

By Mr. Kraus (by request), a petition of Vera J. Bernacchi for legislation relative to the education of the academically gifted and talented. Education, Arts and Humanities.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety.

AN ACT RELATIVE TO THE EDUCATION OF THE ACADEMICALLY GIFTED AND TALENTED.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Definitions:

2 Exceptional students — The term exceptional student means
3 any child or youth who has been certified by a specialist qualified
4 to examine students who may be unsuited for enrollment in a
5 regular class of the public schools or is unable to be adequately
6 educated in the public schools without the provision of special
7 classes, instruction facilities, or related services, or a combination
8 thereof.

9 Free and appropriate public education — organization and
10 support of required public school — The public schools of the
11 state shall provide thirteen consecutive years of instruction
12 beginning with kindergarten, and shall also provide such
13 instruction for exceptional children as shall be required by law.

14 Powers and duties of school board. Exceptional students —
15 Provide for an appropriate program of special instruction
16 facilities and services for exceptional students as a prescribed by
17 the state board as acceptable.

18 Further — exceptional children who will have attained the age
19 of three years on or before January first of the school year may
20 be eligible for admission to public special education programs and
21 for related services under rules and regulations prescribed by the
22 school board. However, exceptional children who are deaf, blind,
23 severely physically handicapped or trainable mentally retarded

24 below age five may be eligible for a home instruction program
25 or if enrolled in another preschool or day care programs, may be
26 eligible for supplemental instruction.

27 Evaluation:

28 The school board shall be responsible for the medical, physical,
29 psychological, social and educational evaluations of students, who
30 are suspected of being exceptional students, by competent
31 evaluation specialists.

32 The district's evaluation procedures shall provide for the use
33 of valid tests and evaluation materials by trained personnel, in
34 conformance instructions provided by the producer of the tests
35 and evaluation materials. For children not proficient in the
36 English language the district's evaluation procedures shall provide
37 for the use of the language or other mode of communication
38 commonly used by the child.

39 Eligibility and Placement:

40 No student shall be given special instruction or services as an
41 exceptional student until after he has been properly evaluated,
42 classified, and placed in the manner prescribed by rules of the state
43 board. No student who has relocated to the state after receiving
44 special education for an exceptional student in a state with the
45 same eligibility/placement rules will have to submit to repetitive
46 testing.

47 A staffing committee utilizing the process of reviewing
48 diagnostic, evaluation, educational or social data shall
49 recommend student's eligibility for special programs and shall
50 recommend the student's educational placement.

51 Re-Evaluation:

52 The district shall provide a re-evaluation of each exceptional
53 students at least every three years, or more frequently if conditions
54 warrant. Exceptional students who are gifted may be provided
55 with re-evaluation as frequently as every three months, if
56 necessary.

57 Least Restrictive Environment:

58 In providing for the education of exceptional students, the
59 superintendent, principals, and teachers shall utilize the regular
60 school facilities and adapt them to the needs of exceptional
61 students whenever this is possible. No students shall be segregated
62 and taught apart from normal students until a careful study of

63 the student's case has been made and evidence obtained which
64 indicates that segregation would be for the student's benefit or
65 is necessary because of difficulties involved in teaching the student
66 in a regular class.

67 Kinds of Exceptional Student Education Program:

68 Exceptional Students — Provide for an appropriate program
69 of special instruction, facilities, and services for exceptional
70 students as prescribed by the state board as acceptable, including
71 provision that:

72 The School Board provides the special instruction, classes and
73 services either within the district school systems, or through
74 contractual arrangements with approved nonpublic schools or
75 community facilities which meet standards established by the state
76 board.

77 Eligible special programs for exceptional students. Special
78 programs for exceptional students encompass instruction and
79 special education for services which provide significant
80 adaptations in one or more of the following: curriculum,
81 methodology, materials, equipment, or environment designed to
82 meet the individual learning needs of exceptional students.

83 Special programs may be structures in one or more of the
84 following patterns so that an exceptional student may receive
85 instruction in a:

86 (a) basic class with supplementary consultation or special
87 education services;

88 (b) basic class supplemented by itinerant instruction or a
89 resource room program;

90 (c) special class either full-time or part-time in a regular school;

91 (d) special day school;

92 (e) non-public residential or day school through a contractual
93 agreement or other written agreement;

94 (f) special class in a hospital or treatment center;

95 (g) individual instruction in a hospital or home setting.

96 Individual Educational Plan (I.E.P.):

97 Each district shall develop an individual educational plan for
98 each exceptional student.

99 (a) An individual educational plan consists of written
100 statements including:

101 (1) A statement of the student's present levels of educational
102 performance;

103 (2) A statement of annual goals, including short-term
104 instructional objectives;

105 (3) A statement of the specific education and related services
106 to be provided to the student and the extent to which the student
107 will be able to participate in regular educational programs;

108 (4) The projected dates for initiation of services and the
109 anticipated duration of the services; and

110 (5) Appropriate objective criteria and evaluation procedures
111 and schedules for determining, on at least an annual basis, whether
112 the short-term instructional objectives are being achieved.

113 (b) An individual educational plan which has been reviewed
114 and revised, if appropriate, within the past year, must be in effect
115 at the beginning of each school year for each exceptional student
116 continuing in a special program. For new exceptional students
117 assigned to a special program an individual educational plan must
118 be developed in conjunction with the assignment to a special
119 program.

120 (c) Meetings shall be held to develop, review and revise an
121 exceptional student's individual educational plan:

122 (1) A meeting shall be held once a year to review each
123 exceptional student's individual educational plan and, as
124 appropriate, revise its provisions.

125 (2) Meetings shall include the following participants;

126 (a) A representative of the district school systems, other than
127 the student's teacher, who is qualified to provide or supervise the
128 provision of special education.

129 (b) The student's teacher.

130 (c) One or both of the student's parents as provided in
131 Rule .

132 (d) The student, when appropriate.

133 (e) Other individuals at the discretion of the parent or district
134 school system.

135 (f) In addition, for an exceptional student who has been
136 evaluated for the first time, a member of the evaluation team, or
137 some other person who is knowledgeable about the evaluation
138 procedures used with the student and is familiar with the results
139 of the evaluation.

140 Parent Participation, Notice and Consent;

141 (a) Procedures for parental involvement. Each district school
142 board shall make provision for:

143 1. Prior written notice regarding child identification and
144 evaluation activities including a statement informing parents of
145 all procedural safeguards available.

146 2. Obtaining informed parental consent prior to formal,
147 individual evaluation to determine eligibility for special programs
148 for exceptional students.

149 3. Obtaining informed parental consent prior to placement into
150 a special program for exceptional students, and

151 4. Parental participation in the development of the individual
152 educational plan for the student.

153 a. Each district shall take steps to ensure that one (1) or both
154 of the parents of an exceptional student are present at each
155 meeting or are afforded the opportunity to participate.

156 (b) Consent

157 (1) Parental consent must be obtained before:

158 (i) Conducting placement evaluation; and

159 (ii) Initial placement of a handicapped child in a program
160 providing special education and related services.

161 (2) Except for a preplacement evaluation and initial placement,
162 consent may not be required as a condition of any benefit to the
163 parent or child.

164 Due Process Hearing:

165 Such hearing may be initiated by a parent or a school district
166 on the proposal to initiate or change the identification,
167 evaluation or educational placement of the child or the provision
168 of a free appropriate public education to the child or the refusal
169 to initiate or change the identification, evaluation or educational
170 placement of the child or the provision of a free appropriate public
171 education to the child.

172 Rights of any party to a hearing. Any party to a hearing has
173 the right to:

174 a. Be accompanied and advised by counsel and by individuals
175 with special knowledge or training with respect to the problems
176 of handicapped children.

177 b. Present evidence and confront, cross-examine, and compel
178 the attendance of witnesses.

179 c. Prohibit the introduction of any evidence at the hearing that
180 has not been disclosed to that party at least five (5) days before
181 the hearing.

182 d. Obtain written or electronic verbatim records of the hearing.

183 e. Obtain written findings of fact and decisions.

184 f. Parents involved in hearings must be given the right to have
185 the child who is the subject of the hearing present and open the
186 hearing to the public.

187 Any party aggrieved by the findings and decision in a hearing
188 conducted under Rule may appeal in writing, within ten (10)
189 days, to the Commissioner.

190 Independent Evaluation:

191 The school district shall provide the parent of an exceptional
192 student the right to an independent educational evaluation and
193 shall consider the results of such evaluation in any decision
194 regarding the student. The independent educational evaluation
195 shall be conducted by a qualified examiner as prescribed in Rule
196 who is not an employee of the district school board. A parent
197 has the right to an independent educational evaluation at public
198 expense if the parent disagrees with an evaluation obtained by the
199 school district, provided, however, the school district may initiate
200 a due process to show that its evaluation is appropriate and if the
201 final decision is that the district evaluation is appropriate, the
202 parent still has the right to an independent educational evaluation,
203 but not at public expense.

204 School Record:

205 Purpose: The purpose of this section is to protect the rights of
206 pupils and students and their parents or guardian with respect to
207 pupil and student records and reports as created, maintained, and
208 used by public educational institutions in the state. The intent
209 of the Legislature is that pupils and students and their parents
210 or guardians shall have rights of access, rights of challenge, and
211 rights of privacy with respect to such records and reports, and
212 that rules shall be available for the exercise of these rights.

213 Such parent, guardian, pupil, or student shall have the right,
214 upon request, to be shown any record or report relating to such
215 pupil or student maintained by any public educational institution.
216 Upon a reasonable request therefore, the institution shall furnish
217 such parent, guardian, pupil or student with an explanation or
218 interpretation of any such records or reports.

219 Copies of any list, record, or report requested under the
220 provision of this paragraph shall be furnished to the parent,
221 guardian, pupil or student upon request.

222 Right of Privacy: Every pupil or student shall have a right of
223 privacy with respect to the education records kept on him. No
224 state or local educational agency, board, public school, area
225 vocational technical center, community college, or institution of
226 higher education in the State University System shall permit the
227 release of personally identifiable records or reports of a pupil or
228 student, or of any personal information contained therein,
229 without the written consent of the pupil's or student's parent or
230 guardian, or of the pupil or student himself is qualified as provided
231 in this section.

232 Right to challenge and hearing: Such parent, guardian, pupil,
233 or student shall have the right to challenge the content of any
234 record or report to which such person is granted access under
235 paragraph (a), in order to insure that the record or report is not
236 inaccurate, misleading, or otherwise in violation of the privacy
237 or other rights of the pupil or student and to provide an
238 opportunity for the correction, deletion or expunction of any
239 inaccurate, misleading, or otherwise inappropriate data or
240 material contained therein.

