



Massachusetts Department of  
ELEMENTARY & SECONDARY  
EDUCATION

## **Report to the Legislature: Annual Report on Students with Disabilities 2011-2012**

---

Chapter 159, Acts of 2000  
May 2013

**Massachusetts Department of Elementary and  
Secondary Education**  
75 Pleasant Street, Malden, MA 02148-4906  
Phone: 781-338-3000 TTY: N.E.T. Relay 800-439-2370  
[www.doe.mass.edu](http://www.doe.mass.edu)



This document was prepared by the  
Massachusetts Department of Elementary and Secondary Education  
Mitchell D. Chester, Ed.D.  
Commissioner

**Board of Elementary and Secondary Education Members**

Ms. Maura Banta, Chair, Melrose  
Ms. Beverly Holmes, Vice Chair, Springfield  
Dr. Vanessa Calderón-Rosado, Milton  
Ms. Harneen Chernow, Jamaica Plain  
Mr. Gerald Chertavian, Cambridge  
Mr. Ryan Casey, Chair, Student Advisory Council, Franklin  
Ms. Ruth Kaplan, Brookline  
Jenny Noyce, Wellesley  
Mr. Paul Reville, Secretary of Education, Worcester  
Mr. David Roach, Sutton

Mitchell D. Chester, Ed.D., Commissioner and Secretary to the Board

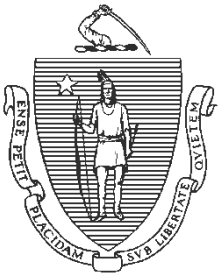
The Massachusetts Department of Elementary and Secondary Education, an affirmative action employer, is committed to ensuring that all of its programs and facilities are accessible to all members of the public.  
We do not discriminate on the basis of age, color, disability, national origin, race, religion, sex or sexual orientation.  
Inquiries regarding the Department's compliance with Title IX and other civil rights laws may be directed to the Human Resources Director, 75 Pleasant St., Malden, MA 02148-4906. Phone: 781-338-6105.

© 2012 Massachusetts Department of Elementary and Secondary Education  
*Permission is hereby granted to copy any or all parts of this document for non-commercial educational purposes. Please credit the "Massachusetts Department of Elementary and Secondary Education."*

*This document printed on recycled paper*

Massachusetts Department of Elementary and Secondary Education  
75 Pleasant Street, Malden, MA 02148-4906  
Phone 781-338-3000 TTY: N.E.T. Relay 800-439-2370  
[www.doe.mass.edu](http://www.doe.mass.edu)





# Massachusetts Department of Elementary & Secondary Education

75 Pleasant Street, Malden, Massachusetts 02148-4906

Telephone: (781) 338-3000  
TTY: N.E.T. Relay 1-800-439-2370

May 2013

Dear Members of the General Court:

I am pleased to submit this *Report to the Legislature: Annual Report on Students with Disabilities 2011-2012*. This report has been provided to the Legislature on an annual basis since 2000 when the legislature amended the language of G.L. c. 71B to align Massachusetts special education terminology with the federal *Individuals with Disabilities Education Act (IDEA)*. It should be noted that Massachusetts' compliance with the IDEA is monitored by the federal Office of Special Education Programs (OSEP). As a result, the Department is required to submit an annual report on compliance and performance to OSEP each year on February 1. The federal report may be found on the Department's website at <http://www.doe.mass.edu/sped/spp/>.

This annual state legislative report provides statewide longitudinal enrollment data on students with disabilities. The report also provides data on the percentage of students with disability by disability category, educational environment, and other special population status. This year, the report includes a compilation of findings and data from the Review of Special Education in the Commonwealth of Massachusetts written by Dr. Thomas Hehir in April 2012. In short, Dr. Hehir confirmed that Massachusetts identifies a higher percentage (17%) of students as having a disability than all but one state (Rhode Island). The disparity in identification rate by race/ethnicity is smaller in the Commonwealth than in other areas of the country, with limited English proficient students having a lower identification rate than English proficient peers. Further, Commonwealth students with disabilities demonstrate higher academic performance than their peers nationally, based on NAEP results. Among the disarming findings are: students from low-income families are substantially more likely to be identified for special education services than their counterparts from higher income families; low-income, Latino, and African American students with disabilities are considerably less likely to be included in general education classrooms when compared to their White and Asian special education counterparts; and, among special education students, lack of integration is likely a contributing factor for lower academic performance.

The report contains descriptions of programs and improvement activities -- including an update on the development of the Massachusetts Tiered System of Support (MTSS), a brief discussion regarding the fact that Massachusetts met requirements for the first time under the IDEA Part B State Performance Plan, and a report on the impact of the No Child Left Behind Waiver on special education accountability determinations. Additionally, the report provides information on special education expenditures, claims filed for "circuit breaker" reimbursement, Medicaid reimbursement for eligible services provided in the school environment, educational collaboratives and statistics from the Division of Administrative Law Appeals (formerly Bureau of Special Education Appeals).

If you have any questions, please feel free to contact me.

Sincerely,

Mitchell D. Chester, Ed.D.  
Commissioner of Elementary and Secondary Education

## Table of Contents

|             |   |    |
|-------------|---|----|
| <b>I.</b>   | <b>Introduction</b>   | 1  |
| <b>II.</b>  | <b>Enrollment Data</b>  | 2  |
|             | A. Longitudinal Enrollment  |    |
|             | B. Percentage of Students with Disabilities Who Receive Services by Educational Environment | 3  |
|             | C. Percentage of Students with Disabilities by Other Special Population Status              | 3  |
|             | D. Student Identification by Disability Category  | 4  |
| <b>III.</b> | <b>Assessment</b>   | 5  |
|             | A. Massachusetts Comprehensive Assessment Systems (MCAS)                                    | 5  |
|             | 1. Performance of Students with Disabilities  | 5  |
|             | 2. Performance Gap  | 6  |
| <b>IV.</b>  | <b>Improvement Activities</b>   | 6  |
|             | B. Office of Tiered System of Supports  | 6  |
| <b>V.</b>   | <b>Initiatives</b>  | 7  |
|             | A. Review of Special Education in the Commonwealth of Massachusetts                         | 7  |
|             | B. Massachusetts Meets Requirements Under IDEA  | 8  |
|             | C. Accountability, Determination Levels, and the No Child Left Behind Waiver                | 9  |
|             | D. Results Driven Accountability  | 9  |
| <b>VI.</b>  | <b>Finances</b>   | 10 |
|             | A. Financial Summary  | 10 |
|             | B. Circuit Breaker  | 11 |
|             | C. School-Based Medicaid  | 11 |
| <b>VII.</b> | <b>Educational Collaboratives</b>   | 13 |
| <b>VIII</b> | <b>Additional Resources</b>   | 14 |
|             | A. Bureau of Special Education Appeals  | 14 |
|             | 1. Rejected Individualized Education Programs   | 14 |
|             | 2. Mediation  | 14 |
|             | 3. Hearings   | 15 |
|             | 4. Representation   | 15 |
| <b>IX.</b>  | <b>Conclusion</b>   | 15 |

## I. Introduction

The Department of Elementary and Secondary Education respectfully submits this Report to the Legislature pursuant to Chapter 159 of the Acts of 2000, Section 432, which reads in relevant part:

*“The Department of Education shall annually, . . . report to the General Court on the implementation of [special education law]. Such report shall include a description of the progress made by school districts in implementing the federal standard, cost increases or savings in cities or towns, . . . the extent of the development of educational collaboratives to provide necessary services, the increase or decrease of the number of children served, federal non-compliance issues and other such matters as said Department deems appropriate. Such report shall be filed with the clerks of the House of Representatives and the Senate who shall forward the same to the Joint Committee on Education, Arts and Humanities and the House and Senate Committees on Ways and Means...”*

## II. Enrollment Data

The Department reports statewide enrollment of students with disabilities based on data collected through its October 1 Student Information Management System (SIMS) collection.

### A. Longitudinal Enrollment

Both Massachusetts’ total student enrollment and the number of students receiving special education services were down slightly from school year 2010-2011 (SY11). However, analysis of child count data over the 10 year period SY03 to SY12 shows that there has been an 8.7 percent increase in the number of students receiving special education services over that period, compared to a 2.9 percent decrease in the total enrollment of all students. There was no change in the proportion of students receiving special education services between SY11 and SY12 (see Figure A).

**Figure A: Number and Percentage of Students with Disabilities, SY03–SY12**

| School Year | Total Special Education Enrollment | Total Enrollment | Percentage of Students with Disabilities |
|-------------|------------------------------------|------------------|--|
| 2002-03     | 150,551                            | 993,463          | 15.20%                                   |
| 2003-04     | 154,391                            | 991,478          | 15.60%                                   |
| 2004-05     | 157,108                            | 986,662          | 15.90%                                   |
| 2005-06     | 160,752                            | 983,439          | 16.40%                                   |
| 2006-07     | 163,396                            | 979,851          | 16.70%                                   |
| 2007-08     | 164,298                            | 972,178          | 16.90%                                   |
| 2008-09     | 166,037                            | 970,059          | 17.10%                                   |
| 2009-10     | 164,847                            | 967,951          | 17.00%                                   |
| 2010-11     | 164,711                            | 966,395          | 17.00%                                   |
| 2011-12     | 163,679                            | 964,198          | 17.00%                                   |

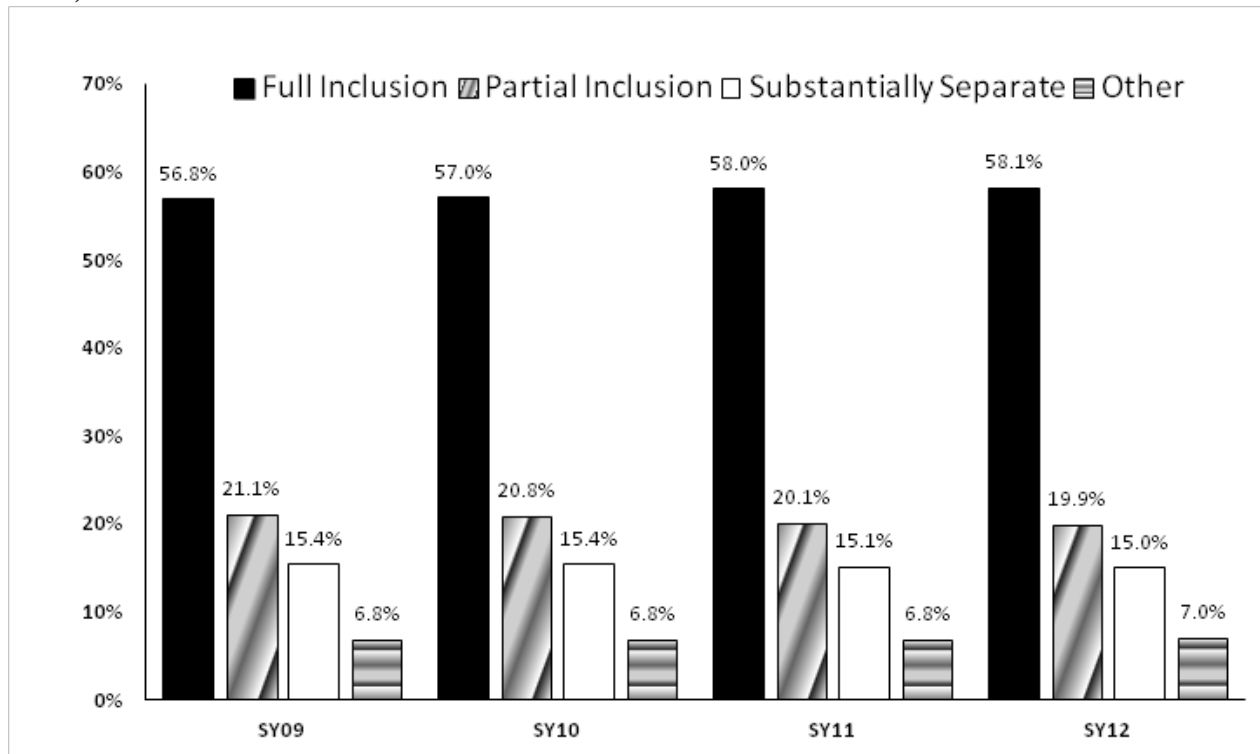
## B. Percentage of Students with Disabilities Who Receive Services by Educational Environment

Students with disabilities placed in full inclusion environments, ages 6-21, represent more than half of all students with disabilities in SY12. The percentage of students in full inclusion environments is 58.1 percent, in partial inclusion is 19.9 percent, and in substantially separate is 15.0 percent. The percentage of students in all other placements (i.e., separate schools, residential facilities, homebound/hospital, and correctional facilities) is 7.0 percent. There have been no significant changes in the percentages of students in these four major placement categories over the past few years. (See Figure B below.)

### Definitions:

- Full Inclusion – at least 80 percent of the time in general education classroom
- Partial Inclusion – 40 percent to 79 percent of the time in general education classroom
- Substantially Separate – less than 40 percent in general education classroom
- Other – separate schools, residential facilities, homebound/hospital and correctional facilities

**Figure B: Special Education Students, Ages 6-21, by Educational Environment (SY09-SY12)**



Note: This chart compares students, ages 6-21, in full inclusion, partial inclusion and substantially separate environments, as well as out-of-district placements for the past four years, as a percentage of all enrolled students ages 6-21 receiving special education services.

Source: Massachusetts Student Information Management System

### **C. Percentage of Students with Disabilities by Other Special Population Status**

Over the past few years, there have been increases in the percentages of special education students who are also in the categories of low income, limited English proficiency (LEP), and first language not English (FLNE). In SY12, percentages of students with disabilities who are also part of other special populations are:

- Low income – 44.2 percent (an increase of 1.0 percentage point over SY11).
- LEP – 7.0 percent (an increase of 0.8 percentage points over SY11).
- FLNE – 15.5 percent (an increase of 0.6 percentage points over SY11).

While 44.2 percent of students with disabilities come from low income families, the incident rate in general education population is only 33.1 percent. The data show that low income students are more likely to be identified as eligible for special education. Additionally, while these special population status figures are not cumulative, each one adds another area of challenge for the eligible student in addition to the disability (ies) that has already been identified as interfering with the student’s ability to make effective educational progress.

### **D. Student Identification by Disability Category**

The following table identifies numbers and percentages of students with disabilities by disability category. SY08 and SY12 data are used to demonstrate change over a five year period within categories.

**Figure C: Number and Percentage of Disability Categories Ages 3-21 (SY08 and SY12)**

| Primary Disability           | SY08    |        | SY12    |        |
|------------------------------|---------|--------|---------|--------|
|                              | #       | %      | #       | %      |
| Autism                       | 8,668   | 5.3%   | 13,228  | 8.1%   |
| Communication                | 27,499  | 16.7%  | 29,444  | 18.0%  |
| Developmental Delay          | 16,434  | 10.0%  | 17,552  | 10.7%  |
| Emotional                    | 13,724  | 8.4%   | 13,932  | 8.5%   |
| Health                       | 10,539  | 6.4%   | 15,304  | 9.4%   |
| Intellectual                 | 11,228  | 6.8%   | 10,155  | 6.2%   |
| Multiple Disabilities        | 4,912   | 3.0%   | 4,694   | 2.9%   |
| Neurological                 | 5,990   | 3.6%   | 7,947   | 4.9%   |
| Physical                     | 1,547   | 0.9%   | 1,390   | 0.8 %  |
| Sensory/Deaf/Blind           | 219     | 0.1%   | 164     | 0.1%   |
| Sensory/Hard of Hearing      | 1,286   | 0.8%   | 1,221   | 0.7%   |
| Sensory/Vision Impairment    | 555     | 0.3%   | 591     | 0.4%   |
| Specific Learning Disability | 61,697  | 37.6%  | 48,057  | 29.4%  |
| SPED Total                   | 164,298 | 100.0% | 163,679 | 100.0% |

*Source: Massachusetts Student Information Management System*



Students with disabilities in the categories of Specific Learning Disability, Communication, and Developmental Delay represent approximately 58 percent of all students receiving special education services in Massachusetts. The analysis of the percentage changes over the five year period (SY08 to SY12) shows that the percentage of students identified under the category of Specific Learning Disability has decreased by 21.8 percent during this period. In contrast, several other disability categories have showed sharp percentage change increases during this same period: Autism at 52.8 percent, Health at 46.9 percent, and Neurological at 32.7 percent. Other disability categories have shown less marked differences over time.

### III. Assessment

#### A. Massachusetts Comprehensive Assessment Systems (MCAS)

##### 1. Performance of Students with Disabilities

In 2012, fewer than 25 percent of students with disabilities scored *Proficient* or higher at grades 3, 4, and 5 in English language arts (ELA); at grades 4, 5, 6, 7, and 8 in Mathematics; and at grades 5 and 8 in Science and Technology/Engineering (STE). The percentage of students with disabilities scoring *Proficient* or higher ranged from:

- 18 percent at grade 4, to 60 percent at grade 10 in ELA;
- 14 percent at grades 7 and 8, to 41 percent at grade 10 in Mathematics; and
- 12 percent at grade 8, to 32 percent at grade 10 in STE.

Students with disabilities made gains in achievement in ELA between 2011 and 2012 at grade 8 (1 point), grade 4 (3 points) and grade 10 (11 points); in Mathematics at grades 4, 6, and 10 (2 points); and in STE at grade 10 (2 points). Decreases in achievement levels were noted in ELA at grade 5 (6 points), and grades 6 and 7 (2 points); in Mathematics at grade 3 (5 points) and grade 5 (2 points); in STE at grade 5 (2 points). These changes in achievement levels are illustrated in Figure F below.

**Figure F: Change in MCAS Performance for Students with Disabilities (SY11–12)**

| Percentage of Students with Disabilities Scoring Proficient and Higher |                       |      |        |             |      |        |                     |      |        |
|--|-----------------------|------|--------|-------------|------|--------|---------------------|------|--------|
|  | English Language Arts |      |        | Mathematics |      |        | Science & Tech/Eng. |      |        |
|  | SY11                  | SY12 | Change | SY11        | SY12 | Change | SY11                | SY12 | Change |
| Grade 3  | 24                    | 24   | 0      | 31          | 26   | -5     |                     |      |        |
| Grade 4  | 15                    | 18   | +3     | 16          | 18   | +2     |                     |      |        |
| Grade 5  | 27                    | 21   | -6     | 22          | 20   | -2     | 21                  | 19   | -2     |
| Grade 6  | 28                    | 26   | -2     | 19          | 21   | +2     |                     |      |        |
| Grade 7  | 31                    | 29   | -2     | 14          | 14   | 0      |                     |      |        |
| Grade 8  | 41                    | 42   | +1     | 14          | 14   | 0      | 12                  | 12   | 0      |
| Grade 10   | 49                    | 60   | +11    | 39          | 41   | +2     | 30                  | 32   | +2     |

Source: Summary of 2012MCAS State Results

## 2. Performance Gap

The between-group gap in the percentage of students scoring *Proficient* or higher for students with disabilities and all students narrowed or remained the same in most subjects and grades. The between-group gap in ELA narrowed by seven points at grade 10, but widened by one point at grades 4 and 8. In Mathematics, the between-group gap narrowed by one point at grade 10, but widened by two points at grade 4. In STE, the gap widened by four points at grades 5 and 8.

More detailed reporting of MCAS results for students is included in the report entitled *Spring 2012 MCAS Tests: Summary of State Results*, available on the Department's website at <http://www.doe.mass.edu/mcas/2012/results/summary.pdf>.

## IV. Improvement Activities

### A. Office of Tiered System of Supports (OTSS)

In spring 2012, the Department created a new office, the Office of Tiered System of Supports (OTSS). Staff from the Office of Special Education, Planning and Policy (SEPP) and OTSS collaborates on many activities. As a blending of special education and general education initiatives, OTSS concentrates on guiding the establishment of a system that provides high-quality core educational experiences in a safe and supportive learning environment for all students, and targeted interventions/supports for students who experience academic and/or behavioral difficulties and students who have already demonstrated mastery of the concept and skills being taught. This blueprint for school improvement focuses on system level change across the classroom, school, and district and is called the Massachusetts Tiered System of Supports (MTSS).

In addition to developing policies, practices and procedures around MTSS, OTSS provides technical assistance, develops tools and guidance documents, administers grants, and establishes and maintains communication with key stakeholders representing general and special education populations. The Department, through OTSS, was awarded \$5.5 over 5 years million under the federal State Personnel Development Grant program to create model sites across the Commonwealth that support the implementation and ongoing monitoring of best practices for tiered systems of support. Also, during the 2011-2012 school year, OTSS supported the following activities, in addition to monitoring State Performance Plan (SPP) performance indicators 3 (assessment), 5 (least restrictive environment), and 14 (post-secondary outcomes):

- First annual MTSS Conference, March 2012;
- Grant Program: District and School Planning: An Integrated Academic and Non-Academic System;
- Summer 2012 professional development on Universal design for Learning (UDL);
- Massachusetts Licensure Academy for special educators on waivers; and
- Massachusetts Focus Academy professional development courses.

To view the MTSS website and read more about the MTSS initiative, please visit: <http://www.doe.mass.edu/mtss/>.

## V. Initiatives

### A. *Review of Special Education in the Commonwealth of Massachusetts*

Thomas Hehir and Associates was retained by the Department in the spring of 2012 to conduct a comprehensive review of special education in the Commonwealth. Dr. Hehir, currently a Professor of Practice at Harvard University's School of Education, also served as director of the U.S. Department of Education's Office of Special Education Programs; associate superintendent for the Chicago Public Schools; and in a variety of positions in the Boston Public Schools, including that of director of special education from 1983 to 1987. The research focused on issues of identification, placement, and performance in Massachusetts and yielded interesting and useful results, some of which are summarized below. The full report can be accessed on the following link <http://www.doe.mass.edu/sped/hehir/>

Schools in the Commonwealth identify a higher percentage (17%) of students as having a disability than do schools across the country. This rate of identification is the second highest in the country, behind Rhode Island.

Two out of three identified students are placed in the disability categories of Specific Learning Disability, Communication, or Other Health Impaired; categories whose definitions are regarded as more subject to interpretation. These three disabilities are combined under the title "High Incidence" for the report, which also identifies potential issues of identification linked to income level of students. Districts that have a higher percentage of low-income students typically identify a larger percentage of their students in the High Incidence disability categories.

The disproportional identification of children of African American and Latino descent has received substantial media attention. This research demonstrated that, in the Commonwealth, any differential in identification rates between African America/Latino students and White/Asian students is considerably smaller than other areas of the country where researchers have observed significant patterns of race-based disproportionality. Likewise students with Limited English Proficiency (LEP) are identified as eligible to receive special education at rates similar to English proficient peers. However, Spanish-speaking students are identified as having an intellectual disability at double the rate of their English proficient peers.

**Figure G: Population Group Status:**

| Population Group          | School Year 2011-12 |                 |
|---------------------------|---------------------|-----------------|
|                           | Incidence in SPED   | PK-12 incidence |
| Low-Income                | 44.2%               | 35.2%           |
| English Language Learners | 7.0%                | 7.3%            |
| African American          | 9.9%                | 8.3%            |
| Hispanic                  | 19.6%               | 15.8%           |
| White                     | 64.9%               | 67.1%           |

*PowerPoint presentation to State Board of Education, April 23, 2012*

The majority of students with disabilities are educated in classrooms with their typically developing peers at rates that are the same or higher than rates for students across the country. However, low-income students with disabilities are educated in substantially separate settings at a higher rate than high-income students with disabilities. African American and Latino students spend less time in inclusive settings than White and Asian students, and MCAS scores are slightly lower for African American and Latino students identified with a “High Incidence” disability. Massachusetts students with disabilities score, on average higher on state-wide standardized achievement tests than their counterparts across the country.

Dr. Hehir’s targeted recommendations focus on state activities intervening in districts that have overrepresentation of low-income students and/or over-use of substantially separate educational settings. He also suggests that the state assume a larger role in “promoting good practices that have been shown to benefit students with disabilities.” Specifically, this report suggests that the state and districts adopt the principles of Universal Design for Learning, universally designed behavior supports, and a tiered system of supports (e.g., MTSS) in order to accelerate the implementation of these interventions and to eventually reduce the large numbers of students identified for special education. The Department is actively working with districts in these areas.

## **B. Massachusetts Meets Requirements under IDEA**

In June 2012 and for the first time since Massachusetts’ submission of the State Performance Plan (SEPP) and Annual Performance Report (APR), the U.S. Department of Education’s Office of Special Education and Rehabilitative Services (OSERS) has determined that Massachusetts meets requirements under Part B of the Individuals with Disabilities Education Act (IDEA). This determination was made based on OSERS review of the state’s submission of the Federal fiscal year (FFY) 2010 SPP and APR in February 2012. (A copy of the current SPP and APR, and prior years’ submissions, is available at <http://www.doe.mass.edu/sped/spp/maspp.html>.) Data for individual districts can be found at: [http://profiles.doe.mass.edu/state\\_report/special\\_ed.aspx](http://profiles.doe.mass.edu/state_report/special_ed.aspx).

The 2004 Amendments to the IDEA require each state to develop an SPP that evaluates annually the state’s efforts to implement the requirements and purposes of the IDEA, and describes how the state will improve its implementation of compliance and performance targets. The SPP includes baseline data, measurable and rigorous targets, and improvement activities for 20 indicators as outlined below.

**Figure H: SPP Performance and Compliance Indicators**

|   |   |
|---|---|
| Indicator 1: Graduation Rate                          | Indicator 12: Early Childhood Transition            |
| Indicator 2: Dropout Rate                             | Indicator 13: Secondary Transition                  |
| Indicator 3: Assessment                               | Indicator 14: Post-School Outcomes                  |
| Indicator 4: Suspension/Expulsion                     | Indicator 15: ID and Correction of Noncompliance    |
| Indicators 5 & 6: Least Restrictive Environment (LRE) | Indicator 16: Complaint Resolution within Timelines |
| Indicator 7: Preschool Outcomes                       | Indicator 17: Due Process within Timelines          |
| Indicator 8: Parent Involvement                       | Indicator 18: Use of Resolution Sessions            |
| Indicators 9 & 10: Disproportionality                 | Indicator 19: Mediation Agreements                  |
| Indicator 11: Initial Evaluation within Timelines     | Indicator 20: Timely State Reported Data            |

In making its determination that Massachusetts meets requirements, OSERS cited the state's submission of valid and reliable data, high levels of compliance, timely correction of identified noncompliance within one year of identification, and high levels of performance for the 20 indicators included in the report. OSEP commended Massachusetts for its performance, which is a reflection of the Department's and the districts' collaborative efforts to improve programs and services for children with disabilities and to improve outcomes for these students.

### **C. Accountability, Determination Levels, and the No Child Left Behind Waiver**

On February 9, 2012, Massachusetts was granted a waiver from certain requirements of the No Child Left Behind (NCLB) law. This waiver allows the state to better align its systems of differentiated accountability, support, and intervention. Prior to seeking this flexibility, the Commonwealth's schools and districts were assessed based on both the state's five-level Framework for District Accountability and Assistance and the requirements of NCLB, as well as a special education determination of 1-5 indicating their need for special education technical assistance or intervention. Under the new flexibility waiver, school districts' special education classifications are better aligned with their state accountability and assistance level.

Instead of the NCLB labels of *identified for improvement*, *corrective action*, and *restructuring*, all districts and schools, including charter schools, beginning in 2012, all districts and schools are classified into one of five accountability and assistance levels based primarily on performance outcomes over a four year period. Districts are also assigned a determination of need for special education technical assistance or intervention based on five categories aligned with the accountability and assistance levels. There is a one-to-one correspondence between the performance-based accountability levels and the special education determination in all cases except that the special education determinations must also take into account compliance criteria. In some instances a district may receive a more serious determination of need for special education technical assistance or intervention, when the district demonstrates non-compliance to an extent inconsistent with the accountability level assigned. In SY2012-13, only two districts have different assigned special education determinations. Special education determinations are required to use the following terminology:

- *Meets Requirements (MR)*
- *Meets Requirements-At Risk (MRAR)*
- *Needs Technical Assistance (NTA)*
- *Needs Intervention (NI)*
- *Needs Substantial Intervention (NSI)*

These coordinated classifications will help signal whether outcomes for all students in the district indicate progress, including that of students with disabilities, or whether technical assistance and/or intervention is needed to improve outcomes for all children, especially students with disabilities. This alignment of accountability and assistance allows the Department to more effectively coordinate the types and amounts of technical assistance offered to struggling districts from across different Department offices, thus utilizing both state and district level resources more efficiently and systemically.

## D. Results Driven Accountability (RDA)

VI. According to the U.S. Department of Education’s Office of Special Education Programs (OSEP), the educational outcomes of America’s students with disabilities have not improved as much as expected, despite significant federal efforts to close achievement gaps through federal programs such as NCLB and IDEA. The current federal accountability system for special education places heavy emphasis on procedural compliance without consideration of how the requirements impact student learning outcomes. OSEP is now shifting the balance toward a systems approach that focuses on improving educational results and functional outcomes for students with disabilities. This new focus has been titled “Results Driven Accountability,” or RDA. More information about this initiative will be issued by OSEP as it is developed. More information on RDA is available at <http://www2.ed.gov/about/offices/list/osers/osep/rda/index.html>.

### VI. Finances

#### A. Financial Summary

Special education expenditures are reported by public school districts at the end of the year to the Department. As shown in Figure I, both total school operating budgets and combined special education expenditures have increased over the past eight years.

Definitions and Notes:

- "Direct" special education expenditures include only those that can be related specifically to special education pupils.
- "Other instructional" includes supervisory, textbooks and instructional equipment, guidance, and psychological services.
- "MA Public Schools and Collaboratives" includes other public school districts, collaboratives, and charter schools.
- Spending from state "circuit breaker" funds is included. Otherwise, spending from grants, revolving funds, or other non-appropriated revenue sources (totaling less than four percent of total special education spending statewide) is excluded.

**Figure I: Direct Special Education Expenditures, FY04–FY11**

| Fiscal Year | In-district Instruction |                     | Out-of-district Tuition              |                                     | E  | F                             | G   |
|-------------|-------------------------|---------------------|--------------------------------------|-------------------------------------|--|-------------------------------|---|
|             | A                       | B                   | C                                    | D                                   |  |                               |   |
|             | Teaching                | Other Instructional | MA Public Schools and Collaboratives | MA Private and Out-of-State Schools | Combined Special Ed Expenditures (A+B+C+D) | Total School Operating Budget | Special Education % of Budget (E as % of F) |
| 2004        | 877                     | 165                 | 182                                  | 325                                 | 1,549                                      | 8,330                         | 18.6%                                       |
| 2005        | 925                     | 180                 | 184                                  | 369                                 | 1,657                                      | 8,770                         | 18.9%                                       |
| 2006        | 989                     | 188                 | 194                                  | 390                                 | 1,762                                      | 9,206                         | 19.1%                                       |
| 2007        | 1,042                   | 195                 | 204                                  | 420                                 | 1,862                                      | 9,614                         | 19.4%                                       |
| 2008        | 1,092                   | 196                 | 212                                  | 437                                 | 1,936                                      | 9,863                         | 19.6%                                       |
| 2009        | 1,200                   | 214                 | 224                                  | 417                                 | 2,056                                      | 10,246                        | 20.1%                                       |
| 2010        | 1,224                   | 219                 | 228                                  | 422                                 | 2,093                                      | 10,530                        | 20.0%                                       |
| 2011        | 1,215                   | 228                 | 246                                  | 436                                 | 2,125                                      | 10,710                        | 19.8%                                       |

Note: Values rounded to nearest million. Source: End of Year Pupil and Financial Report, Schedule 4 – Special Education Expenditures by Prototype

**B. Circuit Breaker**

The state “Circuit Breaker” program – a special education reimbursement program enacted by the Legislature [St. 2000, c. 159, § 171] – was first implemented in FY04. The “Circuit Breaker” program is designed to provide additional state financial assistance to school districts that have incurred exceptionally high costs in educating individual students with disabilities. The law supports shared costs between the state and the school district when costs rise above a certain level, at which point the state will share up to 75% of the costs. Massachusetts state funds are available to reimburse a school district for students with disabilities whose special education costs exceed four times the state average foundation budget per pupil. In FY10, and FY 11, rates fell well below the statutory maximum, at 42 percent and 43.66 percent respectively. In FY 12, the reimbursement rate jumped to 68.71 percent, which is still less than the statutory maximum but which demonstrates a considerable increase in reimbursements to districts.

In FY12, a total of 287 districts filed 20,663 claims; this is 189 fewer claims than were filed in FY11. The number of eligible students covered by these claims was 9, 892, and the total amount of eligible expenses claimed was just under \$664 million, a decrease of more than \$25 million from the previous fiscal year. The total amount reimbursed to school districts was approximately \$203 million, an increase in reimbursements of \$76 million.

Claims submitted by districts through the “Circuit Breaker” reimbursement form indicate a shift in student placements based on the dollars spent. Students in private residential placements claimed \$201 million, a 9 percent decrease from the previous year. In-district placement claims were \$122 million, which is a decrease of 8 percent. Placements in educational collaborative programs claimed \$150 million, which was an increase of \$27 million; and private day placements claimed \$227 million, a decrease of \$15 million.

**Figure J: Amounts claimed by Placement through Circuit Breaker**

| Year | Private Residential | Private Day | Collaborative | In-District |
|------|---------------------|-------------|---------------|-------------|
| FY06 | 210                 | 160         | 114           | 149         |
| FY07 | 206                 | 182         | 121           | 146         |
| FY08 | 210                 | 202         | 128           | 146         |
| FY09 | 220                 | 220         | 112           | 174         |
| FY10 | 228                 | 240         | 143           | 142         |
| FY11 | 211                 | 242         | 123           | 154         |
| FY12 | 201                 | 227         | 150           | 122         |

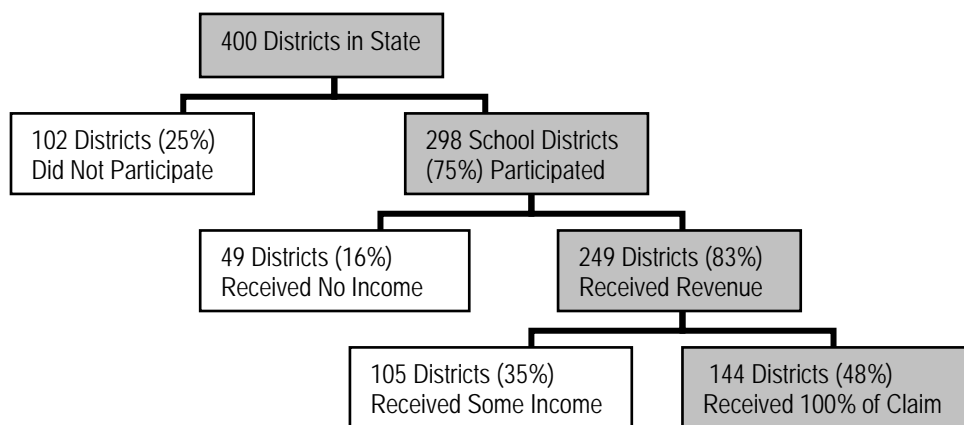
*Note: Total amount claimed rounded to nearest million. Additional information can be found in the Implementation of the Special Education Reimbursement ("Circuit Breaker") Program annual report, which is located at: <http://www.doe.mass.edu/research/reports/legislative.html>.*

### C. School-Based Medicaid

The School-Based Medicaid program allows local education authorities (LEAs), such as cities and towns, charter schools, public health commissions, and regional school districts, to seek payment for providing medically necessary Medicaid services (direct services) to eligible MassHealth-enrolled children. This program also allows such agencies to seek payment for participating in activities that support the administration of the state's Medicaid program (administrative activities). This would include outreach, and those activities that aid the delivery of direct services to Medicaid-enrolled children with individualized education plans (IEPs).

State law allows LEAs to participate in the Municipal Medicaid program and to seek payment for either direct services or administrative activities. In order to participate in the program, LEAs must sign provider contracts with the state Medicaid agency. Municipal Medicaid providers can bill MassHealth in accordance with the contract terms.

**Figure L: Municipal Medicaid Funding Breakdown, FY12** (does not include charter schools)



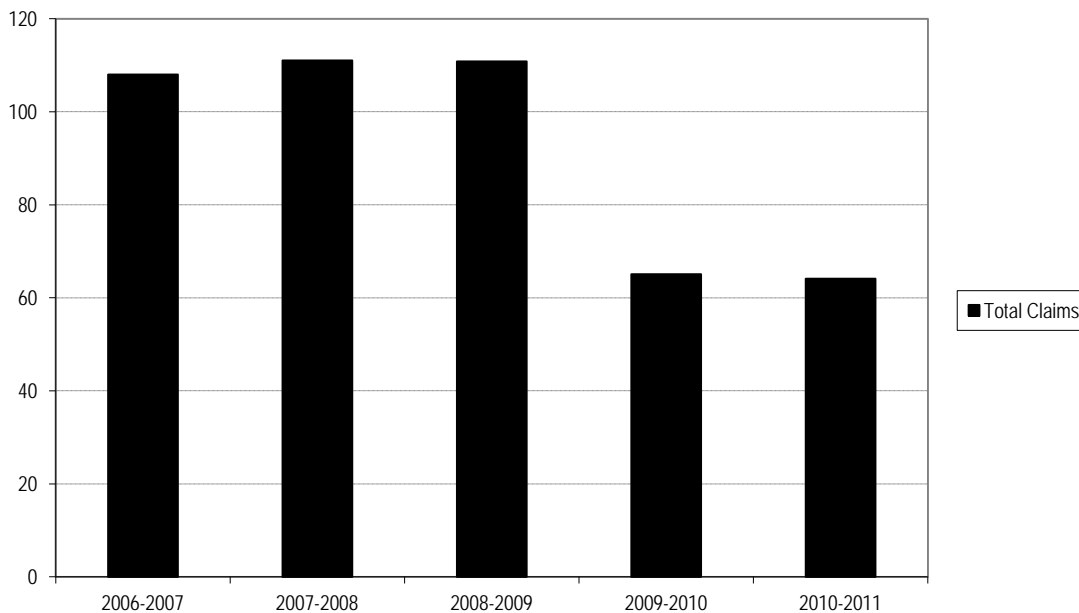
Source: MADESE Finance Office and MA EOHHS Office of School-Based Medicaid

The figures for the School-Based Medicaid program for FY2012 are provided below in Figure K. Total revenue received by providers in FY12 was \$74,117,545; \$48,209,025 is for Direct Services Claims (DSC) and \$25,908,520 for Administrative Activity Claiming (AAC). Three hundred twenty-eight providers received revenue in FY12; of those, 29 were charter schools.

The data also show a decrease of 7.45 percent in participating districts from fiscal year 2011 and a decrease of 8.3 percent decrease in districts receiving at least some revenue (see Figure L). It is important to note that the data shown in Figure L can be somewhat misleading, as the revenue that districts receive in any given fiscal year is often generated by claims from earlier fiscal years. While this data is not conclusive, it is likely that the decreased claiming is a result of a “fee for service” methodology that requires additional paperwork and documentation. This methodology was instituted July 1, 2009 and the two year decrease in claims suggests it is not as popular as the former “bundled rate” methodology. Massachusetts was required to change its methodology due to insufficient documentation of services under the former method.



**Figure K: Total Municipal Medicaid Claims, FY07-FY11**



*Note: Values rounded to nearest tenth of a million.*

## VII. Educational Collaboratives

Educational collaboratives continue to play an important role in delivering special education services to students throughout the Commonwealth, especially in the smallest districts, where capacity to provide extensive services may be limited. During -FY12, 5,178 students, with a full range of disabilities, received direct services through educational collaboratives. Collaboratives collectively served 244 member districts, had budgets that amounted to over \$325 million, and employed 3,688 staff.

Educational collaboratives have operated in Massachusetts for over forty years. With the passage of Chapter 766, the Special Education law, in 1972, collaborative programs expanded as school districts recognized their value in serving low incidence special education students. With this expansion came more responsibility for the districts acting as fiscal agents for the collaborative to manage the financing and hire teachers for the collaborative who then retained tenure in the lead district. During the 2011-2012 school year, collaboratives experienced intense scrutiny regarding financial practices; this inspection culminated in legislation (Ch. 43, Acts of 2012) focused on improved accountability and enhanced oversight by the Department.

One provision of the new legislation authorized the development of regulations relating to educational collaboratives. Proposed regulations have been written and have been opened for public comment. Another provision called for the establishment of a special legislative commission charged with studying the role of collaboratives in the Commonwealth. This commission will be filing its report in March 2013, and is likely to make recommendations regarding the efficiency and value of the current collaborative arrangement.

One successful model for an efficient and coordinated approach to resource sharing through partnerships with educational collaboratives is the Special Education Transportation Pilot Program, which has realized more than \$7 million dollars in savings for participating districts to

date. A copy of the Special Education Transportation Task Force Report is available on the Massachusetts Organization for Educational Collaboratives (MOEC) website: [www.moecnet.org](http://www.moecnet.org).

As a component of increased accountability, the Department has included educational collaboratives in the Department's Program Quality Assurance (PQA) six-year cycle of coordinated program reviews since SY 2010-2011.

## **VIII. Additional Resources**

### **A. *Bureau of Special Education Appeals***

The Bureau of Special Education Appeals (BSEA), an independent subdivision of the Division of Administrative Law Appeals, conducts mediations and due process hearings to resolve disputes among parents, school districts, private schools and state agencies, consistent with the IDEA and related laws. The BSEA derives its authority from both federal law and regulations, and Massachusetts law and regulations, including M.G.L c.71B. In addition to mediation and due process hearings (both of which must be offered pursuant to federal law), the BSEA offers the following alternative dispute resolution options: IEP Team meeting facilitations, settlement conferences, and advisory opinions.

A parent or a school district may request mediation and/or a due process hearing on any matter concerning the eligibility, evaluation, placement, Individualized Education Program (IEP), provision of special education, or procedural protections for students with disabilities, in accordance with state and federal law.<sup>1</sup> In addition, a parent may request a hearing on any issue involving the denial of the free appropriate public education guaranteed by [Section 504 of the Rehabilitation Act of 1973](#).

Mediations and hearings are conducted by impartial mediators and hearing officers who do not have personal or professional interests that would conflict with their objectivity in the proceeding. The BSEA consists of seven hearing officers (all of whom are attorneys), seven mediators, a coordinator of mediation, a scheduling coordinator, administrative staff, and a director.

What follows is a summary of BSEA data for fiscal year (FY) 2012, covering the period July 1, 2011 through June 30, 2012.

#### **1. Rejected Individualized Education Programs**

During FY2012, the BSEA received 8,460 rejected IEPs, an increase of 112 rejected IEPs from the previous fiscal year.

#### **2. Mediation**

---

<sup>1</sup> A school district may not, however, request a hearing on a parent's failure or refusal to consent to initial evaluation or initial placement of a child in a special education program, or to written revocation of parental consent for further provision of special education and related services.

There were approximately 917 mediations concerning special education and Section 504 matters conducted by seven BSEA mediators during FY2012. This figure represents an increase of 108 mediations from the 809 conducted during the prior fiscal year. Approximately 86% of the mediations resulted in written agreements.

### **3. Hearings**

There were 582 hearing requests received by the BSEA during FY2012, representing a slight increase from the 545 requests in the prior year. The majority of these hearing requests were resolved prior to proceeding to the formal hearing, or subsequent to the commencement of the hearing but prior to concluding the process.

Seven (six full time equivalent or FTE) BSEA hearing officers conducted full hearings resulting in 52 decisions. Of these, parents fully prevailed in 13 (25%), school districts fully prevailed in 26 (50%). Thirteen decisions (25%) comprised decisions about school district assignment, other agency involvement, or addressed mixed relief. In addition to the 52 hearing decisions, hearing officers issued at least 23 substantive written rulings during this period of time.

### **4. Representation**

Statistics with respect to outcome in relation to representation are as follows:

Of the 13 cases in which parents fully prevailed, parents were represented by counsel in 7, by lay advocates in 2 and appeared pro se in 4; the school district was represented by counsel in all matters.

Of the 26 cases in which school districts fully prevailed, the school district was represented by counsel in all matters; parents appeared pro se in 14, were represented by counsel in 8 and by lay advocates in 4.

For further information about the BSEA and its decisions, please visit <http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/fiscal-year-2012-bsea-statistics.html>.

## **IX. Conclusion**

### **Contact Information**

The data for this report are a compilation of information from several units within the Department of Elementary and Secondary Education as well as input from the Massachusetts Organization of Education Collaboratives, the state Office of Medicaid, and the Division of Administration Law Appeals. If you have any questions, please contact the Office of Special Education Planning and Policy at the Department of Elementary and Secondary Education, Marcia Mittnacht, Director, by email at [mmmittnacht@doe.mass.edu](mailto:mmmittnacht@doe.mass.edu) or by phone at 781-338-3375.