

CHAPTER 15: SPECIAL EDUCATION SERVICES DURING CONFINEMENT

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SPECIAL EDUCATION SERVICES DURING CONFINEMENT

Youth involved with DYS have the right to receive special education services. DYS reports that approximately 45% of committed youth have been identified as having special education needs.¹

State and federal law requirements for special education

In addition to the rights for all public school students, federal and state laws provide additional protection to youth with disabilities who are determined to be eligible for special education services. Special education is defined as

specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including – (i) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) instruction in physical education.²

Free appropriate public education (FAPE)

To be eligible for special education, a Massachusetts child must:

- have a qualifying disability;
- because of that disability, be unable to progress effectively in school; and
- require either specially designed instruction or a related service that is necessary to access the general education curriculum.³

Qualifying disabilities include: autism, developmental delay, intellectual impairment, sensory impairment, neurological impairment, emotional impairment, communication impairment, physical impairment, health impairment, or specific learning disability.⁴

The federal Individuals with Disabilities Education Act (IDEA) requires that a state have policies and procedures to ensure that a free appropriate public education (FAPE) is provided to all eligible children with disabilities who need special education.⁵

The right to FAPE includes meaningful opportunities to learn in the general curriculum that all students follow. Youth receiving special


education services must receive a full, high-quality education, with qualified instructors, in an educational setting.⁶

In general, the school district's obligation to provide FAPE continues until an eligible youth turns 22 or until the youth has received a regular high school diploma or its equivalent, whichever comes first.⁷ However, the school district may be obligated to continue to provide special education even in some cases in which the youth has met the requirements for a regular high school diploma (i.e., completing the local school district's coursework requirements, passing MCAS tests) if the youth is not also making progress on (or has not completed) his IEP goals and objectives.⁸ In such a case, a school district still may have to provide a certain minimum level of special education services for a period of time.⁹ However, if the youth has graduated, he is no longer entitled to special education services.

The evaluation process

If a parent believes his or her child needs special education services, the parent can request that the school district conduct a special education evaluation.¹⁰ The results will help determine whether the youth is eligible for special education services.¹¹ An evaluation must assess both educational need and all areas of suspected disability.¹² The district may also decide to include health, psychological and home assessments.¹³


If a parent wants a second opinion, the parent can seek an independent evaluation.¹⁴ For families with limited income, the school district may be required to pay for part or all of this second evaluation.¹⁵

 **Tip for families:** A request for a special education evaluation may be submitted to the school district responsible for the youth at any time, even after commitment to DYS.

The team meeting

After the evaluation or evaluations are complete, the school will hold a team meeting to determine eligibility for special education services.¹⁶ A team is a group of persons, meeting requirements of federal special education law, who, together, discuss evaluation results, determine eligibility, develop or modify an IEP, or determine placement.¹⁷ The parent or legal guardian is a member of the team.¹⁸

If a parent or legal guardian cannot attend in person, the school district must offer the option of participating by telephone.¹⁹

 **Tip for families:** While it is best to attend a team meeting in person, if you are absolutely unable to participate in person, request to participate by telephone.

The parent or legal guardian may appeal the decision if the team finds the youth ineligible.²⁰

The Individualized Education Program (IEP)


If the youth is found eligible, he is entitled to an Individualized Education Program (IEP), a plan describing the services to which he is entitled.²¹ The IEP must be individualized to the youth's particular needs and must describe all the educational and related services that will be provided.²² The IEP is drafted by the IEP team.

The IEP must designate the type of school setting appropriate for the student. All students have the right to attend school in the least restrictive environment.²³ This means that students must be educated, to the greatest extent possible, with students without disabilities.²⁴ This principle is known as inclusion. The school must provide the necessary services for this to happen and these services must be described in the IEP.²⁵

In care and protection cases where a youth has been removed from the custody of his parent(s), the Juvenile Court may appoint a Guardian ad litem/Education Surrogate to make special education decisions on behalf of the youth. The surrogate must be certified to act as an Education Surrogate Parent (ESP). If a surrogate has been appointed, that surrogate assumes the parent's role for purposes of special education decision-making. For example, the surrogate may review educational records, participate in team meetings, consent to a special education evaluation, accept or reject a proposed educational program, request an independent evaluation, and request mediation or a hearing from the Department of Elementary and Secondary Education to resolve special education disputes. However, a surrogate does not have the authority to litigate educational issues in state or federal court. Educational surrogates are only available to youth in the custody of the Department of Children and Families (DCF). However, some DYS-involved youth have, at some point, been placed in DCF custody. If DCF still has custody, the youth should still have an education surrogate.


If a parent or legal guardian is unhappy with a youth's IEP, either at the time it is being developed or at any point after, the parent or legal guardian may submit a request to the school district that changes be made to it. The parent or legal guardian may request that changes be made to


the youth's IEP at any time, even if the IEP was previously accepted.²⁷

 **Tip for families:** If your child has an IEP, you should regularly evaluate whether your child's special education needs are being met. To do so, ask the following questions.


- Is your child getting all the academic services listed on the IEP?
- Is your child getting the related services listed in the IEP?
- Is the education being delivered in the manner specified in the IEP?
- Is your child getting individualized services?
- Does your child have access to the full curriculum?

If a youth has received special education in the past, he has the right to receive special education while confined in DYS.

 **Tip for families:** You should make sure that your child's IEP is up-to-date and fully reflects his educational and social needs.

 **Tip for families:** The process of obtaining an IEP from a local school district takes time. If you have a copy of your child's IEP, provide it to DYS and to your child's teacher so that your child can begin receiving the appropriate services immediately.


Even if a youth has not received special education in the past, he can receive special education services while in DYS if he needs them. Many children come into DYS not having an IEP but needing one. The youth's parent or guardian, DESE, another state agency (such as DYS), the youth's local school district, or any person in a caregiving or professional position may initiate a request for an initial evaluation to determine if the youth is a child with a disability.²⁸

 **Tip for families:** If your child wasn't doing well in school before coming to DYS, ask the DYS caseworker, local school district, or Special Education in Institutional Settings (SEIS) (discussed below) to arrange for a special education evaluation (if he hasn't had one) or an IEP team meeting (if he already has had an evaluation). More information on how to do this is provided below.

A 504 plan

If a youth is found ineligible for special education services, he may still be eligible for services under Section 504 of the Rehabilitation Act of 1973.²⁹ Section 504 provides that school districts must provide a free

appropriate public education to students in their districts.³⁰ An appropriate education is an education and related aids and services designed to meet the individual educational needs of a child with a disability as adequately as the needs of non-disabled children are met.³¹ If a youth qualifies for these services, the school should draft a “504 plan” listing the services and accommodations that will be provided to the youth.

 **Tip for families:** If your child has a 504 plan, provide it to your child’s DYS caseworker and follow up to ensure that it is being implemented in each educational setting.


The role of Special Education in Institutional Settings (SEIS) in providing special education to youth in DYS custody

Special education instruction in DYS facilities is provided by Special Education in Institutionalized Settings (SEIS), part of DESE.³² Until mid-2007, SEIS was called Educational Services in Institutional Settings (ESIS).³³

DESE contracts with a special education provider, which hires special education teachers to provide these services.³⁴ Although DYS provides education year round, SEIS teachers teach only 180 days per year (September through June).³⁵

SEIS staff persons are assigned to all sites where DYS provides a general education program: detention units, committed units/long term, committed units/short term, and short-term group care.³⁶ As of fall 2007, SEIS had staff at every DYS facility.³⁷


When implementing the IEP, SEIS may not deny services simply because an IEP is expired.³⁸ Instead, SEIS must provide services based on the expired IEP until an IEP team meeting is scheduled. However, if an IEP does not clearly identify the specialized instruction that is needed, SEIS might say it cannot provide the service.³⁹ In such a case, the IEP should be modified to better indicate what specialized instruction is needed.

 **Tip for families:** If your child has an IEP, but is not receiving appropriate special education services while confined to DYS, investigate why this is the case. Review your child’s IEP to see what services are required. Make sure DYS and educational staff persons are aware of and are following your child’s IEP. Check to see if SEIS is in fact providing services at your child’s facility. Ask which


of your child's classes are taught by SEIS teachers. If SEIS and the local school district are not adequately serving your child's special education needs, call the DYS Education Liaison (described later in this chapter), the DESE SEIS program, or the local school district's special education department. You might also consider seeking assistance from a lawyer or outside advocate.

The role of the youth's local school district in providing special education to youth in DYS custody

While SEIS provides special education instruction to youth in DYS custody, the student's local school district retains both programmatic and fiscal responsibility for the student.⁴⁰ Thus, the local school district retains responsibility for evaluating, developing, and issuing the IEP and for providing notices associated with the IEP process.⁴¹ The DYS program and SEIS staff should assist the school district in the evaluation process by conducting educational assessments and by providing other information used to develop the IEP.⁴²

 **Tip for families:** Make sure each of your child's teachers has a copy of a current, appropriate IEP. If the IEP is not current or appropriate, ask that a IEP team meeting be convened.

Sometimes, SEIS won't have the resources to meet the demands of an IEP. SEIS is allowed to "determine based upon resources the type and amount of special education and related services that it provides."⁴³ If SEIS doesn't have the resources to provide required services, the school district where the father, mother or legal guardian resides must arrange and pay for those services.⁴⁴

 **Tip for families:** If you notice that the services listed in your child's IEP are not being provided, you should contact your child's school district to request that those services be provided. You also should ask SEIS and DYS to contact the school and assist you in pursuing those additional special education services.

The role of regular education teachers in providing special education to youth in DYS custody

DYS youth with disabilities often receive special education instruction from SEIS staff in separate classrooms. When DYS youth with disabilities receive education in DYS general education classrooms, the general education teacher is responsible for implementing the youth's IEP.

Additional responsibilities of DYS and SEIS on behalf of youth with special education needs

DYS and SEIS have additional procedures which impose requirements on staff of both agencies listed below.⁴⁵ DYS and SEIS are currently in the process of revising these procedures and, at the point that new procedures are issued, probably in Spring 2008, this description will be outdated.⁴⁶

Many of the responsibilities described in these procedures as belonging to DYS are fulfilled by a DYS Education Liaison. DYS has at least two Education Liaisons in each DYS region. The liaison's job it is to ensure that detained and committed youth receive the educational services to which they are entitled. To this end, DYS Education Liaisons interact with local school districts, SEIS, DYS staff, youth and families. Further liaison responsibilities are described in the preceding chapter, entitled "Education Services During Confinement."

Key requirements of the DYS and SEIS procedures include the following.

- The DYS Education Liaison must forward copies of educational records received from local schools to the DYS Assessment Unit Education Coordinator for each newly committed student.
- DYS must address (and document) in the initial staffing whether a student needs to be referred for a special education team meeting or an initial team evaluation. The DYS Education Liaison must "make every effort" to attend the initial staffing.
- When the staffing results in a decision to refer a student for a special education team meeting or an initial evaluation, the DYS Education Liaison must send a referral to the local school district within three working days of the staffing.
- The DYS Education Coordinator must review educational documentation contained in a youth's placement packet for an IEP or other information that would identify a youth as having special education needs.
- If there is an IEP in the packet, the DYS Education Coordinator must immediately provide it to the SEIS teacher, along with other pertinent educational material.
- If the packet lacks adequate educational records, the DYS Education Coordinator must contact the DYS Education Liaison.
- If the SEIS Evaluation Team Liaison (ETL) determines, upon

review of documentation, that SEIS can provide services, the SEIS ETL notifies the SEIS teacher and the DYS Education Coordinator.


- If the SEIS ETL determines SEIS cannot provide services, the SEIS ETL immediately notifies the local school district in writing and provides reasons. The SEIS ETL provides copies of this notification to the DYS Education Coordinator and the DYS Education Liaison. Then, the DYS Education Coordinator and SEIS ETL must make plans for meeting the youth's educational needs, including the need to refer the student for a special education team meeting.
- While the DYS Education Coordinator and the SEIS ETL are coordinating these plans, the student attends school in his current DYS placement.
- Following discussions between the two parties, if DYS and SEIS decide that they will refer the youth for a special education team meeting, either the DYS Education Liaison or the SEIS ETL must send a referral to the student's local school district within three working days of the DYS/SEIS decision.
- Once the special education team meeting is held, either the DYS Education Liaison or the SEIS ETL assumes lead responsibility for ensuring that the IEP is developed, signed and forwarded appropriately. (This responsibility falls on whichever agency actually sent the referral to the school district.)
- If the DYS Education Liaison sent the referral to the school district, he, having received the IEP, contacts the SEIS ETL to plan for "immediate delivery of services." Alternatively, if the SEIS ETL sent the referral, he, having received the IEP, contacts the DYS Education Liaison, the SEIS teacher and the DYS Education Coordinator to plan for "immediate delivery of services."
- The DYS Education Coordinator and the on-site SEIS teacher meet to plan and implement the special education services. The youth must receive special education services within two days of the initial receipt of the IEP by the DYS Education Liaison (if he did the referral) or by the SEIS ETL (if he did the referral).

The procedures also impose requirements in the case of youth sent to programs where SEIS services are not available, including the following:

- If a youth with an IEP is placed in a DYS program which

doesn't have SEIS services, the DYS Education Coordinator must (unless the IEP was provided by the DYS Education Liaison) immediately contact the DYS Education Liaison to make sure the program has the most recent IEP and must forward the IEP to the SEIS Principal for that region.

- Within two school days of receiving the IEP, the SEIS Principal must review the IEP and notify the DYS Education Coordinator and/or DYS Education Liaison of SEIS's ability to begin providing special education services.
- If SEIS can provide services, the SEIS Principal must provide the DYS Education Coordinator with a start date.
- The DYS Education Coordinator and the interim SEIS teacher meet to plan the special education services.
- If SEIS determines it cannot provide all the services identified in the IEP in whole or in part, the SEIS Principal immediately notifies the local school district in writing and provides reasons. Copies of this notification are sent to the DYS Education Coordinator and the DYS Education Liaison by the SEIS ETL.
- The DYS Education Liaison and the SEIS Principal discuss plans for meeting the educational needs of the youth including the need to refer the youth for a special education team meeting.
- The procedures that would follow are the same as those that would occur in facilities with SEIS on-site (although an interim SEIS teacher fills the role of the SEIS on-site teacher).⁴⁷

 **Tip for families:** Delivering quality special education is a challenge. However, the law is clear regarding the responsibilities of the local school district, SEIS, and DYS to provide special education. Since lack of academic achievement is a leading indicator for court involvement and improving academic performance is the most effective intervention strategy, it is important for you to be involved in your child's education while he is at DYS. It is helpful to attend the monthly DYS treatment team meetings to understand the DYS educational program and your child's progress within it.


Special education residential schools

If a youth's educational and related service needs, as described in his IEP, cannot be met at a DYS run or contracted facility, the IEP team should convene to determine what type of placement would be needed to meet the youth's needs. The IEP team would determine what sort of educational placement is needed and would identify a particular

placement. Also, the residential placement must accept the youth. Additionally, the parent or legal guardian would have to sign the IEP accepting that placement.

In order for a youth to be placed in such a community placement, the DYS treatment team would have to agree to release the youth to the community. In general, this would occur if the youth had fulfilled any time assignment given and successfully completed identified treatment. (It is possible that such a placement could occur prior to the fulfillment of time assignment and completion of treatment, but that event occurs rarely.) The placement must be agreed to by DYS, including if the youth is still under DYS supervision in the community.

If the IEP team had concluded that the placement was necessary for the youth to access education, the cost of *educational* services at such placements should be paid for by the local education authority (LEA). If the IEP team concludes that residential services (in addition to educational services) are needed to effectively access education, the cost of *residential* services should be paid for by the LEA as well. In rare cases, DYS shares the cost of a placement with another entity, such as a local school district.⁴⁸ Due to the high expense of such programs and the scarce funding for them, such placements happens infrequently.⁴⁹

 **Tip for families:** If you believe that your child requires more intensive mental health or educational services than those he is currently receiving from DYS, consider contacting the DYS caseworker, the SEIS program or asking for an IEP team meeting. You might also consider contacting one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

Endnotes

- 1 DYS, Public Information Packet (Feb. 15, 2006).
- 2 20 USC § 1401(25); 34 CFR § 300.39.
- 3 Mass. Gen. L. ch. 71B, § 1; 603 CMR 28.02(9) (definition of “eligible student”). Effective progress is defined at 603 CMR 28.02(18).
- 4 34 CFR § 300.8; 603 CMR 28.02(7) (definition of “disability”). Massachusetts special education statute is consistent with the IDEA with respect to the definition of disability. Compare Mass. Gen. L. ch. 71B, § 1 with 20 U.S.C. § 1401(3).
- 5 20 U.S.C. § 1412(a)(1)(A). FAPE is defined at 20 U.S.C. § 1401(9); 34 CFR § 300.17.
- 6 20 U.S.C. § 1412(a); see also Mass. Gen. L. ch. 71B, § 1.
- 7 20 U.S.C. § 1412; 34 CFR § 300.102; Mass. Gen. L. ch. 71B, § 1; 603 CMR 28.02(9) (definition of “eligible student”). A regular high school diploma does not include an alternative degree that is not fully aligned with the state’s academic standards, including a certificate or a GED. 34 CFR § 300.102(a)(3)(iv).
- 8 *In re: Quabbin Regional School District*, 11 MSER 146, 153 (Aug. 16, 2005) (decision of Massachusetts Bureau of Special Education Appeals).
- 9 *In re: Quabbin Regional School District*, 11 MSER 146, 153 (Aug. 16, 2005) (decision of Massachusetts Bureau of Special Education Appeals).
- 10 20 U.S.C. § 1414(a)(1)(B); 603 CMR 28.04(1).
- 11 20 U.S.C. § 1414 (a)(1)(C)(i)(I); 603 CMR 28.04(2).
- 12 34 CFR § 300.304(c)(2), (4); 603 CMR 28.04(2)(a).
- 13 603 CMR 28.04(2)(b).
- 14 20 U.S.C. § 1415 (b)(1); 603 CMR 28.04(5).
- 15 603 CMR 28.04(5)(c).
- 16 20 U.S.C. § 1414(b)(4)(A); 603 CMR 28.05(1).
- 17 20 U.S.C. § 1414 (d)(1)(B); 34 CFR § 300.321; 603 CMR 28.02(22) (definition of “team”).
- 18 34 CFR § 300.322; see also 603 CMR 28.02(22).
- 19 20 U.S.C. § 1414 (f); 34 CFR §§ 300.322(c), .328.
- 20 20 U.S.C. § 1415(b)(6)(A).
- 21 20 U.S.C. § 1414(d)(1)(A); 34 CFR § 300.320; 603 CMR 28.05(3).
- 22 20 U.S.C. § 1414(d)(1)(A)(i); 34 CFR § 300.320(a)(4); 603 CMR 28.05(4).
- 23 20 U.S.C. § 1412 (a)(5)(A); 34 CFR § 300.114; 603 CMR 28.06(2)(c).
- 24 20 U.S.C. § 1412 (a)(5)(A); 34 CFR § 300.114(a)(2); 603 CMR 28.06(2)(b), (c).
- 25 20 U.S.C. § 1414 (d)(1)(A)(i)(IV)(cc); 34 CFR § 300.114(a)(2)(ii); 603 CMR 28.06(2)(d).
- 26 20 U.S.C. § 1415(b)(2)(B); 603 CMR 28.07(7); www.espprogram.org/documents/ESPPbrochuresecure.pdf.
- 27 20 U.S.C. § 1414(a)(2)(A)(ii); 603 CMR 28.07(1)(a)(1).
- 28 20 U.S.C. § 1414(a)(1)(B); 603 CMR 28.04(1).
- 29 29 U.S.C. § 794.
- 30 34 CFR § 104.33(a).
- 31 34 CFR § 104.33(b).
- 32 603 CMR 28.06(9).
- 33 In October 2005, DESE, then called DOE, had published on its website a guide to ESIS (now SEIS) services. This guide is now outdated and DESE intends to publish a revised edition, reflecting changes that have taken place since that time.
- 34 DESE’s special education provider is Hampshire Education Collaborative (HEC).
- 35 SEIS school year calendars (on file with MHLAC).
- 36 DESE, Special Education in Institutional Settings, <http://www.doe.mass.edu/seis/programs.html>.
- 37 Telephone conversation with Elizabeth Keliher, Legal Office, DESE (Nov. 29, 2007).
- 38 Department of Youth Services & ESIS, Procedures for Students in Need of Special Ed

- Services (redistribution) (Sept. 2003) at 3, # 20.
- 39 Department of Youth Services & ESIS, Procedures for Students in Need of Special Ed Services (redistribution) (Sept. 2003) at 3, # 20.
- 40 603 CMR 28.06(9)(a); 603 CMR 28.10(3)(c).
- 41 603 CMR 28.06(9)(a); 603 CMR 28.10(3)(c).
- 42 DESE, Educational Services in Institutional Settings (Oct. 2005) at 9, <http://www.doe.mass.edu/mailings/2005/cm110705.pdf>.
- 43 603 CMR 28.06(9).
- 44 603 CMR 28.06(9)(c).
- 45 Department of Youth Services & ESIS, Procedures for Students in Need of Special Ed Services (redistribution) (Sept. 2003).
- 46 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).
- 47 Department of Youth Services & ESIS, Procedures for Students in Need of Special Ed Services (redistribution) (Sept. 2003).
- 48 DYS panel presentation, "Overview of DYS" in An Overview of DYS Advocacy, Juvenile Justice Center (June 6, 2007). If such a placement is not secure but is an open door setting, DYS would require a youth to sign a grant of conditional liberty prior to going to the placement. DYS correspondence to MHLAC (Jan. 14, 2008).
- 49 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

