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# Beyond Basic Rights

SEPAC Presentation: Georgetown



Thank you for having me.

# Beyond Basic Rights

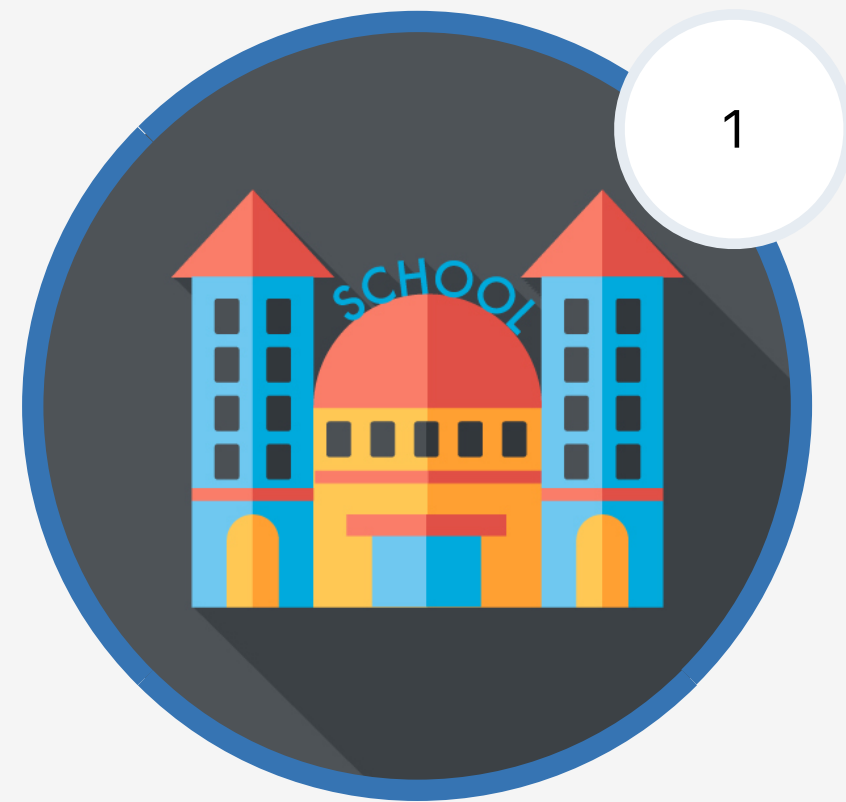
Resolving Special Education Disputes



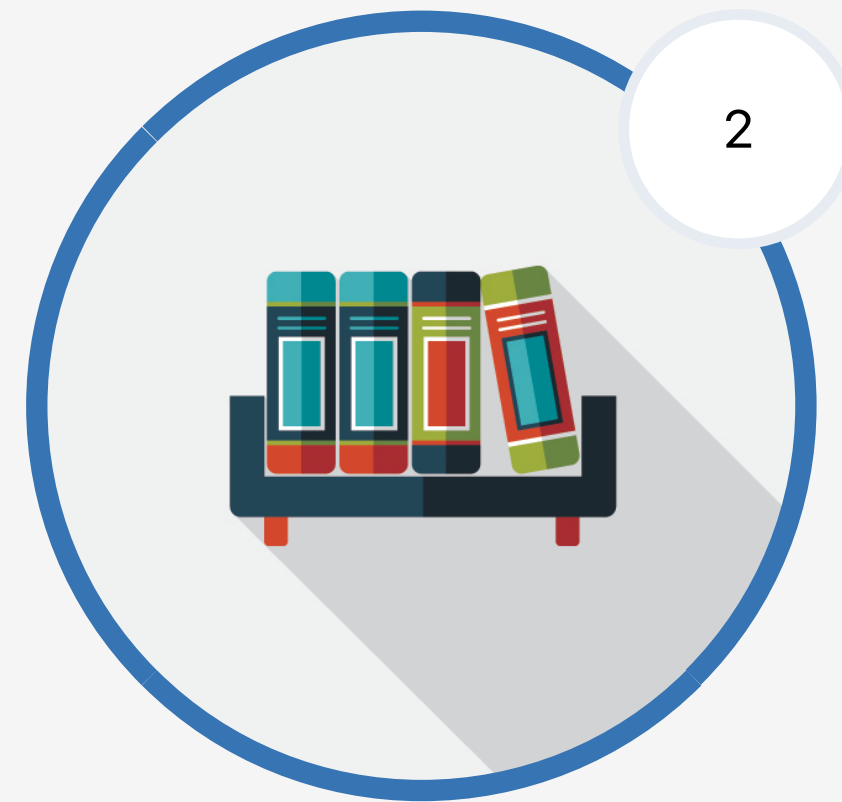


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Due Process



Evidence



Team Advocacy





# Due Process

Your right to disagree





## What is due process?

A formal way to resolve disputes about special education (e.g., services, placement) - IDEA (20 U.S.C. 1400), and MGL c. 71B

You have the right to appeal a Team decision

Starts with a formal complaint, and ends with a decision (or an agreement)





Who decides due process appeals?

Bureau of Special Education Appeals (BSEA) -  
Hearing Officers decide if a district is providing  
FAPE (and other questions of law)

Appeal to Court - Judge

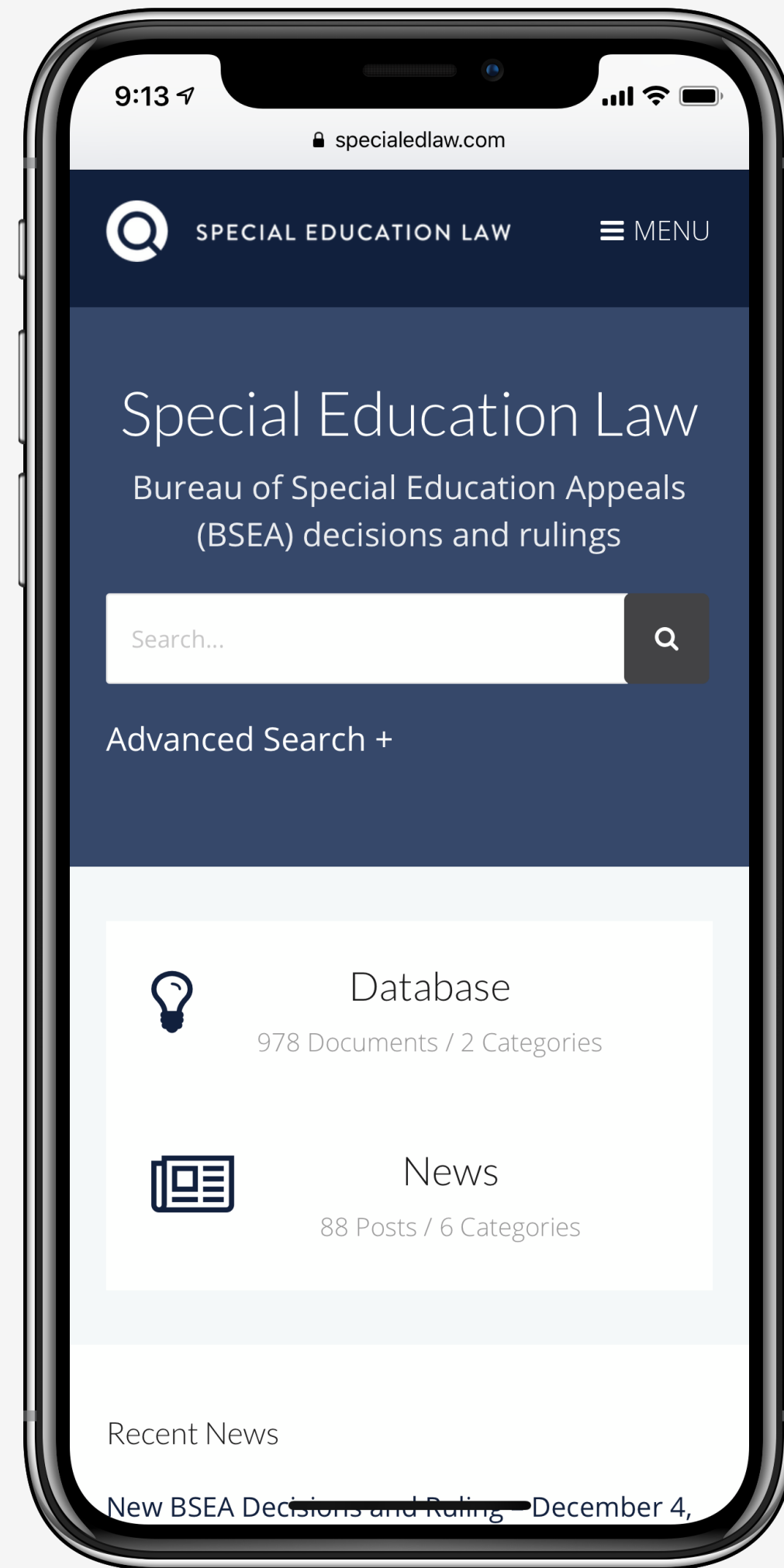




## Why does this matter?

BSEA hearing officers and judges interpret the law:

Reading the laws alone is not enough to fully understand your rights and the special education process



[www.specialedlaw.com](http://www.specialedlaw.com)

- Learn about decisions in your district
- Learn about an independent evaluator
- Find a similar set of facts



( Question ) What does **FAPE** and **effective progress** mean?



## FAPE

FAPE requires that a student's individualized education program (IEP) be

- 1) tailored to address the student's unique needs in a way
- 2) reasonably calculated to enable the student to make meaningful and effective progress in the
- 3) least restrictive environment (LRE)





## Effective progress

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Effective progress means "to make documented growth in the acquisition of knowledge and skills, including social/emotional development..."

603 CMR 28.02



## Effective progress

Documented Growth according to:

- 1) Age
- 2) Developmental Expectations
- 3) Individual Potential
- 4) Learning standards in MA framework and district curriculum 603 CMR 28.02





## Effective progress

IEP is designed as a "package" and "must target all of a child's special needs, whether they be academic, physical, emotional, or social..."

Student v. Acton, BSEA # 14-05736 - hearing officer found that school district's program denied FAPE when IEP met academic but not social/emotional needs

( Question )

How do parents prove their case to hearing officers  
(or preferably to a IEP Team)?





# Evidence

Your roadmap for advocacy



## Independent Educational Evaluation

- Parents can pay privately for IEE at any time
- Team must *consider* IEEs
- (MA) Parents can request an IEE at district expense if income eligible, district must agree if within 16 months of district evals
- (Fed) Parents can request an IEE if district evaluations are not comprehensive
  - District can pay or file for hearing within 5 days to prove evals were comprehensive



## Independent Educational Evaluations

- A neuropsychological evaluation is often the most important, as it provides a comprehensive overview of a student's strengths, challenges, and potential
- Need specific evaluations can supplement (BCBA, reading specialist, SLP)
- Experts involved in the student's care can be helpful (psychologist, tutor)





## What evaluators should do

- **Observe:** Hearing officers sometimes give less weight to testimony and reports of evaluators who have not observed (Amherst-Pelham, BSEA # 07-2259 and # 07-3796, but see Student v. Greenwood Public Schools – BSEA # 14-03564)
- **Seek input from staff:** Evaluators should communicate with district (Norwood Public Schools – BSEA # 11-5444)



## What evaluators should do

- **Testify:** Hearing officers give little or no weight to evaluators who do not **testify**  
(Pentucket Regional School District – BSEA # 11-5530)
- **Review Records** (all records, even those that don't support your position)



## Timing

- When possible, parents should work with independent evaluators early in the process – Boston Public Schools – BSEA # 09-0294
- Use it at a Team meeting or lose it at a hearing – In Re: Richmond Consolidated School District ("RCS") – BSEA # 14-10881



(Question) How do I choose an independent and credible evaluator?



## Credible experts

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Referrals from:

- Advocates, Attorneys
- SEPAC
- BSEA decisions



# Team Advocacy

Working with the Team while preserving your rights





## Team Meetings

1. Make sure that the district understands your position – consider a short opening statement at Team meetings:
  - a) describe your child's needs and disability
  - b) *brief* history
  - c) current issues and evidence (separating the people from the issues)
  - d) clear "ask" and risks if changes aren't provided



## Team Meetings

2. Ensure that the disagreement is in writing - develop a paper trail outlining your concerns (e.g., IEP Response)
3. Stay polite, respectful, but firm - easier said than done
4. Rely on your evidence and take the pressure off yourself (e.g., I understand your perspective, but Dr. X, says..." )



## IEP Response

**There is no disagreement if an IEP is accepted in full** (you can change your response at any time)

- A partial rejection preserves your right to seek compensatory services
- Often a concise, big-picture, response is most effective if a dispute is ongoing (e.g., about placement)





## IEP Response - Partial Rejection

1. **Statement:** I accept all of the services offered, but reject the IEP to the extent that my child needs services and supports beyond those proposed to make effective progress. I understand that the district will implement the IEP as proposed.



## IEP Response - Partial Rejection

2. **Concerns:** I am very concerned about my son/  
daughter because...

He cries when he returns home from school  
His grades are declining and he failed MCAS  
She has no friends and plays video games by  
herself all night

He tells me that he is "stupid," "hates school,"  
"feels alone" (quotes from the student are helpful)



## IEP Response - Partial Rejection

3. **Omissions:** I reject the omission of...

An embedded social skills curriculum  
A cohesive and small language-based  
program across subjects

...as recommended by Dr. X.



## IEP Response - Mistakes to Avoid

1. Length - short paragraphs, bullets, concise
2. Focus on the big picture for big picture disagreements: "An IEP is designed to be a functional blueprint for addressing a student's special education needs, not an encyclopedia." - In re: Rick and Foxborough Public Schools (BSEA # 11-6535)



(Question) What about the details, including goals and benchmarks?



## The nitty gritty

- Consider requesting changes informally or an additional Team meeting
- "The remedy for [objective] 'vagueness' is sending the IEP back to the Team to develop appropriately measurable objectives." In re: Veryl & Nantucket Public Schools – BSEA # 15-11135

(Question)

I know my child is not making progress, but I can't come to agreement with the Team - what do I do?



## Evidence, Advocacy, Paper trail?

- Do you have a credible IEE?
- Have you provided a clear "ask" to the Team?
- Is the IEP rejected in part?





## A disagreement persists...

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- Mediation
- Facilitated Team meeting
- Due Process



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