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4 G.L. C. 69, § 1D

- All students who are seeking to earn a **high school diploma**, including students educated **at public expense** in educational collaboratives and approved and unapproved private special education schools within and outside the state, must meet:
 - Competency Determination Standard (MCAS)

AND

- All local graduation requirements

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5 COMPETENCY STANDARD – MASSACHUSETTS

- At least 240 on the grade 10 MCAS **ELA** and **Mathematics** tests, **or**
- Between 220 and 238 on ELA and Mathematics tests, or earn a score of *Needs Improvement* on a competency portfolio, and fulfill the requirements of an **Educational Proficiency Plan (EPP)**.
- Students must also earn a scaled score of at least 220 on one of the **high school MCAS Science and Technology/Engineering (STE) tests: Biology, Chemistry, Introductory Physics, or Technology/Engineering**, or a score of *Needs Improvement* on a competency portfolio in one of these disciplines.

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6 EDUCATIONAL PROFICIENCY PLAN

- EPP must include the following:
 - a review of the student's strengths and weaknesses, based on MCAS and other assessment results, coursework, grades, and teacher input;
 - identification of the courses the student will be required to take and successfully complete in grades 11 and 12; and
 - a description of the assessment(s) the school will administer on at least an annual basis to determine if the student is moving toward proficiency, or has become proficient on the grade 10 standards.

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7 HIGH SCHOOL REQUIREMENTS LOCALLY DETERMINED

- Massachusetts state law **requires** the instruction of American history and civics ([615 C.F.R. 71.4.3](#)) and physical education ([615 C.F.R. 71.4.3](#)).
- DESE **recommends** that high school students complete the MassCore program of studies.
- The MassCore program includes:
 - Four years of English;
 - Four years of mathematics;
 - Three years of lab-based science;
 - Three years of history;
 - Two years of the same foreign language; one year of an arts program; and
 - Five additional "core" courses such as business education, health, and/or technology.
- MassCore also includes additional learning opportunities including AP classes, dual enrollment, a senior project, online courses for high school or college credit, and service or work-based learning.

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THE DECISION TO GRADUATE A STUDENT

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9 A STUDENT'S ELIGIBILITY UNDER THE IDEA TERMINATES

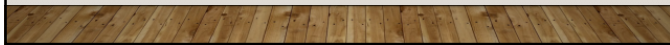
- A student with a disability receives a "regular" high school diploma,
 - "Regular" = a diploma identical to that students without disabilities are eligible for, upon meeting state and school district graduation requirements, [34 CFR 300.102 \(a\)\(3\)\(i\)](#).
 - Fully aligned with state standards
- When student reaches the maximum age for receipt of special education services, [34 CFR 300.102 \(a\)\(2\)\(i\)](#).
- As with students without disabilities, a student with a disability may elect to withdraw from school without completing the education program -- i.e., drop out of school.

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10 STATE LAW AND SCHOOL DISTRICT POLICY ESTABLISH DIPLOMA REQUIREMENTS

Whether a student is eligible to receive a diploma is determined by state law

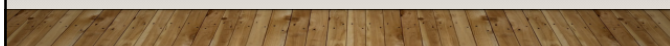
- *MCAS
- *Local requirements



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11 LETTER TO WHITE, 63 IDELR 230 (OSERS/OESE 2014)

- Changing the criteria for individual students with disabilities to earn a regular diploma could discriminate against those students under Section 504 by depriving them of the same opportunities to learn as their nondisabled peers.
- Such students could be denied post - graduation services because graduation would terminate their IDEA-eligibility.

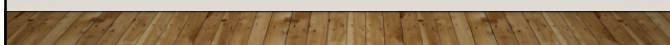


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12 THE TEAM DETERMINES WHETHER TO CHANGE PLACEMENT

1. GRADUATION IS A **CHANGE OF PLACEMENT!!**
2. A decision to change a student's placement from **eligible for special education services to no longer eligible** (because the student is graduated) is a team decision.
3. Once a student graduates, they are no longer eligible for special education services.

See Dracut v. BSEA, 737 F.Supp.2d 35 (D.Mass. 2010)



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13 GRADUATION IS A CHANGE IN PLACEMENT

- **Must** follow the procedural requirements of any other change of placement considered by the IEP team. [34 CFR 300.102](#) (a)(3)(iii).
- IEP team should conduct a review of the child's IEP at an appropriate time before the child receives a diploma.
 - Ensure that graduation requirements will be met and that the goals and objectives in the IEP will be completed
 - *Letter to Richards, 17 IDELR 288* (OSERS 1990).

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14 FEDERAL LAW

- Because graduation is a change of placement, districts must comply with the prior written notice requirements of [34 CFR 300.503](#), [34 CFR 300.102](#) (a)(3)(iii).
- Neither an evaluation nor a Team Meeting are required before the termination of a child's eligibility due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for FAPE under state law.
(BUT BOTH ARE A GOOD IDEA)

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15 SUMMARY OF PERFORMANCE

- Districts are required to develop SOPs only for those students with disabilities who graduate from high school with a regular diploma or who exceed the maximum age of IDEA eligibility. [34 CFR 300.305](#) (e)(3).
- Hi-Set Students
 - OSERS recommended that if a district chooses to provide SOPs to students who earn GED credentials or alternate diplomas, it should notify the students and their parents that the student's IDEA eligibility will not terminate until the student receives a regular diploma or exceeds the maximum age of IDEA eligibility under state law, whichever comes first.
 - *Questions and Answers on Secondary Transition, 57 IDELR 231* (OSERS 2011).

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16 IEP GOALS AND GRADUATION

- If a student with a disability meets all state and school district requirements for the award of a regular high school diploma, then he cannot be denied a diploma simply because he has a disability.
 - See, e.g., *Letter to Runkel*, [25 IDELR 382](#) (OCR 1996); and *Letter to Anonymous*, [22 IDELR 456](#) (OSEP 1994).
- NOTHING in IDEA that requires the achievement of the IEP goals of a student with a disability as a prerequisite for award of a regular high school diploma.
 - IDEA does not establish standards for graduation.
 - See, e.g., *Letter to Richards*, [17 IDELR 288](#) (OSERS 1990).

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- If student with a disability successfully meets the goals and other requirements contained in the IEP (assuming the IEP provides an appropriate program), parents cannot halt the graduation or obtain an extension of services.
 - See also *Doe v. Marlborough Pub. Schs.*, [54 IDELR 283](#) (D. Mass. 2010).
 - Provision of FAPE does not require that IEP goals be achieved. FAPE requires only that sufficient progress towards those goals is made.

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18 CONVENE A TEAM!

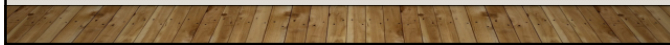
- A district should convene an IEP meeting to review student's IEP at an appropriate time to ensure that graduation requirements will be met and the goals and objectives will be completed.
 - Discuss change in placement
 - *Stock v. Massachusetts Hosp. Sch.*, [555 IDELR 550](#) (Mass. 1984), cert. denied, [110 LRP 47175](#), 474 U.S. 844 (1985)
 - The State Supreme Court invalidated the district's decision to graduate a student with multiple disabilities when the decision was made without an IEP meeting or notice to the student's parents.

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19 IF ELIGIBLE FOR A DIPLOMA, BUT TEAM DECIDES THAT STUDENT HAS NOT RECEIVED FAPE

- A school district is **not** required to award a regular high school diploma to a student with a disability who has met the requirements for a regular high school diploma, if the student has not received FAPE because his/her IEP was not reasonably calculated to provide educational benefit.

- Doe v. Marlborough Public Schools, (D. Mass. 2010)*




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20 IT'S A SNAPSHOT, NOT A RETROSPECTIVE

The BSEA HO should judge a Team's decision to change the student's placement based upon information available to the team at the time that it drafts the IEP:

Was the IEP reasonably calculated to provide educational benefit available to the student at the time that it was written?


Doe v. Marlborough Public Schools, (D. Mass. 2010)



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21 BSEA WILL APPLY ENDREW F STANDARD

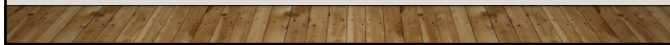
The IEP and transition services must be delivered through a program that offers the student the **chance to meet challenging objectives** and, in light of the student's unique circumstances, is appropriately ambitious and reasonably calculated to enable a student to make progress.



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22 DEMONSTRATING THAT IEP WAS REASONABLY CALCULATED TO PROVIDE BENEFIT

HOW?



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SEVEN TIPS FOR SUCCESSFUL TRANSITION PLANNING




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24 TIP #1

Transition plans should be based upon "age appropriate assessments" and recent assessments.

Every assessment starting when a student is 13 should be viewed as part of the transition assessment process - TRANSITION PLAN SHOULD REFERENCE ASSESSMENTS/DATA.

Every student needs assessments in non-academic areas – "training, education, employment and independent living skills."



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TIP #2

Document in every eligible student's IEP the current level of performance in social/emotional, behavioral, and life skills in addition to academic levels of performance.

1. Ask parents at each IEP meeting starting at age 14.
2. Document functioning in school, home and community.
3. Document early and often in IEP.
4. Anticipated graduation date in every IEP starting at age 14.

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TIP #3

Connect the Transition Planning Form to the IEP goals.

Ensure that the TPF contains the specific skills linked to IEP goals that the student needs to achieve.

Measurable, well-drafted goals achievable by graduation date.

Eliminate goals senior year that the student has met – use very targeted goals.

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TIP #4

Collect data to document the student's progress in order to demonstrate that the educational benefit conferred is "meaningful"

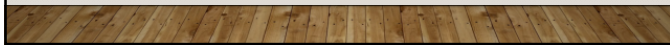
*Determine how to progress monitor non-academic skills.

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TIP #5

Obtain and document student's input.

- *Information directly from the student – unfiltered by parents.
- *Culturally proficient.




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TIP #6

TROUBLE SHOOT WITH PARENTS IMMEDIATELY WHEN THEY START TO QUESTION WHETHER STUDENT IS "READY:"

- *Discuss graduation date at every IEP Team beginning when student is 14.
- *Involve community/state agencies early.




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TIP #7

Monitor students in out-of-district placements to make sure that they are acquiring specific skills needed to meet transition goals.

- *Don't assume that because you are paying for an expensive OOD that the school is working on needed transition skills
- *Don't simply rely upon the OOD's draft IEP and TPF



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31 RESCINDING A DIPLOMA AS A REMEDY

- The IDEA is silent about whether a HO has the authority to rescind the award of a regular diploma.
 - May be an appropriate remedy as long as the rescission would not interfere with the student's current educational program.
 - *Tacoma Sch. Dist.*, [64 IDELR 28](#) (SEA WA 2014) (citing *Stock v. Massachusetts Hosp. Sch.*, [555 IDELR 550](#) (Mass. 1984), cert. denied, [110 LRP 47175](#), 474 U.S. 844 (1985)); and *Espanola Pub. Schs.*, [105 LRP 44611](#) (SEA NM 08/06/03).

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32 COMPENSATORY SERVICES AS A REMEDY

How to offer additional services if Team is concerned that student is not quite ready to graduate.

- *settlement agreement
- *circuit breaker decisions

[Caleb v. Nauset Public Schools](#), BSEA#1507508 (perils of informal agreement).

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GRADUATION AND STAY-PUT

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34 STAY-PUT

- "If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings." [34.CFR.300.518](#) (b)

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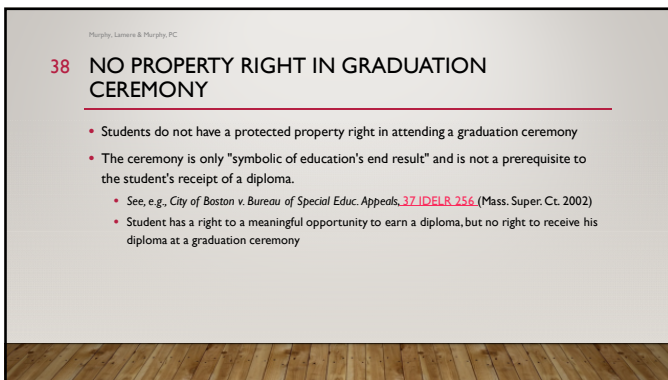
- A decision to graduate a student while a dispute over graduation is pending may result in a stay-put violation.
 - *R.Y. v. State of Hawaii, Dep't of Educ.*, [54 IDELR 4](#) (D. Hawaii 2010)
- Stay-put is the operative placement identified in the student's IEP at the time the dispute arises
 - Stay-put placement is not the new placement proposed by an IEP but rather a continuation of the former placement.
 - See *Drinker v. Colonial Sch. Dist.*, [23 IDELR 1112](#) (3d Cir. 1996)
- "Educational placement" encompasses the services the student is currently receiving under his IEP.

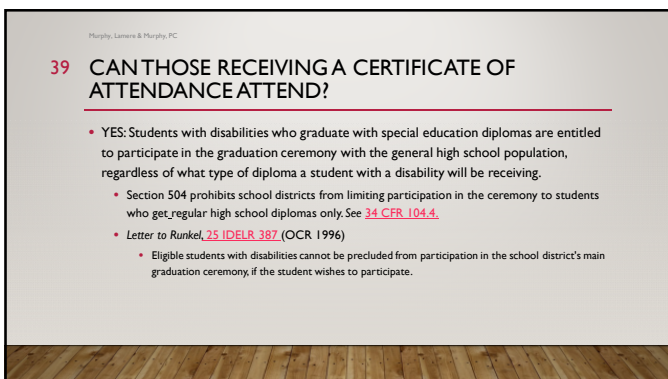
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36 *IN RE STUDENT V. DRACUT, (RULING JUNE 5 2008).*

- The HO determined the Student's "Stay Put" placement is the last agreed upon set of special education services at Dracut High School as memorized in the Student's current IEP.
- The Student may participate in high school graduation exercises, may refuse the proffered diploma and retained his substantive and procedural rights to a free, appropriate public education until resolution of BSEA #08-5330.







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40 M.G.L. CHAPTER 71B SEC. 16

- Student completing 12th grade but not yet receiving competency certificate shall be allowed to participate fully in high school graduation ceremonies and activities conducted or sponsored by the school or school committee even though the student will not receive a diploma during the ceremony if:
 1. student has 95% attendance (except for excused absences)
 2. MCAS at least 3x or MCAS-Alt 2x
 3. student is in good standing

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41 NON-GRADUATING SENIORS' PARTICIPATION IN COMMENCEMENT

- A matter of state or local law or policy.
- Some school districts may elect to limit participation in commencement exercises to graduating students.
 - See, e.g., *Frank S. v. School Comm. of the Dennis-Yarmouth Reg'l Sch. Dist.*, 29 IDELR 707 (D. Mass. 1998).
 - Section 504 does not appear to prohibit blanket exclusion of all nongraduating seniors.
 - *Central Kitsap (WA) Sch. Dist. No. 401*, 352 IDELR 119 (OCR 1985).
 - To the extent that the participation decision is discretionary, Section 504 is not implicated when both nongraduating students with disabilities and nondisabled students are treated in an even-handed manner.
 - *Lauderdale County (AL) Sch. Dist.*, 25 IDELR 161 (OCR 1996).

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42 OLDER STUDENTS ATTENDING THE CEREMONY

- Older students with disabilities are entitled to participate in 12th-grade graduation ceremonies to the same extent as older students who are not disabled.
 - IDEA-eligibility age range extends until age 22 (assuming the student is not awarded a regular high school diploma before reaching the maximum age 34 CFR 300.102 (a))
- Section 504 limits a school district's ability to exclude nontraditional-age students with disabilities from customary commencement exercises for 12th-graders.
 - See *Letter to Runkel*, 25 IDELR 387 (OCR 1996)

43 QUESTIONS AND ANSWERS

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