



BillERICA Public Schools

Grade: **F**

Massachusetts Department of
Elementary and Secondary Education
Coordinated Program Review

Summary of
AREAS OF SPECIAL EDUCATION
REGULATORY NONCOMPLIANCE

April 24, 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 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.

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MDESE reviewed Billerica's compliance with 58 different special education regulatory criteria. The district was found to be in compliance with only 32 of these. If we were to grade the district as we typically grade students (percent of questions answered correctly) Billerica would earn a score of 55% ... 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 2006-2007 school year Billerica reported the following statistics for their special education population:

16% of Billerica students with disabilities were identified as Developmentally Delayed (ages 3-9 only.)
4 % of Billerica students with disabilities were identified as Intellectually Impaired.
4 % of Billerica students with disabilities were identified as Multiply Impaired.

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

MCAS Spring 2007- Billerica Percent of Students Scoring Proficient or Better⁷

	All Students	Spec Ed Students	Achievement Gap
Grade 3 Reading	62%	25%	37 points
Grade 3 Math	64%	33%	31 points
Grade 4 English	54%	15%	39 points
Grade 4 Math	48%	15%	33 points
Grade 5 English	65%	22%	43 points
Grade 5 Math	46%	15%	31 points
Grade 5 Science	51%	21%	30 points
Grade 6 English	69%	29%	40 points
Grade 6 Math	58%	29%	29 points
Grade 7 English	76%	35%	41 points
Grade 7 Math	56%	26%	30 points
Grade 8 English	80%	43%	37 points
Grade 8 Math	49%	12%	37 points
Grade 8 Science	29%	8%	21 points
Grade 10 English	77%	28%	49 points
Grade 10 Math	81%	32%	49 points

⁵ See entire report at <http://www.doe.mass.edu/pqa/review/cpr/reports/2008/0031.pdf>

⁶ See 34 CGR 300.8

⁷ <http://profiles.doe.mass.edu/mcas/subgroups2.aspx?linkid=25&orgcode=00310000&fycode=2007&orgtypecode=5&>

Areas of Noncompliance

The following text is taken directly from Billerica Public School's CPR Report dated April 24, 2008.

There are limited assessment options and ... not all special education evaluators are fully trained or aware of a range of options and when it is appropriate to use them. A description of local evaluation standards and procedures was not provided. Assessments conducted in all areas of disability may be limited due to limited assessment options.

Staff has a limited understanding of the criteria for initiating an extended evaluation, or what constitutes an extended evaluation.

District administration is mistaken in its interpretation of the annual IEP review meeting as just a progress meeting. District practice at the annual review Team meeting is to "update" an individual student's current performance portion of the goal template to reflect any changes in performance. Teams do not then consistently change goals and benchmarks, and for some students at certain levels, the goals may not be designed to meet the needs of individual students, but rather a group of students.

Staff have a limited understanding of how and when to consider appropriate assistive technology for a student, and limited knowledge of what is available that may be used to increase, maintain, or improve the functional capabilities of a child with a disability.

Transition plans are not consistently generated or placed in student files. Limited options exist for the development of community experiences, employment, and similar vocational options for students within the district and there is limited awareness of options that do exist.

The needs of students with behavioral issues are not being appropriately met. In programs that serve students with behavioral difficulties, personnel may not be provided with essential materials, may not be providing essential learning opportunities that prepare the students to reach the state graduation standards, and may not understand the connection between the Massachusetts Curriculum Frameworks and the expectations of the state for student performance; as well as understanding the rights of

students with disabilities to be full participants in the general curriculum.

Since the district does not routinely require a Team chairperson who has the authority to commit the resources of the district to attend an annual review, there is no way to assure the services set out in the draft IEP developed at the meeting will be provided.

There is no district wide system for assuring that teachers have access to students' IEPs, and not all staff are aware of their obligations with regard to the implementation of the IEP.

Especially with respect to out of district placements, the district does not consistently, and in an ongoing manner, monitor or oversee the full implementation of the proposed and accepted services.

[There is] a lack of documentation of monitoring plan, and actual monitoring in the files of eligible students who have been placed out-of-district, although one interviewee said they do take place. No written contracts were placed in student files, as required.

Teams do not consistently select the least restrictive placement for all students. Statements regarding the justification for the removal of the student from the general education setting are often inadequate, addressing the disability rather than the individual needs and abilities of the student. Placement in inclusion settings is almost non-existent district wide and interviews suggest that students may be being removed from the general education setting without considering whether a modification in the curriculum might suffice to meet the student's need. Overall, staff have limited understanding of the requirements for providing the Least Restrictive Environment and are not routinely aware of placement options, building based, and/or system wide.

Progress reports are not consistently documented in student files and not all staff are aware of the required processes and procedures for reporting on individual students' progress toward their goals.

Students in substantially separate settings do not, in all cases, have equal opportunity to participate in nonacademic, extra curricular and ancillary programs, such as art, music and physical education, especially with regard to work-study and employment opportunities.

While the district may initially waive the resolution session in favor of scheduling mediation, it often cancels those same mediation sessions, leaving parents with limited options while significantly extending the amount of time a dispute over services and/or placement for an individual student is at issue.

The district ... does not yet routinely translate communications into the primary language of the home.

The Learning Center at the high school, which is described as a small group pull-out setting for academic support, has as many as 27 students in some sections.

Classroom spaces used for the Bridge to Work program were not being adequately maintained and furnished to allow students with behavioral issues to access the curriculum at the high school. There is also a substantially separate group housed in a portable classroom and sharing space with the instrumental music program at the Vining School.

Some personnel providing direct special education services described in IEPs are not appropriately certified or waived.

There is no evidence of a district wide strategy to assure that all staff, including both special education and general education staff are regularly trained with regard to state and federal special education requirements and related local special education policies and procedures; analyzing and accommodating diverse learning styles of all students in order to achieve an objective of inclusion in the regular classroom of students with diverse learning styles; and methods of collaboration among teachers, paraprofessionals and teacher assistants to accommodate diverse learning styles of all students in the regular classroom.

The district does not have procedures in place to regularly evaluate special education programs.

The district does not make a concerted effort to engage in outreach to, or liaison with, the local community [to locate students possibly in need of special education services.]

The district has limited options available to provide support under the district's general education program when the student does not need any direct services, or when the student's lack of progress is

due to a lack of instruction in reading or mathematics, limited English proficiency, social maladjustment, or is due to an inability to meet the school discipline code, but is not due to a disability. This lack of support services and appropriate instructional programs for students across a broad continuum of needs may have resulted in the over-identification of students in need of special education within the district.

While the Administrator of Special Education is appropriately licensed, he is not consistently ensuring compliance with all federal and state 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.