



SPEDWatch
Special Education Activism

Broken Promises:

Special Education in Massachusetts

April 1, 2007

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Every day, Massachusetts schoolchildren with disabilities suffer the devastating effects of educational neglect.

Although Congress passed legislation over thirty years ago guaranteeing these students appropriate special education support, our public schools routinely deny them the services they need to succeed.

This report details the pervasive and egregious nature of school district noncompliance with special education laws, and its human consequences. The numbers are all here. But more importantly, so are the voices of frustrated parents who have been thrust into battle with an educational system that is supposed to be helping their children.

The Massachusetts special education system is irretrievably broken. It has not, and cannot, educate our children as Congress intends.

SPEDWatch is a non-profit group that believes every child has a fundamental civil right to an appropriate education. We are organizing a civil rights movement to ensure that all Massachusetts schoolchildren with disabilities receive the education to which they are legally entitled.

Join us. The children are waiting.

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Executive Director
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This report is dedicated to
the students, parents and educators
who continue to strive for excellence
despite the obstacles thrown in their paths



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Executive Summary

Massachusetts has a proud heritage as a pioneer in championing the rights of students with disabilities. In 1974, our state enacted Chapter 766, guaranteeing all of our students with special needs instruction and services that would meet their unique needs. Taking its cue from Massachusetts, and modeling its work on Chapter 766, Congress passed the Education of All Handicapped Children Act (later renamed the Individuals with Disabilities Education Act, or IDEA) in 1975. Over the years Congress has reiterated that the purpose of the IDEA is to ensure that public schools provide these students with services that will prepare them for further education, employment, and independent living.

Not all children with disabilities qualify for special education services, however. In Massachusetts, eligibility requires that certain criteria be met. The student must fall into one or more of several disability categories defined in special education law. The disability must prevent the student from making effective progress, and they must need specialized instruction and/or related services in order to make effective progress. Students who do qualify receive an Individualized Education Program (IEP,) a document that details the content of their educational plan. Parents receive regular progress reports, the IEP is updated annually, and the student is reevaluated every three years to determine if they still meet all eligibility criteria.

Unfortunately, special education has never been adequately funded, nor have special education laws ever been effectively enforced.

In 1975, Congress made a commitment to fund 40 percent of the cost of special education. Currently, the federal government provides only 18 percent towards these costs, and it has rarely contributed any more than this in the law's thirty-year history.

In Massachusetts, the cost of special education is included in the 'foundation budget' formula that sets the amount of education aid school districts receive from the State. In addition, the state's "circuit breaker" program allows school districts to seek partial reimbursement for the cost of individual students' programs that exceed a specific dollar amount. Despite this, educational advocates and administrators have long asserted that funding falls far short of what districts need to meet their obligations to students with special needs.

Lack of sufficient funding has placed school districts under enormous financial pressure. Although no district would ever admit it, a common response to this budgetary stress is simply to deny students the special education services they need to succeed.

But how can this be? Aren't there consequences for breaking special education laws? In a word: no.

Noncompliance with special education laws has been rampant in our state's public schools for years. Between July 1, 2004 and June 30, 2005, the Massachusetts Department of Education (MASSDE) documented 1,159 cases of noncompliance statewide. As of February 1, 2007, 31% of these violations had still not been corrected.

The United States Department of Education (USDE) has cited the MASSDE *eight times in the last sixteen years* (most recently in March 2006) for failing to adequately document that our local school districts are complying with special education laws.

The consequences for Massachusetts students with disabilities have been disastrous. Denied the services they need to succeed, they are failing in overwhelmingly high numbers. It is important to keep in mind that only 8-9% of these students have the kinds of significant cognitive impairments that make it impossible to master standard grade level curriculum. The vast majority (90%) are as intellectually capable as their non-disabled peers. Yet their failure rate is staggering, and the MASSDE has no plans to effect any meaningful improvement in their achievement.

On the 2006 MCAS exams, only 26.1% of students with disabilities scored in the proficient range (or above) in English Language Arts. For Math, the figure was 15.5%. The MASSDE has set a target that by 2011 these figures will have risen by only 2.1% and 2.7% respectively.

Likewise, while the four-year graduation rate for all students currently stands at 79.8%, for students with disabilities the rate is only 61.6%. MASSDE expects to increase this rate by only 1.4 percentage points (to 63%) by the year 2011.

Sadly, none of this is particularly surprising given the research findings published by the National Council on Disability in their January 2000 report, *Back to Schools on Civil Rights* which included the following commentary:

“Federal efforts to enforce [special education] law over several Administrations have been inconsistent, ineffective and lacking any real teeth. Lack of accountability, poor enforcement, and systemic barriers have robbed too many students of their educational rights and opportunities... and have produced a separate system of education for students with disabilities rather than one unified system that ensures full and equal ... access for all students.”

Parents of these students are overwhelmed with frustration. They try to advocate for their children, but encounter roadblocks at every turn. Unless they have a firm understanding of the law, *and* the ability to craft legally sound and persuasive arguments, they are easily out-manuevered by school administrators who are focused on cost control. Parents who hire professional advocates or attorneys sometimes succeed in securing the services their children need, but most families cannot afford the cost of such help. Low-cost, no-cost support from the state’s non-profit, legal advocacy centers (Disability Law Center, Massachusetts Advocates for Children, Children’s Law Center, and others) is only available to families who meet certain income guidelines, or whose case meets the center’s identified priorities.

Our special education system has made it virtually impossible for school districts and parents to work in partnership on behalf of students with special needs. It forces teachers who care deeply about children to remain silent while their students struggle and fail. It pits parents of students with disabilities against those without, in the desperate scramble for scarce education resources.

A child’s access to quality education, like their access to quality health care, directly impacts their standard of living for the rest of their lives. The damage done by educational neglect, like that of physical neglect, is significant and often irreversible. The education of our children, all our children, is the foundation upon which the strength of our knowledge-based economy depends. This fact takes on particular importance at this time in our commonwealth’s history, when unprecedented numbers of young, educated professionals are leaving the state.

Education is one of the most fundamental civil rights our country guarantees its citizens. This is, at its core, a civil rights matter. The plight of Massachusetts students with disabilities is no different than that of other disenfranchised groups before them whose civil rights were systemically denied.

History tells us that inequitable treatment of marginalized groups will persist until the oppressed people themselves rise up to demand change. So it was in the 1920s when women fought for the vote. So it was in the 1950s and 1960s when African Americans fought for equal rights. So it will be for students with disabilities in our public schools.

Massachusetts students with special needs, and their parents, are trapped in an educational system that places budget considerations above the needs of children. Capable students are failing, despite possessing the intellectual capacity to succeed. Our state department of education has set insultingly low expectations for the achievement of students with disabilities. Our public schools regularly violate their educational rights, and we cannot rely on our government to enforce those rights.

SPEDWatch believes that increased funding, committed government enforcement, and greater parent access to legal representation are among the critical changes that are needed to address the inequities in our educational system. These will not, however, alter the underlying cause of the discriminatory climate described in this report: society's silent endorsement of these conditions. That will require a true civil rights movement.

SPEDWatch is a non-profit, parent-driven group that is organizing citizens into a civil rights movement to secure true educational equality for Massachusetts schoolchildren with disabilities. It is our fervent hope that educators, legislators, business leaders, and other sectors of society will join us.

We will, however, act independently if necessary. As parents, we have no other choice.

Introduction

The Origins of Special Education Law ¹

Massachusetts has a proud heritage as a pioneer in championing the rights of students with disabilities. In 1974, our state enacted Chapter 766, guaranteeing all of our students with special needs instruction and services that would meet their unique needs. Taking its cue from Massachusetts, and modeling its work on Chapter 766, Congress passed the Education of All Handicapped Children Act (EHA) a year later.

Before enactment of these laws, children with disabilities had no right to a public school education. Many were excluded from school entirely. Others were lumped together in generic, segregated classrooms away from the 'normal' children. Often they were taught in basements, trailers, and closets. And it was all perfectly legal.

The advocacy movement that arose to fight these discriminatory practices was closely aligned with the civil rights movement of the 1950s and 60s. The U.S. Supreme Court's landmark decision in *Brown v. Board of Education*, 347 U.S. 483 (1954) opened the door with its assertion that black children had a legal right to the same education as white children, and that public school segregation violates a student's fundamental civil right to equal treatment.

Spurred on by the *Brown* decision, parents of students with disabilities began to challenge the exclusion of their children from America's public schools. Two cases in particular were instrumental in bringing about passage of our country's first special education law:

Pennsylvania Assn. for Retarded Children v. Commonwealth, 334 F. Supp. 1257 (E.D. Pa. 1971) which dealt with the exclusion of mentally retarded children from public schools; and,

Mills v. Board of Education of District of Columbia, 348 F. Supp. 866 (D. DC 1972) which addressed the practice of suspending, expelling and excluding 'exceptional' children from public schools.

Congress ordered an investigation into the status of our nation's school age children with disabilities and discovered that:

- 1.75 million children with disabilities were not receiving any education at all.
- 200,000 school age children with disabilities were institutionalized.
- 2.5 million children with disabilities, although attending school, were receiving a substandard education. (At 1432)

In describing the social and economic consequences of failing to educate students with disabilities, Congress stated:

¹ From: Peter W.D. Wright and Pamela Darr Wright, *Wrightslaw: Special Education Law*, Hartfield, Virginia: Harbor House Law Press, 2004, pp. 8-10.

"The long-range implications of these statistics are that public agencies and taxpayers will spend billions of dollars over the lifetimes of these individuals to maintain such persons as dependents and in a minimally acceptable lifestyle. With proper education services, many would be able to become productive citizens, contributing to society instead of being forced to remain burdens.

"Parents of handicapped children all too frequently are not able to advocate the rights of their children because they have been erroneously led to believe that their children will not be able to lead meaningful lives ... It should not ... be necessary for parents throughout the country to continue utilizing the courts to assure themselves a remedy." (At 1433)

On November 19, 1975 the EHA was signed into law so that all children with disabilities would "have a right to education, and to establish a process by which State and local educational agencies may be held accountable for providing educational services for all handicapped children." (U.S.C.C.A.N. 1975 p. 1427)²

The EHA has since been reauthorized several times. During its 1990 reauthorization it was renamed the Individuals with Disabilities Education Act (IDEA,) which is the federal law that now governs the provision of special education to our nation's eligible students.

The Special Education Entitlement

Exactly what are eligible students with disabilities entitled to? Congress has stated that the purpose of the IDEA is to:

(a) ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and,

*(b) to ensure that the rights of children with disabilities and parents of such children are protected.*³

The term Free Appropriate Public Education (FAPE) refers to the federal standard of services that a public school district must provide for an eligible student with a disability. FAPE is defined in the IDEA regulations as:

Free appropriate public education or FAPE means special education and related services that--(a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA⁴, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school

² *United States Code Congressional and Administrative News 1975*

³ Code of Federal Regulations at 34 CFR 300.1

⁴ The standards of the SEA (state educational agency, in this case the Massachusetts Department of Education) is the content of the Massachusetts Curriculum Frameworks.

education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) ..."^{5,6}

In addition to the federal FAPE standard, Massachusetts regulations contain an educational standard called Effective Progress, used to assess whether or not a student is learning and developing at an acceptable rate. Effective Progress is defined as:

*Progress effectively in the general education program shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to the chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district. The general education program includes preschool and early childhood programs offered by the district, academic and non-academic offerings of the district, and vocational programs and activities.*⁷

Together, the FAPE and Effective Progress standards make clear that eligible students with disabilities are entitled to the specialized instruction and services necessary for them to be as successful as they are capable of being -- not only in school, but in life.

⁵ An individualized education program (IEP) is a written document that describes in detail the content of a student's educational plan. The IEP is explored in more detail on pages 11-12 of this report.

⁶ 34 CFR 300.17

⁷ Code of Massachusetts Regulations at 603 CMR 28.02(18)

The System

The Massachusetts special education system is complex, governed by federal and state special education statutes and regulations, along with other related laws. The following is a brief overview of how the system is meant to operate.

Determining Eligibility

The process begins when a student is referred for a school evaluation to determine if s/he is eligible to receive special education services. School staff and the student's parent(s) discuss the evaluation results and determine if the student meets Massachusetts' special education eligibility criteria. Not all students with disabilities will qualify for special education. Eligibility requires that all four of the following criteria be met⁸:

1. The student fits into one or more of the disability categories defined in special education regulations⁹:

Autism	Developmental Delay (ages 3-9 only)
Intellectual Impairment	Hearing Impairment
Vision Impairment	Deaf-Blind
Neurological Impairment	Emotional Impairment
Communication Impairment	Physical Impairment
Health Impairment	Specific Learning Disability

2. The student is not making effective progress (see page 10.)
3. The student's lack of effective progress is due to the disability.
4. The student needs specialized instruction, and/or a related service (such as speech, physical, or occupational therapy) in order to make effective progress.

The Individualized Education Program (IEP)

If the student is eligible for special education, an Individualized Education Program (IEP) is developed by the school IEP Team. The IEP is a written document specific to that individual student that details the content of the student's educational plan, including information about:

- How the student's disability affects their participation in all aspects of school life (academic and non-academic activities.)
- The accommodations, modifications, specially designed instruction, and related services that will be provided for the student.
- Goals (expressed in measurable terms) that the student is expected to meet by the end of the school year.

⁸ 603 CMR 28.05(a)

⁹ See Appendix A for detailed definitions of each disability category.

The IEP is a legally binding document. All services, instruction, modifications and accommodations described therein must be provided. If something is not documented within the IEP, the school has no obligation to provide it.

Progress Reporting

Parents of students receiving special education support must be given periodic reports of their student's progress toward meeting each goal in their IEP. In Massachusetts, progress must be reported at least as frequently as parents are informed of their non-disabled childrens' progress.

Annual IEP Review

The IEP Team must meet at least once every year to review and update the student's IEP goals and services, as needed. This ensures that the student's educational programming keeps pace with their progress and changing needs.

Three-Year Reevaluation

Finally, students must be reevaluated by their school district at least once every three years to determine if they are still eligible to receive special education services. If the student remains eligible, the cycle of IEPs, progress reporting, and annual IEP reviews repeats until the next three-year reevaluation occurs.

Dispute Resolution

It is not unusual for parents and school districts to have disagreements about a child's special education services. When these disagreements cannot be resolved at the local level, several options are available.

Bureau of Special Education Appeals ¹⁰

The Massachusetts Bureau of Special Education Appeals (BSEA) handles disputes that concern a student's special education eligibility, programming, or school placement. The BSEA consists of eight hearing officers (all of whom are attorneys) and eight mediators. The BSEA is located within the Massachusetts Department of Education (MASSDE,) but is independent from it.

Three levels of dispute resolution are available through the BSEA:

Mediation

Mediation is a voluntary and confidential process available at no cost. In mediation, an impartial BSEA mediator helps the parties clarify the disputed issues and underlying concerns, discuss options, and collaborate to try to reach mutually satisfying agreements that address the needs of the student. The mediator does not decide how the dispute will be resolved, but merely facilitates the negotiation process between the parent and school. If some or all of the issues are resolved, the mediator helps produce a written agreement which is legally binding on all parties.

Advisory Opinion

The advisory opinion process is available only to parties who have already formally requested a due process hearing (see below.) Each party has one hour to give a brief presentation of its case after which a hearing officer issues a written, non-binding opinion within an hour of the close of the presentations. The parties may agree prior to the commencement of the process, apart from the hearing officer, to make the resulting opinion binding.

Due Process Hearing

A due process hearing is a formal administrative proceeding conducted by a hearing officer in accordance with BSEA Hearing Rules, MASSDE and IDEA regulations, and the Massachusetts Administrative Procedure Act -- Formal Standard Adjudicatory Rules of Practice and Procedure.

During a hearing, each party presents evidence (through documents and the testimony of witnesses) to support its position. The parties also have the right to cross-examine witnesses, submit rebuttal evidence, and present oral and/or written argument to the hearing officer. The hearing officer's decision is based upon the evidence presented and any relevant legal principles.

¹⁰ Massachusetts Department of Education web site <http://www.doe.mass.edu/bsea/> Accessed February 17, 2007

The decision of the BSEA hearing officer is a final agency decision and is not subject to reconsideration by the BSEA or the Department of Education. The decision may be appealed to the Massachusetts Superior Court or the United States District Court within 90 days from the date of the decision.

Office for Civil Rights

The United States Department of Education (USDE) Office for Civil Rights (OCR) enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the USDE. Individuals who feel a student with a disability has been subject to discrimination by a school can file a complaint with OCR who will then conduct an investigation if warranted. OCR will also investigate allegations of retaliation against parents or others who have engaged in advocacy activities on behalf of students with special needs.

School District Noncompliance

Program Quality Assurance

If a parent feels their school district has violated a special education law, regulation, or policy, they may file a complaint with the MASSDE Program Quality Assurance (PQA) Department. The PQA is staffed by Educational Specialists (also called Liaisons) who investigate complaints and issue findings. Each school district has an assigned MASSDE Liaison.

In most cases, the Educational Specialist will issue a finding within 60 days of its receipt of a complaint. If it is determined that the school district has violated a law, regulation or policy, PQA will document the actions the district has taken, or must take, to resolve the complaint.

Between July 1, 2004 and June 30, 2005, the PQA documented 238 instances of special education noncompliance by Massachusetts public schools.¹¹

The PQA does not consider appeals of its decisions. If an individual believes that the Department's determinations are based on incomplete and/or inaccurate information, the Educational Specialist who investigated the complaint may be contacted again and requested to consider any additional information that may influence the outcome of a previous determination. PQA only investigates complaints that are filed within one year of the alleged violation's occurrence.

Coordinated Program Review System¹²

In addition to parent initiated complaints alleging noncompliance, the MASSDE oversees local school district compliance with special education law through its Coordinated Program Review (CPR) System. Each public school district and charter school in the commonwealth receives a comprehensive Coordinated Program Review every six years.

For the CPR, MASSDE 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 MASSDE staff, together with any necessary outside consultants, conducts the CPR over a two to ten day period. During this time the MASSDE team interviews administrative, instructional, and support staff across all grade levels; as well as selected parents and others who ask to be interviewed. A representative sample of student records is reviewed, and classroom and facility observations are conducted.

¹¹ *Massachusetts Part B Annual Performance Report for FFY 2005*. February 1, 2007. Massachusetts Department of Education. <http://www.doe.mass.edu/sped/spp/full.pdf>

¹² *Coordinated Program Review Procedures, School District Information Package, Special Education, School Year 2006-2007*. Massachusetts Department of Education. <http://www.doe.mass.edu/pqa/review/cpr/instrument/sped.pdf>

MASSDE assigns a rating to each compliance criterion it reviews, as follows:

Commendable	Any requirement or aspect of a requirement implemented in an exemplary manner significantly beyond the requirements of law or regulation.
Implemented	The requirement is substantially met in all important aspects.
Partially Implemented	The requirement, in one or several important aspects, is not entirely met.
Not Implemented	The requirement is totally or substantially not met.
Not Applicable	The requirement does not apply to the school district or charter school.

Upon completion of the CPR, MASSDE 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 with the respective statutes or regulations. These plans are subject to MASSDE's review and approval.

921 findings of special education noncompliance were documented in CPR reports published between July 1, 2004 and June 30, 2005. As of February 1, 2007, 38% of these 921 findings of noncompliance had still not been corrected.¹³

MASSDE 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 laws and regulations.¹⁴

Analysis of Recent CPR Reports

SPEDWatch analyzed 50 school district CPR Reports that were released to the public between November 1, 2005 and October 31, 2006. Each report details the MASSDE's findings across 62 different special education requirements. SPEDWatch's analysis grouped these 62 requirements into 9 general areas of special education law, as follows:

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

¹³ *Massachusetts Part B Annual Performance Report for FFY 2005*. February 1, 2007. Massachusetts Department of Education.

¹⁴ *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

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 the IEP Team to respond quickly when progress is not being made as expected. Without proper progress reporting a student can easily 'fall through the cracks.' The student's failure, and the district's outlay of funds for services that are ineffective, can go undetected for an entire school year, or more.
3. Timelines - Before a student can receive needed services s/he must be evaluated; the Team must convene to make decisions about eligibility, educational programming and placement; and those decisions must be written into an IEP for the parent's acceptance. 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 may have to wait as long as two and a half months before receiving 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 upheld. For that reason, regulations require that school personnel be knowledgeable about 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 - 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 focus on 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 effectiveness of their district-wide 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 business sense since they 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.

8. Service Locations - Recognizing the harm done by the many years of segregation experienced by students with disabilities prior to enactment of the EHA, Congress included in the law a strict mandate that these students be educated alongside their non-disabled peers to the maximum extent appropriate.¹⁵ 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 recognizes that in school, the behavioral manifestations of disability are often inappropriately treated as discipline problems. For that reason, IDEA 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. IDEA limits a school's ability to punish children for disability-related behavior.¹⁶ Even when a student with a disability is properly suspended or expelled from school, s/he must still be provided with a free appropriate public education, albeit in a different location.

On these nine measures of compliance, the 50 school districts performed as follows¹⁷:

- 70% Failed to consistently comply with regulations regarding student evaluation.
- 86% Failed to consistently comply with requirements for reporting student progress.
- 68% Failed to consistently meet regulatory timelines.
- 48% Failed to provide staff with mandated training.
- 80% Failed to consistently develop IEPs according to regulatory requirements.
- 46% Failed to properly evaluate the overall effectiveness of their special education programming.
- 50% Failed to ensure that all required staff consistently participate in Team meetings.

¹⁵ Note that regulations require students to be included in regular education programming to the maximum extent 'appropriate,' not to the maximum extent 'possible.' This is an important distinction, intended to safeguard the rights of *all* students to a quality education.

¹⁶ This does not mean school officials are powerless to intervene. The IDEA gives school officials the right to consider any unique circumstances on a case-by-case basis when contemplating the removal of a student from school. In addition, school authorities have the right to remove a student from the school, even over parental objections, if the student possesses a weapon, possess or uses illegal drugs, or has inflicted serious bodily injury upon another person. [IDEA statute at 615(k)(1)(A) and (G)]

¹⁷ Please note that degree of noncompliance can vary. A district may have violated a regulation in only a few instances, or it may have violated a regulation in many instances. However, SpEdWatch includes each finding of noncompliance in this analysis because, regardless of the *degree* of noncompliance with a given criterion, MASSDE's final determination was that the district had not met the regulatory requirement in one or several important aspects.

62% Provided at least some services in substandard or segregated locations.

50% Failed to consistently adhere to regulatory requirements when addressing behavioral and disciplinary matters.

The following excerpts from some of these 50 MASSDE Coordinated Program Review reports¹⁸ illustrate just how perilous it is for schoolchildren with disabilities in our public schools.

Adams-Cheshire Regional School District

Staff members incorrectly believe that a school day may be shortened for students with behavior problems. Some special education students ... now have a shorter day and do not have access to art and music or other exploratory programs with other students. (March 8, 2006)

Barnstable Public Schools and Barnstable Horace Mann Charter School

In several instances in both the Barnstable Horace Mann Charter School and the district, parents were required to seek evaluations outside of the district that should have been conducted by the district.

Some special education and regular education teaching staff members have outdated education licenses. Copies of outdated waivers were submitted for five teachers, and one of the special education teachers at the Centerville Elementary School does not hold appropriate special education certification or a waiver. (October 5, 2006)

Blackstone-Millville Regional School District

Assessments administered do not always link to the original referral issues. The evaluator does not include educational achievement testing, receives minimal input from the student's teachers and does not collect data from multiple sources. The findings from the assessments are based upon anecdotal and personal observations, rather than professional, content based standards. The evaluations also contain gender and cultural bias and statements regarding the student's needs that are based upon his/her physical appearance. (March 30, 2006)

Douglas Public Schools

It is not evident that all Team Chairs or Special Education Liaisons know what a disability is and how to select assessments for students suspected of having a disability. In some instances, a person with limited knowledge of reading is a primary diagnostician for determining reading services. (June 8, 2006)

Hampden-Wilbraham Reg. School District

IEP Teams are not consistently and effectively using the evaluation data to guide development of measurable, annual goals for the student. There was little to no evidence of specially designed instruction for students in full or partial inclusive regular education settings.

Not all staff who provide special education services hold appropriate licensure for the areas that they teach. Not all related service providers hold appropriate credentials or licenses from the relevant professional standards board or agency for the profession. Special education programs, services and administrative areas are not regularly evaluated to determine the effectiveness of the programs and services and to identify areas of need. (October 25, 2006)

Lee Public Schools

The Team does not consistently consider the use of positive behavioral interventions, including behavior intervention plans, for those students whose behavior impedes their learning and/or the learning of others. (September 27, 2006)

Medford Public Schools

Assessments ... do not always address the specific areas of the student's need and suspected disability. Progress reports do not

¹⁸ CPR Reports for all public school districts are available at <http://www.doe.mass.edu/pqa/review/cpr/reports/>

always address the progress or lack of progress made towards the annual IEP goals. When students were not making progress, evidence that the IEP Team had convened to address the lack of progress was inconsistent.

IEP Teams do not always consider goals and/or interventions, such as the need for counseling services, for students with behavioral and/or social-emotional needs who are placed in full or partial inclusion settings. There were no procedures established system-wide regarding the steps to take when a student is failing to make progress towards the annual IEP goals and/or exhibiting recurring issues in maintaining classroom/school-wide behavior, achieving passing grades or demonstrating consistent school attendance. IEP goals at the secondary level, specifically the high school and the vocational school, are not always measurable and do not always pertain to the student's need for specialized instruction.

The review team noted a need for increased training in the identification of disabilities, classroom application of instructional strategies and accommodations for different disabilities and diverse learning styles.

In general, Medford Vocational Technical High School (MVTHS) students are not held to the same rigorous standards and expectations as are students enrolled at Medford High School (MHS). The vocational school does not always ensure that students with disabilities are provided with full access to the general curriculum in the least restrictive setting. (January 6, 2006)

Mount Greylock Regional School District

Staff have not participated in required yearly training on state and federal special education requirements and related local special education policies and procedures. (October 25, 2006)

Needham Public Schools

At the middle school level, staff interviews indicate that eligibility determination Team meetings do not include all of the required participants. (December 5, 2005)

Newburyport Public Schools

The district has three related service providers who are not appropriately licensed. The spaces used to provide special education instruction at the Kelly and Bresnahan Schools are not

comparable to the average standards of general education facilities and classrooms. Many of the instructional spaces at the Kelly School are the size of closets and not appropriate for instruction. Physical therapy is provided in an inappropriate space in the basement. Spaces at the Bresnahan are shared by teachers and service providers and are too small for the number of activities and people who use them at the same time. The pullout tutoring resource room is located in an area isolated from the general education classrooms. (April 28, 2006)

North Shore Technical High School

The school does not provide assessments in all areas related to the suspected disability. Although there were students whose behavior impeded their learning or the learning of others, IEP Teams did not recommend functional behavioral assessments, the development of behavioral interventions or counseling as a related service for these students. (October 25, 2006)

Norton Public Schools

Record review showed little evidence that Teams reconvened when a student failed to make effective progress. Interviews indicate that IEP implementation is inconsistent throughout the district. There is no formal procedure or consistent oversight of IEPs nor is there adequate quality control of services contained in the IEPs.

There is a lack of oversight and monitoring district-wide regarding compliance with the federal and state special education laws. There is a lack of documented evidence that the Administrator of Special Education supervises the special education personnel who are delegated to carry out the majority of the administrative duties.

At least one special education teacher in the district is not licensed in the appropriate area, and is practicing without a waiver from the Department. Board certifications for several related service providers were not submitted with the district's documentation. Some related service providers have recently-expired state certifications, and the district did not provide evidence that they had started the renewal process.

The district does not provide regular training regarding state and federal special education

requirements and related local special education policies and procedures. (June 12, 2006)

Old Colony Regional Vocational Technical High School

Not all special education students have access to physical education or foreign language. Additionally, senior special education students do not have access to the full range of senior English classes that are available in the district. (February 23, 2006)

Oxford Public Schools

The school district is not consistently determining whether a student is eligible for special education and providing a proposed IEP to the parent within the forty-five school day time frame.

Progress reports ... do not consistently include written information on the student's progress toward the annual goals in the IEP. The district does not always address or document the steps taken when a student is failing to make progress towards the annual IEP goals. IEP Teams are not consistently and effectively using the evaluation data to guide development of measurable, annual goals for the student. Not all required related services, such as speech therapy, are provided in full to all students as indicated on the students' IEPs. A 1:1 aide is removed from assisting a student to provide translation services for the district.

Not all aides, including those in Project Success, are provided adequate training to assist them in providing special education or related services particularly when they are initially assigned to a duty.

Not all students are fully integrated into all facilities and classrooms in the middle and high schools. At the middle school, the classroom that provides life skills training has electrical outlets near sinks that students use that [do] not [have] ground-fault circuit interrupters (GFCI). At the A.M. Chaffee School, the related services are provided in a space that is small and does not allow for privacy. At Project Coffee, the small engine repair shop is housed in a very cluttered educational space.

The district conducted a needs assessment in 2004 and a general evaluation of the special education program in 2003; however, the special education evaluation is not comprehensive and does not include analysis or information

regarding the program's effectiveness in assisting students with disabilities to achieve the goals set forth in their IEP's in the least restrictive environment. The documentation does not indicate any follow-up activities regarding the 2003 and 2004 reports. (July 27, 2006)

Petersham Public Schools

Assessment(s) are not always conducted in all areas related to the suspected disability(ies). Interviews and a review of the documentation indicated limited understanding of the elements to determine if a student is making effective progress in school. Progress reports ... do not consistently include written information on the student's progress toward the annual goals in the IEP. Some progress reports do not address individual goals.

IEP Teams are not consistently and effectively using the evaluation data to guide development of measurable, annual goals for the student. The IEPs are not consistently completed addressing all elements of the most current IEP format provided by the Department of Education. Some dates and information on the service delivery grids were missing or inaccurate. Not all staff understand their responsibilities related to the implementation of the student's IEP. The district does not consistently ensure that IEPs are implemented without delay.

The duties of administrating the special education program are the responsibility of the school principal. This results in a lack of oversight and monitoring district-wide regarding compliance with the federal and state special education laws.

Paraprofessionals and assistants do not always have the appropriate training to assist in providing special education or related services and do not consistently receive supervision.

Staff have not participated in required yearly training on state and federal special education requirements and related local special education policies and procedures. Special education programs, services and administrative areas are not regularly evaluated. (June 22, 2006)

Pittsfield Public Schools

The district does not consistently complete all required assessments. Educational assessments that are completed do not contain all required elements.

Students in the Hibbard Alternative Education Program do not consistently have access to curriculum that prepares them to reach state graduation standards. Students in the Hibbard Alternative Education Program and Teen Parenting Program do not have an equal opportunity to participate in vocational, supportive, or remedial services that may be available as part of the general education program as well as non-academic and extracurricular programs of the school.

Three special education teachers are not currently appropriately certified. One related service provider is not currently appropriately certified, licensed, board-registered or otherwise approved.

The Hibbard Alternative Education Program is located in a facility that does not meet any of the four standards [for equal quality of physical space]. Related services are either not consistently provided in dedicated spaces or are provided in spaces that are not equal in all physical respects to the average standards of general education facilities. (September 27, 2006)

Plainville Public Schools

Record review indicated inconsistencies in the overall quality of evaluation reports. In some cases the reports are not written in layman's terms, and are therefore not easily readable. Furthermore, some of the reports do not contain recommendations - instead, they indicate that "recommendations will be made at the Team meeting." Recommendations ought to be included in evaluation reports. (September 13, 2006)

Plymouth Public Schools

Progress reports [did] not always relate to the IEP goals. In some cases there was a lack of progress noted, yet the progress report did not describe what would be done to address the lack of progress.

IEPs are not always fully completed. The content under specially designed instruction was not as individualized as it should be. Some of the goals on IEPs were not measurable. Several IEPs were not internally consistent. For example, concerns were expressed about reading and math ... yet the IEP centered on speech and language. In some cases services were based on availability rather than need, and in other cases

not all needs were considered in the development of the IEP. Two students in Project Growth were provided a shorter day due to staff needs for preparation.

Not all groupings were appropriately staffed. Classrooms for students with special needs were clustered in an area of the building so as to minimize inclusion of students into the life of the school at Plymouth South High School, West Elementary School and Federal Furnace Elementary School. Additionally, the signs indicating "special services" result in stigmatization of eligible students at West Elementary School and Federal Furnace Elementary School. (August 28, 2006)

Saugus Public Schools

At the middle school a room used for physical therapy was unheated. At the high school the Affective Education classroom is a large space with a partial divider separating two groups of students, the ceiling was very high and the acoustics not optimal for the two groups. Also, the space was in a former metal shop area and down a corridor that was cut off from the rest of school life. (June 1, 2006)

Shirley Public Schools

The district does not consistently complete the eligibility process within regulatory timelines. (May 24, 2006)

Sudbury Public Schools

Academic assessments conducted at the middle school are not always tailored to assess specific areas of educational need and related developmental needs. Students are often assessed with the same academic testing instrument irrespective of disability type. The district does not consistently complete student evaluations for students at the elementary and middle school levels within [the required timelines.] (July 10, 2006)

Sutton Public Schools

IEP Teams are often determining services based on program availability rather than the needs of the students. (October 23, 2006)

Tri-County Regional Vocational High School

[Progress] reports do not always address the students' specific progress made toward the IEP goals.

Not all teachers who are designated to have duties under an IEP fully understand their responsibilities for implementing the services. Not all paraprofessionals and assistants have received training to assist in the provision of special education services and related services. Paraprofessionals are not consistently informed of their obligations to implement the requirements on the student's IEP for which they are assigned and can at times be called away from their instructional support duties to assist in other non-special education duties. (September 22, 2006)

Tyngsborough Public Schools

Speech and language pathologists did not have both state board licenses as well as state Board of Education certification.

The following inappropriate location of spaces for the delivery of special education services [were observed]: Occupational Therapy in the boys locker room at the Middle School;

Physical Therapy on a stage at the Early Childhood Center, in the hallway and cafeteria at the high school, and on a walkway at the Middle School. (April 25, 2006)

Wayland Public Schools

The district has significant problems in meeting the timeline for determination of eligibility and/or the provision of documentation to the parents forty-five school working days after the written consent. Testing is generally completed and a Team meeting held within the appropriate time frame, however the proposed IEP is often delayed because it must go to the Director of Student Services for review and authorization. Because of the volume of students with special needs the proposed IEPs are often two weeks to two months late in being issued to the parents. (August 25, 2006)

Wellesley Public Schools

Progress reports at the elementary level do not always predict whether the student will achieve the goal by the end of the IEP period. Progress reports at the elementary level also do not always indicate what would happen if goals are not met. At the high school level student goal progress outcomes are not clear.

The Fiske and Hardy schools label classrooms as special education. The high school classroom space is inadequate for the number of individuals enrolled in those special education classes. The Hardy and Upham schools are utilizing raised stage areas that are not handicapped accessible for providing physical and occupational therapy services. (January 30, 2006)

Other Districts Included in the Analysis

Acton Public Schools
Acton-Boxborough Reg. School District
Berkshire Arts & Technology Charter
Boston Preparatory Charter School
Bristol County Agricultural High School
Canton Public Schools
City on a Hill Charter School
Fairhaven Public Schools
Falmouth Public Schools
Groton-Dunstable Reg. School District
Marshfield Public Schools
Marston Mills East H.M. Charter School
Maynard Public Schools
Medfield Public Schools
Middleborough Public Schools
Narragansett Public Schools
Northboro Public Schools
Northboro-Southboro Reg. School District
Smith Voc. & Agricultural H.S.
Southboro Public Schools
Southern-Berkshire Reg. School District
Westport Public Schools
Wilmington Public Schools

State Noncompliance

The United States Department of Education (USDE) Office of Special Education Programs (OSEP) periodically audits all states to confirm that they are completing and documenting required monitoring activities regarding local school district compliance with special education law. OSEP has cited the MASSDE *eight times in the last sixteen years*¹⁹ for failing to meet this requirement.

A review of OSEP's audit history of Massachusetts brings into sharp focus our state's persistent disregard for the educational rights of its students with disabilities. The following are excerpts taken from audit reports and other related correspondence issued by OSEP:

1995

"The overall State procedures for ensuring effective education of children with disabilities reflected a troubling lack of attention to those requirements ... most important to achieving positive results. OSEP found the following five continuing deficiencies that were first identified in the 1991 Report:

- MASSDE has not monitored to ensure that deficiencies are identified in public agencies in Massachusetts and are corrected in a timely manner.
- MASSDE has not established procedures to ensure that ... funds are distributed to local education agencies (LEAs) based on approved applications from those LEAs.
- MASSDE's procedures for investigating and resolving complaints and conducting due process hearings have not ensured resolution of either within the timelines prescribed by ... regulations.
- MASSDE has not met its responsibility to ensure that public agencies make placement decisions consistent with the least restrictive environment requirements.
- MASSDE has not implemented procedures which ensure that annual meetings are held to develop, review, and, if necessary, revise all components in the student's IEP."²⁰

1997

"In our 1997 follow-up monitoring visit, we note that while MASSDE has taken some steps to strengthen its procedures for monitoring and complaint resolution ... these procedures still are not sufficient to meet MASSDE's responsibility for general supervision [of its local school districts.]

- MASSDE had conducted very few and limited monitoring reviews of public agencies since OSEP's previous monitoring visit in 1990. OSEP observed that MASSDE

¹⁹ SpEdWatch analyzed only the last 16 years of state enforcement of the IDEA. It is likely that evidence of poor enforcement exists prior to 1991 as well (see page 27 of this report.)

²⁰ 1994 Review of the Massachusetts Department of Education's Implementation of Part B of the Individuals with Disabilities Education Act. May 1995. Office of Special Education Programs.

- review teams are not always consistently applying all procedures established by MASSDE for the special education portion of the coordinated [program] reviews.
- The format of the questions asked by the MASSDE interviewers permit 'yes' or 'no' answers, and the questions themselves often imply the correct response. As a result, MASSDE interviewers do not obtain enough data to determine how district policy or procedure may be directly affecting students. Further, OSEP finds that the corrective actions that MASSDE requires public agencies to implement do not enable MASSDE to verify whether a public agency has corrected deficient practices as well as deficient procedures."²¹

2000

"Although MASSDE has made progress in some previously identified areas of noncompliance, OSEP is seriously concerned about continuing noncompliance that has not been corrected. These areas include:

- MASSDE's IEP development process that results in delays in services and in children with disabilities not receiving services.
- Children with disabilities, especially those placed in separate educational environments, not being educated with non-disabled children to the maximum extent appropriate.
- MASSDE's failure to exercise its general supervisory authority in such a manner to insure [sic] that it has effective methods for identifying and correcting deficiencies in local school districts.

These deficiencies have been allowed to exist for a number of years, impacting on services to children with disabilities. OSEP has documented these continued deficiencies in its prior monitoring reports to MASSDE from 1991 and 1995. The State must take action to ensure that the above long-standing, serious noncompliance is effectively and promptly corrected throughout the State."²²

2003

"OSEP believes that MASSDE's systems for general supervision ... constitute a reasonable approach to the identification and correction of noncompliance; however, OSEP cannot, without also collecting data at the local level, determine whether they are fully effective in identifying and correcting noncompliance."²³

²¹ *Letter to Robert V. Antonucci, Commissioner, Massachusetts Department of Education, September 22, 1997.* Thomas Hehir, Director, Office of Special Education Programs.

²² *Letter to David P. Driscoll, Commissioner, Massachusetts Department of Education, June 21, 2000,* Kenneth R. Warlick, Director, Office of Special Education Programs, regarding OSEP's comprehensive audit of Massachusetts which can be found at <http://www.fcsn.org/osep/final.htm>

²³ *Letter to David P. Driscoll, Commissioner, Massachusetts Department of Education, October 29, 2003.* Stephanie Smith Lee, Director, Office of Special Education Programs.

2004

"The purpose of this letter is to respond to Massachusetts' April 1, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act. MASSDE did not address in the APR the extent to which it is ensuring that all identified noncompliance is corrected in a timely way. In the next APR, MASSDE must submit data and analysis, rather than just procedure, on the extent to which specific noncompliance that MASSDE has identified ... has been corrected in a timely manner."²⁴

2005

"The purpose of this letter is to respond to Massachusetts' March 29, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act. OSEP's November 2004 letter directed MASSDE to submit data and analysis, rather than just procedure, on the extent to which specific noncompliance that MASSDE identified through monitoring, complaints and hearing resolutions was corrected in a timely manner. MASSDE ... stated ... 'the [monitoring] procedures themselves are considered our data.' OSEP indicated in its response to MASSDE's FFY 2002 APR that procedures are not a demonstration of MASSDE's ability to identify and correct noncompliance."²⁵

2006

"MASSDE acknowledged that it never required the correction of noncompliance within one year of identification. MASSDE indicated that ... it was unable to report whether noncompliance was corrected within one year from identification."²⁶

²⁴ *Letter to David P. Driscoll, Commissioner, Massachusetts Department of Education.* November 19, 2004.

Stephanie Smith Lee, Director, Office of Special Education Programs.

²⁵ *Letter to David P. Driscoll, Commissioner, Massachusetts Department of Education.* September 12, 2005. Troy R. Justesen, Acting Director, Office of Special Education Programs.

²⁶ *Letter to David P. Driscoll, Commissioner, Massachusetts Department of Education,* March 28, 2006. Troy R. Justesen, Acting Director, Office of Special Education Programs.

Failed Federal Enforcement

Back to School on Civil Rights

In January 2000, the National Council on Disability (NCD)²⁷ released its report, *Back to School on Civil Rights*.²⁸ This report analyzed the effectiveness of over thirty years of federal monitoring and enforcement of the IDEA. The major findings in this report confirmed what parents of students with disabilities have long known:

- Federal efforts to enforce the law over several Administrations have been inconsistent, ineffective and lacking any real teeth.
- Pervasive noncompliance ... is a complex problem with often dramatic implications for children with disabilities and their families.
- Parents and students across the country expressed a high level of frustration with the continued barriers they face to full participation and effective instruction.
- Too many parents continue to expend endless resources in confronting obstacles to their child's most basic right to an appropriate education, often at the expense of their personal lives, their financial livelihoods and their careers.
- Enforcement of the law is the burden of parents who too often must invoke formal complaint procedures and due process hearings ... including expensive and time consuming litigation to obtain the appropriate services and supports to which their children are entitled under the law.
- Lack of accountability, poor enforcement, and systemic barriers have robbed too many students of their educational rights and opportunities... and have produced a separate system of education for students with disabilities rather than one unified system that ensures full and equal ... access for all students.”

²⁷ The National Council on Disability (NCD) is an independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families. NCD is composed of 15 members appointed by the President and confirmed by the U.S. Senate. NCD's overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

²⁸ Read the entire report at http://www.ncd.gov/newsroom/publications/2000/backtoschool_1.htm

Funding

Federal Funding Shortfall

The Education of All Handicapped Children Act (later renamed the Individuals with Disabilities Education Act) established a federal commitment to pay for 40 percent of the excess cost of special education. Congress has never met this commitment. States and local cities and towns have always been forced to finance a disproportionate share of special education costs. Currently, the federal government contributes only approximately 18 percent towards the education of the nation's students with disabilities.²⁹

State Funding Shortfall

The Foundation Budget

In Massachusetts, the definition of an adequate spending level for a school district is called its "foundation budget." It is a statistical measure (derived from a complex formula) that the state uses to determine the amount of financial aid districts will receive for education. The goal of the foundation budget formula is to ensure that every district has sufficient resources to meet its foundation budget spending level, through an equitable combination of local property taxes and state aid. Each district's foundation budget is updated each year to reflect inflation and changes in enrollment. Enrollment plays an important role not just because of the total number of pupils, but also because there are differences in the costs associated with various educational programs, grade levels, and student needs. The cost of providing special education is one variable that is factored into each district's foundation budget.³⁰

The "Circuit Breaker" Program

In addition to special education funding included in their foundation budget, school districts can take advantage of the state's Circuit Breaker program, designed to reimburse districts for high cost programs. School districts are eligible for reimbursement for student programs that cost greater than four times the statewide foundation budget (\$8,425 in FY07). By law, districts are reimbursed for 75% of the costs above four times statewide foundation budget, subject to appropriation.³¹

FY'07 funding for the Circuit Breaker program also includes a \$3M set aside for districts that are experiencing high growth in special education costs from FY'06 to FY'07. These funds are available as **extraordinary relief** to districts whose FY'07 Circuit Breaker costs are expected to be 125% of FY'06 costs claimed.³²

Disability advocates and school administrators have long decried the fact that federal and state funding is insufficient, placing a tremendous strain on local school district budgets. Even with the Circuit Breaker program in place, funding for special education falls far short of what districts say they need to meet their legal obligations to students with special needs. Legislators

²⁹ *National Disability Policy: A Progress Report*. National Council on Disability. November 2006, pg. 69-71.

³⁰ MASSDE web site http://finance1.doe.mass.edu/chapter70/chapter_cal.html Accessed February 19, 2007.

³¹ For certain students who are wards of the state, the statutory reimbursement rate is 100% rather than 75%.

³² MASSE web site http://finance1.doe.mass.edu/seduction/06cb_report.pdf Accessed February 19, 2007.

have responded by filing a number of funding bills, including bills that propose changes to the Circuit Breaker program such as:

- Reducing the reimbursement threshold to three times, rather than four times, the statewide foundation budget.
- Increasing the reimbursement percentage from 75% to 80%.
- Including the frequently prohibitive cost of special education transportation in the program.

However, as this report goes to press, the Circuit Breaker program remains unchanged, full federal funding is nowhere in sight, and school districts continue to struggle with crushing financial obligations.

The Students

Who Are They?

As of October 1, 2005 there were 160,752 students, ages 3-21, eligible for special education in Massachusetts public schools.³³ This represents 16.35% of the total Massachusetts public school population. These students were distributed among the various disability categories as follows³⁴:

41% Specific Learning Disability	3% Neurological Impairment
16% Communication Impairment	3% Multiple Disability
10% Developmental Delay (ages 3-9 only)	1% Hearing Impairment
8% Intellectual Impairment	1% Physical Impairment
8% Emotional Impairment	.5% Vision Impairment
5% Health Impairment	.5% Deaf/Blind
4% Autism	

We sometimes assume that students with disabilities have cognitive impairments that make it impossible for them to learn standard grade level curriculum. In fact, only a very small number fit this profile. These students, classified under the Intellectually Impaired category, represent only 8 percent of all Massachusetts schoolchildren with disabilities. This figure is in line with the USDE finding that no more than 9 percent of students with disabilities have the kinds of significant cognitive impairments that would prevent them from learning standard grade level material.

The USDE made its achievement expectations for America's students with disabilities clear by including the following language in its regulations governing the provision of Title I services to the nation's schoolchildren:

"States are required to hold all students to the same standards except that these regulations permit States to measure the achievement of students with the most significant cognitive disabilities based on alternate achievement standards. An alternate achievement standard is an expectation of performance that differs in complexity from a grade-level achievement standard.

"Alternate achievement standards are acceptable only for the small number of students with the most significant cognitive disabilities. In general, the Department expects no more than 9 percent of students with disabilities will participate in an assessment based on alternate achievement standards."³⁵

Simply put, 90 percent of Massachusetts schoolchildren with disabilities are as capable as the general student population (i.e., all students combined) of mastering the material tested by the MCAS, given appropriate instruction and service.

³³ October 2005 figures are used to correlate with the Spring 2006 MCAS scores included in this report.

³⁴ Massachusetts Department of Education web site www.doe.mass.edu Accessed January 21, 2007. See Appendix A for the regulatory definitions of these disability categories.

³⁵ 34 CFR Part 200 Title I - "Improving the Academic Achievement of the Disadvantaged" Final Rule. Published in the Federal Register December 9, 2003. Pages 68698-68704

Students with disabilities are required to meet the same high standards as their non-disabled peers. They are expected to pass the MCAS exams, have a right to the help they need to do so, and are denied a high school diploma if they fail.

How Are They Doing?

If 90 percent of Massachusetts students with disabilities are as intellectually capable as all students, their MCAS performance should be substantially similar to all students. Instead, they are failing at disproportionately high rates.

The following table shows the percentage of students with disabilities who scored in the Failed category on the four most recent administrations of the Spring MCAS exams, as compared to all students. According to the MASSDE, students in the Failed category demonstrate a minimal understanding of subject matter and do not solve simple problems.³⁶

Statewide Spring MCAS Results
Percent of Students in Failed/Warning Category³⁷

<u>Exam</u>	<u>Year</u>	<u>All Students</u>	<u>Students with Disabilities</u>
Grade 3 Reading	2006	5%	25%
	2005	4%	23%
	2004	4%	22%
	2003	4%	24%
Grade 3 Math	2006	11%	41%
Grade 4 English	2006	6%	36%
	2005	6%	32%
	2004	5%	30%
	2003	6%	31%
Grade 4 Math	2006	9%	39%
	2005	10%	41%
	2004	9%	38%
	2003	12%	40%
Grade 5 English	2006	4%	28%
Grade 5 Math	2006	16%	55%
Grade 5 Science	2006	7%	30%
	2005	8%	33%
	2004	9%	32%
	2003	11%	36%

³⁶ MASSDE web site <http://www.doe.mass.edu/mcas/2006/results/summary.pdf> Accessed February 19, 2007.

³⁷ MASSDE web site www.doe.mass.edu Accessed January 21, 2007.

**Statewide Spring MCAS Results
Percent of Students in Failed/Warning Category**

<u>Exam</u>	<u>Year</u>	<u>All Students</u>	<u>Students with Disabilities</u>
Grade 6 English	2006	4%	28%
Grade 6 Math	2006	17%	61%
	2005	16%	58%
	2004	18%	63%
	2003	19%	64%
Grade 7 English	2006	4%	32%
	2005	3%	26%
	2004	3%	27%
	2003	4%	26%
Grade 7 Math	2006	19%	65%
Grade 8 English	2006	3%	27%
Grade 8 Math	2006	21%	68%
	2005	23%	70%
	2004	21%	67%
	2003	25%	72%
Grade 8 Science	2006	18%	59%
	2005	19%	61%
	2004	24%	66%
	2003	23%	63%
Grade 10 English	2006	3%	25%
	2005	5%	34%
	2004	6%	36%
	2003	7%	37%
Grade 10 Math	2006	8%	38%
	2005	10%	41%
	2004	10%	43%
	2003	15%	54%

Plans To Improve Student Achievement ³⁸

For the 2005-2006 school year, MASSDE reports the following MCAS exam performance results for students with disabilities when combining data for all grades tested:

	<u>English</u>	<u>Math</u>
Percent of Students with Disabilities Scoring Proficient or Above on MCAS	26.1%	15.5%

The MASSDE has set a target that by 2011 these figures will have risen by only 2.1% and 2.7% respectively.³⁹

Plans To Improve Graduation Rates ⁴⁰

For the 2005-2006 school year, MASSDE reports the following results for the percentage of students who graduated high school with a regular diploma in four years or less.

All Students	79.8%
Students with Disabilities	61.6%

MASSDE has set the following initial targets for increasing the percentage of students with disabilities who graduate with a regular high school diploma in four years or less.

<u>School Year</u>	
2006-2007	61.6%
2007-2008	62.0%
2008-2009	62.0%
2009-2010	63.0%
2010-2011	63.0%

³⁸ *Massachusetts Part B Annual Performance Report for FFY 2005*. February 1, 2007. Massachusetts Department of Education.

³⁹ Readers are reminded that the No Child Left Behind Act calls for all students to have achieved academic proficiency by the year 2014.

⁴⁰ *Massachusetts Part B Annual Performance Report for FFY 2005*. February 1, 2007. Massachusetts Department of Education.

The Parents

Every day, SPEDWatch hears from parents about their overwhelming frustration with the Massachusetts special education system. Some agreed to share their experiences here, in the hopes that readers of this report might come to appreciate the magnitude of the stress they experience fighting for the education their children already have a legal right to receive. Many agreed to be quoted only on condition of anonymity, because they fear their school districts may retaliate against them or their children.

August 2005

“My son was suspended three times and expelled from a preschool program while I was working to get him an IEP. It was a traumatic experience for all of us. The school department was terrible – where they should have picked him up for services, they refused to recognize his need for supports.”

*Kara
Wachusett Regional School District*

“We just found out that the entire 6th grade in my daughter’s middle school has gone on multiple field trips this year. Only my daughter’s Life Skills class was excluded! My daughter has never been a safety risk or behavior problem and the teacher readily acknowledges this. We are quite certain this violated her civil rights. Does it?”

Anonymous

“My child is 4.5 years old (Pervasive Developmental Disorder and sensory integration dysfunction) and has attended preschool 10 hours per week since she turned 3. She received 25-30 hours per week of therapy from Early Intervention and made tremendous progress.⁴¹ The public school did their own evaluation and refused to provide any therapy citing she was average. She has regressed since she left EI. We requested extended school year services for the

⁴¹ Early Intervention (EI) is a statewide system of developmental services, run by the Massachusetts Department of Public Health, available to children between birth and three years of age. Children may be eligible for EI if they have identified disabilities, or if typical development is at risk due to certain birth or environmental circumstances. When the child turns 3 the public school system assumes responsibility for servicing the child.

summer of 2004 and the school refused on the basis that the school system only had classes for very severe children and therefore they had no suitable class for her.”

Anonymous

“Our school system has made it blatantly clear: under no circumstances will [they] change their finding of no eligibility. They are quite firm that their testing shows he can function as necessary to meet his educational needs – even though the quality of his skills is questionable. We will never get to a [due process] hearing on anything as at mediation last year the mediator told us we have, as adoptive parents, unrealistic expectations for our child.”

*Kim
Sudbury Public Schools*

“Where are the new regulations for a summer program? We have been offered 3 days a week from 9 am to 1 pm. That seems odd to me. The answer I got was that services are given to prevent backslide only and that 3 days of 4 hours each is all the state allows. Is that true?”

*Anonymous
The Berkshires*

“Our son had outside testing, neuropsychological, doctors evaluations, etc. The school rejected all of it. He was having daily headaches, he has hand tremors, etc. The school claimed it is because we are overly concerned. He was four years below grade level in seventh grade. They say he is doing OK in regular education, so he does not need an IEP.”

*Carl
Hopkinton Public Schools*

“As a former Sped professional who worked in a public school for 12 years, and a current educational consultant with two kids on IEPs, the battles are just getting too difficult. Everything is a struggle.”

Anonymous

“We had our Team meeting yesterday and sadly my daughter did not qualify for special ed. We had the doctor that did the independent evaluation there and my daughter’s psychologist who both strongly feel she is entitled to special ed services Even the extended evaluations that were done by the school system showed my daughter at grade 1.7 for fluency and other reading areas (she is currently in grade 3.6.) The diagnostic specialist from the school kept saying ‘well, her anxiety and perfectionism get in the way of her speed.’ My daughter’s psychologist clearly stated that this is not the case. The independent evaluator also backed up the fact that it looks like she has a language based learning disability. The teacher said my daughter is making effective progress and now all of a sudden reading at grade level. Whereas at the last Team meeting the teacher said she was in the bottom 5 of a class of 24 for reading.”

Anonymous
Arlington Public Schools

October 2005

“Our son is supposed to be getting the Lindamood Phoneme Sequencing Program⁴² (LiPS) through the school. The school sent his special education teacher this summer for the training which she got. He now has had 40 hours with her and I can’t see any progress. We had another IEP meeting 2 weeks ago where this teacher wrote 2 new goals for the LiPS and reading. The problem is that [the goals] don’t follow the format of the LiPS program. The special education teacher has only been teaching for 3 years, and never has taught in a general education classroom. In fact, she has a B.S. in something other than teaching. Oh, and they don’t want to modify the curriculum to include the LiPS program, so our son is being taught to read using 2 different strategies, and right now

⁴² LiPS is a specific method of reading instruction.

neither is working! He hates to read now, which is the saddest part of all.”

Anonymous

“I know it’s an ugly statement, but I am jealous of those with enough money to pay professionals to compel schools to provide what is right. For those of us who struggle with poverty, fighting for what our children are entitled to is an even greater burden.”

Anonymous

“After many years in the public school, my husband and I removed our son and placed him privately at a Chapter 766 school⁴³, where he is thriving. It is disgusting how the public school violated the law so many times when our son was enrolled there, and now they are fighting us with two lawyers as we seek funding. I know of many students in our town who are not getting the help they need. I think SPEDWatch is really needed, because schools don’t face any consequences when they don’t follow the law. There is no accountability, and meanwhile, young children are giving up on learning, as our son did. These kids won’t have any future if they don’t get the help they need. I am thankful we got our son out and he is now learning and feeling so much better. But I worry about the kids whose families can’t do this.”

Anonymous

“I didn’t think that our rights and laws would ever backslide, but they are. I am so glad SPEDWatch is being formed! Other groups just aren’t activist enough!”

Cynthia
Wayland Public Schools

“I have a 12 year old son still out of school after a year, and many, many promises (lies.) I can’t tell you how many times our school district violated the educational rights of my son. Not only has my son’s education suffered along with his emotional well-being, it is causing great financial hardship for our family. While other children are getting an education my son sits home waiting for a proper placement.”

Ellen
Pembroke Public School

⁴³ These are private schools which specialize in serving students with certain disabilities.

November 2005

"My daughter is in 5th grade, and is on the autism spectrum. We have an emergency IEP meeting tomorrow to remove her from the public school as bullying and taunting has increased and she has become the 'entertainment' for the 5th graders who provoke her and then laugh at her reactions. This has also created havoc for her twin sister who is not on the spectrum, she hears her classmates make derogatory statements about her sister on a daily basis and has lost her friends over this."

*Anonymous
Framingham*

"**SPEDWatch** is a group whose time has more than come. It is truly time for schools and society in general to change their mindset when it comes to special education. Special ed services are difficult for towns to fit into their budgets, but the expense of providing proper services for a few years pales in comparison to the cost of providing a lifetime of supports to millions of adults who have been scarred by a lack of these programs. Many people who don't have children in the special ed system say 'why should I pay for these services?' These same people also wonder who will provide a worker base for Social Security. I say, provide services for these students and teach them the skills they need to become productive members of society and you will increase your worker base. Thereby, securing your own future as well as theirs."

*Dennis
Burlington Public Schools*

"My daughter is 27 months old. She is currently with Early Intervention. She has 11 diagnoses. I was wondering if anyone could share any information with me. I am lost. I went to a meeting for 'Basic Rights' last year, but it was for children already enrolled in the school system. I attended and sat in the back, just to listen and learn anything I could. What I heard was a lot of upset parents because they weren't getting the services they were promised."

*Tazz
Bridgewater-Raynham Schools*

December 2005

"We have worked with [our school system] for seven years, and in the end results of outside testing suggested it was as if she had never been in school at all. We've just sent off our second \$3000 retainer to our attorney and while it doesn't seem possible, given the situation it appears we are headed to a [due process] hearing. As much as I want to expose the blatant abuse of the system by the Special Education Director I am signing this letter Anonymous for now. We are afraid of these people and the power they possess."

Anonymous

January 2006

"We had our son's IEP meeting last Friday. We have just moved into a new school district. Our son is three years old. To sum up the meeting, my husband and I were in shock at how, with the exception of the classroom teacher, everyone in the 'team' was so disrespectful. Prior to the meeting, we told the administrator of early childhood, both verbally and in writing, that we have been working with our son since he has been a month old and we have a plan that is working really well for him. We also expressed how important it is to home school our three children until kindergarten. My husband and I are former public school teachers with grades pre-K through 12 between us. My husband has also worked for the Center for Collaborative Education, training teachers. We thought the IEP meeting was supposed to be a team effort to decide how we can all best support our son. When we spoke, we saw glazed eyes looking around the room, with no response to what we said. At the end of the meeting, after an assessment of our child that we did not agree with, we were told that because of all they thought he needed, he would be best serviced by enrolling him in preschool. When we told them we did not want to do that, the early childhood administrator crossed her arms and frowned. Then all of the team, except the SpEd teacher, told us the reasons why they thought he should be in preschool. The administrator said she was going to have the plan written to reflect their recommendations, in order to leave a 'paper trail' and then we could reject it if that's what we want to do. I was in tears from the frustration

of not being heard, and even then, only the teacher showed compassion by getting me tissues.”

*Sari
Scituate Public Schools*

“I am the mother of an almost 14 year old girl with a quirky set of issues, have been through the whole ‘she’s fine and doesn’t need services’ thing despite her qualifying for Early Intervention. In fact, the ‘principal’ of her public school told us when she was in second grade (and outside testing showed that she was sight-reading only, not decoding,) that ‘her only problem is that she hangs out with the smart kids in the class.’”

*Dena
Somerville Public Schools*

“My son, who was diagnosed with autism at age 3, is at a private preschool. We had to leave our home of 9 years because the special education program was so atrocious. Thank God we could move. I can’t imagine our lives if we had lacked the financial wherewithal to leave. We spent thousands of dollars on legal fees and specialists’ fees to substantiate what the district already knew – that our son needed an intensive one-on-one ABA⁴⁴ program. What a waste of time and money! It is just plain wrong that the very people who should have been there to help us only added to our distress.”

Anonymous

“I have a third grader who has been evaluated by two different school systems, and after over a year, she still has no services or formal recognition of problems despite an EEG from a pediatric neurologist with diagnoses and repeated comments from teachers regarding her difficulties (which is what started all the testing in the first place!)”

*Lisa
Foxborough Regional Charter School*

“I have been fighting my own very ugly public battle with the school district since my son turned 3 in August 2004. He had been receiving 40 plus hours a week from Early Intervention

⁴⁴ ABA, or applied behavior analysis, is an intensive teaching methodology often used with students on the autism spectrum.

and ABA until the public schools got a hold of him. Now I can’t even get an IEP for him. I have at least 3 independent evaluations, but the school just keeps rejecting them. At this point I believe it’s retaliation against me, but it’s my son who is losing out. I have taken it to the newspapers and anyone else who will listen. I am so fed up with the ‘system.’”

*Katie
Cambridge Public Schools*

February 2006

“I am thrilled to have discovered your organization-not only because I represent families in litigation against school systems, but also because I have a five year old son who has been diagnosed with Pervasive Developmental Disorder. Although my son has so far been receiving good services in our hometown, I have seen some truly outrageous conduct by other school systems. It is absolutely appalling. An advocacy group such as SPEDWatch has been long overdue in Massachusetts.”

*Sean T. Goguen
Attorney at Law*

“My son is about 6 weeks away from turning 3, and as we head towards our IEP meeting in 2 weeks one of our main concerns is about the hours (or lack thereof) that our public preschool offers for services. Right now, in Early Intervention, he’s receiving 27 hours/week of ABA, plus another several hours with a speech therapist and a developmental specialist - which pretty much falls in line with the ‘30 hours of intensive early intervention’ thing you always hear and read in conjunction with behavioral therapy. However, the public school is only offering a possible maximum of 20 hours of service a week. In addition, their ‘summer hours’ cuts things down to just 10 hours/week. Clearly, this falls *way* short of what every study recommends as an appropriate behavioral therapy schedule. I can’t imagine that the state of Massachusetts, which has been providing for all 30-ish weekly hours of his services to this point, suddenly throws all the research out the window and allows an individual school system to dictate a hard cap on service hours.”

Anonymous

April 2006

"I know people whose rights are being violated repeatedly, and they're all forced to either shut up or go directly to the BSEA or mediation. The sped director is not interested in playing by the rules. I'm incensed by what I hear around me and by the way parents are disrespected for just that ... being parents. This has *got* to change.

Anonymous

June 2006

"Dear Senator Kennedy:

I am a 50 year old divorced mother of one child, a 12 year old son diagnosed with Asperger's Syndrome, Attention Deficit Hyperactivity Disorder, and Tourette's Syndrome. I am also a licensed clinical psychologist. I am writing to you today, the first letter I have ever written to a politician, because this morning I sat in my car afraid to go into the Junior High School in my town. I was afraid to be met, again, with sarcasm, disrespect, and dismissal. I was afraid I would leave the Junior High School, again, crying hysterically. I am writing to you because I want to be heard. I am writing because I am increasingly tired, disillusioned, and simply, scared.

Had I not questioned decisions at Individualized Education Plan (IEP) School Team Meetings each and every year through elementary school, I shudder to think where my son would be academically, emotionally and in terms of pro-social behavior. Though my son has been evaluated and treated by pediatric neurologists, psychiatrists and psychologists at teaching hospitals in Worcester and Boston, Team Members have challenged his diagnoses and functional assessments.

I am writing because I am fortunate enough to have the capacity to do so. I am writing because my situation is not unique in any way. I go to the Parents' Advisory Council⁴⁵ in Sturbridge once per month. I listen to parents, mostly mothers, talk about their fears of contradicting

⁴⁵ Every Massachusetts school district is required, by law, to have a Special Education Parent Advisory Council. The SPED PAC, or PAC, is comprised of parents and others who act in an advisory capacity to the district on special education matters.

the Team, in part because they know things are not right, but do not know how to make things better. I am fortunate that I have a background that gives support to my son's needs. If the Team challenges his diagnosis, I am likely the only person at the table who is licensed in the Commonwealth of Massachusetts to comment. I follow the national and local newsletters such as SPEDWatch News, and the Asperger's Association of New England. If I feel largely marginalized, if not victimized, by a system that dismisses me as just another troublesome, impossible to please parent, how do the truly marginalized members of this community have a prayer of support for their non-typical children?

I am writing because I am tired of fighting and of being treated badly. I am writing to request that you or your delegate come to Sturbridge to remind us about the core values of education as they apply to non-typical children and their families. I also want the community in which I live to hear these values. Too often I hear 'well-educated' adults in this community ask why 'good money is thrown after bad' in reference to special education funding. Every parent wants the best for their child.

Really, I just wanted to be heard, and through me, to give my son voice."

*Lorraine A. Cavallaro, Ph.D.
Asst Prof Psychology, Harvard Medical School.
Director, Mental Health Unit,
Veterans Administration,
Boston Healthcare System*

August 2006

"Our previous school district refused to test my son at least 3 or 4 times until I found out that was illegal. When he was finally tested, he got an IEP but they really didn't try to meet any of our concerns. He was failing in every way. I strongly believe that had they picked him up when we first told them about his problems, he would have a much better outlook on himself and school. They damaged his self-esteem. When we moved to our new district recently we were impressed with their Special Ed program. Of course compared to the other school anything would have looked good to us."

*Kelly
Old district: Somerset
New district: Acushnet*

September 2006

"I have so much to say, but the irony is my time is so consumed with battling the school and yes, trying to figure out how my husband and I get more than 10 minutes at a Team meeting (after the entire staff has spoken) to present, request, and ask questions before the inevitable, 'oops, out of time!' and a 'to be continued' situation which means it goes on for the rest of the year. Our IEP from last year has not yet been signed by the district. They changed my son's intensive hours without support of objective data. I could go on. I've also been trying to get our SPED PAC up and running with STRENGTH this year for parent support and information. A PAC bulletin was posted in the district this past year. Someone pulled it all down. We don't know who. When we asked the administration, we get a shrug of the shoulders type of attitude."

*Anonymous
Western Massachusetts*

"My son was diagnosed with Pervasive Developmental Disorder at approximately 24 months of age. We received minimal EI services in the beginning because his diagnosis was borderline. When the diagnosis was clear, services increased dramatically - we were receiving 18+ hours of EI services per week. Then he turned 3 and we entered the public school system. Anthony's intensive hours were cut to 11.25 hours per week (part-time preschool program with a teacher not trained in ABA and two aides that also have no special ed training). We fought hard - it took us from May 2005 to March 2006 to get Anthony into a full-time program where the lead teacher was qualified to handle Anthony's diagnosis. During this time, my husband and I were forced to pay out-of-pocket to keep Anthony's intensive educational hours going. We currently are paying \$500+ per week for ABA hours, pragmatic groups, occupational therapy and RDI⁴⁶. We have been working with developmental teams at Children's Hospital and at Harvard Vanguard. I'm too afraid to stop funding my own services and

⁴⁶ Relationship Development Intervention (RDI) is a program for educating and coaching parents and teachers of children with Autism Spectrum Disorders.

leave it up to the school to help my son continue to make gains, but I don't know how much longer we can go on paying out-of-pocket. We all have the same question - where is the school district that is doing the right thing for our special ed children?"

*Patty
Medford Public Schools*

"I have been involved with special education from the beginning of time. I have worked hard not only for my child but others. You are right that we need mass protests, not just in the streets, but to get parents to question the team's decisions. If I had gone with the team decision my daughter would not be in college today. Nor would she have passed MCAS."

Debbie

October 2006

"We have a 7th grader, and we had to fight for four years to get an IEP for him. His IEP states clearly that he is to have Orton-Gillingham⁴⁷ by a certified instructor 3 times a week, but we reluctantly agreed to 2 times a week because the instructor last year did not have enough time in her schedule to see him more than 2 times a week. Of course now I can't get it changed back to 3 times a week. I have fought with the school and the special education director for the last 7 weeks of school just to get a TEAM meeting scheduled to discuss my son's current IEP because the one that was handed to all of the teachers was two years old and did not include his most current amendments. It took five weeks of unreturned phone calls, drop in meetings with the Assistant Principal and Building Coordinator and finally a solid day of non-stop calling of no less than 7 people until I finally got someone to pick up their phone and take my call to have anything done. I guess I am lucky but certainly don't feel that way, as this has now become my 3rd full time job."

*Shannon
Duxbury*

"In this day and age, it's absolutely criminal that parents have to fight so hard for their children to receive an education. I think these

⁴⁷ Orton-Gillingham is a specific method of reading instruction.

school systems and the MASSDE should be sued for fraud and grand larceny. These people continue to collect a paycheck without doing their job! I just don't get how these people can continue to look in the mirror every day and go about their days without a guilty conscience. These children are being harmed and denied a basic right."

*Joanne
Tewksbury Public Schools*

"I am so thankful for SPEDWatch, who cares enough to want to reach out and help those who are in need. It is devastating to me to see how many children that we know of who have ended up without any education or work skills. Students who have had their dreams shattered and made to feel as if it was their fault for not knowing how to learn. I believe that no child wants to fail in school. If they do fail, it's because those in charge have not learned how to teach in the different ways children learn. This is embarrassing to our country - that we are not allowing children to be able to compete globally. You can imagine how this will affect this country in the future."

*Diana
Hamilton-Wenham Regional School District*

"Never sign the IEP at the meeting or feel pressured or rushed to never, never. You may all of a sudden after the meeting realize you wanted to discuss something or ask questions. I even went home and thought about the responses I was given from the team about something they had not agreed upon with me at the time, and later researched the laws and found they were inappropriate answers that were given to me."

*Debbie
Natick*

"We just had a TEAM meeting this morning, and I feel almost physically sick about it. The whole structure of the meetings makes it adversarial while everyone is pretending that it's not. My 1st grader has Asperger's Syndrome and I still leave the meetings feeling like they consider her behavior problems to be my fault."

*Grace
Needham*

"In the IEP the school gave me last week, they referenced the findings of an evaluation of my son in February 2002 by a speech therapist. The only problem is my son has never seen that speech therapist. What's more, he wasn't even born in February 2002! I think this is another case of the school system doing a cut-n-paste job between IEPs."

*David
Lynnfield*

"It is nice to know that someone is trying to help parents and get schools to do what they should. My son with dyslexia is now a senior in high school and I am so happy that we have had a fairly quiet last couple of years. When it really counted (in the younger grades), the school system was brutal to deal with to get the services he required. When they finally did offer him close to the correct services, it took me a while to realize that the Orton Gillingham tutor they had was ill-prepared (probably not a lot of experience) to deal with his issues (which were not very difficult, but he was very smart at the same time requiring particular instruction) and was really quite mean to the children. It worries me that she probably is still tutoring young children in our system. I am sure you've heard these stories before ... it seems to be universal around here in most of the public schools. I am sure it is mostly a money issue...what the schools don't realize is that a little more money in the right places could save so much in the end."

Michelle

"My son is 9 and has bipolar disorder. In his last school, they refused to test him. They never contacted me when he drew a picture of himself dead. They kept him in from recess for 4 months straight because he never finished his papers. Then they had the guts to accuse me of not being a 'team player' when I questioned if that was legal. If it's not hard enough on a parent to learn their child has an 'illness or disability' the schools make everything harder by placing blame and withholding services. It is just wrong!"

*Kelly
Regarding Somerset Public Schools*

November 2006

"My daughter has diabetes. I'm an RN with too many years experience and very knowledgeable about diabetes. However, the school system has treated me like a hysterical, over-protective mother instead of a knowledgeable, professional, mother and advocate for my child. I had to pull teeth to get training for the school staff and finally (after my daughter being out of school for 6 months), they allowed a diabetes educator to train the staff. I volunteered many times and they refused to allow me to do any kind of teaching.

Another diabetic child's mother and I are just fed up with the games. Naively, after I learned everything I could about the law and how it impacts my child, I thought I was all set. I would present the school with her Diabetes Medical Management Plan and accommodation plan to be attached to her IEP and the school would carry it out. I don't believe in Santa Claus anymore and I caught on quickly! My child (as well as the other diabetic child) had been in too many dangerous and life threatening situations. It was as if the words on the paper were written in ancient Latin. It's sickening the way the school systems treat parents. They treat them as if they're stupid, hysterical, over-protective and the cause of their children's conditions. They don't want to listen to parents. As a pediatric nurse, I know that parents are my best source of information. They make my job a lot easier by telling me things medical records or medical literature never could!"

*Joanne
Tewksbury Public School*

"My son has Central Auditory Processing Disorder. Before I entered this nightmare of Special Education I naively thought educators would do whatever they could to help a struggling child. Sadly, how wrong I was. Last year my son and I endured nothing less than abuse from our school system. The experience for all involved was exhausting, frustrating and unbelievable. I totally felt my son's civil rights were violated. The school decided he had a social-emotional disability (never diagnosed by a physician) and on two occasions physical restraint was used. I felt like I should be calling the police. I entered the fight of my life for my child's safety.

Fortunately, this year has been better secondary to the pressure put on his school system by myself and my advocate. Although he now has necessary interventions to help him succeed, I know I must remain vigilant throughout the remaining years of his education."

Anonymous

December 2006

"My son is in the second grade, regular education. Concerns seem to be popping up more and more around attentional issues. His teacher thinks it's AD/HD and has him seated separately from the rest of the class, facing a wall. I'm beyond frustrated with the teacher's view of my son's behavior and difficulty in learning."

Leslie

January 2007

"We were thrilled to read the recent article about SPEDWatch in our local newspaper. We have a tenth grader and have been battling with the SPED system for seven years. We are now becoming aware that our fifth grader has similar disabilities and are considering outside placement. We understand too well, the frustrations that parents of learning disabled children in our school system face and are continually amazed at the incompetence of the current system as well as the lack of accountability for implementing necessary services. My husband and I have often spoken about taking this to a higher level. We would like to become members of SPEDWatch, donate additional funding, if needed, as well as donate our time and talent in taking this very important issue to the next level."

*Mary and Steven
North Middlesex Regional School District*

"My son is in 2nd grade and has ADHD, Sensory issues and Aspergers. I contacted a speaker from the Aspergers Association of New England that is willing to conduct a seminar/speaking engagement at the school for all the teachers. I have sent the brochure and fee schedule for this particular speaker to my SPED Director. She won't even call me back to discuss it. The school psychologist, my son's teacher, and many others feel it is a great idea. However,

the SPED Director has to approve it. Is there any thing I can do?"

Wilmington

"My son sustained a Traumatic Brain Injury (TBI) at the age of 10. I am new to this. My special education department has put him in a school that specializes in sexually traumatized children due to him verbally expressing sexually inappropriate comments (due to his frontal lobe being injured, which can be redirected.) I want him at a school that specializes in TBI, but they tell me no. I need help on what to do."

Taunton

"I fought for years, spending thousands of dollars on advocates and lawyers to attain, in the end, what should have been made readily available to us from the beginning. Now, I am in touch with throngs of others going through the same thing. I want to do something to change this nightmare for parents. A week doesn't go by that I don't talk to someone going through this mess. A woman called me just the other day because her son has severe Asperger's and her school district will not send him to an appropriate school. He is suffering HORRIBLY from ridicule, etc. She has no idea what to do. It's outrageous! Something HAS to be done!"

Anonymous

"I don't know what to say to a parent who can't afford an attorney. My financial situation is not as tough as others, but we have been paying for attorneys, independent evaluations as well as the 'extra' speech and occupational therapy that my son needs, but the school refuses to offer, all through my retirement savings. As a parent, what else am I supposed to do? Personally, I would rather be destitute in my retirement but at least know that I did everything possible for my son."

*David
Lynnfield*

Conclusion

Massachusetts students with disabilities are in grave danger. Their very lives are on the line.

Ninety percent of these students are as intellectually capable as their non-disabled peers, but their academic failure rate is astronomical. They are failing because their school districts are denying them the special education services they need in order to develop their innate potential. Their sense of self-worth is constantly battered. Far too many simply give up on themselves, or worse.

They face bleak futures in a labor force where a bachelor's degree (at least) is needed to compete. They take a pounding in the press, and in town meetings, where they are blamed for consuming a disproportionate share of education dollars.

The United States Department of Education (USDE) has turned its back on these students. It has allowed Massachusetts to break special education laws, without consequence, for at least the last sixteen years, and has done nothing to indicate that it will ever take these violations seriously.

The Massachusetts Department of Education (MASSDE) is not acting to address the poor academic achievement of our students with special needs. By 2011 MASSDE plans to have increased the number of such students demonstrating academic proficiency by only 2.1% to 2.7% from its current abysmal level. For years, MASSDE has allowed school districts to violate the special education rights of students, and it has no plans to reduce the frequency of district noncompliance.

Local school districts, squeezed by tight resources and enabled by the MASSDE and USDE, routinely deny students the services they need in order to achieve at a rate commensurate with their ability. The majority of our public school districts do not properly evaluate students with special needs, do not formulate appropriate educational plans for them, and do not accurately assess their progress.

Our special education system makes it impossible for parents and schools districts to work together as partners. Parents have to fight, constantly, to protect their child's legal right to appropriate special education services. Unless they are skilled in crafting persuasive arguments grounded in a sophisticated knowledge of applicable law, parents are easily out-manuevered by school administrators whose primary concern is cost control. Teachers are stuck in the middle, forced to watch silently as the students they care deeply about struggle and fail.

These conditions cannot be allowed to continue.

SPEDWatch believes that changing this reality will require addressing the underlying cause of the discriminatory practices described in this report: society's silent endorsement of these conditions. This will require a true civil rights movement.

SPEDWatch is a non-profit, parent-driven group that is organizing citizens into a civil rights movement to secure true educational equality for Massachusetts schoolchildren with disabilities. It is our fervent hope that educators, legislators, business leaders, and other sectors of society will join us. However, we will act independently if necessary. As parents, we have no other choice.

Recommendations

Although by no means an exhaustive list, the following aspects of the Massachusetts special education system deserve immediate attention.

Funding

Money alone will not address all the weaknesses in the system, but inadequate funding is a major contributor to the crisis in Massachusetts special education. The Legislature must commit itself to adequately funding special education. This could take the form of revising the foundation budget formula, altering the Circuit Breaker program, or devising completely new funding mechanisms. Parents and school districts must join together in insisting that Congress meet its financial obligation to our children with special needs.

Coordinated Program Review and Problem Resolution Systems

The MASSDE Coordinated Program Review (CPR) System and Program Quality Assurance (PQA) should be independently examined by business sector experts to assess whether or not each system is employing best practices in their respective areas of responsibility. SPEDWatch has received many parent complaints about PQA, and is also concerned that some CPR practices may be compromising students' special education rights (such as the practice of allowing school districts to review for completeness all student records selected for review before MASSDE completes their review of the records.)

School District Staff

School district staff must have knowledge of the basic elements of students' special education rights, and must be given the ability to act on that knowledge. School staff must have a way to anonymously report concerns or complaints about a district's special education practices without exposing themselves to the possibility of retaliation by their superiors.

Parent Access to Advocacy Support

Until it becomes socially unacceptable to deny students the education they need to succeed, parents must have cost-free access to independent special education advocacy advice and support. One option is the creation of a Special Education Ombudsman Program that could:

- Receive, investigate and work to resolve parent concerns.
- Educate parents about special education processes and rights.
- Refer parents to other appropriate individuals or agencies for assistance when resolution of concerns is not possible through the Ombudsman Program.

Appendix A Disability Definitions

From Massachusetts Special Education Regulations

603 CMR 28.02: Definitions

(7) Disability shall mean one or more of the following impairments:

(a) **Autism** - A developmental disability significantly affecting verbal and nonverbal communication and social interaction. The term shall have the meaning given it in federal law at 34 CFR §300.7.

(b) **Developmental Delay** - The learning capacity of a young child (3-9 years old) is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: receptive and/or expressive language; cognitive abilities; physical functioning; social, emotional, or adaptive functioning; and/or self-help skills.

(c) **Intellectual Impairment** - The permanent capacity for performing cognitive tasks, functions, or problem solving is significantly limited or impaired and is exhibited by more than one of the following: a slower rate of learning; disorganized patterns of learning; difficulty with adaptive behavior; and/or difficulty understanding abstract concepts. Such term shall include students with mental retardation.

(d) **Sensory Impairment** - The term shall include the following:

Hearing Impairment or Deaf - The capacity to hear, with amplification, is limited, impaired, or absent and results in one or more of the following: reduced performance in hearing acuity tasks; difficulty with oral communication; and/or difficulty in understanding auditorally-presented information in the education environment. The term includes students who are deaf and students who are hard-of-hearing.

Vision Impairment or Blind - The capacity to see, after correction, is limited, impaired, or absent and results in one or more of the following: reduced performance in visual acuity tasks; difficulty with written communication; and/or difficulty with understanding information presented visually in the education environment. The term includes students who are blind and students with limited vision.

Deafblind - Concomitant hearing and visual impairments, the combination of which causes severe communication and other developmental and educational needs.

(e) **Neurological Impairment** - The capacity of the nervous system is limited or impaired with difficulties exhibited in one or more of the following areas: the use of memory, the control and use of cognitive functioning, sensory and motor skills, speech, language, organizational skills, information processing, affect, social skills, or basic life functions. The term includes students who have received a traumatic brain injury.

f) **Emotional Impairment** - As defined under federal law at 34 CFR §300.7, the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The determination of disability shall not be made solely because the student's behavior violates the school's discipline code, because the student is involved with a state court or social service agency, or because the student is socially maladjusted, unless the Team determines that the student has a serious emotional disturbance.

(g) **Communication Impairment** - The capacity to use expressive and/or receptive language is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: speech, such as articulation and/or voice; conveying, understanding, or using spoken, written, or symbolic language. The term may include a student with impaired articulation, stuttering, language impairment, or voice impairment if such impairment adversely affects the student's educational performance.

(h) **Physical Impairment** - The physical capacity to move, coordinate actions, or perform physical activities is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: physical and motor tasks; independent movement; performing basic life functions. The term shall include severe orthopedic impairments or impairments caused by congenital anomaly, cerebral palsy, amputations, and fractures, if such impairment adversely affects a student's educational performance.

(i) **Health Impairment** - A chronic or acute health problem such that the physiological capacity to function is significantly limited or impaired and results in one or more of the following: limited strength, vitality, or alertness including a heightened alertness to environmental stimuli resulting in limited alertness with respect to the educational environment. The term shall include health impairments due to asthma, attention deficit disorder or attention deficit with hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia, if such health impairment adversely affects a student's educational performance.

(j) **Specific Learning Disability** - The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think speak, read, write, spell, or to do mathematical calculations. Use of the term shall meet all federal requirements given in federal law at 34 CFR §§300.7(c)(10) and 300.541.