



When Special Education Disputes Arise

A Strategic Guide for Parents Navigating Conflict in Massachusetts — Kimberly L. Winslow, Esq.

The central question in every dispute: *Did my child receive FAPE — a Free Appropriate Public Education?*

Not every mistake is actionable. Focus on FAPE — not procedural perfection.

▶ Red Flags That Predict Future Disputes

Predictive patterns — not guarantees, but signals worth taking seriously.

Repeated IEP Goals — Same goals cycling across years without closure.

Vague Progress Reports — 'Making progress' without data is not a data point.

Regression / No Growth — Supports in place but skills not advancing.

Frequent Discipline — May signal an unidentified or misunderstood disability.

Narrow Evaluations — Gaps in testing lead to gaps in the IEP.

*Under *Endrew F.* (2017), the IEP must be reasonably calculated to enable appropriate progress — not just maintain the status quo. The question is whether the IEP team can defend its program with data.*

🚩 Common Categories of Dispute

Knowing the category shapes your evidence strategy and escalation path.

Evaluation & Eligibility — Everything downstream depends on a complete evaluation.

IEP Development & Implementation — Is the IEP appropriate — and is it being followed?

Placement & LRE — Individual determination. Peers matter.

Transition Planning — Legal obligation for students age 14+.

Behavior & Discipline — Frequent discipline may signal an unmet disability need.

Schools are not required to maximize potential — only to provide a program reasonably calculated to enable effective progress. Disputes often center on the gap between 'appropriate' and 'best.'



Building Your Case — Documentation, Data & Independent Evaluation

Build Your Paper Trail

Documentation creates leverage. Hearing officers rely on evidence.

- 1. Follow-up emails** — After every meeting, call, or conversation — send a written summary of what was discussed and agreed upon.
- 2. Request raw data** — Ask for probe sheets, graphs, and benchmark results. Narrative summaries alone are not sufficient.
- 3. Save everything** — IEPs, N1s, progress reports, evaluations, emails saved as PDFs — organized chronologically. A well-organized file is a strategic asset.
- 4. Track goal repetition** — Log goals that reappear across school years. Side-by-side IEP comparison is often the most powerful evidence in a dispute.
- 5. Keep dated work samples** — Creates a visual record of actual progress — or the absence of it.
- 6. Request student record** — You have the right to inspect and obtain copies of all educational records. Do this proactively — before conflict, not after.

Analyze Data Trends

Trajectory matters more than any single score.

What to Analyze:

- › Evaluation score trajectories across years
- › Progress toward IEP goals each quarter
- › Regression patterns between school years
- › Benchmark results (DIBELS, iReady, STAR)

What to Watch For:

- › Start-of-year vs. end-of-year performance
- › Pull-out vs. classroom performance gaps
- › Functional vs. academic performance gaps
- › Widening gaps — even if scores technically improve

If possible, graph standardized scores across 3+ years. Trend lines tell stories that words don't.

Private Evaluation & In-School Observation

Seek an independent evaluation when:

Stalled progress — Child not gaining skills despite services in place.

Incomplete testing — Gaps in processing, executive function, or attention not assessed.

Potential mismatch — Unexplained gap between potential and academic performance.

Placement uncertainty — Independent data can clarify whether current setting is appropriate.

In-school observation — Links evaluation recommendations to real classroom conditions — and builds witness credibility for potential litigation.

Private evaluators shift leverage. Independent data creates a new factual record the district must engage with. Choose evaluators carefully — quality and specificity of the report matters.



Using the System Strategically — Team Process & Resolution Options

Using the IEP Team Process Strategically

The IEP team process is a legal proceeding with procedural protections. Use it strategically.

BEFORE	DURING	AFTER
<ul style="list-style-type: none"> > Submit concerns in writing before the meeting > Do not attend alone > Request recording — MA is a 2-party consent state 	<ul style="list-style-type: none"> > Ask: “What data supports this?” > Bring and share your own data > Services drive placement — not vice versa 	<ul style="list-style-type: none"> > Review N1 carefully — legally significant > Consider partial rejection (preserves leverage) > Follow up in writing; document all outcomes > IEPs/notices required within 5 school days

Always appear reasonable & collaborative. Not soft advice — your most powerful strategic posture. Parents who are perceived as reasonable are more credible, more likely to settle, and harder to dismiss.

Resolution Pathways — Least to Most Adversarial

Before escalating, ask: do I have sufficient evidence to meet the burden of proof? In Massachusetts, that burden generally rests with the parent.

INFORMAL	COMPLAINT	DUE PROCESS
<p>Facilitated IEP Meeting Neutral facilitator guides a structured conversation. Not mediation. Use when communication has broken down but both parties want resolution.</p> <p>Mediation (BSEA) Written, BINDING agreement. CONFIDENTIAL — cannot be used in due process. Not a discovery tool.</p> <p>USE WHEN: Both parties willing to work toward resolution.</p> <p>NOTE: Review any agreement with an attorney before signing. Do not use if district appears to be stalling.</p>	<p>DESE / PRS Complaint Procedural violations: missed timelines, failure to follow IEP, records refusals. Faster and cheaper. File free online.</p> <p>OCR Complaint Disability discrimination under Section 504 / Title II ADA. Free federal process. Filing does not guarantee investigation, especially given recent federal changes.</p> <p>USE WHEN: PRS – Clear procedural issue OCR – Discrimination.</p> <p>NOTE: Best for black-and-white issues provable with a calendar and a document.</p>	<p>Due Process (BSEA) Substantive IDEA disputes: FAPE, LRE, compensatory services, placement, disciplinary removals >10 school days. Witnesses testify under oath.</p> <p>Burden & Process Parents generally file and carry burden of proof. Most cases resolve before full hearing. Most resource-intensive path. Very few unrepresented parents prevail.</p> <p>USE WHEN: Substantive denial of FAPE with documented evidence.</p> <p>NOTE: This is litigation. Consult an attorney before filing.</p>



What You Can Ask For — Remedies, Terms & Closing Framework

Available Remedies

Know your ask before you file anything. Specificity signals good faith.

Compensatory Education

Additional services to offset those not properly delivered. Does NOT automatically equal time lost — hearing officers have discretion. Relief may be reduced if the student made some progress.

Prospective Placement

When current program cannot meet the student's needs. Hearing officers may only order placement at APPROVED special education schools, unless the parties agree otherwise.

IEE at Public Expense

Independent evaluation paid for by the district if you disagree with the school's evaluation. Must request within 16 months of the date the district completed its evaluation.

Reimbursement for Services

Tutoring, summer services, private OT/speech/counseling obtained when district failed to provide. Tuition reimbursement requires prior written notice to the district before a unilateral placement.

Important Limits

- No monetary damages — no lost wages or pain and suffering
- Attorney's fees: rare — requires prevailing at hearing + federal court action
- Compensatory services ≠ time lost — hearing officer has discretion
- Placements only at approved schools unless parties agree otherwise
- Written notice required before unilateral private school placement

Key Terms & Concepts

FAPE — Free Appropriate Public Education — the legal standard at the center of every dispute.

IEP — Individualized Education Program — the legally binding plan for a student's services, goals, and placement.

N1 — Prior Written Notice — the district's written summary of what was accepted, rejected, and why. Legally significant.

BSEA — Bureau of Special Education Appeals — Massachusetts hearing authority for due process requests.

DESE / PRS — Dept. of Elementary & Secondary Education / Program Review & Support — handles procedural complaints.

OCR — Office for Civil Rights (federal) — handles Section 504 and ADA disability discrimination complaints.

LRE — Least Restrictive Environment — students must be educated alongside non-disabled peers to the maximum extent appropriate.

IEE — Independent Educational Evaluation — private eval parents can request at district expense if they disagree with the school's eval.

FBA / BIP — Functional Behavioral Assessment / Behavior Intervention Plan — required when behavior impedes learning.

Andrew F. — 2017 Supreme Court: IEP must be reasonably calculated to enable appropriate progress — not just trivial advancement.

Partial Rejection — Rejecting specific IEP components while accepting others — preserves rights without losing access to services.

504 Plan — Accommodation plan for students who don't qualify for special ed but have a disability affecting school.

Five Principles for Strategic Advocacy

- 1. Monitor frequently** — At least as often as report cards. Don't wait for the annual review to identify a problem.
- 2. Ask precise questions** — Vague concerns get vague responses. Data demands data.
- 3. Be reasonable & collaborative** — Not buzzwords — your most powerful strategic posture.
- 4. Escalate intentionally** — Escalation should be a choice, not a reaction to a bad meeting.
- 5. Focus on long-term trajectory** — Every decision should move toward your child's independence and growth.

Disputes are inevitable. Your power is preparation.

Knowledge reduces fear. Documentation creates leverage. Strategy creates outcomes.