

Question and Answer Guide from the Fall 2006 Area Meetings of Administrators of Special Education

This document is a compilation of questions raised from fifteen area meetings held by Program Quality Assurance Services for Special Education Administrators in the late fall and early winter of 2006. These responses were prepared by Program Quality Assurance Services and the Office of Special Education Policy and Planning.

Topic: Private School at Private Expense

1) When in the year should proportionate share be calculated? Or how often in a year?

The proportionate share calculation is required to be done only once each year. Beginning with the 2008-9 school year, the special education entitlement grant (Fund Code 240) will seek specific information about the spending plan for the proportionate share funds. Therefore, it makes sense that the district will calculate the proportionate share based on the data available when the Department releases information about the district's entitlement funds in order to identify how the district will spend the proportionate share in the coming school year.

2) Does everything regarding students in private school at private expense apply to students in private preschool programs who have some IEP services, even though they may be attending the preschool less than a full day or week? Does proportionate share calculation pertain to preschool students who are residents of another town? Another state?

No, children attending pre-school programs are not considered part of the proportionate share services or calculation unless the preschool program is part of a private elementary school (consistent with the ESEA definition of "elementary school") and the child is placed and privately funded by the parent. For the most part, parentally-placed preschool children with disabilities are the responsibility of the district of residence for the purpose of child find and the provision of FAPE.

3) Does the Department have any guidance for how to write IEPs for eligible students in private schools at private expense? Is it realistic to write the IEP as if the student was attending the public school? How should the IEP be written when the student may need an elaborate IEP that cannot be implemented fully unless the student attends the public school? Would a district be obligated to provide an FM system in a private school and train the teacher(s) how to use it? Or be obligated to provide a 1:1 paraprofessional in the private school?

Under state law, special education and related services for parentally-placed private school students must be designed to meet the needs of eligible students and must provide students with a "genuine opportunity to participate in the public school special education program." The school district must provide or arrange for evaluation, determine eligibility, propose an Individualized Education Program (IEP), and make services available to all eligible students who reside in the district, regardless of where they attend school. Because private school students are being educated in a school program that public school districts cannot modify or otherwise control, an IEP offered to a privately enrolled student may differ from that which might be offered to the same student if enrolled in public school. Under this legal standard requiring comparability in quality, scope, and opportunity for participation in the public school program, an IEP for a privately enrolled student will not necessarily replicate the IEP that the student would have if enrolled in the public school.

The public school may encourage the family to enroll the student in the public school program, but if it is clear that the student will remain enrolled in the private school, the IEP that is developed for the private school student should consist of appropriate services based on the student's individual needs. A student is not required to enroll in the public school in order to receive services, however. Under state law, services described in the IEP that are funded with state or local funds must be provided in a public school facility or in another public or neutral site. Schools may provide services on site at the private school, such as aides or equipment -- if only federal funds are used.

4) Will there be a form for documenting the consultation with private school staff?

According to *Administrative Advisory SPED 2007-1: IDEA-2004 Implementing Regulations*, public schools districts must maintain written documentation of timely and meaningful participation of the private school representative(s) when planning services for parentally- placed private school students. There is not a required form rather the advisory suggests several ways that the district could meet its obligation. The majority of districts will meet the obligation for private school students by inviting a representative of the private school to participate in the Team meeting when the IEP is developed. However, districts may determine other method(s) to demonstrate private school participation in special education service planning.

5) Can the Attachment A regarding proportionate share be available in Excel instead of or in addition to PDF?

The Office of Special Education Policy and Planning is developing an Excel version of Attachment A, which will be available on the Department's website shortly.

6) For an eligible private school student, sometimes after going through the process, parents will not want the services. Can the parent withdraw eligibility? Yes, the parent can always refuse initial provision of services.

If so, then what about FAPE? The school district no longer has responsibility to provide FAPE to a student who has refused initial services. Simply maintain documentation of the offer and refusal.

In the same way, if a public school student's parents want to withdraw from services, what to do?

Parents may decline services at any time, and if they do, the district must not provide the services that have been refused. Additionally, the district should document the parent's refusal and ensure that information is provided to the parent stating their right to reconsider and ask for services at any time subsequent to their refusal. If the parents reconsider, the district will either schedule an evaluation or reconvene a Team to consider their request, as appropriate.

If the parent is refusing consent for any or all special education services subsequent to having accepted such services in the past, the school district must additionally consider if such refusal represents a denial of FAPE for the student and if so, the district must seek resolution by requesting a hearing with the Bureau of Special Education Appeals. When services have been refused, the district is under no further obligation to offer annual reviews or three-year reevaluations unless the parent reconsiders their refusal or a new referral is received.

7) When a district has eligible students parentally placed out of state (NH and South Carolina) in private schools, what is the Massachusetts district's obligations to continue to hold annual reviews and offer services once the family declines. In the case of one student whose three-year re-evaluation is due and who will be graduating, does the Mass district have to complete the three-year re-evaluation?

See question #8 for eligible parentally-placed private school students who "decline" services.

If a public school district places an eligible special education student in an out-of-district or out of state placement then the district continues to be programmatically responsible for conducting annual reviews and three-year re-evaluations. A parent can (up to the age of majority) withdraw a student for special education at any time, which the district should document in writing. Once a student is withdrawn from special education then the district would no longer have either programmatic or fiscal responsibility for the placement.

According to federal regulations, specifically 34 CFR 300.305 (e)(2), a re-evaluation would not be required before the termination of the student's eligibility due to graduation from secondary school with a regular diploma.

8) Districts who have students in private school whose parents do not want services are having parents sign off on statements agreeing to the refusal to hold annual review meetings and refusing services, is this appropriate and does it cover the district?

If the parent(s) of an eligible parentally-placed private school student declines services, the district should document the parent's refusal and maintain such documentation in the student record. No further action is required on the part of the district.

9) What is another state's responsibility to serve MA residents who are eligible for Special Education but attend a private school at private expense? Is the other state fiscally responsible? Is there bill back to the MA district of residence?

Massachusetts's residents who are found eligible have an individual entitlement if they seek services from their Massachusetts public school, although the delivery of such services is clearly compromised by distance in most cases. A Massachusetts resident who is placed by their parent in a private school in another state is eligible for services consistent with IDEA 2004 and may be eligible for other rights depending on the extent to which that state provides services beyond what is required under IDEA 2004. There is no authority for a district from another state to seek reimbursement for any services provided to a Massachusetts resident when that student is placed by his or her parent in a private school in the other state.

10) Do unapproved private schools have a right to a district's proportionate share?

The simple answer is no. Ultimately, no private school has any right to funds from the public school district's proportionate share. The proportionate share funds must be spent on serving eligible parentally-placed private school students and the services and spending is fully within the purview of the public schools. Although public schools must consult with private school representatives, they are not bound by such recommendations.

Topic: Highly Qualified

11) Do highly qualified requirements apply to teachers in collaborative day schools? What about teachers of collaborative run substantially separate classes in a public school?

The IDEA 2004 regulations, specifically 603 CMR 300.18 indicates that highly qualified requirements are applicable to special education teachers teaching in elementary and secondary public schools, which in Massachusetts includes Horace Mann Charter Schools. A special education teacher hired by a collaborative would have to be licensed, but not highly qualified regardless of whether they teach in a regular public school building or in a separate public day or residential program. A teacher in a public day program run by a public school district would have to have to meet highly qualified requirements. Exceptions include special education teachers teaching in Commonwealth

Charter Schools, private elementary or secondary school teachers or teachers hired by LEAs to provide services to students who have been parentally-placed in private schools.

12) What does an elementary school teacher who teaches in a self-contained classroom need in order to be highly qualified?

Presuming that the elementary teacher is hired to provide instruction in core academic subjects then the following requirements would be applicable:

In order to meet the highly qualified definition as described in NCLB, Massachusetts teachers must possess a valid Massachusetts teaching license at either the preliminary, initial, or professional level (formerly known as the provisional, provisional with advanced standing, and standard level) AND demonstrate subject matter competency in the areas they teach. NCLB subject matter competence requirements are applied differently to those who teach at different levels.

Elementary teachers may demonstrate competence in reading, writing, mathematics, and other areas of the basic elementary school curriculum through one of the following:

- Passing the Massachusetts Test for Educator Licensure (MTEL) General Curriculum Test, or
- Massachusetts High Objective Uniform State Standard of Evaluation (HOUSSE) - (an approved Individual Professional Development Plan (IPDP) aligned with HOUSSE requirements.)

See also the memorandum entitled *Highly Qualified Teachers and Paraprofessionals* at http://www.doe.mass.edu/nclb/hq/hq_memo.html.

13) How does the definition of highly qualified apply to charter school teachers under the new regulations?

According to *Administrative Advisory SPED 2007-1: IDEA-2004 Implementing Regulations*, under state law, teachers in Horace Mann charter schools must be certified. Teachers in Commonwealth charter schools do not need to be certified, but must take and pass the Communications & Literacy test of the Massachusetts Tests for Educator Licensure (MTEL) and the appropriate subject area test within the first year of their employment at the Commonwealth charter school, or else they can not be rehired for the subsequent school year. More information on credential requirements for charter school teachers is available in the Department's Charter School Technical Advisory regarding NCLB, available at: http://www.doe.mass.edu/charter/tech_advisory/03_2.html.

14) If a person who is hired, as a paraprofessional is special education certified, do they also need to be highly qualified?

Paraprofessionals only have to be highly qualified if they teach in a Title I school. See also http://www.doe.mass.edu/nclb/hq/hq_memo.html.

Topic: IEPs, Progress Reports, Procedural Safeguards

15) How will the Department be monitoring for whether teachers and providers are being “specifically informed” of their responsibilities for each student with an IEP? What is the best way to document that this has been done?

As a best practice districts should consider multiple means for ensuring that teachers are aware of which students with disabilities are in their classrooms and what the teacher’s specific responsibilities are toward each student with regard to accommodations, instructional modifications and supports. The Department will monitor this requirement primarily through its interview processes when conducting Coordinated Program Reviews and Mid-Cycle Reviews.

16) Regarding the issue of specificity on service delivery grids, can a district use the term "Special Education Teacher OR Special Education Paraprofessional" on a service delivery grid?

Yes. There are particular considerations, which the district should take under advisement with respect to circuit breaker reimbursement. The IEP service delivery grid was designed as both a vehicle for school districts to identify services and providers, and for parents to understand how service delivery is happening. It wasn't designed particularly to respond to the circuit breaker (CB) and only a percentage of individual district students will be eligible for circuit breaker reimbursement, so districts should hold the programmatic considerations as most important. Districts can adopt procedures that assist in a systematic use of service provider terminology that will be responsive when determining the appropriate circuit breaker reimbursement, or to document the choices the district made for any financial audit of circuit breaker claims. The recommendations are as follows:

1. The service provider should be generally named by type of position (such as Special Education Teacher, General Education Teacher, Speech and Language Therapist, Occupational Therapist, etc.). Please note that services provided by the general education teacher are reimbursed according to a preset "general education claim" and will not be eligible for additional reimbursement.
2. If the primary service provider is likely to be two people in different types of positions, such as a Psychologist and a General Education Teacher, consider using two lines of the service grid and be clear about how these providers are sharing this service (so that the parent understands how the service is provided). For this example, the additional CB claiming will only allow the services provided by the Psychologist (see note under #1 above).

3. If the primary service provider is a paraprofessional, put the paraprofessional in the direct service part of the grid and show the supervision by a professional (which includes design of service, as well as design and review of progress monitoring) in the consultation part of the grid. In that way, the parent is clear on who is the primary service provider and is aware of the oversight provided by the professional. However, the district cannot claim "supervision" services under the CB claiming process, only the paraprofessional can be claimed for the service.
4. If the professional is generally the service provider, but the paraprofessional occasionally provides some of the service with the supervising professional readily available, the district could use a slash between the professional/paraprofessional for the service delivery grid. A description of this sort should only be used if the paraprofessional is providing the service only occasionally and the district consistently lets the parent(s) know that this is what this type of notation means. In this case the CB claiming is for the professional only. If the service delivery is more than occasional and the district can characterize how often the paraprofessional will be providing service and how often the professional will be providing service, then, as in #2 above, simply use two lines of the service grid and put the paraprofessional in for the amount of time he/she is likely to be providing the service vs. how much the professional is doing so.

17) Can a parent who doesn't attend an IEP meeting be sent a summary of the Team meeting so that the district may have 10 calendar days to issue the complete IEP and written notice?

The Department's Memorandum *on the Implementation of 603 CMR 28.05(7): Parent response to proposed IEP and proposed placement* issued on December 1, 2006 and available at: <http://www.doe.mass.edu/news/news.asp?id=3182> offers the following guidance:

Since 2000, an IEP provided to a parent within 3-5 days of the Team meeting fulfills the requirement for "immediate" delivery of the IEP to the parent, and the parent has an additional 30 days to respond to the proposed IEP.

Guidance: Currently, most districts have the technology or resources that make it possible to present at least the key service components of an IEP to the parents as they leave the IEP development Team meeting. This is referred to as a "summary." At a minimum, this summary of the decisions and agreements reached during the Team meeting must include:

- (a) a completed IEP service delivery grid describing the types and amounts of special education and/or related services proposed by the district, and
- (b) a statement of the major goal areas associated with these services.

By providing parents with this summary at the conclusion of the Team meeting, in the Department's opinion the district has complied with the requirement to provide the parent with the key decisions and agreements immediately. The district may then take no more than two calendar weeks (this reflects the former ten school working days standard) to prepare the complete IEP for the parent's signature and for the student's records (both home and school).

18) What is the Department's policy regarding shared responsibilities with other agencies (i.e. DSS, DMR) so that districts can better answer questions to parents? (Note: agencies tend not to attend Team meetings.) ?

Districts are responsible for meeting the requirements of the special education law and providing all necessary special education and related services according to an accepted IEP. Agencies do not have shared responsibilities in this area but may choose to offer services consistent with agency policies and resources. Districts should direct questions about agency services to agency representatives.

19) As of when will districts not be held to previous requirements for IEP progress reports?

Currently, districts are required to provide progress reports at least as often as report cards or progress reports are provided for students without disabilities. The content of progress reports must relate to the IEP goals. There are no other specific requirements related to progress reports. No district will be held accountable to previous requirements when reviewing current progress reporting. If, however, the Department is reviewing progress reports written prior to IDEA 2004 (e.g. December 2004), the previous requirements related to progress reports would apply.

20) When the new Procedural Safeguards brochure is released, must it be sent out then or can it wait until the beginning of next school year?

Once released, districts must use the Notice of Procedural Safeguards for all subsequent occasions when such Notice is required to be provided. It is not necessary to "replace" a Notice that has been provided previously.

Topic: GEDs and Graduation

21) Whose responsibility is it to inform students who have already received a GED that they may request special education services until 22 or a regular diploma? Districts or DOE? What should a district be doing? Should they offer an IEP every year until the student reaches 22?

When a student, who has been receiving special education services, withdraws from school to participate in a GED program the school provides notice that they will consider this to be a withdrawal (as required by M.G.L. c 76 section 18). We recommend that the district include information in such notice that the student may continue to be eligible for

special education up to age 22 regardless of whether or not the student receives a GED. Such information is not required, but is recommended. Districts have no direct obligation to seek out individuals who have received a GED, or to continue to attempt to provide special education services to individuals who have withdrawn from school until and unless such services are requested and the individual remains eligible according to special education law.

22) Are students with a GED who go to community college eligible for special education services?

Yes. The IDEA 2004 regulations, specifically 34 CFR 300.102(a)(3)(iv), clarify that a regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, including a certificate or a general educational development credential (GED). Massachusetts' residents who have received a GED may continue to access special education as long as they meet eligibility criteria up to age 22. See *Administrative Advisory SPED 2007-1: IDEA-2004 Implementing Regulations*.

23) What are the implications for school districts under AYP when special education students don't graduate?

To make AYP, high schools and school districts at the high school grade-span must meet (a) an MCAS participation target, (b) a target for MCAS performance or (c) improvement, and (d) a graduation rate target. All students, including those receiving special education services, who do not graduate within four years of entering grade 9 count as non-graduates in high school or school district graduation rate calculations. Any student group in a school or district that does not meet the AYP graduation rate target does not make AYP for that year. In 2007 the minimum graduation rate standard for AYP purposes is 55 percent. For more information about AYP in Massachusetts, see <http://www.doe.mass.edu/sda/ayp/2007>.

Topic: Transition

24) Must there be a transition goal in every IEP for students 15 and up, or if it is discussed and determined that none are needed just note that fact?

The Department's guidance on effective transitional planning emphasizes the importance of the Team's discussion and documentation of the student's vision of post-secondary activities, which must take place no later than the IEP developed when the student is 15 years of age, and earlier if appropriate. Any IEP for older students should have goals that relate to preparing for adult life. Such goals may or may not be specifically related to the areas of transition that are required to be discussed as part of the transition planning process and that are documented on the required Transition Planning Form (28M/9). Please refer to <http://www.doe.mass.edu/news/news.asp?id=3295#> and <http://www.doe.mass.edu/sped/links/transition.html#>.

For specific examples of completed Transition Planning Forms please see:
<http://www.doe.mass.edu/sped/links/waltertpf.doc>;
<http://www.doe.mass.edu/sped/links/mariatpf.doc> and
<http://www.doe.mass.edu/sped/links/jennifertpf.doc>.

25) Does the district have an obligation to students with regard to transition services if they attend a community college?

If the student has not received a regular high school diploma, then, yes, the IEP Team must consider the transition planning needs of any special education student age 15 to 22. However, if the student has left public school and is considered “withdrawn” from school, the district is not obligated to seek out the student and continue to offer services.

Topic: Financial

26) Can the Department provide clarification regarding nursing services as a related service? Will circuit breaker reimburse districts for nursing services only on the bus or also in school?

School nursing services are a related service that may be necessary for the student to benefit from special education and are certainly eligible for circuit breaker reimbursement if they appear as a specific service on the student’s IEP service delivery grid. Nursing services provided on an as needed basis or for only a brief period in the student’s school time and that are not specifically indicated on the IEP of the student are not eligible for circuit breaker reimbursement.

27) Please provide guidance regarding the discussion of and obtaining permission for accessing Medicaid or insurance at the annual IEP meeting. Should this be documented on the IEP? Should it be documented on a separate form? Can a different time period than the IEP be specified? If so, does stay put apply?

Documentation of the parents consent for such services is not part of the IEP and should not be included in the IEP. Documentation of consent to access insurance should be obtained on a separate form. Administrative guidance in *Administrative Advisory SPED 2007-1: IDEA-2004 Implementing Regulations* suggests that parental consent to access Medicaid or private insurance be obtained whenever the IEP is developed or revised (i.e. amended). The consent to use insurance is in effect for the time period for which the IEP is in effect. If the IEP continues in effect through “stay put” then the consent to use insurance can also be considered in effect through that period.

28) How is reimbursement made to a district if their appeal of an LEA assignment is successful?

The regulations are clear that a school district must serve a student immediately upon assignment. If the assignment is revised, the district may bill and receive payment for costs incurred (using the procedures of 603 CMR 10.07 to calculate such costs, including

transportation expenses where applicable) from the district that should have been assigned. See 603 CMR 28.10(8)(e). Billing procedures are district specific and not state reviewed. In many cases, districts being considered for assignment are aware of such considerations. In all cases, the Department will readily reconsider assignments if new information is available. What is not acceptable is for a district to not serve a student while contesting an assignment.

Topic: Student Records

29) How long do districts have to keep temporary records post-graduation? In some DOE guidance it says seven years, in others it says five.

According to the Massachusetts Student Record Regulations, specifically at 603 CMR 23.06(3):

The temporary record of any student enrolled on or after the effective date of 603 CMR 23.00 shall be destroyed no later than seven years after the student transfers, graduates, or withdraws from the school system. Written notice to the eligible student and his/her parent of the approximate date of destruction of the record and their right to receive the information in whole or in part, shall be made at the time of such transfer, graduation, or withdrawal. Such notice shall be in addition to the routine information letter required by 603 CMR 23.10.

30) Can the transfer of student records from one district to another be expedited?

All public schools are required to transfer student records promptly upon request and the consent of the parent or adult child is necessary, unless the school that the student is leaving, or has left, gives notice that it forwards student records to schools in which the student seeks or intends to enroll. Such notice may be included in the routine information letter required under the Massachusetts Student Record Regulations (see 603 CMR 23.10). Further, IDEA requires cooperating with state or national efforts to transfer student records for migratory children (see 34 CFR 300.213).

Topic: Regulations

31) When will the MA regulations reflect IDEA-2004 requirements?

Massachusetts's regulations have been updated to appropriately reflect the citation numbers from the IDEA 2004 final federal regulations. No further revisions related to IDEA-2004 are necessary at this time. The regulations are available at <http://www.doe.mass.edu/lawsregs/603cmr28.html>.

32) *What is the authority for Massachusetts Special Education Regulation 603 CMR 28.06(2)(a)?*

Chapter 71B gives the department general authority to write regulations related to special education --- since this regulation was available for public comment and was duly promulgated by the Board of Education and filed with the Secretary of State, it is now law.

Topic: Charters

33) *Are Charter schools required to hire Special Education Administrators?*

Charter schools do not have to hire a Special Education Administrator who is licensed as such to fulfill the duties of that position. However, the person serving in that role must be appropriately licensed or hold a current waiver for an appropriate license or otherwise demonstrate that s/he has the qualifications to perform all of the duties of the position. Consideration must be given as to whether the person is knowledgeable about special education, accountable for implementation of the school's special education programs and able to provide administrative oversight. The charter school may employ a part-time administrator or share an administrator with other charter schools.

Topic: Independent Educational Evaluations

34) *Can DOE provide a list of evaluators who abide by the state rates?*

It is the district's responsibility under 34 CFR 300.502 to provide parents with information about where an independent educational evaluation (IEE) can be obtained and what the agency criteria applicable to IEEs is. There is no prohibition about districts sharing this information with each other. The DOE does not maintain such information at this time.

Topic: Home Schooling

35) *Does the Department have clarification regarding home schooling and the district's responsibilities regarding IDEA 2004?*

No, the most recent update to the Home School Advisory was in March 2003. However, IDEA-2004 did not materially affect the district's responsibilities regarding home schooling and the 2003 advisory is, therefore, still accurate. The advisory can be found at: http://www.doe.mass.edu/pqa/ta/f03am_qa.html

Topic: Parent Advisory Councils

36) When can districts expect that the DOE PowerPoint training for use with PACs on parent's rights will be updated and available?

The Department has begun revision activities on this training and we have hopes that it will be completed and available for use by the 2008-9 school year.

Topic: Retention

37) What is the Department's policy regarding the retention of special education students?

Retention and promotion policies are locally determined matters.

Topic: Unapproved Schools/Programs

38) Is there a requirement that when an unapproved day or residential school continually has 15, 20, or more students enrolled using the 28M/3 process they must apply for an approved status, and if not, why not?

There is no current requirement for a private school to seek state approval under those specific circumstances. However, the Department is considering proposing revisions to the state regulations to that effect and there may be such a requirement in the future.