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.

We hope this Notice will be of assistance to you as you take an active role in your student's educational experience.

[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

[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".

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

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?

34 CFR §300.502 and 603 CMR 28.04(5)

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. 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.

4.1 When is an Independent Educational Evaluation conducted at public expense?

In Massachusetts, under state law, you will receive an IEE at full or shared public expense if you meet income eligibility requirements. Students who are eligible for free or reduced cost meals 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 or choose not to disclose financial information, the district must consider your request for a publicly funded IEE under federal law. Within 5 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 Advisories 2004-1 and 2001-3 available from your local school district and on the DESE Web site http://www.doe.mass.edu/sped/advisories/?section=admin.

You are entitled to only one IEE of your student at public expense each time your school district conducts an evaluation. You may have independent evaluations conducted at your own expense at any time.

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. The Team will consider the evaluation results and determine what, if any, changes should be made to your student's IEP.

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.

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.

[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.

State and federal special education laws provide many opportunities for parents to be involved in educational planning for their student who has a disability. If parents and school districts disagree about changes relating to the identification, evaluation, or educational placement of a student with a disability, or the FAPE services provided to a student with a disability, the laws provide a menu of ways to resolve the disagreement. 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.

Following are alternatives ways that you and your school district can resolve disagreements.

6.1 BRING THE DISPUTE TO THE ATTENTION OF LOCAL PUBLIC SCHOOL OFFICIALS

As a first step to resolve your dispute, you may contact your school Principal, the Administrator of Special Education or your Superintendent to ask for help. It is a good practice to write a letter explaining the situation about which you are concerned.

6.2 USE THE DESE PROBLEM RESOLUTION SYSTEM

If you feel that you need help from outside of your school district, you may contact the DESE, Problem Resolution System Office (PRS) at 781-338-3700 to use the state Problem Resolution System described at http://www.doe.mass.edu/pqa/prs/. You can file a complaint with the PRS office about any violation of state or federal education law or obtain help from PRS staff to resolve the problem informally. If you want a formal investigation by PRS, you will have to submit your complaint in writing. PRS staff will assist you in preparing and submitting the complaint. Your written complaint should include: a statement of your concerns, your attempts to resolve your concerns, the actions by the school you believe would resolve your concerns and your signature and contact information. If your complaint is about a specific student, you should provide the student's name and residential address and the name of the school. The issues that you are complaining about, however, must have occurred no more than one year before PRS receives your complaint. If you choose to file a formal complaint with the Problem Resolution System, you must also send a copy of your written complaint to the school district that is the subject of the complaint. PRS will resolve your complaint within 60 days and send you a copy of the findings and decision.

Filing a formal complaint with PRS will not prevent you from using other methods, such as conversations with your local school district, mediation, or a due process hearing at the Bureau of Special Education Appeals (discussed below) to resolve your complaint.[5] If you request a due process hearing, however, a complaint that you file through the problem resolution system will be set aside until the due process hearing is completed.

[5] For a comparison of how the problem resolution system resolves a complaint with how a complaint is resolved through a due process hearing see: http://www.doe.mass.edu/sped/docs.html.

6.3 ASK FOR A NEUTRAL MEDIATOR TO BE APPOINTED.

Mediation[6] 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.

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"[7] and the "Explanation of Mediation.[8]"

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 known[9] 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[10] 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 [11] 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.

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[6] 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/.

[7] http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/mediation/mediation-faqs.html.

[8] http://www.mass.gov/anf/docs/dala/bsea/mediation-brochure-2012.doc

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

[10] 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/.

[11] https://www.mass.gov/doc/hearing-request-form/download

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 challenged 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.

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.[12]

The school district is required to set up a resolution meeting within 15 calendar days of receiving your due process complaint.[13] 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.

[12] If you and the school district agree to mediation, you may agree to continue the mediation after the 30 day period.
[13] No resolution session is required if the school district has requested the due process hearing.

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.

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 Act[14] and the BSEA Hearing Rules.[15] 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 public[16] and are available on the BSEA Web site at https://www.mass.gov/bsea-decisions-and-rulings.

[14] M.G.L. c.30A
[15] http://www.mass.gov/anf/docs/dala/bsea/hearing-rules.doc.
[16] Hearing decisions are published after redacting information that would allow the student to be readily identified.

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 [17] 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 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.

[17] A BSEA Hearing Officer may not award attorney's fees.

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 student[18] 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 [19] 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.

9. HOW MAY A SCHOOL DISCIPLINE A STUDENT WITH A DISABILITY? 34 CFR §300.530

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 is 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.[20] A chart depicting the operation of these disciplinary rules can be found on the DESE Web site.[21] These special disciplinary rules apply as soon as a student is removed from his or her current education placement[22] 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.

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

[19] http://www.doe.mass.edu/sped/28MR/28m9.docx

[20] 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.

[21] http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_chart.doc

[22] Placement is determined by the IEP Team and is the location where IEP services are provided.

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.

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.[23] 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.

[23] See BSEA Hearing Rule II.C. Expedited Hearing. http://www.mass.gov/anf/docs/dala/bsea/hearing-rules.doc p.7.

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.[24]

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/.

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 the 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

[24] http://www.doe.mass.edu/sped/laws.html

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:
http://www.doe.mass.edu/sped/advisories/07_1ta.html
Bureau of Special Education Appeals
https://www.mass.gov/bsea-decisions-and-rulings
http://www.mass.gov/anf/docs/dala/bsea/hearing-rules.doc
http://www.mass.gov/anf/docs/dala/bsea/hearing.doc
http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/mediation/
http://www.mass.gov/anf/docs/dala/bsea/mediation-brochure-2012.doc
http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/mediation/mediation-faqs.html
http://www.mass.gov/anf/docs/dala/bsea/
Consent to Access MassHealth (Medicaid):
http://www.doe.mass.edu/sped/advisories/13_1.html
http://www.doe.mass.edu/sped/28mr/**28m13**.docm
Discipline:
http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_chart.doc
Individuals with Disabilities Education Act:
http://idea.ed.gov/.
The Basic Special Education Process under IDEA:
http://www.doe.mass.edu/sped/iep/process.doc
Individualized Education Program:
http://www.doe.mass.edu/sped/iep
Individual Education Program Process Guide:
http://www.doe.mass.edu/sped/iep/proguide.pdf
Independent Educational Evaluation:
http://www.doe.mass.edu/sped/advisories/?section=admin
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:
http://www.doe.mass.edu/sped/complaintchart.doc
Program Quality Assurance Services Problem Resolution System:
http://www.doe.mass.edu/prs/
Special Education Laws and Regulations:
http://www.doe.mass.edu/sped/laws.html
Special Education Surrogate Parent:
http://www.doe.mass.edu/sped/advisories/2013SurrogateParent.html
Special Education Transition Planning Form:
http://www.doe.mass.edu/sped/28MR/28m9.docx
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:
http://www.doe.mass.edu/sped/cspd/mod4.html#