



Northbridge Public Schools

Northbridge School Committee

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Michael LeBrasseur, Chairperson, mlebrasseur@nps.org, Joseph Strazzulla, Vice-Chairperson,
Michael Alden, Bethany Cammarano, Brian Paulhus,

Northbridge Public Schools School Committee Meeting Wednesday, August 22, 2018 6:00 PM Northbridge Administration Building

- I. Call to Order (6:00PM)
- II. Attendance
- III. School Committee Workshop:
 - Legal Workshop with Special Education Attorney Matt MacAvoy
- IV. Executive Session:

G.L. c. 30A, § 21(a)(3) (Purpose 3): To discuss strategy with respect to threatened or pending litigation related to special education, because an open meeting may have a detrimental effect on the litigating position of the committee, and not to return to open session.

Northbridge School Committee



Legal Workshop

August 22, 2018

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School Governance

Massachusetts Department of Elementary and Secondary Education

Advisory on School Governance

- The school committee establishes educational goals and policies for the schools in the district.
- The superintendent employed by the school committee is responsible for the day to day operation of the school district in a manner consistent with state law and the policy determinations of the School Committee.
- Principals supervise the operation and management of their schools and school property, subject to the supervision and direction of the superintendent.

“We view the school committee as the publicly elected or appointed equivalent of a board of directors of a corporation, which in this case is a school system. The school committee has oversight of, and responsibility for the school system, sets the direction in which the system must go, and establishes criteria to determine if its goals and policies are being met. The superintendent is the educational leader for the school system, and provides administrative leadership for all school staff in operational matters and in proposing and implementing policy changes. Day-to-day operation of the school system is the responsibility of the superintendent, together with school principals and other administrative staff members.”



Federal Complaints

- Parents also have the right to file a complaint with the United States Department of Education's Office for Civil Rights ("OCR") with regard to any alleged violation of the District's obligations under federal laws and regulations.
- OCR Complaint Process:
 - Parent must file complaint within 180 days of the alleged violation
 - Upon receipt, OCR will send written notice to the District of the complaint and request that the District provide documentation requested by OCR and a narrative response to the complaint within 21 days.
 - Following OCR's review of the documentation and narrative response provided by the District, OCR may:
 - Dismiss the complaint; or
 - Determine that there is insufficient information upon which to make a determination as to the violations alleged and conduct a further investigation which may include onsite interviews of staff; or
 - Issue a notice of findings directing the District to take corrective actions to remedy violations found to have occurred.

* OCR does not have the authority to impose monetary fines for violations found to have occurred.



State Due Process Proceedings



- Parents have the right to request a due process hearing before the Massachusetts Bureau of Special Education Appeals with regard to their child's evaluation, accommodations, services or placement under the Individuals with Disabilities Education Act, M.G.L. c. 71B and/or Section 504 of the Rehabilitation Act of 1973.
 - The Request for Hearing must be filed within 2 years of the alleged violation of the student's procedural and/or substantive rights under federal and/or state laws and regulations.
- BSEA Hearing Process:
 - Upon receipt of a Request for Hearing, the BSEA will provide written notice to the District identifying the Hearing Officer assigned to the case and detailing the timelines for hearing.
 - Within ten (10) calendar days of receipt of the Parents' Request for Hearing, the District is required to submit a written response to the Parents' allegations in their Request for Hearing.
 - Within fifteen (15) calendar days of receipt of the Parents' Request for Hearing, the District is required to convene a Resolution Meeting with the Parent for purposes of exploring informal resolution of the dispute.
 - If the matter is not resolved informally, an evidentiary hearing will be conducted on the 35th day following the Parents' filing of their Request for Hearing.
 - Upon conclusion of the evidentiary proceedings, the Hearing Officer will issue a written decision regarding the Parents' claims which may be appealed by either party to state superior or federal district court.

EVOLVING ISSUES IN SCHOOL GOVERNANCE

MAJOR ISSUES IDENTIFIED BY THE

NATIONAL SCHOOL BOARDS ASSOCIATION

AND THE

MASSACHUSETTS ASSOCIATION OF SCHOOL COMMITTEES

As part of the

RACE TO THE TOP INITIATIVE

DISTRICT GOVERNANCE SUPPORT PROJECT

2013

SCHOOL COMMITTEE ROLES AND RESPONSIBILITIES
Personnel and Policy – Chain of Authority, Personnel, and Confidentiality

The role of the school committee relative to contracts with professional personnel has several dimensions. They include:

Hiring and Contracting:

- Hiring and contracting with the superintendent for up to six years (Ch. 71, Sec. 37).
- Confirming and setting compensation for Associate/Assistant Superintendents (Ch. 71, Sec. 59)
- Confirming and contracting for up to six years with School Business Officials (Ch. 71, Sec. 41)
- Confirm the appointment of a Special Education Administrator (Ch. 71, Sec. 53)
- Negotiating collective bargaining agreements with unionized staff (Ch. 150E, Section 1).
- Establishing compensation parameters for administrators not subject to collective bargaining, including principals (Ch. 71, Sec. 59B).

Setting Compensation:

Compensation refers to anything of value and is not limited to salary. For example, compensation may include vacation, paid and unpaid leave (i.e., sick time, vacations, bereavement leave, and professional days), fringe benefits, “buy-out” provisions, “severance” clauses, and other items. In addition, the school committee, through its policy making role, may establish district rules governing items like school closing, accumulation of unused leave, retirement or severance “buy back” provisions, leave for professional development, and other provisions.

Establishing District Policy

Many district policies impact personnel contracting and employment and range from recruitment and retention policies, collective bargaining, fringe benefit applications, due process requirements, and other areas.

Executing Contracts

The school committee retains the exclusive authority to hire, contract with, evaluate, and terminate a superintendent.

The school committee confirms and approves contracts with the School Business Official. Subsequent contracts would require school committee approval.

State Ethics Laws. State ethics laws forbid you from:

- Using your position for personal gain or advantage.
- Using public resources for private purposes.
- Using your post to act in an inherently coercive manner.
- Acting on behalf of an immediate family member, employer, potential employer, business partner or person with whom you are doing business.

Members put themselves at risk if they engage in practices that extend beyond their scope. Here are some common examples of problematic situations:

- Pressuring the superintendent to hire a particular employee.
- Demanding a faculty member write a reference letter for a constituent or to provide special assistance for a student.
- Getting involved in advocating for someone else's child in a special education placement or assignment.
- Using school supplies for private purposes.
- Usurping the authority of the faculty.

Collective Bargaining (Failure to Bargain in Good Faith)

The school committee negotiates (or delegates the negotiation) of union contracts as one of its most important roles. It is important to understand how the formal rules for negotiations apply to avoid problems. Here are some of the more common problematic circumstances:

End-Running the Bargaining Process

Bargaining must take place in the appropriate setting and under carefully described circumstances. Private meetings with union representatives outside of the bargaining process are unfair labor practices. Taking a union leader aside, or being taken aside for a friendly ex-parte discussion violates the standards of good faith bargaining.

Failure to Recognize Bargaining Agent

Bargaining without the union's chosen representative present can be an unfair labor practice. It is always wise to leave the side bar discussions to the appropriate setting.

Threats

Genuine threats are highly problematic since discussions and actions in the bargaining process are protected from retaliation.

involves a member using one's position for unfair advantage.

Unannounced Visits to Schools/Buildings

School committee members who are parents do not relinquish their rights as parents and citizens. They may visit any public school or public building under the same conditions as the public at large or parents may do so.

When a school committee member visits a school, that member should follow the protocol for everyone else:

- report to the principal's office,
- sign in, and
- get permission to visit the school.

A school committee should not appear in a school and expect an unscheduled meeting, tour, or access to information.

It is common practice, but not required, to inform the superintendent's office prior to a school visit, but as a parent, you have the right to visit the school on family matters without asking permission of the superintendent. MASC strongly advises that school committee members explain immediately to the principal, teacher or other school personnel that "I am here as a parent," or "I am here as a member of the neighborhood," or "I am here as a citizen," when they are not in an official capacity.

Unauthorized Visit to Schools/Classrooms

A classroom visit by a school committee member follows the same protocol as does a general school visit. Moreover, because classroom visits may appear to be "observations," it is essential to differentiate the appropriate visit of a board member/parent from the visit of a school committee member seeking information in an official capacity.

Directives to the Faculty

Issuing a directive to a faculty member is a likely violation of state ethics laws if it comes from a school committee member. Members do not supervise staff

of a faculty room, planning rooms, parking allotments, vending machines in faculty areas, and other purposes.

- The school committee may review faculty grievances filed through the collective bargaining process related to building issues provided the bargaining agreement includes an appeal to the board.

Other situations need to be reviewed carefully to avoid intruding into the administrative sphere of activity.

For example, there is no ambiguity about some of the following:

- Administrative support staff and building custodians are supervised by the school principal and superintendent.
- Building maintenance is overseen by the principal or central office staff.
- Building logistics are also the purview of the building principal or central office staff as they relate to educator assignments (which may be subject to collective bargaining agreements), office designations (also possibly subject to collective bargaining or individual contract arrangements), and any locally-set building requirements such as zoning.
- Evacuation of school buildings in an emergency or during a drill is the responsibility of the building principal.
- School grounds are usually the responsibility of the school principal or central office staff unless a local ordinance or charter gives the responsibility for grounds and playing fields to the municipality.

It is not uncommon for school committee members to receive complaints about building conditions. These

with access limited only to those with a legitimate need to know.

A school committee member who seeks confidential information about a student, family or faculty member is violating the privacy rights of those individuals. The superintendent, principal, teacher or other employee may not discuss information about another person's child with you without the permission of the parent or guardian.

Similarly, school committee chairs should be extra cautious to avoid violating the privacy rights. In addition, they need to advise parents and teachers about the risks of discussing their own children or students in public to prevent them from giving up the confidentiality to which young people are entitled. Similarly, discussions of professional staff may require confidentiality, depending on the nature of the discussion.

Special Requests

Special requests can be touchy. A parent who asks you to expedite a letter of recommendation from a teacher may put you in the position of intimidating that faculty member. Accompanying a parent to a Special Education meeting on behalf of a child can put you in an equally inappropriate position. Asking the superintendent to secure for you a special privilege for yourself or a constituent violates the state ethics law.

Threats/Coercion

Threats are both inappropriate and illegal because you could be perceived as using your position in an inherently coercive manner. The problem with threats is that a listener may interpret what you believe to be a statement of fact or an innocuous caution as a genuine threat to his/her employment.

Terminations/Contract Non-Renewals

One of the most common "contracting" problems for school committee members comes when a popular faculty member is terminated by the superintendent or a principal. This often occurs at the end

- “Vanity” Projects.
- Public Participation

ROLE OF THE CHAIR

The chair is, according to “*Robert’s Rules of Order*,” the servant of the assembly, not the master. The chair is responsible to the members present and those who cannot attend the meeting. The chair is also accountable to the public in the meeting room and those at home. The chair must ensure that the meeting is fair and impartial. Unless provided with special privileges or rights in your by-laws, the chair has no more advantages than the rest of the board except for the responsibility to run the meeting, call upon speakers, administer votes, and open and close the meeting.

The chair must keep the meeting focused and on a relevant topic.

AGENDAS

Robert’s also advises that the agenda is the property of the assembly, in your case, the School Committee. The board, by majority vote, may change the agenda subject to the requirements of the MA Open Meeting Law¹.

BEHAVIOR PROBLEMS AT PUBLIC MEETINGS

The same standards that apply to School Committee members apply to the public. Certain behaviors are considered “out of order” based on *Robert’s Rules of Order*. Most frequent of these include:

1. Making a personal or ad-hominem attack against a member or another person.
2. Attacking a member’s motives (as opposed to the purpose of a motion).
3. Disturbing the assembly, including being disruptive.

In a society where freedom of speech is an honored tradition, the chair of the school committee should be particularly careful in ruling a member out of order, and members should understand the consequences of some of the disturbing behaviors that diminish their credibility. Some of those behaviors common in public boards include:

1. Returning continuously to a point that has been addressed or dismissed.
2. Self-promotion before the audience or a special constituency.

¹ An important requirement is that the public posting of the meeting must include those items that the chair may reasonably anticipate arising at the meeting. If your posting does not include such items, they may not be raised. The key is that, in order to be discussed, the chair must not reasonably anticipate them.

achievement that exceeded expectations based on similar cohorts. This was far more useful than simply putting children in front of the School Committee to sing a song or two.

Similarly, the physical education teachers and athletic coaches had to explain the direct link between their activities and curricula and learning as well as life skills, as opposed to having athletes parade through the room holding their recently won medals or trophies, as has been done elsewhere.

As noted above, however, the chair has a special responsibility to protect people from themselves, including the obligation to protect the privacy rights of students and faculty and to ensure that public discussion and debate are run in an orderly way.

STAFF CONTACT BY SCHOOL COMMITTEE MEMBERS

Contact between employees of the district and School Committee members is unavoidable. It is also perfectly appropriate in most cases. However, there are situations where contact with members of the faculty can be problematic. They include:

- Issuing directives to the faculty. School Committee members gain their authority acting as a board and not as individuals. Members do not have the authority to issue directives to faculty members who report to the principal, department heads or superintendent.
- Seeking information from faculty members. Asking for information that is more than routine can fall into this category as well, especially if faculty members must take time away from their duties to fulfill the requests.
- Dangerous conversations. This is America. Constituents have an unrestricted right to speak to you, and you to them. While you can speak to anyone you want, the conversations can be risky and you have no control over your words once they leave your mouth.

Because board members do not supervise faculty, they need to be careful that teachers or principals to whom you speak do not also abuse the ability to speak to you. Information you obtain from faculty members, like that you hear from parents, may not always be objective or accurate.

People may be intimidated by you as an elected official and may feel uncomfortable with a discussion. More importantly, what you actually say may not be what the listener hears. For example, as careful as you may be about dealing with a problem presented by a teacher or parent, your considered response may be interpreted differently. Your promise to “refer this problem to the superintendent,” could be interpreted as “School Committee Member X is going right to the superintendent to be fixed right now.”

- A bright new thought is pushed to center stage because someone just thought of it, and everyone must now participate in a discussion of an idea that is having its “15 minutes of fame” at your expense.
- Public comment period turns into a meeting agenda when someone else hijacks your meeting to turn the spotlight on a special issue.
- Or, worse, unhelpful amendments to motions are attached simply to shut someone up.

PUBLIC COMMENT PERIOD

Most School Committees now host a public comment period where any member of the public is permitted to address the board. MASC has recommended several protocols for public comment period:

- Most importantly, all speakers must be recognized by the chair and should stop talking when their time is up as informed by the chair.
- Individuals should be limited to a set period of time, and usually three minutes is enough. The chair needs to be discreet in enforcing the time limit in order not to appear unreasonable, but the speakers must be respectful of others wishing to speak, or those who want to get to the meeting agenda. Remember, most speakers are indifferent to the time limits or the impact that repetition has upon listeners. They will generally speak to the limits of any time threshold. As a result, some chairs will ask people not to repeat what has already been said by another speaker.
- “Ad Hominem” attacks should be avoided. Public comment period is not a time to attack an individual.
- Some boards limit public comment to those items on the meeting agenda, while others allow any public comment. Your policy should clarify what is best for you.
- Individuals speaking should be informed that the School Committee will not respond, but will only listen and consider public commentary.
- The chair should prevent individuals from discussing information that is legally confidentially, including information about a particular child or faculty member.

SCHOOL COMMITTEE ROLES AND RESPONSIBILITIES

Areas of Ambiguity: When the Lines Blur

The lines that define the legal, legislative, and fiduciary responsibilities of the School Committee as well as the parameters that clarify the administrative and operational responsibilities of the superintendent of schools are sometimes unclear. The law gives the School Committee responsibilities over policy making which are broad in scope. Statutes also define the fiduciary responsibilities of the board over budget making and financial oversight. In addition, special statutes, including the collective bargaining laws as they link to public schools, provide special obligations and authority School Committees. However, when there is ambiguity, or varying circumstances and facts to go with them, the interpretations are not always clear.

14. Legal Counsel – Who’s the Client?
15. Use of School Facilities.
16. Opening or Closing a School
17. Collective bargaining: What is appropriate to bargain and what is off the table under the Education Reform Law.
18. Remediating grievances: who hears and/or resolves grievances and how.
19. Criticizing a public employee in public.
20. School Redistricting
21. Staff Restructuring.
22. School Committee meeting rules of order.
23. Hiring the Legal Counsel.
24. Handling or Receiving Confidential Information.

Parent's Notice of Procedural Safeguards

Dear Parents:

You are receiving this Notice of Procedural Safeguards (Notice) because your son or daughter (student) has been referred for an evaluation or is currently receiving special education services. If your student is eligible for special education, the school district must provide a free appropriate public education commonly referred to by the acronym FAPE. In order to provide a FAPE the school district must work in partnership with you. You will be a member of the IEP team that will consider your student's unique needs and develop an individualized education program or IEP, for your student.¹ The IEP must provide instruction that is tailored to your student's unique needs and includes sufficient support services to enable your student to make meaningful educational progress and to assist your student in acquisition of knowledge and skills, including those necessary for social and emotional development according to appropriate chronological and developmental expectations. Any special education services identified for your student must be provided at public expense with no cost to you. All students in the Commonwealth's public education system, including students with disabilities, are entitled to the opportunity to learn the material that is covered by the academic standards in the Massachusetts curriculum frameworks. Massachusetts also provides an individual right to FAPE for its resident students with disabilities who attend private schools at private expense, and who seek public special education services.

Both State and federal laws contain rules that school districts must follow when deciding if a student is eligible for special education and, if so, what services the student will receive. These laws also provide detailed procedures for ensuring that the student receives a FAPE during the entire time he or she is eligible for special education. Special education is a highly complex and regulated area of education law. The detail in the law is intended to protect your student and to help ensure that he or she receives appropriate educational services. You can get additional help in understanding the special education process from your school guidance office, the Massachusetts Department of Elementary and Secondary Education (ESE), organizations for parents of students with disabilities, and private special education organizations. Information from these sources will help you work in partnership with your school district to make sure that your student receives appropriate educational services. The ESE publishes extensive information for parents and school districts on its Internet Websites. A Table of the ESE Websites is included at the end of this Notice.

This Notice provides you with important information about your right to be involved in planning your student's special education. Procedural safeguards are the specific rules that make sure that you know what the school district is proposing to do ("receive notice"), agree with the school district's plan ("give parental consent") and have a range of opportunities for resolving disagreements with the school district ("due process"). Procedural Safeguards in the law also provide additional protections outlined in this document.

We hope this Notice will be of assistance to you as you take an active role in your student's educational experience.

This document, the Parent's Notice of Procedural Safeguards, answers the following questions:

1. What is "prior written notice" and when do you receive it? Page 2
2. What is "parental consent" and when must the school district ask for your consent? Page 3
3. Is the school district required to evaluate upon request by a parent? Page 5
4. What is an "independent educational evaluation"? Page 5

¹ See the IEP Process Guide for information on how a student's IEP is developed and implemented.

2. WHAT IS PARENTAL CONSENT?

34 CFR §300.9 AND
603 CMR 28.07 (1)

The school district may not give your student a special test or special service unless you agree and give your written "parental consent." The school district must contact you and clearly explain what it is proposing to do for your student. The school district will then ask you to sign your name on the consent form to show that you agree to the school's proposal. This is giving "parental consent."

Giving your consent is voluntary. You may take back, or revoke, your consent at any time. If you wish to revoke consent you must do so in writing. The withdrawal of consent will only apply to future action by the school district not to something that has already happened. Your school district may not use your refusal to consent to one service or activity as a reason to deny you or your student any other service, benefit, or activity.

Your consent is not required before your school district may review existing data as part of your student's evaluation or reevaluation, give your student a test or other evaluation that is given to all students without consent such as the MCAS or classroom tests that are part of the general education program, or share information with federal or state educational officials.

2.1 WHEN WILL A SCHOOL DISTRICT ASK FOR YOUR CONSENT?

34 CFR §§ 300.300, 300.154 AND
603 CMR 28.07(1)

A school district will ask for your parental consent in the following circumstances:

To authorize the initial evaluation to determine if the student is eligible for special education

The school district cannot conduct an initial evaluation of your student to determine whether your student is eligible to receive special education and/or related services without first obtaining your consent. If your student is referred for an evaluation, the school district must ask for your consent to the evaluation within five school days.

To approve initial services

If, after the initial evaluation has been completed, the Individualized Education Program (IEP) Team has decided that your student is eligible for special education, the IEP Team will propose special education and related services and a placement for your student. You are a member of the IEP Team and must give your consent before your school district can provide special education and related services to your student for the first time. If you do not consent, the school district cannot provide special education and related services to your student. You can accept or reject the whole proposal or part of it. The IEP or any part that you accept must begin as soon as you accept it.

To make a change in services, placement or reevaluation

Once you have agreed to an IEP for your student, the school district must obtain your consent before the school district may change the services or the placement of your student, or conduct a reevaluation.² If you refuse to give your consent, you have an obligation to engage with the district in active discussion to resolve your disagreement. If you have given consent to services in the past and now want to revoke consent and withdraw your student from services, you must do so in writing. The school district may not request a hearing at the Bureau of Special Education Appeals (BSEA) to obtain authority to provide educational services or to reevaluate your student without your consent.

² You also have the right to observe your student in his or her current program and observe a proposed program prior to your student's placement. For further information see the ESE document "Observation of Education Programs by Parents".

revocation of consent. Once you withdraw your consent to all special education and related services, the school district is no longer required to make FAPE available or to have an IEP meeting or develop an IEP for your student. School districts are not required to amend your student's record to remove references to special education services as a result of your revocation of consent.

3. IS THE SCHOOL DISTRICT REQUIRED TO EVALUATE A STUDENT UPON REQUEST BY A PARENT?

**34 CFR §300.301 AND
603 CMR 28.04**

A student must receive a complete and comprehensive evaluation to determine if the student has a disability and is eligible for special education and, if eligible, to assist in determining appropriate special education and related services that may be necessary. Parents who have a concern about their child's development or have a suspicion about a possible disability may refer their child for an initial evaluation. Special words need not be used in making a referral for an initial evaluation. Upon receipt of such a request for an initial evaluation, the school district must send notice to the parent and must seek the parent's consent to conduct an evaluation. (A school district will rarely have occasion to refuse to conduct an initial evaluation and may do so only if the parent or other individual making the referral has no suspicion of disability or is not concerned about the student's development).

Where appropriate, the school district may also provide the parent with information concerning other supportive services that may better suit a particular student's needs. However, a school district may not refuse to evaluate a student who has been referred for an evaluation as described above, on the basis of a pre-referral program or in order to try other instructional support activities or for any other reason. Additionally, the law provides for periodic reevaluations to ensure that the student is benefiting from and continues to require special education. The parent's consent will always be required prior to these reevaluations.

4. WHAT IS AN INDEPENDENT EDUCATIONAL EVALUATION?

**34 CFR §300.502 AND
603 CMR 28.04(5)**

An Independent Educational Evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your student.

You have the right to request an IEE of your student at public expense if you disagree with the school district's evaluation. If you request an IEE, the school district must provide you with information about where you may obtain an IEE and about the state requirements that apply to IEEs.

4.1 WHEN IS AN INDEPENDENT EDUCATIONAL EVALUATION CONDUCTED AT PUBLIC EXPENSE?

In Massachusetts, under state law, you will receive an IEE at full or shared public expense if you meet income eligibility requirements. Students who are eligible for free or reduced cost meals are entitled to an IEE at public expense. Other students are eligible for a shared cost IEE according to a sliding fee scale. Sharing your financial information with the school district is completely voluntary on your part. If you choose to share such information, the school district must immediately notify you in writing whether or not you are eligible for full or partial funding of an IEE and proceed to fund the IEE based on eligibility. Your right to a publicly funded IEE through income eligibility will extend for 16 months from the date of the school district's evaluation with which you disagree.

If you do not meet income eligibility requirements or choose not to disclose financial information, the district must consider your request for a publicly funded IEE under federal law. Within 5 days, the district may either agree to provide an IEE at public expense or request a hearing at the Bureau

State and federal special education laws provide many opportunities for parents to be involved in educational planning for their student who has a disability. If parents and school districts disagree about changes relating to the identification, evaluation, or educational placement of a student with a disability, or the FAPE services provided to a student with a disability, the laws provide a menu of ways to resolve the disagreement. Your student shall remain in his or her current education program and placement during any dispute regarding placement or services, unless you and the school district agree otherwise or your student's placement is changed as a result of discipline.

Following are alternatives ways that you and your school district can resolve disagreements.

6.1 BRING THE DISPUTE TO THE ATTENTION OF LOCAL PUBLIC SCHOOL OFFICIALS

As a first step to resolve your dispute, you may contact your school Principal, the Administrator of Special Education or your Superintendent to ask for help. It is a good practice to write a letter explaining the situation about which you are concerned.

6.2 USE THE ESE PROBLEM RESOLUTION SYSTEM

If you feel that you need help from outside of your school district, you may contact the ESE, Office of Program Quality Assurance Services (PQA) at 781-338-3700 to use the state "Problem Resolution System" described at <http://www.doe.mass.edu/pqa/prs/>. You can file a complaint with PQA about any violation of state or federal education law or obtain help from PQA staff to resolve the problem informally. If you want a formal investigation by PQA, you will have to submit your complaint in writing. PQA staff will assist you in preparing and submitting the complaint. Your written complaint should include: a statement of your concerns, your attempts to resolve your concerns, the actions by the school you believe would resolve your concerns and your signature and contact information. If your complaint is about a specific student, you should provide the student's name and residential address and the name of the school. The issues that you are complaining about, however, must have occurred no more than one year before PQA receives your complaint. If you choose to file a formal complaint with the PQA Problem Resolution System, you must also send a copy of your written complaint to the school district that is the subject of the complaint. PQA will resolve your complaint within 60 days and send you a copy of the findings and decision.

Filing a formal complaint with PQA will not prevent you from using other methods, such as conversations with your local school district, mediation, or a due process hearing at the Bureau of Special Education Appeals (discussed below) to resolve your complaint.⁵ If you request a due process hearing, however, a complaint that you file through the problem resolution system will be set aside until the due process hearing is completed.

⁵ For a comparison of how the problem resolution system resolves a complaint with how a complaint is resolved through a due process hearing see: <http://www.doe.mass.edu/sped/docs.html>.

solution to the problem. Note that the hearing will be limited to the issues that are identified in the complaint.

You must send your due process hearing request to the school district (or other party to the complaint) and a copy to the BSEA. If the due process complaint does not provide enough information, the opposing party may challenge its *sufficiency* within 15 days. The BSEA will decide whether the complaint is sufficient within 5 days of the challenge. Additional information may be added to the complaint if the opposing party agrees or if the hearing officer gives permission. If additional issues are added to the complaint at a later time, however, the hearing timetable begins all over again.

If there is no challenge to the sufficiency of the complaint, then the hearing process continues. If the school district has not already sent a prior written notice to you about the issue that you are complaining about, then within 10 calendar days of receiving your due process hearing request, the school district must send you a written response to the complaint.

Note: If *the school district* has filed the due process hearing request, *the parent must respond* within 10 calendar days of receiving the hearing request, and specifically address the issues that the school district raised.

After you file a due process hearing request, the school district has 30 days to work with you to resolve the disagreement before the due process hearing may occur.¹²

The school district is required to set up a resolution meeting within 15 calendar days of receiving your due process complaint.¹³ The school district will determine with you which members of the IEP Team must attend the meeting. Someone from the school district who can make decisions about your student's program must attend the meeting. The school district's lawyer *may not* attend unless you have a lawyer who is attending the meeting.

You must participate in the resolution meeting unless you *and* the school district agree, in writing, not to have the meeting or if you and the school district decide to use the mediation process. If the school district cannot get you to participate in the resolution meeting, it can ask the hearing officer to dismiss your complaint.

If you are willing to meet, but the school district refuses or delays the resolution meeting more than 15 days after receiving notice of your hearing request, then you can ask the hearing officer to proceed with the hearing process. If you meet, but the school district has not resolved the due process complaint to your satisfaction within 30 days of your filing the complaint, then the due process hearing may go forward.

The resolution process ends when one of the following events occurs:

- When you and the school district agree, in writing, to end the resolution period;
- At the end of the 30 day resolution period;
- At the end of mediation; or
- When you and an official of the school district sign a document that spells out your agreement that resolves your dispute. This is a "settlement agreement" and can be enforced by a state or federal court. Note that if you and the school district enter into an agreement as a result of a resolution meeting, either you or the school district may void the agreement within 3 business days of the time that both you and the school district signed the agreement.

¹² If you and the school district agree to mediation, you may agree to continue the mediation after the 30 day period.

¹³ No resolution session is required if the school district has requested the due process hearing.

6.6 APPEAL A HEARING DECISION TO A STATE OR FEDERAL COURT

If either the parent or the school district disagrees with the decision of the hearing officer, they can seek review of that decision in state or federal court. Any such request for review must be filed within 90 days of the decision.

6.7 ATTORNEYS' FEES

34 CFR §300.517

Each party is responsible for paying its own attorney's fees unless the court decides otherwise. If you obtain a favorable result in a written hearing decision or court proceeding, the court¹⁷ may decide that the school district should pay your reasonable attorneys' fees. Note, however, that you will not be able to obtain these fees for the time spent litigating your case after the district made a settlement offer if

- the district made a written offer of settlement 10 or more days before the hearing,
- you did not accept the offer within 10 days, and
- the outcome of the hearing was no better than the settlement offer.

If the school district obtains a favorable decision, a court could order your attorney to pay the school district's legal expenses if the court finds that your attorney filed a complaint or continued to litigate after learning that the complaint had no basis in fact, was unreasonable, was frivolous, or was pursued for an improper purpose. A court may also order you or your attorney to pay legal expenses if your request for a due process hearing or subsequent cause of action was presented for an improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

7. WHAT ARE YOUR RESPONSIBILITIES IF YOU PLACE YOUR STUDENT IN A PRIVATE SCHOOL AND YOU BELIEVE YOUR SCHOOL DISTRICT SHOULD REIMBURSE YOU FOR THE TUITION?

34 CFR §300.148

There are some occasions when a parent believes that the public school is not providing a FAPE to the student and the parent decides to place the student in a private school. A parent may enroll his or her student in private school at private expense at any time. If, however, the parent believes that the public school should be responsible for the costs of the student's education in the private school, the parent must tell the school district of objections to the student's IEP and program, reject the IEP, inform the school district of his or her intent to remove the student and enroll the student in a private school, and request a hearing by the BSEA. A parent must inform the school district before removing the student from the public school either orally at the last Team meeting before the removal or in writing at least 10 business days before removing the student from school.

The school district is not required to pay for a student to attend a private school if the school district has made a FAPE available to the student. Disagreements between parents and the school district about whether the student's program provides a FAPE and requests for financial reimbursement for the cost of a private program may be resolved through due process procedures discussed earlier in this document. The hearing officer will determine whether the school district made a FAPE available to your student. If the hearing officer finds that the school district did *not* provide your student with a FAPE, that you followed the above steps, and that the private school placement was appropriate, the hearing officer, after considering all of the circumstances surrounding the removal of the student, may require the school district to reimburse you for all or part of the cost of the private school placement.

¹⁷ A BSEA Hearing Officer may not award attorney's fees.

comparable behaviors. The school must notify you as soon as the decision is made to remove your student from his or her education placement for more than 10 days and provide you with a copy of this Notice.

The student's IEP Team must meet within 10 days of the school's decision to impose the discipline. At this meeting, called a "*manifestation determination*," you and other members of the IEP Team will determine if the misbehavior was caused by or had a direct relationship to the student's disability, or was the direct result of the school's failure to provide the services required by the student's IEP. In making the manifestation determination, you and other members of the IEP team must consider relevant information from your student's file, including your student's IEP, your and the teachers' observations of your student's behavior, and any relevant information you provide.

If the team determines that the student's behavior was *not* caused by or directly related to the student's disability or the failure to properly implement the IEP, then a student with a disability can be disciplined in the same manner and for the same length of time as other students are disciplined for the same offense. The IEP Team, however, must determine the interim alternative educational setting (IAES) where the student will be placed and the educational services that will be provided. An IAES is a setting other than the student's current placement that enables the student to continue to receive educational services according to his or her IEP. School personnel may consider the student's unique circumstances in determining whether a change in placement is appropriate for a student with a disability.

If the Team determines that the student's behavior was caused by or directly related to the student's disability or the failure to properly implement the IEP, then the student must be returned to the last approved IEP placement unless you and the IEP Team decide on a different placement. The student must also be provided a functional behavioral assessment. A functional behavioral assessment or FBA is a comprehensive assessment of behavior that provides the IEP Team with information about the student's behavior and identifies behavioral intervention services and program modifications that are designed to address the behavioral violation so it does not recur. If the student has already had a functional behavioral assessment and has a behavioral intervention plan, then the IEP Team should determine if any changes should be made to the behavioral intervention plan. If the behavior was caused by the failure to properly implement the IEP, the school must take immediate steps to remedy the deficiencies.

Note that if your student possessed or used a weapon or drugs, or caused serious bodily injury to another person on school property or at a school event your student may be placed by the principal in an IAES for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability. The IEP Team will determine the IAES and the appropriate educational services that will be provided to the student while he or she is in the IAES.

9.1 APPEAL OF A DISCIPLINARY DECISION

If a parent disagrees with any decision regarding placement of his or her student under the disciplinary provisions or disagrees with the manifestation determination, or if the school district believes that maintaining the current placement of the student is substantially likely to result in an injury to the student or to others, either the parent or the school district may appeal the decision by requesting a hearing with the BSEA, as described earlier in this document.

The BSEA will convene a hearing on a disciplinary placement or manifestation determination on an expedited schedule.²³ During the appeal of a disciplinary placement or manifestation determination, the student must remain in the IAES until the hearing officer makes a decision or the disciplinary period is completed, unless the parent and the school district agree to a different placement.

²³ See BSEA Hearing Rule II.C. Expedited Hearing. <http://www.mass.gov/anf/docs/dala/bsea/hearing-rules.doc> p.6.

10.4 TABLE OF WEB SITES

The ESE publishes extensive information for parents and school districts on its internet Websites. These Websites include pertinent laws, agency policies and useful documents that explain the special education process.

Autism Spectrum Disorder:

http://www.doe.mass.edu/sped/advisories/07_1ta.html

Bureau of Special Education Appeals

<http://www.doe.mass.edu/bsea/decisions.html>

<http://www.mass.gov/anf/docs/dala/bsea/hearing-rules.doc>

<http://www.mass.gov/anf/docs/dala/bsea/hearing.doc>

<http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/mediation/>

<http://www.mass.gov/anf/docs/dala/bsea/mediation-brochure-2012.doc>

<http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/mediation/mediation-faqs.html>

<http://www.mass.gov/anf/docs/dala/bsea/>

Consent to Access MassHealth (Medicaid):

http://www.doe.mass.edu/sped/advisories/13_1.html

<http://www.doe.mass.edu/sped/28mr/28m13.pdf> (Mandated Form 28M/13)

Discipline:

http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_chart.doc

Individuals with Disabilities Education Act:

<http://idea.ed.gov/>

The Basic Special Education Process under IDEA:

<http://www.doe.mass.edu/sped/iep/process.doc>

Individualized Education Program:

<http://www.doe.mass.edu/sped/iep>

Individual Education Program Process Guide:

<http://www.doe.mass.edu/sped/iep/proguide.pdf>

Independent Educational Evaluation:

<http://www.doe.mass.edu/sped/advisories/?section=admin>

Observation of Education Programs by Parents and Their Designees for Evaluation Purposes:

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

Parent's Notice of Procedural Safeguards:

<http://www.doe.mass.edu/sped/prb>

PQA Problem Resolutions System compared to BSEA Due Process Complaint:

<http://www.doe.mass.edu/sped/complaintchart.doc>

Program Quality Assurance Services Problem Resolution System:

<http://www.doe.mass.edu/pqa/prs>

Special Education Laws and Regulations:

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

Special Education Surrogate Parent:

<http://www.doe.mass.edu/sped/2002/news/1104memo.html>

Special Education Transition Planning Form:

<http://www.doe.mass.edu/sped/28MR/28m9.doc>

Student Records Regulations:

<http://www.doe.mass.edu/lawsregs/603cmr23.html>

Student Records Questions and Answers

<http://www.doe.mass.edu/lawsregs/advisory/cmr23qanda.html?section>

Transition Planning:

<http://www.doe.mass.edu/sped/cspd/mod4.html#>