

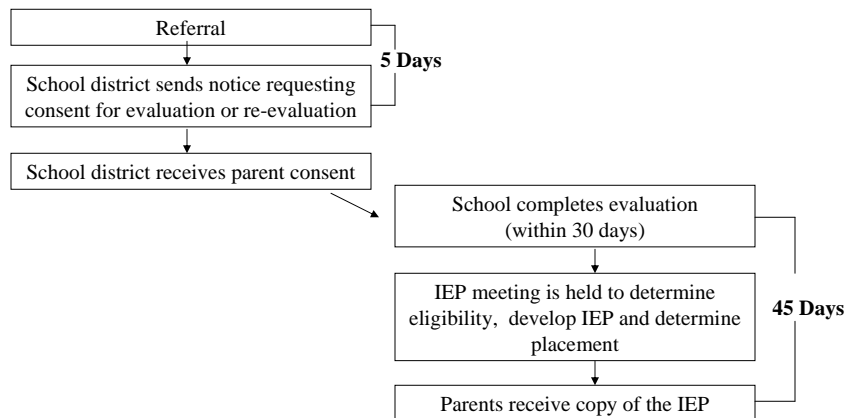
Evaluations A to Z

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FCSN Annual Conference
March 14, 2009

20 USC 1414 Evaluations

- A State educational agency, other State agency, or local educational agency shall conduct a *full and individual* initial evaluation,
 - in accordance with this paragraph and subsection (b) of this section,
 - **before** the initial provision of special education and related services to a child with a disability under this subchapter.

SPECIAL EDUCATION TIMELINE 603 CMR 28.04



Evaluations: Who Can Refer

- A parent
- Any person in a caregiving position
- Any person in a professional position
 - 603 CMR 28.04

Consent for Evaluations

- Within 5 school days the district must send notice asking for written consent
 - notice must indicate **nature** of assessments and **who** will conduct assessment
- All notices must be in parents' primary language
- Option to meet for pre-evaluation conference

71B, Sec. 3

- The parents or guardians of such child **shall be** consulted about the content of such evaluation and the evaluators being used

Consent to Evaluations not Consent to Services

- Parental consent for initial evaluation **must not be construed as consent for initial provision of special education** and related services

New Consent Override Provision

Sec. 300.300(a)(3)

- If
 - the parent of a child enrolled in public school or seeking to be enrolled in public school **does not provide consent for initial evaluation** under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent,
 - the public agency **may, but is not required** to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516), if appropriate,
 - except to the extent inconsistent with State law relating to such parental consent. Sec. 300.300(a)(3)
- (ii) The public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation

Consequence of Failure to Consent

- If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent--
 - **(aa)** the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and
 - **(bb)** the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent. **20 USC § 1414 (a)(1)(D)(III)**

Consent Exception State Wards Sec. 300.300(2)

- For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if—
 - (i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
 - (ii) The rights of the parents of the child have been terminated in accordance with State law; or
 - (iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child

§ 300.302 Screening

- The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation **shall not be considered** to be an **evaluation** for eligibility for special education and related services.

Evaluation: REQUIRED ASSESSMENTS

- ✓ An educational assessment
- ✓ An assessment in all areas related to the suspected disability
- ✓ A psychological assessment, health assessment, or home assessment if requested by parent or recommended by district

(note: for children whose behavior impedes learning, consider functional behavior assessments)

71B Sec.3

- Said evaluation shall include:
 - an assessment of the child's current **educational status** by a representative of the local school department,
 - an **assessment by a classroom teacher** who has dealt with the child in the classroom,
 - a complete **medical assessment** by a physician,
 - an assessment by a **psychologist**,
 - an assessment by a nurse, social worker, or a guidance or adjustment counselor of the general **home situation** and pertinent family history factors

Optional Assessments

603 CMR 28.04(2)(b)

- Comprehensive health assessment by a physician
- Psychological assessment by a certified school psychologist, licensed psychologist, or licensed educational psychologist, including an individual psychological examination
- Home assessment by nurse, psychologist, social worker, guidance or adjustment counselor or teacher - may include home visit with agreement of parents

MGL c71B, §3 Assessment Requirements -Specialists

- assessments by such specialists as may be required in accordance with the diagnosis including when necessary, but not limited to:
 - a neurologist
 - an audiologist
 - an ophthalmologist
 - a specialist competent in speech, language and perceptual factors
 - a psychiatrist

Assessments if Blind – 71 B §3

- shall also include an assessment of the appropriateness of Braille instruction for the child. Such assessment shall include
- (i) the child's efficiency in reading and writing print as compared with children who do not have a disability;
- (ii) the child's stamina in using print before fatigue occurs;
- (iii) the child's prognosis for further sight loss; and
- (iv) the child's present competence in Braille and a detailed explanation as to whether instruction is appropriate, conducted by a certified teacher of students with visual impairments.
- Any such instruction found to be essential to meet such child's disability shall be available at a frequency and duration sufficient to meet fully the educational needs of the child. Braille instruction may be used in combination with other special education services appropriate to the child's educational needs

Considerations – ASD -71B §3

- Team shall consider and shall specifically address the following:
- the verbal and nonverbal communication needs of the child;
- the need to develop social interaction skills and proficiencies;
- the needs resulting from the child's unusual responses to sensory experiences;
- the needs resulting from resistance to environmental change or change in daily routines;
- the needs resulting from engagement in repetitive activities and stereotyped movements;
- the need for any positive behavioral interventions, strategies, and supports to address any behavioral difficulties resulting from autism spectrum disorder;
- and other needs resulting from the child's disability that impact progress in the general curriculum, including social and emotional development.

IDEA EVALUATION PROCEDURES

- No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
- The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

34 CFR §300.532(f) & (g)

20 USC 1414(b) (2) Conduct of evaluation

- In conducting the evaluation, the local educational agency shall--
- **(A)** use a **variety of assessment** tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;
- **(B)** not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and
- **(C)** use **technically sound instruments** that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

Assessment Requirements

- **(i)** are selected and administered so as not to be discriminatory on a racial or cultural basis;
- **(ii)** are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;
- **(iii)** are used for purposes for which the assessments or measures are valid and reliable;
- **(iv)** are administered by trained and knowledgeable personnel; and
- **(v)** are administered in accordance with any instructions provided by the producer of such assessments;

» 20USC 1414(b)(3)

IDEA EVALUATION PROCEDURES

- The school district must use technically sound instruments that may assess the relative contribution of cognitive and **behavioral factors**, in addition to physical or developmental factors.

34 CFR §300.532(i)

Evaluations must be in Native Language

Each public agency shall ensure, at a minimum, that the following requirements are met:

- (a)(1) Tests and other evaluation materials used to assess a child under Part B of the Act—
 - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and
 - (ii) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so

» 34 CFR 300.532

Native Language – 34 CFR 300.19

- (a) As used in this part, the term **native language**, if used with reference to an individual of limited English proficiency, means the following:
- (1) **The language normally used by that individual**, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.
 - (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.
 - (b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication).

Translations are Required for Effective Communication

603 CMR 28.07(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.

Importance of Language in Evaluations

- **In Re: Bourne Public Schools
BSEA # 03-2617 (Crane 2004)
ordering : a neuropsychological
evaluation by a neuropsychologist with
extensive experience and expertise
evaluating children whose first
language is not English**

Children who Transfer

- assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations

Other Assessment Requirements

300.305(c)

- (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

Chapter 71B: Section 7. Tests for selection of children for referral, diagnosis, or evaluation

- No results of standardized or local tests of ability, aptitude, attitude, affect, achievement, or aspiration may be used exclusively in the selection of children for referral, diagnosis, or evaluation. *Such tests shall be approved by the department in accordance with regulations issued by the board to insure that they are as free as possible from cultural and linguistic bias or, wherever necessary, separately evaluated with reference to the linguistic and cultural groups to which the child belongs.*

71B §3 Requirements

- Those persons assessing said child shall maintain:
 - a complete and specific record of diagnostic procedures attempted and their results,
 - the conclusions reached,
 - ***the suggested courses of special education best suited to the child's educational needs***, and
 - the specific benefits expected from such action.

More 71B §3 Requirements

- A suggested special education program may include family guidance or counseling services.
- When the suggested course of study is other than regular education those persons assessing said child shall
 - present a method of monitoring the benefits of such special education and conditions that would indicate that the child should return to regular classes, and
 - a comparison of expected outcomes in regular class placement.

Content of Reports -603 CMR

- 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*

Assessments to be Provided to Parents

- The written record and clinical history from both the evaluation provided by the school committee and independent evaluation, if any, shall be made available to the parents, guardians, or persons with custody of the child (71B §3)
- Summaries of such assessments shall be completed so as to ensure their availability to parents at least two days prior to the Team meeting. (603 CMR 28.05)

28.04: Referral and Evaluation



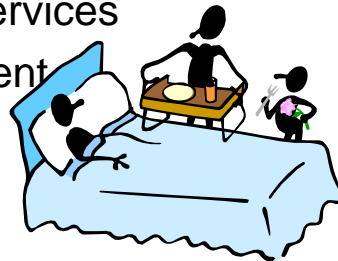
- (4) Unscheduled evaluations for medical reasons (for eligible students out for more than 60 days)
- (5) Independent evaluations
 - ⇒ publicly funded for students with free/reduced lunch.

“The assessor may recommend appropriate types of placements, but shall not recommend specific placements.” (school and IEE)

Responsibilities of the School Principal 28.03(3)(c)

Educational services in home or hospital.

- ANY STUDENT (not just SPED)
- physician's order
- out of school => 14 days
- arrange educational services
- not SPED unless student is eligible



Reevaluations 20 USC 1414(a)(2)(A)

- A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c) of this section--
- **(i)** if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- **(ii)** if the child's parents or teacher requests a reevaluation

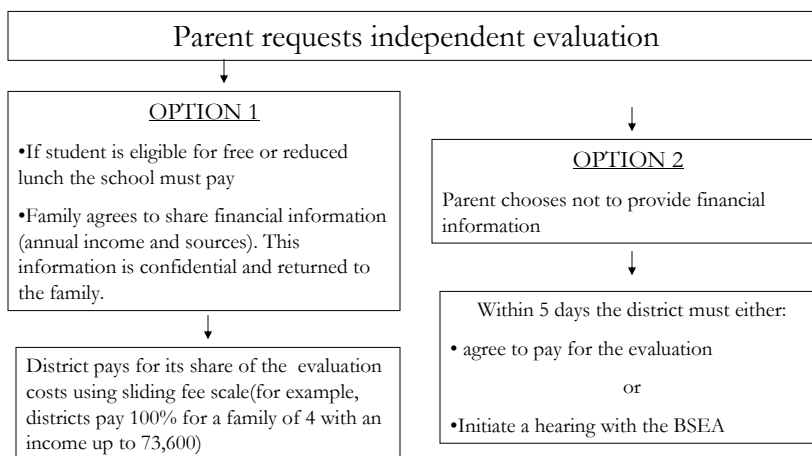
Re-Evaluation on Change of Placement Exceptions

- An evaluation is not required before the termination of a child's eligibility if the termination of eligibility is:
- Due to graduation from secondary school with a regular high school diploma; or
- Because the child exceeds the age of eligibility for a free appropriate public education under state law.
- For a child whose eligibility under IDEA terminates under circumstances described above, an LEA must provide the child with a summary of his or her academic achievement and functional performance, including recommendations on how to assist the child in meeting postsecondary goals.
- 300.305(e)

Importance of Assessments

- Assessments of a child's progress are not bureaucratic, but an essential component of good instruction.
- The Department believes that good instruction depends on repeated assessments of a child's progress.
- This allows teachers to make informed decisions about the need to change their instruction to meet the needs of the child, and also provides parents with information about their child's progress so that they can support instruction and learning at home.
- Parents should be informed if there are concerns about their child's progress and should be aware of the strategies being used to improve and monitor their child's progress.

Independent Evaluations:



Note: under option 1 the school cannot initiate a hearing with the BSEA

Independent Evaluations at Parent Expense

- The parent may obtain an independent education evaluation at private expense ***at any time.*** 603 CMR 28.04(5)(b)

IEEs- Public Funded – What

- When the parent seeks and receives public funding for an independent education evaluation under these provisions, the parent may request independent assessments in **one, more than one, or all of the areas assessed by the school district.**

IEE – State – Timing

- The right to this publicly funded independent educational evaluation under 603 CMR 28.04(5)(c) continues for sixteen (16) months from the date of the evaluation with which the parent disagrees.

– 603 CMR 28.04(5)(c)(vi)

IEEs – State Sliding Scale

- 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.

IEEs – Obtaining Financial Info

- 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).

IEEs – Sliding Scale

- 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:
 - (i) 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.
 - (ii) 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.
 - (iii) 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
 - (iv) If the family income is over 600% of the federal poverty guidelines, the district shall have no obligation to cost-share with the parent.

Family Size	400% of poverty	500% of poverty	600% of poverty
1	35,920	44,900	53,880
2	48,480	60,600	72,720
3	61,040	76,300	91,560
4	73,600	92,000	110,400

IEEs – Sliding Scale – Financial Information

- 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.

IEEs – Federal Right Funded

- 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.
- The district shall either agree to pay for the independent education evaluation or within five school days, 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

In Re: Mansfield Public Schools, 9 MSER 361,
November 7, 2003

Hearing officer, Lindsay Byrne, BSEA# 03-4709

- H.O. found that the district's failure to seek a hearing on the issue of their denial of the parents' request for IEE within the requisite 5 days, resulted in their obligation to "reimburse the Parents for all out-of-pocket expenses associated with securing independent occupational therapy and speech-language evaluations in the spring of 2003."

IEEs – who & how much

- 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. 603 CMR 28.04(5)(a)

IEEs- Completion

- 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**

IEEs – Consideration

- 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.

In Re: Mansfield Public Schools BSEA # 05-4247

- Parent has made no allegations that Mansfield has declined to evaluate Student in an area of suspected need, including the areas addressed by her independent evaluation, or that Mansfield's evaluations would not be comprehensive or appropriate. Rather, Parent has essentially ignored the process of Mansfield evaluating her son – that is, she declined to consent to any of Mansfield's proposed evaluations and did not ask Mansfield to conduct any alternative evaluations. Parent simply sought to have her independent evaluation funded without agreeing or disagreeing with any actual or proposed evaluations by Mansfield.
- The above-quoted regulatory language makes clear that Parent may not obtain public funding of her independent evaluation through the process that she has chosen. At the very least, the above state and federal regulatory language requires that Parent's request for a publicly-funded independent evaluation reflect a disagreement with Mansfield's evaluations.

In Re: Ellora & South Hadley Public Schools

BSEA#03-1385

- Pursuant to 603 CMR 28.04 (5) (d) the school may decline to fund an independent evaluation upon a showing that its own evaluation is comprehensive and appropriate.
- Here, South Hadley told the Parent it declined to fund her request because “the rush to ‘label and disable’ may well have an adverse effect on this capable child” and “why were its potential consequences not identified as part of her original evaluation?”
- Moreover, South Hadley did not offer any testimony or argument at the hearing bearing on the comprehensiveness and appropriateness of its original speech-language evaluation in the area of expressive and receptive syntax.

South Hadley –part 2

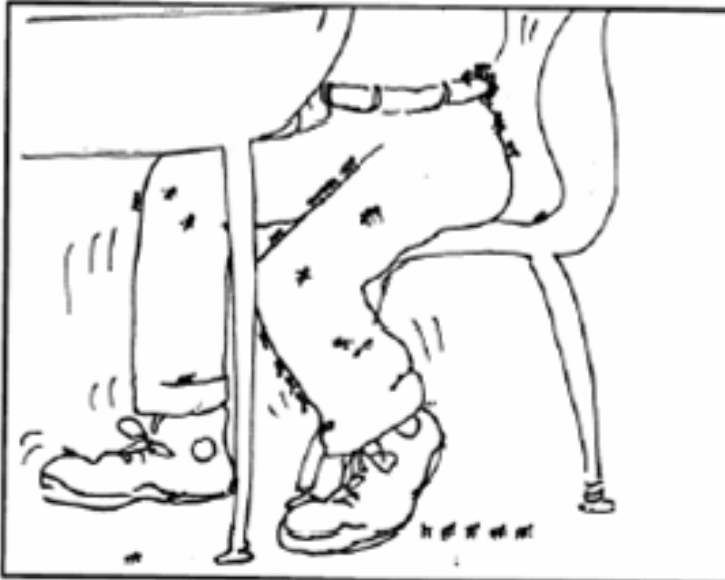
- [the district] demonstrated that the evaluations already available to the Team were comprehensive and appropriate, that the requested evaluation went well beyond the scope of the challenged evaluation, and that any information developed as a result of the requested evaluation would be duplicative and of limited value in planning Ellora’s educational program.
- Therefore, I find that the School’s refusal to fund the evaluation conducted by Dr. Loomis was justifiable

In Re: Foxborough Regional Charter School
BSEA # 06-3158 –Facts

- Parents requested that Foxborough conduct evaluations of Student with respect to social skills, pragmatic language skills and functional behavioral assessment
- Parents began to look for evaluators who were knowledgeable regarding Asperger's syndrome and who would accept the Massachusetts rates for evaluations. Parents inquired with the Family Autism Center, Asperger's Association of New England, Community Autism Resources, Masspac (a listserv providing information and support families in Massachusetts), Federation for Children with Special Needs, Massachusetts Advocates for Children, and Friends and Families of Autistic Spectrum Disorders Support Group. Parents asked for referrals to providers who would accept the state rates, and they called many providers. Every provider reported to Parents that they would not accept state rates for school-based evaluations with respect to a social skills assessment and functional behavioral assessment.

In Re:Foxborough Regional Charter School
BSEA # 06-3158 – Decision

- It would be unreasonable for Parents to do anything more than they have done. I find that Parents have made out a *prima facie* case that assessments at higher than normal rates are necessary in order for the independent evaluations are to be carried out.
- Foxborough has made no apparent attempt to rebut Parents' *prima facie* case. Foxborough has provided no evidence that would support the proposition that evaluators may be identified or are otherwise available to perform the two evaluations pursuant to the rates set by Massachusetts Division of Health Care Finance and Policy.



AFTER A HASTY SPECIAL EDUCATION PLACEMENT FOR BEHAVIOR PROBLEMS, SCHOOL OFFICIALS WERE EMBARRASSED TO LEARN THAT MARTY REALLY DID HAVE ANTS IN HIS PANTS.

Experts are Essential

In Re: Lunenburg Public Schools and Department of Mental Health, BSEA #05-0799, 11/24/04 (Parents were successful in their efforts to win a residential placement for their son where the hearing officer found their experts to be "credible" and "persuasive" regarding the student's emotional and behavioral needs).

- *In Re: Westford Public Schools, BSEA #05-0621, 12/22/04 (Parent lost in her effort to win a residential placement for her son where the hearing officer found that the parent's own expert agreed that the school district's proposed day program plus a home-based program would meet the student's needs).*

Essential Experts

- **In re: Elizabeth R. L. & Worcester Public Schools** BSEA #06-2557 (2006)(Sherwood)
- Parent failed to provide sufficient evidence supporting her position that this asserted non-compliance resulted in a denial of FAPE such that even with current compliance, a more restrictive placement is necessary. She provided no expert testimony supporting her claim. It may be that Elizabeth continues to exhibit self-injurious behaviors and that she is not yet toilet trained. However, Mother's lone opinion that such behaviors prove a lack of FAPE amounts to mere conjecture and is not credited. Absent any credible testimony that she should be making more progress, given her disabilities, or showing that Worcester is failing to develop appropriate behavioral plans, to use appropriate techniques, or to employ properly trained staff working directly with Elizabeth, Mother has not met her burden of persuasion. Parent's one expert witness, Dr. Samant, provided nothing that would support Parent's conclusions.

Importance of Experts

- Peter J. Kuriloff et al., *When Handicapped Children Go to Court: Assessing the Impact of the Legal Reform of Special Education in Pennsylvania* 153 (National Institute of Education Project No. Neg.-003-0192, 1979), available in ERIC Doc. Reproduct. Service No. 196256.

Experts Need to Observe

- **In Re: Ipswich Public Schools BSEA #07-0962 (2006)(Berman):** At the time of his testimony, however, Dr. Castro had not reviewed Student's current IEP, had not observed Student at home or in school, and, significantly, did not have current information about when and how often Student had actually participated in Ipswich's program, or how he had responded to same. These factors diminish the weight I give Dr. Castro's recommendations on the required credentials of service providers.

Experts Need Access

- **In Re: Selena W. & the Newton Public Schools, BSEA #04-3458/04-4310 (Byrne)**
- Although Dr. F conducted a thorough evaluation and her results jibe with those reported by school evaluators, I do not give her recommendation sufficient weight to outweigh those of the school personnel who know Selena in her day to day environment. Dr. F did not have the advantage of observing Selena functioning outside a one-to-one testing situation, nor was she able to discuss Selena's classroom functioning with any of her teachers, nor was she aware that the regular classroom modifications she was suggesting had been implemented in two different schools and three different classes by four different teachers, with little positive effect. I am persuaded that, in this matter, the consistent recommendations of those professionals who have worked with Selena day in and out over the past year should be accorded significantly more weight than those made by one psychologist, however competent, who had only a limited opportunity to see Selena function in a protected setting.

The Right to Observe

- *603 CMR 28.07(1)(a)(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.*
- *Letter to Wessels, 16 EHLR 735 (OSEP 1990) (if the district observed the child as part of its evaluation, or its evaluation policies permit “in-class observation of a child, the independent evaluator has the right to do so”);*
- *Toledo Public Schools, 508 EHLR 197 (SEA Ohio 1986) (private evaluation “may be conducted with access to the school setting”).*

New Observation Law (71B Sec.3)

- To insure that parents can participate fully and effectively with school personnel in the consideration and development of appropriate educational programs for their child, a school committee shall, upon request by parents, provide timely access to parents and/or parent-designated independent evaluators and educational consultants for observations of a child’s current program and/or of any program proposed for the child, including both academic and nonacademic aspects of any such program.

Right of Access (new observation law)

- Parents and/or their designees shall be afforded **access of sufficient duration and extent** to enable them to evaluate the child's performance in a current program and/or the ability of a proposed program to enable the child to make effective progress.

Limitations (new observation law)

- School committees shall impose **no conditions or restrictions** on such observations that are not necessary to ensure the safety of children in a program or the integrity of the program while under observation or to protect children in the program from disclosure by an observer of confidential and personally identifiable information in the event such information is obtained in the course of an observation.

**In Re: Weymouth Public Schools
BSEA # 09-1335**

- Hearing Officer granted parent's request to observe program for 13 hours, finding that school district had not established good reasons to limit or deny the request.

Advisory SPED 2009-2

http://www.doe.mass.edu/sped/advisories/09_2.html

- We caution districts against setting ... requirements or requesting resumes of designees. Such policies could be considered an unlawful condition or restriction on the right of parents and their chosen designees to access the child's program for the purpose of evaluation.

Advisory SPED 2009-2

http://www.doe.mass.edu/sped/advisories/09_2.html

- Best practices suggest that these issues are resolved most efficiently and effectively when discussed with the observer, beginning with timely communication from the school to the observer when the request is made.
- For example, timely access following a request to observe a specific classroom which the parties agree can be achieved in an hour, in most circumstances **should be able to be scheduled within a week** of the request.
- In other instances, such as when a designee needs to observe the current and proposed programs, including periods of unstructured time to observe the student's interactions and responses, the observation may take longer to schedule.

Advisory SPED 2009-2

http://www.doe.mass.edu/sped/advisories/09_2.html

- School districts and parents have reported that, typically, observations are between one and four hours.
- While useful as a general rule, the Department recommends that district policies and practices specify that the duration and extent of observations will be determined on an individual basis.
- Districts should avoid rigid adherence to defined time limits regardless of the student's needs and settings to be observed. The complexities of the child's needs, as well as the program or programs to be observed, should determine what the observation will entail and what amount of time is needed to complete it.

Advisory SPED 2009-2

http://www.doe.mass.edu/sped/advisories/09_2.html

- The Department believes that decisions regarding the need to restrict or place conditions on program observations for safety reasons should be made on an individual request basis by building administrators and the child's teacher(s) and service providers, if relevant, based on their professional judgment concerning the needs of the child or children within the program. **These decisions should be made carefully and not for the convenience of the school.**

Advisory SPED 2009-2

http://www.doe.mass.edu/sped/advisories/09_2.html

- We recognize that the classroom routine is affected on some level when any visitor enters the classroom, whether that person is the principal, another teacher, or an individual from outside the school environment. That fact in and of itself is not a basis for denying or restricting access to a classroom. The Department encourages districts to consider the program activities the observer wishes to evaluate and to work with the teacher and the observer on how to avoid or minimize disruption in the students' routines.

Experts Need to Be Qualified

- **In Re: Fall River Public Schools** BSEA # 05-5383 (2005)(Crane):. Although I found Dr. Sisson's relevant education, experience and knowledge to be impressive, I found the qualifications of each of Parent's three experts to be more so.
- Although I do not question the qualifications of Dr. Sisson to render expert opinions regarding Student's needs and how they should be met, I note that much of Dr. Sisson's more recent relevant experience (from 1996 to 2002) was involved in management positions, including responsibility for the development of contracts, for the May Institute.
- Parents' experts (individually and collectively) have stronger clinical experience, particularly over the past ten years.
- Perhaps most importantly, when comparing the testimony of the four experts, I was persuaded that the individual and collective opinions and recommendations of Dr. Audet, Dr. Pinnock and Dr. Carlson were based on a more sophisticated, detailed and complete understanding of Student's needs as a child with autism and how his educational needs should be met in accordance with accepted, professional standards.
- I reached this conclusion notwithstanding the fact that Dr. Sisson has spent more time working directly with Student than any of Parent's three experts..

Qualification –Legal Standard

- The testimony of an expert witness is admissible so long as the factual basis for the expert's conclusions or opinions can be found in the evidence in the record, personal observation by the expert, or a combination of both. [Bethpage Water District v. Hendrickson Bros. Inc., 138 A.D.2d 660](#)

Experts Need Full Information

- **In Re: Southwick-Tolland Regional School District BSEA # 06-6583** (2006) (Crane): Ms. Lafontaine and Dr. Green had the disadvantage of only observing Student on a particular day (Ms. Lafontaine) or only evaluating Student on a particular day (Dr. Green), rather than over a period of time.
- These limitations are inherent in evaluations of a student by someone who is not also working with Student, and the limitation applies to evaluations relied upon by Parent as well as by the School District.
- I find that Ms. Lafontaine and Dr. Green compensated for this limitation by reviewing an extensive number of evaluations, reports and IEPs of Student over a period of many years, and by understanding their own evaluation or observation within this broader context

Experts Need Full Information

- **Student v. Mashpee Public Schools** BSEA #03-1193 (Putney-Yaceshyn 2003)
- The only witnesses who testified that Student was not making effective progress were Mother, Dr. LaMonica, and Mr. Putnam.
- Both Dr. LaMonica and Mr. Putnam testified that they had not seen
 - Student's IEPs,
 - progress reports, or
 - report cards and
 - had not spoken to any Mashpee Public Schools employees regarding Student's performance.
 - They were not familiar with the services being provided to Student or the services available at Mashpee High School.

I did not credit their testimony regarding Student's progress or the level at which he was working

Experts Need Timely Information

- **In Re: Amelia v. Boston Public Schools BSEA # 06-3610 (2006)(Crane):** Two such experts (Dr. Urion and Ms. Effernen), who have impressive expertise and experience, testified to this effect. Their recommendations were strengthened by multi-disciplinary testing (by Dr. Urion's program at Children's Hospital in Boston) and by observation at New Mission and document review (by Dr. Effernen). Both were credible witnesses. Ms. Effernen, in particular, has very substantial experience working with children such as Student, and both have the added credibility of consulting for school districts as well as parents.
- Ultimately, however, I do not find the recommendations of these experts to be persuasive regarding Student's academic needs because subsequent to the evaluations and observations of Dr. Urion (date of evaluation: 2/17/05) and Ms. Effernen (date of evaluation: 11/7/05), Student has been making meaningful and effective academic progress within her current inclusion placement at New Mission.

Experts Need to Testify

- **In Re: Southwick-Tolland Regional School District BSEA # 06-6583 (2006) (Crane):**
- Although I found helpful and relied upon the various professional evaluations in the record, a written evaluation is given less weight than expert testimony unless there is testimonial explanation and clarification from either the author or another professional competent to comment upon the relevance of the evaluation.
- Testimony allows for cross-examination as well as clarifying questions from the Hearing Officer, whereas the document does not.
- Testimony is particularly important with respect to dated evaluations (such as the neuropsychological evaluation in 2002 by Dr. Elin) and various test scores embedded within other evaluations, which through testimony must be explained and/or interpreted in order to provide relevant, useful information for the Hearing Officer.

Expert Costs are not Reimbursable

- ***Arlington v. Murphy***, 126 S.Ct. 2455 (2006):
 - non-attorney expert's fees for services rendered to prevailing parents in IDEA action are not “costs” recoverable from state under IDEA's fee-shifting provision

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