

Code of Massachusetts Regulations Currentness

Title 603: Department of Education

Chapter 28.00: Special Education (Refs & Annos)

>> 28.10: School District Responsibility

(1) General Provisions. School districts shall be programmatically and financially responsible for eligible students based on residency and enrollment.

(a) With the exception of students who are in the care or custody of a state agency, nothing in 603 CMR 28.10 shall require a school district to provide special education to a student whose parent(s), and legal guardian if any, live outside Massachusetts and have placed the student in an education program in Massachusetts or who maintain contact with the student who remains in Massachusetts.

(b) Nothing in 603 CMR 28.10 shall limit the right of the student to timely evaluation, services and placement in accordance with 603 CMR 28.00.

(c) Nothing in 603 CMR 28.10 shall be interpreted to assign responsibility to school districts for any educational service or program other than services or programs provided under state or federal special education law.

(d) Any school district deemed responsible for a student under 603 CMR 28.10 shall continue responsibility for such student until another school district is deemed responsible under 603 CMR 28.10.

(2) School District Responsibility Based on Student Residence. The school district where the student resides shall have both programmatic and financial responsibility under the following circumstances:

(a) When students live with their parent(s) or legal guardian.

1. When a student who requires an in-district placement to implement his or her IEP lives with both of his or her parents during the school year, irrespective of school vacation periods, and the parents live in two

different Massachusetts school districts, the school district where the student is enrolled shall be responsible for fulfilling the requirements of 603 CMR 28.00.

2. When a student who requires an out-of-district placement to implement his or her IEP lives with both of his or her parents during the school year, irrespective of school vacation periods, and the parents live in two different Massachusetts school districts, the school districts where the parents reside shall be equally responsible for fulfilling the requirements of 603 CMR 28.00.

(b) When students are 18 years of age or over and they have established their own residences as adults.

(c) When students have been placed or are funded by the Department of Social Services in a foster home located within Massachusetts.

(3) School District Responsibility Based on Residence of Parent(s) or Legal Guardian. The school district where the parent(s) or legal guardian resides shall have both programmatic and financial responsibility under the following circumstances:

(a) When a student is in a pediatric nursing home.

(b) When a student whose IEP requires an out of district placement lives and receives special education services at a special education residential school.

(c) When a student lives and receives educational services in a residential facility (other than a group home or a residential school) operated by or, through contract, authorized by the Department of Mental Health, the Department of Public Health, the Department of Youth Services, or the Department of Correction or County House of Correction. In certain of these facilities, the Department of Education may provide special education services, subject to appropriation and resource availability. The responsible school district shall coordinate with the Department to ensure that the student receives an evaluation, an annual review, and special education services as identified by the Team at a Team meeting convened by the school district. The responsible school district is not relieved of its obligations under state and federal special education law because the student is being served by the Department of

Education or any other state agency.

(d) When a student whose IEP requires in-district services is placed by the Department of Social Services in an approved residential school, programmatic and financial responsibility will be with the district where the parent(s) or legal guardian resides. The school district of the city, town or regional school district where such approved residential special education school is located shall provide educational and special educational services to the student in accordance with his or her IEP, shall participate in any Team meetings convened by the school district where the parent(s) or legal guardian resides and shall receive reimbursement from the school district where the parent(s) or legal guardian resides for such services using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable.

(4) Shared School District Responsibility. The school district where the parent(s) or legal guardian resides shall have financial responsibility and the school district where the student resides shall have programmatic responsibility when a student is in a living situation other than that described in 603 CMR 28.10(2) or (3) including but not limited to a relative's home that is not funded by the Department of Social Services, a foster home funded by the Department of Social Services that is located outside of Massachusetts, a group home, or a residence or crisis or respite facility funded or supervised by a state agency.

(a) When such a student is served in an in-district program, the school district where the student lives shall provide such services and may bill and shall receive payment for the special education costs (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable) from the school district where the parent(s) or legal guardian resides, unless such student is over 18 years of age and has established his or her own residence as an adult as described in 603 CMR 28.10(2)(b).

(b) When such a student is served in an out-of-district program, the school district where the parent(s) or legal guardian resides shall pay the tuition costs for the student's IEP program directly to the out-of-district school, and such other payments as may be required to other individuals or entities that provide services required by the student's IEP.

(c) In all cases where financial and programmatic responsibility are shared, the school district where the student resides shall invite the school district where the parent(s) or legal guardian resides to participate as a member of the

student's Team, provided that such participation shall not limit the student's right to timely evaluation and placement in accordance with 603 CMR 28.00.

(5) Responsibility for Homeless Students. Nothing in 603 CMR 28.00 shall limit the educational rights of homeless students and parents afforded under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. s 11431 et seq. (McKinney-Vento). The following provisions apply to these students.

(a) Homeless students shall be entitled to either continue to attend their school of origin, as defined by McKinney-Vento, or attend school in the city or town where they temporarily reside. To the extent feasible, homeless students should remain in their school of origin unless doing so is contrary to the wishes of such student's parent(s) or legal guardian or state agency with care or custody of the student.

(b) The school district(s) that was programmatically and financially responsible prior to the student becoming homeless shall remain programmatically and financially responsible for a homeless student until the parent(s) or legal guardian or state agency with care or custody of the student chooses to enroll the student in the school district where the shelter or temporary residence is located. When a student whose IEP requires in-district services is enrolled in the school district where the student is temporarily residing, then that school district shall become programmatically and financially responsible upon enrollment. When a student whose IEP requires out-of-district services is enrolled in the school district where the student is temporarily residing, then that school district shall become programmatically responsible upon enrollment and the school district(s) that was financially responsible prior to the student becoming homeless shall remain financially responsible until the student is no longer homeless.

(6) Program Schools. A program school shall have programmatic and financial responsibility for enrolled students, subject only to specific finance provisions of any pertinent state law related to the program school. Specific provisions for program schools are as follows:

(a) For charter schools, vocational schools, or schools attended under M.G.L. c. 76, s 12A (Metco), when the Team determines that the student may need an out-of-district placement, the Team shall conclude the meeting pursuant to 603 CMR 28.06(2)(e) without identifying a specific placement type, and shall notify the school district where the student resides within two school days.

1. Upon a determination as in 603 CMR 28.10(6)(a), the program school shall schedule another meeting to determine placement, and shall invite representatives of the school district where the student resides to participate as a member of the placement team pursuant to 603 CMR 28.06 (2)(e)1.

2. The Team meeting convened by the program school shall first consider if the school district where the student resides has an in-district program that could provide the services recommended by the Team, and if so, the program school shall arrange with the school district where the student resides to deliver such services or develop an appropriate in-district program at the program school for the student.

3. If the placement Team, in accordance with the procedures of 603 CMR 28.06 (2)(e), determines that the student requires an out-of-district program to provide the services identified on the student's IEP, then the placement proposed to the parent shall be an out-of district day or residential school, depending on the needs of the student. Upon parental acceptance of the proposed IEP and proposed placement, programmatic and financial responsibility shall return to the school district where the student resides. The school district where the student resides shall implement the placement determination of the Team consistent with the requirements of 603 CMR 28.06 (3).

(b) For schools attended pursuant to M.G.L. c. 76, s 12B (school choice), such schools may bill and receive payment from the school district where the student resides for the costs of out-of-district placements made by the program school. The program school shall invite the school district where the student resides to participate as a member of the student's Team and shall provide notice of the Team meeting at least five school days prior to the meeting, provided that such participation shall not limit the student's right to a timely evaluation and placement in accordance with 603 CMR 28.00.

(c) A Vocational school shall not discriminate in the enrollment of students with disabilities.

1. A vocational school may not accept students with disabilities on a conditional basis unless the vocational school has procedures that ensure that the reasons for conditional acceptance are equally applied to students

without disabilities.

2. A vocational school may serve as an "evaluation site" for a student requiring an extended evaluation under the provisions of 603 CMR 28.05(2)(b) of 603 CMR 28.00 if the evaluative information that is required is primarily vocational in nature. In such circumstances, the student is not considered enrolled in the vocational school, nor shall an extended evaluation be considered a temporary placement. For the duration of the extended evaluation the student shall be considered enrolled in the public school district in which he or she was enrolled prior to the extended evaluation.

(7) Temporary Assignments. The Department reserves the right to assign temporary responsibility in cases where the student is not receiving services or when lack of assignment threatens the student's placement or program. Such temporary assignment shall be made based on the information available to the Department. The temporary district shall have all of the rights and responsibilities assigned to districts under 603 CMR 28.00. The temporary district may bill and shall be eligible to receive payment for the special education costs (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable) from the district assigned responsibility for that period of time for which a temporary district was identified.

(8) Department Assignment of School District Responsibility.

(a) The Department may assign or a school district or agency may request the Department's assistance in assigning a city, town, or school district to be responsible for students in living situations described in 603 CMR 28.10(3) or (4).

1. who are in the care or custody of a state agency and have no parent or legal guardian residing in Massachusetts; or

2. when the residence or residential history of the student's parent(s) or legal guardian is in dispute; or

3. when the student has a legal guardian who has been appointed on a limited basis; or

4. when a student has not yet been determined to be eligible and/or is not receiving services, or

5. when a student is in the care or custody of a state agency and is hospitalized and the agency gives notice to the responsible school district that the student will not return to the residence held prior to hospitalization.

(b) A request for an assignment shall not limit the right of the student to timely evaluation, services, or placement in accordance with 603 CMR 28.00. The school district or state agency requesting assignment shall be responsible for providing to the Department all required documentation to ascertain the legal status or residence(s) of the student or the student's parent(s) or legal guardian.

(c) The Department shall use the following criteria to assign a city, town or school district responsibility for a student in a living situation described in 603 CMR 28.10(3) or (4):

1. If the child has been voluntarily surrendered for adoption or freed for adoption by the Probate Court or the Juvenile Court, the school district(s) where the parent(s) lived at the time that the child was surrendered or freed for adoption or when parental rights were terminated shall be responsible.

2. If the student is in the care or custody of a state agency and such state agency has obtained a legal guardianship for the student when the student has turned 18, the school district(s) where the parent(s) lived at the time the court granted the request for guardianship shall be responsible.

3. If the parents' rights have been terminated and the Probate Court or the Juvenile Court has appointed a legal guardian for a minor student, the school district where the legal guardian resides shall be responsible.

4. If the legal guardian is an agency or organization or the legal guardian has been appointed on a limited basis such as a guardian ad litem, or a guardian appointed solely to monitor medications or finances, the school district where the parent(s) lives or last lived shall be responsible.

5. If the student's parents live in two different school districts, such school districts shall be jointly responsible for fulfilling the requirements of 603 CMR 28.00 except if the student actually resided with either parent immediately prior to going into a living situation described in 603 CMR 28.10(3) or (4) or the parents are divorced or separated and one parent has sole physical custody, then the school district where the student resided with the parent or the school district of the parent who has sole physical custody shall be responsible and shall remain responsible in the event the student goes into the care or custody of a state agency.

6. If the student's parent(s) or legal guardian resides in an institutional setting in Massachusetts, including, but not limited to, a correctional facility, a hospital, a nursing home or hospice, or a mental health facility, a halfway house, a pre-release center or a treatment facility, the school district where the parent(s) or legal guardian lived prior to entering the institutional setting shall be responsible.

7. If the student's parent(s) or legal guardian does not reside in Massachusetts, and the parent's or legal guardian's whereabouts are unknown, the school district of the last known Massachusetts residence of the student's parent(s) or legal guardian who lived in Massachusetts shall be responsible.

(d) Using the above criteria, the Department shall notify in writing the assigned school district(s) of its decision. Upon notification of responsibility for provision of special education to a student under 603 CMR 28.10(8)(d), the school district(s) shall immediately assume responsibility for the student in accordance with the requirements of 603 CMR 28.00. Until such notification, the school district(s) that had been responsible for providing special education to such student under 603 CMR 28.00 shall continue to be responsible.

(e) The school district(s) that had been responsible for providing special education to the student prior to assignment by the Department under 603 CMR 28.10(8)(d) may bill and shall be eligible to receive payment (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable), from the newly assigned district for the special education costs that were incurred during the period of time in which the newly assigned district should have been responsible.

(f) A school district may seek a review of the Department's assignment under

the procedures of 603 CMR 28.10(8) at any time that the district has information that was not available to the Department at the time that the assignment was made. The Department will review the information presented and will confirm or change the assignment of school district responsibility, and notify the districts of this decision under 603 CMR 28.10(8)(d).

(9) Appeal of Assignment of School District Responsibility. The assigned district may appeal the Department's assignment of responsibility to the Bureau of Special Education Appeals, subject to the following procedures:

(a) A district may appeal the assignment of school district responsibility within 60 days of the most recent notification of assignment.

(b) The request for appeal shall meet the following standards:

1. A request for appeal shall be based only on the information provided to the Department under 603 CMR 28.10(8)(b) and 603 CMR 28.10(8)(f) if applicable;

2. The request shall state the basis of the appeal;

3. The request for appeal shall identify the district(s) that the appealing district claims should have been assigned responsibility; and

4. The appealing district shall include such district(s) as a party to the appeal.

(c) A party may request a decision without a hearing with the agreement of all parties.

(d) The Bureau of Special Education Appeals shall render a decision within 45 days of receipt of the hearing request. The granting of a postponement shall not extend the 45-day deadline for issuance of a decision unless the postponement is requested by a party and allowed by the hearing officer for good cause.

(e) The Bureau of Special Education Appeals may return the case to the Department of Education based on new information presented at the hearing.

(f) The decision of the Bureau of Special Education Appeals shall be limited to a determination of the assigned school district and the effective date of such assignment.