



# NewsLine

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The Federation for Children with Special Needs

617-236-7210 • 800-331-0688 • www.fcsn.org

## The Switch from Maximum Possible Development to FAPE—What Will it Mean?

by Robert K. Crabtree  
Kotin, Crabtree & Strong, LLP

We all know that beginning on January 1, 2002, Massachusetts will change the standard by which IEPs (Individualized Education Program) will be measured. Instead of “maximum possible development,” an IEP will be required to provide “free appropriate public education”

(“FAPE”). What we don’t know – and won’t know for some time – is whether the change in standard will make a real difference in students’ lives and, if so, what that difference will be. The meaning of FAPE in Massachusetts will not ultimately become clear until we begin to see how cases are decided by the Bureau of Special Education Appeals (the “BSEA”) and courts under the new standard.

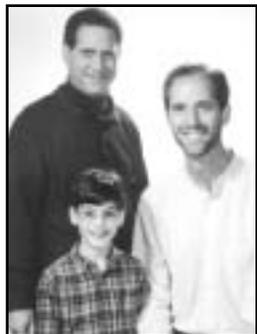
The politicians who did away with Massachusetts’ longstanding commitment to maximizing the educational development of students with disabilities did so because they expected the switch to FAPE to reduce costs and services. We hope and expect to see them faced with a lovely (to them, disappointing) irony. Because of the way in which IDEA (Individuals with Disabilities Education Act) and FAPE have evolved since 1982, we think there should be lit-

tle or no actual reduction of services to students with disabilities after January 1, 2002.

FAPE was first interpreted by the U.S. Supreme Court in *Board of Education v. Rowley*.<sup>1</sup> That case held that, although an IEP need not maximize the potential of a disabled student, it must nevertheless provide “meaningful” access to education. Such access must include “personalized instruction with sufficient support services to permit the child to benefit educationally.”

A recent BSEA decision reviews the application of the FAPE standard by federal courts in other states and, we believe, provides a foreshadowing of the way in which the BSEA will apply it here. In *Gill-Montague Regional S.D.*, the BSEA pointed out that courts interpreting FAPE have

*continued on page 5*



Matthew Savage Trio

## GALA 2002 to feature Matthew Savage

*“Whenever he plays...he blows people away.”*

Matthew Savage, jazz pianist genius of the new millennium, will perform at the Federation’s annual fundraising Gala on May 10, 2002 at the Cambridge Sonesta

Hotel. In addition to the entertainment provided by “The Matt Savage Trio,” the Federation’s Gala 2002 will include an elegant reception overlooking the Charles River, a silent auction packed with an incredible array of items to bid on, a sumptuous gourmet dinner, thrilling music, and a dazzling evening for all those attending. Reception and silent auction will be from 6:00 pm – 7:30 pm, dinner and entertainment from 7:30 pm – 10:00 pm. Last year’s Gala surpassed its goal and set a fundraising record. Funding from the Gala helps to ensure that the Federation is able to continue its important role in providing timely information regarding the education and healthcare of children with disabilities to all families, in turn protecting the rights of *all* children.

Matthew Savage, a young man diagnosed with autism, began playing piano at age six. At age seven, he discovered jazz and blues and began

private studies at The New England Conservatory of Music. At eight, he performed for jazz legend Dave Brubeck at the Maine Jazz Festival. Matthew was hailed by Brubeck as “amazing.” Now at age nine, Matthew continues to astound audiences, setting the jazz world on fire. Most recently he was featured in a segment on ABC-TV’s “20/20”. Matthew performs original compositions as well as jazz standards by the greats, including Miles Davis, Charlie Parker, Duke Ellington, John Coltrane, and Thelonius Monk – to name a few. Matthew (together with the wonderful support of his parents, Diane and Larry) has formed and leads “The Matt Savage Trio”. In it, Matthew performs with professional adult musicians, bassist John Funkhouser and drummer Steve Silverstein, both of whom teach jazz. The Trio has just released their first CD together, which is Matthew’s third CD as a musician. The Federation is proud and honored to have such a talented group of musicians for this festive evening. It will be an event not to miss.

If you have questions, need further information, or wish to purchase tickets please call Brooke Heraty @ 1-617-236-7210 x184 or contact by email @ bheraty@fcsn.org. Also, please visit Matthew’s website @ www.savagerecords.com to find out just how “amazing” he is.



## Creating a World of Opportunities

### A Reminder!

*A Conference for Families of Children  
with Special Needs and the Professionals  
Who Serve Them*

**Saturday, February 9, 2002**

**8:00 a.m. – 4:15 p.m.**

Boston World Trade Center, Seaport  
District/Northern Avenue

**Register ASAP on-line at [www.fcsn.org](http://www.fcsn.org), or  
call 617-236-7210 with a credit card**

Late registrants pay at the door, if space is available.  
Sponsored by the Federation for Children with Special  
Needs, Parent Professional Advocacy League, Family TIES  
of Mass., and Mass. Families Organizing for Change.



## Bulletin

Parents Learning About Children's Education

## Legislative & Policy Update

## UPDATES ON PUBLIC POLICY

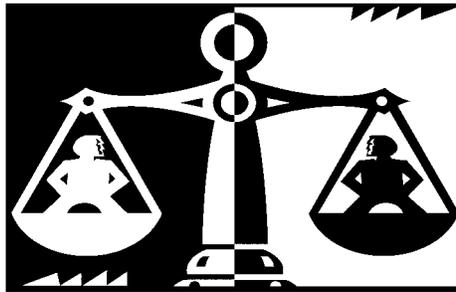
### MASSACHUSETTS STATE BUDGET SEVERELY CUT

On December 5, 2001, the Massachusetts Legislature met to consider the vetoes of Governor Jane Swift to items in the recently passed FY 2002 State Budget. The Budget, which by law is supposed to be completed by July 1 of each year, was over 5 months late. Due to the declining economy and fall out from the events of September 11, over \$650 million had to be cut from across both the House and Senate budgets. A six-person conference committee was charged with that unpleasant task. Of course, the problem with producing these types of cuts this late in the budget year is that the immediate impact to services and programs is nearly doubled.

While education funding remained largely intact, and even slightly increased in several areas, human services caught the brunt of the budget-cutting axe. General aid to education (Chapter 70) was increased by approximately \$265 million over last year. In addition, MCAS remediation funding was increased by nearly \$10 million.

However, there was little good news beyond this. Funding for technology, school building safety projects, and the enrollment of state wards in public schools was completely eliminated. Many other education grant programs were eliminated or significantly reduced. Adult education was slashed. Human service agencies such as the Departments of Mental Health, Mental

Retardation, Public Health, and Social Services all suffered severe cuts to vital services to support families and provide residential support programs. Following the Governor's vetoes, a supplemental budget was passed by the legislature partially restoring some programs, yet many others (such as DMR's Family Support program) have suffered immeasurable harm.



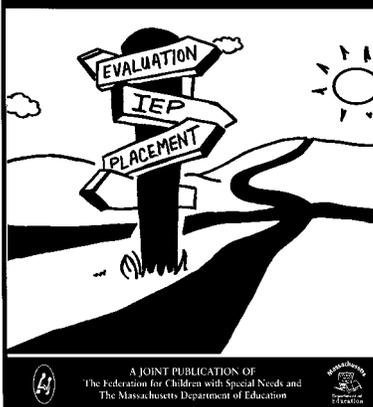
The slowing economic picture for FY '03 along with the implementation of the income tax roll back means next year's budget will be even more troubling. The Governor's "House 1" budget for next year is due in January '02. Advocates are bracing for budget numbers severely below this year's reductions. With special education costs continuing to rise and human service dollars drying up, there can be nothing but trouble ahead. An immediate impact of the state's cutting back is the requirement that local cities and towns may feel the pressure even more than they do now. Parents and advocates must remain vigilant to ensure that vital services are preserved in the midst

of these reductions. The ultimate cost is the harm done to children with special needs and their families. Please be in contact with your local legislators and help them understand what it means to raise your child with special needs.

### MASS DOE SEEKS PUBLIC INPUT ON SPECIAL ED FINANCING REGULATIONS

The state Board of Education is seeking comments regarding proposed new special education financing regulations that would implement the new "Circuit Breaker Reimbursement Program." Readers may remember that among the significant changes to Chapter 766 was the creation of a new reimbursement program for assisting cities and towns with the costs of providing special education, especially to students whose programs are quite expensive. The program developed a set of formulas for reimbursement of "high cost programs" of students both in district and out of district at two different rates. The new proposed regulations set a series of rules for calculating those costs and assisting local districts to determine their eligibility for reimbursement. The regulations will replace or amend section 603 CMR 10.07 and following. The document can be obtained by contacting the Mass. Department of Education. Comments are due to the Department by January 25, 2002.

### A Parent's Guide to Special Education



## It's Here: A Parent's Guide to Special Education

At last, *A Parent's Guide to Special Education*, co-authored by the Federation for Children with Special Needs and the Massachusetts Department of Education Office of Special Services, is in print! We are very excited about the positive feedback we have had from families regarding the *Guide*. The *Guide* contains the most current and accurate information available regarding the special education system in Massachusetts.

The Federation hopes that this publication will assist families in obtaining the supports and services that their children with disabilities need to succeed in school. The *Guide* is also an excellent resource for schools and service providers seeking concise, easy-to-read guidance on the implementation of the state's new special education laws, regulations, and policies.

The publication, which is currently available through the Federation and the Department of Education, is also available on our website, [www.fcsn.org](http://www.fcsn.org). It is easy to download and copy. Distribute the *Guide* to any individual, family, or organization that you feel can benefit from it.

# From the Executive Director With History on Our Side

In September 1974, upon the implementation of the new Chapter 766 special education law in Massachusetts, the late Dr. Gunnar Dybwad delivered an address to the Massachusetts Association for Mental Health entitled, "How Can We Make Special Education Special?" In it Dybwad argued for the need for permanently authorized federal legislation that "may not deny any child (with a disability) access to a free public program of education and training." He further explained that, "This was the climate in which [the General Court of the Commonwealth of] Massachusetts enacted Chapter 766 of the Laws of 1972, which is widely regarded throughout this country as one of the most thoughtful and forward-looking pieces of educational legislation in this nation."

On May 12, 2000, Dr. Dybwad delivered a revised version of this same address at the 25th Anniversary Gala of the Federation. He reminded us that this dream of a Free Appropriate Public Education (FAPE) had now been the law of the nation for 25 years. Dybwad observed that the ideas about our nation's children, which are embodied in special education legislation, have a long history—one that embraces much of the last century. As early as 1909, President Theodore Roosevelt initiated a succession of White House Conferences on Children and Youth, which began to set forth the rights of the nation's children. In 1930, at the third of these conferences, President Herbert Hoover (the great conservative) articulated the rights of children with disabilities to education and medical treatment. However, Dybwad pointed out that before these rights were acted upon, the nation's attention was diverted to other matters: economic depression,

post-depression, pre-war, and world wars. It was not until after World War II that our nation, and our world, began to think concretely about the individual person, dignity and integrity, and the right to opportunity for all citizens. Thus came a succession of legal victories that included *Brown vs. Board of Education* (1954), the landmark case that determined that education is a right that must be available to all on equal terms. The PARC

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**As parents and  
advocates, we  
have been given  
a tremendous  
responsibility —  
to protect the rights  
of children with  
disabilities for the  
next century.**

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case (1971, Penn.) applied that right to children with disabilities by determining that the state "may not deny access to a free public program of education to (any child, including) a child with mental retardation." How ironic that even as Dybwad spoke two years ago, the Massachusetts legislature was poised to repeal the language of Chapter 766. On January 1, 2002, we saw an historic shift take place. Our legal standard of Maximum Possible Development was formally and legally replaced with the less specific Free Appropriate Public Education. While our



Richard Robison

Massachusetts legal standard has changed, the right of every child to receive a free public education has not. Our challenge, as Dybwad pointed out, is to remember, "consumers have been given a vital role" in the implementation and protection of this legislation. We cannot afford to become diverted to other matters, even as the nation has again focused its attention on economic downturn, terrorism, and war.

The Massachusetts legislative battle is over for now. The new focus is on federal congressional proposals that continue to challenge these rights. During the next session of Congress, our federal special education law, IDEA (Individuals with Disabilities Education Act), is scheduled for review and reauthorization, a process that makes it vulnerable to changes that could weaken it. As parents and advocates, we have been given a tremendous responsibility—to protect the rights of children with disabilities for the next century. It is an awesome responsibility, but as we learned from Dr. Dybwad, history is on our side; rights that are true rights will not vanish. Let us not become distracted from vigilant protection of those rights!

*Richard J. Robison*

## New Publication Shows Where We Are in Special Education Today

Arlington, VA, September 6, 2001—*Educating Exceptional Children: A Statistical Profile* presents a snapshot – in charts, tables, and graphs – of special education today. The eight-page booklet presents a clear and comprehensive national perspective of trends in special education, as well as a look at how we are serving children with special needs.

The *Statistical Profile*, which costs \$5.00, is available from the ERIC Clearinghouse on Disabilities and Gifted Education, 1110 N. Glebe Rd., #300, Arlington, VA 22201.

### MATCHING GIFTS

*Make Your Contributions Go Farther!*

1. Check with your company's personnel department to see if they have a matching gifts program.
2. Ask for matching gifts forms for all the members of your team.
3. Review the requirements of your matching gifts program carefully—each program has its own policies.



# Ask an Expert!

## Empowerment Through Information

by Terri McLaughlin,  
Federation Information Specialist

*Terri McLaughlin, Transition Specialist at the Federation, receives many questions from families about how to help students take on more responsibility for the management of their health care as they transition from School to adult life. Terry discusses two students who are “in charge” of their health.*

### **Kathleen\***

Kathleen, who has a diagnosis of PDD (Pervasive Developmental Disorder), which is on the autism spectrum, faced her biggest challenge when she developed Type 1 diabetes in the summer of her junior year. Her parents realized that learning to manage her diabetes must become a critical goal in Kathleen’s transition plan. In preparing for her adult life, Kathleen would need this health-related goal to identify and master strategies for managing diabetes.

We needed to help her “read” her blood sugar meter so she could take the appropriate food therapy depending on her

current blood sugar level. Kathleen has a very difficult time with numbers so we developed a “Snack Therapy Card” that she carries along with her glucose meter. The card is color-coded to help her determine what to eat. Initially she needed assistance reading the card, but now she is becoming more independent with the task.

Kathleen is not sure when or what to eat and when to test during the day. Kathleen and her parents developed a “Daily Record” to track her intake and levels. Each day she records her insulin dosages (three times a day), blood sugar levels and food intake (six times a day), and any other relevant information (illness, exercise).

On Friday, she takes a week of “Daily Records” to the health office. The IEP Team felt that it was important to meet with a health care professional to understand appropriate strategies regarding diet, exercise, testing, and other management issues. The nurse reinforces Kathleen’s progress and reviews her choices for the week.

Everyone who interacts with Kathleen supports her efforts to develop a rhythm and routine for managing her diabetes. Learning what to do and how and when to do it will increase Kathleen’s independence as an adult.

### **Mary\***

This fall, the IEP Team began to address transition issues with Mary, who is sixteen and non-verbal. Because her major issue is her communication disorder, the team is developing IEP goals that relate to Mary’s special health care needs. Effective communication with healthcare providers and management of her medications are two goals that will increase her independence as an adult.

Obviously, Mary needs to be able to communicate with adult medical providers, yet she shies away from communicating when she is alone with a professional. Asking her questions via the TTY would enable her to prepare, then take the time she needs to process her response. One strategy is for Mary to use the TTY at school for part of the day. The TTY prints out the conversation, allowing Mary to reread it and share with others who are assisting her. She starts with one sentence, question, or piece of information and build from there.

Mary is working with the school nurse to take more responsibility regarding her medications. Basic issues such as remembering when to go to the nurse, taking her medications without prompting, and letting someone know when her prescriptions are running low are skills she can begin to learn now to take charge of her health in the future.

*\*Names have been changed for confidentiality.*

## Discover IDEA: Supporting Achievement for Children with Disabilities



### **Discover IDEA: Supporting Achievement for Children with Disabilities**

A video produced by the IDEA Partnership Project and the Council for Exceptional Children

This 15-minute video lets you hear from educators, administrators, family members, and children themselves across the nation who attest to the impact of IDEA in ensuring that children with disabilities learn and achieve to their potential.

**Discover IDEA:  
Supporting Achievement for Children with  
Disabilities** received an Honorable Mention in  
the 2000 Communicator Awards.



### **Available Now!**

To order, call the ASPIRE and ILIAD Partnerships at the Council for Exceptional Children, 888-CEC-SPED (toll-free), 866-915-5000 (TDD), or e-mail [service@cec.sped.org](mailto:service@cec.sped.org)

[www.ideapractices.org](http://www.ideapractices.org)

# The Switch . . . What Will it Mean?

continued from page 1

focused on the “importance of addressing the ‘unique’ individual nature of the particular child’s needs,” taking into account the particular child’s individual potential.<sup>2</sup> (Please see our website at [kcslegal.com](http://kcslegal.com) for a more detailed review of this decision in which the BSEA ordered a school district to reimburse parents who had unilaterally placed their child in an unapproved private school.)

As declared in one of the lead cases cited by the BSEA, FAPE is not satisfied with “trivial” progress, or even something more than trivial progress, but instead requires an IEP to provide “significant learning” and a “meaningful benefit” “gauged in relation to the child’s potential.” *Ridgewood Bd. of Ed. v. NE*.<sup>3</sup> In *Ridgewood*, the student’s parents had placed him unilaterally at the Landmark School in Massachusetts and the lower federal court had refused to order the school district to fund that placement because the school district’s proposed IEP offered, “more than a trivial benefit.” The appellate court ordered the lower court to reconsider its decision because it had not considered the intellectual potential of the student.

The most recent amendments to IDEA (1997) give FAPE considerably more teeth than when it was first interpreted by the Supreme Court in 1982. Key among those changes are many provisions that insist that students with disabilities be given full access to the general education curriculum. This new emphasis follows congressional findings that students with disabilities were too often presumed to be incapable of participating in the general curriculum in which their non-disabled peers were engaged. In effect, the 1997 amendments impose a legal presumption that *all* students have the potential to progress in the full general education curriculum, permitting school districts to offer less than full access only if they can show that the student is not capable of participating. (Massachusetts has embodied this presumption in definitions of “eligible student” at 603 CMR §28.02(9) and of “progress effectively in the general education program” at 603 CMR §28.02(18).)

The Massachusetts Department of Education has posted an Advisory memorandum concerning the change to FAPE (Administrative Advisory SPED 2002-1) on its website.<sup>4</sup> In the Advisory, DOE likewise emphasizes that FAPE requires “meaningful educational progress” through IEPs that

are “tailored to meet the unique needs of [each] student” and refers to “the Commonwealth’s commitment to assist all students to reach their full educational potential.” The DOE Advisory also reminds the reader that in states where FAPE has been the standard, “courts have ordered school districts to provide an extensive array of special education services, including private day and residential placements as well as related services.”

Commenting on IEPs that will be in effect when the standard changes, the DOE Advisory helpfully points out: “A current IEP that has been accepted by the parent continues to represent an agreement for services between the parent and the school district. *The change in the standard on January 1, 2002 does not change existing IEPs.*”

Finally, a historical note with implications for the future: from 1974, when Chapter 766 took effect, to 1984, when the federal court determined that Massachusetts law required a higher standard, the BSEA ignored the language in Chapter 766 that called for maximum possible development. During those ten years, the BSEA asked only whether a proposed IEP offered an “adequate and appropriate” program and placement – similar to the way in which FAPE was interpreted in other states during those years. Since the decision in *David D. v. Dartmouth Public Schools*, a higher standard has applied: “maximum possible development in the least restrictive environment.”<sup>5</sup> Parents won many a case at the BSEA before 1984; they have won many a case since then.

Where school districts can be proven to have offered less than a meaningful and effective educational program, or to have ignored the individual potential and needs of a student, or to have reduced a student’s participation in the general education curriculum without a solid basis for doing so, parents will continue to win appeals before the BSEA.

Any significant change in law invites an increase in litigation. This change will certainly do so as school districts dig in to test the meaning of FAPE for Massachusetts’s students. Once the dust settles, however, we hope and expect that the switch to FAPE will have little ultimate impact on the quality and quantity of services provided to children with disabilities.

*Robert K. Crabtree is a founding partner of the Boston law firm of Kotin, Crabtree & Strong, LLP, a general practice firm. Among other areas, Mr. Crabtree concentrates in special education law with his partners and colleagues, Lawrence Kotin, Richard Howard, Eileen Hagerty, and Maura Kelly. All frequently lecture and write on issues in education law.*

1. 458 U.S. 176 (1982)
2. BSEA 01-1222 (Crane, 8/17/01)
3. 172 F.3d 238, 247 (3d Cir. 1999)
4. <http://www.doe.mass.edu>
5. 615 F. Supp. 639 (D. Mass.), aff’d, 775 F.2d 411 (1st Cir. 1984)

## Know Your Rights! What’s changed and what has NOT! Moving from MFB to FAPE

- FAPE requires school districts to provide individualized instruction tailored to the student’s needs, with sufficient support services to make meaningful educational progress.
- FAPE requires that all students be involved in and progress in the general curriculum.
- FAPE does not affect eligibility for special education.
- FAPE requires that students with disabilities be educated in the “least restrictive environment.”
- FAPE requires school districts to focus on a student’s unique needs and strengths through the Team evaluation and IEP process.
- FAPE requires parental notice and consent before changing a student’s special education services or placement. (Until an agreement is reached, students are entitled to “stay put” in the last agreed-upon placement.)
- FAPE maintains the right of parents to obtain an independent evaluation of their child.
- FAPE ensures the right of parents and school districts to seek resolution of disputes through mediation and administrative hearings.
- FAPE does not change existing IEPs. A current IEP that has been accepted by the parent continues to represent an agreement for services between the parent and the school district.

Remember, under Massachusetts’ education reform law, ALL students, including students with disabilities, are entitled to the opportunity to learn the material covered by the Curriculum Frameworks. And, IDEA 1997, which contains the FAPE standard, was specifically amended to raise expectations and increase educational achievement of students with disabilities.

**For more information on FAPE**, see the Massachusetts Department of Education Administrative Advisory SPED 2002-1: *Guidance on the change in the special education standard of service from “maximum possible development” to “free appropriate public education,”* available on [www.fcsn.org](http://www.fcsn.org).

## ¿Qué Implica El Cambio de Máximo Desarrollo Posible a FAPE (Educación Pública Apropriada y Gratuita)?

Robert K. Crabtree  
Kotin, Crabtree & Strong, LLP

Todos sabemos que a partir del 1 de enero del 2002, Massachusetts cambiará los estándares a través de los cuales los IEP (Programas Educativos Individualizados) se medirán. En lugar de un “Máximo Desarrollo Posible”, se necesitará un IEP para proveer “Educación Pública Apropriada y Gratuita” (FAPE). Lo que no sabemos ahora—y no sabremos por un tiempo—es si el cambio de estándares tendrá alguna diferencia en las vidas de los estudiantes, y si es así, cuál será la diferencia. Lo que FAPE significa en Massachusetts no será completamente claro hasta que veamos cómo los casos se definen en Buró de Apelaciones para Educación Especial (BSEA) y las cortes que operen bajo estos nuevos estándares.

Los políticos que se alejaron del compromiso para mejorar el desarrollo de la educación de los estudiantes con discapacidades lo hicieron con la esperanza de cambiar a FAPE y reducir costos y servicios. Esperamos verles enfrentados a la realidad irónica (desilusionante para ellos). Basados en la manera como IDEA (Acta de Educación para Individuos con Discapacidades) y FAPE han evolucionado desde 1982, creemos que no debe haber reducción alguna en los servicios a los estudiantes con discapacidades después del 1 de enero del 2002.

FAPE fue interpretado primero por la Corte Suprema de los Estados Unidos en *Board of Education vs. Rowley*.<sup>1</sup> Este caso sostuvo que aunque un IEP no necesitaba maximizar el potencial de un estudiante discapacitado, sí tiene que proveerle acceso “significativo” a la educación. Dicho acceso tiene que incluir “instrucción personalizada con suficientes servicios de apoyo para permitirle al niño beneficiarse de la educación”.

Una decisión reciente del Buró de Apelaciones para Educación Especial (BSEA) revisa la aplicación de los estándares de FAPE en la cortes federales en otros estados, y creemos que esta

revisión ofrece una luz sobre cómo el BSEA actuará aquí. En *Gill-Montague Regional S.D.*, el BSEA mostró que las cortes que interpretaron FAPE se enfocaron en la “importancia de referirse a la naturaleza “única” individual de las necesidades particulares del niño”, teniendo en cuenta el potencial individual del niño en particular.<sup>2</sup> (Por favor revise la página en Internet [kcslegal.com](http://kcslegal.com) para ver una revisión más detallada de esta decisión en la cual el BSEA ordenó que un Distrito Escolar regresara a el dinero a los padres de un niño que habían decidido de manera unilateral ubicar a su hijo en una escuela privada no aprobada).

Así como fue declarado en uno de los casos más representativos citado por el BSEA, FAPE

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**Al comentar sobre los IEPs que estarán vigentes cuando los estándares cambien, el memorando del Departamento de Educación dice: “Un IEP vigente que ha sido aceptado por el padre de familia sigue representando un acuerdo entre el padre y el distrito escolar. El cambio en los estándares el 1 de enero del 2002 no cambia los IEPs existentes”.**

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no está satisfecho con un progreso “trivial”, o aún algo más que progreso trivial. FAPE requiere un IEP que provea “aprendizaje significativo” y un “beneficio significativo” medido con relación al potencial del niño. *Ridgewood Bd. of Ed. v. Ed.*<sup>3</sup> En *Ridgewood*, los padres del estudiante lo habían puesto unilateralmente en la Escuela Landmark en Massachusetts, y la corte federal se había rehusado a ordenar al Distrito Escolar a proveer fondos para este lugar porque el IEP propuesto por el Distrito Escolar ofrecía “más que un beneficio trivial”. La corte de apelaciones ordenó a esta corte reconsiderar su decisión porque no consideró el potencial intelectual del estudiante.

La modificación más reciente a IDEA (1997) le concede a FAPE considerablemente más poder que cuando fue interpretada inicialmente por la Corte Suprema en 1982. Entre los cambios más importantes se encuentran las nuevas provisiones que insisten que a los estudiantes con discapacidades se les de acceso total de participar

en el currículo general de educación. Este nuevo énfasis se basa en investigaciones del congreso que dicen que los estudiantes con discapacidades eran frecuentemente considerados incapaces de participar en el currículo general en el cual sus compañeros sin discapacidades estaban participando. En efecto, las modificaciones de 1997 imponen una presunción legal que *todos* los estudiantes tienen el potencial para progresar en todo el currículo general de educación, permitiendo a los distritos escolares ofrecer menos acceso que el total sólo si son capaces de demostrar que el estudiante no es capaz de participar. (El estado de Massachusetts ha adoptado esta presunción en las definiciones de “estudiante elegible” en 603 CMR §28.02 (9) y de “progresar efectivamente en el programa general de educación” en 603 CMR §28.02 (18).)

El Departamento de Educación de Massachusetts ha puesto un memorando relacionado con el cambio de FAPE (Administrative Advisory SPED 2001-1) en su página electrónica.<sup>4</sup> En el memorando el Departamento también enfatiza que FAPE requiere de “un progreso educacional significativo” a través de los IEPs, los cuales están “diseñados para atender las necesidades únicas de [cada] estudiante” y se refiere al “compromiso del estado de ayudar a todos los estudiantes a alcanzar su máximo potencial educativo”. También el memorando recuerda al lector que en los estados en que FAPE es estándar “las cortes han ordenado a los distritos escolares que provean una gama extensa de servicios de educación especial, incluyendo ubicaciones privadas de día y residenciales lo mismo que servicios relacionados.

Al comentar sobre los IEPs que estarán vigentes cuando los estándares cambien, el memorando del Departamento de Educación dice: “Un IEP vigente que ha sido aceptado por el padre de familia sigue representando un acuerdo entre el padre y el distrito escolar. *El cambio en los estándares el 1 de enero del 2002 no cambia los IEPs existentes*”.

Finalmente, una nota histórica con implicaciones para el futuro: desde 1974, cuando el Capítulo 766 tuvo efecto, cuando una corte federal determinó que el sistema legal de Massachusetts requería un estándar más alto, el BSEA ignoró el lenguaje del Capítulo 766 que exigía un máximo desarrollo posible. Durante esos 10 años, el BSEA pidió sólo si un IEP propuesto ofrecía un programa y una ubicación “adecuados y apropiados”—de manera similar a como FAPE fue interpretado en otros estados

## A Troca do Máximo Desenvolvimento Possível para a FAPE – O Que Isso Significará?

Robert K. Crabtree  
Kotin, Crabtree & Strong, LLP

Todos sabemos que, a partir de 1 de janeiro de 2002, o estado de Massachusetts vai mudar o padrão pelo qual os IEPs (Programa de Educação Individualizado) serão medidos. Em vez do “máximo desenvolvimento possível”, um IEP será requerido a fornecer uma “educação pública apropriada gratuita” (“FAPE”, sigla em inglês). O que não sabemos – e não há como saber por algum tempo –, é se a mudança de padrão consistirá em uma verdadeira diferença na vida dos alunos e, neste caso, que diferença será essa. O significado da FAPE não estará muito claro até que comecemos a ver como os casos serão decididos, sob este novo padrão, pela Secretaria de Apelação de Educação Especial—“BSEA”—(Bureau of Special Education Appeals—“BSEA”), assim como pelas cortes.

Os políticos que acabaram com o compromisso permanente do estado de Massachusetts, qual seja, o de maximizar o desenvolvimento educacional dos estudantes portadores de deficiência, assim o fizeram porque esperavam que a mudança para a FAPE reduzisse custos e serviços. Nós esperamos e pretendemos vê-los dar de cara com uma amável (para eles, desapontadora) surpresa. Por causa da maneira pela qual a IDEA (sigla em inglês para Lei Educacional para Indivíduos Portadores de Deficiência) e a FAPE têm-se desenvolvido desde 1982, pensamos que deveria haver pouca, ou mesmo nenhuma redução de serviços para os alunos portadores de deficiência após 1 de janeiro de 2002.

A FAPE foi interpretada pela primeira vez, pela Suprema Corte dos EUA, no caso *Board of Education v. Rowley*.<sup>1</sup> Este caso levou em consideração que, ainda que o IEP não precise maximizar o potencial de um aluno deficiente, ele deve, contudo, providenciar um acesso “significativo” à educação. Tal acesso deve incluir “uma instrução personalizada com serviços de apoio suficientes para permitir que a criança se beneficie educacionalmente.”

Uma decisão recente da BSEA reexamina a aplicação do padrão da FAPE pelas cortes

federais em outros estados e, acreditamos, fornece uma antecipação da maneira pela qual a BSEA o aplicará aqui. No caso *Gill-Montague Regional S.D.*, a BSEA apontou que as cortes que têm interpretado a FAPE focalizaram “a importância de endereçar a natureza individual ‘única’ das necessidades particulares da criança”, levando-se em consideração o singular potencial individual da criança.<sup>2</sup> (Por favor, confira o nosso website, [kcslegal.com](http://kcslegal.com), para uma análise mais detalhada dessa decisão, à qual a BSEA impôs que um distrito escolar reembolsasse os pais que haviam, unilateralmente, posto sua criança numa escola particular descredenciada.)

Como está declarado em um dos principais casos citados pela BSEA, a FAPE não está satisfeita

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**Comentando sobre os IEPs que estarão em efeito quando o padrão mudar, o memorando do DOE prestativamente informa: “Um IEP corrente, que tenha sido aceito pelos pais, continua a representar um acordo por serviços entre os pais e o distrito escolar. A mudança de padrão, em 1 de janeiro de 2002, não muda em nada os IEPs já existentes.”**

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com um progresso “trivial”, ou mesmo algo mais do que um progresso trivial, mas, invés, exige um IEP que providencie um “aprendizado significativo” e um “benefício substancial”, e que sejam “relacionados ao potencial da criança.” *Ridgewood Bd. of Ed. v. NE*.<sup>3</sup> No caso *Ridgewood*, os pais do aluno lhe haviam matriculado na escola Landmark, em Massachusetts, e a corte federal de primeira instância havia se recusado a ordenar que o distrito escolar pagasse pela matrícula, uma vez que o IEP proposto do distrito escolar oferecia um “benefício mais do que trivial”. A corte de apelação ordenou que a corte de primeira instância reconsiderasse sua decisão, pois não haviam levado em conta o potencial intelectual do aluno.

As emendas mais recentes da lei IDEA (1997) dá consideravelmente mais força à FAPE, do que quando fora interpretada pela primeira vez, pela Suprema Corte, em 1982. Entre essas mudanças chaves constam muitas provisões que insistem que os estudantes portadores de deficiência

tenham pleno acesso ao currículo geral de educação. Essa nova ênfase segue os “achados legislativos” de que estudantes com deficiência eram, em geral, presumidamente incapazes de participar do currículo geral no qual seus colegas não-deficientes estavam envolvidos. Com efeito, as emendas de 1997 impuseram uma conjectura legal de que *todos* os estudantes têm o potencial de progredir no currículo geral de educação pleno, permitindo aos distritos escolares oferecer menos que o pleno acesso somente no caso de que possam demonstrar que o estudante não seja capaz de participar. (O estado de Massachusetts tem incorporado esta conjectura nas definições de “estudante elegível” (“eligible student”), no 603 CMR §28.02(9), e de “progresso efetivo no programa geral de educação” (“progress effectively in the general education program”), no 603 CMR §28.02(18).)

O Departamento de Educação de Massachusetts (DOE) afixou, em seu website, um memorando Orientador (Advisory memorandum) concernente à mudança para a FAPE (Administrative Advisory SPED 2002-1).<sup>4</sup> Nesse memorando, o DOE, igualmente, enfatiza que a FAPE exige um “progresso educacional substancial” através dos IEPs que são “adaptados para ir de encontro às necessidades únicas de [cada] aluno”, referindo-se, além disso, ao “compromisso da Comunidade em assistir a todos os alunos a alcançar o seu pleno potencial educacional.” O memorando do DOE também relembra o leitor de que, nos estados em que a FAPE tem sido o padrão, “as cortes têm ordenado que os distritos escolares providenciem uma extensa gama de serviços de educação especial, incluindo o dia privado (“private day”) e alocações residenciais, bem como outros serviços relacionados.”

Comentando sobre os IEPs que estarão em efeito quando o padrão mudar, o memorando do DOE prestativamente informa: “Um IEP corrente, que tenha sido aceito pelos pais, continua a representar um acordo por serviços entre os pais e o distrito escolar. *A mudança de padrão, em 1 de janeiro de 2002, não muda em nada os IEPs já existentes.*”

Finalmente, uma nota histórica com implicações para o futuro: de 1974, quando o Capítulo 766 foi efetivado, até 1984, quando a corte federal determinou que a lei de Massachusetts exigia um padrão mais alto, a BSEA ignorou a linguagem do Capítulo 766 que solicitava o máximo desenvolvimento possível. Durante aqueles dez anos, a BSEA questionava apenas se um IEP proposto oferecia um programa e uma colocação “adequados e apropriados”—de modo similar ao qual a FAPE era interpretada em outros estados naqueles anos. Desde a decisão do caso *David*

# Upcoming Federation Workshops

For more information about a workshop, or to register, call the Federation at 1-800-331-0688. Call to find out about Basic Rights workshop in Portuguese. Ligue para informação sobre aulas iniciando em Português.

## JANUARY 2002

- 30th:** Stoneham, 1-2 PM part II, *Basic Rights*  
**24th:** Melrose, 7-9 PM, *IEP 2000*  
**29th:** Hopkinton, 7-9 PM, *MCAS*

## FEBRUARY 2002

- 6th:** Concord [2/27 snow date], 7:30-9:30 PM, *Basic Rights*  
**7th:** Hanover [2/14 snow date], 7-9 PM, *MCAS*  
**7th:** Westboro [2/28 snow date], 7-9 PM, *IEP 2000*  
**7th:** Warren [3/7 snow date], 7-9 PM, *Basic Rights*  
**11th:** Milton, 7:30-9:30 PM, *Access to the General Curriculum*  
**13th:** Arlington, 7-9 PM, *Basic Rights*  
**14th:** Franklin [2/28 snow date], 7-9 PM, *IEP 2000*  
**25th:** Tewksbury [3/11 snow date], 7-9 PM, *Basic Rights*  
**25th:** Wareham [3/11 snow date], 6:30-8:30 PM, *MCAS*  
**28th:** Somerville [3/7 snow date], 7-9 PM, *Basic Rights*

## MARCH 2002

- 4th:** Georgetown, 7-9 PM, *IEP 2000*  
**4th:** Wayland, 7-9 PM, *IEP 2000*  
**4th:** Boston, 6:30-8:30 PM, *Basic Rights*  
**6th:** Danvers, 7-9 PM, *Access to the General Curriculum*  
**11th:** Marblehead, 7-9 PM, *MCAS*  
**11th:** Mattapan, 9-11 AM, *Basic Rights*  
**13th:** Concord, 7:30-9:30 PM, *Access to the General Curriculum*  
**14th:** Wakefield, 7-9 PM, *Basic Rights*  
**19th:** Harvard, 7-9 PM, *IEP 2000*  
**19th:** Revere, 6:30-8:30 PM, *MCAS*  
**20th:** Medway, 7-9 PM, *Access to the General Curriculum*

- 21st:** Marlboro, 7-9 PM, *MCAS*  
**25th:** Tyngsboro, 7-9 PM, *IEP 2000*  
**26th:** Attleboro, 7-9 PM, *MCAS*  
**26th:** Chatham, 6:30-8:30 PM, *Access to the General Curriculum*  
**30th:** Needham, TBA, *Basic Rights*

## APRIL 2002

- 2nd:** Worcester, 10 AM-12 Noon, *Basic Rights for Parent Consultant Training Applicants*  
**3rd:** Shrewsbury, 7-9 PM, *IEP (Transition to three)*  
**3rd:** Arlington, 7-9 PM, *IEP 2000*  
**3rd:** Newtonville, 7:30-9:30 PM, *Basic Rights*  
**10th:** Concord, 7:30-9:30 PM, *MCAS*  
**11th:** Wakefield, 7-9 PM, *Access to the General Curriculum*  
**23rd:** Sandwich, 7-9 PM, *Basic Rights*  
**25th:** Somerville, 7-9 PM, *IEP 2000*  
**30th:** Nahant, 7-9 PM, *IEP 2000*

## MAY 2002

- 15th:** Medway, 7-9 PM, *MCAS*

## JUNE 2002

- 3rd:** Boston, 6:30-8:30 PM, *IEP 2000*

## WORKSHOP DESCRIPTIONS

**Basic Rights** covers basic information about state and federal special education laws to assist parents in the planning, decision-making and monitoring of their child's IEP. (Materials available in Spanish and Portuguese.)

**Effective Communication** offers communication skill-building and conflict resolution for parents as members of the IEP Team.

**IEP 2000** includes a walk-through of the new IEP with emphasis on IDEA '97 and the latest Massachusetts special education regulations, access to the general curriculum and writing curriculum-based, measurable annual goals.

**Transition** provides basic information on the state and federal laws that require the IEP to address goals such as competitive employment and independent living to assist students 14 and older with planning transition to adult living.

**Access to the General Curriculum** offers parent-friendly information on diverse learning styles and access to the general curriculum for all students. The workshop includes discussion and examples of modifications to content, delivery of instruction, and performance that will allow students with disabilities to more fully participate in the general curriculum.

**Effective Inclusion of Students with Disabilities in the MCAS Testing System** includes information on the IEP Team's determination of the appropriate method for an individual student to participate in the MCAS testing system. The workshop covers accommodations available to students with disabilities who take the standard paper-and-pencil version of MCAS as well as information on the MCAS Alternate Assessment.

Please register online at [www.fcsn.org](http://www.fcsn.org) or call the Federation at 1-800-331-0688.

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## Interested in Becoming a Parent Consultant? Save These Dates!

The Federation will offer intensive training on special education law and regulations and advocacy strategies to prepare parents and others to advocate for parents through the special education process. The schedule for each six-session series is as follows.

- In the Berkshires (site TBA), offered in collaboration with UCP: Each consecutive **Thursday** from **April 4-May 9**, from 10 A.M. to 5 P.M. Please contact Julie Sinclair, Director of the Federation's Western Massachusetts office, at 413-585-8140 for more details.
- At our Worcester office (site TBA): Each consecutive **Tuesday** from **April 23-May 28**, from 9 A.M. to 4 P.M. Please contact the Parent Consultant Training Coordinator at the Federation, Phyllis Sneider, at 617-236-7210 for further details. Enrollment in Worcester is limited.

## Early Childhood Corner



Highlighting information of interest to parents of children under five and their professional partners, particularly Early Intervention service providers. Sponsored by the Federation's Early Intervention Training Center.

## Early Intervention Training Center Workshop Schedule: January - March 2002

Early Intervention staff, families, and other early childhood personnel are invited to attend. Trainings are from 9 am to 3:30 pm. Snacks and lunches are provided, stipends for family members of children who receive early intervention services are available. For more information, call (800) 331-0688, ext. 159, or register on-line at [www.eitrainingcenter.org](http://www.eitrainingcenter.org).

### JANUARY 2002

#### January 29:

*Building a Community, Part 1*  
College of the Holy Cross (Worcester)

### FEBRUARY 2002

#### February 12:

*Building a Community, Part 2*  
DPH Western Regional Office (Northampton)

#### February 13:

*Play and Other Interventions (Part 2 of 2)*  
DPH Central Regional Office (West Boylston)

#### February 21:

*Building a Community, Part 1*  
Metro West Medical Center, Framingham

#### February 28:

*Service Coordination*  
Merrimack College (North Andover)

### MARCH 2002

#### March 6:

*Building a Community, Part 1*  
Reggie Lewis Center (Boston)

#### March 13:

*Building a Community, Part 2*  
Stonehill College (Easton)

### APRIL 2002

#### April 3:

*Building a Community, Part 1*  
Merrimack College (North Andover)

#### April 9:

*Building a Community, Part 2*  
College of the Holy Cross (Worcester)

*The Early Intervention Training Center at the Federation is funded by the Massachusetts Department of Public Health.*

## Survey to Help Parents Speak Out for Better Mental Health Care

by Ariel R. Frank  
Americorps Promise Fellow  
Health Care For All

Several thousand Massachusetts' parents will have the rare opportunity to tell policy-makers about their frustration with the children's mental health care system, thanks to a new survey by Health Care For All and the Parent/Professional Advocacy League at the Federation.

The survey, titled "Speak Out For Access," contains 42 questions about availability of services, treatment experiences, and outcomes. It was edited by a panel of researchers and public health professionals and field-tested with parents at focus groups in Arlington, Greenfield, and Boston. To date, more than 700 parents have received the survey at support groups, classes, and conferences.

Lisa Lambert, assistant director of the Parent/Professional Advocacy League (PAL), says the organization teamed up with Health Care For All to write the survey because parents are rarely included in discussions about the children's mental health care system, though

they have first-hand knowledge of its problems. The survey focuses on concerns raised by parents at the three focus groups.

Obtaining mental health services for children is like driving on a highway with "long detours, unexpected delays, and confusing road maps," Lambert says. "We hope that the questions on this survey will help families tell us where the worst delays and most problematic detours are found. With those results we can begin a dialogue with policy makers about how to make the journey easier."

Children's Hospital in Boston and the Boston Public Health Commission agreed to donate \$2,000 to fund printing and mailing of the survey. Organizers believe this support will help the project have an impact with legislators and state agency directors. Children's Hospital also had the survey translated into Spanish.

"We are pleased and proud to collaborate with Health Care For All and PAL in this innovative and important approach to gaining insight and information from parents on the issues of mental health service fragmentation," says Karen Darcy,

Director of the Mental Health Advocacy Initiative at Children's. "By providing financial and production support, Children's Hospital continues its commitment to support and advocate for the highest quality health care – including mental health care – for children, adolescents, and their families."

In conjunction with the survey, Health Care For All is interviewing families about their experiences with the children's mental health care system. Their stories will be included in the report of the survey results, as well as on the organization's website, to add a human dimension to the statistics.

Janet Hirschhorn, one of the mothers who shared her story for the interview project says the process was therapeutic, but perhaps more importantly, it gave her hope that some good will come from her family's struggles. "I shared my family's story because I want everyone to know how vital and appropriate mental health interventions are to the stabilization and recovery of troubled adolescents," Hirschhorn says. "It makes me feel that I have been heard."

For copies of the PAL/HCFA children's mental health survey, or to share your family's story, please call Ariel Frank at (617) 275-2937. The survey is also available on-line at [www.hcfama.org](http://www.hcfama.org).



# Health News

from FAMILY VOICES

at the Federation for Children with Special Needs

## Partnerships for Quality: A Forum on Managed Care and Children with Special Health Care Needs in Massachusetts

October 26, 2001, Bentley College, Waltham, MA

Perhaps it was the energy and hope that can be felt on any college campus on a picture-perfect fall day. Or maybe the recent events in the world gave us the drive to work together. Possibly, national and state initiatives, along with the efforts of the forum planning committee, combined to set the stage so the voices of families of children with special health care needs could be heard. What is undisputable, however, is that

### THIS FORUM WAS HISTORIC!

Twenty-seven staff from eight managed care health insurance plans in Massachusetts participated alongside 37 parents, nine health care providers, and 21 individuals from state agencies and private organizations in sharing information about children with special health care needs at a forum sponsored by Family Voices with funding from the David and Lucile Packard Foundation. From morning presentations to lunchtime networking to breakout discussions, the model of parents and professionals successfully working together was evident.

The morning agenda included talks about parent and professional partnerships, and perspectives about quality health care in Massachusetts. After lunch, attendees took part in interactive discussions and creative problem-solving sessions in one of the following breakout groups:

- Creating Quality Care for Children with Behavioral Issues
- Home Health and Community-Based Services
- Enhancing Care Coordination
- Identification of Children with Special Health Care Needs

The day concluded with an inspirational talk by Dr. Robert Master of Neighborhood Health Plan, who relayed his health plan's efforts to improve the quality of care for children with special health care needs and the positive impact parents have had in these efforts.

Massachusetts Family Voices wants to build on the energy and excitement that was generated at the forum. As parents, we know our children best and have a multitude of experiences and unique perspectives about the health care services our children receive. We can help managed care plans, and others, develop and implement creative solutions for improving our children's health care. Health care providers are asking for our help, insurance plans are ready to listen, and state agencies are being supportive. To learn more or to get involved in this effort, call Peggy Curran at the Federation at 1-800-331-0688, x155.

### MASSACHUSETTS FAMILY VOICES WEBSITE UPDATE

Information from this conference, including presentation summaries, PowerPoint files, reports, and resources, is available on our website, [www.massfamilyvoices.org](http://www.massfamilyvoices.org). Our new reports, *From Conversations to Connections; a Report on Parent Interviews with Managed Care Organizations in Massachusetts about Children with Special Health Care Needs*, and *Selected Highlights from Interviews with Managed Care Plans* are also available there.

## Mass Family Voices Receives Recognition

The National Family Voices Board of Directors recently voted to formally recognize Massachusetts Family Voices as the newest chapter in the national Family Voices Network. The Massachusetts' chapter is housed at the Federation for Children with Special Needs and is one of 11 officially recognized state chapters across the United States. Massachusetts Family Voices was formed to provide support to parents as they seek to improve the quality of health care for their children with special health care needs. The first statewide meeting of Massachusetts Family Voices was held in Framingham and included more than 30 parent leaders from across the state. Participants learned some important ways that families can gain easier access to needed health care services. Polly Sherman of the Federation's Family Ties Project has been named Chapter Director and is forming an advisory board for the Chapter in order to plan the next steps for Massachusetts Family Voices. If interested, contact Polly at [polly.sherman@state.ma.us](mailto:polly.sherman@state.ma.us) or visit our new website at [www.massfamilyvoices.org](http://www.massfamilyvoices.org).

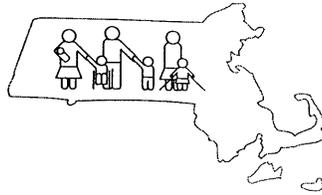
## Announcing a New National Executive Director of Family Voices

On October 1, 2001, Jennifer Cernoch became the new Executive Director of Family Voices. Jennifer has extensive experience working with families of children with special health care needs. She was responsible for the creation of the Texas Respite Resource Network and has been a key player in consumer education about managed care issues. She lives with her family in San Antonio, Texas, and her office will be based there. Other national Family Voices staff members are based in New Mexico, Iowa, Illinois, North Carolina, Washington, D.C., and Boston (at the Federation for Children with Special Needs). *Welcome, Jennifer!*

**FAMILY VOICES**

is a national grassroots organization of families and friends speaking on behalf of children with special health care needs. The Federation is one of the founding members of Family Voices and conducts Family Voices projects from the Federation office in Boston.

# Family TIES of Massachusetts



## FAMILY TIES – WHO ARE WE?

Family TIES (Together in Enhancing Support) is a statewide information and support network for families of children with disabilities or chronic illnesses. Family TIES Coordinators provide up-to-date information about available services and can share information about community resources, support groups, and upcoming workshops and conferences. Family TIES offers a skill-building series of workshops called “NEXT STEPS” which includes ideas about: getting organized, building advocacy skills, and getting your child involved in the community. Please call your local Family TIES Coordinator (see below) for more information or to schedule this series in your community. We also provide a parent-to-parent support network for families.

## WHAT IS PARENT-TO-PARENT?

When you have a child with a disability or chronic illness, you often feel isolated and alone. The mission of parent-to-parent is to match parents with another parent who shares a similar life experience. This support parent will share his or her story, listen to your concerns, and offer information and support while respecting your confidentiality, culture, and individual differences. Trained, experienced, supportive parents are matched in one-to-one relationships with parents who are seeking support from another parent who has

“been there.” If you would like to be matched with a parent of a child with a similar diagnosis or health concern, or if you feel you can offer support to another parent, please contact your Family TIES Coordinator.

## WHERE DO YOU FIND FAMILY TIES?

The Family TIES network is supported by the Massachusetts Department of Public Health, in collaboration with the Federation for Children with Special Needs. A Parent Coordinator is based in each of the six regional public health offices. Every Family TIES staff member is the parent of a child or children with special health care needs. To talk to your local Family TIES coordinator, call **1-800-905-TIES** or call the numbers listed below. Please visit our web site at [www.massfamilyties.org](http://www.massfamilyties.org) where you will find the Family TIES Directory of Resources for Families of Children with Special Needs. You may also receive a copy of our Directory by calling your local parent coordinator. We look forward to hearing from you!

## STATEWIDE:

Polly Sherman, Family TIES Director, (508) 947-1231

Joanne Spencer, Coordinator of Family Support, (508) 947-1231

## BOSTON REGION:

MaryLee Gupta, (617) 727-1115

## CENTRAL REGION:

Barbara Donati, (508) 792-7880

## METROWEST REGION:

Kathy Barrett Lewis, (781) 828-7190

## NORTHEAST REGION:

Barbara Round, (978) 851-7261

## SOUTHEAST REGION:

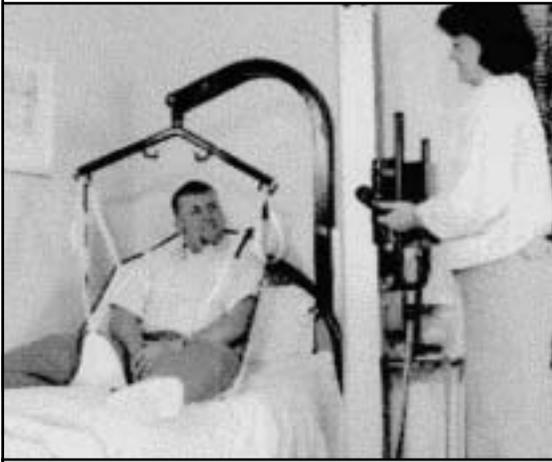
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**Lawrence Kotin, Esq., Robert K. Crabtree, Esq., Richard F. Howard, Esq.**

***Welcome to their practice: Maura J. Kelly, Esq.***

Providing representation to children and adults with disabilities, and their families.

Ms. Kelly was most recently at Holland and Knight. Prior to that she served as General Counsel for Lesley College and was a staff attorney at the Center for Law and Education.

**Kotin, Crabtree & Strong, LLP**

Kotin, Crabtree & Strong is a general practice law firm, one of whose specialties is in law relating to children, including education and child care issues. Other areas of practice include disability issues, civil and criminal litigation, personal injury law, estate planning and administration, intellectual property, corporations, representation of child care and other organizations, real estate, taxation and mediation.

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# Selecting a Residential Placement\* for Your Child

Deciding to send a child to a residential school is not only devastating for a family, it is a journey without a road map. Families and caregivers are likely to feel vulnerable and confused about treatment options, and all while under extreme stress from managing their child's chronic disorder.

Furthermore, increased reports of abuse and neglect in some residential settings add worry—fear that one's own child may not be safe in the very facility designed to care for him or her. Indeed, a residential placement can be a decision mired in emotion, though one requiring sound reason and good judgment.

Families seeking residential services for a young child should raise complex and critical questions before making such a decision. This article considers the most important.

## 1. What is a residential placement?

...[A] residential placement is a licensed, 24-hour facility that offers mental health treatment... Settings range from highly structured—resembling psychiatric hospitals—to group homes, halfway houses, boarding schools, or wilderness settings.

Treatment methods and philosophies vary, though the most common approaches are psychoeducational, behavioral management, group therapies, medication management, and peer-cultural approaches...

## 2. How Do I Know If My Child Needs Residential Care?

Chances are you already instinctively know whether a residential placement is an appropriate next step for your child. If you have exhausted every treatment avenue, your child is being poorly served in either school or community, and the preservation of the family is at stake, a quality residential treatment placement may be a necessary—and ultimately beneficial—intervention for recovery.

Some psychiatric disorders require 24-hour treatment in a highly structured setting. No parents can provide this exhaustive level of sustained care by themselves at home, particularly if there are other children to care for. When making a decision of this magnitude, remember that you know your child, your family's needs, and your own capacity for caregiving better than anyone else. Trust your instinct, though make sure it is a well-informed one.

## 3. Where and How Do I Begin Looking for a Residential Placement?

Which facility you select depends on the level of care needed, cost, functional capacity of the child and severity of the illness. A word-of-mouth recommendation is always best. Speak to other families who have been through the process. They are

always your best source of information. Call your local family-oriented advocacy organizations like CHADD, NAMI, or the Child and Adolescent Bipolar Foundation. Ask your child's doctor or other mental health clinicians who know your child for recommendations.

You also can refer to the websites below for comprehensive information about residential placement, but know that a website description is not a substitute for an onsite visit and a thorough investigation of services, staffing, and safety standards.

www.spedschools.com  
 www.petersons.com  
 www.strugglingteens.com  
 www.bpkids.org (provides education and parent testimonials bulletin board)  
 www.hometown.aol.com/parforres1/myhomepage/profile.html

[Note: the websites referenced above are not endorsed by the author of this article, NAMI, or CHADD. They are merely cited as available resources.]

In fact, you should be wary of slick marketing and advertising efforts. Looks can be highly deceiving. Conduct very careful research. Keep a notebook and document your impressions. Learn everything you can—especially from other parents whose children attended the program. Don't be afraid to ask questions. Above all, do not make a hasty placement decision, no matter how dire the need. Emotions can cloud reason when faced with a decision this large. Do not hesitate to ask for guidance from a neutral, though knowledgeable party.

\* The original article uses Residential Treatment Center. *NewsLine* has substituted "residential placement" or "residential school," the Massachusetts' equivalent.

*Excerpted from "Selecting a Residential Treatment Center for Your Child," by Peg Nichols in Attention! Magazine, (April 2001), a publication of CHADD, and reprinted with permission.*

**Note from Andrea Watson:** Parents for Residential Reform at the Federation for Children with Special Needs is a great resource for information and referral. PFRR also provides workshops to navigate the maze of state agencies, laws and regulations, and to explain your and your children's rights. PFRR is also doing a workshop at the Federation's conference, "Creating a World of Opportunities" on February 9, 2002. For more information or to register for this conference, visit [www.fcsn.org](http://www.fcsn.org). If you are interested in any of these services, call our hotline at 1-800-672-7084, email us at [pfrr@fcsn.org](mailto:pfrr@fcsn.org), or visit our web site at [www.pfrr.org](http://www.pfrr.org).

## NewsLine

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*NewsLine's* mailing list is occasionally made available to organizations in which we believe our readers may have interest. If you wish your name to be withheld, please call or write the Federation's Boston office to inform us.

## The Federation for Children with Special Needs, Inc.

### Our Mission:

To provide information, support, and assistance to parents of children with disabilities, their professional partners, and their communities. We are committed to listening to and learning from families, and encouraging full participation in community life by all people, especially those with disabilities.

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by Mary Loughlin, Director of Central Mass. office of the Federation's PTI project

Our town, like many small towns across Massachusetts, had been bitterly divided over education costs. Rising special education expenses and under-funded special education mandates left some town leaders refusing to pay special education costs while many others were undecided on how to vote. The superintendent threatened to make drastic cuts in regular education in order to cover the mandated special education costs.

Our newly reorganized Special Education Parent Advisory Council (PAC) was determined to have our voices heard in the town budget process. We phoned town

## Small Town Unites for Education

leaders. We joined a group of politically active parents of regular education students. We gave a presentation to the school committee. Finally, we prepared for the town meeting.

As we prepared what we would say to support education funding for all students, we wondered what the town's reaction would be. Would we anger town meeting participants and town leaders? We took comfort in our numbers, glad that three of us would be getting up together. We e-mailed our individual presentations back and forth; building what we hoped would be a powerful message.

The PAC co-chairs spoke first. They emphasized the need to fund all education costs now, including special education, but also stated that we all needed to work together to advocate for increased state and federal funding for special education. I spoke last. I talked about my sons with autism and how they are high-cost students. "Some say that they have hurt the budget. I say that the budget has hurt them." I spoke about wanting to keep my children in our community schools, but watched as their educational programs failed, because our town could not afford to provide the necessary supports to include my children. I spoke about feeling that the town lamented the cost of my children's education, but not the loss of my children from our community. I stated that perhaps my children were worth-

less, but surely not all two thousand of the children in our community were worthless. I spoke of feeling like terrorists had come to our town, since my children had been traumatized and had already lost their future in the community. I asked the citizens in our town to stand united with us in support of education.

When we finished speaking, we were stunned by the applause. Teachers shook our hands. High school students patted us on the back. A town meeting member who had never supported education made a motion to restore all of the needed special education funding. I am voting for this, "because I have compassion in my heart." "Leave no student behind," he quoted. The town meeting members voted to restore all of the special education funding. Another town meeting member affirmed the value of children with special needs to our town.

When I joined the Federation staff two years ago, I arrived devastated by my struggle to find appropriate educational programs for my children. I felt isolated, alienated, and betrayed by the town in which I had lived for 30 years. Two years later, after learning so much at the Federation, my voice helped turn my town around. I was advocating for all children, while the town meeting members were advocating for my children with special needs.

This is the power of the Federation.

## Project Playgroup

### *A collaborative initiative*

Early Learning Services at the Massachusetts Department of Education and the Early Intervention Unit at the Massachusetts Department of Public Health recently received funding from the federal Office of Special Education Programs to support collaborative, inclusive community playgroups for children, birth to four years old, both with and without disabilities. Beginning in January 2002, Project Playgroup will fund a minimum of 20 new collaborations, or will support the enhancement of current collaborations, between community Early Intervention programs and Massachusetts Family Networks.

According to the goals articulated in the reauthorization of the Individuals with Disabilities Education Act (IDEA) in 1997,

children with disabilities should be served in community settings, participating in activities with their typically developing peers. Research on play, children's development, and children with disabilities tells us that play, the developmental task of young children, provides the infrastructure for social, cognitive and motor development, and that young children who develop play-based relationships with peers are able to develop increasingly complex interactions. Research also tells us that, due to a number of factors including lack of social skills, young children with disabilities may be excluded from naturally occurring play situations in the absence of adult intervention. In addition, parents of young children with disabilities are often frustrated at the lack of social and play opportunities available to their children in their communities. Playgroups, therefore, were selected as the vehicle for establishing this collaborative grant, in order to:

- Increase community opportunities for young children and their families to participate in developmentally appropriate activities,
- Increase understanding between staff of programs serving different populations of young children, and
- Build community capacity.

Projects will run from January through August 2002. Project Playgroup grant recipients will be expected to participate in an evaluation process to examine the effectiveness of integrated playgroups on children's development and on families' abilities to access resources in their communities. The evaluation process will consolidate some of the "lessons learned" from Project Playgroup, and be released as a manual to provide guidance on the development of integrated playgroups.

For more information, please e-mail Katharine.Thomas@state.ma.us or knettleton@doe.mass.edu.

## ¿Qué Implica El Cambio?

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durante esos años. Desde la decisión en *David D. v. Dartmouth Public Schools*, un estándar más alto se ha aplicado: "Desarrollo máximo posible en un ambiente menos restrictivo."<sup>5</sup> Los padres ganaron muchos casos en el BSEA antes de 1984, y han ganado muchos otros desde entonces. Donde se ha probado que los distritos escolares han ofrecido menos que un programa educacional significativo o han ignorado el potencial individual y las necesidades de un estudiante, o han reducido la participación de un estudiante en el currículo general de educación sin una base sólida para hacer eso, los padres continuarán ganando apelaciones ante el BSEA.

Cualquier cambio en la ley implica un incremento en las litigaciones. Este cambio ciertamente lo hará en cuanto las escuelas prueben el significado de FAPE para los estudiantes de Massachusetts. Una vez las cosas se calmen esperamos que el cambio a FAPE tenga poco impacto en la calidad y cantidad de servicios ofrecidos a niños con discapacidades.

*Robert K. Crabtree es un miembro fundador de la firma de abogados de Boston Kotin, Crabtree & Strong, LLP, una firma de práctica general. Entre otras áreas, el señor Crabtree se especializa en las leyes de educación especial con sus compañeros y colegas Lawrence Kotin, Richard Howard, Hielen Hagerty y Maura Kelly. Todos escriben y hacen presentaciones sobre temas de ley educativa.*

1. 458 U.S. 176 (1982)
2. BSEA 01-1222 (Crane, 8/17/01)
3. 172 F.3d 238, 247 (3d Cir. 1999)
4. <http://www.doe.mass.edu>
5. 615 F. Supp. 639 (D. Mass.), aff'd, 775 F.2d 411 (1st Cir. 1984)

## O Que Isso Significará?

continua da pagina 7

*D. v. Dartmouth Public Schools*, um padrão mais elevado tem sido aplicado: "máximo desenvolvimento possível, num ambiente o menos restritivo possível."<sup>5</sup> Os pais ganharam muitas causas na BSEA, antes de 1984 ; eles têm ganho muitas causas desde então. Onde quer que se prove que os distritos escolares tenham oferecido menos do que um programa educacional significativo e efetivo, ou tenham ignorado as potencialidades e necessidades de um estudante, ou tenham reduzido a participação do aluno no currículo geral de educação, sem que disponham de uma base sólida para tal, os pais continuarão a ganhar as apelações junto à BSEA.

Qualquer mudança significativa da lei convida a um aumento de litígios. Isso certamente acontecerá com esta mudança, já que os distritos escolares se entrincheiram para testar o significado da FAPE para os estudantes de Massachusetts. Assim que a poeira assentar, contudo, esperamos e desejamos que a troca para a FAPE terá, enfim, pouco impacto na qualidade e na quantidade dos serviços fornecidos para as crianças portadoras de deficiência.

*Robert K. Crabtree é parceiro fundador da firma jurídica de Boston de Kotin, Crabtree & Strong, LLP, uma firma de prática geral. Entre outras áreas, o senhor Crabtree concentra sua atuação nas leis de educação especial, juntamente com os seus parceiros e colegas de profissão, Lawrence Kotin, Richard Howard, Eileen Hagerty, e Maura Kelly. Frequentemente, todos escrevem e dão palestras com temas sobre as leis educacionais.*

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## News & Happenings

### NEW! FAMILY RESOURCE DATABASE NOW AVAILABLE!

The new Family Resource Database at the Federation provides a quick and easy way for families and others to find their own resources. Log on to any Federation-hosted website and click the "FRD link." You can search by geographical area or topic and gain ready-access to hundreds of family support and service agencies.

Log on to any of these locations:

- Federation for Children with Special Needs – [fcsn.org](http://fcsn.org)
- ICC National Parent Leadership Support Project – [iccparent.org](http://iccparent.org)
- Early Intervention Training Center – [eitrainingcenter.org](http://eitrainingcenter.org)
- Parent's PLACE – [pplace.org](http://pplace.org)
- Parent Professional Advocacy League – [ppal.net](http://ppal.net)
- Massachusetts Family TIES – [massfamilyties.org](http://massfamilyties.org)
- Massachusetts Family Voices – [massfamilyvoices.org](http://massfamilyvoices.org)
- Bright Futures for Families – [brightfuturesforfamilies.org](http://brightfuturesforfamilies.org)
- Parents for Residential Reform – [pfr.org](http://pfr.org)

### FIRST EVER VACTERL CONFERENCE

The first ever VACTERL conference will be

held on **May 18-19, 2002**, at Children's Hospital in Boston. Co-sponsored by the VACTERL Association and the VATER Connection, the conference is for families whose children have VACTERL or related syndromes. (VATER and VACTERL are acronyms that refer to the spectrum of anatomical birth defects that affect some children.)

For more information, please contact Arlene Lambert at [VCB2002\\_WM@yahoo.com](mailto:VCB2002_WM@yahoo.com) or visit <http://communities.msn.com/vcb2002>.

### LD NETWORK ANNOUNCES APRIL CONFERENCE!

The LD Network's 20th Annual Conference, "Unlocking Learning Potential," will be held **April 8-12, 2002**, in Randolph, Massachusetts. The conference will feature sessions on teaching, learning, and learning disabilities for Pre-K through adults, educators, school leaders, clinicians, and parents. CEUs/Grad Credit available. For more information, contact Learning Disabilities Network, 72 Sharp St., Hingham, MA 02043, Ph: 781-340-5605. Fax: 781-340-5603. Email: [LDNTWK@aol.com](mailto:LDNTWK@aol.com), [www.LDNetwork.org](http://www.LDNetwork.org).

### SUPPORT GROUP IN SPANISH

Project COEP (Community Outreach and Empowerment Project), is a unique parent support project, funded by the Boston Foundation and operated by the Federation for Children

with Special Needs. Staff of the COEP Project coordinate support groups for families of children with disabilities. One group, "Familias Latinas Unidas por el Síndrome de Down," (Latino Families United for Down Syndrome) is dedicated to supporting and empowering families of children with Down syndrome. The group meets **one Saturday a month from 10 am – 12 noon** at the Federation in Boston. For more information, please call Diana Rocha at 617-236-7210, x171. In addition, Sandy Blanes and volunteer Rhea Tavares coordinate a second monthly support group for Portuguese-speaking parents of and people with disabilities. For more information, contact Sandy at x144. Finally, an additional support group in English is planned for the near future.

### GRUPO DE APOYO EN ESPAÑOL

La Federación para Niños con Necesidades Especiales se complace en anunciar el regreso de Community Outreach and Empowerment Project (COEP), con fondos del Boston Foundation.

COEP apoya al grupo "Familias Latinas Unidas por el Síndrome de Down." El grupo se dedica a apoyar y aumentar el liderazgo de las familias que tienen niños con el síndrome de Down. Este grupo se reúne **un sábado al mes, de 10 a.m. a 12 p.m.** en la Federación en Boston. Para más información, llame a Diana Rocha al 617-236-7210, x171.