

101 CMR 27.00: INTERAGENCY REVIEW OF COMPLEX CASES

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27.01: Regulatory Authority

The Executive Office of Health and Human Services (EOHHS) is authorized by M.G.L. c. 6A, § 16R to promulgate regulations in consultation with the Department of Elementary and Secondary Education (DESE) to establish processes by which EOHHS, DESE, and additional designated agencies will conduct interagency reviews of an individual who presents as a complex case, as defined in 101 CMR 27.03.

27.02: Purpose

The purpose of 101 CMR 27.00 is to implement M.G.L. c. 6A, § 16R, which establishes requirements by which an interagency team will review complex cases, as defined in 101 CMR 27.03. The interagency review team was established to collaborate on complex cases only where there is a need for urgent action to address the lack of consensus or resolution between state agencies about current service needs or placement of an individual.

27.03: Definition of Terms

The following terms used in 101 CMR 27.00 have the meanings given in 101 CMR 27.03 unless the context clearly requires a different meaning.

Bureau of Special Education Appeals (BSEA). The entity with jurisdiction under M.G.L. c. 71B and the federal Individuals with Disabilities Education Act to mediate and adjudicate disputes related to the provision of special education and related services to children with disabilities.

Complex Case. A case involving an individual as defined in 101 CMR 27.03, where there is a lack of consensus or resolution between state agencies as to the individual's current service needs or placement, and the individual is waiting in a hospital emergency department, a medical bed, at home or other location and in urgent need of a disposition (placement, or identifying entity responsible for payment). A complex case will not include

- (a) individuals who are deemed to meet hospital level of care requiring admission to an acute care hospital or inpatient psychiatric facility inclusive of the Department of Mental Health (DMH) Adolescent Continuing Care Unit, an Intensive Residential Treatment Program (IRTP), or at a psychiatric inpatient developmentally disabled unit; or
- (b) cases where there is agreement as to the services or placement necessary for the individual, including agreement as to which entity is responsible for payment, and the individual has been on the waiting list for such services or placement for less than 60 days.

DALA. The Division of Administrative Law Appeals.

DCF. The Department of Children and Families, an agency within EOHHS.

DDS. The Department of Developmental Services, an agency within EOHHS.

EEC. The Department of Early Education and Care.

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DESE. The Department of Elementary and Secondary Education.

DMH. The Department of Mental Health, an agency within EOHHS.

DYS. The Department of Youth Services, an agency within EOHHS.

EOE. The Executive Office of Education.

EOHHS. The Executive Office of Health and Human Services.

EOHHS State Agency. The agencies described in M.G.L. c. 6A, § 16 as within EOHHS, including MassHealth.

IDEA. The federal Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* The IDEA and M.G.L. c. 71B govern the provision of special education to eligible Massachusetts students.

Individual. A person who

- (a) is under the age of 22;
- (b) is disabled or has complex behavioral health or special needs; and
- (c) qualifies or may qualify for services from one or more state agencies, or for special education services through their school district.

Interagency Review Team (IRT). The group of agencies and school district(s), as applicable, which are designated pursuant to M.G.L. c. 6A, § 16R(b), to conduct reviews and issue determinations for complex cases in accordance with the requirements of 101 CMR 27.00.

Interagency Services Reserve Fund. The fund established pursuant to M.G.L. c. 29, § 2TTTTT, administered by the secretary of EOHHS to effectuate the purpose of the interagency review established through M.G.L. c. 6A, § 16R and 101 CMR 27.00.

Legal Custodian. A parent, legal guardian, or a person or entity with legal custody of the individual or the authority to consent to services or treatment and to authorize the release of information about the individual.

Medical Bed. A bed in a hospital unit to which an individual is admitted while waiting to be placed in an appropriate therapeutic setting or to be provided with appropriate evaluations and services, and not for treatment for a medical condition.

OCA. The Commonwealth of Massachusetts Office of the Child Advocate.

Referral Date. The date the co-chairs determine the referral submission is complete and the case is eligible for IRT review, as set forth in 101 CMR 27.05(3) and 101 CMR 27.06.

School District. Consistent with the definition in 603 CMR 28.02: *Definitions*, a Massachusetts municipal school department or regional school district, a county agricultural school, and any other Massachusetts public school established by statute, certificate, or charter, with programmatic or financial responsibility for certain children and individuals in accordance with the procedures of 603 CMR 28.10: *School District Responsibility*.

27.04: Interagency Review Team Membership and Roles and Responsibilities

(1) There will be an interagency review team (IRT) to review complex cases. The IRT will include the following members:

- (a) the secretary of EOHHS or a designee, and the commissioner of DESE or a designee, who will serve as co-chairs of the IRT;
- (b) the assistant secretary of MassHealth or a designee;
- (c) the commissioner of the Department of Mental Health (DMH) or a designee;

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- (d) the commissioner of the Department of Children and Families (DCF) or a designee;
- (e) the commissioner of the Department of Developmental Services (DDS) or a designee;
- (f) the commissioner of the Department of Youth Services (DYS) or a designee;
- (g) the commissioner of the Department of Early Education and Care (EEC) or a designee;
- (h) the secretary of the Executive Office of Education (EOE) or a designee;
- (i) a representative of the OCA; and
- (j) a representative from the school district or districts responsible for any aspect of the individual's education.

(2) All members of the IRT will have authorization to make decisions on behalf of their appointing entity. The co-chairs and any IRT member may perform their roles and responsibilities related to the IRT through a designee(s).

(3) The IRT will be responsible for

- (a) conducting reviews of complex cases which have been confirmed eligible by the co-chairs, as described in 101 CMR 27.07;
- (b) participating in IRT meetings convened by the IRT co-chairs;
- (c) ordering expedited eligibility determinations by a state agency and evaluations, if necessary, to determine the individual's current service needs, provided that if an extended evaluation at special education residential school is ordered by the IRT, it is separate from any extended evaluation under 603 CMR 28.05(2)(b);
- (d) providing updates and opportunities for input to the individual's parent or guardian and to the individual during the IRT review process;
- (e) submitting requests for funds from the Interagency Services Reserve Fund to the co-chairs, to effectuate the IRT review or for other permissible purposes described in 101 CMR 27.08;
- (f) after collecting and reviewing all necessary information, issuing a consensus determination as to the services currently in place for the individual, additional services that are needed to meet the individual's current needs, which agencies will provide such services, and which agencies have fiscal responsibilities to pay for such services; and
- (g) referring the case to the co-chairs in the event a consensus determination cannot be reached.

(4) The secretary of EOHHS and commissioner of DESE, as co-chairs of the IRT, will facilitate the IRT process by

- (a) receiving and conducting a preliminary review of each case submitted as a referral to the co-chairs to determine if the case is eligible for IRT review;
- (b) convening the IRT for the initial meeting on the complex case within the timing required in 101 CMR 27.07(2). The co-chairs may convene a subset of the IRT members according to the circumstances of the individual's case; provided, however, a representative of the OCA will be present for all team meetings;
- (c) participating in the review and determination of the complex case;
- (d) issuing the determination of the IRT, where a consensus determination could not be reached and the case is referred to the co-chairs to issue the final determination;
- (e) reviewing and authorizing expenditures of the Interagency Services Reserve Fund to effectuate the purposes of the IRT review, consistent with 101 CMR 27.08;
- (f) establishing protocols to inform individuals, parents, and guardians of the availability of the interagency review; and
- (g) establishing data gathering and reporting requirements to document the activities of the IRT and to provide the information required for the annual report, as required in 101 CMR 27.12.

(5) The secretary of EOHHS, in addition to the responsibilities in 101 CMR 27.04(4), will issue the IRT's annual report as required in 101 CMR 27.12, summarizing the cases reviewed by the team in the previous year, the length of time spent at each stage, and the final resolutions.

27.05: Referrals

- (1) Parties Who May Refer Cases for Review. An individual's case may be referred to the IRT by
 - (a) an individual 16 years of age or older;
 - (b) a state agency or a representative of a state agency's ombudsman's office;
 - (c) a juvenile court in the Commonwealth of Massachusetts;
 - (d) a hospital or emergency service provider;
 - (e) a school district;
 - (f) an attorney representing the individual or the individual's parent or guardian;
 - (g) the individual's parent or guardian; or
 - (h) a physician or behavioral health care provider authorized to act on behalf of a parent or guardian who is seeking access to services for the individual or the individual's parent or guardian.

- (2) Documentation and Consents Required to Refer to the IRT.
 - (a) A person or entity identified in 101 CMR 27.05(1) seeking to refer an individual's case to the IRT must provide to the co-chairs the following:
 1. an IRT form containing key information, developed and amended as necessary by the co-chairs;
 2. consent from the legal custodian, or from the individual if 18 years of age or older or otherwise authorized by law, authorizing the IRT, the secretary of EOHHS, the commissioner of DESE, and DALA to
 - a. obtain materials related to the individual's case including, but not limited to, medical records, school records, and any evaluation or assessment of the individual; and
 - b. discuss these materials and records related to the individual's case with one another and with other individuals directly addressing matters related to the individual's case.
 3. documentation and any necessary description, demonstrating the individual presents a complex case; and
 4. the reason the individual's case is being submitted to the IRT, the agencies currently involved in the case, and a requested resolution.
 - (b) Authorizations for the disclosure of Protected Health Information or Substance Use Treatment information submitted to the co-chairs must comply with applicable requirements of HIPAA and 42 CFR Part 2.
 - (c) An individual between 16 and up to 18 years of age who seeks to refer themselves to the IRT must submit all required documents, including the consents from their legal custodian or the person authorized to provide consent to release their records as required in 101 CMR 27.05(2)(a)2.

- (3) The co-chairs will assess the referral submission to determine if the submission is complete and the case is eligible for IRT review. The co-chairs may request any additional records or information necessary to complete the referral submission or assess eligibility. A case is referred to the IRT only after the co-chairs determine the referral submission is complete and the case is eligible.

- (4) Withdrawal of Referral. The legal custodian or, if authorized by law, the individual, may withdraw a referral at any time by notifying the co-chairs in writing.

27.06: Eligibility for Review

- (1) An individual's case is eligible for review by the IRT if
 - (a) the individual presents a complex case as defined in 101 CMR 27.03, as determined by the co-chairs;
 - (b) the case was referred by a party who may refer such cases, consistent with 101 CMR 27.05(1);
 - (c) the documents and information required in 101 CMR 27.05(2) have been submitted to the co-chairs; and
 - (d) the individual is domiciled in the Commonwealth of Massachusetts.

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- (2) An individual's case is ineligible for review by the IRT if
- (a) the individual has an appeal pending with an EOHHS state agency, a mediation or hearing pending with the BSEA (*see* 603 CMR 28.08(3)), or a court case, and the subject of such appeal, mediation, hearing, or court case is substantially related to the reason that the individual's case is being referred for review by an IRT, as determined by the co-chairs at their discretion. Once such appeal, mediation, hearing, or court case is completed, the individual's case may again be referred for review; or
 - (b) the individual's case is not eligible, under 101 CMR 27.06(1), including if the case is not determined to be a complex case as defined in 101 CMR 27.03. Consistent with the definition in 101 CMR 27.03, an individual's case is not a complex case and therefore ineligible for IRT review if
 1. the individual is deemed to meet hospital level of care requiring admission to an acute care hospital or inpatient psychiatric facility inclusive of the DMH Adolescent Continuing Care Unit, an Intensive Residential Treatment Program (IRTP), or at a psychiatric inpatient developmentally disabled unit; or
 2. there is agreement as to the services or placement necessary for the individual, including agreement as to which entity is responsible for payment, and the individual has been on the waiting list for such services or placement for less than 60 days.
- (3) If the co-chairs determine based upon the referral submission that consensus or resolution may be possible at the regional level or that regional representatives have not yet been engaged, the co-chairs may refer the individual's case to the regional representatives of an interagency team currently involved in the individual's case, or which represents the region responsible or likely responsible for the individual, for investigation and resolution. If that regional team is unable to resolve the case within 20 business days, the regional team will submit the case back to the IRT co-chairs to determine eligibility for IRT review, unless the parties involved including the individual or the person legally authorized to consent on behalf of the individual, agree otherwise.
- (4) The co-chairs will notify the legal custodian, or the individual if 18 years of age or older or otherwise authorized by law, in writing whether such individual's case is eligible for review by the IRT and, if applicable, will include any reasons for ineligibility. Such notification will also be provided to the referral source, if different, and if there is a valid consent for the referral source.

27.07: Interagency Review Process

- (1) The IRT Review.
- (a) The IRT review will include, without limit, review of the referral submission, input from the individual, parent(s) or guardian(s), review of materials relevant to the individual's case, including, as applicable, medical records, education records and evaluations, any other relevant assessments of the subject individual, and any report regarding the subject individual issued from the area or regional level of state agencies involved.
 - (b) During the review process, the IRT must provide the individual who is the subject of an IRT review, their legal custodian, and any attorney representing the individual or the individual's parent or guardian, as applicable, with regular updates and opportunities to provide input and make decisions as the IRT deems appropriate
 - (c) The IRT may also accept or request input from additional sources in its review of the individual's complex case, including from
 1. the individual's custodian, in situations where the custodian is not the parent or guardian;
 2. relevant service providers;
 3. an attorney representing the individual or the individual's parent or guardian;
 4. a representative from the individual's health plan; and
 5. representatives of juvenile probation or juvenile courts, if relevant to the case.
 - (d) The IRT may order expedited eligibility determinations by a state agency or an extended evaluation at a special education residential school, if the IRT deems such updated information is necessary for the IRT to make determinations about the current service needs of an individual under IRT review.

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(e) The secretary of EOHHS, in consultation with the commissioner of DESE, may authorize expenditures from the Interagency Services Reserve Fund in accordance with the procedures in 101 CMR 27.08, including paying the costs of an evaluation ordered by the IRT, as necessary to complete the IRT review.

(2) Initial IRT Meeting.

(a) Timing of Initial Meeting.

1. The co-chairs will convene the IRT no later than five business days after the referral date, except as provided in 101 CMR 27.07(2)(a)2.
2. If the individual who is the subject of the complex case is waiting in a hospital emergency department or medical bed, or at home, for not less than five days, to be placed in an appropriate therapeutic setting or to be provided with appropriate evaluations and services, the co-chairs must convene the initial IRT meeting no later than one business day after the referral date.

(b) IRT Meeting Participants. The co-chairs will invite the following IRT members to the IRT meeting:

1. the IRT representatives from the school district or districts responsible for any aspect of the individual's education, as determined by the commissioner of DESE;
2. the IRT representatives from agencies involved in or necessary for the complex case review, as determined by the co-chairs;
3. the individual who is the subject of the IRT meeting and/or their parent or guardian, if appropriate; and
4. a representative of the OCA.

(c) Notification of IRT Meeting(s). While maintaining confidentiality pursuant to 101 CMR 27.11, the co-chairs will notify all IRT meeting participants of

1. the date, time, and location of the IRT meeting;
2. the reason the referral source gave for referring the individual's case; and
3. the individual's name, address, date of birth, and the school district(s) involved in the individual's case.

(d) Meeting Protocol. The co-chairs will lead the IRT meeting and may impose guidelines for the meeting(s).

(3) Limits on IRT Authority.

(a) The IRT does not have the authority to plan or determine services the state agency would not be required to provide for an individual under its applicable statutes or regulations or to otherwise alter agency policy and practices relating to eligibility for and delivery of services, including activities related to the maintenance of waiting lists.

(b) The IRT does not have the authority to make medical necessity determinations for MassHealth-covered services, including hospital level of care for admission to a medical or inpatient psychiatric facility, the DMH Adolescent Continuing Care Unit, an Intensive Residential Treatment Program (IRTP), or at a psychiatric inpatient developmentally disabled unit.

(c) The IRT does not have the authority to plan or determine the special education services to which an individual may be entitled under IDEA, 20 U.S.C. §§ 1400 *et seq.*, and M.G.L. c. 71B, or to supersede, amend, modify, or otherwise affect the authority of the IEP Team or the BSEA to mediate or adjudicate special education disputes as provided in § 1415 of the IDEA, M.G.L. c. 71B, § 3, and 603 CMR 28.08(3).

(d) 101 CMR 27.00 does not affect DESE's established regulations, policies, or procedures for assigning to school districts programmatic and fiscal responsibility for individual students' special education programs. DESE issues such assignments of responsibility under federal and state special education laws and regulations including, but not limited to, 603 CMR 28.10: *School District Responsibility*. The IRT's determinations of fiscal or programmatic responsibility relate only to the responsibilities of state agencies.

(4) The IRT Determination.

(a) The IRT will issue a consensus determination after receiving and reviewing all necessary and updated information regarding the individual's service needs and eligibility decisions. The IRT's determination must include findings as to the following:

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1. the services currently in place for the individual;
 2. additional services that are needed to meet the current needs of the individual;
 3. which agencies will provide said services, including location or placement where appropriate and ongoing case management services; and
 4. which agencies have fiscal responsibilities to pay for such services.
- (b) The IRT will record its determinations in a written report. The co-chairs will provide the IRT report to the parent(s), guardian(s), legal custodian or, if authorized by law, the individual, as well as to the representatives of the state agencies that participated in the review.
- (c) Time Requirements to Complete the IRT Review.
1. The IRT must complete its review of the individual's case and make its determinations within 30 business days of the referral date, unless an expedited IRT review is required as set forth in 101 CMR 27.07(4)(c)2.
 2. An expedited determination is required if the individual whose case is under IRT review is waiting to be placed in an appropriate therapeutic setting or to be provided with appropriate evaluations and services for not less than five days in a hospital emergency department medical bed, or, if at home, there is a need for urgent action as determined by the IRT. An expedited review must be completed within five business days of the referral date.
- (5) Additional Processes When IRT Consensus Cannot Be Reached.
- (a) If the IRT does not come to a consensus determination on a complex case, in whole or in part, the case will be referred to the co-chairs for determination. The co-chairs will issue a determination consistent with 101 CMR 27.07(4), which will be the final determination of the IRT.
- (b) If the IRT cannot come to resolution regarding which state agency or agencies have fiscal responsibility for the services or placements determined necessary by the IRT, the co-chairs, EOHHS and DESE, may authorize the expenditure of funds pursuant to M.G.L. c. 29, § 2TTTTT for the costs of needed services or placements. EOHHS and DESE may seek reimbursement from any state agency, school district, or other entity that is subsequently found to have been responsible for the provision of services during the time period that EOHHS and DESE assumed fiscal responsibility.

27.08: Interagency Services Reserve Fund

- (1) The secretary of EOHHS administers and makes expenditures from the Interagency Services Reserve Fund to effectuate the purpose of the interagency review process, in consultation with the commissioner of DESE, pursuant to M.G.L. c. 6A, § 16R and M.G.L. c. 29, § 2TTTTT. The fund may be used for the following purposes:
- (a) covering the cost of providing additional evaluation for an individual as needed by the IRT to issue the required determination;
 - (b) covering the costs of a service or placement determined to be necessary for an individual in the IRT final determination, until a resolution regarding agency fiscal responsibility is reached; and
 - (c) additional costs required to facilitate the complete review of the complex case and reach final resolution among agencies to meet the individual's service needs.
- (2) The secretary of EOHHS will develop procedures by which the IRT may request expenditures from the Interagency Services Reserve fund, and for how such resources will be issued if approved.
- (3) The secretary of EOHHS, in consultation with the commissioner of DESE, will review all requests for expenditures from the fund and determine if the requested expenditure is an allowable use of the fund, the requested funds are available and based on the information provided, and whether to approve the request. Additional documentation or information may be requested.

27.09: Appeal Process

- (1) Right to Appeal to DALA. If the individual or their parent or guardian disputes the determination of the IRT, in whole or in part, such person may file an appeal with DALA, which conducts an adjudicatory proceeding in accordance with 801 CMR 1.01: *Formal Rules* and orders any necessary relief consistent with state or federal law.
- (2) Timeliness of Appeal. Any appeal to DALA must be filed within 30 days of receipt of the IRT's written report, as applicable.
- (3) Grounds for Appeal. The permissible grounds for an appeal to DALA under 101 CMR 27.00 are
 - (a) a dispute about the IRT's determinations issued under 101 CMR 27.07(4)(a), subject to the limitations in 101 CMR 27.07(3); or
 - (b) a dispute about the co-chairs' determinations issued under 101 CMR 27.07(5), if the IRT is unable to reach consensus and the co-chairs issue a determination for the IRT review, subject to the limitations in 101 CMR 27.07(3).
- (4) Nonappealable Actions. The following actions do not constitute grounds for an appeal to DALA under 101 CMR 27.00:
 - (a) the co-chair's decision that a case is ineligible for IRT review;
 - (b) any decision of the co-chairs, or the secretary of EOHHS, related to expenditures from the Interagency Services Reserve Fund;
 - (c) a determination by a state agency of
 1. ineligibility for services provided by a state agency;
 2. unavailability of any service that the state agency is not required to provide under its applicable statutes or regulations; or
 3. the applicability of agency policy and practices relating to eligibility for and delivery of services, including activities related to the maintenance of waiting lists;
 - (d) appeals related to any MassHealth action. All such appeals must be made to the Office of Medicaid Board of Hearings pursuant to 130 CMR 610.000: *MassHealth: Fair Hearing Rules*. For an individual enrolled in a MassHealth managed care plan, such appeals must be made to the managed care plan directly, subject to review at the Office of Medicaid Board of Hearings in accordance with the provisions of 130 CMR 610.000. A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency and is not subject to appeal to the Office of Medicaid Board of Hearings or DALA; and
 - (e) appeals related to a dispute concerning the free appropriate public education or special education services to which an individual is entitled under the IDEA and M.G.L. c. 71B. All such appeals must be made to the BSEA as provided in § 1415 of the IDEA, M.G.L. c. 71B, and 603 CMR 28.08(3), or may be raised with DESE's Problem Resolution System Office in accordance with 34 C.F.R. §§ 300.151 through 300.153 and 603 CMR 28.08(2).

27.10: Implementation of Services

The state agencies represented on the IRT must work to implement in a reasonable amount of time any authorized decision by the IRT with respect to services or coordination.

27.11: Confidentiality

- (1) Access to Confidential Information. Notwithstanding M.G.L. chs. 66A, 112, and 119 or any other law related to the confidentiality of personal data, the IRT members assigned to a particular case, the secretary of EOHHS, the commissioner of DESE, and DALA will have access to and may discuss materials related to an individual's complex case with one another and with other individuals directly addressing matters related to the individual's case while the case is under review after
 - (a) the legal custodian, or, if authorized by law, the individual has consented in writing; and
 - (b) those with access agree in writing to keep the materials confidential.

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(2) Disposition of Confidential Information. Once an IRT review is complete and the timeline for all potential legal and administrative appeals has been exhausted, all materials are returned to the originating source, or, with consent of the originating source, all materials are destroyed to the extent authorized by state law.

(3) The IRT's records and documents included as part of the IRT process are confidential and are not public records under M.G.L. c. 66.

(4) Redaction of Personal Information. Any written report produced by a IRT and any written decision produced by DALA is redacted in accordance with the confidentiality requirements applicable to the source material, including without limit M.G.L. c. 66A (FIPA), M.G.L. c. 93H, Health Information Portability and Accountability Act (HIPAA), Pub. L. 104-191, 110 Stat. 1936 (1996), and 45 CFR 164.514(B)(2)(i), and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99.

27.12: Annual Report

The secretary of EOHHS will publish an annual report no later than October 1st summarizing the cases reviewed by the IRT in the prior year. Such report will include the length of time spent at each stage and the final resolution. The report will not include any personally identifiable information of an individual. The secretary of EOHHS will provide the report to the OCA and the clerks of the senate and the house of representatives.

REGULATORY AUTHORITY

101 CMR 27.00: M.G.L. c. 6A, § 16R.