

RIGHTS OF MASSACHUSETTS YOUTH REGARDING SPECIAL EDUCATION REFERRAL

Prepared by the Mental Health Legal Advisors Committee
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Who can make a referral of a student for special education services?

Any person who is concerned that a child may have a disability or is having difficulty developing in school may refer a student for an initial evaluation.

A parent may initiate a request for an initial evaluation to determine if a child is a “child with a disability.” 20 U.S.C. 1414(a)(1)(B); 34 CFR 300.301(b); 603 CMR 28.04(1).

If the person who refers a child is not the child’s parents, the school district needs to get consent for the evaluation from the child’s parents first.

May a school district refuse to conduct an evaluation for a referred student?

School districts may not refuse to evaluate a student who has been referred. Even if the school district has made efforts to meet a child’s needs in a regular education program, it is still required to evaluate the child.¹

Must a district conduct an evaluation if the request comes from the parent?

Yes, a district is legally obligated to conduct an evaluation for a student upon the request of his parents. This obligation is based on language in the IDEA, its regulations, as well as in the state and federal law implementing the IDEA.

A school district may not refuse to evaluate a student who has been properly referred for evaluation by parents, on the basis of a pre-referral program or in order to try other instructional support activities *or for any other reason*.² “A school district will rarely have occasion to refuse to conduct an initial evaluation and may do so only if the parent or other individual making the referral has no suspicion of disability or is not concerned about the student’s development.”³

¹ DESE, IEP Process Guide (2001), <http://www.doe.mass.edu/sped/iep/proguide.pdf>.

² DESE, IEP Process Guide (2001), <http://www.doe.mass.edu/sped/iep/proguide.pdf> at 6 (emphasis added).

³ DESE, Notice of Procedural Safeguards, http://www.doe.mass.edu/sped/prb/pnps.doc#_3. In accordance with G.L. c. 71B, § 2, prior to referral by the school district of a student, the principal of the student’s school shall ensure that all efforts have been made to meet such student’s needs within the regular education program, but such efforts shall not be construed to limit or condition the right to refer a student for evaluation. DESE, Notice of Procedural Safeguards, http://www.doe.mass.edu/sped/prb/pnps.doc#_3.

What should happen after a parent makes a request for an evaluation?

In response to a parent's request, a school must, within five working days of receipt of the request, provide notice to the parents of receipt of the request and seek the consent of the parents for an evaluation to occur.⁴ The notice shall contain certain elements.⁵

How long does the district have to perform the evaluation?

Within thirty school days of receiving the parent's consent to the evaluation, the school district must evaluate the referred student.⁶

In conducting the evaluation, the school district administers assessments and other evaluation measures.

Resources:

DESE, Parent's Notice of Procedural Safeguards, <http://www.doe.mass.edu/sped/prb/>

⁴ M.G.L. 71B, § 3; 603 CMR 28.04 (1)(a); *see also* 20 U.S.C. 414(b)(1); 34 CFR §300.304(a).

⁵ M.G.L. c. 71B, § 3. 603 CMR 28.04 (1)(b); 20 USC § 1415(c). The notice also must seek the consent of the parents for an evaluation to occur, and provide the parents with the opportunity to express any concerns or provide information on the student's skills or abilities. 603 CMR 28.04 (1)(b).

⁶ 603 CMR 28.04(2).