



# Massachusetts Department of Elementary and Secondary Education

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September 15, 2023

Robert Tremblay, Superintendent  
Framingham Public Schools  
19 Flagg Drive, Suite 5  
Framingham, MA 1702

Re: Intake PRS 9505  
Student Name: [REDACTED]  
**Letter of Finding**

Superintendent Tremblay:

[REDACTED], the Massachusetts Department of Elementary and Secondary Education (Department) received a written statement of concern from Kimberly Winslow (Complainant) involving the Framingham Public Schools (District). As the Problem Resolution System (PRS) Specialist inquiring into this matter, I took the following steps:

- Reviewed the statement of concern and supporting documentation
- Spoke with the District's Legal Counsel regarding the statement of concern
- Requested a Local Report from the District
- Reviewed the District's Local Report and supporting documentation submitted to the Department on August 25, 2023
- Reviewed relevant state and federal special education laws and regulations
- Consulted with other Problem Resolution System staff

The Department's inquiries determined noncompliance, and we are advising the District now of this finding, as well as of the required corrective action. The concerns included in the signed statement, a summary of our findings and required corrective actions follow.

## CONCERNS AND FINDINGS

1. The Complainant alleged that the District changed the Student's placement without convening the IEP Team and including the guardians in the determination. The Complainant alleged noncompliance with 603 CMR 28.06(2):

*(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:*

*(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.*

And 34 CFR 300.114 (2):

*2) Each public agency must ensure that—*

*(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and*

*(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or*

*severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.*

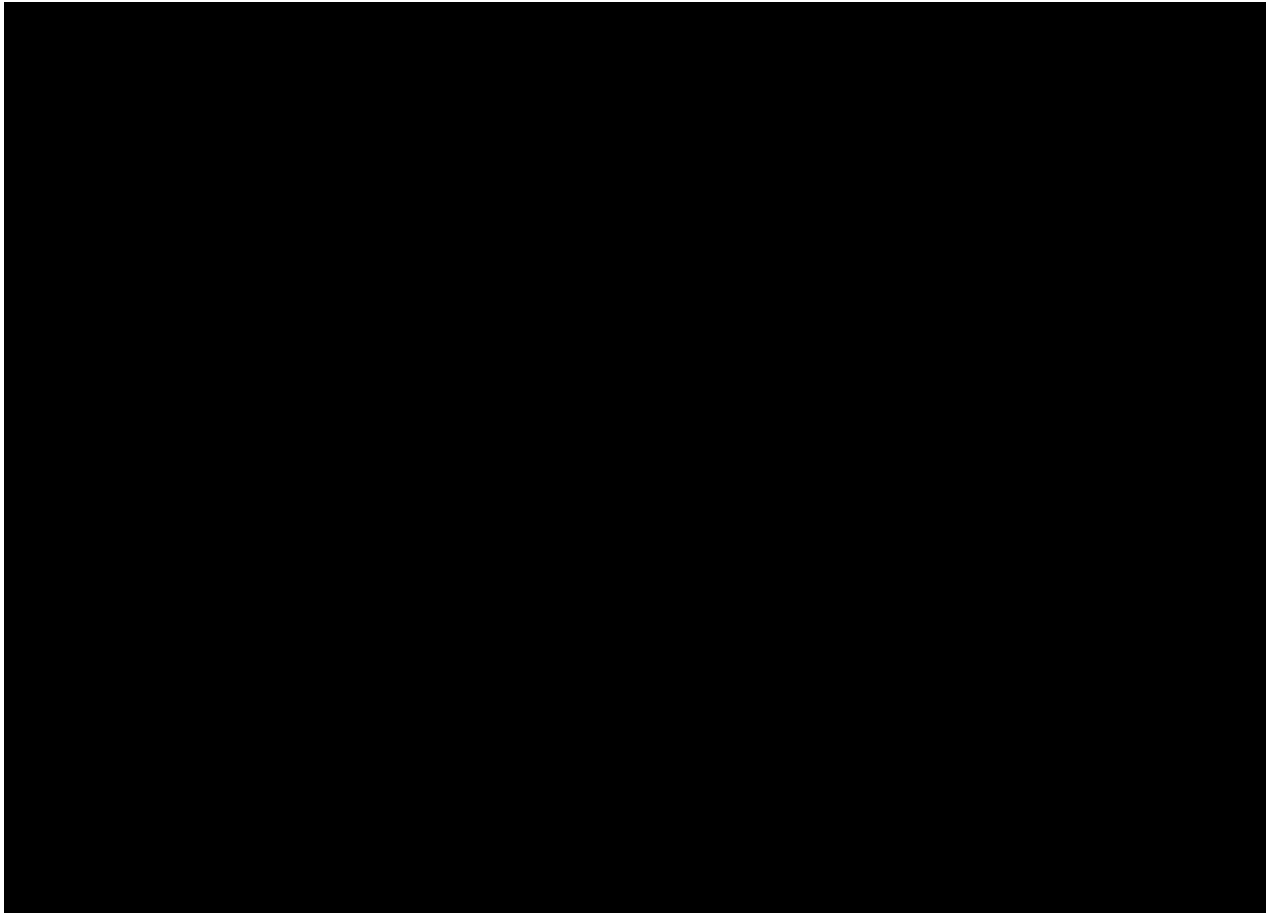
And 34 CFR 300.327:

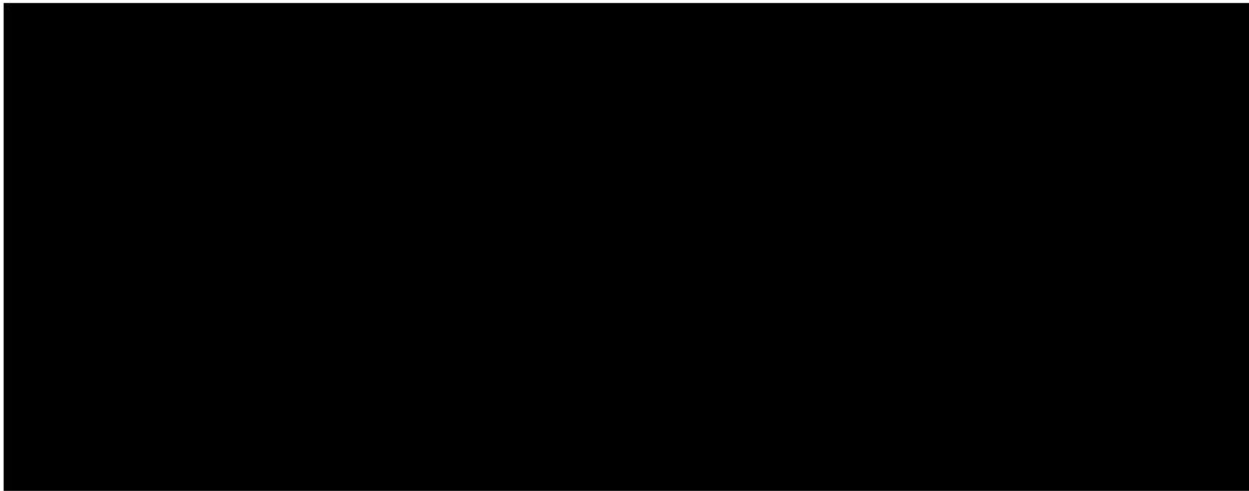
*Educational placements.*

*Consistent with §300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.*

The [REDACTED], grade [REDACTED] student (Student), attended [REDACTED] (School) at the time of the filing of the complaint. The Student transferred into the District for the [REDACTED] school year. [REDACTED]

The Student is eligible for Special Education with a primary disability [REDACTED]. The Local Report contained the Student's IEP dated [REDACTED]. The Service Delivery Grid for the IEP included (unless otherwise specified, start and end dates are [REDACTED])





603 CMR 28.03(c)(1) states: “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.”

The Department finds that the District did not ensure that the student received comparable services upon enrollment in the District. Though the parties agreed to keep the student in the [REDACTED] without the inclusion support, pending resolution through the IEP Team meeting process, the District was obligated to provide those services within [REDACTED] setting. Upon the guardian’s acceptance of the change to the delivery of services, after the IEP Team reconvened, the District remedied this non-compliance.

**The Department finds, and the District acknowledged, that they did not fully comply with 603 CMR 28.06(2) in this matter. Further, the District did not comply with 603 CMR 28.03(c)(1) in this matter.**

The District’s insistence that access to the student’s special education services can only occur in CP classes is problematic. Both 603 CMR 28.06(2) and 34 CFR 300.114 (2) require that students have equal access to education in general education classes unless the services cannot be provided there effectively. The Office for Civil Rights’ *Dear Colleague Letter: Access by Students with Disabilities to Accelerated Programs (2007)*, which can be accessed here: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20071226.html>, offers the following guidance:

The practice of denying, on the basis of disability, a qualified student with a disability the opportunity to participate in an accelerated program violates both Section 504 and Title II. Discrimination prohibited by these laws includes, on the basis of disability, denying a qualified individual with a disability the opportunity to participate in or benefit from the recipient’s aids, benefits, or services, and affording a qualified individual with a disability with an opportunity to participate in or benefit from the aid, benefit or service in a manner that is not equal to that offered to individuals without disabilities. 34 CFR 104.4(a), (b)(1)(i), (b)(1)(ii); 28 CFR 35.130(a), (b)(1)(i), (b)(1)(ii).

...Please note that nothing in Section 504 or Title II requires schools to admit into accelerated classes or programs students with disabilities who would not otherwise be qualified for these classes or programs.

...In general, conditioning participation in accelerated classes or programs by qualified students with disabilities on the forfeiture of necessary special education or related aids and services amounts to a denial of FAPE under both Part B of the *IDEA* and Section 504.

Participation by a student with a disability in an accelerated class or program generally would be considered part of the regular education or the regular classes referenced in the Section 504 and the *IDEA* regulations. Thus, if a qualified student with a disability requires related aids and services to participate in a regular education class or program, then a school cannot deny that student the needed related aids and services in an accelerated class or program. For example, if a student's IEP or plan under Section 504 provides for Braille materials in order to participate in the regular education program and she enrolls in an accelerated or advanced history class, then she also must receive Braille materials for that class. The same would be true for other needed related aids and services such as extended time on tests or the use of a computer to take notes.

Conditioning enrollment in an advanced class or program on the forfeiture of needed special education or related aids and services is also inconsistent with the principle of individualized determinations, which is a key procedural aspect of the *IDEA*, Section 504 and Title II. As noted above, under Section 504, the provision of FAPE is based on the student's individual education needs as determined through specific procedures--generally, an evaluation in accordance with Section 504 requirements. 34 CFR 104.35. An individualized determination may result in a decision that a qualified student with a disability requires related aids and services for some or all of his regular education classes or his program. Likewise, the *IDEA* contains specific procedures for evaluations and for the development of IEPs that require individualized determinations. See 34 CFR 300.301 through 300.328. The requirement for individualized determinations is violated when schools ignore the student's individual needs and *automatically* deny a qualified student with a disability needed related aids and services in an accelerated class or program.

The Student's initial IEP required [REDACTED] which should have been delivered [REDACTED]. While the parties eventually agreed to the change in the service delivery grid [REDACTED] this should not have been a condition for access to the classes. The Student's transcript, IEP evaluations, and grades reflect that [REDACTED] was qualified to enroll in these courses and was due the support described in the IEP with inclusionary support. **The Department finds that the District did not comply with 603 CMR 28.06(2) and 34 CFR 300.114 (2) in this matter, denying the student a Free and Appropriate Public Education (FAPE) and therefore, the Department requires corrective action.**

[REDACTED]

2. Upon changing the Student’s placement, the Complainant alleged that the District did not provide prior written notice. The Complainant also alleged that the notices that were generated were not accurate and did not reflect the family’s requests. The Complainant alleges noncompliance with 603 CMR 28.02(13):

*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.*

And 34 CFR 300.503(a):

*(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—*

*(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;*

*or*

*(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.*

And 34 CFR 300.503(b):

*Content of notice. The notice required under paragraph (a) of this section must include—*

*(1) A description of the action proposed or refused by the agency;*

*(2) An explanation of why the agency proposes or refuses to take the action;*

*(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;*

*(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;*

*(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;*

- (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
- (7) A description of other factors that are relevant to the agency's proposal or refusal.

This allegation contains two elements:

- Element One (1) - failure to provide notice for a change in placement regarding [REDACTED] [REDACTED] (see allegation one), and
- Element Two (2) - subsequent notices that were incomplete and/or delayed, specifically the notice following the [REDACTED] IEP Team meeting and the notices generated from the meetings on [REDACTED].

Regarding Element One (1), the District initially attempted to change [REDACTED] [REDACTED] to provide the student's IEP services. [REDACTED]

[REDACTED] In most circumstances a change in schedule does not result in a change in placement, and typically would not require notice. In this specific case, a notable change of placement occurred because the student was kept in the [REDACTED] classes without the provision of the student's agreed upon IEP services under part [REDACTED] of the IEP service delivery grid. This constituted a change in placement that required notice.

Regarding this matter, the Complainant asserted [REDACTED] that "the District did not provide a cogent written explanation why [REDACTED] [REDACTED]. The District stated this information was provided both verbally and, in an [REDACTED] [REDACTED]. The Department notes that the rationale regarding accessing Special Education Services in CP classes is not consistent with state and federal requirements (see allegation one).

**The Department finds that the District did not comply with 34 CFR 300.503(a) in this matter.**

Regarding Element Two (2), three notices are in question: notice one (1) following [REDACTED] [REDACTED] meeting, notice two (2) following the [REDACTED] meeting, and notice three (3) following the [REDACTED] meeting.

- Notice One (1) following [REDACTED] meeting: This notice is dated [REDACTED] [REDACTED]. Regarding this notice, the Complainant's rejection of the IEP dated [REDACTED] [REDACTED] stated:

We reject the omission of appropriate prior written notice with descriptions of actions refused by the District, explanations why the District refused such action, the basis for the refusals, other options considered by the District, and any other factors relevant to the refusals.

The following requests were refused:

- [REDACTED]
- [REDACTED]
- [REDACTED]

The following areas were not addressed:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

In relationship to the rejected options, the Notice of Proposed District Action (N1) stated: “The TEAM rejected the option of [REDACTED] [REDACTED] In the Department’s N1 notice, in the section, Directions for School Staff, question 3 that must be addressed states: *What rejected options were considered and why was each option rejected?*

The Department’s review of the notice determined that it provides very minimal information, explanation, or description, and did not satisfy question 3 as noted above.

A subsequent N1 dated [REDACTED] and following a reconvening of the IEP Team on [REDACTED], noted [REDACTED] [REDACTED] but did not provide further explanation for the refusal, nor did it include the items that the Complainant alleged were omitted.

An N1 dated [REDACTED] following a [REDACTED] reconvene meeting proposed [REDACTED] and provided explanations for why [REDACTED] were rejected as well as noted, [REDACTED]

[REDACTED]  
[REDACTED]

- Notice Two (2) following the [REDACTED] meeting: This N1 had a notice date of [REDACTED] and a document return date of [REDACTED]. This notice proposed conducting [REDACTED] assessment but did not provide an explanation for the proposal nor the data used for the basis of the proposal. In part, the notice reads:

[REDACTED]  
[REDACTED]  
[REDACTED]

Additionally, the notice was provided nearly three (3) months after the meeting and two (2) months after the consent should have been received. The signed evaluation consent form was dated April 6, 2023. This notice was not provided in a “reasonable time” as required by 34 CFR 300.503(a).

- Notice Three (3) following the [REDACTED] meeting: This N1 had a notice date of [REDACTED] and a document return date of [REDACTED]. This notice stated:

[REDACTED]

This notice was not provided in a “reasonable time” as required by 34 CFR 300.503 (a), nor did it provide an explanation for the refusal.

The Department’s review of the notices finds that explanation regarding proposals and refusals, and in some cases, the data used for the basis of the proposal, were not included in the issued notices. Additionally, neither notice two (2) nor three (3) were provided in a reasonable time. **The Department finds that the District did not fully comply with 603 CMR 28.02(13), 34 CFR 300.503 (a), and 34 CFR 300.503 (b) in this matter.**

3. The Complainant alleged that the District did not conduct all of the required assessments within thirty (30) school days of receiving consent; the Complainant alleges noncompliance with 603 CMR 28.04(2):

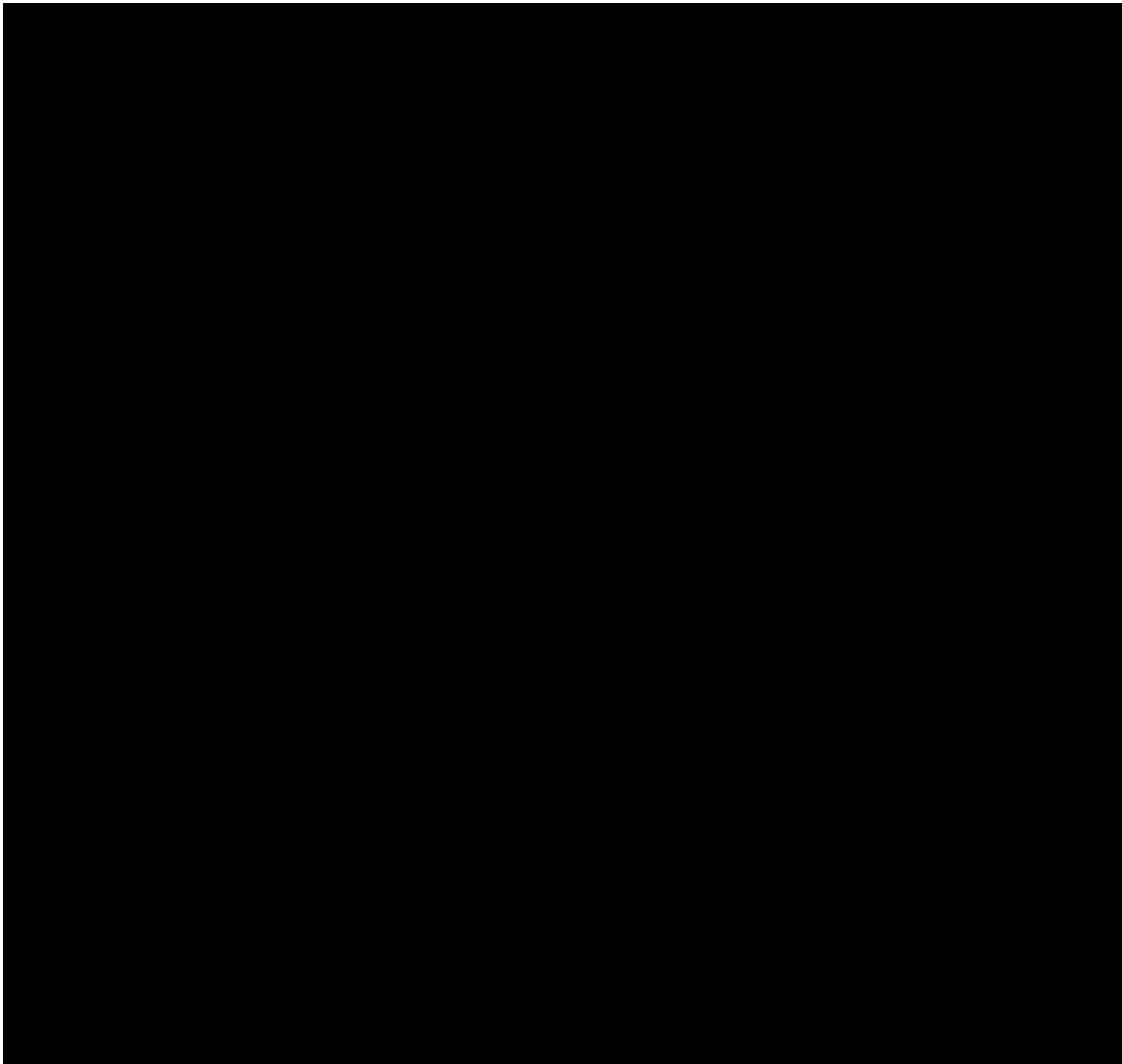
*Upon consent of a parent, the school district shall provide or arrange for the evaluation of the student by a multidisciplinary team within 30 school days. The assessments used shall be adapted to the age of the student and all testing shall meet the evaluation requirements set out in state and federal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

This allegation is relevant specifically to two (2) assessments:

- [REDACTED] assessment, which was consented to on [REDACTED]. The evaluation was conducted on [REDACTED]. The evaluation due date was [REDACTED].
- [REDACTED] assessment, which was consented to on [REDACTED] and was conducted on [REDACTED]; however, the evaluation due date was [REDACTED].

Regarding both evaluations, “the District acknowledges that the evaluation was not completed within the required time and will take corrective action.” The District proposed meeting with District special education staff to review tracking timelines for assessments.

**The Department finds, and the District acknowledged, that the District did not comply with 603 CMR 28.04(2) in this matter. The Department requires corrective action.**



5. The Complainant alleged that following a consent to evaluate on [REDACTED] and a consent to evaluate on [REDACTED], the District did not provide a proposed IEP or notice within forty-five (45) days. The Complainant alleged noncompliance with 603 CMR 28.05(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.*

See also 603 CMR 28.05 (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.*

Regarding this allegation, also see the Department's determination under allegation three (3).

The District received a consent to evaluate pertinent to a [REDACTED].  
[REDACTED] A Team meeting to review the report was held, but not completed, [REDACTED]. The meeting was continued [REDACTED], and a revised IEP issued that was dated [REDACTED]. The Local Report stated: "The District acknowledges that the IEP was not sent within the required time and will take corrective action."

**The Department finds, and the District acknowledges, that they did not fully comply with 603 CMR 28.05(1) and 603 CMR 28.05 (7) in this matter.**

**CORRECTIVE ACTION THAT MUST BE IMPLEMENTED**

1. The District must review with all [REDACTED] IEP Team chairpersons the requirements to ensure that IEPs from other Massachusetts school districts are implemented in a comparable manner, until such time as the District proposes a new IEP and obtains the consent of the parent to the new IEP. Please provide the agenda, the name and title of the reviewer, the staff in attendance by name and title and any materials used in the training.

2. The District must train the [REDACTED] IEP Team chairpersons, and the appropriate [REDACTED] administrators, regarding access for eligible special education students into advanced placement courses. The training must make clear that students eligible for special education, and qualified to enroll in AP courses, must receive the accommodations, modifications, and services consistent with their agreed upon IEPs, which may include direct inclusionary support by special education teachers and paraprofessionals in the AP courses, (i.e., those services categorized under part B of the IEP service delivery grid). Please provide the agenda, the name and title of the reviewer, the staff in attendance by name and title and any materials used in the training.
3. The District must train IEP Team chairpersons at the [REDACTED] on the required content for prior written notice, including addressing all key questions in the directions section of the Department's notices. Please provide the agenda, the name and title of the reviewer, the staff in attendance by name and title and any materials used in the training.
4. Because of the denial of a Free and Appropriate Public Education (FAPE), the District must develop a **compensatory service plan** for the period ([REDACTED] [REDACTED]) when the student remained in AP courses but did not have access to services required by the student's IEP. This corrective action is due **October 13, 2023**.
5. Please submit the requested evidence of the trainings under 1-3 by **October 13, 2023**.
6. After the completion of trainings described in 1-3, please provide **to the Department only because of student confidentiality concerns the following:**
  - A copy of the District's tracking report from October 1, 2023 through November 30, 2023 of initial or re-evaluation timelines and the issuance of the IEP stemming from the initial or re-evaluation IEP Team meetings. Please identify each student by their initials and birthdate. Include the date of receipt of the signed consent form, the dates by which all the evaluations were completed, the date of the IEP Team meeting and the date of issuance for the notice and/or IEP. If the District identifies continued noncompliance with the timelines, please indicate the basis for the noncompliance and any additional corrective action steps taken.
  - Please provide a copy of the Notice of Proposed District Action (N-1) or Notice of the District's Refusal to Act (N-2) for all annual reviews, initial evaluations and re-evaluations issued during the period October 1, 2023 through November 30, 2023. If the District identifies continued noncompliance with the content of the notice requirements, please indicate the basis for the noncompliance and any additional corrective action steps taken.

## COMPENSATORY SERVICES PLAN TO BE DEVELOPED AND IMPLEMENTED

Because the Department finds noncompliance in this case and the resulting denial of a free appropriate public education (FAPE) for this student, the Department requires the District to develop a plan of compensatory services for the student. The District should develop the compensatory services plan with the student's parents, secure the signed approval of the parents, and submit it to the Department on the attached form.

If the District and the parents are unable to develop a mutually acceptable plan of compensatory services by **October 30, 2023**, the Department will develop a plan and specify the compensatory services that the District must provide. Failure to implement such a plan may result in the withholding of funds.

Please provide the Department with the required Corrective Action Report and the Compensatory Service Agreement pursuant to these findings **no later than October 30, 2023**. Please provide the implementation report by **December 15, 2023**.

If the District and the complainant are unable to agree on a Plan of Compensatory Services, the District and complainant must each provide their proposals to the Department by **October 30, 2023**.

A standard response form is enclosed for your use in responding to this request. Please submit all corrective actions, compensatory agreements or proposals and the implementation report to [PRSCAP@mass.gov](mailto:PRSCAP@mass.gov).

**A copy of your Report must also be sent to the person who registered this complaint but do not share any personally identifiable information concerning other students with the complainant. Do not share the implementation report due to the Department by December 15, 2023.**

Also note that for matters related to special education the parties may seek mediation and/or a hearing through the Bureau of Special Education Appeals (BSEA) on the same issues addressed in this letter. Such a hearing, however, is a new proceeding and is not for the purposes of reviewing the Department's decision in this matter. Any order or decision issued by the BSEA on the issues raised in this complaint would be binding.

I would be pleased to provide further clarification of all information and requirements noted above if you find it necessary. Please call 781-338-3762.

Sincerely,

*Christina Farese*

Christina Farese, Ed.D., PRS Specialist  
Problem Resolution System Office



Dean Paolillo, PRS Supervisor  
Problem Resolution System Office

CC: [Redacted]

Enclosures: Response Form