

What does 'FAPE' really mean?

Eligible students with disabilities are entitled to a "free appropriate public education," often referred to as FAPE. FAPE is a standard set by federal law. When we ask whether or not a student is receiving all the services to which they are legally entitled, we ask, "is the student receiving a FAPE?" Rarely is there disagreement about what is meant by the words 'free,' 'public,' and 'education.' As many parents have discovered, however, the interpretation of the word 'appropriate' can differ widely among individuals.

So what is 'appropriate' really supposed to mean in the context of special education programming? The Individuals with Disabilities Education Act of 2004 (IDEA 2004) defines FAPE at 20 U.S.C Section 602(9): "the term 'free appropriate public education' means special education and related services that (a) have been provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the State educational agency; (c) include an appropriate preschool, elementary school, or secondary school education; and (d) are provided in conformity with the individualized education program required under section 614(d)."

When the law is vague about a concept, such as it is with FAPE, we must turn to administrative and judicial decisions and be guided by how hearing officers and judges have interpreted the meaning of FAPE. Of great use to Massachusetts parents is a decision issued on August 17, 2001 by Hearing Officer William Crane of the Massachusetts Bureau of Special Education Appeals. The case, BSEA # 01-1222, involved the Gill-Montague Regional School District, and contained the following language:

"The US Supreme Court has stated that the federal standard [FAPE] 'contemplates personalized instruction with sufficient support services to permit the child to benefit educationally.' Lower federal courts have further refined their understanding of the requisite benefit to the special needs child, often stating that the benefit must be meaningful or more than minimal. In addition, federal courts, as well as special education law and regulations, have focused on the importance of addressing the 'unique' individual nature of the particular child's needs for special education and related services."

In another case, *Burlington v. Department of Education*, 736 F.2d 773, 788 (1984) the Federal First Circuit Court of Appeals (which covers Massachusetts and is the last stop before the U.S. Supreme Court) stated that, concerning FAPE:

"[the] objective is 'demonstrable improvements in the educational and personal skills identified as special needs,' educational instruction must be based on the 'unique needs of the disabled child' with sufficient support services so that the child will benefit from that instruction."

Parents should keep in mind two other points when talking with their school Teams about whether or not their child is receiving a FAPE.

First, IDEA 2004 requires that, in order to be receiving a FAPE, a student must "(b) meet the standards of the State educational agency." For Massachusetts that standard is the MCAS exam. Meeting the standard means the student scores Proficient or Advanced on their MCAS tests. Students who are capable of scoring in this range but do not are, by definition and according to the federal government, *not* receiving a FAPE.

Second, consider the IDEA 2004 Statement of Purpose, which is Congress's explanation of what they intend the law to accomplish:

20 U.S.C. § 1400(d) "Purposes - The purposes of this chapter are to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living."

Considering all this, the FAPE standard is a high one indeed. Schools must provide the services a student needs to pass MCAS, move on to college if desired, and be prepared to secure employment and live independently in their community.

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