

Understanding Basic Rights in Special Education

Specific to Massachusetts

Productive, shared decision-making among families and school team members is an important factor in ensuring a free, appropriate public education for each child with a disability.

“The purpose of the IEP is to give the parents a voice in the process.”

The Laws

- IDEA – **I**ndividuals with **D**isabilities **E**ducation **A**ct
- NCLB – **N**o **C**hild **L**eft **B**ehind
- ESSA – **E**very **S**tudent **S**ucceeds **A**ct
- Section 504 of the Rehabilitation Act of 1973
- ADA – **A**mericans with **D**isabilities **A**ct
- MGL 603 CMR 28.00 – **M**A **G**eneral **L**aws

IDEA

“To 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;”

Authority: 20 U.S.C. 1400(d)

FAPE

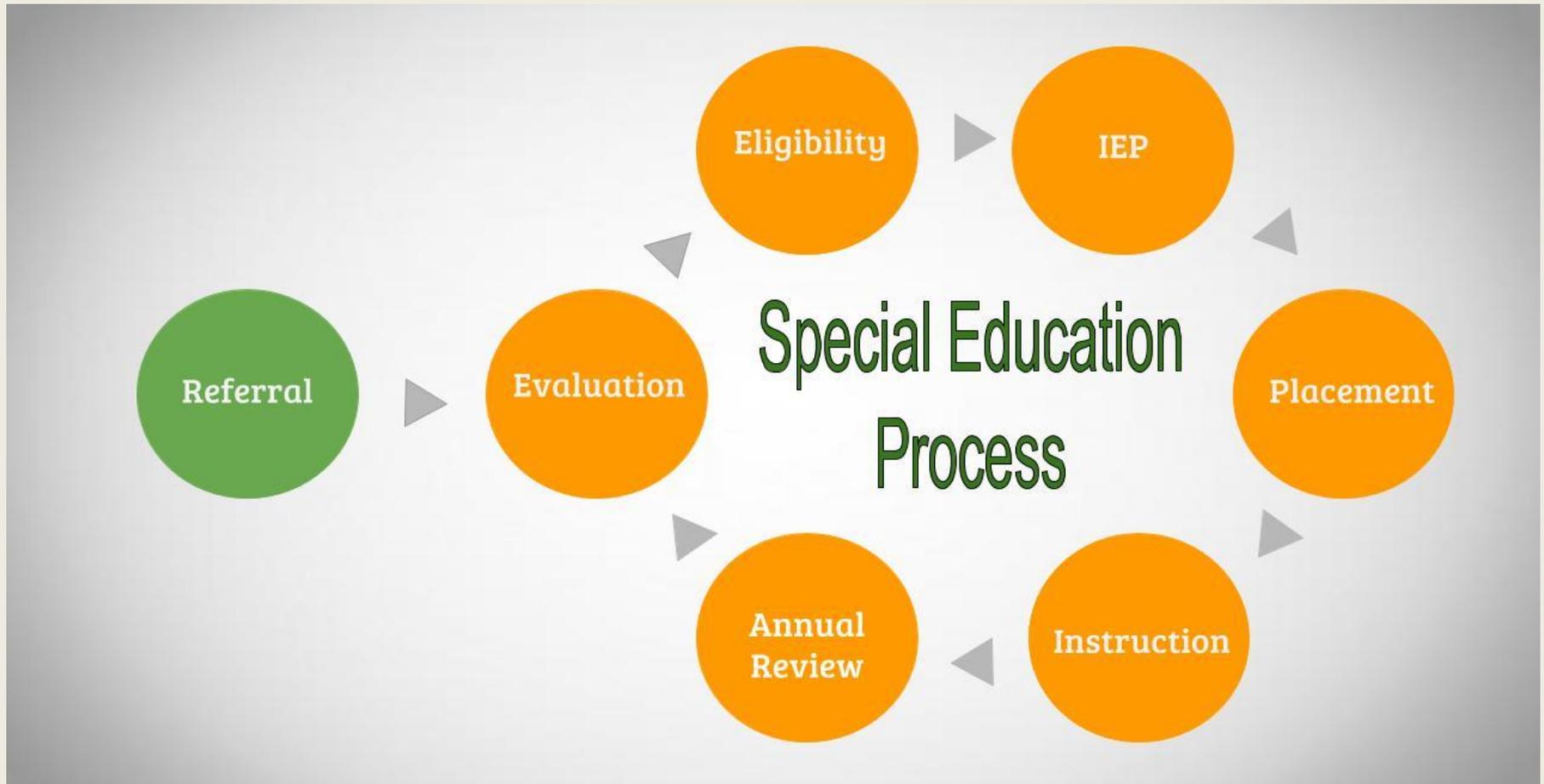
- **Free** – no cost to the family
- **Appropriate** – hmmm ...
- **Public** – provided by or under direction of a public school
- **Education** – preschool, elementary, and secondary education, including extra curricular and non-academic school activities

34 CFR 300.17 ; Bd. of Ed. v. Rowley 483 F.Supp.528 (SD NY 1980)

“Appropriate”

“... for all students, including those performing at grade level and those unable to perform at grade level, a school must offer an IEP that is **“reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”** This standard is different from, and more demanding than, the “merely more than de minimis” test applied by the Tenth Circuit. As the Court stated, “[t]he goals may differ, but **every child should have the chance to meet challenging objectives.”**”

The special education “process”



The *referral* to special education

- Any caregiver or professional working with the child can make a referral for special education services
- The referral can happen at any time
- The parents will get a consent for evaluation form within **5 school days**

603 CMR 28.04(1) and (2)

and the timelines begin ...

There are many official timelines in special education to which the district *must* adhere.

The district must complete the evaluation(s) **within 30 school days** of receiving consent.

You need to request, *in writing*, to see the evaluations before a meeting.

603 CMR 28.04

Evaluations?

- Required assessments:
 - Assessment in all areas of suspected disability
 - Speech and language
 - Reading
 - Occupational therapy
 - Physical therapy
 - Functional behavioral assessments
 - Educational assessment by the school

603 CMR 28.04 (2)

Evaluations (continued)

- Optional assessments
 - Comprehensive health assessment
 - Psychological assessment
 - Licensed school psychologist
 - Licensed psychologist, or
 - Licensed educational psychologist
 - Home assessment
 - Nurse, psychologist, social worker, guidance counselor and/or adjustment counselor

603 CMR 28.04(2)(b)

Evaluations (continued)

- A written report for each assessment will include:
 - Procedures used
 - Results
 - Diagnostic impression
 - Student's needs
 - **Offer explicit means of meeting needs**

603 CMR 28.04(2)(c)

Next step ... meeting

- A Team meeting will convene to review the evaluations
- Determination of eligibility for special education services
- If eligible, develop an IEP and *then* determine a proper placement
- Parent gets two copies of the IEP **within 45 school days** of submitting written consent

603 CMR 28.05(1)

TEAM

/tēm/

noun

- two or more people working together
- a group of people linked in a common purpose
- a brood especially of young pigs or ducks

Parent Participation

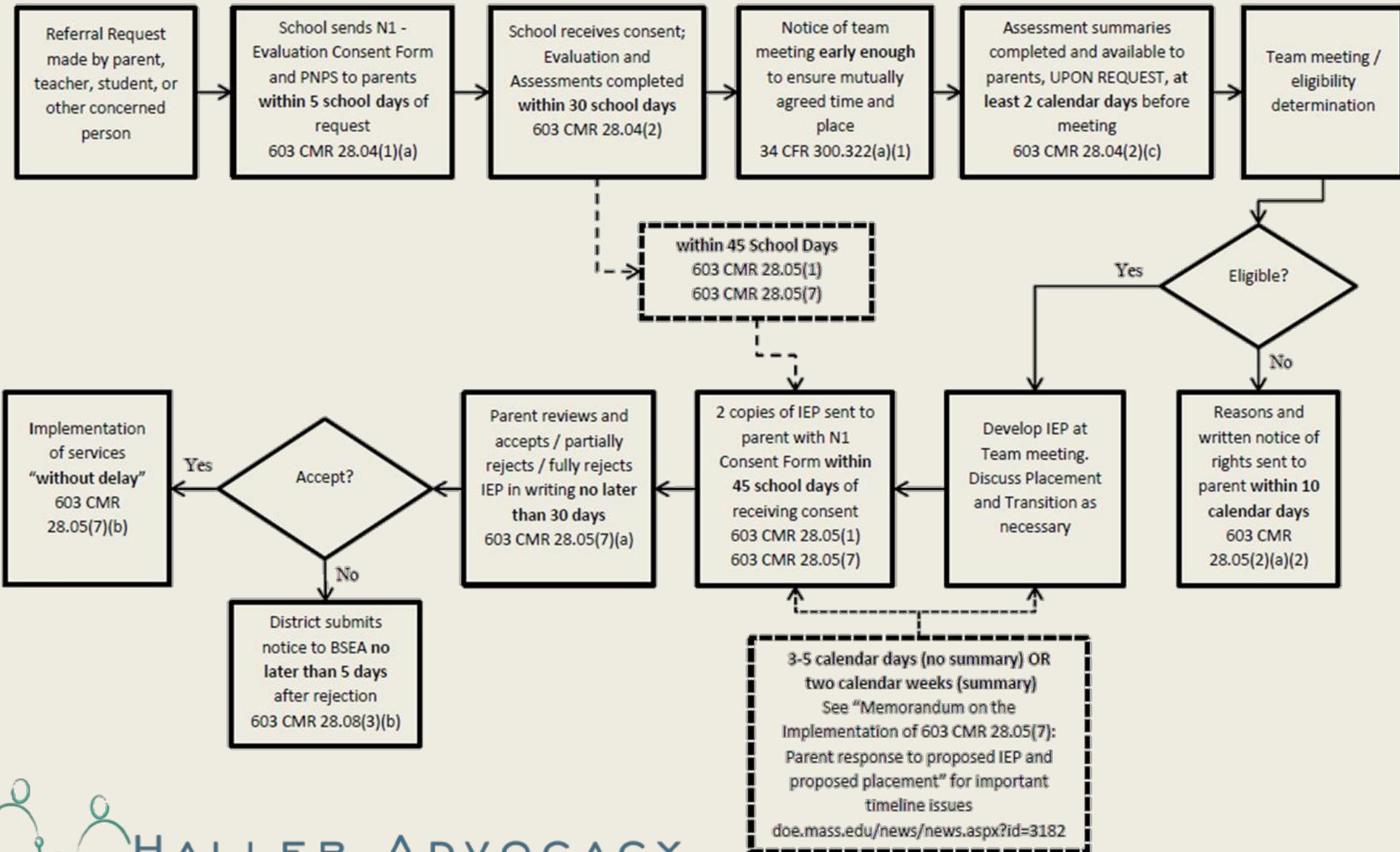
Sec. 300.322 Parent participation.

(a) [District] responsibility-general. Each [district] must take steps to **ensure** that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--

- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- (2) Scheduling the meeting at a mutually agreed on time and place.

34 CFR §300.322(a)

That timeline thing ...



The IEP Team includes ...

- The parents
- At least one general education teacher if the student participates in general education
- At least one special education teacher (or where appropriate, not less than one special education provider of the child)
- A district representative *
- Someone who can interpret the evaluations
- Others with knowledge or special expertise regarding the student, invited by parent or the school
- When appropriate, the student

34 CFR 300.321

District Representative (ETC)

(Section 1414(d)(1)(B))

- (iv)** a representative of the local educational agency who—
- (I)** is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (II)** is knowledgeable about the general education curriculum; and
 - (III)** is knowledgeable about the availability of resources of the local educational agency;

MA adds: “... who has the authority to commit resources”
(Guidance for Implementing IDEA 2004)

Who needs to attend the meeting?

Everyone.

But if the parent and district agree *in writing* that a member is *not necessary*, that person may be excused from all *or part* of the meeting.

If a member is necessary but needs to miss all *or part* of the meeting, *and if agreed by both parties*, the member can submit, *in writing*, input for the IEP prior to the meeting.

34 CFR 300.321(e)(1), 34 CFR 300.321(e)(2)

Meeting notice

The district **must** inform parents **in advance** of the IEP meeting, including the **purpose**, time, and location of the meeting and **who will be in attendance**. There is no similar requirement in the IDEA for the parent to inform the district, in advance, if they intend to be accompanied by an individual with knowledge or special expertise regarding the child, including an attorney or advocate.

34 CFR §300.322(b)

That said, it is good practice to tell the school in advance who will be attending with you.

Meeting notice (continued)

When you arrive at the meeting, if you find:

- the purpose of the meeting has changed
- attendees who are not on the meeting notice

you may cancel the meeting right there and insist on a rescheduled meeting and new meeting notice.

Meeting takeaways

- Time and place must work for parents
- No surprise attendees
- No surprises on the agenda
- Must be a *full team* or you must agree
- **Early notification of meeting notice must include:**
 - Purpose
 - Time and location
 - Attendees

The TEAM responsibilities

- Determine eligibility
- If eligible:
 - Develop the IEP
 - Determine placement *based on developed IEP*
 - Annual review of IEP and placement
 - Re-evaluate every three years
- If not eligible:
 - Provide parents with written notice of rights within 10 calendar days

Qualifying disability

The student must have a “qualifying” disability - the first step in determining if the student is eligible for special education.

The disability must adversely affect the child’s educational performance.

34 CFR 300.8(c)(11)

IDEA defines “disability”

- Intellectual disability
- a hearing impairment (including deafness)
- a speech or language impairment
- a visual impairment (including blindness)
- a serious emotional disturbance
- an orthopedic impairment
- autism
- traumatic brain injury
- an other health impairment
- a specific learning disability
- deaf-blindness
- multiple disabilities

34 CFR 300.8(a)(1)

MA Disability Definition

- Autism
- Developmental Delay
- Intellectual Impairment
- Sensory Impairment
 - Hearing or Deaf
 - Vision or Blind
 - Deafblind
- Neurological Impairment
- Emotional Impairment
- Communication Impairment
- Physical Impairment
- Health Impairment
- Specific Learning Disability

603 CMR 28.02(7)

Lack of effective progress

To judge whether a student is making effective progress, the Team must determine whether the student has:

- Made **documented** growth, with or without accommodations, in knowledge and skills acquisition including social/emotional development, the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district
- Made growth according to the chronological age, the developmental expectations **and the individual educational potential** of the child

Lack of effective progress (continued)

The Team must specifically look at whether the disability(ies) *is causal* to an inability to make progress. Students may not be determined eligible solely because of a need for reading or math instruction or because of limited English proficiency or social maladjustment.

Only if the Team determines the lack of progress is connected to a disability or disabilities may the Team continue on to discuss a possible finding of special education eligibility.

From “Child Find”

Although failing grades would allow the Team to assert that the student is not making effective progress, the Team would not be able to comparably assert that the student is making effective progress solely because he/she is making passing grades. In fact, the **federal special education law specifically prohibits the Team from finding a student ineligible solely because the student is advancing from grade to grade.**

(34 CFR 300.111(c)(1)) From MA DOE Special Education Technical Assistance Guide

Is “specialized instruction” needed?

- Modification of:
 - Curriculum content
 - Teaching methods
 - Testing methods

Designed for the child’s unique needs

Enable access to the curriculum

34 CFR 300.39(b)(3)

Related Supports and Services

- Assistive Technology
- Audiology
- Interpreting
- Occupational Therapy
- Orientation and Mobility
- Parent Counseling
- Parent Training
- Physical Therapy
- Psychological
- Rehabilitation Counseling
- Recreation
- School Nurse/Social Worker
- Health Services
- Speech/Language Pathologist
- Travel Training
- Transportation

Needing one or more related services for effective progress can be a qualification for an IEP. 603 CMR 28.05(2)(a)(1)

MA Autism Law MGL Ch. 71B sec. 3

With ASD, the IEP Team shall consider and address:

1. **Verbal and nonverbal** communication needs
2. Need to develop **social skills and proficiencies**
3. Needs resulting from unusual **responses to sensory** experiences
4. Needs resulting from resistance to **changes in environment / routine**
5. Needs resulting from **stereotype / repetitive activities**
6. Need for **positive behavioral interventions**, strategies, support
7. Other needs resulting from the disability that impact progress, including **social and emotional development**

After the meeting ...

The Team leader will typically give a summary of goals and a completed service grid showing the types and amounts of special education proposed and a copy of the attendance sheet.

Parent gets the proposed IEP in two calendar weeks *if given the summary*, but if the parent wants it sooner, *the school must give a completed IEP within 3-5 calendar days.*

Memorandum on the Implementation of 603 CMR 28.05(7): Parent response to proposed IEP and proposed placement

IEP Contents

- Parent and student input
- Student's needs
- Accommodations / modifications
- Measurable goals and benchmarks to gauge progress
- Service delivery grid
- Schedule modifications including ESY (summer)
- Transportation
- Standardized testing (accommodations, etc.)

IEP Contents (sort of)

- Transition Planning Form – starting at age 14 and discussed **BEFORE** the IEP
- Placement – actually a separate document and only considered **AFTER** the completion of the IEP
- Health Plan – optional, separate but attached

Parent's response to IEP

- Accept the IEP in full
 - Must be implemented “*without delay*”
- Reject the IEP in full (don't do this at initial!)
- Reject parts of the IEP
 - Any part not rejected must be implemented without delay
 - Rejection can be for services not offered
 - Parts rejected fall back to “stay put” rights

Least Restrictive Environment

Students must be educated in the **least restrictive environment**, i.e. as much with their typically developing peers as possible.

603 CMR 28.06(2)

MA law goes as far as stating if two outside placements are equally appropriate, the student goes to the one closest to home.

Least Restrictive Environment (continued)

L
E
S
S

- Regular classroom
- Pull-outs
- Separate classroom
- Other school in district
- Out of district day school

M
O
R
E

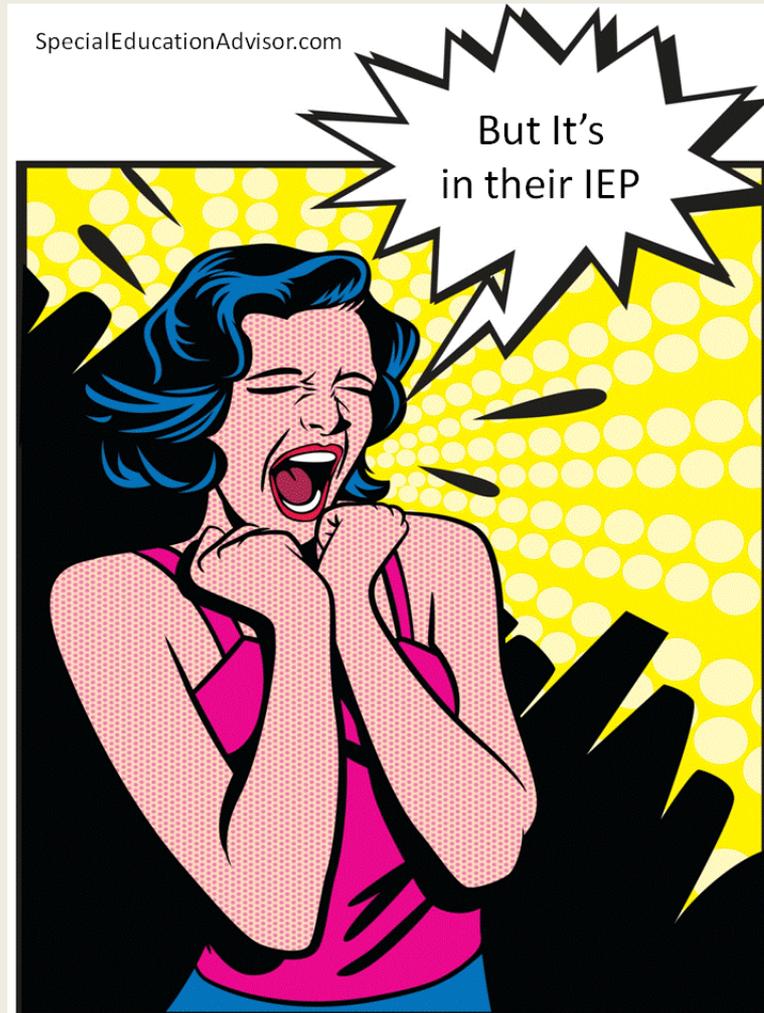
- Out of district residential placement
- Incarceration / Hospitalization

Can the IEP be amended or modified?

- Parent and school may amend or modify the IEP without a meeting during the year, but there must be written parent consent
- All staff implementing the IEP must be informed of the changes
- Staff must have access to the IEP at all times

34 CFR 300.323, 300.324

The IEP must be accessible to all teachers; they must be informed of their specific responsibilities related to its implementation! (34 CFR 300.323)



After the IEP is signed ...

- Progress reports are sent as often as report cards
- Annual review by the IEP Team
- Three-year re-evaluation with parent consent
- Parent has access to all school records
- Parent or chosen professional can observe the student in the classroom

What if deemed not eligible?

- School notifies the parent in writing (N2) within 10 calendar days of Team meeting
- Potential discussion of eligibility for accommodations under a Section 504 plan
- Parents may reject finding of ineligibility and request an Independent Education Evaluation and then a re-determination of eligibility

Independent Ed Evaluation

Option 1: If a parent disagrees with an evaluation, they can request an IEE as a second opinion in area(s) assessed by the school.

- Fully paid if student is eligible for free or reduced-price lunch or has a SESP
- Paid in part by district on a sliding scale
- Parent has 16 months to request an IEE

Independent Ed Evaluation (continued)

Option 2: If parent requests an IEE in an area not assessed by school, student does not meet income eligibility standards or family chooses not to provide financial information:

School shall agree to pay for the IEE or, within 5 school days, file with BSEA and show the school evaluation was comprehensive and appropriate.

Independent Ed Evaluation (continued)

Option 3: Family may obtain an independent evaluation at private expense any time.
Insurance *may* cover the testing.

Resolving Differences

Local Options

- Reconvening IEP Team
- Meeting with Special Education Team leader, district level director, or Superintendent
- Independent Educational Evaluation
- Involving SEPAC, getting advice from others

Resolving Differences (continued)

In Lowell ...

Dr. Francisco C. Vicente

Director of Special Education

fvicente@lowell.k12.ma.us

978-674-4322

Resolving Differences (continued)

Procedural Violations & Enforcement Issues

- **Problem Resolution System (PRS)**
 - Compliance and Monitoring
 - (781) 338-3700 compliance@doe.mass.edu
- **Office for Civil Rights (OCR)**
 - U.S. Department of Education
 - (617) 289-0111 OCR.Boston@ed.gov

Resolving Differences (continued)

Voluntary Alternate Dispute Resolution

- Facilitated IEP Meeting
 - No cost to the parties to help with difficult IEP Team meetings. Either school district or parent can request a facilitator. Both parties must agree to accept the facilitator's services.
 - To request a facilitator for an IEP Team Meeting, call the Bureau of Special Education Appeals at (617) 626-7250.

Resolving Differences (continued)

Voluntary Alternate Dispute Resolution (continued)

- Mediation
 - Special Education Mediation is a voluntary and confidential dispute resolution process available at no cost. Either party may request mediation, both must agree to it.
 - Contact the BSEA Coordinator of Mediation at (617) 626-7291

Resolving Differences (continued)

Due Process

- BSEA Hearing (**B**ureau of **S**pecial **E**ducation **A**ppeals)
 - A due process hearing may only be requested by filing a written request with the opposing party(ies) and simultaneously with the BSEA
 - You can be pro se (no lawyer)