

Why noncompliance with special education law matters

Approximately 170,000 Massachusetts public school students, ages 3-21, are identified as requiring special education services. Some are cognitively impaired, but most (at least 85 percent nationally¹ and at least 90 percent in Massachusetts²) are not. These youngsters are as intellectually capable as their non-disabled peers of achieving academic proficiency, as long as they receive the special education services they need in order to learn. Massachusetts and federal laws guarantee they will receive those services.³

ESE Coordinated Program Review System

The Massachusetts Department of Elementary and Secondary Education (ESE) is responsible for monitoring local school district compliance with special education law. They do this through their Coordinated Program Review (CPR) System. Each public school district⁴ in Massachusetts receives a comprehensive Coordinated Program Review every six years.

For the CPR, ESE 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 ESE staff conducts the CPR over a two to ten day period. During this time the ESE team interviews administrative, instruct-

ional, and support staff across all grade levels, as well as parents and others who wish to provide input. A representative sample of student records is reviewed, and classroom and facility observations are conducted.

Upon completion of the CPR, ESE issues a report of its findings.⁵ Where requirements are not fully met, the district must propose a Corrective Action Plan to address each area of noncompliance. Corrective Action Plans must be approved by ESE.

ESE also sends a monitoring team back to the district midway through the six-year cycle to complete an onsite special education Mid-Cycle Review (MCR).⁶ Again, the review consists of onsite interviews and observations as well as examination of documentation and student records. In this way, each public school district in Massachusetts is monitored once every three years for compliance with special education law.

Special Education Compliance Rates

Massachusetts public schools have been in serious noncompliance with special education law for decades. ESE documents an average of 110 regulatory violations every month.⁷ The U.S. Department of Education has cited Massachusetts 12 times in the last 20 years for failing to meet its legal obligations to schoolchildren with disabilities.⁸ The result has been a failure rate for students with disabilities that is far out of proportion to their

¹ Written Testimony of Martha L. Thurlow, Ph.D., Director, National Center on Educational Outcomes, Before the Health, Education, Labor and Pensions Committee, United States Senate. April 28, 2010.
<http://www.cehd.umn.edu/NCEO/Presentations/ThurlowSenateTestimony2010.pdf>

² Source: Massachusetts Department of Elementary and Secondary Education.

³ Individuals with Disabilities Education Act regulations at 34 CFR Part 300. Massachusetts special education regulations at 603 CMR 28.00.

⁴ Includes charter schools.

⁵ Coordinated Program Review reports are available online at <http://www.doe.mass.edu/pqa/review/cpr/reports/>

⁶ Mid-Cycle Review reports are available online at <http://www.doe.mass.edu/pqa/review/cpr/reports/followup.html>

⁷ Massachusetts Part B State Performance Plan and Annual Progress Report <http://www.doe.mass.edu/sped/spp/full.pdf>

⁸ "Broken Promises: Special Education in Massachusetts." SPEDWatch, April 2007.
http://www.spedwatch.org/files/broken_promises_2007.pdf

intellectual capabilities. (See “The Price Students Pay” later in this article).

Why Noncompliance Matters

Noncompliance with special education law has serious consequences for students, especially when it involves:

1. Student Evaluation - Proper student evaluation forms the basis for all service decisions. Without an accurate assessment of a student's needs, it is impossible to develop an effective plan of instruction and support. The result for the student is failure, while the school district wastes scarce resources on ineffective instruction and services.

2. Progress Reporting - Progress reporting allows parents and schools to monitor a student's growth and, importantly, enables educators to respond quickly when progress is not being made as expected. Without proper progress reporting a student can very easily ‘fall through the cracks’. A student's lack of progress and the district's outlay of funds for ineffective instruction can go undetected for an entire school year, or more.

3. Timelines - Before a student can receive special education services he or she must be evaluated; decisions about eligibility, services, and placement must be made; and those decisions must be documented in an Individualized Education Program⁹ (or IEP) for the parent's signed consent. Regulations require that these activities occur within 45 school (not calendar) days. With intervening weekends, vacation days, holidays, snow days, and professional days, a student can wait as long as two and a half months before receiving badly needed help. Exceeding regulatory timelines has an immediate and negative impact on a student's education.

4. Staff Training - School district administrators and instructional staff are responsible for ensuring that the district complies with the laws designed to protect students' special education rights. For this reason the law mandates that school personnel be trained in basic 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 – The IEP is a contract between the parent and the school district. It is the blueprint that instructs staff how to work with a student. A student can be properly evaluated in a timely manner and still not receive an appropriate education if the IEP is not developed correctly. Regulations regarding IEP development include ensuring that instruction and services are tailored to the specific needs of the child, and that the student's goals are expressed in measurable terms so that meaningful progress reporting can occur. Services, accommodations, and modifications listed in the IEP must be provided as a matter of law. Conversely, if something does not appear in the IEP, the district is under no obligation to provide it.

6. Program Evaluation - In addition to monitoring the progress of individual students, schools are required to regularly evaluate the overall effectiveness of their special education programming. This evaluation must include consideration of local and statewide assessment results, drop out rates, and graduation rates for special education students. Such an evaluation makes sense since the needs a district's special education population 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.

⁹ The Individualized Educational Program, or IEP, is a written document specific to an individual student that details the content of the student's educational plan, including the services to be provided

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 special education law, Congress requires that these students be educated alongside their non-disabled peers to the maximum extent appropriate.¹⁰ 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 - The behavioral manifestations of disability are too often inappropriately treated as discipline problems by schools. For that reason the law specifically requires that schools treat behavioral difficulties as educational issues (if the behavior in question is a result of the student's disability) by responding with appropriate services and supports. The law prohibits schools from punishing children for disability-related behavior.¹¹

¹⁰ Note that regulations require students to be included in regular education programming to the maximum extent 'appropriate,' not to the maximum extent 'physically possible.' This is an important distinction, intended to safeguard the rights of *all* students to a quality education.

¹¹ This does not mean school officials are powerless to intervene. The law gives school officials the right to consider any unique circumstances on a case-by-case basis when contemplating the removal of a student with a disability from school. In addition, school authorities have the right to remove a student from school, even over parental objections,

The Price Students Pay

Given the fact that at least 90% of the Massachusetts special education population does not have cognitive impairments, one would reasonably expect that the academic achievement rates for students with and without disabilities would be substantially similar. Instead, the achievement gap between the two groups (as measured by MCAS results – see table below) is significant and has actually widened, not narrowed, over the years. This is the result of students with disabilities being denied the special education services they require by school district noncompliance with applicable laws.

**MCAS Statewide Results - Aggregate Performance
Percent of Students Scoring Proficient or Advanced**

<u>Exam</u>	<u>Students without Disabilities</u>	<u>Students with Disabilities</u>	<u>Achievement Gap</u>
2009 ELA	75.0%	28.0%	47.0 points
2008 ELA	73.1%	26.3%	46.8
2007 ELA	74.1%	27.3%	46.8
2006 ELA	70.7%	26.1%	44.6
2005 ELA	67.9%	24.4%	43.5
2004 ELA	69.4%	25.4%	44.0
2003 ELA	67.8%	25.2%	42.6
2009 Math	64.0%	20.0%	44.0 points
2008 Math	63.0%	19.3%	43.7
2007 Math	60.5%	18.3%	42.2
2006 Math	53.1%	15.5%	37.6
2005 Math	53.2%	14.5%	38.7
2004 Math	51.1%	13.0%	38.1
2003 Math	48.2%	12.4%	35.8

Source: Massachusetts Dept. of Elementary and Secondary Education: Student Assessment Services. October 15, 2009
Students with Disabilities are defined as only those who have IEPs.

Copyright © 2010 Ellen M. Chambers. All rights reserved. SPEDWatch is not engaged in rendering legal, educational, medical, therapeutic, or other professional advice.

if the student possesses a weapon, possess or uses illegal drugs, or has inflicted serious bodily injury.