

家長的程序性保護措施通知

尊敬的家長：

您之所以收到此程序性保護措施通知（通知），是因為您的兒子（女兒）（學生）已被轉介接受評估或當前正在接受特殊教育服務。如果您的學生有資格接受特殊教育，則學區必須提供免費的適當的公共教育，通常簡稱為FAPE。為了提供FAPE，學區必須與您合作。您將成為IEP小組的成員，該小組將考慮您學生的獨特需求，並製定個性化的教育計劃或 [IEP](#) 為您的學生。¹ IEP必須提供適合您學生獨特需求的指導，並包括足夠的支持服務，以使您的學生取得有意義的教育進步，並幫助您的學生獲得知識和技能，包括適當地促進社交和情感發展的知識和技能時間和發展期望。為您的學生確定的任何特殊教育服務必須免費提供，且無需支付公共費用。聯邦公共教育系統中的所有學生，包括殘疾學生，都有機會學習馬薩諸塞州課程框架中學術標準涵蓋的材料。馬薩諸塞州還為其在當地私立學校就讀且尋求公共特殊教育服務的殘障學生提供FAPE的個人權利。

和 [州聯邦法律](#) 包含的規則，學區必須決定是否有一個學生是否有資格獲得特殊教育何時，遵循如果是這樣，學生將獲得什麼樣的服務。這些法律還提供了詳細的程序，以確保學生在有資格接受特殊教育的整個時間內獲得FAPE。特殊教育是教育法中高度複雜和規範的領域。法律中的詳細內容旨在保護您的學生，並幫助確保他或她獲得適當的教育服務。您可以從學校指導辦公室，馬薩諸塞州中小學教育部（DESE），殘障學生家長組織和私人特殊教育組織那裡獲得更多幫助，以了解特殊教育過程。這些來源的信息將幫助您與學區合作，以確保您的學生獲得適當的教育服務。DESE在其Internet網站上為父母和學區發布了廣泛的信息。一個 [所述DESE網站的表](#) 被包括在該通知的結束。

本通告為您提供了有關您參與計劃學生的特殊教育的權利的重要信息。程序性保護措施是確保您了解學區打算做什麼的特定規則（“接收通知”），同意學區的計劃（“獲得父母的同意”），並有各種機會解決與學區的分歧。學區（“正當程序”）。法律中的程序性保障措施還提供了本文檔中概述的其他保護措施。

希望您在學生的學習經歷中發揮積極作用，本通知對您有所幫助。

這份文件，即《程序性保護措施的父母通知》，回答了以下問題：

1. 什麼是“事先書面通知”，何時收到？	Page 2
2. 什麼是“父母同意”，學區何時必須徵得您的同意？	Page 3
3. 是否要求學區根據家長的要求進行評估？	Page 5
4. 什麼是“獨立教育評估”？	Page 5
5. 什麼時候可以看到學生的學生記錄？	Page 6

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

6. 家長和學校如何解決糾紛？	Page 7
7. 如果您將學生安置在一所私立學校，您將承擔什麼責任？	Page 11
8. 為計劃學生從學校的過渡必須做什麼？	Page 12
9. 學校如何訓練殘疾學生？	Page 12
10. 在哪裡可以找到法律法規和其他有用信息？	Page 14

如果您的學生被確定符合特殊教育的條件，則您每年至少會收到一次此通知。您也可以隨時從您所在的學區或DESE索取一份副本。該文檔可從DESE網站上網址為 [找到](http://www.doe.mass.edu/sped/prb)。

1. 什麼是事先書面通知，何時收到？

34 CFR§300.503

學區必須提議或拒絕採取步驟來識別您的學生，評估您的學生，為您的學生提供特殊服務或更改學生的課程時，向您發出書面通知。聯邦法規將此稱為“事先書面通知”。書面通知必須：

- 描述 **什麼** 該學區提議或拒絕這樣做；
- 說明 **為何** 學區提議或拒絕採取行動；
- 描述 **如何** 學區決定提議或拒絕採取該行動，包括告訴您有關學區用來做出決定的每個評估程序，評估，記錄或報告；並
- 說明您的學生的個性化教育計劃（IEP）小組考慮的任何其他選擇以及拒絕這些選擇的原因。

學區將使用DESE開發的，可在DESE網站上找到的表格或包含相同信息的自己的表格向您提供此信息。

當學區：提議進行初步評估或重新評估時，您將收到書面通知。提出新的或修訂的IEP；提議更改安置，包括出於紀律原因建議更改安置；或建議終止特殊教育服務。

如果學區發現沒有資格獲得特殊教育服務或拒絕您提出的與評估或向學生提供特殊教育有關的要求，您還將收到通知，必須以您的母語提供學區通知或您使用的其他通訊方式，除非這樣做顯然不可行。如果您的母語或其他交流方式不是書面語言，則您的學區必須確保以口頭或其他方式（例如，通過手語）為您翻譯學校的告示，並且您理解該告示的內容。

在學區要求使用公共健康保險（MassHealth或Medicaid）之前，學區還將向您發出書面通知並徵求您的同意（或書面許可），以首次為學生的特殊教育服務付費。。

事先收到書面通知後，您還將獲得本程序保障通知書的副本，或者如果您在本學年內已收到此通知書，則將被告知如何獲取另一份。您還將獲得有關信息，可以聯繫誰的，以幫助他們了解聯邦和州的特殊教育法律。

2. 什麼是父母同意？

34 CFR§300.9和
603 CMR 28.07 (1
)

除非您同意並提供書面“父母同意”，否則學區不得為您的學生提供特殊測試或特殊服務。學區必須與您聯繫並清楚說明其建議。為您的學生做。然後，學區將要求您在同意書上簽名，以表明您同意學校的提議。這就是“父母同意”。

徵得您的同意是自願的。您可以隨時收回或撤銷您的同意。如果您想撤銷同意，則必須以書面形式進行。撤回同意僅適用於學區將來採取的行動，不適用於已經發生的事情。您所在學區可能不會以您拒絕接受一項服務或活動為理由來拒絕您或您的學生任何其他服務，利益或活動。

您的同意不需要之前您的學區可能會在評估或重新評估學生的過程中審查現有數據，對您的學生進行未經所有同意而給予所有學生的測驗或其他評估，例如MCAS或作為普通教育計劃一部分的課堂測驗，或與聯邦或州教育官員的信息。

2.1 學區何時會徵求您的同意？

34 CFR§§300.300、300.154和603 CMR 28.07 (1)

在以下情況下，學區將徵求您的父母同意：

授權進行初步評估以確定學生

是否有資格接受特殊教育在未事先徵得您的同意之前，學區無法對您的學生進行初步評估，以確定您的學生是否有資格接受特殊教育和/或相關服務。如果您的學生被要求進行評估，則學區必須在五個教學日之內徵求您的同意。

批准初始服務

如果在初步評估完成之後，個性化教育計劃（IEP）小組確定您的學生有資格接受特殊教育，則IEP小組將為您提供特殊教育和相關服務以及安置的機會。您是IEP小組的成員，必須徵得您的同意，然後您的學區才能為您的學生提供特殊教育和相關服務。首次。如果您不同意，學區將無法為您的學生提供特殊教育和相關服務。您可以接受或拒絕整個建議或部分建議。IEP或您接受的任何部分都必須在接受後立即開始。

更改服務，安置或重新評估

一旦您同意學生的IEP，學區必須先徵得您的同意，然後學區才能更改學生的服務或安置或進行重新評估。² 如果您拒絕同意，則有義務與該地區進行積極討論以解決您的分歧。如果您過去曾同意服務，現在想撤銷同意並讓學生退出服務，則必須以書面形式這樣做。未經您的同意，學區不得要求特殊教育上訴局（BSEA）舉行聽證會，以獲取提供教育服務或重新評估學生的權力。

首次獲得公共健康保險（MassHealth或Medicaid）福利

允許學區使用公共健康保險（MassHealth或Medicaid）為學生的IEP中包括的針對公共健康保險的學生的某些特殊教育服務付費。在學區首次訪問MassHealth之前，學區必須給您書面通知，告知其將尋求此項報銷，並以書面形式獲得您的自願同意。該通知將告訴您，始終向您或您的家人免費提供特殊教育服務；將明確表示您的同意不會導致孩子的MassHealth福利或資格發生任何變化；將描述將共享有關您學生的哪些信息以便訪問MassHealth；提醒您可以隨時撤回您的同意；並明確指出，如果您

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

退出或未徵得您的同意，您的學生的特殊教育服務或計劃將不會改變。如果您搬家或您的學生被另一個地區錄取，則新學區將要求您再次提供同意。

為了免除IEP團隊

成員參加團隊會議的權利，如果您在會議之前書面同意，則可免除IEP團隊成員參加團隊會議的權利。如果團隊要討論被解僱的團隊成員所在的區域，那麼被解僱的成員必須在團隊會議之前以書面形式提供其輸入。如果您不同意請小組成員，則他或她必須參加IEP小組會議。

2.2 什麼時候要求學生同意？

34 CFR§300.520和603 CMR 28.07 (5)

在馬薩諸塞州的法律有學生在他到達了成年或她的第十八次（18th）生日。當學生年滿18歲時因此，您作為父母所擁有的所有決策權都將轉移給您的成年學生，除非法院已為您的學生任命了法定監護人，或者您的學生以書面形式表明他或她想要與您分享決策，或希望您繼續有權對他或她的教育計劃做出決定。學區必須至少在學生十八歲生日前一年與您和您的學生討論這種權利轉讓的影響。作為殘疾成人學生的父母，您將繼續收到學校要求的所有通知，即使您自己做出教育決定，您也將繼續能夠檢查學生的教育記錄。

2.3 特殊教育代理父母何時會給予同意？

34 CFR§300.519 (g) 和603 CMR 28.07 (7)

如果學生由兒童及家庭事務局保管，或者該學生的父母或監護人無法被識別或定位，或者其父母權利被終止，則DESE有責任確保沒有一個利益衝突的成年人代表學生做出特殊的教育決定。此人稱為特殊教育代理人父母。DESE確定是否有必要為學生指定特殊的教育替代家長。如果任命，特殊教育代理父母在針對學生的特殊教育事務上具有與父母相同的權利和責任。

2.4 我如何撤回同意？ 34 CFR§300.300 (b) (4) 和300.9

如果您已經同意接受特殊教育和相關服務，但現在希望撤銷同意，則必須以書面形式進行。您可以撤回對所有特殊教育和相關服務，特定服務，安置或學區使用MassHealth或Medicaid福利的同意。學區收到您的來信後，學區將向您發送通知，說明因您撤銷同意而導致的教育安置和服務的變化（如有）。ØNCE你收回你的同意，所有特殊教育和相關服務，學區不再需要進行FAPE可用或有一個IEP會議或制定IEP為您的學生。由於您撤銷同意，學區不需要修改學生的記錄以刪除對特殊教育服務的引用。

3. 根據家長的要求，學區是否需要評估學生？

34 CFR§300.301和
603 CMR 28.04

學生必須接受全面而全面的評估，以確定該學生是否有殘疾並有資格接受特殊教育，如果符合條件，則可以幫助確定適當的特殊教育和相關服務。對孩子的成長有擔憂或懷疑可能有殘疾的父母，可將其子女轉介進行初步評估。推薦原始評估時無需使用特殊詞。收到此類初次評估請求後，學區必須向家長發送通知，並且必須徵得家長的同意才能進行評估。（學區很少有機會拒絕進行初步評估，只有在進行推薦的父母或其他個人不懷疑有殘疾或不關心學生的成長時，才可以這樣做。）

在適當的情況下，學區還可以向家長提供有關其他支持服務的信息，這些信息可能更適合特定學生的需求。但是，學區不得基於轉介前計劃或為了嘗試其他教學支持活動或出於任何其他原因而拒絕對如上所述進行過評估的學生進行評估。此外，法律規定定期重新評估，以確保學生從中受益並繼續需要特殊教育。在重新評估之前，始終需要獲得父母的同意。

4. 什麼是獨立教育評估？

34 CFR§300.502和603 CMR 28.04 (5)

：獨立教育評估（IEE）是由合格的審查員進行的評估，該審查員未受負責您學生教育的學區僱用。

如果您不同意學區的評估，您有權要求您的學生進行獨立教育評估，費用由公共承擔。如果您請求IEE，則學區必須為您提供有關在何處獲得IEE的信息以及適用於IEE的州要求。

4.1 什麼時候需要進行公共費用的獨立教育評估？

在馬薩諸塞州，根據州法律，如果您符合收入資格要求，您將獲得全部或分擔的公共費用的獨立外部評價。符合免費或減價用餐條件的學生有權獲得獨立教育津貼，費用由公共承擔。其他學生可以根據滑動費用等級獲得分擔費用的IEE。與學區共享您的財務信息完全是您的自願行為。如果您選擇共享此類信息，則學區必須立即以書面形式通知您您是否有資格獲得IEE的全部或部分資金，並根據資格繼續為IEE提供資金。從您不同意的學區評估之日起，您通過收入資格獲得由公共資助的IEE的權利將延續16個月。

如果您不符合收入資格要求或選擇不公開財務信息，則學區必須根據聯邦法律考慮您對公共資助的獨立外部評價的要求。在5天內，學區可能同意提供公共費用的獨立外部評價，或要求特殊教育上訴局（BSEA）舉行聽證會，以證明學區進行的評估是全面而適當的。有關獨立外部評價的更多詳細信息，請參見您當地學區的DESE管理顧問2004-1和2001-3，以及DESE網站 <http://www.doe.mass.edu/sped/advisories/?section=admin>。

每次您的學區進行評估時，您僅有權從公共費用中獲得學生的一個IEE。您可能隨時需要您自費進行獨立評估。

4.2 學區必須在10天內考慮

IEE的結果如果您以公費方式獲得學生的IEE或與學區共享您以私人費用獲得的學生評估，則您的學區必須召集在收到評估信息後的十個工作日內舉行團隊會議。小組將考慮評估結果，並確定應對學生的IEP進行哪些更改。

5. 什麼時候可以看到學生的學生記錄？

34 CFR 300.611 和 603 CMR
23.00

學生記錄由學生的成績單和臨時學校記錄組成，包括健康記錄，測試，評估，學科記錄以及與學生的特殊教育資格或課程有關的其他記錄。³ 關於您學生的個人身份信息是機密信息，未經您的同意，不得將其透露給老師和教育官員以外的任何人。

您和您的學生（如果您的學生是14歲或14歲以上）有權在您提出要求後的10天內，在任何IEP會議或正當程序聽證會之前，查看學生的所有記錄。⁴ 您還可以應要求提供信息的副本，但要收取合理的費用，但僅限於複製成本。可能不會向您收取與搜索和檢索學生記錄有關的費用。

此外，您可以與具有專業資格的學校人員見面，以對記錄進行說明。如果您給出了具體的書面知情同意，則您還可以讓您的代表（辯護人，顧問或律師）檢查，審查和解釋學生的記錄。與學生記錄相關的所有權利都包含在《馬薩諸塞州學生記錄條例》 603 CMR 23.00中。可以在上找到這些法規，也可以 <http://www.doe.mass.edu/lawsregs/603cmr23.html> 向學區或DESE索取法規的副本。

通常，只有在父母或成年學生未明確，知情且書面同意的情況下，才允許父母，合格學生，授權的學校人員以及州和聯邦教育官員查看學生記錄。根據法院命令或針對健康，安全或執法問題，可能要求學區向州和聯邦官員提供一些信息。有關這些以及其他學生記錄問題的有用信息，可以在上找到 <http://www.doe.mass.edu/lawsregs/advisory/cmr23qanda.html>。

6. 父母和學校如何解決糾紛？

34 CFR 300.151、300.506 – 300.518 和 603 CMR 28.08

國家和聯邦特殊教育法為父母提供了許多機會，幫助他們為有殘疾的學生參與教育計劃。如果父母和學區不同意與殘疾學生的身份，評估或教育安置有關的變化，或為殘疾學生提供的FAPE服務，則法律提供了解決分歧的方法菜單。在關於安置或服務的任何爭議期間，您的學生應保留在其當前的教育計劃和安置中，除非您和學區另有協議，或者由於而改變了學生的安置 [紀律](#)。

以下是您和您所在學區可以解決分歧的替代方法。

6.1 將爭端引起當地公立學校官員的注意

作為解決爭端的第一步，您可以聯繫學校校長，特殊教育管理員或學監以尋求幫助。最好寫一封信來說明您所關心的情況。

6.2 使用DESE問題解決系統

如果您認為需要學區外的幫助，可以致電781-338-3700與DESE問題解決系統辦公室（PRS）聯繫，以使用描述的狀態問題解決系統 <http://www.doe.mass.edu/pqa/prs/>。您可以就任何違反州或聯邦教育法的行為向PRS辦公室投訴，或從PRS工作人員那裡獲得幫助以非正式方式解決問題。如果您想通過PRS進行正式調查，則必須以書面形式提出投訴。PRS工作人員將協助您準備和提交投訴。您的書面投訴應包括：關於您所關注問題的陳述，您解決您所關注問題的嘗試，您認為學校可以解決您所關注問題的行動以及您的簽名和聯繫信息。如果您是針對某個特定學生的投訴，則應提供該學生的姓名，住所地址和學校名稱。但是，您抱怨的問題必須發生在PRS收到您的投訴之前不超過一年。如果您選擇通過問題解決系統提出正式投訴，則還必須將書面投訴的副本發送到投訴對象的學區。PRS將在60天內解決您的投訴，並向您發送調查結果和決定的副本。

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

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

向PRS提出正式投訴不會阻止您使用其他方法，例如與您當地學區的對話，調解或的 [正當程序聽證會](#) 特殊教育上訴局（在下面討論），以解決您的投訴。⁵ 但是，如果您要求進行正當程序聽證，則將通過問題解決系統提交的投訴擱置一旁，直到完成正當程序聽證會為止。

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

6.3 要求任命中立的調解員。

調解⁶ 是由受過特殊教育法和談判方法培訓的中立個人提供的服務。只要父母和學校在特殊教育問題上存在分歧，就可以安排調解，即使通過PRS問題解決系統提出了投訴。調解員可以幫助家長和學區談論他們的分歧，並達成雙方都可以接受的解決方案。調解過程中的討論屬於機密信息，並且如果爭端成為正式聽證會或法院程序的標的，則任何一方都不能使用任何稍後所說的內容。一旦達成協議，將以書面形式提出，由雙方簽署，並可由法院執行。

可以通過781-97-4750與BSEA聯繫來設置調解。調解員將在請求調解後的30天內安排與您和學區的會議。會議將在方便的時間和地點舉行。參與是自願的，因此學區和家長都必須同意參與調解。該服務不收費。

BSEA 781-397-4750提供了有關調解工作方式的其他信息，可以在其出版物 [“有關調解的常見問題”](#)⁷ 和 [“調解說明”](#) 中找到。⁸ 6.4

請求正當程序聽證，並參與決議會議

如果您和學區已經無法工作你不同意，那麼你有權中立和公正的聽證官聽取爭執的雙方，聽取證詞，檢查證據並做出決定。該聽證會由BSEA召集，稱為正當程序聽證會。BSEA聽力官員接受過特殊教育法律培訓，並且不得與您或參與爭議的任何人有任何個人或專業聯繫。

正當程序聽證會將考慮有關資格的爭議；評估；IEP；教育安置決定，包括由學科產生的決定；FAPE；提供特殊教育；或針對殘障學生的州和聯邦法律的程序保護。您必須在知道或應該知道後兩年內提出聽證會⁹ 構成投訴基礎的事件。如果您可以證明由於學區錯誤地表明您已經解決了您的投訴中的問題或者如果該學區拒絕了您的某些必要信息，則可以延長該時間段。

您或您所在的學區都可以提交書面 [正當程序聽證請求](#)¹⁰ 與另一方聯繫，並將副本發送給BSEA，以獲得正當程序聽證會。BSEA已製定 [聽證請求表](#)¹¹ 可以使用，也可以寫自己的信代替表格，但必須確保包括學生的姓名和住址（如果學生無家可歸，則應提供聯繫方式）；您學生所在學校的名稱；對您所關注的問題的描述，包括與該問題有關的特定事實；以及針對該問題的建議解決方案。請注意，聽證將僅限於投訴中確定的問題。

您必須將正當程序聽證請求發送到學區（或投訴的另一方），並將副本發送到BSEA。如果正當程序申訴未提供足夠的信息，則對方可以質疑其充分性在15天內。BSEA將在質疑後的5天內決定投訴是否充分。如果對方同意或聽證官給予許可，可以在投訴中添加其他信息。如果以後有其他問題添加到投訴中，但是，聽覺時間表又重新開始了。

如果對申訴的充分性沒有任何挑戰，那麼聽證程序將繼續進行。如果學區尚未就發送 [事先書面通知](#) 您所投訴的問題向您在收到您的正當程序後的10個日曆日內，則學區必須聽證請求向您發送書面答复。

⁶ A description of the mediation process can be found on the DESE Web site at <http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/mediation/>.

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

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

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

¹⁰ Information on the due process hearing request can be found at: <http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/due-process-hearings/>.

¹¹ <https://www.mass.gov/doc/hearing-request-form/download>

注意： 如果 學區 已經提出了正當程序聽證請求， 則家長必須做出回應 在收到聽證請求後的10個日曆日內， 並特別解決學區提出的問題。

在您提交了正當程序聽證會請求後， 學區將有30天的時間與您一起解決分歧， 然後再進行正當程序聽證會。¹²

要求學區在收到您的正當程序投訴後的15個日曆日內召開解決會議。¹³ 順他學區將與您確定哪些IEP團隊的成員必須參加會議。來自學區的可以決定學生課程的人必須參加會議。學區的律師 *可能不會* 除非您有參加會議的律師， 否則參加。

除非您否則您必須參加解決方案會議 *和* 學區書面同意不參加會議， 或者您和學區決定使用， [調解程序](#)。如果您拒絕參加決議會議， 則聽證會可能不會繼續進行。

如果您願意開會， 但是學區在收到您的聽證請求通知後超過15天拒絕或推遲了決議會議， 那麼您可以要求聽證官進行聽證程序。如果您見面， 但 學區在提出申訴後30天內仍未解決正當程序申訴， 令您滿意， 則可以繼續進行正當程序聽證會。

當發生以下事件之一時， 解決流程結束：

- 您和學區書面同意結束解決期限；
- 在30天的解決期結束時；
- 在調解結束時；或
- 當您和學區的官員簽署文件時， 會詳細說明您解決糾紛的協議。這是一項“和解協議”， 可以由州或聯邦法院執行。注意 如果您和學區由於決議會議而達成協議， 則您或學區可能在您和學區雙方簽署協議之日起3個工作日內使該協議無效。

¹² If you and the school district agree to mediation, you may agree to continue the mediation after the 30 day period.

¹³ No resolution session is required if the school district has requested the due process hearing.

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

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

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

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

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

Hearings are conducted according to the Massachusetts Administrative Procedure Act¹⁴ and the BSEA [Hearing Rules](#).¹⁵ The hearing officer must issue a final decision within 45 days of the end of the resolution period described above unless the hearing officer has granted extensions of time at the request of either party. The hearing officer will send a copy of the decision to you and to the school district. Both the parents and the school district must abide by the decision of the hearing officer.

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

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

The decision of the hearing officer is a final agency decision and cannot be reconsidered by the BSEA or changed by the DESE. Hearing decisions are public¹⁶ and are available on the BSEA Web site at <https://www.mass.gov/bsea-decisions-and-rulings>.

¹⁴ MGL c.30A

¹⁵ <http://www.mass.gov/anf/docs/dala/bsea/hearing-rules.doc>.

¹⁶ Hearing decisions are published after redacting information that would allow the student to be readily identified.

6.6 APPEAL A HEARING DECISION TO A STATE OR FEDERAL COURT

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

6.7 ATTORNEYS' FEES §300.517

34 CFR

Each party is responsible for paying its own attorney's fees unless the court decides otherwise. If you obtain a favorable result in a written hearing decision or court proceeding, the court¹⁷ may decide that the school district should pay your reasonable attorneys' fees. Note, however, that you will not be able to obtain these fees for the time spent litigating your case after the district made a settlement offer if

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

If the school district obtains a favorable decision, a court could order your attorney to pay the school district's legal expenses if the court finds that your attorney filed a complaint or continued to litigate after learning that the complaint had no basis in fact, was unreasonable, was frivolous, or was pursued for an improper purpose. A court may also order you or your attorney to pay legal expenses if your request for a due process hearing or subsequent cause of action was presented for an improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

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

34 CFR §300.148

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

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

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

considering all of the circumstances surrounding the removal of the student, may require the school district to reimburse you for all or part of the cost of the private school placement.

Planning for your student's transition from school to postschool opportunities will facilitate your student's ability to successfully participate in activities such as post-secondary education, work, and community and adult life. Planning for transition must be based on your student's strengths, preferences, interests, and needs, must begin when your student is 14, and must be discussed each year at a Team meeting. The school district must discuss your student's transition needs with you and your student¹⁸ and must consider the goals for your student after he or she completes school by graduating with a regular high school diploma or reaching the age of 22. School districts must use the [Transition Planning Form](#)¹⁹ to record the results of this annual discussion. The student's IEP must include measurable post-secondary transition goals, objectives and services based upon an appropriate assessment of his or her disability and transition needs.

Graduation with a regular high school diploma is a change of placement and ends the student's eligibility for special education. The school district must inform you if and when the district expects your student to graduate with a regular high school diploma. This discussion should take place during the Team meeting no less than 1 year in advance of the student's graduation.

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

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

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

Schools must follow special disciplinary rules for students with disabilities who have been found eligible for special education.²⁰ A chart depicting the operation of these disciplinary rules can be found on the DESE Web site.²¹ These special disciplinary rules apply as soon as a student is removed from his or her current education placement²² for more than 10 days in a row, or if a student is removed for disciplinary

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

¹⁹ <http://www.doe.mass.edu/sped/28MR/28m9.docx>

²⁰ The special education disciplinary rules also apply to some students who have not yet been found eligible for special education. If, prior to the conduct in question, the parent has put his or her concern that the student's has a possible disability in writing to supervisory or administrative personnel or the student's teacher; if the teacher or other staff has expressed concerns about the student's pattern of behavior directly to the director of special education or other supervisory personnel, or if the student has been referred for an evaluation that has not yet been completed these special rules apply. The special education disciplinary rules *do not* apply if the parent has refused to consent to the evaluation, if the student has previously been found to be not eligible for special education, or if the parent has revoked consent to special education and related services.

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

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

reasons for more than a total of 10 days in any school year and there is a pattern of removal for comparable behaviors. The school must notify you as soon as the decision is made to remove your student from his or her education placement for more than 10 days and provide you with a copy of this Notice.

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

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

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

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

9.1 APPEAL OF A DISCIPLINARY DECISION

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

The BSEA will convene a hearing on a disciplinary placement or manifestation determination on an expedited schedule.²³ During the appeal of a disciplinary placement or manifestation determination,

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

the student must remain in the IAES until the hearing officer makes a decision or the disciplinary period is completed, unless the parent and the school district agree to a different placement.

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

10.1 LAWS AND REGULATIONS

You can find the full text of the state Special Education law in Massachusetts General Law Chapter 71B. The state law is popularly known as “Chapter 766.” The state special education regulations are found in the Code of Massachusetts Regulations (CMR) at 603 CMR 28.00. The law and the regulations and other helpful resources are on the DESE Web site.²⁴

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

10.2 INDIVIDUALIZED EDUCATION PROGRAM PROCESS GUIDE AND FORMS

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

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

10.3 TABLE OF ABBREVIATIONS

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

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

²⁴ <http://www.doe.mass.edu/sped/laws.html>

10.4 TABLE OF WEB SITES

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

Autism Spectrum Disorder:

http://www.doe.mass.edu/sped/advisories/07_1ta.html

Bureau of Special Education Appeals

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

<http://www.mass.gov/anf/docs/dala/bsea/hearing-rules.doc>

<http://www.mass.gov/anf/docs/dala/bsea/hearing.doc>

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

<http://www.mass.gov/anf/docs/dala/bsea/mediation-brochure-2012.doc>

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

<http://www.mass.gov/anf/docs/dala/bsea/>

Consent to Access MassHealth (Medicaid):

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

<http://www.doe.mass.edu/sped/28mr/28m13.docm>

Discipline:

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

Individuals with Disabilities Education Act:

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

The Basic Special Education Process under IDEA:

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

Individualized Education Program:

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

Individual Education Program Process Guide:

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

Independent Educational Evaluation:

<http://www.doe.mass.edu/sped/advisories/?section=admin>

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

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

Parent's Notice of Procedural Safeguards:

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

PRS Problem Resolution System compared to BSEA Due Process Complaint:

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

Program Quality Assurance Services Problem Resolution System:

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

Special Education Laws and Regulations:

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

Special Education Surrogate Parent:

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

Special Education Transition Planning Form:

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

Student Records Regulations:

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

Student Records Questions and Answers

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

Transition Planning:

<http://www.doe.mass.edu/sped/cspd/mod4.html#>