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Memo to Parents/Guardians/Staff regarding updated guidelines for referral, evaluation, and eligibility determination for special education services and section 504

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 two and a half 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.

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
 - (i) 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
 - (ii) an assessment of the student's attention skills, participation behaviors, communication skills, memory, and social relations with groups, peers, and adults.
 - (iii) The school district shall also thoroughly evaluate and provide a narrative description of the student's educational and developmental potential.

(iv) 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.

(v) 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).

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.

For more information:

<http://www.doe.mass.edu/lawsregs/603cmr28.html?section=04>

Section 504 and the Americans with Disabilities Act

Three important federal laws protect students with disabilities:

IDEA (special education);
Sec. 504 of the Rehabilitation Act of 1973;
The Americans with Disabilities Act (ADA).

Section 504 of the Rehabilitation Act of 1973 (the precursor of ADA) protects the rights of individuals with disabilities in programs and activities, including schools, that receive federal funds. Section 504 provides that: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving

Federal financial assistance . . ." The meaning of this protection as regards students with disabilities is summarized in the U.S. Department of Education's Office for Civil Rights publication: "[Free Appropriate Public Education for Students with Disabilities: Requirements Under Section 504 of the Rehabilitation Act of 1973](#)". Another useful Office for Civil Rights publication is "[Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities](#)."

The Rights offers many other publications in several languages, which are generally easy to read and understand.

The specific federal regulations for Sec. 504 that apply to pre-school, elementary and secondary schools are found in **Title 34 of the Code of Federal Regulations (CFR), Part 104**. The Americans with Disabilities Act requires the same (though it has no specific regulations for this population), so when one complies with 504 as regards services for a covered student (of any age) one can usually feel confident that one is also complying with the ADA.

The Americans with Disabilities Act: ADA gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin, and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations (including most private schools, child care centers, etc), transportation, State and local government services (including public schools), and telecommunications.

For more information:

<http://www.doe.mass.edu/sped/links/sec504.html>

A final note:

Both Sec. 504 and the ADA are major civil rights laws that protect not only eligible students, but also - unlike IDEA -- they extend basic access and participation rights to all other persons with disabilities who are involved in the world of public education. These include: parents, teachers and all other staff, volunteers, school committee members and other local officials, members of the public, etc.