

Parent's Notice of Procedural Safeguards

Dear Parents:

You are receiving this Notice of Procedural Safeguards (Notice) because your son or daughter (student) has been referred for an evaluation or is currently receiving special education services. If your student is eligible for special education, the school district must provide a free appropriate public education commonly referred to by the acronym FAPE. In order to provide a FAPE the school district must work in partnership with you. You will be a member of the IEP team that will consider your student's unique needs and develop an individualized education program or [IEP](#), for your student.¹ The IEP must provide instruction that is tailored to your student's unique needs and includes sufficient support services to enable your student to make meaningful educational progress and to assist your student in acquisition of knowledge and skills, including those necessary for social and emotional development according to appropriate chronological and developmental expectations. Any special education services identified for your student must be provided at public expense with no cost to you. All students in the Commonwealth's public education system, including students with disabilities, are entitled to the opportunity to learn the material that is covered by the academic standards in the Massachusetts curriculum frameworks. Massachusetts also provides an individual right to FAPE for its resident students with disabilities who attend private schools at private expense, and who seek public special education services.

Both [State and federal laws](#) contain rules that school districts must follow when deciding if a student is eligible for special education and, if so, what services the student will receive. These laws also provide detailed procedures for ensuring that the student receives a FAPE during the entire time he or she is eligible for special education. Special education is a highly complex and regulated area of education law. The detail in the law is intended to protect your student and to help ensure that he or she receives appropriate educational services. You can get additional help in understanding the special education process from your school guidance office, the Massachusetts Department of Elementary and Secondary Education (DESE), organizations for parents of students with disabilities, and private special education organizations. Information from these sources will help you work in partnership with your school district to make sure that your student receives appropriate educational services. The DESE publishes extensive information for parents and school districts on its Internet Websites. A [Table of the DESE Websites](#) is included at the end of this Notice.

This Notice provides you with important information about your right to be involved in planning your student's special education. Procedural safeguards are the specific rules that make sure that you know what the school district is proposing to do ("receive notice"), agree with the school district's plan ("give parental consent") and have a range of opportunities for resolving disagreements with the school district ("due process"). Procedural Safeguards in the law also provide additional protections outlined in this document.

¹ See the IEP Process Guide for information on how a student's IEP is developed and implemented.

This document, the Parent's Notice of Procedural Safeguards, answers the following questions:

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You will receive this Notice at least once each year if your student is identified as eligible for special education. You can also request a copy from your school district at anytime or from the DESE. This document is available on the DESE Web site at <http://www.doe.mass.edu/sped/prb>.

1. WHAT IS PRIOR WRITTEN NOTICE AND WHEN DO YOU RECEIVE IT?

34 CFR §300.503

The school district must provide you with a written notice when it proposes, or refuses, to take steps to identify your student, to evaluate your student, to provide special services to your student, or to change your student's program. Federal regulations call this a "prior written notice." The written notice must:

- Describe **what** the school district proposes or refuses to do;
- Explain **why** the school district is proposing or refusing to take the action;
- Describe **how** the school district decided to propose or refuse to take the action, including telling you about each evaluation procedure, assessment, record, or report that your school district used to make its decision; and
- Describe any other options that your student's individualized education program (IEP) Team considered and the reasons why those options were rejected.

School districts will provide this information to you using forms developed by the DESE and available on the DESE Web site or their own forms containing the same information.

You will receive prior written notice when the school district: proposes to conduct an initial evaluation or reevaluation; proposes a new or amended IEP; proposes a change in placement, including a proposed change in placement for disciplinary reasons; or proposes to end special education services.

You will also receive a notice if the school district makes a finding of no eligibility for special education services or refuses a request you have made related to evaluations or provision of special education to your student. Notices from the school district must be provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, your school district must ensure that the school's notice is translated for you orally or by other means (e.g., by sign language), and that you understand the content of the notice.

The school district will also give you written notice and request your consent – or written permission – before the school district asks to use public health insurance (MassHealth or Medicaid), to pay for a student's special education services for the first time.

When you are given prior written notice, you will also be given a copy of this Notice of Procedural Safeguards, or if you have already received this Notice during the current school year, you will be told how you can obtain another copy. You will also be given information about whom you can contact for help in understanding federal and state special education laws.

2. WHAT IS PARENTAL CONSENT?

34 CFR §300.9 AND
603 CMR 28.07 (1)

The school district may not give your student a special test or special service unless you agree and give your written “parental consent.” The school district must contact you and clearly explain what it is proposing to do for your student. The school district will then ask you to sign your name on the consent form to show that you agree to the school’s proposal. This is giving “parental consent.”

Giving your consent is voluntary. You may take back, or revoke, your consent at any time. If you wish to revoke consent you must do so in writing. The withdrawal of consent will only apply to future action by the school district not to something that has already happened. Your school district may not use your refusal to consent to one service or activity as a reason to deny you or your student any other service, benefit, or activity.

Your consent is not required before your school district may review existing data as part of your student’s evaluation or reevaluation, give your student a test or other evaluation that is given to all students without consent such as the MCAS or classroom tests that are part of the general education program, or share information with federal or state educational officials.

2.1 WHEN WILL A SCHOOL DISTRICT ASK FOR YOUR CONSENT?

34 CFR §§ 300.300, 300.154 AND
603 CMR 28.07(1)

A school district will ask for your parental consent in the following circumstances:

To authorize the initial evaluation to determine if the student is eligible for special education

The school district cannot conduct an initial evaluation of your student to determine whether your student is eligible to receive special education and/or related services without first obtaining your consent. If your student is referred for an evaluation, the school district must ask for your consent to the evaluation within five school days.

To approve initial services

If, after the initial evaluation has been completed, the Individualized Education Program (IEP) Team has decided that your student is eligible for special education, the IEP Team will propose special education and related services and a placement for your student. You are a member of the IEP Team and must give your consent before your school district can provide special education and related services to your student for the first time. If you do not consent, the school district cannot provide special education and related services to your student. You can accept or reject the whole proposal or part of it. The IEP or any part that you accept must begin as soon as you accept it.

To make a change in services, placement or reevaluation

Once you have agreed to an IEP for your student, the school district must obtain your consent before the school district may change the services or the placement of your student or conduct a reevaluation.² If you refuse to give your consent, you have an obligation to engage with the district in active discussion to resolve your disagreement. If you have given consent to services in the past and now want to revoke consent and withdraw your student from services, you must do so in writing. The school district may not request a hearing at the Bureau of Special Education Appeals (BSEA) to obtain authority to provide educational services or to reevaluate your student without your consent.

To access public health insurance (MassHealth or Medicaid) benefits for the first time

² You also have the right to observe your student in his or her current program and observe a proposed program prior to your student’s placement. For further information see the DESE document “Observation of Education Programs by Parents”.

The school district is allowed to use public health insurance (MassHealth or Medicaid) to pay for some special education services included in a student's IEP for students covered by public health insurance. Before the school district accesses MassHealth for the first time, the school district must give you written notice that it is going to seek this reimbursement, and get your voluntary consent in writing for it. The notice will tell you that special education services are always provided at no cost to you or your family; will make clear that your consent will not lead to any changes in your child's MassHealth benefits or eligibility; will describe what information about your student will be shared in order to access MassHealth; remind you that your consent can be withdrawn at any time; and make clear that there will be no changes to your student's special education services or program if you withdraw or do not provide consent. If you move or your student becomes enrolled in another district, then the new school district will ask you to provide consent again.

To excuse members of the IEP Team from attending a Team meeting

Members of the IEP Team may be excused from attending a Team meeting if you agree in writing in advance of the meeting. If the Team will be discussing the excused Team member's area, then the excused member must provide his or her input in writing before the Team meeting. If you do not agree to excuse the Team member he or she must attend the IEP Team meeting.

2.2 WHEN WILL THE STUDENT BE ASKED FOR CONSENT?

**34 CFR §300.520 AND
603 CMR 28.07 (5)**

Under Massachusetts' law a student has reached adulthood upon his or her eighteenth (18th) birthday. **When a student turns age 18**, therefore, all of the decision-making rights that you have as a parent transfer to your adult student, unless a court has appointed a legal guardian for your student or your student indicates in writing that he or she wants to share decision-making with you or wants you to continue to have authority to make decisions about his or her educational program. The school district must discuss with you and your student the impact of this transfer of rights at least a year before the student's eighteenth birthday. As the parent of an adult student with a disability, you will continue to receive all the required notices from the school, and you will continue to be able to inspect your student's educational records, even if your student makes his or her own educational decisions.

2.3 WHEN WILL A SPECIAL EDUCATION SURROGATE PARENT GIVE CONSENT?

**34 CFR §300.519 (g) AND
603 CMR 28.07 (7)**

If a student is in the custody of the Department of Children and Families, or the student's parents or guardian cannot be identified or located or have had their parental rights terminated, the DESE has a responsibility to ensure there is an adult with no conflicting interests to make special education decisions on behalf of the student. This person is called a special education surrogate parent. The DESE determines if it is necessary to appoint a special education surrogate parent for the student. If appointed, a special education surrogate parent has the same rights and responsibilities as a parent in special educational matters for the student.

2.4 HOW DO I WITHDRAW CONSENT?

34 CFR §300.300(b)(4) AND 300.9

If you have given consent to special education and related services and now wish to revoke your consent, you must do so in writing. You may withdraw your consent to all special education and related services, to a specific service or to placement or to the district's use of MassHealth or Medicaid benefits for your student. Once the school district receives your letter, the district will send you a notice stating the change, if any, in educational placement and services that result from your revocation of consent. Once you withdraw your consent to all special education and related services, the school district is no longer required to make FAPE available or to have an IEP meeting or develop an IEP for your student. School districts are not required to amend your student's record to remove references to special education services as a result of your revocation of consent.

3. IS THE SCHOOL DISTRICT REQUIRED TO EVALUATE A STUDENT UPON REQUEST BY A PARENT?

**34 CFR §300.301 AND
603 CMR 28.04**

A student must receive a complete and comprehensive evaluation to determine if the student has a disability and is eligible for special education and, if eligible, to assist in determining appropriate special education and related services that may be necessary. Parents who have a concern about their child's development or have a suspicion about a possible disability may refer their child for an initial evaluation. Special words need not be used in making a referral for an initial evaluation. Upon receipt of such a request for an initial evaluation, the school district must send notice to the parent and must seek the parent's consent to conduct an evaluation. (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).

Where appropriate, the school district may also provide the parent with information concerning other supportive services that may better suit a particular student's needs. However, a school district may not refuse to evaluate a student who has been referred for an evaluation as described above, on the basis of a pre-referral program or in order to try other instructional support activities or for any other reason. Additionally, the law provides for periodic reevaluations to ensure that the student is benefiting from and continues to require special education. The parent's consent will always be required prior to these reevaluations.

4. WHAT IS AN INDEPENDENT EDUCATIONAL EVALUATION?

An Independent Educational Evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your student.

You have the right to request an IEE of your student at public expense if you disagree with the school district's evaluation. You have the right to request one IEE per area of assessment, per evaluation cycle. If you request an IEE, the school district must provide you with information about where you may obtain an IEE and about the state requirements that apply to IEEs. In Massachusetts, all IEEs are required to be conducted by qualified persons who are registered, certified, licensed or otherwise approved and who abide by the rates set by the responsible state agency. However, a student's unique circumstances may justify an individual assessment rate that is higher than that normally allowed.

4.1 WHEN IS AN INDEPENDENT EDUCATIONAL EVALUATION CONDUCTED AT PUBLIC EXPENSE?

34 CFR §300.502, M.G.L. c. 71B, § 3 AND 603 CMR 28.04(5)

Under federal law, you have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by the school district, subject to the following conditions:

1. If you request an IEE of your child at public expense, your school district must, without unnecessary delay, either:
 - a. request a due process hearing to show that its evaluation of your child is appropriate or that the independent evaluation did not meet the school district's criteria; or
 - b. provide an IEE at public expense.
2. If the hearing officer decides that the school district's evaluation is appropriate, then the school district does not have to pay for the evaluation requested or arranged for by you. However, you still have the right to have an IEE at your own expense.
3. You are entitled to only one IEE at school district expense each time the school district conducts an evaluation with which you disagree.

In addition to your rights under federal law, Massachusetts law also provides additional protections for students and parents related to IEEs. Specifically, you may choose, on a voluntary basis, to share the costs of the IEE based on a sliding fee scale. Under this state standard, you will receive an IEE.

Under the state standard, you will receive an IEE at full or shared public expense based on your income. If you choose to use the state option, the district does not have the option to request a due process hearing to show that its evaluation of your child is appropriate. Students who are eligible for free or reduced cost meals and families whose income is equal to or less than 400% of the federal poverty guidelines are entitled to an IEE at public expense. Other students are eligible for a shared cost IEE according to a sliding fee scale. Sharing your financial information with the school district is completely voluntary on your part. If you choose to share such information, the school district must immediately notify you in writing whether or not you are eligible for full or partial funding of an IEE and proceed to fund the IEE based on eligibility. Your right to a publicly funded IEE through income eligibility will extend for 16 months from the date of the school district's evaluation with which you disagree.

If you do not meet income eligibility requirements, choose not to disclose financial information, or you decide not to utilize the voluntary Massachusetts standard for any reason, the district must consider your request for a publicly funded IEE under federal law. Within 5 school days, the district may either agree to provide an IEE at public expense or request a hearing at the Bureau of Special Education Appeals (BSEA) to demonstrate that the evaluation conducted by the district was comprehensive and appropriate. More details regarding IEEs are available in the DESE Administrative Advisory Special Education Policy Memo SY2024-2025.

You may have independent evaluations conducted at your own expense at any time. You may give the results of the evaluation to the school district. If you share the results of the evaluation with the school district, the school district must consider the results of the evaluation, if it meets the school district's criteria for IEEs, in any decision made with respect to the provision of FAPE to your child and the evaluation results may be used at a due process hearing.

4.2 THE RESULTS OF IEEs MUST BE CONSIDERED WITHIN 10 DAYS BY THE SCHOOL DISTRICT

If you obtain an IEE of your student at public expense or you share with the school district an evaluation of your student that you obtained at private expense, your school district must convene a Team meeting within ten school working days after receiving the evaluation information regardless of whether the student has an IEP or not. The district is responsible for the consideration of the educational components of the IEE. The Team will consider the evaluation results and determine what, if any, changes should be made to your student's IEP or eligibility determination process to ensure timely and appropriate consideration of the IEE findings.

5. WHEN CAN YOU SEE YOUR STUDENT'S STUDENT RECORDS?

**34 CFR 300.611 AND
603 CMR 23.00**

The student record consists of your student's transcript and temporary school record and includes health records, tests, evaluations, discipline records and other records pertaining to your student's special education eligibility or program.³ Personally identifiable information about your student is confidential and may not be disclosed to anyone other than teachers and educational officials without your consent.

You and your student (if your student is 14 or older) have a right to look at any and all of the student's records within 10 days of your request and before any IEP meeting or due process hearing.⁴ You may also have copies of the information upon request for a reasonable charge limited to the cost of reproduction. You may not be charged for costs associated with the search for and retrieval of your student's records.

³ If a student's parents revoke their consent for special education services after such services have been initially provided, school districts are not required to amend the student's records to remove references to special education services.

⁴ The school district can only limit access to the student record if it has received a legal document such as a restraining order or a divorce or custody decree that restricts access to information about the student's.

In addition, you can meet with professionally qualified school personnel to have the records explained. You may also have your representative (advocate, consultant, or attorney) inspect, review, and interpret your student's record if you give your specific, written informed consent. All of the rights associated with the student record are contained in the Massachusetts Student Record Regulations 603 CMR 23.00. Those regulations can be found at <http://www.doe.mass.edu/lawsregs/603cmr23.html> or by requesting a copy of the regulations from the school district or DESE.

Generally, only the parent, eligible student, authorized school personnel, and state and federal education officials are allowed to see the student record without the specific, informed, written consent of the parent or adult student. The school district may be required to provide some information to state and federal officials as the result of a court order or in response to a health and safety or law enforcement issue. Helpful information about these and other student records issues can be found at <http://www.doe.mass.edu/lawsregs/advisory/cmr23qanda.html>.

6. HOW CAN PARENTS AND SCHOOLS RESOLVE DISPUTES?

**34 C.F.R. 300.151-300.153, 300.506 –
300.518 AND 603 CMR 28.08**

Parents/guardians and school districts are encouraged to work together to resolve disputes. The Individuals with Disabilities Education Act (IDEA) Part B, its implementing regulations, state special education laws and regulations provide you with options to resolve a disagreement with your school district or other responsible public agency. The following describe the processes available to parents/guardians and public agencies for resolving disagreements regarding a child's special education and related services, including eligibility. Dispute resolution options within Massachusetts include mediation, filing a state complaint with DESE's Problem Resolution System Office, and filing a due process hearing with the Bureau of Special Education Appeals. The following will describe each option in greater detail.

Your student shall remain in his or her current education program and placement during any dispute regarding placement or services, unless you and the school district agree otherwise, or your student's placement is changed as a result of [discipline](#).

6.1 BRING THE DISPUTE TO THE ATTENTION OF LOCAL SCHOOL OFFICIALS

Collaboratively working through disputes is a great strategy to maintain a strong working relationship between home and school. To address a dispute, parents/guardians are encouraged to discuss their concerns with the school and district leaders. Sometimes it can be hard to identify who is the right person to talk to within an educational organization. Individuals in these roles are often helpful to parents/guardians in navigating a dispute:

- Your student's teacher or service provider(s);
- The school's Principal or Assistant Principal;
- Special Education Director, Administrator of Special Education, or Student Services Director;
- The Superintendent (or Charter School Leader, if a charter school).

You may find contact information for these individuals on your district's website or on the DESE district profiles website linked [here](#).

6.2 DESE'S STATE COMPLAINT SYSTEM

An organization or individual, including one from another state, may file a state complaint with DESE's Problem Resolution System (PRS). In order for PRS to conduct an investigation, the written state complaint must meet specific criteria required by the IDEA Part B regulations. A written complaint must include the specific information required by the IDEA Part B regulations to be considered sufficient. The state complaint must include:

- A statement that the public agency has violated IDEA Part B, its implementing regulations or state special education law or regulations, although complainants do not have to cite specific provisions of law or regulations;
- The facts upon which the statement is based;
- The signature and contact information for the person filing the state complaint; and
- If the state complaint is alleging a violation with respect to a specific child:
 - The name and address of residence of the child;
 - The name of the school the child is attending;
 - In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
 - A description of the nature of the problem of the child, including facts relating to the problem; and
 - A proposed resolution of the problem to the extent known and available to the party at the time the state complaint is filed.

A state complaint must allege a violation that has occurred not more than one year prior to the PRS receiving the complaint. The state complaint must be filed with PRS and the person or organization that files a state complaint must also send a copy of the complaint to the school district or other public agency at the same time.

To assist with filing the state complaint, an electronic intake form for submission of a state complaint electronically is available on the DESE website at <https://www.doe.mass.edu/prs/>. In addition to the online intake form, PRS accepts complaints submitted via fax, email, U.S. mail, and in-person at the following contact information:

Problem Resolution System Office
Massachusetts Department of Elementary and Secondary Education
135 Santilli Highway – Everett, MA 02149
Main Telephone: 781-338-3700
TTY: N.E.T. Relay: 1-800-439-2370
Fax: 781-338-3710
Email: DESECompliance@mass.gov

It is not required that you use DESE's form to file a state complaint. However, your state complaint must still include the elements required by 34 C.F.R. § 300.153(b) and described above to be deemed sufficient. The model intake form is translated into Arabic, Cape Verdean, Chinese, Haitian Creole, Khmer, Portuguese, Russian, Spanish and Vietnamese, and may be translated into other languages upon request. You may also call PRS at 781-338-3700 to assist you with the filing of the complaint. Detailed procedures that PRS uses when processing state complaints are available at: <https://www.doe.mass.edu/prs/>.

Following receipt of a complaint that meets the requirements outlined above, PRS must issue a written decision that contains findings of fact and conclusions within 60 calendar days of receipt of the state complaint, and may extend the 60-day timeline only if:

- Exceptional circumstances exist regarding a particular complaint; or
- The parent and the public agency involved voluntarily agree to extend the time to try to engage in mediation or other alternative means of state sponsored dispute resolution.

When processing state complaints, PRS will at a minimum:

- Provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the state complaint;

- Provide the public agency with the opportunity to respond to the complaint, including a proposal to resolve the complaint and provide the parties with the opportunity to voluntarily engage in mediation consistent with 34 C.F.R. § 300.506;
- Conduct an independent on-site investigation, if it is determined necessary;
- Review all relevant information and make an independent determination as to whether a public agency has violated requirements of federal or state special education laws or regulations; and
- Issue a written decision to the complainant and the public agency that addresses each allegation in the state complaint and contains findings of fact and conclusions, and the reasons for PRS's final decision.

The decision will also impose corrective action requirements, if appropriate, and include procedures for the effective implementation of the final decision, as needed. If PRS determines that a public agency has failed to provide appropriate services, the final written decision may include the corrective action(s) that the public agency must take to address the identified noncompliance, provide student level remedies, or both, and must address:

- the failure to provide appropriate services, including corrective action(s) appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
- appropriate future provision of services for all students with disabilities.

Corrective actions may include, but are not limited to, staff training, additional reporting requirements, policy changes, monetary awards, and compensatory services. In the case of a complaint related to an individual student where PRS has found non-compliance, the corrective action may include a tailored review (e.g., record review, etc.) of similarly situated students to determine the need for further systemic intervention from the Department if any.

Parties are encouraged to continue to work together to resolve disputes, including while the state complaint is pending. Filing a state complaint with PRS will not prevent you from using other dispute resolution methods, such as mediation, or a due process hearing at the Bureau of Special Education Appeals (discussed below) to resolve your concerns.

If the state complaint that is also part of a due process hearing contains multiple issues of which one or more are part of the due process hearing, PRS must set aside any part of the state complaint that is being addressed in the due process hearing until the conclusion of that due process hearing. However, any issue in the state complaint that is not part of the due process hearing must be resolved using the timeline and procedures described above. If an issue is raised in a state complaint that has previously been decided in a due process hearing, involving the same parties, the hearing decision is binding, and PRS shall inform the complainant to that effect.¹

6.3 ASK FOR A NEUTRAL MEDIATOR TO BE APPOINTED.

Mediation⁵ is a service provided by a neutral individual who is trained in special education law and in methods of negotiation. Mediation can be scheduled whenever the parents and schools have a disagreement about special education matters, even if a complaint was made through the PRS Problem Resolution System. The mediator helps the parent and school district talk about their disagreement and reach a settlement that both sides can accept. Discussions during mediations are confidential and nothing that is said by either party can be used later if the dispute becomes the subject of a formal hearing or court proceeding. Once an agreement is reached, it will be put in writing, both sides will sign it, and it may be enforced by a court.

Mediation can be set up by contacting the BSEA at 781-397-4750. The mediator will schedule a meeting with you and the school district within 30 days of the request for mediation. Meetings will be held at a convenient time and place. Participation is voluntary, therefore both the school district and the parents must agree to participate in mediation. There is no fee for the service.

⁵ A description of the mediation process can be found on the DESE Web site at <http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/mediation/>.

Additional information about how mediation works is available from the BSEA 781-397-4750 and can be found in their publications "[Frequently Asked Questions about Mediation](#)" and [Learn about Mediation at the BSEA](#).⁶"

6.4 REQUEST A DUE PROCESS HEARING AND PARTICIPATE IN A RESOLUTION MEETING

If you and the school district have been unable to work out your disagreement, then you are entitled to have a neutral and impartial hearing officer listen to both sides of the dispute, hear testimony, examine evidence, and make a decision. This hearing is convened by the BSEA and is called a due process hearing. The BSEA hearing officer is trained in special education law and must not have any personal or professional connection to you or anyone else who is involved in the disagreement.

The due process hearing will consider disputes about eligibility; evaluation; IEPs; educational placement decisions, including those resulting from discipline; FAPE; provision of special education; or procedural protections of state and federal law for students with disabilities. You must file for a hearing within two years of when you knew, or should have known⁷ about the events that form the basis for your complaint. This time period can be extended if you can show that you were prevented from filing for a hearing because the school district misrepresented that it had resolved the issue in your complaint or if the district withheld certain required information from you.

Either you or your school district can file a written [due process hearing request](#)⁸ with the other party and send a copy to the BSEA to obtain a due process hearing. The BSEA has developed a [Hearing Request Form](#).⁹ that you may use, or you can write your own letter instead of using the form, but you must be sure to include your student's name and residential address (or contact information if the student is homeless); the name of your student's school; a description of the problem you are concerned about, including specific facts relating to the problem; and a proposed solution to the problem. Note that the hearing will be limited to the issues that are identified in the complaint.

You must send your due process hearing request to the school district (or other party to the complaint) and a copy to the BSEA. If the due process complaint does not provide enough information, the opposing party may challenge its *sufficiency* within 15 days. The BSEA will decide whether the complaint is sufficient within 5 days of the challenge. Additional information may be added to the complaint if the opposing party agrees or if the hearing officer gives permission. If additional issues are added to the complaint at a later time, however, the hearing timetable begins all over again.

If there is no challenge to the sufficiency of the complaint, then the hearing process continues. If the school district has not already sent a [prior written notice](#) to you about the issue that you are complaining about, then within 10 calendar days of receiving your due process hearing request, the school district must send you a written response to the complaint.

Note: If the school district has filed the due process hearing request, the parent must respond within 10 calendar days of receiving the hearing request, and specifically address the issues that the school district raised.

⁶ <https://www.mass.gov/info-details/learn-about-mediation-at-the-bsea>

⁷ The phrase "or should have known" reminds you that you have a responsibility to be aware of your student's program.

⁸ Information on the due process hearing request can be found at: <http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/due-process-hearings/>.

⁹ <https://www.mass.gov/doc/hearing-request-form/download>

After you file a due process hearing request, the school district has 30 days to work with you to resolve the disagreement before the due process hearing may occur.¹⁰

The school district is required to set up a resolution meeting within 15 calendar days of receiving your due process complaint.¹¹ The school district will determine with you which members of the IEP Team must attend the meeting. Someone from the school district who can make decisions about your student's program must attend the meeting. The school district's lawyer *may not* attend unless you have a lawyer who is attending the meeting.

You must participate in the resolution meeting unless you *and* the school district agree, in writing, not to have the meeting or if you and the school district decide to use the [mediation process](#). If you refuse to participate in the resolution meeting, the hearing may not go forward.

If you are willing to meet, but the school district refuses or delays the resolution meeting more than 15 days after receiving notice of your hearing request, then you can ask the hearing officer to proceed with the hearing process. If you meet, but the school district has not resolved the due process complaint to your satisfaction within 30 days of your filing the complaint, then the due process hearing may go forward.

The resolution process ends when one of the following events occurs:

- When you and the school district agree, in writing, to end the resolution period;
- At the end of the 30 day resolution period;
- At the end of mediation; or
- When you and an official of the school district sign a document that spells out your agreement that resolves your dispute. This is a "settlement agreement" and can be enforced by a state or federal court. Note that if you and the school district enter into an agreement as a result of a resolution meeting, either you or the school district may void the agreement within 3 business days of the time that both you and the school district signed the agreement.

6.5 PRESENT YOUR EVIDENCE TO AN IMPARTIAL HEARING OFFICER DURING A DUE PROCESS HEARING

When you file a due process complaint, the BSEA will set a hearing date, assign a hearing officer, and send you detailed information about the hearing process and a list of free or low-cost attorneys and advocates whom you may contact for help.

During the due process hearing you and the school district will each present evidence and provide the testimony of witnesses to an impartial hearing officer from the BSEA. At any due process hearing, including a hearing relating to disciplinary procedures, you may:

- be accompanied, advised and represented by a lawyer and/or advocate;
- have your student present at the hearing;
- have the hearing open to the public;
- present evidence such as documents and reports;
- request, or require through subpoena, witnesses to come to the hearing and answer questions;
- see any evidence that is to be used at the hearing at least five business days ahead of time and ask the hearing officer to keep out any evidence that you have not seen; and
- obtain a written or, at your option, electronic, word-for-word record of the hearing findings of fact and decision at no cost to you. To obtain a written record of the hearing, you must make your request in writing.

¹⁰ If you and the school district agree to mediation, you may agree to continue the mediation after the 30 day period.

¹¹ No resolution session is required if the school district has requested the due process hearing

Additional information about due process hearings can be obtained from the BSEA at 781-397- 4750 and from the BSEA Web site: <http://www.mass.gov/dala/bsea>.

Hearings are conducted according to the Massachusetts Administrative Procedure Act¹² and the BSEA [Hearing Rules](#).¹³ The hearing officer must issue a final decision within 45 days of the end of the resolution period described above unless the hearing officer has granted extensions of time at the request of either party. The hearing officer will send a copy of the decision to you and to the school district. Both the parents and the school district must abide by the decision of the hearing officer.

A hearing officer's decision on whether your student is being offered a FAPE must be based on a finding that your student's special education rights were violated or a determination that the school district failed to fulfill its other obligations to your student under the special education laws and regulations. If you have complained about a violation of the special education procedures (such as failure to hold a proper team meeting, poor record keeping, or failure to follow timelines) a hearing officer may find that your student did not receive FAPE *only if* the failure to follow the procedures:

- Interfered with your student's right to a FAPE;
- Significantly interfered with your ability to be involved in decisions about your student's education; or
- Deprived your student of an educational benefit.

The decision of the hearing officer is a final agency decision and cannot be reconsidered by the BSEA or changed by the DESE. Hearing decisions are public¹⁴ and are available on the BSEA Web site at <https://www.mass.gov/bsea-decisions-and-rulings>.

6.6 APPEAL A HEARING DECISION TO A STATE OR FEDERAL COURT

If either the parent or the school district disagrees with the decision of the hearing officer, they can seek review of that decision in state or federal court. Any such request for review must be filed within 90 days of the decision.

6.7 ATTORNEYS' FEES

34 CFR §300.517

Each party is responsible for paying its own attorney's fees unless the court decides otherwise. If you obtain a favorable result in a written hearing decision or court proceeding, the court ¹⁵ may decide that the school district should pay your reasonable attorneys' fees. Note, however, that you will not be able to obtain these fees for the time spent litigating your case after the district made a settlement offer if

- the district made a written offer of settlement 10 or more days before the hearing,
- you did not accept the offer within 10 days, and
- the outcome of the hearing was no better than the settlement offer.

If the school district obtains a favorable decision, a court could order your attorney to pay the school district's legal expenses if the court finds that your attorney filed a complaint or continued to litigate after learning that the complaint had no basis in fact, was unreasonable, was frivolous, or was pursued for an improper purpose. A court may also order you or your attorney to pay legal expenses

¹² M.G.L. c.30A

¹³ <https://www.mass.gov/doc/hearing-rules/download>

¹⁴ Hearing decisions are published after redacting information that would allow the student to be readily identified.

¹⁵ A BSEA Hearing Officer may not award attorney's fees.

if your request for a due process hearing or subsequent cause of action was presented for an improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

7 WHAT ARE YOUR RESPONSIBILITIES IF YOU PLACE YOUR STUDENT IN A PRIVATE SCHOOL AND YOU BELIEVE YOUR SCHOOL DISTRICT SHOULD REIMBURSE YOU FOR THE TUITION? 34 CFR §300.148

There are some occasions when a parent believes that the public school is not providing a FAPE to the student and the parent decides to place the student in a private school. A parent may enroll his or her student in private school at private expense at any time. If, however, the parent believes that the public school should be responsible for the costs of the student's education in the private school, the parent must tell the school district of objections to the student's IEP and program, reject the IEP, inform the school district of his or her intent to remove the student and enroll the student in a private school, and request a hearing by the BSEA. A parent must inform the school district before removing the student from the public school either orally at the last Team meeting before the removal or in writing at least 10 business days before removing the student from school.

The school district is not required to pay for a student to attend a private school if the school district has made a FAPE available to the student. Disagreements between parents and the school district about whether the student's program provides a FAPE and requests for financial reimbursement for the cost of a private program may be resolved through due process procedures discussed earlier in this document. The hearing officer will determine whether the school district made a FAPE available to your student. If the hearing officer finds that the school district did *not* provide your student with a FAPE, that you followed the above steps, and that the private school placement was appropriate, the hearing officer, after considering all of the circumstances surrounding the removal of the student, may require the school district to reimburse you for all or part of the cost of the private school placement.

8 WHAT MUST BE DONE TO PLAN FOR YOUR STUDENT'S TRANSITION FROM HIGH SCHOOL?

34 CFR §300.43

Planning for your student's transition from school to postschool opportunities will facilitate your student's ability to successfully participate in activities such as post-secondary education, work, and community and adult life. Planning for transition must be based on your student's strengths, preferences, interests, and needs, must begin when your student is 14, and must be discussed each year at a Team meeting. The school district must discuss your student's transition needs with you and your student¹⁶ and must consider the goals for your student after he or she completes school by graduating with a regular high school diploma or reaching the age of 22. School districts must use the [Transition Planning Form](#)¹⁷ to record the results of this annual discussion. The student's IEP must include measurable post-secondary transition goals, objectives and services based upon an appropriate assessment of his or her disability and transition needs. Graduation with a regular high school diploma is a change of placement and ends the student's eligibility for special education. The school district must inform you if and when the district expects your student to graduate with a regular high school diploma. This discussion should take place during the Team meeting no less than 1 year in advance of the student's graduation.

¹⁶ The student should be invited to attend the Team meeting to discuss postsecondary goals and transition.

¹⁷ <http://www.doe.mass.edu/sped/28MR/28m9.docx>

Public schools must have procedures and standards in place to assure a safe learning environment for students. Schools are expected, and high schools are required, to publish their rules of conduct so that students know how they are expected to behave. If a student misbehaves and violates the school code of conduct, the school may discipline the student. Discipline must be fair and even-handed.

In general, any student may be suspended or removed from school for disciplinary reasons for a short time, which is no more than 10 days. Before any removal or suspension, the student must be told what he or she is accused of having done and must be given a chance to tell his or her side of the story. During a short disciplinary removal, the school is not required to provide instruction to a disabled student unless it does so for non-disabled students. Once a student with a disability has been removed from the school placement for more than 10 cumulative days during the school year the student must receive educational services that will allow the student to continue to participate in the general education curriculum and to progress toward the goals set out in his or her IEP. School officials must consult with at least one of the student's teachers to determine what services are necessary. These services must begin on the 11th school day of a student's disciplinary removal during the school year and continue during the disciplinary removal.

Schools must follow special disciplinary rules for students with disabilities who have been found eligible for special education.¹⁸ A chart depicting the operation of these disciplinary rules can be found on the DESE Web site.¹⁹ These special disciplinary rules apply as soon as a student is removed from his or her current education placement²⁰ for more than 10 days in a row, or if a student is removed for disciplinary reasons for more than a total of 10 days in any school year and there is a pattern of removal for comparable behaviors. The school must notify you as soon as the decision is made to remove your student from his or her education placement for more than 10 days and provide you with a copy of this Notice.

The student's IEP Team must meet within 10 days of the school's decision to impose the discipline. At this meeting, called a "*manifestation determination*," you and other members of the IEP Team will determine if the misbehavior was caused by or had a direct relationship to the student's disability, or was the direct result of the school's failure to provide the services required by the student's IEP. In making the manifestation determination, you and other members of the IEP team must consider relevant information from your student's file, including your student's IEP, your and the teachers' observations of your student's behavior, and any relevant information you provide.

If the team determines that the student's behavior *was not* caused by or directly related to the student's disability or the failure to properly implement the IEP, then a student with a disability can be disciplined in the same manner and for the same length of time as other students are disciplined for the same offense. The IEP Team, however, must determine the interim alternative educational setting (IAES) where the student will be placed and the educational services that will be provided. An IAES is a setting other than the student's current placement that enables the student to continue to receive educational services according to his or her IEP. School personnel may consider the student's unique circumstances in determining whether a change in placement is appropriate for a student with a disability.

¹⁸ The special education disciplinary rules also apply to some students who have not yet been found eligible for special education. If, prior to the conduct in question, the parent has put his or her concern that the student's has a possible disability in writing to supervisory or administrative personnel or the student's teacher; if the teacher or other staff has expressed concerns about the student's pattern of behavior directly to the director of special education or other supervisory personnel, or if the student has been referred for an evaluation that has not yet been completed these special rules apply. The special education disciplinary rules *do not* apply if the parent has refused to consent to the evaluation, if the student has previously been found to be not eligible for special education, or if the parent has revoked consent to special education and related services.

¹⁹ <https://www.doe.mass.edu/sped/advisories/discipline/disc-chart.docx>

²⁰ Placement is determined by the IEP Team and is the location where IEP services are provided.

If the Team determines that the student's behavior was caused by or directly related to the student's disability or the failure to properly implement the IEP, then the student must be returned to the last approved IEP placement unless you and the IEP Team decide on a different placement. The student must also be provided a functional behavioral assessment. A functional behavioral assessment or FBA is a comprehensive assessment of behavior that provides the IEP Team with information about the student's behavior and identifies behavioral intervention services and program modifications that are designed to address the behavioral violation so it does not recur. If the student has already had a functional behavioral assessment and has a behavioral intervention plan, then the IEP Team should determine if any changes should be made to the behavioral intervention plan. If the behavior was caused by the failure to properly implement the IEP, the school must take immediate steps to remedy the deficiencies.

Note that if your student possessed or used a weapon or drugs, or caused serious bodily injury to another person on school property or at a school event your student may be placed by the principal in an IAES for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability. The IEP Team will determine the IAES and the appropriate educational services that will be provided to the student while he or she is in the IAES.

9.1 APPEAL OF A DISCIPLINARY DECISION

If a parent disagrees with any decision regarding placement of his or her student under the disciplinary provisions or disagrees with the manifestation determination, or if the school district believes that maintaining the current placement of the student is substantially likely to result in an injury to the student or to others, either the parent or the school district may appeal the decision by [requesting a hearing](#) with the BSEA, as described earlier in this document.

The BSEA will convene a hearing on a disciplinary placement or manifestation determination on an expedited schedule.²¹ During the appeal of a disciplinary placement or manifestation determination, the student must remain in the IAES until the hearing officer makes a decision or the disciplinary period is completed, unless the parent and the school district agree to a different placement.

10 WHERE CAN THE LAWS AND REGULATIONS AND OTHER USEFUL INFORMATION BE FOUND?

10.1 LAWS AND REGULATIONS

You can find the full text of the state Special Education law in Massachusetts General Law Chapter 71B. The state law is popularly known as "Chapter 766." The state special education regulations are found in the Code of Massachusetts Regulations (CMR) at 603 CMR 28.00. The law and the regulations and other helpful resources are on the DESE Web site.²²

The federal special education law is the Individuals with Disabilities Education Act, known as "IDEA." The federal statute is located in the United States Code at 20 U.S.C. § 1400. The implementing regulations for IDEA may be found in the Code of Federal Regulations (CFR) at Chapter 34, Section 300. A copy of the federal statute and regulations and explanatory information can be found on the U.S. Department of Education Web site at <http://idea.ed.gov/>.

²¹ See BSEA Hearing Rule II.C. Expedited Hearing. <https://www.mass.gov/doc/hearing-rules/download> p.7.

10.2 INDIVIDUALIZED EDUCATION PROGRAM PROCESS GUIDE AND FORMS

A general overview of how the special education process works (taken from the IEP guide prepared by the USDOE) can be found at <http://www.doe.mass.edu/sped/iep>.

For the DESE explanation of how an IEP is developed, consult the IEP Process Guide and the standard IEP forms available on the DESE Web site: <http://www.doe.mass.edu/sped/iep>.

10.3 TABLE OF ABBREVIATIONS

Many common special educational phrases are abbreviated by acronyms composed of the initial letters of the phrase. For your convenience the acronyms and phrases used in this document are listed below:

BSEA:	Bureau of Special Education Appeals
CFR:	Code of Federal Regulations
CMR:	Code of Massachusetts Regulations
DESE:	Massachusetts Department of Elementary and Secondary Education
FAPE:	Free Appropriate Public Education
FBA:	Functional Behavioral Assessment
IAES:	Interim Alternative Educational Setting
IDEA:	Individuals with Disabilities Education Act
IEE:	Independent Educational Evaluation
IEP:	Individualized Education Program
PRS:	Problem Resolution System

10.4 TABLE OF WEB SITES

The DESE publishes extensive information for parents and school districts on its internet Websites. These Websites include pertinent laws, agency policies and useful documents that explain the special education process.

Autism Spectrum Disorder:

<https://www.doe.mass.edu/sped/links/Autism.html>

Bureau of Special Education Appeals:

<https://www.mass.gov/bsea-decisions-and-rulings>

<https://www.mass.gov/doc/hearing-rules-revised-july-2024/download>

<http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/mediation/>

<https://www.mass.gov/doc/bsea-mediation-brochure/download>

<https://www.mass.gov/info-details/frequently-asked-questions-about-meditation-at-the-bsea>

<https://www.mass.gov/info-details/learn-about-meditation-at-the-bsea>

Consent to Access MassHealth (Medicaid):

http://www.doe.mass.edu/sped/advisories/13_1.html

Discipline:

<https://www.doe.mass.edu/sped/advisories/discipline/disc-chart.docx>

Individuals with Disabilities Education Act:

<http://idea.ed.gov/>

Individualized Education Program:

<http://www.doe.mass.edu/sped/iep>

Individual Education Program Process Guide:

<https://www.doe.mass.edu/sped/ImproveIEP/iep-technical-guide.docx>

Independent Educational Evaluation:

https://www.doe.mass.edu/sped/advisories/04_1.html

Observation of Education Programs by Parents and Their Designees for Evaluation Purposes:

http://www.doe.mass.edu/sped/advisories/09_2.html

Parent's Notice of Procedural Safeguards:

<http://www.doe.mass.edu/sped/prb>.

PRS Problem Resolution System compared to BSEA Due Process Complaint:

<https://www.doe.mass.edu/prs/guide/default.html>

Program Quality Assurance Services Problem Resolution System:

<http://www.doe.mass.edu/prs/>

Special Education Laws:

<https://www.doe.mass.edu/lawsregs/statelaws.html>

Special Education Regulations:

<https://www.doe.mass.edu/lawsregs/stateregs.html>

Special Education Surrogate Parent:

<http://www.doe.mass.edu/sped/advisories/2013SurrogateParent.html>

Special Education Transition Planning Form:

<https://www.doe.mass.edu/sped/ImproveEP/transition-planning.pdf>

Student Records Regulations:

<http://www.doe.mass.edu/lawsregs/603cmr23.html>

Student Records Questions and Answers:

<http://www.doe.mass.edu/lawsregs/advisory/cmr23qanda.html?section>.

Transition Planning:

<https://www.doe.mass.edu/sped/secondary-transition/default.html>