determined such goals and services are not necessary. These discussions might occur at Team meetings, but appropriate documentation is not always completed. In some cases, information concerning transition planning for students might be found with a guidance counselor or with a special education staff person, but not within the IEP. The discussion of transition services does not always begin when the student is fifteen years old.

Team chairpersons do not always have the authority to commit the resources of the district, particularly at annual review meetings and with certain resources that might be costly, such as out of district placements or one-to-one paraprofessionals. Rather, interviews indicate that chairpersons can generally only commit resources that already exist within their buildings.

Teams do not always include an individual who is knowledgeable about the availability of the resources of the district, specifically, placement options.

At the high school level, regular educators are not always present at Team meetings. Teams do not always include a person qualified to interpret evaluation results. Where Team members are excused from meetings, the district has the parent initial attendance sheets instead of using the [required] procedures.

Regular education teachers of students in the EDCO program do not always attend Team meetings, although students are involved or may be involved in a regular education program.

The district's high school Teams inconsistently meet the 45-day timeline for completion of the eligibility process. In some cases, evaluations at both

high schools and at the Oak Hill Middle School were not completed within 30 school working days. In addition, at both high schools, IEPs and placements were not always proposed immediately following their development, and record review did not indicate consistent use of a Team meeting summary sheet.

The district's practices and internal procedures include information about the state, but not the federal, right to an independent educational evaluation. The district must ensure that it makes parents and staff aware of both the state and federal rights and procedures. In addition, documentation indicates that the district's practices permit the Team, with parental consent, to delay the development of a full or partial IEP until the independent educational evaluation is completed. Where an evaluation has been completed and an eligibility determination made, the Team must develop an IEP.

At the middle school and high school levels, and with respect to students in out of district placements, progress reports are not always submitted to parents at least as often as report cards or progress reports are sent to parents of students without disabilities.

At the high school and middle school levels, and with respect to out-of-district and EDCO Collaborative placements, annual reviews are not always held prior to the expiration of IEPs.

Non-participation justification statements are not always student-specific. In several cases at the middle school and high school levels and in the EDCO program, goals and objectives were repeated from year to year. Behavior intervention plans were not always found when referenced in IEPs. While IEPs contain behavioral goals and services, the PLEP B page of the IEP was either blank or was not completed when required, in particular with cases of students with social-emotional needs and language (LEP) needs.

In instances where students' Teams wish to explore district-wide special education programs, those Teams are required to first refer the cases to an administrative team for consideration, through a "packet process." In these cases, IEPs are not developed until after the packet process has occurred. Although the intent of this process is not to take the placement determination away from the Team, and

the process is intended to result in only a recommendation for programming, staff and parent interviews and documentation contradict this. Specifically, there is a “deadline” by which Teams must make these referrals, and missing this deadline is a common reason students are not placed in one district-wide program. In these cases, IEPs are not developed based on student needs, and the students’ Teams are not empowered to make placement decisions.

The district uses interpreters at Team meetings. Interviews indicate that staff know the process to obtain translations, where required, and staff indicate that provisions are made to ensure that communications are provided in the primary language of the home. However, student record review did not contain evidence of compliance, including copies of translated notices, progress reports and IEPs. In addition, at times, the district orally provides notices to parents in their primary language through the use of interpreters; however, the district does not keep written documentation that notices have been provided in this manner.

The school district has established a district-wide parent advisory council (PAC) on special education, and the PAC has established by-laws regarding officers and operational procedures. The PAC receives assistance from the school committee without charge, upon reasonable notice, and subject to the availability of staff and resources. While the PAC conducts at least one workshop annually within the district on the rights of students and their parents and guardians under the state and federal special education laws, it is not clear that the district is involved in the provision of this workshop. Membership in the PAC is not offered to all parents, and all parents are not made aware of the annual workshop. Interviews indicate that this might result from inconsistent inclusion of PAC notices in school newsletters, which is the primary means by which the PAC provides notification to parents. The PAC does not participate in the evaluation of the school district’s special education program.

While interviews indicate that the current out-of-district coordinator monitors out-of-district placements, student records did not always contain evidence of monitoring. Documentation indicates that [many] special education instructional groupings do not meet regulatory requirements.

[There are] the following issues with licensure: in the Newton North High School, in the Pilot Program, two content area teachers hold special education licensure, but not content area licensure, and one content area teacher has an expired waiver. At Newton South High School, one teacher in the Learning Program, one teacher in the Learning Center, and a teacher in the Compass Program do not hold appropriate licensure.

Bigelow Middle School and Peirce Elementary School did not submit class size documentation.

Documentation submitted by Newton North High School does not include lists of related services instructional groupings; therefore, compliance could not be determined.

The district submitted age span information for only the preschool, Newton South High School, Brown Middle School, Bigelow Middle School, Horace Mann Elementary School, and Oak Hill Middle School. Based on the submitted information the following instructional group exceeds the regulatory requirements: Turnaround program at Newton South High School.

[Compliance with] age span [requirements] could not be determined, as dates of birth were not included in the class lists submitted for [several] schools and service providers.

Rosters for the preschool programs included only the names and dates of births of special education students, but no information about non-disabled students, so compliance with this criterion could not be determined.

The district must create a greater variety of supports at all levels for students whose behaviors impede their learning or that of other students, particularly for students with social-emotional issues and students with serious mental health issues.

Documentation indicates that a speech and language pathologist at Brown Middle School has an expired licensure.

The Department team members toured a sample of the schools in the district and found that buildings provide limitations, which create accessibility, confidentiality and comparability issues.

Newton North High School, which offers the district’s vocational/technical education programs, is not fully accessible. Physically impaired individuals cannot reach all floors, and the cafeteria line includes a turnstile that makes it inaccessible. In addition, the

Pilot Program classrooms at Newton North High School are clustered in a location that does not maximize the inclusion of such students into the life of the school.

In some cases, visually cued fire alarms were not observed in classrooms of hearing impaired students.

The CPR team saw signs indicating special education instructional spaces throughout the district, labeled as “speech,” “learning center,” “ABA,” “OT/PT,” etc.

In some cases, special education services are provided in hallways (Angier and Cabot Elementary Schools) or in a carrel in the library (Oak Hill Middle School). At the Bigelow Middle School, some open spaces are used for small group instruction, and for supporting students. In addition, itinerant service providers often have to find spaces, e.g., empty classrooms, in which to serve students. The use of some of these spaces raises concerns about confidentiality and stigma.

At the Angier Elementary School, stairwells to the stage have been converted into an OT/PT room and a speech room. Similarly, the occupational therapy space at Memorial Spaulding Elementary School is part of the stairwell area. At Franklin and Angier Elementary schools, service providers must share spaces, which reportedly creates distracting environments for students. At the Angier Elementary School, a classroom space is shared by the inclusion specialists, speech therapist and is also used as the book room.

The Early Childhood Program on the ground floor of the Education Center, where more severely disabled preschool students are served, is in part inaccessible. There are no appropriate handicapped-accessible bathrooms. The occupational/physical therapy room is located off the gym, with its entrance behind a cluttered area, which requires staff and students to climb (or be carried) over and around mats and bookcases in order to reach it. In addition, some of the classrooms are in a state of disrepair (in one, unfinished plywood and duct tape cover a radiator that has reportedly been continuously leaking; in another, a window cannot be closed due to a window unit air conditioner; in another, a window is broken). Further, there are radiator covers in the hallways and classrooms in this ground level space that staff reported heat up to a point that they have caused students to become injured. Because of

the location of other offices in the Education Center, disabled preschool students (some of whom have physical impairments) and teachers must negotiate around storage and deliveries left in the hallways in order to get to classes and to and from the bathrooms or gym. And, the ground level entrance for students and the wheelchair van pull-up space are at times blocked by delivery trucks and deliveries. The ABA classroom, where discrete trial work occurs, has no windows. Another classroom serves as an office space for 5-6 staff, as well as the speech room. In addition, the elevator in the Education Center is not fully accessible, due to a gate that has been placed in front of its doors. Due to these issues, these spaces are not comparable to classrooms provided to regular education students. In addition, interviews indicate that the early childhood programs have no accessible playground.

While the district does periodically evaluate its special education programs and services, the district does not use information it gathers from annual IEP reviews to measure the effectiveness of the special education programs. In addition, as part of these evaluation procedures, the district does not measure the success of programs based on students’ local and statewide assessment results, drop out rates and graduation rates for special education students.

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.