

A Student's Right to Emotional Progress

© 2016 Daniel S. Perlman
Law Office of Daniel S. Perlman, LLC
42 Davis Road
Acton, MA 01720

The legal requirement for public school districts to provide appropriate services to students with emotional needs is well settled in Massachusetts. However, 'what is old is new again' as legislators, policy makers, hearing officers, and advocates continue to remind school districts of this important obligation.

In recent years, research about the significant impact of emotional well-being on both immediate and long-term learning has gained traction in Massachusetts, influencing legislative and policy reform. Data suggests that this momentum might also be fostered by the volume of calls and complaints by families whose children with emotional challenges are not well supported by their local school districts.

With ongoing pressure from multiple sources, practitioners in the field will likely continue to see a significant number of cases involving this highly vulnerable population of students.

The Legal Standard

School districts are required to provide a free appropriate public education ("FAPE") to all students who have disabilities and need specialized instruction and/or related services to make meaningful progress.¹ The First Circuit has long held that an Individualized Education Program ("IEP") is designed as a package that must target all of a student's special needs, whether they be academic, physical, emotional, or social,² as long as whatever nonacademic issues at stake are not "truly distinct" from learning problems.³ Black letter law in Massachusetts also makes clear that considering social and emotional development is required when determining whether a student is making documented progress.⁴

Over the years, the Massachusetts Bureau of Special Education Appeals ("BSEA")⁵ has followed and enforced the clear-cut mandate that school districts must address the emotional needs of students with disabilities.⁶

¹ Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq.; Massachusetts General Laws c. 71B.

² See *Lenn v. Portland School Committee*, 910 F. 2d 1083, 1089-1090 (1st Cir. 1990); *Mr. I. v. Maine School Administrative District No. 55*, 480 F.3d 1, 12 (1st Cir. 2007); *Zayas v. Commonwealth of Puerto Rico*, 163 Fed.Appx. 4, 5 (1st Cir. 2005).

³ *Gonzalez v. P.R. Dep't of Educ.*, 254 F.3d 350, 352 (1st Cir. 2001) (internal quotations omitted).

⁴ 603 CMR 28.02(18).

⁵ All BSEA decisions cited are available on Special Education Law (www.specialeducationlaw.com).

⁶ E.g., *Student v. Acton Public Schools & Acton Boxboro Regional School*, BSEA #14-05736 (September 2, 2014); *Student v. Belmont Public Schools*, BSEA # 13-05177 (July 15, 2013); *Grafton Public Schools*,

The most recent BSEA decision on the subject, *Student v. Acton Public Schools*, demonstrates that even when a school district proposed IEP allows for academic progress, the program can be deficient when it does not address social or emotional progress.⁷ In *Acton*, the hearing officer wrote: “I conclude that while Student’s academic needs were being appropriately met in Acton, his social and emotional needs were not.” The student in question called everyone a friend but did not understand the elements of friendship (e.g., trust, having fun together, etc.). He had limited understanding of perspective taking and the nuance of social norms. After school, he preferred to play video games, watch television, or read by himself. The social isolation was taking an emotional toll and the student struggled with anxiety.

The hearing officer found that Acton’s program did not and would not allow for social and emotional progress, writing: “Ultimately I am persuaded that Student presented with some emotional issues related to anxiety, frustration and lack of understanding of social behaviors. Acton did not propose to address these issues from an emotional standpoint until after Student had been unilaterally placed.” Similarly, one year earlier, in *Student v. Belmont*, a hearing officer found a student eligible for special education, when the student made academic progress but did not make social and emotional progress within general education.⁸

Recent Education Reform

In addition to well settled law, recent legislative reform in Massachusetts has emphasized the importance of school districts responding to the emotional needs of students. In 2010, An Act Relative to Bullying in Schools was signed into law, and amended in 2014 to require formal reporting of bullying to parents, and that school districts develop an anti-bullying plan, among other requirements.⁹ As required by the anti-bullying legislation, the Massachusetts Department of Elementary and Secondary Education (“DESE”) created guidelines for “the implementation of social and emotional learning [“SEL”] curricula in kindergarten to grade 12.”¹⁰

The SEL guidelines provide a platform to foster emotional growth for students within a variety of contexts beyond bullying prevention. While the guidelines do not provide specific learning benchmarks, DESE does include specific criteria for social and emotional learning that should be implemented by school districts, including an “Evidence-based curricula,” “Professional development,” and data collection to “Measure[] readiness, progress, and impact.”

The guidelines provide:

BSEA # 11-7489 (August 18, 2011); *Hingham Public Schools*, BSEA # 10-0592 (September 9, 2009); *Allan v. Wayland Public Schools*, BSEA # 07-2137 (March 23, 2007); *Elizabeth and Boston Public Schools*, BSEA # 04-1509 (June 23, 2004).

⁷ *Student v. Belmont Public Schools*, BSEA # 13-05177 (July 15, 2013).

⁸ *In Re: Student v. Belmont Public Schools*, BSEA # 13-05177 (July 15, 2013).

⁹ M.G.L. c. 71, §370.

¹⁰ Massachusetts Department of Elementary and Secondary Education, Guidelines on the Implementation of Social and Emotional Learning (SEL) Curricula K-12, available at <http://www.doe.mass.edu/bullying/SELguide.pdf> (last visited, March 28, 2016).

Research clearly demonstrates that social and emotional skills can be taught through school-based programs. Today, numerous nationally-available, evidence-based SEL curricula provide systematic classroom instruction that enhance students' abilities to recognize and manage their emotions, appreciate the perspectives of others, establish prosocial goals and solve problems, and use a variety of interpersonal skills to handle the challenges of growing up in society. In addition to skills-building components, a number of SEL curricula feature elements designed to foster positive classrooms and school environments, and to establish practices that build trust and rapport among and between students and adults.

DESE has also created guidelines, with specific benchmarks, emphasizing the importance and requirement of emotional learning for preschool and kindergarten students. DESE's Social and Emotional Learning, and Approaches to Play and Learning, which was publishing in June 2015, establishes social and emotional development standards for school districts to follow for younger students.¹¹ According to the guidelines:

The preponderance of outcomes from both research and evidence-based practice clearly indicate the positive connection between social and emotional learning, academic learning, and success in life.

Beyond early education, research also shows that a student's social emotional learning is critical to developing competencies besides academic content knowledge that are necessary to succeed in college and in careers.¹² Despite this, the Massachusetts Curriculum Framework, which is one criteria for measuring whether a student with a disability is making effective progress,¹³ has only limited reference to social and emotional benchmarks at this time. However, one could speculate that an update is inevitable given ongoing legislative reform and adoption of social and emotional learning standards by other states.¹⁴

In addition to SEL guidelines, Massachusetts codified An Act Relative to the Reduction of Gun Violence in 2014, which includes a "safe and supportive schools framework" to assist schools to create safe and supportive learning environments "that improve educational outcomes for students." The framework defines "safe and supportive" as:

... schools that foster a safe, positive, healthy and inclusive whole-school learning environment that (i) enables students to develop positive relationships with adults and peers, regulate their emotions and behavior, achieve academic and non-academic success in school and maintain physical and psychological health and well-being and (ii)

¹¹ Massachusetts Department of Elementary and Secondary Education, *Massachusetts Standards for Preschool and Kindergarten: Social and Emotional Learning, and Approaches to Play and Learning* (June 2015).

¹² Joseph A. Durlak et al., *The Impact of Enhancing Students' Social and Emotional Learning: A Meta-Analysis of School-Based Universal Interventions*, 82 CHILD DEVELOPMENT 405–432 (2011).

¹³ 603 CMR 28.02(18).

¹⁴ Rennie Center for Education Research & Policy & ASCD, *Social and Emotional Learning: Opportunities for Massachusetts, Lessons from the Nation* (2015).

integrates services and aligns initiatives that promote students' behavioral health, including social and emotional learning, bullying prevention, trauma sensitivity, dropout prevention, truancy reduction, children's mental health, foster care and homeless youth education, inclusion of students with disabilities, positive behavioral approaches that reduce suspensions and expulsions and other similar initiatives.

The law also requires all public school districts to provide at least 2 hours of suicide awareness and prevention training every 3 years to all licensed school personnel. While this requirement was subject to appropriation, and to date, funding for the training has not been established, DESE has encouraged districts to train staff and has developed a Suicide Awareness and Prevention Training Guidance on the subject.¹⁵

Massachusetts has also recently added social and emotional teaching requirements for teachers. In January 2015, the Commonwealth's Professional Standards for Teachers (PSTs) added Social and Emotional Learning indicator (2.e): "Employs a variety of strategies to assist students to develop social emotional competencies: self-awareness, self-management, social awareness, relationship skills, and responsible decision-making."¹⁶

A Sustained Need

Despite this, across the state, families seek help and guidance at an alarming rate as school districts struggle to meet the needs of students with emotional disabilities.¹⁷ Nonprofits that advocate on behalf of students with disabilities report that calls about students with emotional disabilities are second only to calls about students diagnosed with Autism Spectrum Disorder ("ASD").¹⁸ It is also likely that there is an overlap of students on the autism spectrum who have emotional needs.¹⁹ Massachusetts Advocates for Children (MAC), for example, reports that annually over 20% of all calls from parents relate to students who have emotional needs and are not receiving appropriate services in school.

¹⁵ Massachusetts Department of Elementary and Secondary Education, Suicide Awareness and Prevention Training Guidance, *available at* <http://www.doe.mass.edu/ssce/SuicideAwarenessPrevention.pdf> (last visited March 28, 2016).

¹⁶ Massachusetts Department of Elementary and Secondary Education, Guidelines for the Professional Standards for Teachers (January, 2015).

¹⁷ This article uses the term "emotional disability" to include students who have specific diagnoses (e.g. Major Depressive Disorder, Anxiety Disorder), and/or who struggle generally with emotional challenges (similar to how federal regulations define "emotional disturbance" under 34 CFR 300.8).

¹⁸ Federation for Children with Special Needs, Massachusetts Advocates for Children, and Massachusetts Disability Law Center (DLC) kindly provided call log statistics for this article. While data from the DLC was reviewed, the statistics are not incorporated in this article as the sample size was significantly smaller (approximately 1/10th) when compared to the sample size of Federation for Children with Special Needs and Massachusetts Advocates for Children.

¹⁹ Susan W. White et al., *Anxiety in children and adolescents with autism spectrum disorders*, 29 CLINICAL PSYCHOLOGY REVIEW, 216-229 (2009) (Discussing the prevalence of Anxiety and poor stress management and reviewing reports published between 1999 and 2008 on the subject. Results of the review suggest that anxiety is common in children and adolescents with autism spectrum disorders, but suggests that additional research is necessary to understand the overall impact).

Statistics from the Federation for Children with Special Needs (FCSN) provide that, in 2015, calls about students with emotional needs were the second most common, and have increased over the last three years. In comparison, calls about students with on the autism spectrum, while still the most prevalent, have decreased over the last three years.²⁰

The Massachusetts Youth Health Survey (YHS), provided to students in grades 6-12, is conducted by the Massachusetts Department of Public Health in collaboration with the Massachusetts Department of Elementary and Secondary Education in randomly selected public middle and high schools biannually. In 2013, the last reported statistics, 23.8% of high school students reported feeling so sad or depressed daily for at least two weeks during the previous year that they discontinued usual activities (31.3% of female students surveyed).²¹

This concern about school districts providing services to students with emotional disabilities is far reaching. The U.S. Department of Education (“DOE”) recently wrote about the importance of evaluating and providing special education services to students considered “twice exceptional” after receiving complaints from families.²² This group includes individuals who have a disability and are also intellectually gifted. Of note, the DOE expressed concern about supporting students with emotional disabilities.

According to the DOE memorandum:

In spite of the guidance provided in [a previous letter], we continue to receive letters from those who work with children with disabilities with high cognition, particularly those with emotional disturbance or mental illness, expressing concern that some local educational agencies (LEA) are hesitant to conduct initial evaluations to determine eligibility for special education and related services for children with high cognition.”

In its letter, the DOE sternly advised school districts to evaluate students suspected of having a disability, including emotional disabilities, regardless of cognitive strengths.

With a growing body of research, education reform, and well-established special education law, the importance and requirement that school districts provide services that allow for emotional progress for students with disabilities is clear. Yet complaints about appropriate services remain prevalent with no evidence of slowing.

²⁰ Autism 2013: 486; 2014: 462; 2015: 445, Emotional Disabilities/Emotional Impairment 2013: 201; 2014: 196; 2015: 239.

²¹ Massachusetts Department of Public Health, Massachusetts Youth Health Survey (MYHS), available at <http://www.mass.gov/eohhs/gov/departments/dph> (These numbers represent a nominal decrease overall since 2011, and a nominal increase for female students. 2015 statistics not available at the time of publication).

²² Letter from Office of Special Education Programs, United States Department of Education to State Directors of Special Education, (April 17, 2015), available at <http://www.ed.gov/policy/speced/guid/idea/memosdcltrs> (last visited March 27, 2016)).

The stakes are particularly high for this vulnerable population of students, where delay in appropriate services can result in not only educational but physical harm (e.g., self-harm, suicide). These risks also present legal issues that go beyond FAPE, sometimes resulting in civil rights and tort-based liability for school districts. Further, lack of appropriate services might prevent a student from attending a more traditional learning environment, and result in the need for a costly and restrictive residential placement. Indeed, the mandate to evaluate and provide appropriate services to students who have emotional needs is clear, and the importance of doing so in a timely and effective way is critical.