

# **RIGHTS OF MASSACHUSETTS YOUTH REGARDING SPECIAL EDUCATION PLACEMENT**

**Prepared by the Mental Health Legal Advisors Committee  
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## **How do I advocate for accommodations and services in the regular classroom setting?**

Massachusetts regulations state that a school must provide education within the least restrictive environment, which means that schools are required to integrate the special education students into the mainstream school environment as much as possible.<sup>1</sup> Maintaining special education students in the regular classroom setting is known as “inclusion.” An alternative to full inclusion is partial inclusion where a student receives some services in the regular classroom setting and is pulled out to receive some specialized services in another setting. The appropriate balance of regular classroom and specialized services will depend on the student.

To succeed in regular classroom settings, special education students may seek a range of accommodations, services and supports such as modifications to assignments, adapted teaching methods and adapted learning methods. For youth with mental health issues there are some particular modifications and services that can be helpful.

For example, an IEP may provide regular and/or as needed access to in-school mental health services. IEPs may also provide that students can avail themselves of certain options, such as a self-directed time out, when they are experiencing emotional stress. IEPs also can incorporate behavior plans that guide teacher and other school staff response when a student exhibits certain targeted behaviors or is in crisis. An IEP may provide access for a student to a classroom aide or even may provide a 1:1 aide in a classroom setting.

To advocate for accommodations and services, it is necessary to assemble documentation as to how your child is doing in the classroom. Request your child’s educational records from the school.

It is also helpful to have clinical support from individuals who have worked with and/or evaluated your child for the specific accommodations and services that you are requesting. You may want to observe your child or have a professional observe your child in the classroom.

You may want to clarify your child’s mental health diagnosis and symptoms and organize the documentation of those conditions. Such information should inform the discussion of the IEP. You also should organize the information regarding what mental health services and supports your child currently receives (as well as those services that have worked and not worked for your child in the past). You should explore whether there are any additional services and supports available in the community for your child.

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<sup>1</sup> 34 CFR § 300.114(a)(2); 603 CMR 28.06(2).

You may want to consult with educational advocates as to what accommodations and services might be appropriate for your child.

**Resources:**

SPEDWatch, Least Restrictive Environment, <http://www.spedwatch.org/files/lre.pdf>

**How do I advocate for a substantially separate classroom, a day school, or residential services?**

As explained above, Massachusetts schools must provide education within the least restrictive environment.<sup>2</sup> The school is also required to look to an in-district placement before considering out-of-district placement.<sup>3</sup> The schools are required to provide the resources necessary to provide the student with a free and appropriate education, and if you feel that this can only be accomplished with a separate program or residential placement, then it may be necessary to advocate for it. When advocating for these types of placements, it is helpful to show that other services have already been tried and were not sufficient to provide your child with FAPE.<sup>4</sup>

In particular, it is often difficult to have residential services written into the IEP. It is not uncommon for parents to have to submit an appeal to the Board of Special Education Appeals (BSEA) in order to obtain residential services for their children. It is usually necessary to show not only that the child requires 24-hour care and programming, but that without this, the child will not receive a free and appropriate education. This has been successful in previous cases, such as by showing that a student's social, emotional, and behavioral deficits were his most substantial educational needs, which could only be addressed by a residential placement.<sup>5</sup> It is essential to show that the placement is needed for education purposes.

Providing expert witnesses who can attest to the necessity of a residential placement will also greatly strengthen the appeal, as the parents bear the burden of persuading the court that the placement is necessary if the school disagrees.<sup>6</sup> For example, in one case, the BSEA was persuaded by a psychologist who testified that it was unlikely that the student could successfully be provided with services outside of a residential placement, because he needed trained staff that

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<sup>2</sup> 34 CFR § 300.114(a)(2); 603 CMR 28.06(2).

<sup>3</sup> *Id.*

<sup>4</sup> See *In Re: Dracut Public Schools*, 13 MSER 280 (2007) (Parents' request for residential placement was denied because Hearing Officer found a new approach had been improving the student's attendance, and neither intensive home services nor DDS services had been tried); *In Re: Wayland Public Schools*, 13 MSER 71 (2007) (Parents won reimbursement for unilateral residential placement after Hearing Officer found highly structured therapeutic academic residential program was necessary for educational progress because numerous less restrictive options had been tried and proved ineffective).

<sup>5</sup> See *In Re: Fall River Public Schools*, 15 MSER 189 (2009).

<sup>6</sup> See *In Re: North Andover Public Schools*, 14 MSER 14 8 (2008). See also *In Re: Marblehead Public Schools*, 14 MSER 39 (2008).

would be constantly available to respond to the student's aggressive behavior.<sup>7</sup> Additionally, it may be necessary to have a specific recommendation for residential placement in an evaluation (whether the evaluation conducted by the school or an independent evaluation).<sup>8</sup>

If your child is receiving services from a state agency, such as the Department of Mental Health, then it may be possible to join them as a party in the appeal. The BSEA has the power to order state agencies to provide services that are necessary to enable the student to access educational services provided by the school district.<sup>9</sup> Parents may request the joinder of an additional party by submitting a written request. If the Hearing Officer finds that this third party bears some of the responsibility for providing the necessary services, then it may order the agency and the school district to share the financial responsibility of the placement.

### **Resources:**

SPEDWatch, Out-of-district placements,  
[http://www.spedwatch.org/files/Out\\_of\\_District\\_Placements.pdf](http://www.spedwatch.org/files/Out_of_District_Placements.pdf)

SPEDWatch, Sole Source Placement,  
[http://www.spedwatch.org/files/sole\\_source\\_placement.pdf](http://www.spedwatch.org/files/sole_source_placement.pdf)

### **How do I evaluate a therapeutic school/collaborative school?**

When determining what therapeutic or collaborative school might be appropriate for your child, it is very important to visit the schools so that you can see the environment first-hand. Parents should ask to see the classroom that would be appropriate for their child, and if it is a residential placement, to see the residential facilities. It is also important to come prepared with questions.

### **What should I ask during a visit?**

Some examples of good questions include:

- What kind of clinical support services are available to the students?
- What is the makeup of the student body, and about how long does each of the students remain at the school?
- What are the credentials or experience levels of the educational and other staff members?
- What emergency facilities are available to the school, and how often are they used?
- Are there vocational or employment resources on or off campus?
- For residential placements: What residential services are in place? Are there trips off campus? If so, how can the students access them?

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<sup>7</sup> See *In Re: Lunenberg Public Schools*, 10 MSER 518 (2004).

<sup>8</sup> See *In Re: North Andover Public Schools*, 14 MSER 14 8 (2008),. See also *Marblehead Public Schools*, 14 MSER 39 (2008).

<sup>9</sup> 603 CMR 28.8(3); Massachusetts Hearing Rules for Special Education Appeals, Rule 1J.

It is also a good idea to ask for the student handbook, and to talk to other parents with children in therapeutic schools.

**Resources:**

An easy way to contact other parents is through parent support groups or other networks, such as the Parent/Professional Advocacy League (PPAL) (<http://ppal.net/>), the Massachusetts Association of Approved Private Schools (MAAPS) (<http://www.maaps.org>), or the special education parent advisory council in your school district.

National Association of Therapeutic Schools and Programs, Selecting the “Right” Therapeutic School or Program, <http://www.natsap.org/right-school.asp> gives criteria and questions to ask when evaluating potential programs for your child.

**How do I find an appropriate special education day school or special education residential school?**

There are a number of sources for information about special education programs. Your school district will have suggestions and may be able to speak from past experience about some programs. Other parents and parent advocates will be able to speak about their experiences. One helpful parent group is the Parent Professional Advocacy League as they have regional support groups where you could learn about programs in your geographic area. Special education advocates can also suggest appropriate programs. If your child has a disability requiring specialized services, like autism or fire-setting, contact organizations that advocate for youth with such issues for their suggestions. If your child is involved with a state agency, such as DMH or DCF, ask to speak to staff at those agencies which are familiar with special educational placements and have followed clients placed in the past.

The Massachusetts Association of 766 Approved Private Schools’ maintains a complete listing of approved private special education schools. You can search the directory of Chapter 766 private special education schools or related educational programs or services on line.

**Resources:**

Massachusetts Association of 766 Approved Private Schools, Membership Directory, <http://maaps.org/about/members/?cn-cat=2>

Parent Professional Advocacy League, PAL Affiliated Parent Support Groups, <http://ppal.net/wp-content/uploads/2011/01/Support-Group-List-Updated-Feb.-17-2011.pdf>

**What kinds of public school settings are available outside the traditional school setting?**

There are a range of public school options beyond the regular public school setting including alternative education schools, educational collaboratives, and charter schools?

**Resources:**

DESE, Profiles, <http://profiles.doe.mass.edu/> (to find collaboratives, alternative education programs, or charter schools)

### **What are alternative education schools?**

Alternative education schools are public schools that serve at-risk students whose needs are not being met in the traditional school setting. Unlike alternative education programs within public schools, alternative education schools are self-contained.<sup>10</sup> Students in alternative education schools should learn the same curriculum as students in all other Massachusetts public schools.

The Massachusetts Department of Elementary and Secondary Education provides some guidelines on how to determine the quality and appropriateness of alternative education programs, in addition to general information on alternative education at <http://www.doe.mass.edu/alted/faq.html>.

#### **Resources:**

DESE, Alternative Education: Frequently Asked Questions and Promising Practices, <http://www.doe.mass.edu/alted/faq.html>

### **What are educational collaboratives?**

Educational collaboratives provide inter-district public school services to students with a variety of needs, including mental health issues. Students who use collaborative services have usually not been able to function successfully in traditional school settings. Collaborative services range from supports in regular education settings to separate therapeutic schools. Collaboratives are public schools.

#### **Resources:**

Mass. Organization of Educational Collaboratives, <http://moecnet.org/>

### **What are charter schools?**

Charter schools are also part of the public education system. Therefore, charter schools must abide by federal special education laws and regulations.

#### **Resources:**

DESE, Massachusetts Primer on Special Education and Charter Schools (Feb. 2009), [http://www.doe.mass.edu/charter/sped/primer\\_sl.doc](http://www.doe.mass.edu/charter/sped/primer_sl.doc)

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<sup>10</sup> DESE, About Alternative Education, <http://www.doe.mass.edu/alted/about.html?section=definition>.

### **What are a special education student's rights regarding private schools?**

Special education students may be placed in an approved private school if the IEP Team makes such a determination. In such cases where an out-of-district placement (which includes private schools) is written into the student's IEP, tuition should be paid at public expense.<sup>11</sup> Publicly funded students have the same substantive and procedural rights as other special education-eligible students.<sup>12</sup>

Special education schools, public or private, cannot terminate enrollment of a student until his public school district is informed and agrees to assume responsibility for the student. The school must wait up to two calendar weeks to terminate enrollment if the public school district makes such a request. In this period, the school district may convene emergency IEP team meetings or other planning discussions. The period may be extended beyond two weeks with mutual agreement.<sup>13</sup>

Furthermore, special education-eligible students attending private schools at *private*, not public expense have the right to genuine opportunities to participate in their public school district's special education program.<sup>14</sup> The school district must evaluate students attending private schools and, if necessary, provide them with an IEP.<sup>15</sup> The district is also responsible for providing any services outlined by the IEP. Furthermore, these services should be comparable in quality, scope, and opportunity for participation to special education services that eligible public school students receive.<sup>16</sup>

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<sup>11</sup> 603 C.M.R. 28.09 (4)(b).

<sup>12</sup> 603 C.M.R. 28.06 3 (f)(4).

<sup>13</sup> 603 C.M.R. 28.09, 12(b).

<sup>14</sup> 603 C.M.R. 1(e)(1).

<sup>15</sup> 603 C.M.R. 1(e) (2).

<sup>16</sup> 603 C.M.R. 1(e) (4).