



# Massachusetts Primer on Special Education and Charter Schools

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## Section I: General Information

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## **Massachusetts Primer on Special Education and Charter Schools**

### **Section I: General Information**

**This information is intended for those readers who may not fully understand the legal status of charter school within the Massachusetts public education system, or who may not have a working knowledge of, or need a brief update on, federal special education laws and regulations.**

**This document has been developed by the Massachusetts Department of Elementary and Secondary Education (ESE) with the assistance of the TA Customizer Project, funded by the National Association of State Directors of Special Education (NASDSE).**

# Massachusetts Primer on Special Education and Charter Schools

## Part I: General Information

Part I provides an explanation of a charter school’s legal status within the Massachusetts public education system and a synopsis of federal laws that are most relevant to special education in charter schools. The information is intended for those who may not fully understand the legal status of charter schools within the Massachusetts public education system, or may not have a working knowledge of, or need a brief update on, federal special education laws and regulations.

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## **A. Charter School Legal Status and Linkage to a Local Education Agency**

Charter schools must abide by federal special education laws and regulations because they are part of the public education system. However, the way this is carried out in practice depends on a charter school's legal identity and its linkage to a traditional local education agency (LEA) for purposes of special education. In Massachusetts, each Commonwealth charter school is its own LEA or school district for all matters pertaining to special education. Horace Mann charter schools are also LEAs, but may choose to work with the district in which they are located to share responsibility for special education. As LEAs, Commonwealth and Horace Mann charter schools must comply with federal and state special education laws and regulations.

## **B. Federal Laws Relevant to Special Education in Charter Schools**

The following list and brief overview of federal education laws as they pertain to special education is intended to be an orientation for those who are not familiar with this legislation.

### **1. Which federal laws are most relevant to special education in charter schools?**

The federal laws and regulations that have most relevance for implementing special education are:

- Individuals with Disabilities Education Act (IDEA) <http://idea.ed.gov>
- No Child Left Behind Act (NCLB) <http://www.ed.gov/nclb>
- Section 504 of the Rehabilitation Act of 1973 (Section 504) <http://www.hhs.gov/ocr/504.html>
- Americans with Disabilities Act (ADA) <http://www.ada.gov>
- Family Education Rights and Privacy Act (FERPA) <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

### **2. Which federal agency is responsible for overseeing these laws?**

The U.S. Department of Education (USED), the Office of Special Education Programs (OSEP) is in charge of the IDEA. The Office for Civil Rights (OCR) is responsible for Section 504 and the ADA is enforced by the U.S. Department of Justice. The Office of Elementary and Secondary Education (OESE) manages the Elementary and Secondary Education Act, reauthorized as the No Child Left Behind Act of 2001 (NCLB). The Family Compliance Policy Office provides technical assistance for Family Education Rights and Privacy Act (FERPA) requirements.

### **3. What is the Individuals with Disabilities Act?**

The Individuals with Disabilities Education Act-2004 (IDEA), is a federal special education law that requires states and public schools to provide students with disabilities with a free and appropriate public education and access to the general education curriculum. The educational placement of students with disabilities must be provided in the least restrictive environment and meet the unique needs of the students. For each eligible student, the school develops a written individualized education plan, documenting the special education services required by the student. The Massachusetts Department of Elementary and Secondary Education (ESE) has developed helpful tools and resources to assist educators in implementing selected provisions of IDEA that can be accessed at [http://www.doe.mass.edu/sped/IDEA2004/spr\\_meetings/#](http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/#). The ESE *Administrative Advisory SPED 2007-1: IDEA-2004 Implementing Regulations* highlights

key aspects of the IDEA-2004 regulations which took effect on October 13, 2006. This administrative advisory is available at [http://www.doe.mass.edu/sped/advisories/07\\_1.html](http://www.doe.mass.edu/sped/advisories/07_1.html).

#### 4. What common terms and acronyms should I know?

The common terms are:

- IEP: A team of professionals and parents arrange for the student's evaluation, determine eligibility, decide on the individualized special education and related services for the student, and prepare an **individualized education program** containing student specific services that are reviewed at least annually. An IEP includes measurable annual goals, how the student will be included in state and district assessments, and how the student will access the general education curriculum in order to meet state's academic standards.
- FAPE: Students with disabilities are entitled to a **free and appropriate public education**.
- LRE: The **least restrictive environment** refers to placement in a setting that most closely resembles the regular classroom. Students with disabilities must have available to them a continuum of placements that range from fulltime in a regular classroom to a substantially separate placement. They are entitled to be placed in the setting that will meet their individual needs while removing them as little as possible from the regular education classroom.
- IEP Team: A group of persons, meeting participant requirements of federal special education law who, together, discuss evaluation results, determine eligibility, develop or modify an IEP, and/or determine placement. The U.S. Department of Education's (USED) Office of Special Education Programs (OSEP) provides information on the requirements of the Individuals with Disabilities Act (IDEA) and is available at [www.ed.gov/about/offices/list/osers/osep/index.html](http://www.ed.gov/about/offices/list/osers/osep/index.html).

#### 5. Does the Individuals with Disabilities Education Act include charter schools?

The Individuals with Disabilities Education Act (IDEA) affirms that students who attend charter schools are covered under this law. The law makes specific references to charter schools and includes:

- Students with disabilities who attend public charter schools and their parents retain all rights under IDEA.
- Charter schools are included in the definition of a local education agency (LEA) when they are established as LEAs by state law.
- A charter school that functions as its own LEA is responsible for ensuring that the requirements of IDEA are met.
- The state special education advisory panel must include a charter school representative.

#### 6. Do students with disabilities need to be treated in a nondiscriminatory manner?

Yes. Section 504 of the Rehabilitation Act (Section 504) specifically prohibits discrimination solely on the basis of disability to public and private programs and activities that receive federal financial assistance, which includes charter schools. This protection extends not only to students covered under Section 504, but also to students who are eligible for special education services.

#### 7. What protections does the Individuals with Disabilities Education Act provide if a parent disagrees with the school about special education?

The Individuals with Disabilities Education Act (IDEA) contains procedural safeguards and due process rights for parents in the identification, evaluation, and placement of their child. Parents

must be provided with prior written notice of these rights. The law put various procedures in place for resolving conflicts between parents and schools and requires that parents be notified of their right to access those procedures at least once a year, as well as at any time they request a due process hearing. Every state must have a formal complaint system and must provide for mediation and due process hearings to settle conflicts.

**8. Are there students with disabilities who are not covered by the Individuals with Disabilities Education Act?**

Yes. To be eligible under Individuals with Disabilities Education Act (IDEA), students must meet the eligibility criteria for one or more of the specific disability categories as defined in the law. A student eligible for special education must have a disability and *on account of that disability*, be unable to access the general education curriculum unless they are provided with specialized instruction. Students who are not eligible under IDEA may still qualify for accommodations of some type under Section 504 of the Rehabilitation Act (Section 504).

**C. Disability Rights and Access in Charter Schools: Section 504 of the Rehabilitation Act and the Americans with Disabilities Act**

**9. What is the Americans with Disabilities Act?**

The Americans with Disabilities Act (ADA) is a federal law that requires places of public accommodation to provide goods and services to persons with disabilities on an equal basis with the general public. Such public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment. They also must comply with specific requirements related to architectural standards for new and altered buildings; reasonable modifications to policies, practices, and procedures; effective communication with people with hearing, vision, or speech disabilities; and other access requirements. For schools specifically, the ADA requires that, as recipients of federal funds, public schools ensure that they operate programs and activities that are, when viewed in their entirety, readily accessible to handicapped persons. ADA resources and publications are available from the U.S. Department of Justice at <http://www.ada.gov>.

**10. What is Section 504 of the Rehabilitation Act?**

Section 504 of the Rehabilitation Act (Section 504) is a federal law that prohibits discrimination based on a disability, and applies to all school districts (including charter schools) as recipients of federal funds. Section 504 covers eligible students, employees, and other individuals with disabilities and requires that they be provided reasonable accommodations. An individual is considered eligible under Section 504 if they have a disability that substantially limits one or more major life functions. Examples of a major life function include, but are not limited to, hearing, seeing, walking, speaking, learning, breathing, or performing manual tasks.

**11. How do Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Individuals with Disabilities Education Act differ?**

Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA) define disability much more broadly than the Individuals with Disabilities Education Act (IDEA). The IDEA specifically addresses access to education. Section 504 and the ADA include any individual who has a physical or mental impairment that substantially limits one or more life activities, or who has a record of such impairment, or who is regarded as having such impairment. Reasonable accommodations are required by Section 504 and the ADA. Section 504, however, specifically requires the provision of educational and related aids and services

designed to meet the individual educational needs of the student. Including Your Child, a guide for parents on IDEA, Section 504 and ADA, is available at <http://www.ed.gov/pubs/parents/Including/chapter3.html>.

**12. What are examples of disabilities that may be covered under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act but not under the Individuals with Disabilities Education Act?**

Students who have chronic illnesses such as diabetes or a physical impairment that may require the use of a wheelchair may be eligible for specific accommodations or services. These same students may not meet the Individuals with Disabilities Education Act (IDEA) eligibility criteria for special education because they may not require specially designed instruction. Such students are entitled to an evaluation and to a free and appropriate public education (FAPE) if they are found to meet the definition of "handicapped person" as specified in Section 504 of the Rehabilitation Act (Section 504). A Section 504 Accommodation Plan is usually developed for these students. The U.S. Department of Education document *Frequently Asked Questions about Section 504 and the Education of Children with Disabilities* is available at <http://www.ed.gov/about/offices/list/ocr/504faq.html?exp=0>.

**13. Are there requirements regarding physical accessibility of charter school facilities?**

Yes. Pursuant to both Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA) a local education agency (LEA), including a charter school functioning as an LEA, may not exclude persons with disabilities, including parents and students, from the benefits of programs and activities offered at the school because of inaccessible facilities. The *ADA Standards for Accessible Design* is available at <http://www.usdoj.gov/crt/ada/adastd94.pdf>.

## **D. Charter Schools and No Child Left Behind**

**14. What is the No Child Left Behind Act?**

The No Child Left Behind Act of 2001 (NCLB) is the reauthorization of the Elementary and Secondary Education Act of 1965. NCLB is the education reform legislation passed into law on January 8, 2002. NCLB is built on four principles: accountability for results, more choices for parents, greater local control and flexibility, and an emphasis on implementing effective practices based on scientific research. The U.S. Department of Education NCLB website is <http://www.ed.gov/nclb>.

**15. What parts of No Child Left Behind are particularly relevant to charter schools?**

Charter schools are subject to the same No Child Left Behind (NCLB) accountability requirements as other public schools in a state, and their students must participate in the state assessment system. NCLB also requires that charter school teachers must be highly qualified as defined by the law. The Department of Elementary and Secondary Education (ESE) *Charter School Technical Advisory 03-2: The Impact of NCLB on Massachusetts Charter Schools* is available at [http://www.doe.mass.edu/charter/tech\\_advisory/03\\_2.html](http://www.doe.mass.edu/charter/tech_advisory/03_2.html).

**16. What specific No Child Left Behind assessment requirements pertain to students with disabilities?**

All students, including those with disabilities, must participate in the state's assessment and accountability system. A state's assessment system must be valid and accessible for use by students with disabilities and students covered under Section 504 of the Rehabilitation Act

(Section 504). The participation of students with disabilities in such assessments is covered in the Individuals with Disabilities Education Act (IDEA) and requires the following:

- Students with disabilities must be included in state and district-wide assessment programs with appropriate accommodations if necessary.
- Alternate assessments must be provided for those students who cannot participate in state and district-wide assessment programs even with accommodations.
- The IEP for all students with disabilities will specify how they will participate in state assessments.

It is important to note that a procedure for the inclusion of all students with disabilities in large scale assessments is a developing area of knowledge and practice. The National Center on Educational Outcomes provides extensive resources on this topic at <http://www.education.umn.edu/nceo/>.

**17. Must students with disabilities be included in No Child Left Behind school/district accountability reports?**

Yes. As stated in No Child Left Behind (NCLB), Adequate Yearly Progress (AYP) by school districts, including charter schools, must be calculated by applying the same high standards of academic achievement to all public elementary and secondary school students in the state. The law also requires selected subgroups, one of which is students eligible for special education, to be considered separately under certain conditions in determining whether a school has met AYP targets.

An important part of the NCLB regulations is known as "the one percent rule". When measuring AYP, states and school districts have the flexibility to count the "proficient" and "advanced" scores of students with the most significant cognitive disabilities who take alternate assessments based on alternate achievement standards—as long as the number of those proficient and advanced scores does not exceed one percent of all students in the grades tested. This rule applies to students with significant disabilities, and was added to the NCLB regulations in December 2003. The Department of Elementary and Secondary Education (ESE) issued a summary of that rule at <http://www.doe.mass.edu/mcas/alt/04statesum.pdf>.

"Students receiving special education services" is one of the subgroups for which NCLB requires disaggregated reports of assessment results. NCLB provides, however, that a state may not use disaggregated data for one or more subgroups to report achievement results if the number of students in those subgroups is insufficient to yield statistically reliable information or if the results would reveal personally identifiable information about an individual student.

**18. What qualifications are required for special education teachers under No Child Left Behind?**

Changes to the Individuals with Disabilities Education Act (IDEA) in 2004 require that special education teachers of core academic subjects meet the same highly qualified standards as all teachers under No Child Left Behind (NCLB). In accordance with IDEA, all special education teachers, must demonstrate subject matter competence in order to be considered highly qualified. A summary of the federal highly qualified special educator requirements may be accessed at <http://idea.ed.gov/explore/home>. The Department of Elementary and Secondary Education (ESE) *Charter School Technical Advisory 07-1: Teacher Qualifications in Massachusetts Charter Schools* clarifies the Massachusetts and federal professional qualification requirements and is available at [http://www.doe.mass.edu/charter/tech\\_advisory/07\\_1.html](http://www.doe.mass.edu/charter/tech_advisory/07_1.html).



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## **Massachusetts Primer on Special Education and Charter Schools**

### **Section II: Information for State Officials and Others**

**This information is intended for new staff in state agencies and others who need an overview of topics related to students with disabilities who are enrolled in Massachusetts charter schools. The information focuses on the main issues related to policies and procedures that govern special education in all stages of implementation for Massachusetts charter schools.**

**This document has been developed by the Massachusetts Department of Elementary and Secondary Education (ESE) with the assistance of the TA Customizer Project funded by the National Association of State Directors of Special Education (NASDSE).**

# Massachusetts Primer on Special Education and Charter Schools

## Part II: Information for State Officials and Others

Part II provides an overview of topics related to Massachusetts students with disabilities enrolled in Massachusetts charter schools. The information focuses on the primary issues related to policies and procedures that govern special education in all stages of implementation for Massachusetts charter schools and is intended to answer questions frequently raised by employees of state agencies and others.

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# Massachusetts Primer on Special Education and Charter Schools

## Part II: Information for State Officials

This section is an introduction for new staff members of state agencies and others who need an overview of topics related to Massachusetts students with disabilities enrolled in Massachusetts charter schools. The information focuses on the primary issues related to policies and procedures that govern special education in all stages of implementation for Massachusetts charter schools.

### A. Background

#### 1. What are charter schools?

Charter schools are independent public schools that operate under a five-year charter granted by the Massachusetts Board of Elementary and Secondary Education (BESE). Charter schools are independent of any school committee and are governed by a board of trustees. The Massachusetts charter school statute, G.L. c. 71, § 89 (d), lists the following purposes for charter schools:

“(1) to stimulate the development of innovative programs within public education; (2) to provide opportunities for innovative learning and assessments; (3) to provide parents and students with greater options in choosing schools within and outside their school districts; (4) to provide teachers with a vehicle for establishing schools with alternative, innovative methods of educational instruction and school structure and management; (5) to encourage performance-based educational programs; (6) to hold teachers and school administrators accountable for students’ educational outcomes; and (7) to provide models for replication in other public schools.”

Like all public schools, charter schools are responsible for educating all students at no cost to parents and may not discriminate based on race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or a foreign language, or prior academic achievement. As independent public schools, charter schools must attract enough children to stay open and must achieve results that merit renewal of their five-year charter. Sixteen years after the nation’s first charter school opened in Minnesota, there are approximately 4,300 charter schools serving 1.2 million students in 40 states and the District of Columbia.

#### 2. When were charter schools established in Massachusetts?

The Massachusetts Education Reform Act of 1993 included among its provisions the creation of new, independent public charter schools. Twenty-five charter schools opened for the first time in the fall of 1995. Since then, charter schools have grown in number and enrollment and have become a significant part of the educational landscape in Massachusetts.

#### 3. How is a charter school in Massachusetts authorized?

Massachusetts authorizes its charter schools differently than most other states. The state’s Education Reform Act sanctions only one authorizer for charter schools – the Board of Elementary and Secondary Education (BESE). As the sole authorizer, the BESE makes decisions regarding the approval, renewal, and revocation of all charters. Most other states allow multiple entities to authorize the creation of charter schools, including the state education agency (SEA), universities, municipalities, and others. Nationally, most charter schools are authorized by a local school district and function as part of that district.

#### 4. What is the status of charter schools in Massachusetts?

In school year 2007-08, Massachusetts has 61 operating charter public schools - 54 are Commonwealth charters and 7 are Horace Mann charters. Total enrollment in charter schools is approximately 25,000 students, with an additional 15,000 students on charter school waiting lists.

#### 5. What types of charter schools exist in Massachusetts?

The Massachusetts charter school statute G.L. c. 71 §89, available at [www.doe.mass.edu/charter/laws.html](http://www.doe.mass.edu/charter/laws.html), defines two types of charter public schools:

- A Commonwealth charter school shall be a public school, operated under a charter granted by the Board of Elementary and Secondary Education (BESE), which operates independently of any school committee and is managed by a board of trustees. The board of trustees of a commonwealth charter school, upon receiving a charter from the BESE, shall be deemed to be public agents authorized by the Commonwealth to supervise and control the charter.
- A Horace Mann charter school shall be a public school or part of a public school operated under a charter approved by the local school committee in which the school is located and by the local collective bargaining agent; provided, however, that all charters shall be granted by the BESE. Horace Mann charter schools shall be operated and managed by a board of trustees independent of the school committees that approve said schools. The board of trustees may include a member of the school committee.

In Massachusetts, each charter school is its own local education agency (LEA), and is defined as a school district for all matters pertaining to special education. As LEAs, Massachusetts charter schools must comply with state laws and regulations regarding how to identify students who have special needs and refer those students for evaluation.

#### 6. What are the major differences between charter schools and other public schools in Massachusetts?

There are three major ways in which charter schools differ from other public schools.

- Charter schools are schools of choice that provide parents with the option to enroll their child in a charter school instead of the school their child would otherwise attend.
- All charter schools operate under a charter granted by the Board of Elementary and Secondary Education (BESE) and governed by a board of trustees, independent of any school committee.
- Charter schools are held accountable for success of their academic program, viability of their organization and faithfulness to the terms of their charter by the BESE. Charter schools that fail to meet these criteria or are found in noncompliance with relevant state and federal laws and regulations may be subject to non-renewal, renewal with conditions, probation or revocation of their charter.

### **B. Department of Elementary and Secondary Education Responsibilities**

In Massachusetts, the Board of Elementary and Secondary Education (BESE) is the sole authorizer of charter schools, making decisions regarding the approval, renewal, and revocation of all charters. The day-to-day operations of reviewing charter school applications, maintaining operational oversight, and

providing technical assistance and informational support to schools is the responsibility of the Department of Elementary and Secondary Education (ESE) Charter School Office (CSO).

### **C. Implementation of Quality Authorizer Practices**

The Charter School Office (CSO) ensures that applicant schools are reviewed prior to receiving a charter and that operating charter schools receive regular oversight. The CSO is responsible for a number of oversight activities that provide multiple sources of evidence used by the Board of Elementary and Secondary Education (BESE) in making renewal determinations for each school. In part, oversight responsibilities include:

- **Approval Procedures:** The CSO institutes a multi-tiered, charter school application process designed to ensure that only applicant groups who submit high quality proposals will be granted a charter. The application process, including an initial prospectus and a full application stage, requires a description of how the school will provide students with disabilities and English language learners with access to the general curriculum. The applicant school must describe how programs will be implemented, including staffing projections for special education and related services for the term of the charter. Charter school applications undergo a panel review process and final applicant founding groups are interviewed on the specific content of the application as well as the goals for the school.

Historically, about one-half of the groups that submit initial prospectuses are subsequently invited to submit full applications. Approximately one-half of final charter school applications are recommended by the Commissioner of Elementary and Secondary Education to the BESE. As the state's charter school authorizer, the BESE makes the final decision on granting charters.

- **Opening Procedures:** Once a charter is awarded, school leaders are required to attend trainings on the charter school opening procedures requirements. The Department of Elementary and Secondary Education (ESE) staff offer several days of training and technical assistance about the requirements for legally operating a school, including curriculum accommodations for diverse learners within the general education program and operating a special education program.
- **Charter School Accountability and Oversight:** Charter schools receive increased freedom in exchange for increased accountability for results. Specifically, the renewal of a public school charter is contingent on affirmative evidence in three areas: faithfulness to the terms of the charter, academic program success and organizational viability.

The evidence in these areas is obtained through a variety of sources, including materials provided by the school itself, ESE routine inspection visits, and a renewal inspection visit. All accountability documents used by ESE, including renewal and site visit protocols, are available at <http://www.doe.mass.edu/charter/acct.html>. The ESE gathers information and corroborates information provided by the school through the following oversight activities:

- **Site visits:** In conducting site visits, the CSO is carrying out the requirements of state charter school regulations which outline the ongoing review of charter schools. Charter school site visits are conducted by teams assembled and led by the CSO to review schools, usually in the second and third year of a charter. A fourth year site visit may occur if concerns exist about

the school's potential to receive a charter renewal, and additional site visits are scheduled as needed in cases when the BESE has imposed conditions on the renewal of a school's charter. Site visits may also include a federal programs review of special education and English language learner programs and certain civil rights requirements.

- Coordinated Program Review: In addition to the CSO accountability and oversight procedures, all Massachusetts public schools receive a Coordinated Program Review (CPR) on a six year cycle and a follow-up Mid-Cycle Review (MCR) of special education, English language learner and other selected criteria. These reviews are conducted by the Program Quality Assurance (PQA) unit of the ESE.
- Renewal procedures: Schools are awarded five-year charters. No earlier than March 1 of the school's third year or later than the first of August after the fourth year of operation, the school must submit an Application for Renewal. Following submission of the renewal application, each school undergoes a three to four day renewal inspection visit by a renewal inspection team. The renewal inspection team provides a report of the school's performance in relation to the three areas of inquiry: faithfulness to the terms of the charter, academic success, and organizational viability. CSO federal programs staff members conduct an inspection of the implementation of federal programs in each charter school receiving renewal consideration. Additional renewal evidence is gathered from the most recent CPR and MCR reports and the status of the school's CPR Corrective Action Plan.
- The CSO develops a Summary of Review for the BESE, based on the school's Renewal Application, Renewal Inspection Report, Site Visit Reports, CPR and MCR reports, federal programs inspection, annual audits, and other sources of evidence.
- The Commissioner makes a recommendation to the BESE on charter renewals and the BESE votes to either renew the charter, renew with conditions, or to not renew the school's charter. If a decision is made not to renew a charter, the school is closed, pending the right to an administrative hearing.

#### **D. Types of Charter Schools**

Massachusetts charter schools offer a variety of programs to serve children throughout the state. Schools are chartered to either give preference to students within a particular district or to serve a region. Schools serve a variety of grade spans, ranging from only elementary grades to K-12. Many charter schools offer extended day and school year programs and were chartered with a variety of missions. For example, several charter schools serve exclusively at-risk students, including schools in Amesbury, Boston, and Lowell, two charter schools are based on the Montessori curriculum, several are college-preparatory in focus, and the arts form the basis for others. Examples include:

Academy of the Pacific Rim in the Hyde Park area of Boston offers a rigorous, character-based program that incorporates successful educational approaches used in Asia and includes Mandarin as a required language <http://www.pacrim.org/>.

MATCH Charter Public School in Boston, offers a program in which every student is in school from 8:30 a.m. to 5 p.m., receives two hours of one-on-one tutoring every day, and must pass at least one advanced placement class as well as take two Boston University classes in order to graduate <http://www.matcheschool.org/>.

Hilltown Cooperative Charter School in Haydenville is a cooperative elementary school where parents are required to take an active part in the operation of the school and to support their child's education <http://www.hilltowncharter.org/>.

Pioneer Valley Performing Arts Charter School in Hadley provides its middle and high school students with a multi-disciplinary arts curriculum. <http://www.pvpa.org/>.

Health Careers Academy Charter School is a Horace Mann charter school in Boston for students interested in careers in care giving and public health <http://healthcareersacademy.org/HOME.html>.

Sturgis Charter School in Hyannis and Mystic Valley Regional Charter School, in Malden and Everett, offer the International Baccalaureate program, an internationally recognized program of academic excellence <http://www.sturgischarterschool.com/> and <http://www.mvracs.com/>.

A complete list of all Massachusetts charter schools is available at <http://profiles.doe.mass.edu/charter>.

## E. Special Education in Charter Schools

### 7. What are the basic requirements of the Individuals with Disabilities Education Act?

The Individuals with Disabilities Education Act-2004 (IDEA), is a federal special education law, that requires that states and public schools provide students with disabilities a free and appropriate public education (FAPE) and access to the general education curriculum commensurate with their non-disabled peers, and that the educational placement of students with disabilities be in the least restrictive educational placement which still meets the unique needs of the student. How the school will do these things is described in a written education plan developed on an individual basis for each disabled student.

Federal IDEA entitlement funds are allocated through state education agencies (SEA) to the local education agencies (LEA) to support special education and related services. Every SEA receives these funds and must ensure that all LEAs, the state's school districts and charter schools, are in compliance with the mandates of IDEA.

### 8. What common terms and acronyms should I know?

The common terms are:

- IEP: A team of professionals and parents arrange for the student's evaluation, determine eligibility, decide on the individualized special education and related services for the student, and prepare an ***individualized education program*** containing student specific services that are reviewed at least annually. An IEP includes measurable annual goals, how the student will be included in state and district assessments, and how the student will access the general education curriculum in order to meet state's academic standards.
- FAPE: Students with disabilities are entitled to a ***free and appropriate public education***.
- LRE: The ***least restrictive environment*** refers to placement in a setting that most closely resembles the regular classroom. Students with disabilities must have available to them a

continuum of placements that range from full time in a regular classroom to a substantially separate placement. They are entitled to be placed in the setting that will meet their individual needs while removing them as little as possible from the regular education classroom.

- IEP Team: A group of persons, meeting participant requirements of federal special education law who, together, discuss evaluation results, determine eligibility, develop or modify an IEP, and/or determine placement. The U.S. Department of Education's (USED) Office of Special Education Programs (OSEP) provides information on the requirements of IDEA and is available at [www.ed.gov/about/offices/list/osers/osep/index.html](http://www.ed.gov/about/offices/list/osers/osep/index.html).

**9. Do charter schools serve students with disabilities?**

Yes. All charter schools in Massachusetts serve students with disabilities. Charter schools must accept all students who apply, and whose names are selected through a lottery. They may not discriminate in admissions against students on the basis of disability, special need or prior academic achievement.

**10. Can charter schools waive responsibilities for special education?**

No. Charter schools are public schools and must comply with all federal education laws, including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act (ADA). There is no provision to request a waiver from federal requirements pertaining to students with disabilities. However, all Massachusetts public school districts, including charter schools, may submit a written proposal (Request for Waiver) to the Department of Elementary and Secondary Education (ESE) for approval to satisfy the requirements of the *state* special education requirements in an alternative manner. ESE may approve the proposal if it demonstrates substantial promise of contributing to improvements in the methods for meeting the goals of the state special education regulations and does not conflict with any provision of state law.

**11. What does Individuals with Disabilities Education Act say about charter schools?**

The Individuals with Disabilities Education Act (IDEA) states that students who attend charter schools are protected under this law. IDEA, 34 CFR, § 300.209, refers to charter schools and their students:

- Students with disabilities in charter schools and their parents retain all procedural safeguards.
- Charter schools are included in the local education agency (LEA) definition when established as an LEA by state law.
- Students with disabilities in charter schools that are part of an LEA must be served in the same manner as that LEA serves students with disabilities in its other schools, including the provision of supplementary and related services at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools. The LEA must also allocate funds to charter schools on the same basis that it provides funds to its other public schools.
- A charter school that functions as its own LEA is responsible for ensuring that the requirements of IDEA are met, unless state law assigns that responsibility to some other entity.
- The state's Special Education Advisory Council must include a charter school representative.
- The IDEA requires SEAs to implement specific procedures, including evaluations for students to determine if they are eligible for special education, to provide subsequent services and to re-evaluate eligible students. Under IDEA, SEAs receive grant funds which are allocated to LEAs to provide special education and related services to students with disabilities. All states are allocated these funds and are required to follow the IDEA mandates.

**12. Responsibility for service:** Charter schools are responsible for the provision of free and appropriate public education (FAPE), including a full continuum of services to students with disabilities, except that programmatic and financial responsibility for students who require an out-of-district day or residential school returns to the school district where the student resides. The state's charter school law is available at [www.mass.gov/legis/laws/mgl/71-89.htm](http://www.mass.gov/legis/laws/mgl/71-89.htm).

**13. Administrator of Special Education:** All charter schools in Massachusetts must appoint an individual to act as the Administrator of Special Education. This person must be qualified to perform all required duties, including supervision and oversight of all special education services and programming within the school, and ensure compliance with all federal and state special education laws. The state's special education regulations are available at: [www.doe.mass.edu/lawsregs/603cmr28.html?section=03#start](http://www.doe.mass.edu/lawsregs/603cmr28.html?section=03#start).

**14. Special Education Instructional Staff:**

All special education teachers in charter schools must satisfy the Massachusetts's charter school statute and regulations and, if they are the primary instructor of a core academic subject(s), satisfy the No Child Left Behind highly qualified standards. The licensure component of NCLB is waived for Massachusetts Commonwealth charter school teachers because it is not a requirement of the state charter school statute and regulations. Teachers in Horace Mann charter schools are required to hold an appropriate Massachusetts teaching license because employees of a Horace Mann charter school are, for collective bargaining purposes, employees of a school district. The Department of Elementary and Secondary Education (ESE) *Technical Advisory 07-01: Teacher Qualifications in Massachusetts Charter Schools* is available at [www.doe.mass.edu/charter/tech\\_advisory/07\\_1.html](http://www.doe.mass.edu/charter/tech_advisory/07_1.html).

**15. Individualized Education Program:** Students with disabilities at charter schools are required to receive services according to the elements of an approved individualized education program (IEP), developed by the IEP team. The state's IEP process guidelines are available at [www.doe.mass.edu/sped/iep/proguide.pdf](http://www.doe.mass.edu/sped/iep/proguide.pdf).

**16. Forms and Notices:** Charter schools must use individualized education programs (IEPs) forms and notice letters which contain all the required elements mandated in state regulations. The state's mandated forms and notices are available at [www.doe.mass.edu/sped/iep/forms/](http://www.doe.mass.edu/sped/iep/forms/).

**17. Special Education Compliance Monitoring:**

- The Department of Elementary and Secondary Education (ESE) oversees school district compliance with special education requirements through the Coordinated Program Review (CPR) process. All compliance reviews monitor selected special education and civil rights requirements; and as appropriate, selected English language learner and other general education requirements. Subsequent to the monitoring review, the ESE issues a CPR report identifying education requirements that are implemented and any areas of non-compliance identified during the school's onsite review. The school district is required to develop a Corrective Action Plan (CAP) that addresses the identified areas of non-compliance.
- The ESE compliance monitoring process occurs on a six-year cycle and maintains copies of all previous monitoring reports. In addition, Massachusetts requires a Mid-Cycle Review (MCR) follow-up visit three years after the CPR. The MCR verifies the implementation status and effectiveness of the school district's compliance and effectiveness in remedying previously identified noncompliance issues in the area of special education. The MCR also reviews special education criteria that have been substantially changed in response to IDEA-2004 and

selected English language learner requirements. The ESE is currently piloting a Program Quality Assurance (PQA) Web-based Monitoring System (WBMS) with some school districts and charter schools. As part of the WBMS, schools will conduct a special education program self-assessment including student special education records and required policies and procedures. It is expected that the WBMS will improve the monitoring process and increase school level compliance with federal and state laws and regulations.

**18. Charter School Startup and Service Capacity:** During the state’s charter school application phase, Charter School Office (CSO) federal programs specialists review each proposal for evidence of a special education program that can effectively identify, assess, and serve special student populations. The applicant must demonstrate knowledge of program requirements and implementation; appropriate staffing levels and program organization to support delivery of quality student services; and program evaluation procedures that indicate the special education program can effectively serve the targeted student populations. Once the charter is awarded, new school leaders are required to participate in CSO trainings prior to the opening of the school. The trainings provide an overview of the state’s special education program requirements and the Department of Elementary and Secondary Education (ESE) Coordinated Program Review (CPR) compliance review procedures. Subsequent to the trainings, a follow-up school visit is scheduled with the school leader and special education administrator, and a determination is made as to whether the school building meets the handicapped accessibility and special education instructional space requirements. During the first year of operation, the CSO conducts a federal programs onsite visit to observe the special education program and the implementation of individualized education program (IEP) services; to review the program’s policies, student special education records and IEPs; and to verify that special education program requirements are in place.

**19. Child Find:**

The Individuals with Disabilities Education Act (IDEA) requires each state to “have in effect policies and procedures to ensure that all students with disabilities residing in the state who are in need of special education and related services are identified, located and evaluated.” States develop procedures that their local education agencies (LEAs) must follow to carry out these responsibilities. Because a charter school is its own LEA for special education, the school must follow the Massachusetts procedures just like any other LEA. Charter schools are responsible for students only when they are actually enrolled in the charter school. It is clear that all charter schools must conduct “child find” activities for their full student population so that students who may need special education are appropriately identified and, if necessary, referred for evaluation.

**20. Facility issues:** All charter schools must be fully programmatically accessible to persons with disabilities.

**21. Related Services:** Charter schools must provide related services (i.e., speech and language therapy, occupational and/or physical therapy) as determined necessary by the student’s individualized education program (IEP) team in order for the student to receive a free and appropriate education (FAPE). All related service providers at charter schools must comply with all professional licensure and certification requirements.

**F. Finance**

**22. What are Massachusetts policies for the funding of charter schools?**

Charter school funding information is available at <http://finance1.doe.mass.edu/charter/>.

**23. How is a Horace Mann charter school funded?**

Funding for a Horace Mann charter school comes directly from the school district in which the school is located, through a Memorandum of Understanding with the district. An application for a Horace Mann charter school will specify a total budget allocation that the school committee has approved for the charter school's first year. Each year thereafter, the board of trustees of a Horace Mann charter school will submit a budget request for the following fiscal year to the superintendent and school committee of the district. Under the charter school statute, a Horace Mann charter school cannot receive less than it would have under the district's standard budgetary allocation rules. A school may appeal a disproportionately small budget allocation to the Department of Elementary and Secondary Education, commissioner's office. For purposes of entitlement grants, a Horace Mann charter school is considered to be its own LEA and can receive its funds directly or through the district, depending on the terms of the Memorandum of Understanding. Horace Mann charter schools may apply for private grants and receive individual contributions.

**24. Are there fiscal responsibility exceptions for charter schools regarding programs for students with disabilities?**

Yes. For purposes of special education implementation and accountability, Commonwealth charter schools function as stand alone local education agencies (LEAs). They are responsible for all aspects of special education programming and operation, similar to any Massachusetts city or town *except* that they are not required to provide out-of-district placements to students who may require a full time day or residential program of special education. Pursuant to M.G.L. c. 71A §89 (t), if a charter school expects that a special needs student currently enrolled in the charter school may be in need of the services of a private day or residential school, it shall convene an individual education plan team meeting for said student. Notice of the team meeting shall be provided to the special education department of the school district in which the child resides at least five days in advance of the meeting. Personnel from the school district in which the child resides shall be allowed to participate in the team meeting concerning future placement of the child.

In the event that an individualized education program (IEP) team determines that a full time day or residential placement may be necessary and the student's school district has *not* been previously invited to the team meeting, the school should follow the state special education regulation procedures described in 603 CMR 28.10 (6)(a):

- a) The IEP team shall conclude the meeting pursuant to 603 CMR 28.06(2)(c) without identifying a specific placement type, and shall notify the school district where the student resides within two school days.
- b) Upon a determination as in 603 CMR 28.10(6)(a), the program school shall schedule another meeting to determine placement, and shall invite representatives of the school district where the student resides to participate as a member of the placement team pursuant to 603 CMR 28.06(2)(e)(1).
- c) The IEP team meeting convened by the program school shall first consider if the school district where the student resides has an in-district program that could provide the services recommended by the IEP team, and if so, the program school shall arrange with the school district where the student resides to deliver such services or develop an appropriate in-district program at the program school for the student.
- d) If the placement team, in accordance with the procedures of 603 CMR 28.06(2)(d), determines that the student requires an out-of-district program to provide the services identified on the student's IEP, then the placement proposed to the parent shall be an out-of-district day or residential school,

depending on the needs of the student. Upon parental acceptance of the proposed IEP and proposed placement, programmatic and financial responsibility shall return to the school district where the student resides. The school district where the student resides shall implement the placement determination of the team consistent with the requirements of 603 CMR 28.06(3).

**25. Are there any additional state funds available for students with disabilities?**

Yes. First implemented in fiscal year 2004, the "circuit breaker" program reimburses a local education agency (LEA) for students with disabilities who require individualized education program (IEP) services that cost greater than four times the statewide foundation budget. An LEA may be reimbursed, subject to appropriation, for up to 75% of these costs. Although the majority of charter school students who meet this service threshold are served at private day or residential placements and are the programmatic and financial responsibility of their school district of residence, some charter schools may be qualified for "circuit breaker" reimbursement.

**26. Are charter schools entitled to federal funds?**

Yes, charter schools are eligible for the same federal funds that go to all public schools. Each federal program has its own requirements. Special education grant information is available on the Department of Elementary and Secondary Education website at <http://www.doe.mass.edu/sped/grants.html>.

**27. Can charter schools access Medicaid benefits for students who are eligible?**

As of 2007, Massachusetts school districts, because they are considered Medicaid providers, can file Medicaid claims to obtain federal reimbursements for students who receive special education services, as delineated on an individualized education program (IEP), and who have MassHealth. This is called the Municipal Medicaid Program. In Massachusetts, the federal match for state dollars spent on Medicaid services is 50%. For every dollar that the Commonwealth spends on Medicaid-eligible services, the federal government contributes 50 cents. Therefore, schools can bill for half of the cost of the services they provide. This can be a significant source of additional funding for schools.

There are two categories of Medicaid billable services that schools provide:

- Direct services to students - this includes physical therapy, occupational therapy, speech and language services, audiological services, behavior management and/or counseling, and 1:1 nursing services; and
- Administrative activities - these are indirect services that are not child-specific, and include: providing resources and referrals, overall planning for all student health services, prenatal/postnatal counseling for pregnant students, and outreach to identify and enroll eligible students in MassHealth (including helping families with the MassHealth application).

No family is required to enroll their child in MassHealth in order for him or her to become eligible for special education and receive a free and appropriate public education (FAPE). In order for a local education agency (LEA) to bill MassHealth for Municipal Medicaid services, the parent or guardian must give consent, as the school will be sharing information about the student with MassHealth in order to submit a claim for Medicaid reimbursement for school-based health services. The school should also have a written policy and procedures for documenting all health services. Additionally, school personnel must meet both federal and state provider qualifications for the service he or she provides. Not all Massachusetts school districts participate in the Municipal Medicaid Program. For local school districts, the federal reimbursement goes to the city or town treasurer. Each municipality then decides whether to pass this money along, in part or in whole, to the school. Commonwealth charter schools receive the reimbursement directly. Information about Medicaid is available at

[www.mass.gov/masshealth](http://www.mass.gov/masshealth) and an Office of Health and Human Services bulletin is available at [www.doe.mass.edu/sped/advisories/Parent520Auth.doc](http://www.doe.mass.edu/sped/advisories/Parent520Auth.doc).

## **G. Transportation**

### **28. What about transportation for students who attend charter schools?**

Massachusetts charter school regulation 603 CMR 1.08(11) requires that, for students attending a charter school located in their town of residence, school districts provide transportation for charter school students to and from school on the same basis as it is provided to other public school students in the district. The charter school may also choose to arrange for alternative transportation if an agreement cannot be reached with the district, in which case the charter school's transportation costs are deducted from the district's funding, and used to reimburse the charter school.

Transportation for students with disabilities who attend a charter school in their town of residence must be provided by the school district of the town. Special education transportation for students who live outside the town in which the charter school is located must be arranged and paid for by the charter school. The Department of Elementary and Secondary Education *Charter School Technical Advisory 07-2: Transportation* is available at [www.doe.mass.edu/charter/tech\\_advisory/07\\_2.html](http://www.doe.mass.edu/charter/tech_advisory/07_2.html)

## **H. Enrollment**

### **29. What issues should charter schools consider when designing their enrollment forms?**

Under Section 504 of the Rehabilitation Act of 1973 (Section 504), the Title II of the Americans with Disabilities Act (ADA) and the Massachusetts Charter School Law and Regulations, schools may not categorically deny admission to students on the basis of disability. The Department of Elementary and Secondary Education (ESE) Charter School Administrative and Governance Guide defines the enrollment policy and nondiscrimination requirement:

*“Massachusetts law is clear; charter schools may not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or a foreign language, or prior academic achievement in admitting students, and charter schools may not set admissions criteria that are intended to discriminate or that have the effect of discriminating on any of these bases. A student must be a resident of Massachusetts at the time of application to be eligible for a charter school's enrollment process. The charter school must hold a lottery to determine which students to admit if there are more applications received than seats available. Every time an admissions lottery takes place, the process must be fair and all rules must be consistently applied”.*

Although a charter school application may ask whether or not a student is currently receiving special education services, the application form must include a nondiscrimination disclaimer with all the protective categories and adhere, as required, to an open and fair lottery process.

Although it is essential that the charter school has this information in order to plan and hire staff for the school year, the information obtained may not be used in a discriminatory manner. Charter schools may not administer tests to potential applicants or predicate enrollment on results from any test of ability or achievement. The charter school may also initiate student records requests from the student's home district.

**30. Does the Department of Elementary and Secondary Education provide guidance on conflict resolution and due process?**

The Department of Elementary and Secondary Education (ESE) Bureau of Special Education Appeals (BSEA) conducts mediations, advisory opinions, and hearings to resolve disputes among parents and school districts, charter schools, private schools and state agencies concerning eligibility, evaluation, placement, individual education programs (IEPs), special education services and procedural protections for students with disabilities. In addition, a parent may request a hearing on any issue involving the denial of the free appropriate public education (FAPE) guaranteed by Section 504 of the Rehabilitation Act of 1973 (Section 504). The BSEA derives its authority from federal IDEA law and regulations and Massachusetts law and regulations. The BSEA is located with the Massachusetts Department of Elementary and Secondary Education, but is independent from the ESE. Information about the BSEA is available at <http://www.doe.mass.edu/bsea/>.

**31. What assistance does the Department of Elementary and Secondary Education offer persons who believe that a charter school is not meeting its obligations under federal and state laws and regulations?**

The Program Quality Assurance Unit (PQA) manages the ESE's Problem Resolution System (PRS). The PRS is the process for receiving, reviewing and resolving concerns from the public regarding students who allegedly are not receiving education services under federal and state laws and regulations as required. Information about the PRS is available at <http://www.doe.mass.edu/pqa/prs/>. Individuals who believe that any charter school student is not receiving special educational services or procedural protections that by law must be provided to disabled students may access the PRS by contacting PQA Services at:

Massachusetts Department of Elementary and Secondary Education  
Program Quality Assurance Services, Problem Resolution Intake Specialist  
75 Pleasant Street, Malden, MA 02148  
Telephone: 781-338-3700  
TTY:N.E.T. Relay: 1-800-439-2370  
FAX: 781-338-3710  
E-mail: [compliance@doe.mass.edu](mailto:compliance@doe.mass.edu)

## **Resources**

- ESE Charter School Office [www.doe.mass.edu/charter/](http://www.doe.mass.edu/charter/)
- ESE *Charter Schools Technical Advisory 03-1: Horace Mann Charter Schools* [http://www.doe.mass.edu/charter/tech\\_advisory/03\\_1.html](http://www.doe.mass.edu/charter/tech_advisory/03_1.html)
- ESE Charter School Administrative and Governance Guide <http://www.doe.mass.edu/charter/governance/adminguide.pdf>
- ESE Special Education Policy, Planning and Development Unit <http://www.doe.mass.edu/sped>
- Massachusetts Charter Public School Association [www.masscharterschools.org/](http://www.masscharterschools.org/)
- U.S. Charter Schools [www.uscharterschools.org](http://www.uscharterschools.org)
- National Association of Charter School Authorizers [www.qualitycharters.org](http://www.qualitycharters.org)
- Charter School websites [http://edreform.com/charter\\_schools/websites/massachusetts.html](http://edreform.com/charter_schools/websites/massachusetts.html)
- ESE *Problem Resolution System compared to BSEA Due Process Complaint* <http://www.doe.mass.edu/sped.docs.html>



# Massachusetts Primer on Special Education and Charter Schools

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## Section III: Information for Charter School Operators

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## **Massachusetts Primer on Special Education and Charter Schools**

### **Section III: Information for Charter School Operators**

**This information addresses the issues concerning the education of students with disabilities at all of the life stages of a Massachusetts charter school. The information is intended to inform those who are responsible for the design, development, and operation of a charter school. The purpose is to focus on specific aspects of implementing a special education program during the pre-authorization, start-up and operating phases of the school.**

**This document has been developed by the Massachusetts Department of Elementary and Secondary Education (ESE) with the assistance of the TA Customizer Project funded by the National Association of State Directors of Special Education (NASDSE).**

# Massachusetts Primer on Special Education and Charter Schools

## Part III: Information for Charter School Operators

Part III addresses the issues concerning the education of students with disabilities at all stages in the development and operation of a Massachusetts charter school. The information is intended to inform those who are responsible for the design, development, and operation of a charter school. The information is focused on specific aspects of implementing a special education program during the pre-authorization, start-up, and operating phases of the school.

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## **A. Charter School Founding Groups - Special Education Planning**

### **1. Are charter schools required to accept students with disabilities and is a charter school required to be in compliance with federal civil rights laws?**

Yes. When conducting outreach or accepting applications, a public school, including a public charter school, may not discriminate against students with disabilities. Charter schools are expected to make proactive efforts to reach out to students and families throughout the community in recruiting new students, and to administer their enrollment process in a way that is open, inclusive, and fair. Failure to do so may indicate that the school is using its enrollment process to discriminate and may result in sanctions by the Department of Elementary and Secondary Education (ESE). Each charter school in Massachusetts must have an enrollment policy that has been approved by the Charter School Office (CSO) of the ESE. A checklist to be used in developing enrollment policies is available from the ESE CSO. The U.S. Department of Education, Office for Civil Rights (OCR) enforces a number of civil rights laws that apply to public schools, including charter schools, and provides guidance in *Applying Federal Civil Rights Laws to Public Charter Schools*, available at [www.uscharterschools.org/pdf/fr/civil\\_rights.pdf](http://www.uscharterschools.org/pdf/fr/civil_rights.pdf).

### **2. As a founding group, how should we plan for special education in our school?**

During pre-authorization planning, founding groups have the opportunity to learn about special education and plan how implementation of their school's required special education program will take place in the context of the school's mission and educational program. Students entering the school through the open lottery process may bring a range of physical and learning disabilities, some of which may not have been identified. The following list provides the Massachusetts disability definitions that may require special education services. The links should be used for more in depth information.

Massachusetts special education regulations define a student with a disability as one who is evaluated and found in need of special education in one or more of the following disabilities:

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

The ESE December 10, 2007 *Memorandum on Specific Learning Disability – Eligibility Process/Forms* notified school districts about a series of required forms and technical assistance documents when finding a student eligible for special education with a

Specific Learning Disability. This information is available at <http://www.doe.mass.edu/sped/iep/sld/default.html#>.

An ESE Special Education Planning and Policy (SEPP) professional development module for school district administrators, general and special educators, related service providers and parents provides information regarding requirements when a student is being assessed for special education with a Specific Learning Disability is available at <http://www.doe.mass.edu/sped/cspd/mod5.html#>. The ESE SEPP website includes the disability definitions and related links at <http://www.doe.mass.edu/sped/definitions.html> and <http://www.doe.mass.edu/sped/2001/disdef.pdf>.

### **3. What special education services must a charter school provide?**

Massachusetts's charter schools must comply with federal and state laws and regulations when determining if a student is eligible for special education and, if so, what services the student will receive. Special education ensures that all students with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs.

Special education is specially designed instruction that includes modifications that affect content, delivery of instruction, methodology and/or performance criteria as necessary to assist the student in participating and learning. This instruction is designed by or with a qualified special education teacher or related service provider. Traditional as well as charter public schools must ensure that students with disabilities receive all special education and related services identified in the student's individualized education program (IEP) in the least restrictive environment (LRE).

The range of special education supports must ensure that a continuum of alternative placements is available to meet the needs of all students with disabilities. This means that each charter school must have a range of alternative special education placements available including, instruction in general education classes (full inclusion program); instruction in general and special education classes (partial inclusion program); or instruction in a special education classroom (substantially separate classroom). Special education may include related services, e.g., occupational and physical therapy, orientation and mobility training, adapted physical education, transportation, or assistive technology. Many charter schools have developed creative solutions to providing services that may include contracting with a local school district to provide specific services or hiring a consultant.

The federal special education law and regulations, the Individuals with Disabilities Education Act (IDEA) are available at <http://www.idea.ed.gov>. The Massachusetts state law, G.L. c. 71B, and Massachusetts state regulations, 603 CMR 28.00, are available at <http://www.doe.mass.edu/lawsregs/statelaws.html>.

### **4. How can we plan for students with a wide variety of disabilities?**

During the initial planning stages of the school, it is important to consider how the school's mission and educational program can be relevant and accessible to a wide range of students, including students with learning disabilities, physical disabilities, or students who present behavioral challenges. It is important to keep in mind that the charter school

will be its own local education agency (LEA) and is responsible for successful implementation of a special education program. As an LEA, the school is also responsible for the academic achievement of special education students on the Massachusetts Comprehensive Assessment System (MCAS). The following six major legal principles that embody the requirements in Individuals with Disabilities Education Act (IDEA) should be considered in planning to include students with disabilities:

1. Equal educational opportunity
2. Individualized Education Program (IEP)
3. Free, appropriate public education (FAPE)
4. Least restrictive environment (LRE)
5. Procedural protections and parental involvement
6. Non-discriminatory evaluation

Definitions of these terms are found in subsequent sections of this document. Taking time to understand and consider these principles and how they relate to Massachusetts requirements for charter schools will help in the development of a school that addresses the needs of all students.

**5. What does a free appropriate public education mean?**

Individuals with Disabilities Education Act (IDEA) requires that students with disabilities are entitled to a free appropriate public education, often called free, appropriate public education (FAPE). This means that schools must provide eligible students who have a disability with specially designed instruction to meet their unique needs, at no cost to the child's parents. This specially designed instruction is known as special education.

In order to provide FAPE, the school may need to train and employ professionals who are competent to design instruction and provide an appropriate education to each student with a disability. While each student's education must be free, defining what is appropriate for a student requires an evaluation to identify the student's areas of strength and weakness relative to his or her participation in the general curriculum. FAPE may require consideration of the effect of the student's disability on, among other things, the proper functioning of hearing aids, non-academic services, recess, physical education, assistive technology, extended school day or year services, transportation, counseling and/or health services, and program options including art, music, and vocational education.

**6. What does least restrictive environment mean?**

Historically, the federal special education law and regulations has included a strong preference for students with disabilities to be educated in the least restrictive environment (LRE), alongside their peers without disabilities, to the maximum extent appropriate. The individualized education program (IEP) team determines the placement (setting) that the student needs to provide the services on the student's IEP and the team must choose the LRE available to provide those services. The team must also carefully consider whether supplemental aids and services and specialized instruction could make it possible for a student to be educated with non-disabled peers.

Supplementary aids and services can be accommodations and modifications to the curriculum or the manner in which the content is presented or a student's progress is measured. Supplementary aids can also include direct services and supports to the child, as well as support and training for staff who work with that student. If services can be appropriately provided in a less restrictive setting, the team must choose that type of program and setting. If the student's program requires a more restrictive setting to be successful, then the team may consider other settings. The determination of the LRE is based on a student's IEP, not on a diagnosis or specific disability label. Students can not be placed in separate or more restrictive environments only because they require modification of the curriculum. After a team has developed the IEP, it determines the most appropriate setting for services and LRE is an integral part of the placement determination. Free, appropriate public education (FAPE) and LRE are closely tied together. Both federal and Massachusetts special education laws require that an IEP team consider appropriate education in the least restrictive environment.

7. How does the prospectus and application for a charter require me to describe how the charter school will meet the needs of special education students in accordance with federal and state statutes and regulations?

The Department of Elementary and Secondary Education (ESE) *Application for a Massachusetts Public Charter School* requires a detailed description of the school's special education program and services, as well as a signed statement of assurances certifying the school will adhere to all applicable provisions of federal law relating to students with disabilities. It is important to obtain a current application that includes a checklist of requirements, attend any information or training sessions that might be offered, read the charter school law and regulations, and make use of other technical assistance information. The Application for a Massachusetts Charter Public School is available at: <http://www.doe.mass.edu/charter/new/?section=app> .

The application asks how the school will ensure that all students with disabilities have access to a *free and appropriate public education* (FAPE) and how the needs of special education students will be met in specific areas, including:

- A description of how the school will provide students with disabilities access to the general education curriculum by implementing programs of special education including how the special education program will be implemented at the school, given the particular mission and educational program of the school.
- A description of how the proposed school will identify, evaluate, and develop an individualized education program (IEP) for each student in need of special education services.
- A description of how the school will comply with state and federal special education requirements for serving students with disabilities, including a description of the settings in which these requirements will be implemented, and the qualifications of the individuals delivering services.
- A list of the special education staffing levels the school intends to provide, by year, for each of the school's first five years. Staffing positions should

include: the special education director, teachers, paraprofessionals, and other staff, as well as the number of staff the school plans to hire each year and their qualifications, salary, and the percentage of their time that will be devoted to special education. If the school anticipates outsourcing services such as occupational therapy, physical therapy, or speech therapy, indicate that a contract will be developed, and if possible, indicate with whom.

- A description of the school's plan to evaluate the special education program and to assess its effectiveness in serving the needs of all students, including the data sets that will be used to conduct the analysis and how the school will address program weaknesses.

The application review process will verify evidence of:

- An implementation plan for student services that effectively determine student needs and the delivery of services.
- A proposed array of services which address a wide range of potential student need levels.
- Knowledge of the school's obligations regarding state and federal laws on special education and civil rights.
- A plan to effectively identify, evaluate and serve students with disabilities.
- A proposed staffing level and program structure that support delivery of high quality services for all students.

**8. How do we deliver instruction to students with disabilities that will be in keeping with our educational program?**

Currently operating charter schools in Massachusetts are often willing to share their experience and expertise on these issues. They are a resource as you plan your school and contact information for each school can be found at <http://profiles.doe.mass.edu/charter.asp>. The Massachusetts Curriculum Frameworks (MCF), [www.doe.mass.edu/frameworks/current.html](http://www.doe.mass.edu/frameworks/current.html), are the general curriculum foundation that guides curriculum development and assessment in all public schools and curriculum planning for all students should be aligned with the MCF.

**9. What issues need to be considered as we plan to provide effective special education services?**

There are many requirements to consider. The following list of basic questions can be used to help focus your planning activities.

## *Checklist of Special Education Considerations*

- Funding for Special Education
  - Is there a formula for determining how much special education funding to include in our budget?
  - What is the formula and how is it determined?
  - Where can I find out about the formula?
  - What funds will we receive for special education services?
    - federal
    - state
- Space and Facilities
  - Are the facilities we're considering accessible?
  - Where will we conduct student evaluations?
  - Where will we conduct IEP meetings?
  - Where can we store confidential student records?
  - Where will we provide pullout services?
  - Where can related services personnel meet with individual students?
  - Where will we store supplies and equipment used by students with disabilities (e.g., educational, medical, mobility, assistive technology)?
  - Are entrances, classrooms, common areas and bathrooms accessible to individuals, including adults, with physical disabilities?
- Human Resources
  - How many students will the school enroll?
  - How many teachers will I need to hire?
  - How many special education teachers will I need to hire?
  - What qualifications will the teachers need?
  - Can I hire part-time teachers?
  - What kinds of qualifications will teachers need to have?
  - Can we use student teachers from area universities?
  - What type of related services personnel will we need?
  - How will we obtain these services and contract with these individuals?
  - What other types of services will our school need?
    - legal counsel with special education expertise
    - accountant/bookkeepers
- Curriculum
  - What curriculum will my school offer?
  - How does our curriculum align with the state's curriculum or standards for student learning?
  - How will we modify the curriculum to address the unique needs of children with disabilities?

- How can we train general and special education teachers to modify/adapt the curriculum for students with disabilities in inclusive classrooms?
  - What types of assistive technology will be needed by our students?
- Service Provision
  - How will we provide special education related services (e.g., occupational and physical therapy, orientation and mobility, speech therapy)?
  - What should our Child Find activities look like?
  - How will we conduct student identification, evaluation, and special education determination meetings?
  - Who will participate in IEP development and implementation?
  - What types of special staff or consultants will we need to implement our students' IEPs?
- Professional Development
  - How will we provide teachers with professional development?
  - What type of specialized professional development will be needed by school staff (including teachers, paraprofessionals, administrators) to support students with disabilities?
  - Does the LEA or the SEA operate a professional development program or network that I can utilize?
- Administration
  - Who will administer the special education program?
  - Who will be responsible for collecting, managing, and reporting data related to students with disabilities?
  - What equipment/supplies/programs will be needed to collect and store data and records? How will we obtain these? What training will be needed to use these efficiently and appropriately?
- Transportation
  - How will we provide students with transportation?
  - Can we access district or state transportation dollars to offset costs, if we provide our own?
  - How will we meet transportation needs of students who receive transportation as a related service that is required by their IEP?
  - How will we arrange transportation for a student in a wheelchair?

The Charter School Office (CSO) federal programs staff members can provide technical assistance with questions that are not answered in this document. If you would like clarification of any part of this document, please contact the CSO at 781-338-3227 or via email at [charterschools@doe.mass.edu](mailto:charterschools@doe.mass.edu).

## **B. Student Recruitment, Enrollment, and Records**

### **10. What steps should we take when recruiting students and providing outreach information to parents?**

Charter schools should ensure that prospective students and their families understand the mission and focus of the school and that they are interested in being part of that school community. When a public information meeting with parents or community groups is held, those meetings must be physically accessible to individuals with disabilities. Qualified interpreters, translations, or another effective means of communication must be provided if requested.

### **11. What is our obligation to make sure that applications from students with disabilities are treated in a nondiscriminatory manner in admissions?**

Under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Massachusetts Charter School Law and Regulations, schools may not deny admission to students on the basis of disability. The Department of Elementary and Secondary Education (ESE) *Charter School Administrative and Governance Guide*, available at [www.doe.mass.edu/charter/governance/adminguide.pdf](http://www.doe.mass.edu/charter/governance/adminguide.pdf), defines enrollment policy and nondiscrimination requirements:

“Massachusetts law is clear; charter schools may not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in English language or a foreign language, or prior academic achievement in admitting students, and charter schools may not set admissions criteria that are intended to discriminate or that have the effect of discriminating on any of these bases. A student must be a resident of Massachusetts at the time of application to be eligible for a charter school’s enrollment process. The charter school must hold a lottery to determine which students to admit if there are more applicants received than seats available. Every time an admissions lottery takes place, the process must be fair and all rules must be consistently applied”.

### **12. What should we do to make sure we will be able to include all students with disabilities in our charter school?**

Charter schools must offer open enrollment. Although a charter school admission application may ask whether a student is currently receiving special education services, the application form must include a nondiscrimination disclaimer stating all the protected categories and adhere, as required, to an open and fair lottery admissions policy. The non-discrimination requirement is at the core of charter school enrollment law pursuant Massachusetts state law, G.L. c. 71, § 89(1), available at [www.mass.gov/legis/laws/mgl/71-89.htm](http://www.mass.gov/legis/laws/mgl/71-89.htm) and Massachusetts state regulations, 603 CMR 1.06(1), available at [www.doe.mass.edu/lawsregs/603cmr1.html?section=06](http://www.doe.mass.edu/lawsregs/603cmr1.html?section=06).

### **13. May we limit the participation of students with disabilities to certain aspects of our school’s program?**

No. Consistent with special education and civil rights laws, students with disabilities must be provided an equal opportunity to participate in the educational, nonacademic, extracurricular and in general education programs as they are available to students

without disabilities. These opportunities to participate include the range of nonacademic or extracurricular programs and activities offered at your charter school.

**14. Can we test students before enrollment or placement in a lottery?**

No. Charter schools may not administer tests to potential applicants or predicate enrollment on results from any test of ability or achievement. Charter schools may not make statements that are intended to discourage parents or guardians of students with disabilities, English language learners, or any other protected group of students from submitting an application to the school.

For each student with a disability who enrolls at a charter school, all special education requirements must be met. In each case, collaboration between the school's general education staff and special education staff is critical. The need for prior planning to create special education capacity is obvious.

**15. A student with a significant disability has enrolled in our school.**

**What should we do?**

As a local education agency (LEA), your charter school has to provide services to a student with a disability who is identified as eligible. The charter school must implement the student's individualized education program (IEP) in a comparable setting without delay until a new IEP is developed and accepted. The charter school must review the existing IEP, which should be part of a student's records and analyze its existing capacity to provide the IEP services. If there are concerns about the existing IEP, the IEP team must meet immediately to discuss appropriate options. One strategy that charter schools have found effective is incorporating into the proposed IEP a provision for close tracking of the student's adjustment in the first 30 days at the charter school, with a set date for the full IEP team to review progress and make any necessary revisions.

**16. Do I need to have student records from previous schools?**

Once a student with disabilities is admitted to the charter school, it is critical that you receive the records from the student's former school to ensure that prior individualized education program (IEP) requirements are known and implemented until an IEP team meeting is convened to determine if a new IEP is required. When a student with an IEP transfers from a school district, whether or not both of those districts are in Massachusetts, the sending school must take reasonable steps to promptly respond to the new school's request for records. If you do not automatically receive the records, initiate a request to the special education office of the former school.

**17. What is our school's responsibility when a student with a disability transfers to another school?**

As with any other student, when a student with a disability transfers to another school, you must ensure timely transfer of all student records. At the point in time when the student is formally no longer enrolled in your charter school, your school no longer has a responsibility to provide services to the student.

## **C. Policies and Procedures**

### **18. Does my school need policies and procedures for special education?**

Yes. The charter school board of trustees should develop policies and procedures once the charter is granted. The Charter School Office (CSO) *Opening Procedures Handbook: A Guide for Boards of Trustees and Leaders of New Charter Schools*, a guide to the opening procedures process for leaders of new charter schools and available at [www.doe.mass.edu/charter/new/?section=handbook](http://www.doe.mass.edu/charter/new/?section=handbook), identifies the required action items that must be completed and includes documents, including due dates, that must be submitted to the CSO prior to the opening of the school. The CSO *Opening Procedures Handbook* ensures that school leaders are prepared to offer a full range of programs and services to their students, including special education, e.g., the school's code of conduct must be submitted which includes the students' right to due process, the criteria for expulsion and discipline procedures for students with disabilities. Included in the CSO *Opening Procedures Handbook* checklist and specific to special education, the Special Education Program Plan Statement (SEPP) is a written assurance that the school's local special education policies and procedures are in compliance with IDEA requirements. The SEPP provides school district and charter school leaders with a means of verifying their awareness of the special education requirements and assuring the Department of Elementary and Secondary Education (ESE) that all of the school's local policies and procedures are in compliance with federal and state special education laws and regulations to ensure uninterrupted access to federal special education funds. An electronic version of the SEPP Statement is available at [www.doe.mass.edu/sped/programplan/pp\\_statement.pdf](http://www.doe.mass.edu/sped/programplan/pp_statement.pdf). The charter school must maintain the documentation named in each element of the SEPP to demonstrate compliance with the Individuals with Disabilities Education Act (IDEA) during an ESE scheduled compliance review. The ESE Program Quality Assurance Unit (PQA) oversees local compliance reviews and is available at [www.doe.mass.edu/pqa/review/cpr/default.html](http://www.doe.mass.edu/pqa/review/cpr/default.html).

## **D. Special Education Staff**

### **19. Are charter schools required to hire special education administrators?**

Yes. Unless the school determines that a full-time administrator is needed, a charter school may employ a part-time administrator or share an administrator with other charter schools. Charter schools are not required to hire a licensed special education administrator to fulfill the duties of that position. However, the person serving in that role must be qualified to perform all the duties of the position, or may hold appropriate state licensure, or hold a current waiver for an appropriate license. Consideration must be given as to whether the person is knowledgeable about special education requirements, accountable for implementation of the school's special education programs, and able to provide administrative oversight.

### **20. We are responsible for hiring our staff and faculty. How much flexibility do we have in the qualifications of special education teachers?**

To satisfy the state charter school statute and regulations, all Commonwealth charter school teachers, including special education teachers, must pass the state's two-part

Massachusetts Tests for Educator Licensure (MTEL), [www.doe.mass.edu/mtel](http://www.doe.mass.edu/mtel), comprised of the Communication and Literacy skill tests and the relevant subject matter knowledge test(s), within one year of employment or hold a valid and appropriate license to teach in Massachusetts. In Horace Mann charter schools, all teachers including special education teachers, must hold an appropriate Massachusetts teaching license.

In addition, the No Child Left Behind Act (NCLB) requires all public school teachers of core academic subjects to be highly qualified. Special education teachers who provide the primary instruction in any of the core academic subjects must meet the NCLB requirements. It is essential that charter school operators who hire such personnel understand the requirements as outlined in the Department of Elementary and Secondary Education (ESE) *Technical Advisory 07-01: Teacher Qualifications in Massachusetts Charter Schools* available at [www.doe.mass.edu/charter/tech\\_advisory/07\\_1.html](http://www.doe.mass.edu/charter/tech_advisory/07_1.html). It is important that the charter school abide by the decision of the individualized education program (IEP) team regarding the type of services a student will need and consider the staffing implications, including the required qualifications, for delivering those services.

**21. Where can I obtain additional information on the state's requirements pertaining to charter school special education teachers?**

In addition to the Department of Elementary and Secondary Education (ESE) *Technical Advisory 07-01: Teacher Qualifications in Massachusetts Charter Schools* which details both the federal and state charter school special education teacher qualification requirements, the ESE Teacher Quality Unit provides further guidance on the federal highly qualified teacher requirements at [www.doe.mass.edu/nclb/title\\_ii.html](http://www.doe.mass.edu/nclb/title_ii.html). Schools may seek further information from the ESE Teacher Quality Unit at [HQTHelp@doe.mass.edu](mailto:HQTHelp@doe.mass.edu) or the Charter School Office (CSO) at [charterschools@doe.mass.edu](mailto:charterschools@doe.mass.edu).

**22. Are there licensure requirements for related service providers?**

Yes. Related services include, but are not limited to, speech-language, occupational or physical therapy or interpreting services for students who are deaf or hard of hearing. Pursuant to Individuals with Disabilities Education Act (IDEA), 34 CFR 300.34 any person, including non-educational personnel, who provides related services, supervises paraprofessionals in the provision of related services, or provides support services directly to the regular or special education teacher must be appropriately certified, licensed, board-registered, or otherwise approved to provide such services by the relevant professional standards board or agency for the profession.

**23. Do we have to hire full-time special educators in our charter school?**

No. The special education services identified in the students' individualized education programs (IEPs) will determine the school's level of need for full and/or part-time special education staff.

**24. Does Massachusetts have a teacher data collection system?**

Yes. The Department of Elementary and Secondary Education (ESE) Education Personnel Information Management System (EPIMS) is a statewide data collection system that collects annual demographic data and work assignment information on individual public school educators in all school districts and charter schools. This

information system will enable Massachusetts to comply with No Child Left Behind (NCLB) by accurately reporting on highly qualified teachers. The ESE EPIMS data system can be accessed at <http://www.doe.mass.edu/infoservices/data/epims/>.

## **E. Teacher Professional Development and Training**

**25. What types of special education professional development should we offer our staff?** Pursuant to Massachusetts state law, G.L. c. 71§ 38(q), available at [www.mass.gov/legis/laws/mgl/71-38q.htm](http://www.mass.gov/legis/laws/mgl/71-38q.htm), it is required that every school district adopt and implement a Professional Development Plan (Plan) for all principals and instructional staff. The Plan must provide on-going training for special education and general education personnel in order for all instructional staff to understand and acquire the skills necessary to work in teams to assist eligible students with disabilities to be involved in and make progress in the general curriculum. Both special and general education staff must receive training in:

- State and federal special education requirements and related local special education policies and procedures
- Analyzing and accommodating diverse learning styles of all student in order to achieve an objective of inclusion in the general classroom with diverse learning styles
- Methods of collaboration among teachers and paraprofessionals to accommodate diverse learning styles of all students in the general classroom

Clearly all of the instructional staff must have ongoing access to training specifically linking instruction, curriculum, and the school's mission to the individual needs of students. Successful practices in personnel retention also stress the importance of involving teachers in the planning of their own professional development.

**26. What if the school's faculty members need help in accommodating the needs of a student who has a disability?**

As a local education agency (LEA), the charter school is required to provide special education and related services and staff training in analyzing and accommodating diverse learning needs of all students. School leaders, in consultation with administrators of special education, must promote instructional practices responsive to student needs and ensure that adequate instructional support is available for students and teachers. The Department of Elementary and Secondary Education (ESE) Special Education Planning and Policy Development (SEPP) unit has instituted a series of training activities, including *A Principal's Role and Special Education in Massachusetts*, available at [www.doe.mass.edu/sped/cspd](http://www.doe.mass.edu/sped/cspd). This overview highlights the importance of the principal or school leader's role in accommodating the needs of diverse learners within the general education curriculum and coordinating the delivery and supervision of special education services with the special education administrator.

## **F. Planning for and Meeting the Needs of Students**

### **27. How is a student identified as possibly needing special education and related services?**

If a student is having difficulty in school - covering a broad range of possibilities including academic, behavioral, physical, emotional or social dysfunction or difficulty or some other manifestation of difficulty – someone generally notices, becomes concerned, and wants to get to the root of the problem. This may be the child’s teacher or parent. At other times, the student’s performance on a test or classroom assessments may signal cause for concern. To determine whether or not a student needs special education or related services, a full and individual evaluation of the student must be conducted.

An evaluation is an essential beginning step in the special education process for a student with a suspected disability. The purposes of evaluation are to see if the student is a “student with a disability,” to gather information that will help determine the student’s educational needs, and to guide decision making about the appropriate educational programming for the student. The law requires a student to be assessed in all areas related to his or her suspected disability, including information relative to the student’s participation in the general curriculum in order to determine an appropriate educational program. The data gathered during the evaluation process will determine the nature and extent of the special education and related services the student needs, so that a comprehensive and appropriate individualized education program (IEP) can be developed and implemented. If the IEP team makes a determination that a student has a disability and requires special education, an IEP is developed. If it is determined that a student is not eligible for special education, the reasons are recorded and parents are provided written notice of the finding. The Department of Elementary and Secondary Education (ESE) Special Education, Policy, Planning and Development document *The Basic Special Education Process under IDEA*, a step-by-step summary of how a student is identified as having a disability, needing special education and related services and an IEP, is available at <http://www.doe.mass.edu/sped/iep/process.pdf>.

Individuals with Disabilities Education Act (IDEA) (§ 300.111) also requires schools to conduct “child find” activities to identify, locate, and evaluate all children with disabilities, aged birth to 21 years. Charter school “child find” responsibilities differ from traditional public school because charter schools do not have jurisdiction over a geographical area as most traditional public schools. Charter schools must only conduct “child find” activities for the students who are actually enrolled in the school.

### **28. What should we do if a teacher or parent suspects a student might benefit from special education?**

Parents and teachers must be given clear information about the procedures that will be followed in your charter school concerning the rights of a student to an evaluation for special education. Parents and teachers must also be fully aware of other services your school provides (e.g., a student assistance team to provide help) prior to a formal referral for a special education evaluation. The Department of Elementary and Secondary Education (ESE) power point presentation *Is Special Education the Right Service?* provides guidance to practitioners and parents on how the capacity of general education

can be maximized to ensure that referrals to special education are made appropriately. It is available at [www.doe.mass.edu/sped/2001/eligibility.pps](http://www.doe.mass.edu/sped/2001/eligibility.pps).

However, a parent or any person in a care giving or professional position who is concerned that a student may have a disability or who is concerned about a student's development can refer a student for an initial evaluation. A school may not refuse or delay a referral in order to try other supportive services. Once the parent consents to a special education evaluation to determine if a student is eligible, the charter school must be prepared to use existing, evaluative information and conduct an evaluation, without delay, in all areas related to the student's suspected disability. *Parents, Students and Schools as Partners: Responsibilities in Special Education*, an ESE training tool for parents and schools to assist in meeting the state requirements under federal and state special education laws, is available at [www.doe.mass.edu/sped/2001/paccurricm.pps](http://www.doe.mass.edu/sped/2001/paccurricm.pps).

**29. Does the Department of Elementary and Secondary Education have any resources to articulate parental rights and procedures related to special education?**

Yes. The Department of Elementary and Secondary Education (ESE) Special Education Planning and Policy Development (SEPP) unit offers an extensive list of resources for parents available at [www.doe.mass.edu/sped/parents.html](http://www.doe.mass.edu/sped/parents.html). Charter schools should be familiar with these resources and share them with parents. *A Parent's Guide to Special Education*, written by the Federation for Children with Special Needs (FCSN) in collaboration with ESE, is available at [www.fcsn.org/parentguide/pguide1.html](http://www.fcsn.org/parentguide/pguide1.html). The FCSN operates a Parent Center in Massachusetts that offers a variety of services to parents, parent groups, and others who are concerned with children with special needs.

**30. Are federal and state timelines different for determining if a student is eligible for special education services?**

Yes. In Massachusetts, the special education system is based on the federal special education law, the Individuals with Disabilities Education Act (IDEA), in combination with the state's special education laws and regulations. IDEA allows a 60 calendar day timeline to determine if a student is eligible for special education services. In Massachusetts, the team process must be completed within 45 school working days of the school's receipt of a parent's written consent. The school district must provide an evaluation (within the first 30 of the 45 school working days), convene a team meeting to review the evaluation to determine eligibility and, if required, develop an individualized education program (IEP) and provide the parents with two copies of the proposed IEP and proposed placement. The team process and development of the IEP timelines regulation, 603 CMR 28.05(7), is available at <http://www.doe.mass.edu/lawsregs/603cmr28.html?section=05#start>. In 2000, Massachusetts amended the state special education regulations to incorporate the work "immediately" into the regulation at 603 CMR 28.05(7). 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. The Department of Elementary and Secondary Education (ESE) December 1, 2006 Memorandum *Implementation of 603 CMR 28.05(7): Parent response to proposed IEP and proposed placement* is a best practice guidance to school districts and parents in how to implement and comply with the "immediate" standard. This memorandum is available at <http://www.doe.mass.edu/news/news.asp?id=3182#>

**31. If we have concerns about our ability to meet the needs of a specific student with a disability, can we recommend other programs or schools?**

It is important to discuss the services and supports currently provided to students with disabilities and to explore potential strategies for meeting the needs of all students who attend your school. The initial focus should be on understanding the needed supports and services and identifying strategies for delivering them within the context of your school. All issues about the appropriateness of a student's placement should be taken up with the student's individualized education program (IEP) team.

Pursuant to Massachusetts special education regulations, 603 CMR 28:10(6), if the charter school's IEP team determines that a student with disabilities may need an out-of-district placement, the team shall conclude the meeting without identifying a specific placement type. The charter school must then notify the school district where the student resides within two school days and schedule another meeting to determine the placement. The charter school must invite a representative from the district where the student resides to participate in determining the placement as a member of the IEP team.

**32. What kind of planning do I have to do to ensure all students' needs are accommodated?**

All schools are required to develop a District Curriculum Accommodation Plan (DCAP) detailing the school's strategies to strengthen and improve the general education program for the benefit of all students and avoid unnecessary referrals to special education. For example, the school's DCAP must describe the various strategies, such as professional development, used by general classroom teachers to accommodate the learning needs of English language learners and effectively manage student behavior. The Department of Elementary and Secondary Education (ESE) 2001 Memorandum: *District Curriculum Accommodation Plan*, is available at: [www.doe.mass.edu/mailings/2001/cm022001.pdf](http://www.doe.mass.edu/mailings/2001/cm022001.pdf).

## **G. Developing an Individualized Education Program**

**33. What is an Individualized Education Program?**

An individualized education program (IEP) is a written statement for a child with a disability that is developed, written and revised by the student's IEP team in accordance with the requirements of the Individuals with Disabilities Education Act (IDEA) and Massachusetts special education law and regulations. Each IEP must include a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum. The statement of the student's present levels is intended to comprehensively describe a student's abilities, performance, strengths, and needs. A fully developed, well-written "present levels" is the foundation upon which the rest of the IEP can be developed to specify appropriate goals, services, supports, accommodations, and placement for the student. Once all the elements of the IEP are determined, including services and supports, an educational placement is determined. The first placement option considered for each student with a disability must be the general education classroom with the provision of supplementary aids and services. Concerns about instruction are discussed during the IEP team meeting and described in the student's IEP so that all team members can contribute and understand how the student

will have access to the general curriculum. Students may not be denied education in an age-appropriate general education classroom solely because the students' education requires modification to the general curriculum. Other placement options should be considered only when the nature and severity of the disability would prevent satisfactory achievement within the general education environment. The state's mandated IEP forms, notices and directions are available at [http://www.doe.mass.edu/sped/iep/eng\\_toc.html](http://www.doe.mass.edu/sped/iep/eng_toc.html) and [http://www.doe.mass.edu/sped/iep/forms/pdf/dir\\_forms.pdf](http://www.doe.mass.edu/sped/iep/forms/pdf/dir_forms.pdf).

**34. We plan to develop individual learning plans for all of our students. Do we still have to develop an Individualized Education Program for students with disabilities?**

Yes. All students receiving special education services must have an individualized education program (IEP) that is developed by an IEP team following the procedural requirements of the Individuals with Disabilities Education Act (IDEA) and Massachusetts special education law and regulations. The IEP may complement the learning plans your school will develop for all students. However, the IEP will be the legal, binding document for all special education related services provided to a student who has been found to be eligible for special education.

**35. Who must be part of an individualized education program team?**

The individualized education program (IEP) team consists of a chairperson, a representative of the school who can authorize school resources (and who may act as chairperson), the parent, general education and special education teachers, the student (as appropriate) and an individual who is qualified to interpret evaluation results. The IEP team meeting creates an opportunity for teachers, parents, school administrators, other individuals with knowledge and special expertise regarding the student, including related services personnel, and the students themselves (whenever appropriate) to work together to develop the IEP. These individuals combine their knowledge, experience, and commitment to design an educational program that must help the student to be involved in, and progress in, the general education curriculum. The IEP guides the delivery of special education services. In Massachusetts, the IEP team composition and attendance requirements per the Coordinated Program Review Procedures, School District Information Package 2008-2009 are:

- 1) The child's parents.
- 2) A representative of the school district who acts as chairperson and who is (1) qualified to supervise or provide special education; (2) is knowledgeable about the general curriculum; and (3) is knowledgeable about the availability of resources of the district.
- 3) A representative of the school district who has the authority to commit the resources of the district (and who may act as the chairperson).
- 4) a. If the student *may* be involved in a regular education program, a regular education teacher. If the student *is* involved in a regular education program, a regular education teacher of the student.
  - b. If the student is participating in a special education program, a special education teacher of the student or, if appropriate, a special education provider for the student.
- 5) The student, if one purpose of the meeting is to discuss transition services or if otherwise appropriate and if he/she chooses.
- 6) Other individuals at the request of the student's parents.

- 7) Reserved
- 8) An individual who is qualified to interpret the instructional implications of evaluation results, who may be any one of the persons identified in parts 2 – 4 above.
- 9) Other individuals who may be necessary to write an IEP for the child, as determined by the Administrator of Special Education.
- 10) When one purpose of the team meeting is to discuss transition services, a representative of any public agency who may be responsible for providing or paying for transition services is invited to the team meeting. If the representative(s) does not attend the meeting, the school district takes other steps to obtain the participation of these agencies.
- 11) Reserved
- 12) When one purpose of the team meeting is to discuss placement, a person knowledgeable about placement options is present at the meeting.
- 13) Members of the team attend team meetings unless:
  - a. the parent and district agree to use alternative means, such as a video conference or a conference call, for any team meeting
- 14) OR
  - b. (i) the school district and parent agree that the member's attendance is not necessary or consent to the member's excusal AND
    - (i) the parent's agreement or consent is in writing AND
    - (ii) the member submits in writing any input he or she has related to the development of the IEP.

The Department of Elementary and Secondary Education (ESE) *Guidance for Implementing IDEA 2004: Team Meetings* is available at [www.doe.mass.edu/sped/IDEA2004/spr\\_meetings/iep.html?section=keypoints\\_team](http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/iep.html?section=keypoints_team).

**36. Are there specific individualized education program forms that must be used?**

Yes. The Department of Elementary and Secondary Education (ESE) has developed mandated individualized education program (*IEP*) *Forms and Notices* that is available at [www.doe.mass.edu/sped/iep/eng\\_toc.html](http://www.doe.mass.edu/sped/iep/eng_toc.html). All elements of the state's mandated forms must remain unchanged; however, schools may change the form design and may add elements. The *IEP Process Guide*, a companion document that links sound special education practices with program requirements, designed to be used along with the *IEP Forms and Notices* is available at [www.doe.mass.edu/sped/iep/proguide.pdf](http://www.doe.mass.edu/sped/iep/proguide.pdf). The IEP forms and notices are translated into sixteen languages and there is a glossary corresponding to each language that translates common special education terms. The IEP is not intended to be a curriculum for the student but serves as a guide for how to "open the doors" to improve access to the general education curriculum and include the necessary special education and related services that will assist the student to succeed.

**37. Is our school responsible for the cost of a placement in a private school if a student with a disability who attends our school requires such a placement?**

No. Massachusetts special education regulations require that such tuition for a private school placement is the responsibility of the charter school student's district of residence. The Massachusetts state regulation, 603 CMR 28.10 § 6(a), available at [www.doe.mass.edu/lawsregs/603cmr28.html?section=10#start](http://www.doe.mass.edu/lawsregs/603cmr28.html?section=10#start), requires:

If a placement team determines that the student requires an out-of-district program to provide the services identified on the student's IEP, then the placement proposed to the parent shall be an out-of-district day or residential school, depending on the needs of the student. Upon parental acceptance of the proposed IEP and proposed placement, programmatic and financial responsibility shall return to the school district where the student resides. The school district where the student resides shall implement the placement determination of the team consistent with the requirements of 603 CMR 28.06(3).

When a charter school individualized education program (IEP) team determines that a student may need an out-of-district placement, the team must conclude the meeting without identifying a specific placement type, and must notify the school district where the student resides within two school days. The charter school must then schedule another meeting to determine placement, and must invite representatives of the school district where the student resides to participate as a member of the placement team. If an out-of-district placement type is determined, the proposed IEP and proposed placement is offered to the parent for consent. When parent consent is received, the school district of residence must work cooperatively with the team to implement the team's placement determination and must ensure that the determination of the final specific program location is made in compliance with the IEP, least restrictive environment requirements and requirements to giving preference to approved programs located in Massachusetts. When the student enrolls at the new placement type, he or she is no longer considered enrolled at the charter school and program and fiscal responsibility for the placement returns to the school district of residence.

## **H. Code of Conduct**

### **38. Can a student with a disability be suspended or expelled?**

Yes. Students with disabilities can be disciplined for misconduct like all students, but special considerations and protections are required before imposing a student's removal exceeding 10 school days from his or her current education placement, including transportation. School authorities can suspend a student with a disability from his or her current placement for less than 10 consecutive or cumulative days for any violation of school rules if non-disabled students would be subject to removal for the same offense. However, removal of a student for more than 10 consecutive days is considered a change of placement and triggers a mandatory consideration as to whether the behavior is a manifestation of the student's disability. The student's individualized education program (IEP) team must conduct a "manifestation determination" by reviewing all relevant information and determine if the student's conduct is a direct and substantial relationship to the disability and is a direct result of the school's failure to implement the IEP. If the misconduct is determined to be a manifestation of the student's disability, the IEP team must conduct a functional behavioral assessment and implement a behavioral intervention plan for the student and, except under special circumstances, return the student to the placement from which the student was removed, unless the parent and the charter school agree to a change of placement as part of a modification of the student's behavioral intervention plan.

If the behavior was not a manifestation of the disability, discipline can be implemented in the same manner as for nondisabled students, except that appropriate educational services must continue to be provided during the exclusion period. When a student is suspended from school, education services are provided by a teacher or paraprofessional in either the student's home or at a "neutral site" such as the local library. This means that if non-disabled students are long-term suspended or expelled for a particular violation of school rules, the student with a disability may also be long-term suspended or expelled, but must continue to receive an academic program sufficient to enable the student to progress in the general curriculum and appropriately advance toward the goals set out in the student's IEP. If a special education student is suspended or expelled from school, procedures must be in place to ensure that the student continues to receive an education even though their education will no longer be provided at the school. Charter school personnel should be carefully trained on the specific discipline requirements related to such removals so that correct procedures can be consistently followed in compliance with the law. The Individuals with Disabilities Education Act (IDEA) regulation pertaining to discipline procedures, 34 CFR § 300.530 - § 300.537, is available at <http://idea.ed.gov/explore/home>. The Department of Elementary and Secondary Education (ESE) flowchart, *Discipline of Special Education Students under IDEA 2004* is available at [www.doe.mass.edu/sped/IDEA2004/spr\\_meetings/disc\\_chart.doc](http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_chart.doc). The ESE May 2005 *Implementation Guide IDEA 2004 Laws* provides a summary of the IDEA discipline statute and is available at [www.doe.mass.edu/sped/IDEA2004/spr\\_meetings/disc\\_law.pdf](http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_law.pdf).

## **I. Financial Support for Special Education**

### **39. Are funds available to support special education services?**

As a local education agency (LEA), Commonwealth and Horace Mann charter schools can apply for entitlement/allocation funds for special education. Charter schools, like all public schools, are entitled to federal funds provided under a formula grant program, if compliance with the program application requirements is met. Eligibility for these entitlement/allocation grants (also called "formula grants") is usually based on a set of demographic criteria, such as the proportion of low-income or special education students a school serves. U.S. Department of Education (USED) regulations ensure that charter schools opening for the first time or significantly expanding their enrollment will receive funds from the state in a timely manner. The ESE special education federal entitlement grant information is available at [www.doe.mass.edu/sped/grant.html](http://www.doe.mass.edu/sped/grant.html).

### **40. Is there financial support available for very high cost students with disabilities who attend charter schools?**

Yes. The Department of Elementary and Secondary Education (ESE) Special Education Circuit Breaker program, first implemented in FY04, reimburses a school district for students with disabilities who require individualized education program (IEP) services that cost greater than four times the statewide foundation budget. A school district may be reimbursed, subject to appropriation, for up to 75% of these costs. Although the majority of charter school students who meet this service threshold are served at special education day or residential placements and are the programmatic and financial responsibility of their school district of residence, some charter schools may qualify for "circuit breaker" reimbursement. <http://finance1.doe.mass.edu/education/>

**41. Can charter schools access Medicaid benefits for students who are eligible?**

Massachusetts school districts, because they are considered Medicaid providers, can file Medicaid claims to obtain federal reimbursements for students who receive special education services, as delineated on an individualized education program (IEP), and who have MassHealth. This is called the Municipal Medicaid Program. Parents and guardians of a student with IEP have the right to decide if they want to give school districts permission to share information with MassHealth for the purpose of billing the Municipal Medicaid Program. A June 18, 2008, Office of Health and Human Services bulletin, available from the Department of Elementary and Secondary Education (ESE) at [www.doe.mass.edu/sped/advisories/Parent%20Auth.doc](http://www.doe.mass.edu/sped/advisories/Parent%20Auth.doc), clarifies that giving a school district permission to claim reimbursement through the Municipal Medicaid Program does not alter or reduce the benefits that students are entitled to receive from MassHealth.

In Massachusetts, the federal match for state dollars spent on Medicaid services is 50%. For every dollar that the Commonwealth spends on Medicaid-eligible services, the federal government contributes 50 cents. Therefore, schools can bill for half of the cost of the services they provide. This can be a significant source of additional funding for schools. The ESE Special Education Program Plan Statement, Element XVIII, stipulates the financial responsibilities related to Medicaid reimbursements and is available at [www.doe.mass.edu/sped/programplan/pp\\_statement.pdf](http://www.doe.mass.edu/sped/programplan/pp_statement.pdf).

There are two categories of Medicaid billable services that schools provide:

- Direct services to students – this includes physical therapy, occupational therapy, speech and language services, audiological services, behavior management and/or counseling, and 1:1 nursing services; and
- Administrative activities – these indirect services that are not child-specific, and include: providing resources and referrals, overall planning for all student health services, prenatal/postnatal counseling for pregnant students, and outreach to identify and enroll eligible students in MassHealth (including helping families with the MassHealth application).

**42. Can charter schools in Massachusetts collaborate and pool their special education resources or form a consortium in order to provide special education and related services?**

The Massachusetts state statute, M.G.L. c. 40, § 4E, available at [www.mass.gov/legis/laws/mgl/40-4e.htm](http://www.mass.gov/legis/laws/mgl/40-4e.htm), does not allow charter schools to pool resources to form an education collaborative with other charter schools. However, charter schools may contract for special education services with a collaborative provided the collaborative agreement permits such an arrangement and may work together to share part-time staff or special education administrators.

## **J. Facilities**

### **43. Are there requirements for physical access that apply when I select the facilities that will house our charter school?**

Yes. Charter schools in Massachusetts may not deny persons with disabilities, including parents and students, the benefits of any programs or activities offered because of inaccessible facilities. When selecting a school building, one should consider whether or not it is accessible and the potential costs incurred to make the building programmatically accessible to persons with disabilities prior to opening the school.

### **44. If we rent our school building, whose responsibility is it to make our school accessible?**

Responsibility to modify a facility should be articulated in the lease between your school and the owner of the facility. If your school is purchasing a building, the responsibility lies with the school. It is very important that you seek legal counsel prior to signing any contracts to lease or purchase your facility.

### **45. Are there different legal requirements that apply to charter schools located in existing facilities as compared to newer facilities?**

Yes. Generally for existing facilities, a charter school's programs and activities, when viewed in their entirety, must be readily accessible to individuals with disabilities. The regulations for Section 504 and Americans with Disabilities Act (ADA) Title II permit considerable flexibility in meeting this legal standard. For example, structural changes are not required in existing facilities if nonstructural methods are effective in achieving program accessibility. For new construction and alterations (i.e., construction begun since June 1977), Section 504 and ADA Title II requires that a new or altered facility (or the part that is new or altered) must be readily accessible to, and usable by, individuals with disabilities.

### **46. What impact will these requirements have on our operations?**

You must make sure that a student with a physical disability has access to every part of the new building or the parts that are newly altered. For example, if your charter school is in a new building, all parts of the building including a third-floor chemistry lab must be accessible for use by persons with disabilities. In contrast, if your charter school is in an existing facility, you might be able to meet the program accessibility requirement by locating at least one chemistry lab in an accessible location, such as the first floor. However, the specific federal, state, and local requirements on this issue are complicated and you should obtain legal counsel when acquiring a facility to house the charter school.

### **47. Where can we obtain information and technical assistance in making our school accessible?**

The Massachusetts special education regulations require all school districts and charter schools to provide facilities and classrooms for students with disabilities that maximize their inclusion into the life of the school. Facilities and classrooms serving only students with disabilities shall be at least equal in all physical respects to the average standards of general education facilities and classrooms. All eligible students shall have access to school facilities including, but not limited to, those areas necessary to implement the student's individualized education program (IEP). In addition to reviewing the

requirements of Section 504 of the Rehabilitation Act (Section 504) and the Title II of the Americans with Disabilities Act (ADA), schools may seek further information from the Massachusetts Office of Civil Rights at: [OCR\\_Boston@ed.gov](mailto:OCR_Boston@ed.gov). Because charter schools in Massachusetts came into existence after these federal laws were enacted, the “grandfather” provision does not apply to charter schools. When considering whether to obtain access to a facility, a charter school should not assume that the facility meets the handicapped accessibility requirements, even if the facility has previously been occupied by a non-charter or charter public school.

## **K. Transportation**

### **48. Must we provide transportation to students who attend our charter school?**

The Massachusetts charter school statute, M.G.L. Ch. 71 § 89(ff), requires that students who reside in the school district in which the charter school is located shall be provided transportation to the charter school by the resident school district in the same manner as transportation is provided to students attending its local district schools. The Department of Elementary and Secondary Education (ESE) *Charter School Technical Advisory 07-2: Transportation*, [www.doe.mass.edu/charter/tech\\_advisory/07\\_2.html](http://www.doe.mass.edu/charter/tech_advisory/07_2.html), is a guidance document that clarifies the obligations to provide transportation to charter school students and the reimbursement programs currently available to charter schools for the provisions of transportation services. Students with disabilities, who have transportation specified as a related service in their individualized education program (IEP) or Section 504 of the Rehabilitation Act (Section 504) Plans, are provided transportation in the same manner as students without disabilities unless the charter school opts to provide these services and be reimbursed as described in the ESE Local District Transportation Reimbursement program. Students with disabilities, who are enrolled in a regional charter school and reside outside of the district in which the charter school is located, the regional charter school is obligated to provide these services, whether or not the charter school provides transportation to any regular education student or participates in any transportation reimbursement program.

## **L. Child Find**

### **49. What are our responsibilities to conduct “Child Find” activities?**

Individuals with Disabilities Education Act (IDEA) require each state to have in effect policies and procedures to ensure that all students with disabilities residing in the state who are in need of special education and related services are identified, located and evaluated. The Department of Elementary and Secondary Education (ESE) has developed procedures that school districts must follow to carry out “child find” responsibilities. Because a charter school does not have jurisdiction over a geographical area as most traditional school districts do, the actual implementation of “child find” responsibilities will differ. A charter school’s “child find” activities must ensure that all students enrolled at the school in need of special education and related services are identified, located, and evaluated. It is clear that charter schools are responsible for finding students with disabilities enrolled in the school so that students who may need special education are appropriately identified and, if necessary, referred for evaluation.

## **M. Understanding Section 504 of the Rehabilitation Act**

### **50. Are there other laws designed to protect the rights of students with disabilities?**

Yes. In addition to Individuals with Disabilities Education Act (IDEA), other important federal laws that protect students with disabilities are Section 504 of the Rehabilitation Act (Section 504) and the American with Disabilities Act (ADA). Section 504 is a civil rights law that prohibits discrimination on the basis of disability and requires that the educational needs of disabled students are met as adequately as the needs of nondisabled students. The ADA is a civil rights law that prohibits discrimination on the basis of disability in employment, public services (including public schools) and accommodations. ADA seeks to eliminate barriers to disabled access in buildings, transportation and communication. Both Section 504 and ADA protect not only eligible students but extend basic access and participation rights to other persons with disabilities who are involved with public education. These rights extend to parents, teachers and all other staff, volunteers, board of trustee members and members of the public, etc. Section 504 and ADA resources are available at [www.doe.mass.edu/sped/links/sec504.html](http://www.doe.mass.edu/sped/links/sec504.html).

### **51. Who is protected under Section 504 of the Rehabilitation Act?**

Under Section 504 of the Rehabilitation Act (Section 504), any person who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such impairment or (3) is regarded as having an impairment. Major life activities include walking, seeing, hearing, speaking, breathing, learning, speaking, breathing, learning, working, caring for oneself, and performing manual tasks. The Section 504 regulations do not provide an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments or major life activities because of the difficulty of ensuring the comprehensiveness of such a list. The Section 504 regulations require a charter school to provide a free appropriate public education (FAPE) to each qualified student with a disability that is comparable to that provided to students without disabilities. An “appropriate” education could consist of a blend of regular or special education and related aids and services created specifically for a disabled student to meet his/her needs as adequately as the needs of nondisabled students are met. Students can receive related services (e.g., speech-language therapy, physical and occupational therapy, and health services) under Section 504 even if they are not provided any special education

### **52. How are students identified as eligible for services under Section 504 of the Rehabilitation Act? Is there a written plan?**

Like the Individuals with Disabilities Education Act (IDEA) evaluation and placement procedures, Section 504 of the Rehabilitation Act (Section 504) requires schools to draw from a variety of sources and that decisions are made by persons knowledgeable about the student and evaluation data. Section 504 requires notice to parents regarding the identification, evaluation and planned accommodations. The Office Civil Rights (OCR) has interpreted Section 504 to require schools to obtain parental permission for initial evaluations. In the Section 504 context, “evaluation” refers to a gathering of data or information from a variety of sources so that persons knowledgeable about the student can make the required determinations. Common sources of evaluation data for Section 504 eligibility are the student’s grades, disciplinary referrals, health information, language surveys, parent information, standardized test scores, teacher comments, etc. If

a student is found eligible under Section 504, an Accommodation Plan is developed that includes the accommodations that will compensate for the disability so that the student has equal access to the educational benefits of the school's program. While curricular modifications may be available to special education students, there is no modification of the essential elements for Section 504 students. Section 504 is not about modifying or reducing expectations for disabled students, but providing the types of accommodations that will compensate for their disabilities so the students have an equal opportunity to succeed in school.

**53. Is there funding to implement Section 504 of the Rehabilitation Act services?**

No. Unlike the Individuals with Disabilities Education Act (IDEA), an education act that provides federal funds to supplement local and state expenditures for special education and related services and assists schools in meeting special education requirements, Section 504 of the Rehabilitation Act (Section 504) is an antidiscrimination law and does not provide any type of funding. IDEA funds may not be used to serve children found eligible under Section 504.

## **N. Parent Involvement**

**54. What types of trainings and information sessions must be provided to parents of children with special needs?**

It is important to reach out to family members of students with disabilities to ensure they are part of the activities that involve all parents and meet their needs for information. Massachusetts state regulations, 603 CMR 28.07(4), available at [www.doe.mass.edu/lawsregs/603cmr28.html?section=07#start](http://www.doe.mass.edu/lawsregs/603cmr28.html?section=07#start), governing parent involvement requires a charter school to create a Parent Advisory Council (PAC) offering membership to all parents of eligible students and other interested parties. In cooperation with the PAC, the school must offer at least one workshop annually on the rights of students and their parents and guardians. Individuals with Disabilities Education Act (IDEA) defines "parent counseling and training" to mean:

- Assisting parents in understanding the special needs of their child
- Providing parents with information about child development, and
- Helping parents to acquire the necessary skills that allow them to support the implementation of their child's individualized education program (IEP)

The Department of Elementary and Secondary Education (ESE) Special Education Planning and Policy Development (SEPP) unit offers an extensive list of resources for parents available at [www.doe.mass.edu/sped/parents.html](http://www.doe.mass.edu/sped/parents.html).

## **O. Accountability**

**55. What are the accountability requirements at charter schools in regard to special education?**

Charter school special education programs undergo two types of review. As a school district, the Department of Elementary and Secondary Education (ESE) Program Quality Assurance Unit (PQA) will monitor the implementation of program requirements in the

same manner as traditional school districts. The ESE compliance monitoring system is available at [www.doe.mass.edu/pqa/review/cpr/default.html](http://www.doe.mass.edu/pqa/review/cpr/default.html).

In addition, the school is evaluated on the effectiveness of the school's special education program, as part of the charter school accountability process. During the charter school renewal process, which occurs every five years, charter schools receive a federal programs renewal site visit. This visit evaluates student outcomes in meeting individualized education program (IEP) goals, classroom implementation of IEP requirements, student performance on local and statewide assessments, and graduation and dropout rates.

**56. How will special education be included in the renewal of our school's charter?**

The Department of Elementary and Secondary Education (ESE) *Charter School Administrative and Governance Guide* provide a summary of the charter renewal process. Charter school law obligates the Board of Elementary and Secondary Education (BESE) to conduct an ongoing review of charter schools and by the fifth year of a school's operation, determine whether a school's charter should be renewed. During the renewal process, charter schools receive a federal programs renewal site visit. This visit examines the school's implementation of curricular accommodations, how programs of special education and English Language Learner (ELL) meet the needs of students, and how program effectiveness is evaluated by the school. The school's failure to comply substantially with special education, civil rights and English language learner program requirements may result in or contribute to revocation or non-renewal of a charter. Charter schools can find specific information on the renewal process in the ESE *Massachusetts Charter School Renewal Inspection Protocol*, available at [www.doe.mass.edu/charter/acct.html?section=inspection](http://www.doe.mass.edu/charter/acct.html?section=inspection).

**57. How do students with disabilities participate in the No Child Left Behind accountability system?**

No Child Left Behind (NCLB) specifically includes students with disabilities in school assessment and accountability systems. Students receiving special education services, including those with the most significant disabilities who participate in an alternate assessment system, will "count" in the accountability formulas and the computation of measures of adequate yearly progress (AYP). Not only do they count, but also they can make a difference in your school's ability to meet AYP criteria and state-specific performance measures under the NCLB law. The Massachusetts Comprehensive Assessment System (MCAS) is used to hold schools and districts accountable, on a yearly basis, for the progress they have made toward the objective of NCLB that all students be proficient in reading and Mathematics by 2014. During its annual meeting, a student's individualized education program (IEP) or Section 504 of the Rehabilitation Act (Section 504) team must determine how the student will participate in MCAS for each subject scheduled for assessment. This information, including any accommodations that a student will use, must be documented in the student's IEP or Section 504 plan. The Department of Elementary and Secondary Education (ESE) guidance document for educators and parents, *Requirements for the Participation of Students with Disabilities*, includes a list of standard MCAS accommodations, requirements for the use of nonstandard MCAS accommodations and alternate assessments is available at [www.doe.mass.edu/mcas/participation/?section=sped](http://www.doe.mass.edu/mcas/participation/?section=sped).

## **P. Student Reporting**

**58. Is there a student reporting system to submit information about students with disabilities to the state?**

Yes. The Student Information Management System (SIMS) is a student-level data collection system that allows the Department of Elementary and Secondary Education (ESE) to collect and analyze information that includes a unique student identifier for *all* students receiving a publicly funded education in Massachusetts and transmissions of data from all school districts to the ESE for all students via a security portal. SIMS has over fifty student-level data elements, including special education data elements, that report student information on special education placement, type of disability, level of need, and special education evaluation results. The SIMS data system can be accessed at <http://www.doe.mass.edu/infoservices/data/sims/>.

## **Q. Special Education Monitoring**

**59. How is special education monitoring carried out in Massachusetts?**

The Department of Elementary and Secondary Education (ESE) oversees school district compliance with education requirements through the Coordinated Program Review (CPR). All compliance reviews monitor selected special education, civil rights requirements and English language learner, as well as other general education requirements. Subsequent to the monitoring review, the ESE issues a CPR report identifying education requirements that are implemented and any areas of non-compliance cited during the school's onsite review. The school district is required to develop a Corrective Action Plan (CAP) that addresses the identified areas of non-compliance.

The ESE compliance monitoring process occurs on a six-year cycle. In addition, Massachusetts requires a Mid-Cycle Review (MCR) follow-up visit three years after the CPR. The MCR verifies the implementation status and effectiveness of the school district's Corrective Action Plan in remedying previously identified noncompliance issues. The MCR also reviews special education criteria that have been substantially changed in response to IDEA and selected English language learner requirements. The ESE is currently piloting a Program Quality Assurance (PQA) Web-based Monitoring System (WBMS) with some school districts and charter schools. As part of the WBMS, schools will conduct a special education program self-assessment that includes student special education records and required policies and procedures. It is expected that the WBMS will improve the monitoring process and increase school level compliance with federal and state laws and regulations.

**60. What resources are available to prepare my charter school to be successful in special education monitoring?**

At the beginning of each school year, the Charter School Office (CSO) provides training for school administrators on the Coordinated Program Review (CPR) monitoring process and how to conduct a self-assessment of the school's special education student records. Special education administrators may contact the CSO for information on the CPR monitoring process at 781-338-3227 or via email at [charterschools@doe.mass.edu](mailto:charterschools@doe.mass.edu).

The Department of Elementary and Secondary Education (ESE) Program Quality Assurance (PQA) unit provides a CPR orientation visit to schools to review the CPR's purpose and procedures. Prior to a CPR, a PQA Chairperson will schedule a school visit to discuss the school coordinator's role and responsibilities, submission of required documents and set dates and timelines for the CPR visit. The ESE CPR *General Procedures Booklet*, available at [www.doe.mass.edu/pqa/review/cpr/instrument/generalinfo.pdf](http://www.doe.mass.edu/pqa/review/cpr/instrument/generalinfo.pdf), is a detailed description of the review procedures that includes: the scope of the review and compliance components; pre-onsite preparation; program self-assessment; local orientation meeting; student record review format; documentation requirements; parent surveys and onsite schedule. A CSO federal programs specialist is also a member of the ESE CPR onsite team.

Federal special education funds are available through the PQA Grant Program, [www.doe.mass.edu/pqa/grants.html#](http://www.doe.mass.edu/pqa/grants.html#), to assist public school districts, including charter schools, with preparing for a scheduled special education compliance review and implementing a Corrective Action Plan (CAP) in response to CPR findings under special education criteria (and criteria in other programs such as Civil Rights or English Language Learner Education that are related closely to special education).

## **R. Resources**

Massachusetts Department of Elementary and Secondary Education

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

National Association of State Directors of Special Education (NASDSE)

<http://www.nasdse.org>

ESE *The Charter School Administrative and Governance Guide*

<http://www.doe.mass.edu/charter/governance/adminguide.pdf>

Massachusetts Office of the Attorney General

<http://www.state.ma.us>

Massachusetts Office of the Inspector General

*Designing and Constructing Public Facilities*

<http://www.state.ma.us/ig/publ/dcmanual.pdf>

Massachusetts Division of Occupational Safety

<http://www.state.ma.us/construction/rules.html>

ESE Special Education Policy, Planning and Development Unit

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

ESE Charter School Office

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

Massachusetts Charter Public School Association  
<http://www.masscharterschools.org/schools/>

Massachusetts Center for Charter Public School Excellence  
<http://www.mccpse.org/scho.html>

ESE *Technical Assistance Advisory SPED 2007-1: Autism Spectrum Disorder*  
[http://www.doe.mass.edu/sped/advisories/07\\_1ta.html](http://www.doe.mass.edu/sped/advisories/07_1ta.html)

ESE *Memorandum on Specific Learning Disability–Eligibility Process/Forms*  
<http://www.doe.mass.edu/sped/iep/sld/default.html>

ESE Training Module: *Specific Learning Disabilities: Eligibility Determination under IDEA 2004*  
<http://www.doe.mass.edu/sped/cspd/mod5.html>

Massachusetts MassONE  
<http://massone.mass.edu/>

ESE Student Records Regulations <http://www.doe.mass.edu/lawsregs/603cmr23.html>

ESE *Student Records Questions and Answers*  
<http://www.doe.mass.edu/lawsregs/advisory/cmr23qanda.html?section>

ESE *Parent’s Notice of Procedural Safeguards*  
<http://www.doe.mass.edu/sped/prb>

National Association of State Directors of Special Education (NASDSE)  
[www.nasdse.org/project\\_spedtacs.htm](http://www.nasdse.org/project_spedtacs.htm)  
Applying Federal Civil rights Laws to Public Charter Schools  
[www.uscharterschools.org/pdf/fr/civil\\_rights.pdf](http://www.uscharterschools.org/pdf/fr/civil_rights.pdf)

Massachusetts Federation for Children with Special Needs  
[www.fcsn.org](http://www.fcsn.org)

Massachusetts Association of Special Education Parent Advisory Councils  
[www.masspac.org](http://www.masspac.org)

ESE Teacher Quality – Highly Qualified Teacher, Title II  
[www.doe.mass.edu/nclb/title\\_ii.html](http://www.doe.mass.edu/nclb/title_ii.html)

ESE Massachusetts Tests for Educator License (MTEL)  
[www.doe.mass.edu/mtel](http://www.doe.mass.edu/mtel)

ESE Massachusetts Curriculum Frameworks  
<http://www.doe.mass.edu/frameworks/current.html>

Massachusetts Special Education Regulations

<http://www.doe.mass.edu/lawsregs/603cmr28.html>

ESE Federal Programs Compliance Monitoring System

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

ESE Principal's Role and Special Education in Massachusetts

[www.doe.mass.edu/sped/cspd](http://www.doe.mass.edu/sped/cspd)