

603 CMR 28.00: SPECIAL EDUCATION

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28.01: Authority, Scope and Purpose

(1) 603 CMR 28.00 is promulgated pursuant to the authority of the Board of Elementary and Secondary Education under M.G.L. c. 69, § 1B, and c. 71B.

(2) 603 CMR 28.00 governs the provision by Massachusetts public schools of special education and related services to eligible students and the approval of public or private day and residential schools seeking to provide special education services to publicly funded eligible students. The requirements set forth in 603 CMR 28.00 are in addition to, or in some instances clarify or further elaborate, the special education rights and responsibilities set forth in state statute (M.G.L. c. 71B), federal statute (20 U.S.C. §1400 *et seq.*, and federal regulations (34 CFR § 300 *et seq.*).

(3) The purpose of 603 CMR 28.00 is to ensure that eligible Massachusetts students receive special education services designed to develop the student's individual educational potential in the least restrictive environment in accordance with applicable state and federal laws.

28.02: Definitions

Approved Private Special Education School or Approved Program shall mean a private day or residential school, within or outside Massachusetts, that has applied to, and received approval from, the Department according to the requirements specified in 603 CMR 28.09.

Approved Public Special Education School shall mean a program operated by a public school or an educational collaborative providing full day or residential special education services to eligible students in a facility serving primarily students with disabilities. Such program shall be approved when it has applied to, and received approval from, the Department according to the requirements specified in 603 CMR 28.09.

Certified Special Educator shall mean a person with a teaching certificate or license in an area of special education or a related service provider with appropriate certification or license in his or her professional area. Licensure shall meet the requirements of the 603 CMR 7.00: *Educator Licensure and Preparation Program Approval* and the requirements for renewal of license at 603 CMR 44.00: *Recertification*, as necessary. A certified or licensed special educator may provide, design, or supervise special education services.

Consent shall mean agreement by a parent who has been fully informed of all information relevant to the activity for which consent is sought, in his/her native language or other mode of communication, understands and agrees in writing to the carrying out of the activity, and understands that the granting of consent is voluntary and may be revoked at any time. The consent describes the activity and lists the records (if any) that will be released and to whom.

Day shall mean calendar day unless 603 CMR 28.00 specifies school day, which shall mean any day, including a partial day, that students are in attendance at school for instructional purposes.

Department shall mean the Massachusetts Department of Elementary and Secondary Education.

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Disability shall mean one or more of the following impairments:

- (a) Autism. A developmental disability significantly affecting verbal and nonverbal communication and social interaction. The term shall have the meaning given it in federal law at 34 CFR § 300.8(c)(1).
- (b) Developmental Delay. The learning capacity of a young child (three through nine years old) is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: receptive and/or expressive language; cognitive abilities; physical functioning; social, emotional, or adaptive functioning; and/or self-help skills.
- (c) Intellectual Impairment. The permanent capacity for performing cognitive tasks, functions, or problem solving is significantly limited or impaired and is exhibited by more than one of the following: a slower rate of learning; disorganized patterns of learning; difficulty with adaptive behavior; and/or difficulty understanding abstract concepts. Such term shall include students with mental retardation.
- (d) Sensory Impairment. The term shall include the following:
 1. Hearing Impairment or Deaf. The capacity to hear, with amplification, is limited, impaired, or absent and results in one or more of the following: reduced performance in hearing acuity tasks; difficulty with oral communication; and/or difficulty in understanding auditorally-presented information in the education environment. The term includes students who are deaf and students who are hard-of-hearing.
 2. Vision Impairment or Blind. The capacity to see, after correction, is limited, impaired, or absent and results in one or more of the following: reduced performance in visual acuity tasks; difficulty with written communication; and/or difficulty with understanding information presented visually in the education environment. The term includes students who are blind and students with limited vision.
 3. Deafblind. Concomitant hearing and visual impairments, the combination of which causes severe communication and other developmental and educational needs.
- (e) Neurological Impairment. The capacity of the nervous system is limited or impaired with difficulties exhibited in one or more of the following areas: the use of memory, the control and use of cognitive functioning, sensory and motor skills, speech, language, organizational skills, information processing, affect, social skills, or basic life functions. The term includes students who have received a traumatic brain injury.
- (f) Emotional Impairment. As defined under federal law at 34 CFR § 300.8(c)(4), the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The determination of disability shall not be made solely because the student's behavior violates the school's discipline code, because the student is involved with a state court or social service agency, or because the student is socially maladjusted, unless the Team determines that the student has a serious emotional disturbance.
- (g) Communication Impairment. The capacity to use expressive and/or receptive language is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: speech, such as articulation and/or voice; conveying, understanding, or using spoken, written, or symbolic language. The term may include a student with impaired articulation, stuttering, language impairment, or voice impairment if such impairment adversely affects the student's educational performance.
- (h) Physical Impairment. The physical capacity to move, coordinate actions, or perform physical activities is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: physical and motor tasks; independent movement; performing basic life functions. The term shall include severe orthopedic impairments or impairments caused by congenital anomaly, cerebral palsy, amputations, and fractures, if such impairment adversely affects a student's educational performance.

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(i) Health Impairment. A chronic or acute health problem such that the physiological capacity to function is significantly limited or impaired and results in one or more of the following: limited strength, vitality, or alertness including a heightened alertness to environmental stimuli resulting in limited alertness with respect to the educational environment. The term shall include health impairments due to asthma, attention deficit disorder or attention deficit with hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia, if such health impairment adversely affects a student's educational performance.

(j) Specific Learning Disability. The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think speak, read, write, spell, or to do mathematical calculations. Use of the term shall meet all federal requirements given in federal law at 34 CFR §§ 300.8(c)(10) and 300.309.

District or School District shall mean a Massachusetts municipal school department or regional school district, acting through its school committee or superintendent of schools; a county agricultural school, acting through its board of trustees or superintendent/director; and any other Massachusetts public school established by statute, certificate, or charter, acting through its governing board or director. School districts have programmatic and financial responsibility in accordance with the procedures of 603 CMR 28.10.

Eligible Student shall mean a person three through 21 years of age who has not attained a high school diploma or its equivalent, who has been determined by a Team to have a disability(ies), and as a consequence is unable to progress effectively in the general education program without specially designed instruction or is unable to access the general curriculum without a related service. An eligible student shall have the right to receive special education and any related services that are necessary for the student to benefit from special education or that are necessary for the student to access the general curriculum. In determining eligibility, the school district must thoroughly evaluate and provide a narrative description of the student's educational and developmental potential.

In-district Program shall mean a special education program operated in a public school building or other facility that provides educational services to students of comparable age, with and without disabilities.

(a) or young children ages three to five years, the term shall include programs provided by the public school in the eligible child's home if such setting has been identified by the Team as the natural or least restrictive setting to deliver the services on the child's IEP.

(b) For students three through 21 years of age, the term shall include programs provided by the district in a home or hospital setting if such setting is required by the student's physician and the student would otherwise have been served in an in-district program.

(c) For students aged 14 years of age or older, when the Team has determined that a vocational program is appropriate, work settings shall be considered in-district programs if such programs offer ongoing opportunities for students to interact with community members and/or other workers without disabilities engaging in similar activities.

(d) A program operated solely by an individual, not for profit corporation or agency, or proprietary corporation shall not be considered an in-district program unless it is located within a public school building.

Individualized Education Program (IEP) shall mean a written statement, developed and approved in accordance with federal special education law in a form established by the Department that identifies a student's special education needs and describes the services a school district shall provide to meet those needs.

Least Restrictive Environment (LRE) shall mean the educational placement that assures that, to the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled, and that special classes, separate schooling, or other removal of students with disabilities from the general education environment occurs only when the nature or severity of the student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

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Notice shall mean the notice and content required in accordance with the federal special education law whenever the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement or the provision of special education services to the student.

Out-of-district Program shall mean a special education program located in a building or facility outside of the general education environment that provides educational services primarily to students with disabilities and shall include all programs approved under 603 CMR 28.09. Such program may be operated by a private organization or individual, a public school district, or a collaborative.

Parent shall mean father or mother. For purposes of special educational decision-making, parent shall mean father, mother, legal guardian, person acting as a parent of the child, foster parent, or an educational surrogate parent appointed in accordance with federal law. Legal authority of the parent shall transfer to the student when the student reaches 18 years of age.

Program School shall mean the school in which the student is enrolled according to the provisions of M.G.L. c. 71, § 89 (charter schools); M.G.L. c. 71, § 94 (Commonwealth of Massachusetts virtual schools); M.G.L. c. 74 (vocational schools); M.G.L. c. 76, § 12A (Metco) or M.G.L. c. 76, § 12B (school choice), and shall not include schools approved under 603 CMR 28.09 or institutional school programs as described in 603 CMR 28.06(9).

Progress Effectively in the General Education Program shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the student, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district. The general education program includes preschool and early childhood programs offered by the district, academic and non-academic offerings of the district, and vocational programs and activities.

Related Services shall have the meaning set forth in federal special education law at 34 CFR § 300.34. Individuals providing interpreting services for students who are deaf or hard of hearing shall be registered with the Massachusetts Commission for the Deaf and Hard of Hearing.

State Agency shall mean a Massachusetts state agency.

Special Education shall mean specially designed instruction to meet the unique needs of the eligible student or related services necessary to access the general curriculum and shall include the programs and services set forth in state and federal special education law.

Team shall mean a group of persons, meeting participant requirements of federal special education law as provided at 34 CFR §§ 300.321 and 300.116(a)(1), who, together, discuss evaluation results, determine eligibility, develop or modify an IEP, or determine placement.

28.03: School District Administration and Personnel

(1) General Responsibilities of the School District.

(a) General. Each school district shall provide or arrange for the provision of special education and related services for eligible students in accordance with the provisions of state and federal law and regulation.

1. The school district shall provide training to all school district staff, including general and special educators, administrators, and paraprofessionals, on the requirements of special education.
2. The school district shall provide such staff training in analyzing and accommodating diverse learning needs of all students in the general education classroom.
3. The school district shall provide such staff training in methods of collaboration among teachers, paraprofessionals, and teacher assistants to accommodate diverse learning needs.

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4. The district shall conduct, in cooperation with the parent advisory council, at least one workshop annually within the school district on the rights of students and their parents and guardians under state and federal special education laws.
- (b) Facilities. The school district shall provide facilities and classrooms for eligible students to maximize the inclusion of such students 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. Resource rooms and separate classrooms for students with disabilities shall be given the same priority as general education programs for access to and use of instructional and other space in public schools in order to minimize the separation or stigmatization of eligible students.
1. All eligible students shall have access to school facilities including, but not limited to, those areas necessary to implement the student's IEP.
 2. School districts shall provide whatever equipment and make whatever physical adaptations are necessary to comply with 603 CMR 28.03(1)(b), including acoustical and lighting treatments to remove physical communication barriers for students who are deaf or hard of hearing.
 3. The Department may make unannounced inspections of facilities.
 4. The following examples illustrate aspects of this requirement and shall not be construed as limiting or defining its scope:
 - a. Placing a classroom serving only older students with disabilities in a part of the school building in which all the classrooms are occupied by elementary school students would violate the requirements of 603 CMR 28.03(1)(b).
 - b. Placing a sign saying "special class" on the front of a substantially separate classroom would violate the requirements of 603 CMR 28.03(1)(b).
 - c. Placing all special education facilities together in one part of a school building would violate the requirements of 603 CMR 28.03(1)(b).
 - d. Moving classrooms of students with disabilities to locations apart from the general education program because of financial or construction considerations violates the requirements of 603 CMR 28.03(1)(b).
- (c) Change of Residence.
1. When an eligible student or student's family changes residence from one Massachusetts school district to another, the last IEP written by the former school district and accepted by the parent shall be provided in a comparable setting without delay until a new IEP is developed and accepted.
 2. If a student found eligible in another state moves to Massachusetts, the new Massachusetts district of residence shall provide the student with a free appropriate public education, including special education services comparable to those in the IEP from the former state, in consultation with the parents, until the Massachusetts district determines if it will accept the finding of eligibility and/or the current IEP developed for the student in the former state of residence. If the Massachusetts district determines that the finding of eligibility and the IEP developed for the student continues to accurately represent the needs of the student, then the Massachusetts district shall continue to implement the IEP. If the Massachusetts district determines that a new evaluation is necessary to determine continued eligibility or services, or a parent or another person concerned with the child's development requests an evaluation, the district shall immediately provide written notice to the parents as required under 603 CMR 28.04(1).
- (d) Preschool Screening. Each school district shall conduct screening for three and four year olds and for all children who are of age to enter kindergarten. Such screening shall be designed to review a child's development and to assist in identification of those children who should be referred for an evaluation to determine eligibility for special education services.
1. The school district shall submit information to the Department describing the screening program and its elements as part of the local special education plan, when so requested.
 2. Participation in the screening program for three and four year olds shall be optional on the part of the parents.
- (e) Private Schools at Private Expense. Nothing in 603 CMR 28.00 shall be construed to limit the rights of parents to have their children educated at private schools, completely at private expense. To the extent that public school districts provide and pay for special education services for eligible students enrolled in private schools at private expense, the following requirements shall apply:

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1. Each school district shall provide special education designed to meet the needs of eligible students who are attending private schools at private expense and whose parents reside in the jurisdiction of the school district. The school district shall provide to such students genuine opportunities to participate in the public school special education program consistent with state constitutional limitations.
 2. The school district shall provide or arrange for the provision of evaluation services and an IEP for any eligible private school student whose parent resides in the jurisdiction of the school district. The evaluation may take place in the public school, the private school, or an appropriate contracted facility, provided that the school district shall ensure that a representative of the student's private school is invited to participate as a member of the Team pursuant to 603 CMR 28.05.
 3. The school district shall provide or arrange for the provision of the special education described by the student's IEP provided that school districts shall ensure that special education services funded with state or local funds are provided in a public school facility or other public or neutral site. When services are provided using only federal funds, services may be provided on private school grounds.
 4. Special education provided by the school district to a private school student shall be comparable in quality, scope, and opportunity for participation to that provided to public school students with needs of equal importance. Programs in which both public and private school students participate may not include classes that are separated on the basis of school enrollment or the religious affiliation of the students.
- (2) Administrator of Special Education. Each school district shall appoint a person to be its Administrator of Special Education. The Administrator shall supervise all special education for the school district and shall ensure compliance with all federal and state special education laws. As appropriate, and in accordance with the requirements of M.G.L. c. 71B, § 3A, the Administrator may designate other school district personnel to carry out some of the duties of the Administrator.
- (3) Responsibilities of the School Principal.
- (a) Instructional Support. The principal shall implement the plan developed and adopted by the district to ensure that efforts have been made or will be made to meet the needs of diverse learners in the general education program. As part of his/her responsibilities, the principal shall promote instructional practices responsive to student needs and shall ensure that adequate instructional support is available for students and teachers. Instructional support shall include remedial instruction for students, consultative services for teachers, availability of reading instruction at the elementary level, appropriate services for linguistic minority students, and other services consistent with effective educational practices and the requirements of M.G.L. c. 71B, § 2. The principal may consult with the Administrator of Special Education regarding accommodations and interventions for students. Such efforts and their results shall be documented and placed in the student record. Additionally, if an individual student is referred for an evaluation to determine eligibility for special education, the principal shall ensure that documentation on the use of instructional support services for the student is provided as part of the evaluation information reviewed by the Team when determining eligibility.
 - (b) Coordination with Special Education. The principal with the assistance of the Administrator of Special Education shall coordinate the delivery and supervision of special education services within each school building.
 - (c) Educational Services in Home or Hospital. Upon receipt of a physician's written order verifying that any student enrolled in a public school or placed by the public school in a private setting must remain at home or in a hospital on a day or overnight basis, or any combination of both, for medical reasons and for a period of not less than 14 school days in any school year, the principal shall arrange for provision of educational services in the home or hospital. Such services shall be provided with sufficient frequency to allow the student to continue his or her educational program, as long as such services do not interfere with the medical needs of the student. The principal shall coordinate such services with the Administrator of Special Education for eligible students. Such educational services shall not be considered special education unless the student has been determined eligible for such services, and the services include services on the student's IEP.

28.03: continued

(4) Standard Procedures and Forms. The Department may prepare standard forms to assist school districts in meeting state and federal special education requirements.

(a) The school district shall use forms that, at a minimum, contain the elements of those forms issued by the Department.

(b) School districts shall maintain required data on eligible students receiving special education services, shall ensure that such data remains current and accurate, and, on request, shall report such data in the form required by the Department and in accordance with 603 CMR 10.00: *School Finance and Accountability* and the guidelines for reporting student and financial data.

(5) Waivers. A school district, collaborative, or approved special education school program may submit in writing a proposal for approval by the Department for the satisfaction of any requirement in 603 CMR 28.00 in a manner different from that specified in 603 CMR 28.00. The Department may approve such proposal if it shows substantial promise of contributing to improvements in the methods for meeting the goals of 603 CMR 28.00 and if such proposal does not conflict with any provision of law. No such proposal shall be implemented until approved by the Department.

(6) Enforcement: Withholding of Funds. The Department may withhold funds for special education from cities, towns, school districts, or private schools or agencies that do not comply with regulations or statutes related to special education or do not carry out plans for such compliance within a reasonable period of time; provided, however, that nothing in 603 CMR 28.03(6) shall be construed to prevent the Department from withholding state and federal funds to the extent it deems necessary consistent with state and federal law, or from taking such other enforcement action as may be authorized by law.

28.04: Referral and Evaluation

(1) Referral for Initial Evaluation. A student may be referred for an evaluation by a parent or any person in a caregiving or professional position concerned with the student's development.

(a) When a student is referred for an evaluation to determine eligibility for special education, the school district shall send written notice to the student's parent(s) within five school days of receipt of the referral.

(b) The notice required by 603 CMR 28.04(1)(a) shall meet all of the content requirements set forth in M.G.L. c. 71B, § 3, and in federal law and shall seek the consent of a parent for the evaluation to occur, and provide the parents with the opportunity to express any concerns or provide information on the student's skills or abilities.

(c) School districts shall provide the student's parents with an opportunity to consult with the Special Education Administrator or his/her designee to discuss the reasons for the referral, the content of the proposed evaluation, and the evaluators used.

(d) Upon referral, school districts shall evaluate children who are 2½ years of age and who may be receiving services through an early intervention program. An initial evaluation shall be conducted in order to ensure that if such child is found eligible, special education services begin promptly at age three.

(2) Initial Evaluation. Upon consent of a parent, the school district shall provide or arrange for the evaluation of the student by a multidisciplinary team within 30 school days. The assessments used shall be adapted to the age of the student and all testing shall meet the evaluation requirements set out in state and federal law. The school district shall ensure that appropriately credentialed and trained specialists administer all assessments.

(a) Required Assessments.

1. An assessment in all areas related to the suspected disability.

2. An educational assessment by a representative of the school district, including

a. a history of the student's educational progress in the general curriculum. Such assessment shall include information provided by a teacher(s) with current knowledge regarding the student's specific abilities in relation to learning standards of the Massachusetts Curriculum Frameworks and the district curriculum; and

b. an assessment of the student's attention skills, participation behaviors, communication skills, memory, and social relations with groups, peers, and adults.

c. The school district shall also thoroughly evaluate and provide a narrative description of the student's educational and developmental potential.

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d. When a child is being assessed to determine eligibility for services at age three, an observation of the child's interactions in the child's natural environment or early intervention program is strongly encouraged.

e. For children who are receiving early intervention services, school districts are encouraged to use current and appropriate assessments from early intervention teams, whenever possible, to avoid duplicate testing.

(b) Optional Assessments. The Administrator of Special Education may recommend or a parent may request one or more of the following:

1. A comprehensive health assessment by a physician that identifies medical problems or constraints that may affect the student's education. The school nurse may add additional relevant health information from the student's school health records.

2. A psychological assessment by a licensed school psychologist, licensed psychologist, or licensed educational psychologist, including an individual psychological examination.

3. A home assessment that may be conducted by a nurse, psychologist, social worker, guidance or adjustment counselor, or teacher and includes information on pertinent family history and home situation and may include a home visit, with the agreement of a parent.

(c) Reports of Assessment Results. Each person conducting an assessment shall summarize in writing the procedures employed, the results, and the diagnostic impression, and shall define in detail and in educationally relevant and common terms, the student's needs, offering explicit means of meeting them. The assessor may recommend appropriate types of placements, but shall not recommend specific classrooms or schools. Summaries of assessments shall be completed prior to discussion by the Team and, upon request, shall be made available to the parents at least two days in advance of the Team discussion at the meeting occurring pursuant to 603 CMR 28.05(1).

(3) Annual Reviews and Three-year Reevaluations. The school district shall review the IEPs and the progress of each eligible student at least annually. Additionally, every three years, or sooner if necessary, the school district shall, with parental consent, conduct a full three-year reevaluation consistent with the requirements of federal law.

(4) Unscheduled Evaluations for Medical Reasons. If, in the opinion of the student's physician, an eligible student is likely to remain at home, in a hospital, or in a pediatric nursing home for medical reasons and for more than 60 school days in any school year, the Administrator of Special Education shall, without undue delay, convene a Team to consider evaluation needs and, if appropriate, to amend the existing IEP or develop a new IEP suited to the student's unique circumstances.

(5) Independent Education Evaluations. Upon receipt of evaluation results, if a parent disagrees with an initial evaluation or reevaluation completed by the school district, then the parent may request an independent education evaluation.

(a) All independent education evaluations shall be conducted by qualified persons who are registered, certified, licensed or otherwise approved and who abide by the rates set by the state agency responsible for setting such rates. Unique circumstances of the student may justify an individual assessment rate that is higher than that normally allowed.

(b) The parent may obtain an independent education evaluation at private expense at any time.

(c) Public Funding of Independent Education Evaluations. When the parent requests public funding for an independent education evaluation, the district shall abide by the following provisions for a sliding fee scale:

1. If the student is eligible for free or reduced cost lunch or is in the custody of a state agency with an Educational Surrogate Parent appointed in accordance with federal law, then the school district shall provide, at full public expense, an independent education evaluation that is equivalent to the types of assessments done by the school district. No additional documentation of family financial status is required from the parent.

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2. If the family financial status is not known, the district shall offer the parent information about the sliding fee scale and the opportunity to provide family income information to determine if the family may be eligible for public funding of all or part of the costs of an independent education evaluation. Provision of financial information by the family is completely voluntary on the part of the family. The lack of financial information provided by the family will disqualify the family from such additional public funding of all or part of the costs of an independent education evaluation under 603 CMR 28.04(5)(c) but shall not limit the rights of parents to request public funding under 603 CMR 28.04(5)(d).
 3. If the family agrees to provide financial information, such information shall include anticipated annual income of the family, including all sources of income and verifying documents. Financial information shall be reviewed by the district, shall be kept confidential during review by the district, shall not be copied or maintained in any form at the district except to note that information was provided and reviewed and met or did not meet sliding fee scale standards. Financial documents shall be promptly returned to the parent upon the district's determination of financial income status.
 4. The district shall consider family size and family income information in relation to Federal Poverty Guidelines and shall contribute public funds to the costs of the independent education evaluation according to the following standards:
 - a. If the family income is equal to or less than 400% of the federal poverty guidelines, the district shall pay 100% of the costs of an independent education evaluation.
 - b. If the family income is between 400% and 500% of the federal poverty guidelines, the district shall pay 75% of the costs of an independent education evaluation.
 - c. If the family income is between 500% and 600% of the federal poverty guidelines, the district shall pay 50% of the costs of an independent education evaluation.
 - d. If the family income is over 600% of the federal poverty guidelines, the district shall have no obligation to cost-share with the parent.
 5. When the parent seeks and receives public funding for an independent education evaluation under 603 CMR 28.04(5)(c)4.a. through d., the parent may request independent assessments in one, more than one, or all of the areas assessed by the school district.
 6. The right to this publicly funded independent education evaluation under 603 CMR 28.04(5)(c) continues for 16 months from the date of the evaluation with which the parent disagrees.
- (d) If the parent is requesting an independent education evaluation in an area not assessed by the school district, the student does not meet income eligibility standards, or the family chooses not to provide financial documentation to the district establishing family income level, the school district shall respond in accordance with the requirements of federal law. Within five school days, the district shall either agree to pay for the independent education evaluation or proceed to the Bureau of Special Education Appeals to show that its evaluation was comprehensive and appropriate. If the Bureau of Special Education Appeals finds that the school district's evaluation was comprehensive and appropriate, then the school district shall not be obligated to pay for the independent education evaluation requested by the parent.
- (e) Whenever possible, the independent education evaluation shall be completed and a written report sent no later than 30 days after the date the parent requests the independent education evaluation. If publicly funded, the report shall be sent to the parents and to the school district. The independent evaluator shall be requested to provide a report that summarizes, in writing, procedures, assessments, results, and diagnostic impressions as well as educationally relevant recommendations for meeting identified needs of the student. The independent evaluator may recommend appropriate types of placements but shall not recommend specific classrooms or schools.
- (f) Within ten school days from the time the school district receives the report of the independent education evaluation, the Team shall reconvene and consider the independent education evaluation and whether a new or amended IEP is appropriate.

28.05: The Team Process and Development of the IEP

(1) Convening the Team. Within 45 school working days after receipt of a parent's written consent to an initial evaluation or reevaluation, the school district shall: provide an evaluation; convene a Team meeting to review the evaluation data, determine whether the student requires special education and, if required, develop an IEP in accordance with state and federal laws; and provide the parents with two copies of the proposed IEP and proposed placement, except that the proposal of placement may be delayed according to the provisions of 603 CMR 28.06(2)(e); or, if the Team determines that the student is not eligible for special education, the school district shall send a written explanation of the finding that the student is not eligible. The evaluation assessments shall be completed within 30 school working days after receipt of parental consent for evaluation. Summaries of such assessments shall be completed so as to ensure their availability to parents at least two days prior to the Team meeting. If consent is received within 30 to 45 school working days before the end of the school year, the school district shall ensure that a Team meeting is scheduled so as to allow for the provision of a proposed IEP or written notice of the finding that the student is not eligible no later than 14 days after the end of the school year.

(2) Determinations of the Team.

(a) Eligibility Determination. The Team shall examine the evaluative data, including information provided by the parent, and make one of the following determinations:

1. The student is eligible. If the student has one or more of the disabilities defined at 603 CMR 28.02(7) and if, as a result of the disability(ies), the student is unable to progress effectively in the general education program without the provision of specially designed instruction, or is unable to access the general curriculum without the provision of one or more related services, the Team shall determine that the student is eligible.

a. Consistent with state and federal special education law, the Team shall establish whether a student has a disability(ies) as defined in 603 CMR 28.02(7), determine the type(s) of disability(ies) and shall ensure that the student's inability to progress is a result of the disability(ies) and not a result of an inability to meet the school discipline code, limited English proficiency, social maladjustment, or lack of instruction in reading or math.

b. Once eligibility has been determined, the type of disability of the student shall not be used to provide a basis for labeling or stigmatizing the student. Additionally, the type of disability shall not define the needs of the student and shall in no way limit the services, programs, or inclusion opportunities provided to the student.

c. If the Team determines that the student is an eligible student, the Team shall develop an individualized education program (IEP).

2. The student is not eligible. If the Team determines that the student is not eligible, the Team chairperson shall record the reason for such finding, list the meeting participants, and provide written notice to the parent of their rights in accordance with federal requirements within ten days of the Team meeting.

(b) Evaluation Information is Inconclusive. If the Team finds the evaluation information insufficient to develop an IEP, the Team, with parental consent, may agree to an extended evaluation period.

1. The extended evaluation period shall not be used to deny programs or services determined to be necessary by the Team. If, prior to the extended evaluation, the Team determines that sufficient information is available to identify some necessary objectives and services, the Team shall write a partial IEP that, if accepted by the parent, shall be immediately implemented by the district while the extended evaluation is occurring.

2. The extended evaluation period shall not be used to allow additional time to complete the required assessments under 603 CMR 28.04(2)(a).

3. If the parent consents to an extended evaluation, the Team shall document its findings and determine what evaluation time period is necessary and the types of information needed to develop an IEP, if appropriate. The Team may decide to meet at intervals during the extended evaluation, but in all cases shall reconvene promptly to develop or complete an IEP when the evaluation is complete.

4. The extended evaluation may extend longer than one week, but shall not exceed eight school weeks.

5. The extended evaluation shall not be considered a placement.

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(3) Developing the IEP. Upon determining that the student is eligible for special education, the Team shall develop an IEP using the evaluation data to guide development of goals and objectives for the student.

(a) Parent disagrees with evaluation and seeks an independent education evaluation. If a parent disagrees with the evaluation results, the Team may, with the agreement of the parent, delay writing some or all of the IEP until an independent education evaluation can be completed.

(b) If the Team writes a partial IEP, a parent may consent to the proposed partial program prior to completion of the full IEP. In such case, the partial program shall be implemented immediately.

(c) The IEP shall be completed using the standard IEP format provided by the Department. If the Team members are unable to agree on the IEP, the Team chairperson shall state the elements of the IEP proposed by the school district

(4) Contents of the IEP. Upon determining that the student requires special education and based upon the evaluative data, the Team shall write an IEP for the student and decide the student's placement. The IEP shall describe the special education and related services that the student requires and shall include all elements required under federal and state law.

(a) The IEP shall include specially designed instruction to meet the needs of the individual student and related services that are necessary to allow the student to benefit from the specially designed instruction, or may consist solely of related services that are necessary to allow the student to access the general curriculum, consistent with federal and state requirements.

(b) The Team shall carefully consider the general curriculum, the learning standards of the Massachusetts Curriculum Frameworks, the curriculum of the district, and shall include specially designed instruction or related services in the IEP designed to enable the student to progress effectively in the content areas of the general curriculum.

(c) For any student approaching graduation or the age of 22, the Team shall determine whether the student is likely to require continuing services from adult human service agencies. In such circumstances, the Administrator of Special Education shall make a referral to the Bureau of Transitional Planning in the Executive Office of Health and Human Services in accordance with the requirements of M.G.L. c. 71B, § 12A through C (known as Chapter 688).

(d) The daily duration of the student's program shall be equal to that of the regular school day, unless the Team states that a different duration is necessary to provide a free appropriate public education to the student. In such case, the Team shall specify the daily duration of the program, and the Team shall state on the IEP the reason for such different duration.

1. An extended year program may be identified if the student has demonstrated or is likely to demonstrate substantial regression in his or her learning skills and/or substantial difficulty in relearning such skills if an extended program is not provided.

2. If residential services are required, the IEP must clearly specify the reasons for such determination and how such services will be coordinated with the day education services provided to the student. Additionally, the goals and services on the student's IEP must reflect the comprehensive nature of the educational program required.

3. If a longer program is required, the student's IEP must specify why a longer program is necessary.

4. Camping or recreation programs provided solely for recreational purposes and with no corresponding IEP goals or specially designed instruction shall not be considered extended year programs.

(5) Transportation. The Team shall determine whether the student requires transportation because of his or her disability in order to benefit from special education.

(a) Regular Transportation. If the student does not require transportation as a result of his or her disability, then transportation shall be provided in the same manner as it would be provided for a student without disabilities. In such case, the IEP shall note that the student receives regular transportation, and if the school district provides transportation to similarly situated students without disabilities, the eligible student shall also receive transportation.

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1. If regular transportation is noted on the student's IEP and the student is placed by the school district in a program located at a school other than the school the student would have attended if not eligible for special education, the student is entitled to receive transportation services to such program.
 2. If regular transportation is noted on the student's IEP and the student is enrolled by his or her parents in a private school and receiving services under 603 CMR 28.03(1)(e), such student is not entitled to transportation services unless the school district provides transportation to students without disabilities attending such private school.
- (b) Special Transportation. If the Team determines that the student's disability requires transportation or specialized transportation arrangements in order to benefit from special education, the Team shall note on the student's IEP that the student requires special transportation. In such circumstances, transportation is a related service.
1. The Team shall determine necessary modifications, special equipment, assistance, need for qualified attendants on vehicles, and any particular precautions required by the student and shall document such determinations in the student's IEP. If specialized arrangements can be provided on regular transportation vehicles, the school district shall make such arrangements.
 - a. The district shall arrange to have eligible students who use wheelchairs transported in vehicles that do not require such students to be removed from their wheelchairs in order to enter or leave the vehicles; provided, however, 603 CMR 28.05(5)(b) shall not be applicable where a Team or the student's physician recommends that the student regularly transfer in and out of conventional vehicles to or from a wheelchair for therapeutic or for independence training reasons.
 - b. The Team shall specify whether the student requires assistance in or out of the home, on or off of the vehicle, and in or out of the school. If such assistance is specified, the district shall ensure that it is provided.
 - c. The Team shall specify if the student has a particular need or problem that may cause difficulties during transportation, such as seizures, a tendency for motion sickness, behavioral concerns, or communication disabilities.
 2. If special transportation is noted on the student's IEP, the student is entitled to receive transportation services to any program provided by the public school and in which the student participates.
 3. If special transportation is noted on the student's IEP and the student is enrolled by his or her parents in a private school and receiving services under 603 CMR 28.03(1)(e), the school district's obligation to provide transportation shall be limited to transportation services within the geographic boundaries of the school district.
- (c) In no event shall a school district allow transportation considerations to influence, modify, or determine the educational program required by any student in need of special education.
- (6) Determination of Placement. At the Team meeting, after the IEP has been fully developed, the Team shall determine the appropriate placement to deliver the services on the student's IEP. Unless the student's IEP requires some other arrangement, the student shall be educated in the school that he or she would attend if the student did not require special education.
- (a) Identification by the Team of placement shall proceed in accordance with the options delineated in 603 CMR 28.06.
 - (b) Lack of an identified placement shall not delay the proposal of the IEP to the parent following the Team meeting.
- (7) Parent Response to Proposed IEP and Proposed Placement. Immediately following the development of the IEP, and within 45 school working days after receipt of the parent's written consent to an initial evaluation or reevaluation, the district shall provide the parents with two copies of the proposed IEP and proposed placement along with the required notice, except that the proposal of placement may be delayed according to the provisions of 603 CMR 28.06(2)(e) in a limited number of cases.
- (a) later than 30 days after receipt of the proposed IEP and proposed placement, the parents shall:
 1. Accept or reject the IEP in whole or in part; request a meeting to discuss the rejected portions of the IEP or the overall adequacy of the IEP; or if mutually agreed upon, accept an amended proposal; and

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2. accept or reject the proposed placement.
- (b) Upon parental response to the proposed IEP and proposed placement, the school district shall implement all accepted elements of the IEP without delay.

28.06: Placement and Service Options

(1) Reporting. The Department shall determine specific protocols for school districts to report level of services and placements made for eligible students. School districts shall use such protocols for the purposes of reporting information only. No reporting protocol shall be used as the basis for specifying services, delaying, or otherwise limiting services or programs for eligible students.

(2) Determining Placement. At the Team meeting, after the IEP has been developed, the Team shall consider the identified needs of the student, the types of services required, and whether such services may be provided in a general education classroom with supplementary aids and/or services or in a separate classroom or school. The Team shall consider all aspects of the student's proposed special education program as specified in the student's IEP and determine the appropriate placement to provide the services. The Team shall determine if the student shall be served in an in-district placement or an out-of-district placement and shall determine the specific placement according to the following requirements:

(a) The decision regarding placement shall be based on the IEP, including the types of related services that are to be provided to the student, the type of settings in which those services are to be provided, the types of service providers, and the location at which the services are to be provided.

(b) The placement selected by the Team shall be the least restrictive environment consistent with the needs of the student. In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the student or on the quality of services that the student needs.

(c) Least Restrictive Environment (LRE). The school district shall ensure that, to the maximum extent appropriate, students with disabilities are educated with students who do not have disabilities, and that special classes, separate schooling, or other removal of students with special needs from the general education program occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(d) In-district Placement. The placement decision made by the Team shall indicate the specific program setting in which services will be provided. The Team shall first consider in-district settings such as a general education classroom, a resource setting, a separate classroom, a work setting, a vocational school program, and/or another type of setting identified by the Team as appropriate and able to provide the services on the IEP in a natural or less restrictive environment. If an in-district setting is able to deliver the services on the IEP, the Team shall identify such placement and include such determination with the proposed IEP.

1. The school district shall determine specific instructional personnel and shall work jointly with the Team to arrange the specific classroom or school, in order to implement the placement decision and to assure that services begin promptly when parental consent to the IEP and placement has been received.

2. The school district shall not delay implementation of the IEP due to lack of classroom space or personnel, shall provide as many of the services on the accepted IEP as possible and shall immediately inform the parent in writing of any delayed services, reasons for delay, actions that the school district is taking to address the lack of space or personnel and shall offer alternative methods to meet the goals on the accepted IEP. Upon agreement of a parent, the school district shall implement alternative methods immediately until the lack of space or personnel issues are resolved.

(e) Placement Meeting. Upon developing the IEP, if the needs of the student and the services identified by the Team are complex, and the Team is considering an initial placement out-of-district or a different setting for a student who has been served in an out-of-district program, the school district may schedule a separate Team meeting to determine placement. The placement meeting shall meet the participant requirements of federal special education law as outlined at 34 CFR § 300.116(a)(1) and shall be held within ten school days following the meeting at which the Team developed the IEP. At the request of the parent, the placement meeting may be held at a later date.

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1. Any other school district that may be financially or programmatically responsible for the student shall be invited to participate in the placement meeting and shall receive notice of such meeting at least five school days prior to the meeting. The Department or other state agency involved with the student may designate a representative to participate in the placement meeting.
 2. Prior to the placement meeting, the school district and parent shall investigate in-district and out-of-district placement options in light of the student's needs and identified services required.
 3. At the placement meeting, the district and the parent shall report on the investigation of in-district and out-of-district options. If an in-district program can provide the services on the IEP, such program shall be identified at the placement meeting and provided by the district; if not, the placement Team shall identify an out-of-district placement.
- (f) Out-of-District Placement. If an out-of-district placement is designated by the Team, the Team shall state the basis for its conclusion that education of the student in a less restrictive environment with the use of supplementary aids and services could not be achieved satisfactorily.
1. Students in out-of-district placements shall be entitled to the full protections of state and federal special education law and regulation. Out-of-district options include, but are not limited to, special education schools approved under 603 CMR 28.09.
 2. When an out-of-district placement is identified by the Team, the determination shall ensure that the student's placement is as close as possible to the student's home. The Team shall not recommend a day or residential school program outside of the city, town, or school district in which the student resides unless there is no suitable program within the city, town, or school district. The school district shall implement the placement decision of the Team and shall include consulting with personnel of the school contemplated to provide the program for the student to determine that the school is able to provide the services on the student's IEP. The Team shall not recommend a specific program unless it is assured that the adequacy of said program has been evaluated and the program can provide the services required by the student's IEP. Team identification of specific schools, however, shall not supercede LRE considerations, IEP considerations, or requirements to give preference to approved programs as provided in 603 CMR 28.06(3)(d).
- (3) General Requirements for Out-of-district Placements. For the duration of any student's placement in an out-of-district setting in Massachusetts, the Administrator of Special Education shall make a good faith effort to ensure that the student's IEP is being appropriately implemented and that service delivery in the out-of-district setting is aimed at assisting the student to meet the goals identified on the student's IEP.
- (a) Program Oversight. The Department shall determine that programs approved under 603 CMR 28.09 have appropriate policies, procedures, and appropriately credentialed staff as may be necessary to provide special education services to publicly funded students. The Department shall investigate and resolve concerns raised through the Problem Resolution System of the Department. The approval activities and oversight of the Department for the approved programs does not relieve school districts of their responsibility to monitor the programs of individual students enrolled in the approved programs by the school districts. The approval activities and oversight of the Department for the approved programs does not make the Department a guarantor or insurer for services or programs provided to individual students.
 - (b) Individual Student Program Oversight. The school district is required to monitor the provision of services to and the programs of individual students placed out-of-district. Documentation of monitoring plans and all actual monitoring shall be placed in the files of every eligible student who has been placed out-of-district. To the extent that this monitoring requires site visits, such site visits shall be documented and placed in the students' files for review. The duty to monitor out-of-district placements cannot be delegated to parents or their agents, to the Department, or to the out-of-district placement. The school district may, however, contract directly with a person to conduct such monitoring.

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(c) Student Right to Full Procedural Protections. School districts that place eligible students in out-of-district programs retain full responsibility for ensuring that the student is receiving all special education and related services in the student's IEP, as well as all procedural protections of law and regulation including, but not limited to, those specified in 603 CMR 28.09. Any Team meetings conducted during the time that a student is enrolled in the out-of-district program shall be initiated by the school district in coordination with the out-of-district placement.

(d) Preference to Approved Programs. The school district shall, in all circumstances, first seek to place a student in a program approved by the Department pursuant to the requirements of 603 CMR 28.09. Preference shall also be given to approved programs located within the Commonwealth of Massachusetts if the choice of such program is consistent with the needs of the student and choice of such program complies with LRE requirements. No student in an out-of-state placement as of June 1, 2000 shall be required to transfer to a facility in Massachusetts unless such transfer is consistent with the student's IEP and the LRE requirements of the law. When an approved program is available to provide the services on the IEP, the district shall make such placement in the approved program in preference to any program not approved by the Department.

(e) Use of Unapproved Programs. If the Team is unable to identify an appropriate placement in an approved school, the Administrator of Special Education may request assistance from the Department. Such request shall be in writing and shall contain copies of all assessments from the evaluation or reevaluation, the complete referral package that had been sent to approved schools, a listing of all approved schools that had been considered, and the decision given by such schools to refuse admission. A school district that places a student in a program that has not been approved by the Department according to the requirements under 603 CMR 28.09 must ensure that such programs and services are provided in appropriate settings by appropriately credentialed staff able to deliver the services on the student's IEP. Students placed by the school district in such programs shall be entitled to the full protections of state and federal special education law and regulation including, but not limited to, those protections specified in 603 CMR 28.09 and 603 CMR 18.00: *Program and Safety Standards for Approved Public or Private Day and Residential Special Education School Programs*. The following documentation is required and may be reviewed by the Department of Elementary and Secondary Education at any time:

1. Search. The Administrator of Special Education shall document the search for and unavailability of a program approved by the Department under 603 CMR 28.09. The Administrator shall place such documentation in the student record.
2. Evaluation of Facility. The Administrator of Special Education or his or her designee shall thoroughly evaluate the appropriateness of any unapproved facility prior to placement of the student in such program. Such evaluation shall determine whether the unapproved facility can appropriately implement the student's IEP in a safe and educationally appropriate environment. Such evaluation shall additionally determine whether the unapproved facility can and will provide the student with all the rights that are accorded to the student under state and federal special education law. Such evaluation shall be documented in detail and placed in the student record for review. To the extent that this evaluation requires a site visit, such site visits shall be documented and placed in the student record for review. The duty to evaluate the appropriateness of any unapproved facility cannot be delegated to the parents or their agents or the proposed unapproved facility. The school district may, however, contract directly with a person to conduct such evaluation activities.
3. School District Approval to Operate a Private School in Massachusetts. If services in an unapproved program are provided in a school setting, the Administrator of Special Education must ensure that such school has received approval from the local school committee under M.G.L. c. 76, § 1 and that a copy of such approval is retained in the student record.
4. Notification to the Department. Prior to placement, the Administrator shall notify the Department of the intent to place the student and the name and location of the proposed placement.

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- a. Pursuant to the requirements for Compliance, Reporting and Auditing for Human and Social Services at 808 CMR 1.00, the Administrator shall obtain pricing forms required to set program prices for programs receiving publicly funded students. Such pricing forms shall be completed by the proposed placement and shall document that the price proposed for the student's tuition is the lowest price charged for similar services to any student in that program.
 - b. The Administrator shall forward the notice of proposed placement and completed pricing forms to the Department along with the information on the proposed terms of the contract that will govern such placement. The Department shall notify the district within ten days if there are any objections to such placement, and if none, shall forward the pricing forms to the state agency responsible for setting program prices. Such agency shall, according to its procedures, set an approved price for publicly funded students and shall forward such information to the school district making the placement.
 - c. The Department reserves the right to request any additional documentation or information regarding student placements in educational settings not approved under 603 CMR 28.09, including but not limited to documentation of a monitoring plan pursuant to 603 CMR 28.06(3)(b) and a plan detailing the time and resources necessary to establish or locate a program able to meet the student's needs in the city, town or school district where the student resides or in an approved program.
5. Out-of-state. If such services are provided in a placement outside of Massachusetts, and such school has not received approval by the Department under 603 CMR 28.09, the Administrator of Special Education must ensure that such school has received approval from the host state. No placements of Massachusetts students may be made in out-of-state programs without approval of the program by the host state or, if the host state does not have an approval process, then the program must provide documentation of reputable accreditation. The requirements of 603 CMR 28.06(3)(b) through (e), apply to all such placements.
6. Department Review. The Department shall periodically, and at its discretion, review all required documentation and if such documentation is not available or is not appropriate, the Department may take action pursuant to 603 CMR 28.03(7). Such a review, however, does not make the Department a guarantor or insurer for services or programs provided to individual students.
- (f) Written contracts. School districts shall enter into written contracts with all out-of-district placements. Each such contract shall include, but not be limited to, the following terms:
1. The out-of-district placement shall comply with all elements of the IEP for the student and shall provide, in writing, to the Administrator of Special Education detailed documentation of such compliance through completion of required student progress reports.
 2. The out-of-district placement shall allow the placing school district to monitor and evaluate the education of the student and shall make available, upon request, any records pertaining to the student to authorized school personnel from the school district and the Department in accordance with 603 CMR 23.00: *Student Records*.
 3. The out-of-district placement shall allow the placing school district and/or the Department to conduct announced and unannounced site visits and to review all documents relating to the provision of special education services to Massachusetts students at public expense. Access to documents for the placing school district shall include general documents available to the public, documents specifically related to the student placed by such district, and other documents only to the extent they are necessary to verify and evaluate education services provided at public expense.
 4. The out-of-district placement shall afford publicly-funded students all the substantive and procedural rights held by eligible students, including but not limited to those specified in 603 CMR 28.09, and shall comply with all other applicable requirements of 603 CMR 28.00 and applicable policy statements and directives issued by the Department.
 5. No school district shall contract with any out-of-district placement that discriminates on the grounds of race, color, religion, sexual orientation, or national origin, or that discriminates against qualified persons with disabilities.

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(4) Programs for Older Students. The school district shall ensure that options are available for older students, particularly those eligible students of ages 18 through 21 years. Such options shall include continuing education; developing skills to access community services; developing independent living skills; developing skills for self-management of medical needs; and developing skills necessary for seeking, obtaining, and maintaining jobs. Such programs may have an educational and/or vocational focus and shall be considered in-district programs if the program is operated by the public school and offers the student ongoing opportunities to interact with students or young adults without disabilities. Participation in such options for students younger than age 18 shall not relieve the school district of its obligation to ensure that students have access to instruction in the general curriculum.

(5) Access to District Programs. All students receiving special education, regardless of placement, shall have an equal opportunity to participate in and, if appropriate, receive credit for the vocational, supportive, or remedial services that may be available as part of the general education program as well as the non-academic and extracurricular programs of the school.

(6) Instructional Grouping Requirements. When eligible students aged five and older receive special education services for some or all of the school day outside of the general education environment, the school district shall make every effort to maintain the student's access to the general curriculum and participation in the life of the school. The school district shall devote resources to develop the school district's capacity for serving such eligible students in less restrictive alternatives.

(a) Programs serving young children shall meet instructional grouping requirements of 603 CMR 28.06(7).

(b) The size and composition of instructional groupings for eligible students receiving services outside the general education classroom shall be compatible with the methods and goals stated in each student's IEP.

(c) Instructional grouping size requirements are maximum sizes and school districts are expected to exercise judgment in determining appropriate group size and supports for smaller instructional groups serving students with complex special needs. When eligible students are assigned to instructional groupings outside of the general education classroom for 60% or less of the students' school schedule, group size shall not exceed eight students with a certified special educator, 12 students if the certified special educator is assisted by one aide, and 16 students if the certified special educator is assisted by two aides.

(d) Eligible students served in settings that are substantially separate, serving solely students with disabilities for more than 60% of the students' school schedule, shall have instructional groupings that do not exceed eight students to one certified special educator or 12 students to a certified special educator and an aide.

(e) After the school year has begun, if instructional groups have reached maximum size as delineated in 603 CMR 28.06(6)(c) and (d), the Administrator of Special Education and the certified special educator(s) providing services in an instructional group may decide to increase the size of an instructional grouping by no more than two additional students if the additional students have compatible instructional needs and then can receive services in their neighborhood school. In such cases, the Administrator must provide written notification to the Department and the parents of all group members of the decision to increase the instructional group size and the reasons for such decision. Such increased instructional group sizes shall be in effect only for the year in which they are initiated. The district shall take all steps necessary to reduce the instructional groups to the sizes outlined in 603 CMR 28.06(6)(c) and (d) for subsequent years.

(f) The ages of the youngest and oldest student in any instructional grouping shall not differ by more than 48 months. A written request for approval of a wider age range may be made to the Department, which may approve such request.

(g) Instructional group sizes in all programs approved under 603 CMR 28.09 shall be limited to those outlined in 603 CMR 28.06(6)(d), and no such instructional groups shall have an age range greater than 48 months.

(7) Programs for Young Children. The school district shall ensure programs are available for eligible children three and four years of age. Such programs shall be developmentally appropriate and specially designed for children ages three and four years.

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(a) The requirements of 603 CMR 28.00 shall apply to the extent that they can be adapted to reflect the fact that such children may not be receiving services in the public school.

(b) School districts are encouraged to accept referrals from the Department of Public Health, other agencies, and individuals for young children when or before the child turns 2½ years old in order to ensure continuity of services and to ensure the development and implementation of an IEP for eligible children by the date of the child's third birthday in accordance with federal requirements.

(c) The school district may elect, consistent with federal requirements as outlined at 34 CFR § 300.323(b), to use the format and services of the Individualized Family Service Plan (IFSP), if appropriate, for an additional year as a means of transitioning eligible children to public school services.

(d) The Team may allow a child to remain in a program designed for three and four year old children for the duration of the school year in which the child turns five years old (including the summer following the date of the child's fifth birthday).

(e) Type of Setting - Inclusionary. Inclusionary programs for young children shall be located in a setting that includes children with and without disabilities and shall meet the following standards:

1. Services in such programs may be provided in the home, the public school, Head Start, or a licensed childcare setting.

2. For public school programs that integrate children with and without disabilities, the class size shall not exceed 20 with one teacher and one aide and no more than five students with disabilities. If the number of students with disabilities is six or seven then the class size may not exceed 15 students with one teacher and one aide.

(f) Type of Setting – Substantially Separate. Substantially separate programs for young children shall be those programs for three and four year olds that are located in a public school classroom or facility that serves primarily or solely children with disabilities. Substantially separate programs shall adhere to the following standards:

1. Substantially separate programs shall be programs in which more than 50% of the children have disabilities.

2. Substantially separate programs operated by public schools shall limit class sizes to nine students with one teacher and one aide.

(8) Transportation Services. The term transportation providers shall include the driver of the vehicle and any attendants or aides identified by the Team. The school district shall provide a qualified attendant on each vehicle that transports one or more students in need of special education, when such attendant is recommended by the Team in accordance with 603 CMR 28.05(5)(b).

(a) The district shall not permit any eligible student to be transported in a manner that requires the student to remain in the vehicle for more than one hour each way except with the approval of the Team. The Team shall document such determination on the IEP.

(b) The school district shall give transportation providers clear, written information on the nature of any need or problem that may cause difficulties for a student receiving special transportation along with information on appropriate emergency measures that may be necessary.

(c) The district shall provide an in-service training program for transportation providers. Such training program shall acquaint transportation providers with the needs of the students they are transporting and shall be designed to enable the transportation providers to meet those needs. All transportation providers shall be required to complete such in-service training prior to providing transportation services to eligible students.

(d) The district shall make sufficient inspections of equipment and unannounced spot checks throughout the year to ensure compliance with these requirements, and with all applicable state and federal safety and equipment laws, including M.G.L. c. 90.

(9) Educational Services in Institutional Settings. The Department shall provide certain special education services to eligible students in certain facilities operated by or under contract with the Department of Mental Health, the Department of Youth Services, County Houses of Corrections, or the Department of Public Health. The Department shall retain the discretion to determine based upon resources, the type and amount of special education and related services that it provides in such facilities.

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(a) Decisions about admission to and discharge from institutional facilities are within the authority of institution administrators, not the school district. However, school districts are not relieved of their obligations to students in such settings. School districts are responsible for students in institutional settings in accordance with 603 CMR 28.10. Such students have the same rights for referral, evaluation, and the provision of special education in accordance with state and federal law as students in public schools.

(b) Non-educational services such as residential, medical and clinical services shall be provided by the state agency that controls the facility. The provision of such services shall be governed by the state agency in accordance with applicable laws, interagency agreements, or agency policies.

(c) Where a student's IEP requires a type or amount of service that the facility does not provide, it shall remain the responsibility of the school district where the father, mother or legal guardian resides, except as provided in 603 CMR 28.10(3)(c)1. and 2., to implement the student's IEP by arranging and paying for the provision of such services.

(d) The responsible school district shall coordinate with the Department and ensure that the student receives an evaluation, an annual review, and special education services as identified by the Team at a Team meeting convened by the responsible school district. The Department shall participate in Team meetings for any student receiving special education services in an institutional setting. To the extent that special education services are provided by the Department in such facilities, the Department will make every effort to provide services consistent with the student's IEP and available resources.

28.07: Parent Involvement

(1) Parental Consent. In accordance with state and federal law, each school district shall obtain informed parental consent as follows:

(a) The school district shall obtain written parental consent before conducting an initial evaluation or making an initial placement of a student in a special education program under 603 CMR 28.00. Written parental consent shall be obtained before conducting a reevaluation and before placing a student in a special education placement subsequent to the initial placement in special education.

1. The school district shall obtain consent before initiating extended evaluation services as described in 603 CMR 28.05(2)(b).

2. A parent may revoke consent at any time. Except for initial evaluation and initial placement, and as prescribed by 603 CMR 28.00, consent may not be required as a condition of any benefit to the student.

3. Parents have the right to observe any program(s) proposed for their child if the child is identified as eligible for special education services.

4. A parent may discontinue special education and related services provided to his or her child by notifying the school district in writing that the parent revokes consent to the continued provision of all special education and related services to the child. The school district shall respond promptly by sending notice to the parent of the district's intention to discontinue all special education and related services to the student ten school days from the date of the district's notice based on the parent's revocation of consent. The school district may not challenge the parent's decision through the dispute resolution processes provided under 603 CMR 28.08. Nothing in 603 CMR 28.00 shall prevent a school district and a parent from meeting to discuss discontinuation of all special education and related services provided the parent's participation is voluntary.

(b) If, subsequent to initial evaluation and initial placement and after following the procedures required by 603 CMR 28.00, the school district is unable to obtain parental consent to a reevaluation or to placement in a special education program subsequent to the initial placement, or the parent revokes consent to such reevaluation or placement, the school district shall consider with the parent whether such action will result in the denial of a free appropriate public education to the student. If, after consideration, the school district determines that the parent's failure or refusal to consent will result in a denial of a free appropriate public education to the student, it shall seek resolution of the dispute through the procedures provided in 603 CMR 28.08. Participation by the parent in such consideration shall be voluntary and the failure or refusal of the parent to participate shall not preclude the school district from taking appropriate action pursuant to 603 CMR 28.08 to resolve the dispute. This provision shall not apply if the parent has revoked consent to all special education and related services as provided in 603 CMR 28.07(1)(a)4.

28.07: continued

(c) When the participation or consent of the parent is required and the parent fails or refuses to participate, the school district shall make and document multiple efforts to contact the parent. Such efforts may include letters, written notices sent by certified mail, electronic mail (e-mail), telephone call, or, if appropriate, TTY communications to the home, and home visits at such time as the parent is likely to be home. Efforts may include seeking assistance from a community service agency to secure parental participation. The school district shall ensure that its efforts to involve the parent and gain parental consent meet a reasonable measure standard as articulated in federal law at 34 CFR §§ 300.300(c)(2) and 300.322(d). If the efforts listed in 603 CMR 28.07(1)(a) and (b) are attempted and documented and the district is unable to secure parental consent to a reevaluation or placement subsequent to the initial placement in a special education program, the school district shall proceed in accordance with 603 CMR 28.07(1)(b). This provision shall not apply if the parent has revoked consent to all special education and related services as provided in 603 CMR 28.07(1)(a)4.

(2) Parent Right to Waive Assessments. Any individual assessment may be waived with the approval of the parents if an equivalent assessment has been recently completed and if the person conducting the school assessment determines that the assessment results are still accurate.

(a) All efforts shall be made to avoid duplicative or unnecessary testing.

(b) In accordance with federal requirements, if recommended by the school district, parents may agree to waive some or all assessments when the three-year reevaluation is required.

(3) Reports to Parents. Written progress reports for eligible students shall be submitted to parents at least as often as report cards or progress reports for students without disabilities.

(4) Parent Advisory Participation. Each school district shall create a districtwide parent advisory council offering membership to all parents of eligible students and other interested parties. The parent advisory council duties shall include but not be limited to: advising the district on matters that pertain to the education and safety of students with disabilities; meeting regularly with school officials to participate in the planning, development, and evaluation of the school district's special education programs. The parent advisory council shall establish by-laws regarding officers and operational procedures, and, in the course of its duties, the parent advisory council shall receive assistance from the district without charge, upon reasonable notice, and subject to the availability of staff and resources.

(5) Student Participation and Consent at the Age of Majority. When the student reaches 18 years of age, he or she shall have the right to make all decisions in relation to special education programs and services. The school district shall have the obligation to obtain consent from the student to continue the student's special education program. The parents will continue to receive written notices and information but will no longer have decision-making authority, except as provided in 603 CMR 28.07(5)(a) through (c).

(a) If a parent has sought and received guardianship from a court of competent jurisdiction, then the parent retains full decision-making authority. The parent shall not have authority to override any decision or lack of decision made by the student who has reached the age of majority unless the parent has sought or received guardianship or other legal authority from a court of competent jurisdiction

(b) The student, upon reaching 18 years of age and in the absence of any court actions to the contrary, may choose to share decision-making with his or her parent (or other willing adult), including allowing the parent to co-sign the IEP. Such choice shall be made in the presence of the Team and shall be documented in written form. The student's choice shall prevail at any time that a disagreement occurs between the adult student and the parent or other adult with whom the student has shared decision-making.

(c) The student, upon reaching 18 years of age and in the absence of any court actions to the contrary, may choose to delegate continued decision-making to his or her parent, or other willing adult. Such choice shall be made in the presence of at least one representative of the school district and one other witness and shall be documented in written form and maintained in the student record.

28.07: continued

(6) When a Parent Provides Transportation. If a parent provides transportation to an eligible student requiring special transportation consistent with the requirements of 603 CMR 28.05(5)(b), the school district shall reimburse such parent the prevailing rate per mile for state employees. Reimbursement shall be for no more than the round-trip distance between the home and the school for school attendance and school-sponsored extracurricular activities. Mileage shall be determined based on a direct route between the student's home and school. No parent shall be obligated to provide such transportation.

(7) Educational Surrogate Parent – District Responsibility. When a student is without parental representation and requires an educational surrogate parent to be appointed in accordance with federal law and regulations, the Department may request assistance from the district responsible for services to the student in identifying a person willing to serve as an educational surrogate parent.

(a) Upon assignment by the Department, such educational surrogate parent shall have all the rights and responsibilities of a parent in making decisions regarding eligibility and services for special education for the assigned student. The Department shall provide notice of appointment to the school district and any state agency with custody of the student.

(b) A person identified by the district and willing to serve as an educational surrogate parent shall have no conflict of interest and shall not be in the employ of the school district or any state or local agencies involved with the care of the student.

(c) A person identified by the district, appointed by the Department, and serving as an educational surrogate parent shall not receive financial remuneration from the district except that the school district shall reimburse the person for reasonable expenses related to the exercise of his or her responsibilities as an educational surrogate parent for a student enrolled in the district.

(8) Communications with Parents and Students. Each district shall ensure that all communications and meetings with parents and students pursuant to 603 CMR 28.00 meet the following standards:

(a) Communications shall be in simple and commonly understood words.

(b) Communications shall be in both English and the primary language of the home, if such primary language is other than English. Any interpreter used to implement this provision shall be fluent in the primary language of the home.

(c) Where the parents or the student are unable to read in any language or are blind or deaf, communications shall be made orally in English or with the use of a foreign language interpreter, in Braille, in sign language, via TDD, or in writing, whichever is appropriate.

28.08: Continuum of Options for Dispute Resolution

(1) Local School District Procedures. School districts are encouraged to develop local problem resolution procedures that allow parents to present a concern to a district representative and receive a response related to the concern. Local procedures shall not be used to delay or deny a parent's right to access other dispute resolution mechanisms.

(2) Department Procedures. The Department maintains a Problem Resolution System that provides for the investigation of complaints and the enforcement of compliance with 603 CMR 28.00, as well as with other statutes and regulations relating to the provision of publicly funded education. The Department can make findings on procedural issues and issues related to implementation of requirements. Any party wishing to file a complaint may do so through the Department. Use of the Department Problem Resolution procedures shall not prevent a party from requesting alternative administrative remedies of mediation or hearing on any matter, at any time. Copies of the Problem Resolution System Guidelines and Procedures are available from the Department upon request. Findings and orders issued by the Department on complaints and the Department's processing of a complaint are not reviewable by the Bureau of Special Education Appeals. Additionally, the pendency of a complaint before the Department does not make the Department a necessary party to actions on related issues pending before the Bureau of Special Education Appeals.

28.08: continued

(3) Bureau of Special Education Appeals: Jurisdiction. In order to provide for the resolution of differences of opinion among school districts, private schools, parents, and state agencies, the Bureau of Special Education Appeals, pursuant to M.G.L. c. 71B, § 2A, shall conduct mediations and hearings to resolve such disputes. The jurisdiction of the Bureau of Special Education Appeals over state agencies, however, shall be exercised consistent with 34 CFR § 300.142(a). The hearing officer may determine, in accordance with the rules, regulations and policies of the respective agencies, that services shall be provided by the Department of Children and Families, the Department of Developmental Disabilities, The Department of Mental Health, the Department of Public Health, or any other state agency or program, in addition to the IEP services to be provided by the school district. Mediations and hearings shall be conducted by impartial mediators and hearing officers who do not have personal or professional interests that would conflict with their objectivity in the hearing or mediation and who are employed to conduct those proceedings.

(a) A parent or a school district, except as provided in 603 CMR 28.08(3)(c) and (d), may request mediation and/or a hearing at any time on any matter concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities. A parent of a student with a disability may also request a hearing on any issue involving the denial of the free appropriate public education guaranteed by Section 504 of the Rehabilitation Act of 1973, as set forth in 34 CFR §§ 104.31 through 104.39.

(b) No later than five days after receipt of a request for hearing or notice that an IEP, or proposed placement, or finding of no eligibility for special education has been rejected by the parent, the school district shall send a copy of such request or notice to the Bureau of Special Education Appeals. The Bureau of Special Education Appeals shall then give notice in writing to the parties of the rights of the parents and school district to request mediation and a hearing.

(c) A school district may not request a hearing on a parent's failure or refusal to consent to initial evaluation or initial placement of a student in a special education program, or on a parent's decision to revoke consent to the continued provision of all special education and related services to his or her child under 603 CMR 28.07(1)(a)4.

(d) A school district may request a hearing to appeal the Department's assignment of school district responsibility under 603 CMR 28.10 according to the procedures in 603 CMR 28.10(9).

(4) Mediation. A voluntary dispute resolution procedure, called mediation, shall be provided by mediators employed by the Bureau of Special Education Appeals and may be used by parents and school districts to seek resolution of their dispute. Mediations shall be provided at no cost to the parties. No parent shall be required to participate in mediation.

(a) Within 30 days of receipt of a request for mediation, the mediator shall schedule a mediation session at a time and place convenient to the parties. The mediation shall include the parents, any representative of the parents' choosing, and a representative(s) of the school district, with one representative who is authorized to resolve the dispute on behalf of the school district. When the parties reach agreement, it shall be set forth in written form. Concurrent with a request for mediation or if no agreement is reached, the parents or school district may request a hearing.

(b) All discussions that occur during mediation are confidential and may not be used as evidence in a hearing. Parents and school districts may request a hearing without participating in mediation.

(5) Hearings. Five days after receipt of a written request for hearing, the Bureau of Special Education Appeals shall notify the parties in writing of the name of the assigned hearing officer and, as appropriate, shall provide either a date for the hearing or a statement of federally required procedures to be followed before a hearing date can be assigned.

(a) The Bureau of Special Education Appeals shall issue Rules that state the parties' rights and obligations as to the hearing process, which shall be consistent with all state and federal laws. Such Rules shall be available to the public on request.

(b) Except as provided otherwise under federal law or in the administrative rules adopted by the Bureau of Special Education Appeals, hearings shall be conducted consistent with the formal Rules of Administrative Procedures contained in 801 CMR 1.00.

28.08: continued

(c) The Special Education Appeals hearing officer shall have the power and the duty to conduct a fair hearing; to ensure that the rights of all parties are protected; to define issues; to receive and consider all relevant and reliable evidence; to ensure an orderly presentation of the evidence and issues; to order additional evaluations by the school district or independent education evaluations at public expense when necessary in order to determine the appropriate special education for the student; to reconvene the hearing at any time prior to the issuance of a decision; to take such other steps as are appropriate to assure the orderly presentation of evidence and protection of the parties' rights at the hearing; to ensure a record is made of the proceedings; and to reach a fair, independent, and impartial decision based on the issues and evidence presented at the hearing and in accordance with applicable law.

28.08: continued

(6) Hearing Decision. The decision of the hearing officer of the Bureau of Special Education Appeals shall be implemented immediately and shall not be subject to reconsideration by the Bureau of Special Education Appeals or the Department, but may be appealed to a court of competent jurisdiction.

(a) The written findings of fact and decision of the hearing officer along with notification of the procedures to be followed with respect to appeal and enforcement of the decision shall be sent to the parties and their representatives.

(b) A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that the decision is not being implemented and setting out the areas of non-compliance. The hearing officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the hearing officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department or other office for appropriate enforcement action. The possibility of enforcement action does not make the Department a necessary party in matters pending before the Bureau of Special Education Appeals.

(7) Student's Right to IEP Services and Placement. In accordance with state and federal law, during the pendency of any dispute regarding placement or services, the eligible student shall remain in his or her then current education program and placement unless the parents and the school district agree otherwise.

(a) If the parents are seeking initial placement in the public school, and the child is at least five years old, however, the child shall be placed in the public school program.

(b) For children three and four years of age, rights to services from the public school district are limited to children who have been found eligible for special education and have an IEP and placement proposed by the public school district and accepted by the parent.

(c) A hearing officer may order a temporary change in placement of an eligible student for reasons consistent with federal law, including but not limited to when maintaining such student in the current placement is substantially likely to result in injury to the student or others.

(d) Except as provided in 603 CMR 28.08(7)(a) through (c), any party seeking to change the eligible student's placement during the pendency of proceedings before the Bureau of Special Education Appeals or in subsequent judicial proceedings shall seek a preliminary injunction from a state or federal court of competent jurisdiction, ordering such a change in placement.

28.09: Approval of Public and Private Day and Residential Special Education School Programs

(1) Approval from the Department. The Department may grant approval to public and private day and residential schools providing special education services (special education schools) in Massachusetts in order to ensure that a continuum of special education programs is available to Massachusetts students with disabilities. Approval shall be granted by the Department in accordance with the provisions of 603 CMR 28.09. Upon receipt of approval special education schools are eligible to enroll publicly funded Massachusetts eligible students. Approval does not relieve special education schools of their obligation to comply with other applicable state or federal statutory or regulatory requirements or requirements set forth in their contracts with referral sources.

(a) Limited Approval for Out-of-state Programs. The Department may grant approval to public and private day and residential schools providing special education services (special education schools) in states other than Massachusetts in the following circumstances.

1. An out-of-state program, in cooperation with a Massachusetts school district, seeks approval from the Department. The following documentation is required.

a. Written verification by the Massachusetts school district of its intent to place an eligible Massachusetts student in the out-of-state program.

b. Documentation from the program that the host state has approved the program to provide services to students with disabilities. If the host state does not have an approval process, then the program must provide documentation of reputable accreditation.

28.09: continued

- c. Documentation of tuition rate approved by the host state. If the host state does not approve or otherwise regulate tuition rates, then the program shall provide documentation meeting the requirements of the Massachusetts agency responsible for setting rates for special education schools and showing that the proposed rate is the lowest rate charged to any enrolled student for similar services.
 2. Upon receipt of required documentation, the Department may grant approval for a period of time not to exceed three years from the date of application. The Department may withhold such approval if it deems that circumstances warrant such action. In such case, the Department will notify the Massachusetts school district and the out-of-state program of its actions and the reason for such actions.
 3. Once approved by the Department, out-of-state programs may accept Massachusetts students without additional documentation during the three-year period of approval. It is the responsibility of the out-of-state program, in cooperation with a Massachusetts school district, to reinstate the three-year approval status.
 - (b) Approval for Massachusetts special education schools. Approval for schools operating in Massachusetts includes meeting all of the requirements of 603 CMR 28.09 and 603 CMR 18.00. The Department reserves the right to withhold or deny approval if, in its discretion, circumstances warrant such action.
- (2) Eligibility. Any individual, not-for-profit corporation or agency, or proprietary corporation or public educational collaborative or school district may file an application to establish and/or operate a special education school in Massachusetts to serve eligible students with disabilities. The Department shall require justification of the need for such program and may establish standards for approval eligibility, including but not limited to, standards for minimum or maximum size of such program.
- (a) Residential programs shall demonstrate initiation of a request for a license with the state agency responsible for licensing programs providing residential childcare. Such state agency shall be responsible for licensing the residential non-educational component of the program.
 1. The Elementary and Secondary of Education shall not grant final approval of the educational component of the residential school until all licensing activity for the residential component has been completed and a license has been awarded.
 2. The educational component of a residential program must reflect the 24-hour nature of the service and indicate how residential services and educational services will be fully coordinated.
 - (b) The Department shall develop approval standards that shall specify the types of information, policies, procedures, and assurances to be included in any application for approval. The application shall include, but not be limited to:
 1. A demonstration of the need for such a program;
 2. The population to be served. Such population shall, at a minimum, consist of a majority of students who have been determined eligible for special education services.
 3. The anticipated special education and related services that the program will provide;
 4. The legal and financial stability of the program;
 5. The safety and appropriateness of the physical plant for the student population that the school will serve;
 6. Documentation of qualified staff; and
 7. Procedures detailing how the school will provide education services for the identified population of students.
 - (c) For public special education school programs, the public school or educational collaborative must demonstrate that the program is developed for programmatic reasons and not because of lack of space at an in-district location.
- (3) Department Review and Approval. The Department shall review for approval each application submitted and shall consult with other state agencies as necessary. The Department may, at its discretion, schedule site visits, interviews, or other inspection of the proposed program. The Department may deny approval; grant temporary, provisional, or full approval; or grant probationary approval. The Department shall provide the applicant with a written notice of its actions and the reasons for such actions.

28.09: continued

- (a) Temporary Approval/Program Pricing. The Department, upon granting temporary approval to private special education schools, shall forward such approval, together with a description of approved program elements for the educational component of the program, and applicable pricing elements for the residential component of the program, if any, to the state agency responsible for program pricing.
- (b) Provisional Approval. If provisional approval is granted, the Department shall indicate the specific conditions that shall be met and shall establish a time limit not to exceed six months within which the program shall meet those conditions. In no case shall approval be given unless the applicant can demonstrate to the satisfaction of the Department that the health and safety of the students is protected and the school is able to carry out the provisions of each student's IEP.
- (4) Probationary Approval. The Department may place the program on probationary status if it becomes aware of conditions at the school that, in the Department's judgment, compromise the program's ability to provide a safe, healthy and appropriate educational environment. In such circumstances, the Department shall provide written notice of the probationary status, the circumstances that caused the Department to take such action, and the actions necessary to correct the problem.
- (a) Health and Safety Issues. When, in the Department's judgment, conditions at the school threaten the health or safety of the students in the program, acceptance of any additional eligible students (intake) may be prohibited and the Department shall establish a time not to exceed 14 days within which the program shall correct the problem.
- (b) Educational Issues. When, in the Department's judgment, conditions at the school compromise the program's ability to provide an appropriate education but do not threaten the health and safety of the students, the Department shall establish a time limit up to 90 days during which the program shall correct the problem. The Department shall determine if it is necessary to close intake during this period. The Department shall not close intake for more than 60 days in any 12-month period without a full review of the approval status of the school.
- (c) Notification Requirements. Within two school days of receipt of notice from the Department placing the program's approval on probation, the program shall provide notification to the parents of all enrolled Massachusetts students, all Massachusetts school districts with enrolled students, and officials of Massachusetts human service agencies or agencies of other states with responsibility for any students at the school. Notification shall state that the school has been assigned probationary status; that intake is closed, if applicable, and the reasons for such status.
- (d) Completed Corrective Action. At the end of the time period for corrective action or when the issue giving rise to probationary status is resolved, whichever is sooner, the Department may reinstate the approval status of the program, change the approval status to provisional, or withdraw approval. The Department shall provide written notification of its action to the special education school.
- (e) Request for Reconsideration. Within one month of receipt of a written request for reconsideration of any Department action in relation to probationary status, the Department shall consider the request and make formal written response. The Department may, at its discretion, hold a hearing on the facts, make site visits, or issue an alternative remedy.
- (5) Disclosure of Information.
- (a) An approved special education school shall make available to the Department, on request, information on all aspects of the school's program(s), the certification or credentials of its staff, and the individual records of enrolled Massachusetts students.
- (b) The approved special education school shall also maintain on site and provide, on request, documentation of a safety inspection of all buildings by the Department of Public Safety or the local building inspector, an annual fire safety inspection from the local fire department, and a lead paint inspection, if applicable. More frequent inspections may be required at the discretion of the Department.
- (c) Prior to any substantial change in program or physical plant, the special education school shall give written notification of intent to change to the Department. Notice shall be given with sufficient time to allow the Department to assess the need for the proposed change and the effects of such change on the educational program. The Department shall provide response to the approved program within thirty days if such change may affect the approval status of the program.

28.09: continued

(6) Public Information and Postings. Each approved special education school shall maintain on site and make available for public review the following:

- (a) Program information including a statement of purpose, a general description of the educational program, an organizational chart, and tuition information;
- (b) Documentation of the current approval and or licensing status;
- (c) Documents granting authority to operate the school, including documents that fully identify ownership, and, as applicable, the names of officers, boards, charters, partnership agreements, articles of organization, and by-laws;
- (d) All required policies and procedures; and
- (e) First aid, medical, and emergency procedures. The special education school shall conspicuously post first aid and emergency procedures, including emergency telephone numbers and location of nearest telephones within each building.

(7) Educational Staffing Requirements. An approved special education school program shall meet the requirements of 603 CMR 18.00 related to staffing, staff training, and personnel policies and shall demonstrate that its organizational structure provides for the effective and efficient operation of the school, supervision of school staff, and supervision of students. The school staff shall at all times provide appropriate supervision of students while they are engaged in any school related activity on or off school grounds.

- (a) At least one staff member shall be designated as the educational administrator for the program. The educational administrator shall either possess licensure as a special education administrator or as a special educator and shall have a minimum of a master's degree in special education or a related field; and shall have a minimum of one year of administrative experience. Such person shall be assigned to supervise the provision of special education services in the school and ensure that the services specified in each student's IEP are delivered. The educational administrator shall be relicensed pursuant to the requirements of 603 CMR 44.00 and shall be required to obtain supervisor approval of his/her Professional Development Plan pursuant to 603 CMR 44.04.
- (b) Teaching staff shall have teaching licensure appropriate to meet the needs of the population served and which is provided pursuant to the licensure requirements under 603 CMR 7.00. Teaching staff shall be relicensed pursuant to the requirements of 603 CMR 44.00. For the purposes of relicensure, teaching staff shall be subject to the same requirements as teachers in Massachusetts public schools and shall be required to obtain supervisor approval of Professional Development Plans pursuant to 603 CMR 44.04. At least half of the teaching staff shall be licensed in special education areas appropriate to the population served at the school; other teaching staff may be licensed in other educational areas, in order to provide for content expertise in the general curriculum.
- (c) The Department may require a higher proportion of licensed special educators if, in the opinion of the Department, the population requires more specialized services. To the extent that teaching staff is providing special education services, such services shall be provided, designed, or supervised by a special educator.
- (d) Staff providing or supervising the provision of related services shall be appropriately certified or licensed in their professional areas.
- (e) Instructional groupings and student/teacher ratios shall not exceed the class size standards set forth at 603 CMR 28.06(6) and (7). The Department may impose additional limits, if, in the opinion of the Department, the population requires more specialized services.
- (f) The special education school shall have a written plan for staff orientation and training that is consistent with the needs of the student population and provides, on average, at least two hours per month of relevant training for all staff including non-professional staff. Initial staff orientation shall include provision for training in emergency procedures, behavior management procedures, and requirements related to student protections as provided in 603 CMR 28.09(12). The special education school shall maintain written documentation of training provided and staff attendance at training as well as documentation of training received outside of the school. Upon request, such documentation shall be readily available for review by the Department.

28.09: continued

(8) Educational Facilities and Materials. Approved special education schools shall provide the facilities, textbooks, equipment, technology, materials, and supplies needed to provide the special education and related services specified on the IEPs of enrolled students. If specialized materials or equipment needed solely for an individual student are necessary, the special education school may enter into an agreement for the provision of such materials or equipment by the school district enrolling the student. Approved schools shall additionally meet all facility requirements of 603 CMR 18.00.

(9) Educational Program Requirements.

(a) All approved special education schools shall meet or exceed the student learning time requirements for public school students set forth at 603 CMR 27.00 and shall ensure that such requirements are met for individual students unless the student's IEP requires otherwise. In addition to meeting the student learning time requirements, all ten month programs must run a minimum of 180 school days; 11 month programs a minimum of 198 school days and 12 month programs a minimum of 216 school days exclusive of weekends, holidays, and vacations.

(b) Each approved special education school shall ensure that all teaching staff have an understanding and knowledge of the general curriculum expectations and learning standards of the Massachusetts Curriculum Frameworks and that such knowledge is incorporated into the educational programs of the special education school.

(c) All approved special education schools shall ensure that there are flexible procedures and mechanisms that maximize opportunities for enrolled students to gain the capacity to return to a less restrictive educational program. Such mechanisms may include, but are not limited to, a capacity for part-time attendance at a neighborhood public school or other community program or a period of transition from one program option to a less restrictive program option.

(d) All approved special education schools shall ensure that there are written procedures outlining how such schools will ensure that enrolled students also participate in state assessment programs in accordance with the assessment participation information provided on the student's IEP. Such procedures shall include how the approved school will provide for accommodations or alternate assessments when required.

(10) Student Records. Approved special education schools shall keep current and complete files for each publicly funded enrolled student and shall manage such files consistent with 603 CMR 23.00: *Student Records* and M.G.L. c. 71, § 34H.

(11) Policies and Procedures. In addition to the written procedures required for residential schools by the state agency responsible for licensing residential programs providing childcare, and written procedures required by 603 CMR 18.00, all approved special education schools shall maintain on site a policies and procedures manual, and shall provide written notice to parents of enrolled students that copies of such policies or procedures are available on request. Policies and procedures shall additionally include the procedures required in 603 CMR 28.09(9) and emergency procedures, admissions procedures, behavior management procedures, procedures regarding suspension or termination of the student's placement, and orientation procedures for parents and students as required under 603 CMR 18.00 and the following:

(a) Personnel policies, including procedures for hiring, discipline, supervision, evaluation, handling complaints, and dismissal of staff. Procedures on hiring shall include a description of the steps the school will take to obtain, consider, and act upon information related to convictions for criminal offenses for any prospective staff members whose responsibilities bring them into direct contact with students in the school.

(b) If applicable, transportation procedures that ensure that vehicles are safe, insured, and operated by qualified and trained individuals, and that students are transported in a safe manner that is responsive to individual student's needs and provisions of their IEPs.

(12) Student Protections. Students shall be entitled to protections and standards in accordance with 603 CMR 18.00. In addition approved special education schools shall observe the following requirements:

28.09: continued

(a) Serious Incidents – Immediate Notification and Reporting. In the event of serious injury or death of a student, criminal activity on the part of a student or staff member, or other serious incident affecting the well-being of any student, the approved special education school shall immediately notify, by telephone and by letter, the parents, the sending school district(s), any state agency involved in student care or program placement, and the Department of Elementary and Secondary Education.

(b) Emergency Termination of Enrollment. The special education school shall not terminate the enrollment of any student, even in emergency circumstances, until the enrolling public school district is informed and assumes responsibility for the student. At the request of the public school district, the special education school shall delay termination of the student for up to two calendar weeks to allow the public school district the opportunity to convene an emergency Team meeting or to conduct other appropriate planning discussions prior to the student's termination from the special education school program. With the mutual agreement of the approved special education school and the public school district, termination of enrollment may be delayed for longer than two calendar weeks.

28.10: School District Responsibility

(1) General Provisions. School districts shall be programmatically and financially responsible for eligible students based on residency and enrollment.

(a) With the exception of students who are in the care or custody of a state agency, nothing in 603 CMR 28.10 shall require a school district to provide special education to a student whose parent(s), and legal guardian if any, live outside Massachusetts and have placed the student in an education program in Massachusetts or who maintain contact with the student who remains in Massachusetts.

(b) Nothing in 603 CMR 28.10 shall limit the right of the student to timely evaluation, services and placement in accordance with 603 CMR 28.00.

(c) Nothing in 603 CMR 28.10 shall be interpreted to assign responsibility to school districts for any educational service or program other than services or programs provided under state or federal special education law.

(d) Any school district deemed responsible for a student under 603 CMR 28.10 shall continue responsibility for such student until another school district is deemed responsible under 603 CMR 28.10.

(2) School District Responsibility Based on Student Residence. The school district where the student resides shall have both programmatic and financial responsibility under the following circumstances:

(a) When students live with their parent(s) or legal guardian.

1. When a student who requires an in-district placement to implement his or her IEP lives with both of his or her parents during the school year, irrespective of school vacation periods, and the parents live in two different Massachusetts school districts, the school district where the student is enrolled shall be responsible for fulfilling the requirements of 603 CMR 28.00.

2. When a student who requires an out-of-district placement to implement his or her IEP lives with both of his or her parents during the school year, irrespective of school vacation periods, and the parents live in two different Massachusetts school districts, the school districts where the parents reside shall be equally responsible for fulfilling the requirements of 603 CMR 28.00.

(b) When students are 18 years of age or older and they have established their own residences as adults.

(3) School District Responsibility Based on Residence of Parent(s) or Legal Guardian. The school district where the parent(s) or legal guardian resides shall have both programmatic and financial responsibility under the following circumstances:

(a) When a student is in a pediatric nursing home.

(b) When a student whose IEP requires an out-of-district placement lives and receives special education services at a special education residential school pursuant to a placement by the IEP Team.

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(c) When a student lives and receives educational services in an institutional facility operated by or, through contract, authorized by the Department of Mental Health, the Department of Public Health, the Department of Youth Services, or the Department of Correction or County House of Correction, except as provided in 603 CMR 28.10(3)(c)1. and 2.

1. If an eligible student was placed or resided in foster care at the time the student entered the institutional facility, then responsibility shall remain with the district(s) assigned most recently pursuant to 603 CMR 28.10(5)(b).

2. If a student is 18 years of age or older and has established his or her own residence as an adult, the school district where the student resided prior to entering the institutional facility shall remain programmatically and fiscally responsible.

(4) Shared School District Responsibility. The school district where the parent(s) or legal guardian resides shall have financial responsibility and the school district where the student resides shall have programmatic responsibility when a student who is not in foster care, as defined in 603 CMR 28.05(5)(b), is living in a relative's home or living in a residence, crisis, or respite facility funded or supervised by a state agency other than the Department of Children and Families.

(a) When such a student is served in an in-district program, the school district where the student lives shall provide such services and may bill and shall receive payment for the special education costs (using the procedures of 603 CMR 10.07: *Special Education Payments and Reimbursements* to calculate such costs, including transportation expenses where applicable) from the school district where the parent(s) or legal guardian resides, unless such student is beyond 18 years of age and has established his or her own residence as an adult as described in 603 CMR 28.10(2)(b).

(b) When such a student is served in an out-of-district program, the school district where the parent(s) or legal guardian resides shall pay the tuition costs for the student's IEP program directly to the out-of-district school, and such other payments as may be required to other individuals or entities that provide services required by the student's IEP.

(c) In all cases where financial and programmatic responsibility are shared, the school district where the student resides shall invite the school district where the parent(s) or legal guardian resides to participate as a member of the student's Team, provided that such participation shall not limit the student's right to timely evaluation and placement in accordance with 603 CMR 28.00.

(5) Responsibility for Homeless Students and Students in Foster Care.

(a) Nothing in 603 CMR 28.00 shall limit the educational rights of homeless students and parents afforded under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 *et seq.* (McKinney-Vento). The following provisions apply to these students.

1. Homeless students shall be entitled to either continue to attend their school of origin, as defined by McKinney-Vento, or attend school in the city or town where they temporarily reside. To the extent feasible, homeless students should remain in their school of origin unless doing so is contrary to the wishes of such student's parent(s) or legal guardian or state agency with care or custody of the student.

2. The school district(s) that was programmatically and financially responsible prior to the student becoming homeless shall remain programmatically and financially responsible for a homeless student until the parent(s) or legal guardian or state agency with care or custody of the student chooses to enroll the student in the school district where the shelter or temporary residence is located. When a student whose IEP requires in-district services is enrolled in the school district where the student is temporarily residing, then that school district shall become programmatically and financially responsible upon enrollment. When a student whose IEP requires out-of-district services is enrolled in the school district where the student is temporarily residing, then that school district shall become programmatically responsible upon enrollment and the school district(s) that was financially responsible prior to the student becoming homeless shall remain financially responsible until the student is no longer homeless.

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(b) Nothing in 603 CMR 28.00 shall limit the educational rights afforded under the Every Student Succeeds Act (ESSA) to students who are in foster care, which means 24-hour substitute care for children placed away from their parents or guardians and for whom the Department of Children and Families agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. The provisions in 603 CMR 28.10(5)(b)1. through 4. apply to these students:

1. The school district(s) that was programmatically and financially responsible prior to the student's entry into foster care or prior to a subsequent change in the student's foster care setting shall remain responsible for the student's special education program for as long as the student continues to attend the same school.
2. For students in foster care who do not continue to attend the same school, and who enroll in the district in which their foster care setting is located, programmatic responsibility shall be with the district in which the student is enrolled and financial responsibility shall be with the district where the parent(s) or legal guardian resides.
3. When the Department of Children and Families relocates a student to reside in and attend an approved residential school, the school district that was programmatically responsible prior to this relocation shall remain programmatically responsible and the district where the parent(s) or legal guardian resides shall be financially responsible.
4. For all situations in which school districts share responsibility for students in foster care, the following provisions shall apply:
 - a. When such a student is served in an in-district program, the school district with programmatic responsibility may bill and shall receive payment for the special education costs (using the procedures of 603 CMR 10.07: *Special Education Payments and Reimbursements* to calculate such costs, including transportation expenses where applicable) from the school district where the parent(s) or legal guardian resides.
 - b. When such a student is served in an out-of-district placement, the school district where the parent(s) or legal guardian resides shall pay the tuition costs for the student's IEP placement directly to the out-of-district school, and such other payments as may be required to other individuals or entities that provide services in the student's IEP shall apply.
 - c. The school district with programmatic responsibility shall invite the school district where the parent(s) or legal guardian resides to participate as a member of the student's Team, providing that such participation shall not limit the student's right to timely evaluation and placement in accordance with 603 CMR 28.00.

(6) Program Schools. A program school shall have programmatic and financial responsibility for enrolled students, subject only to specific finance provisions of any pertinent state law related to the program school. Specific provisions for program schools are as follows:

- (a) For charter schools, Commonwealth of Massachusetts virtual schools, vocational schools, or schools attended under M.G.L. c. 76, § 12A (Metco), when the Team determines that the student may need an out-of-district placement, the Team shall conclude the meeting pursuant to 603 CMR 28.06(2)(e) without identifying a specific placement type, and shall notify the school district where the student resides within two school days.
 1. 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.
 2. The 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 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.

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3. If the placement Team, in accordance with the procedures of 603 CMR 28.06(2)(e), 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).
- (b) For schools attended pursuant to M.G.L. c. 76, § 12B (school choice), such schools may bill and receive payment from the school district where the student resides for the costs of out-of-district placements made by the program school. The program school shall invite the school district where the student resides to participate as a member of the student's Team and shall provide notice of the Team meeting at least five school days prior to the meeting, provided that such participation shall not limit the student's right to a timely evaluation and placement in accordance with 603 CMR 28.00.
- (c) A Vocational school shall not discriminate in the enrollment of students with disabilities.
1. A vocational school may not accept students with disabilities on a conditional basis unless the vocational school has procedures that ensure that the reasons for conditional acceptance are equally applied to students without disabilities.
 2. A vocational school may serve as an "evaluation site" for a student requiring an extended evaluation under the provisions of 603 CMR 28.05(2)(b) if the evaluative information that is required is primarily vocational in nature. In such circumstances, the student is not considered enrolled in the vocational school, nor shall an extended evaluation be considered a temporary placement. For the duration of the extended evaluation the student shall be considered enrolled in the public school district in which he or she was enrolled prior to the extended evaluation.
- (7) Temporary Assignments. The Department reserves the right to assign temporary responsibility in cases where the student is not receiving services or when lack of assignment threatens the student's placement or program. Such temporary assignment shall be made based on the information available to the Department. The temporary district shall have all of the rights and responsibilities assigned to districts under 603 CMR 28.00. The temporary district may bill and shall be eligible to receive payment for the special education costs (using the procedures of 603 CMR 10.07: *Special Education Payments and Reimbursements* to calculate such costs, including transportation expenses where applicable) from the district assigned responsibility for that period of time for which a temporary district was identified.
- (8) Department Assignment of School District Responsibility.
- (a) The Department may assign or a school district or agency may request the Department's assistance in assigning a city, town, or school district to be responsible for students in living situations described in 603 CMR 28.10(3), (4), or (5) in the following circumstances.
1. Students who are in the care or custody of a state agency and have no parent or legal guardian residing in Massachusetts; or
 2. When the residence or residential history of the student's parent(s) or legal guardian is in dispute; or
 3. When the student has a legal guardian who has been appointed on a limited basis; or
 4. When a student has not yet been determined to be eligible and/or is not receiving services, or
 5. When a student is in the care or custody of a state agency and is hospitalized and the agency gives notice to the responsible school district that the student will not return to the residence held prior to hospitalization.
- (b) A request for an assignment shall not limit the right of the student to timely evaluation, services, or placement in accordance with 603 CMR 28.00. The school district or state agency requesting assignment shall be responsible for providing to the Department all required documentation to ascertain the legal status or residence(s) of the student or the student's parent(s) or legal guardian.
- (c) The Department shall use the following criteria to assign a city, town or school district responsibility for a student in a living situation described in 603 CMR 28.10(3), (4), or (5):

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1. If the child has been voluntarily surrendered for adoption or freed for adoption by the Probate Court or the Juvenile Court, the school district(s) where the parent(s) lived at the time that the child was surrendered or freed for adoption or when parental rights were terminated shall be responsible.
 2. If the student is in the care or custody of a state agency and such state agency has obtained a legal guardianship for the student when the student has turned 18 years old, the school district(s) where the parent(s) lived at the time the court granted the request for guardianship shall be responsible.
 3. If the parents' rights have been terminated and the Probate Court or the Juvenile Court has appointed a legal guardian for a minor student, the school district where the legal guardian resides shall be responsible.
 4. If the legal guardian is an agency or organization or the legal guardian has been appointed on a limited basis such as a guardian *ad litem*, or a guardian appointed solely to monitor medications or finances, the school district where the parent(s) lives or last lived shall be responsible.
 5. If the student's parents live in two different school districts, such school districts shall be jointly responsible for fulfilling the requirements of 603 CMR 28.00 except if the student actually resided with either parent immediately prior to going into a living situation described in 603 CMR 28.10(3) or (4) or the parents are divorced or separated and one parent has sole physical custody, then the school district where the student resided with the parent or the school district of the parent who has sole physical custody shall be responsible and shall remain responsible in the event the student goes into the care or custody of a state agency.
 6. If the student's parent(s) or legal guardian resides in an institutional setting in Massachusetts including, but not limited to, a correctional facility, a hospital, a nursing home or hospice, or a mental health facility, a halfway house, a pre-release center or a treatment facility, the school district where the parent(s) or legal guardian lived prior to entering the institutional setting shall be responsible.
 7. If the student's parent(s) or legal guardian does not reside in Massachusetts, or the parent's or legal guardian's whereabouts are unknown, the school district of the last known Massachusetts residence of the student's parent(s) or legal guardian who lived in Massachusetts shall be responsible.
- (d) Using the above criteria, the Department shall notify in writing the assigned school district(s) of its decision. Upon notification of responsibility for provision of special education to a student under 603 CMR 28.10(8)(d), the school district(s) shall immediately assume responsibility for the student in accordance with the requirements of 603 CMR 28.00. Until such notification, the school district(s) that had been responsible for providing special education to such student under 603 CMR 28.00 shall continue to be responsible.
- (e) The school district(s) that had been responsible for providing special education to the student prior to assignment by the Department under 603 CMR 28.10(8)(d) may bill and shall be eligible to receive payment (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable), from the newly assigned district for the special education costs that were incurred during the period of time in which the newly assigned district should have been responsible.
- (f) A school district may seek a review of the Department's assignment under the procedures of 603 CMR 28.10(8) at any time that the district has information that was not available to the Department at the time that the assignment was made. The Department will review the information presented and will confirm or change the assignment of school district responsibility, and notify the districts of this decision under 603 CMR 28.10(8)(d).
- (9) Appeal of Assignment of School District Responsibility. The assigned district may appeal the Department's assignment of responsibility to the Bureau of Special Education Appeals, subject to the following procedures:
- (a) A district may appeal the assignment of school district responsibility within 60 days of the most recent notification of assignment.
 - (b) The request for appeal shall meet the following standards:
 1. A request for appeal shall be based only on the information provided to the Department under 603 CMR 28.10(8)(b) and 603 CMR 28.10(8)(f) if applicable;
 2. The request shall state the basis of the appeal;

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3. The request for appeal shall identify the district(s) that the appealing district claims should have been assigned responsibility; and
 4. The appealing district shall include such district(s) as a party to the appeal.
- (c) A party may request a decision without a hearing with the agreement of all parties.
 - (d) The Bureau of Special Education Appeals shall render a decision within 45 days of receipt of the hearing request. The granting of a postponement shall not extend the 45-day deadline for issuance of a decision unless the postponement is requested by a party and allowed by the hearing officer for good cause.
 - (e) The Bureau of Special Education Appeals may return the case to the Department of Elementary and Secondary Education based on new information presented at the hearing.
 - (f) The decision of the Bureau of Special Education Appeals shall be limited to a determination of the assigned school district and the effective date of such assignment.

REGULATORY AUTHORITY

603 CMR 28.00: M.G.L. c. 69, § 1B, and c. 71B.

(PAGES 273 THROUGH 298 ARE RESERVED FOR FUTURE USE.)