

## Too smart for special education?

The definition of ‘effective progress’ in Massachusetts special education regulations, at 603 CMR 28.02(18), reveals that in order for a student’s progress to be deemed effective the progress must be commensurate with the student’s individual educational and developmental potential. The Individuals with Disabilities Education Act (IDEA), our federal law, entitles students with special needs to a free appropriate public education (FAPE). The very purpose of IDEA is to ensure that all children with disabilities receive an education that will permit them to pass MCAS, move on to college if desired, secure employment, and live as independently as possible in their chosen community. (See 20 U.S.C. § 1400(d)).

Nowhere in any law, regulation, or policy is it stated that high intelligence disqualifies a student from eligibility for special education (i.e., having an I.E.P.) In fact, Congress emphasized this by including the following language in the most recent reauthorization of IDEA:

“Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.”

34 CFR 300.101(c)

Despite this, some parents and school staff still believe that a child who possesses great intelligence is, by definition, ineligible for special education. The U.S. Department of Education Office of Special Education and Rehabilitative Services sought to correct this misunderstanding by issuing a frequently cited “policy letter” in 1995. That letter states, in part:

“... underachievement is measured against the student's own ability, and not against a normative performance standard. Thus, each child's educational needs are determined on a case-by-case basis ...”  
Letter to Lillie/Felton U.S. Department of Education

Office of Special Education and Rehabilitative Services. April 5, 1995.

Governmental agencies issue policy letters such as this from time to time when issues and rights require clarification. Although these letters do not carry the full weight of the law they are nearly as persuasive as the law itself because they represent the government’s interpretation of the law. Policy letters are a vital advocacy tool for all parents and educators.

With regard to the matter of intelligence and special education eligibility, the U.S. Department of Education, Office for Civil Rights (OCR) has issued another policy letter discussing a related matter titled: *Access by Students with Disabilities to Accelerated Programs*. Every parent and educator should read and retain a copy of this important letter.<sup>1</sup> It states, in part:

“It is unlawful to deny a student with a disability admission to an accelerated class or program solely because of that student’s need for special education or related aids and services. In general, conditioning participation in accelerated classes or programs by qualified students with disabilities on the forfeiture of necessary special education or related aids and services amounts to a denial of FAPE. If a qualified student with a disability requires related aids and services to participate in a regular education class or program, then a school cannot deny that student the needed related aids and services in an accelerated class or program. The requirement for individualized determinations is violated when schools ignore the student’s individual needs and *automatically* deny a qualified student with a disability needed related aids and services in an accelerated class or program.”

Importantly, the letter also points out that:

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<sup>1</sup> The entire text of the letter can be found at <http://www.ed.gov/about/offices/list/ocr/letters/colleague-20071226.html>

“Please note that nothing ... requires schools to admit into accelerated classes or programs students with disabilities who would not otherwise be qualified for these classes or programs,” and “a [school] ... may not apply eligibility criteria that screen out or tend to screen out an individual with a disability ... unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.”

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