



Massachusetts Primer on Special Education and Charter Schools

Section I: General Information

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Section I: General Information

This information is intended for those readers who may not fully understand the legal status of charter schools within the Massachusetts public education system, or who need a brief update on, federal or state special education laws and regulations.

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Massachusetts Primer on Special Education and Charter Schools

Part I: General Information

Part I provides an explanation of a charter school's legal status within the Massachusetts public education system and a synopsis of federal laws that are most relevant to special education in charter schools. The information is intended for those who may not fully understand the legal status of charter schools within the Massachusetts public education system, or need a brief update on, federal and state special education laws and regulations.

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A. Charter School Legal Status and Linkage to a Local Education Agency (LEA)

Charter schools must abide by federal special education laws and regulations because they are part of the public education system. However, the way this is carried out in practice depends on a charter school's legal identity and its linkage to a traditional local education agency (LEA). In Massachusetts, legal identity varies depending on the type of charter school, and there are two basic types: Commonwealth and Horace Mann. Each Commonwealth charter school is its own LEA or school district for all matters pertaining to special education. Horace Mann charter schools are also LEAs, but may choose to work with the district in which they are located to share responsibility for special education. As LEAs, Commonwealth and Horace Mann charter schools must comply with federal and state special education laws and regulations.

B. Federal Laws Relevant to Special Education in Charter Schools

The following list and brief overview of federal education laws as they pertain to special education is intended to be an orientation for those who are not familiar with this legislation. In addition, the name of each law is hyperlinked to provide a quick reference to the text of the laws and further information.

Which federal laws are most relevant to special education in charter schools?

The federal laws and regulations that have most relevance for implementing special education are:

- [Individuals with Disabilities Education Act \(IDEA\)](#)
- [Elementary and Secondary Education Act \(ESEA\)](#). This was recently updated and is now referred to as [Every Student Succeeds Act \(ESSA\)](#).
- [Section 504 of the Rehabilitation Act of 1973 \(Section 504\)](#)
- [Americans with Disabilities Act \(ADA\)](#)
- [Family Education Rights and Privacy Act \(FERPA\)](#)

Which federal agencies are responsible for overseeing these laws?

The U.S. Department of Education (USED), the Office of Special Education Programs (OSEP) is in charge of the IDEA. The Office for Civil Rights (OCR) is responsible for Section 504 and the ADA is enforced by the U.S. Department of Justice. The Office of Elementary and Secondary Education (OESE) manages the Elementary and Secondary Education Act (ESEA), reauthorized as the Every Student Succeeds Acts (ESSA) in 2015. The Family Compliance Policy Office within the U.S. Dept of Education provides technical assistance for Family Education Rights and Privacy Act (FERPA) requirements.

What is the Individuals with Disabilities Act?

The Individuals with Disabilities Education Act-2004 (IDEA), is a federal special education law that requires states and public schools to provide students with disabilities with a free and appropriate public education and access to the general education curriculum. The educational placement of students with disabilities must be provided in the least restrictive environment which meets the unique needs of the students. For each eligible student, the school develops a written individualized education program (IEP), documenting the special education services required by the student. The Massachusetts Department of Elementary and Secondary Education (ESE) has developed [helpful tools and resources to assist educators in implementing selected](#)

[provisions of IDEA](#) that can be accessed at on the DESE website. The ESE [Administrative Advisory SPED 2007-1: IDEA-2004 Implementing Regulations](#) highlights key aspects of the IDEA-2004 regulations which took effect on October 13, 2006.

What common terms and acronyms should I know?

The common terms are:

- IEP: After parents consent to a student evaluation for special education services, a school-based team determines eligibility. The team of professionals and parents determine the need for an individualized education and related services for the student and create an **individualized education program** containing services that are reviewed and rewritten annually. An IEP includes measurable annual goals, how the student will be included in state and district assessments, and how the student will access the general education curriculum in order to meet state's academic standards. Students are reevaluated every three years to determine continued eligibility for special education services.
- FAPE: Students with disabilities are entitled to a **free and appropriate public education**.
- LRE: The **least restrictive environment** refers to placement in a setting that most closely resembles the general education classroom while also supporting the student's educational progress. Students with disabilities must have a continuum of placements available to them that range from fulltime in a general education classroom to a substantially separate placement. Students are entitled to be placed in the setting that will meet their individual needs while removing them as little as possible from the general education classroom.

Who can be considered members of an IEP Team?

The IEP team consists of a group of persons, meeting participant requirements of federal special education law who, together, discuss evaluation results, determine eligibility, develop or modify an IEP, and/or determine placement. The U.S. Department of Education's (USED) Office of Special Education Programs (OSEP) provides [information on the requirements of the Individuals with Disabilities Act \(IDEA\)](#). Information regarding team membership and the requirements for participants in IEP Team meetings are found in the federal statute [34 CFR §300.321](#).

Does the Individuals with Disabilities Education Act include charter schools?

The Individuals with Disabilities Education Act (IDEA) affirms that students who attend charter schools are covered under this law. The law makes specific references to charter schools and includes:

- Students with disabilities who attend public charter schools and their parents retain all rights under IDEA.
- Charter schools are included in the definition of a local education agency (LEA) when they are established as LEAs by state law.
- A charter school that functions as its own LEA is responsible for ensuring that the requirements of IDEA are met.
- The state special education advisory council must include a charter school representative.

Do students with disabilities need to be treated in a nondiscriminatory manner?

Yes. Section 504 of the Rehabilitation Act (Section 504) specifically prohibits discrimination solely on the basis of disability to public and private programs and activities that receive federal

financial assistance, which includes charter schools. This protection extends not only to students covered under Section 504, but also to students who are eligible for special education services.

What protections does the Individuals with Disabilities Education Act (IDEA) provide if a parent disagrees with the school about special education?

Parents have the right to disagree with the school. Procedures and regulations are written into the law to support conflict resolution using either mediation or due process legal proceedings. The Individuals with Disabilities Education Act (IDEA) contains procedural safeguards, or required procedures designed to protect student and parent rights, and due process rights for parents in the identification, evaluation, and placement of their child. School districts must give the Procedural Notice of Parent Safeguards to parents when an initial evaluation of a student is requested by the parent or another person; upon the parent's request for a copy; and when a student with a disability is removed from his or her placement to an interim alternative education setting as a result of discipline. A copy of the procedural [safeguards document is available online in many languages](#). The law put various procedures in place for resolving conflicts between parents and schools and requires that parents be notified of their right to access those procedures at least once a year, or at any time they request a due process hearing. Every state must have a formal complaint system and must provide mediation and due process hearings to settle conflicts. In Massachusetts the system is operated by the [Bureau of Special Education Appeals](#).

Are there students with disabilities who are not covered by the Individuals with Disabilities Education Act (IDEA)?

Yes. To be eligible under IDEA, students must meet the eligibility criteria for one or more of the [specific disability categories as defined in the law](#). A student eligible for special education must have a disability and, *on account of that disability*, be unable to access the general education curriculum unless they are provided with specialized instruction. Students with disabilities who are not eligible under IDEA may still qualify for accommodations of some type under [Section 504 of the Rehabilitation Act \(Section 504\) \(see below, as well as link to Section 504, Rehabilitation Act of 1973 in question 1, above\)](#).

C. Disability Rights and Access in Charter Schools: Section 504 of the Rehabilitation Act and the Americans with Disabilities Act

What is the Americans with Disabilities Act?

The Americans with Disabilities Act (ADA) is a federal law that requires places of public accommodation to provide goods and services to persons with disabilities on an equal basis with the general public. Such public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment. They also must comply with specific requirements related to architectural standards for new and altered buildings; reasonable modifications to policies, practices, and procedures; effective communication with people with hearing, vision, or speech disabilities; and other access requirements. For schools specifically, the ADA requires that, as recipients of federal funds, public schools must ensure that they operate programs and activities that are, when viewed in their entirety, readily accessible to handicapped persons. [ADA resources and publications](#) are available from the U.S. Department of Justice.

What is Section 504 of the Rehabilitation Act?

Section 504 of the Rehabilitation Act (Section 504) is a federal law that prohibits discrimination based on a disability, and applies to all school districts (including charter schools) as recipients

of federal funds. Section 504 covers eligible students, employees, and other individuals with disabilities and requires that they be provided reasonable accommodations. An individual is considered eligible under Section 504 if they have a disability that substantially limits one or more major life functions. Examples of a major life function include, but are not limited to, hearing, seeing, walking, speaking, learning, breathing, or performing manual tasks.

How do Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and Individuals with Disabilities Education Act (IDEA) differ?

Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA) define disability much more broadly than the Individuals with Disabilities Education Act (IDEA). The IDEA specifically addresses access to education. Section 504 and the ADA include any individual who has a physical or mental impairment that substantially limits one or more life activities, has a record of such impairment, or is regarded as having such impairment. Reasonable accommodations are required by Section 504 and the ADA. Section 504, however, specifically requires the provision of educational and related aids and services designed to meet the individual educational needs of the student.

Section 504 of the Rehabilitation Act and ADA are enforced by the Office for Civil Rights, a component of the U.S. Department of Education. Compliance with IDEA is enforced by the Office of Special Education and Rehabilitative Services (OSERS), another component of the US Office of Education. Further description of the relationship between these two federal laws is found on the [US Department of Education website](#).

What are examples of disabilities that may be covered under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act but not under the Individuals with Disabilities Education Act?

Students who have chronic illnesses such as diabetes or a physical impairment that may require the use of a wheelchair may be eligible for specific accommodations or services. These same students may not meet the Individuals with Disabilities Education Act (IDEA) eligibility criteria for special education because they may not require specially designed instruction. Such students are entitled to an evaluation and to a free and appropriate public education (FAPE) if they are found to meet the definition of "handicapped person" as specified in Section 504 of the Rehabilitation Act (Section 504). A Section 504 Accommodation Plan is usually developed for these students. Another resource on Section 504 is the U.S. Department of Education document [*Frequently Asked Questions about Section 504 and the Education of Children with Disabilities*](#).

Are there requirements regarding physical accessibility of charter school facilities?

Yes. Pursuant to both Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA) a local education agency (LEA), including a charter school functioning as an LEA, may not exclude persons with disabilities, including parents and students, from the benefits of programs and activities offered at the school because of inaccessible facilities. See [*ADA Standards for Accessible Design*](#) for more information.

D. Charter Schools and the Massachusetts School Accountability System

What is the school accountability system in Massachusetts?

In February 2012 Massachusetts was granted a waiver approving specific forms of flexibility from certain requirements of the federal education law: the No Child Left Behind Act of 2001 (NCLB). Beginning in the 2012-13 school year, Massachusetts implemented a unified system for classifying districts and schools into five accountability Levels, including charter schools. The NCLB goal of 100 percent of students reaching proficiency by the 2013-14 school year was replaced with the goal of reducing proficiency gaps by half by the end of the 2016-17 school year. The 100-point Composite Performance Index (CPI), gauges progress toward this goal. Instead of the NCLB labels of identified for improvement, corrective action, and restructuring, all districts and schools, including charter schools, are classified into one of five accountability and assistance levels. Districts are also assigned a determination of need for special education technical assistance or intervention. Further details about the district accountability system are available in multiple documents available on the DESE webpage on the [State System of Accountability](#).

What parts of the Commonwealth's Framework for District Accountability are particularly relevant to charter schools?

Student assessment: Charter schools are subject to the same accountability requirements as other public schools in Massachusetts, and their students must participate in the state assessment system.

Teacher qualifications: Charter schools are required to comply with the federal requirement that all public school teachers of core academic subjects meet state standards for licensure. In Massachusetts this includes the requirement for holding a bachelor's degree, and for passing MTEL tests in both the content area and the general Communications and Literacy MTEL; in addition, the charter school law is explicit on the subject of the requirement for teachers to pass the MTEL: "No teacher shall be hired by a commonwealth charter school who is not certified pursuant to section 38G unless the teacher has successfully passed the state teacher test as required in said section 38G" (M.G.L. Chapter 71, §89 (hh) (ii)).

As stated in the DESE guidance document, [Charter School Technical Advisory 07-01—Amended February 2011](#), teachers in Commonwealth charter schools must meet all of the same requirements, *except that of licensure*. The one exception to this rule is that all schools enrolling English Language Learner (ELL) students must employ no less than one licensed teacher of English as a Second Language. Further information on teacher qualifications for special educators in charter schools is found under question 19 below.

What specific Massachusetts Accountability System assessment requirements pertain to students with disabilities?

By state and federal law, all students, including those with disabilities, must participate in the state's assessment and accountability system. A state's assessment system must be valid and accessible for use by students with disabilities and students covered under Section 504 of the Rehabilitation Act (Section 504). The participation of students with disabilities in such assessments is covered in the Individuals with Disabilities Education Act (IDEA) and requires the following:

- Students with disabilities must be included in state and district-wide assessment programs with appropriate accommodations, if necessary.
- Alternate assessments must be provided for those students who cannot participate in state and district-wide assessment programs even with accommodations.
- The IEP for all students with disabilities will specify how they will participate in state assessments. In Massachusetts the IEP form prompts teams to specify testing accommodations according to the subject area being assessed, since students may require different supports for reading, math, or other specific content areas.

It is important to note that a procedure for the inclusion of all students with disabilities in large scale assessments is a developing area of knowledge and practice. [The National Center on Educational Outcomes](#) provides extensive resources on this topic.

Must students with disabilities be included in Massachusetts school/district accountability reports?

Yes. As stated in NCLB and in Massachusetts state system of accountability, the school and district's accountability level for all public school districts, including charter schools, must be calculated by applying the same high standards of academic achievement to all public elementary and secondary school students in the state. The law also requires selected subgroups, one of which is students eligible for special education, to be considered separately under certain conditions in determining whether a school has met accountability system improvement targets. In February 2012, the Massachusetts Department of Elementary and Secondary Education (ESE) received approval from the U.S. Department of Education (USED) to waive certain requirements of the No Child Left Behind law. As a result, the [Progress and Performance Index \(PPI\)](#) has replaced Adequate Yearly Progress (AYP) as [the primary method of providing accountability determinations for districts and schools](#).

What has not changed as a result of the MA 2012 flexibility waiver is the provision that allows states to count the results of students with significant cognitive disabilities who take alternate assessments differently from the results of all other students. In Massachusetts, the vast majority of students with disabilities take standard MCAS or PARCC tests, either with or without accommodations, at the grade specified for assessment in that subject. A very small number of students with the most significant disabilities, about 1% statewide, take the MCAS Alternate Assessment. Each student's IEP or 504 team decides how, not whether, the student will participate in statewide assessment in the coming year. Guidelines used by IEP Teams to make these decisions can be found in the Department publication, [Requirements for the Participation of Students with Disabilities in MCAS](#) which is updated annually.

“Students with disabilities” is one of the subgroups for which the state accountability system requires disaggregated reports of assessment results. NCLB provides, however, that a state may not use disaggregated data for one or more subgroups to report achievement results if the number of students in those subgroups is insufficient to yield statistically reliable information or if the results would reveal personally identifiable information about an individual student. Determinations are made for districts and schools (including single school districts and charter schools) that serve 20 or more students and for all subgroups of 25 or more students. Subgroups are eligible for an annual Progress and Performance Index calculation (PPI) if a sufficient number of students were assessed in English language arts and mathematics in the most recent year and one of the two prior years. Median student growth percentiles (SGP) are not calculated

if the number of students included in the aggregated SGP is less than 20; for special education indicator data, data are suppressed for enrollment counts fewer than six.¹

Additionally, the U.S. Department of Education requires Massachusetts to determine which districts have specific needs for technical assistance or intervention in the area of special education. A district's determination is based on six categories: Meets Requirements – Provisional (MRP); Meets Requirements (MR); Meets Requirements – At Risk (MRAR); Needs Technical Assistance (NTA); Needs Intervention (NI); and Needs Substantial Intervention (NSI). In most cases these categories correspond to the district's accountability and assistance level, except when the district has specific compliance needs. This designation helps signal whether outcomes for all students in the district indicate progress, including that of students with disabilities, or whether technical assistance and/or intervention is needed to improve outcomes for all children, especially students with disabilities. Upon classification of a district into Level 3, two additional focus areas for special education will be reviewed at the district level and may require action: (A) over-identification of low-income students as eligible for special education and (B) inordinate separation of students with disabilities across low income and/or racial groups.

What qualifications are required for special education teachers, including special education teachers in charter schools, under Massachusetts law?

The guidance on this issue found below is also found on the [charter school website](#).

The IDEA 2004 special education teacher qualifications requirements are complex; refer to Title 34, Section 300.18 titled [Highly Qualified Special Education Teachers](#).

Massachusetts Law: Meeting the Charter School Statute

To satisfy the state charter school statute and regulations, all charter school special education teachers must pass the state's two-part MTEL, which consists of the Communication and Literacy Skills test and the relevant subject matter knowledge test(s), within one year of employment. Massachusetts' charter school statute states teachers in Commonwealth charter schools, including special education teachers, are not required to be licensed. Charter schools should note, however, that any staff implementing specialized instruction included in an Individual Education Plan (IEP) must meet the qualifications for service delivery provider established by the Department pursuant to IDEA § 34 CFR 300.156(a)

"The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities."

The appropriate qualifications for a Commonwealth charter school staff to independently deliver specialized instruction are:

- Hold a valid (in- or out-of-state) license or its equivalent as a special education teacher for the appropriate grades and severity level and/or
- Have successfully completed an undergraduate or graduate degree in an approved special education program.

¹ For more information, please see <http://profiles.doe.mass.edu/help/data.aspx?section=assess>.

Specialized instruction provided by personnel who do not meet the above qualifications must be delivered in consultation with a qualified individual who provides supervision and oversight of the delivery of the specialized instruction.

Supervision of unlicensed special education instructors: Because charter schools may employ unlicensed teachers, charter schools need to be aware that the federal law (IDEA) requires that any special educator providing direct services to students on an IEP be directly supervised by a licensed or qualified person, who may be licensed as a teacher or special education administrator. This should be documented on those students' IEPs, typically in "Grid A" as a consult. The Department of Elementary and Secondary Education (ESE) Massachusetts Charter Schools [Teacher Qualifications in Massachusetts Charter Schools](#) clarifies the Massachusetts and federal professional qualification requirements.