

Report to the Legislature: Annual Report on Students with Disabilities 2015-2016

Chapter 159, Acts of 2000
September 2017

Massachusetts Department of Elementary and Secondary Education
75 Pleasant Street, Malden, MA 02148-4906
Phone 781-338-3000 TTY: N.E.T. Relay 800-439-2370
www.doe.mass.edu



This document was prepared by the
Massachusetts Department of Elementary and Secondary Education
Jeff Wulfson
Acting Commissioner

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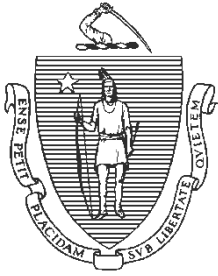
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Jeff Wulfson
Acting Commissioner

September 2017

Dear Members of the General Court:

I am pleased to submit this Report to the Legislature: Annual Report on Students with Disabilities 2015-2016. Similar reports have been provided to the Legislature on an annual basis since the year 2000.

In June 2016, the U.S. Office of Special Education Programs (OSEP) notified the Massachusetts Department of Elementary and Secondary Education (“the Department”) that, for the third year in a row, Massachusetts met the requirements of the Individuals with Disabilities Education Act (IDEA). This is the highest accolade that a state can receive from OSEP and is based on the totality of the Commonwealth’s data on student participation and performance. At the same time that our state is meeting these high standards, we seek continuous improvement to prepare all students for success after high school.

In 2015, the Department experienced a significant reduction in staff, in large part due to an early retirement incentive program for staff and the end of our federal *Race to the Top* funding. The Department then launched a new initiative with the assistance of Parthenon-EY, a strategic consulting firm, to take stock of its organizational structure and identify changes that could be made to enhance coordination and planning while helping its staff and leadership work more efficiently and effectively. Parthenon-EY’s [recommendations](#), submitted to the Board of Elementary and Secondary Education in March 2016, focused on integrating and aligning work across the agency, including combining related functions into an Office of Student and Family Support to help provide programs and supports that help all students gain the knowledge, skills and values needed to be well prepared for post secondary options as well as a career and citizenship.

This report highlights our 2015-2016 achievements and continuing efforts made toward maintaining our record of meeting requirements under IDEA, reorganizing our system of student and family supports, and improving outcomes for students with disabilities. If you have any questions, please feel free to contact me.

Sincerely,

Jeff Wulfson
Acting Commissioner of Elementary and Secondary Education

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I. Introduction

The Department of Elementary and Secondary Education (“the Department” or “ESE”) respectfully submits this Report to the Legislature pursuant to Chapter 159 of the Acts of 2000, Section 432, which reads in relevant part:

“The Department shall annually . . . report to the General Court on the implementation of [special education law]. Such report shall include ... cost increases or savings in cities or towns, . . . the extent of the development of educational collaboratives to provide necessary services, the increase or decrease of the number of children served, federal non-compliance issues and other such matters as said Department deems appropriate. Such report shall be filed with the clerks of the House of Representatives and the Senate who shall forward the same to the Joint Committee on Education, Arts and Humanities and the House and Senate Committees on Ways and Means...”

II. Background: Enrollment and Finances

This section on Enrollment and Finances offers data required by the statute and provides context for subsequent discussion of Department activities.

A. **Longitudinal Enrollment**

Massachusetts’ total student enrollment decreased slightly from school year 2014-2015 (FY15) to 2015-2016 (FY16), while the number of students receiving special education services increased slightly. The percentage of students with Individualized Education Programs (IEPs) enrolled in Massachusetts public schools increased by 0.1 percentage points in FY16 (Table 1). It should be noted that Massachusetts uses the total number of publicly enrolled students as the denominator when calculating the percentage enrollment of students with disabilities in special education. This contrasts with federal reporting, which uses census data in the denominator, including students who are not enrolled in public schools. Thus [published federal reports](#) show, for example, that 11.1 percent of Massachusetts students aged 6 to 21 received special education services during FY16, a rate lower than that of Maine, New Jersey, Oklahoma, West Virginia, and New York. Federal reports also indicate that in FY16 students with IEPs were 7.6 percent of all Massachusetts students aged 3 through 5, again using census data in the denominator. [This federal data](#) shows that, for these young students, fourteen states have higher special education rates than Massachusetts.

Table 1: Number and Percentage of Students with Disabilities, FY07–FY16

School Year	Total Special Education Enrollment	Total Enrollment	Percentage of Students with Disabilities
2006-07	163,396	979,851	16.7%
2007-08	164,298	972,178	16.9%
2008-09	166,037	970,059	17.1%
2009-10	164,847	967,951	17.0%
2010-11	164,711	966,395	17.0%
2011-12	163,679	964,198	17.0%
2012-13	163,921	965,602	17.0%
2013-14	164,336	966,360	17.0%
2014-15	165,060	966,391	17.1%
2015-16	165,560	953,429	17.2%

Source: Massachusetts Student Information Management System

B. Student Identification by Disability Category

The following table identifies numbers and percentages of students with IEPs by disability category. FY12 and FY16 data are used to illustrate change over a five-year period within categories. (Values are rounded to the nearest 0.1.)

Table 2: Number and Percentage of Disability Categories Ages 3-21 (FY12 and FY16)

Primary Disability	FY12		FY16		Percentage Change
	#	%	#	%	%
Specific Learning Disability	48,057	29.4%	41,669	25.2%	-4.2
Communication	29,444	18.0%	26,822	16.2%	-1.8
Health	15,304	9.4%	20,692	12.5%	+3.1
Autism	13,228	8.1%	18,572	11.2%	+3.1
Developmental Delay	17,552	10.7%	18,011	10.9%	+0.2
Emotional	13,932	8.5%	15,152	9.2%	+0.7
Neurological	7,947	4.9%	9,239	5.6%	+0.7
Intellectual	10,155	6.2%	8,600	5.2%	-1.0
Multiple Disabilities	4,694	2.9%	3,655	2.2%	-0.7
Sensory/Hard of Hearing	1,221	0.7%	1,201	0.7%	---
Physical	1,390	0.8%	1,150	0.7%	-0.1
Sensory/Vision Impairment	591	0.4%	606	0.4%	---
Sensory/Deaf/Blind	164	0.1%	161	0.1%	---
Students with IEPs Total	163,679	100	165,560	100	

Source: Massachusetts Student Information Management System

Collectively, Specific Learning Disability, Communication Impairment, and Health Impairment are often referred to as “high incidence disabilities” and are the disabilities most commonly found in the general population. Based on the designation conventions of different school districts, the percentage of students in each of these three categories may rise and fall relative to each other in any given year.¹ For FY16, Specific Learning Disability has decreased by 4.2 percent and Communication by 1.8 percent when compared with the FY12 rate, whereas Health has risen by 3.1 percent. However, when combined, students with IEPs in the categories of Specific Learning Disability, Communication Impairment, and Health Impairment represent approximately 53.9 percent of all students receiving special education services in Massachusetts. This overall number is 2.9 percentage points lower than it was in FY12.

Autism has increased by 3.1 percentage points over five years and is currently at 11.2 percent of all students with a disability.

For most other disability categories, the percentages have stayed approximately constant over the last five years.

C. *Financial Summary*

Public school districts report special education expenditures to the Department at the end of each year. Table 3 below shows the most recent available data (FY16 data were not available at the time of this writing) and indicates that both total school operating budgets and combined special education expenditures have increased over the past ten years. Expenditures from the district [Special Education Reimbursement \(“Circuit Breaker”\) Program](#) revolving accounts are included. The operating budget includes municipal indirect spending for schools but excludes capital expenditures and transportation. Other than circuit breaker spending, the operating budget does not include expenditures from grants, revolving funds, or other non-appropriated revenue sources. (Values are rounded to the nearest \$100,000.)

Definitions and notes:

- *Direct special education expenditures* include only those that can be related specifically to pupils receiving special education services.
- *Other instructional* includes supervisory, textbooks and instructional equipment, guidance, and psychological services.
- *MA Public Schools and Collaboratives* includes other public school districts, educational collaboratives, and charter schools.

¹ For a full discussion of the data fluctuation in the categories of Specific Learning Disability, Communication Impairment, and Health Impairment, see Hehir, Thomas, et al., *Review of Special Education in the Commonwealth*, April 2012, <http://www.doe.mass.edu/sped/hehir/2012-04sped.pdf>.

Table 3: Direct Special Education Expenditures, FY08–FY15, In Dollars

Fiscal Year	<i>In-District Instruction</i>		<i>Out-of-District Tuition</i>		E	F	G
	A	B	C	D			
	Teaching	Other Instructional	MA Public Schools and Collaboratives	MA Private and Out-of-State Schools	Combined Special Ed Expenditures (A+B+C+D)	Total School Operating Budget	Special Education % of Budget (E as % of F)
2008	1,132,805,073	209,235,235	223,288,119	451,779,440	2,017,107,867	10,172,987,581	19.8
2009	1,199,704,253	212,959,915	223,839,279	417,844,303	2,054,347,750	10,243,839,754	20.1
2010	1,221,013,989	218,417,498	227,720,315	422,154,922	2,089,306,724	10,530,690,533	19.8
2011	1,214,794,187	228,193,919	247,601,162	435,878,519	2,126,467,787	10,710,955,988	19.9
2012	1,290,077,738	239,336,243	258,571,816	475,131,655	2,263,117,452	11,034,255,332	20.5
2013	1,391,956,887	248,357,794	257,350,184	507,772,958	2,405,437,823	11,486,135,702	20.9
2014	1,459,789,905	257,489,030	259,934,327	511,132,743	2,488,346,005	11,926,430,635	20.9
2015	1,538,306,865	274,291,074	276,948,039	517,490,334	2,607,036,312	12,372,483,307	21.1

Source: End of Year Pupil and Financial Report, Schedule 4 – Special Education Expenditures

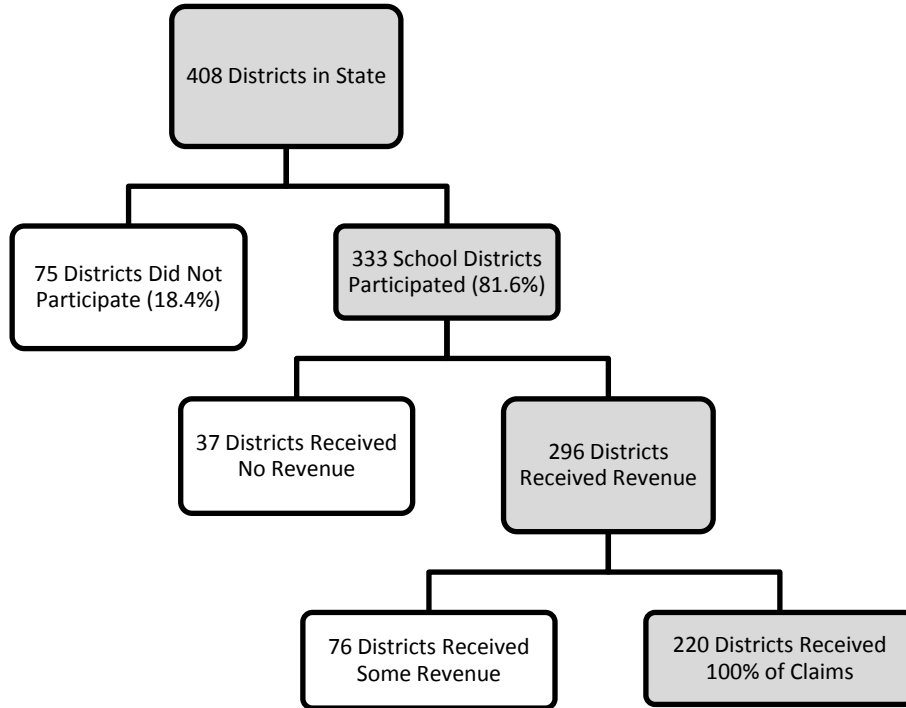
From FY08 to FY15, statewide growth in direct special education expenditures slightly outpaced growth in the total school operating budget. Average annual growth over this period for special education expenditures was 4 percent, and growth in the school operating budget was 3 percent. Since this is a statewide average, individual districts do not necessarily follow this pattern, and the trend in the largest urban districts is moving in the other direction, namely that growth in total school operating budgets is slightly outpacing growth in direct special education expenditures. On average, though, growth in special education spending has put some pressure on the rest of the operating budget for many districts during a period of fiscal constraint.

D. **School-Based Medicaid**

The School-Based Medicaid program allows local education authorities (LEAs), such as cities and towns, charter schools, public health commissions, and regional school districts, to seek payment for providing medically necessary Medicaid services (direct services) to eligible MassHealth-enrolled children. This program also allows LEAs to seek payment for participating in activities that support the administration of the state's Medicaid program (administrative activities). This includes outreach and those activities that aid the delivery of direct services to Medicaid-enrolled children with IEPs. State law allows LEAs to participate in the School-Based Medicaid program and to seek payment for direct services, administrative activities, or both. In order to participate in the program, LEAs must sign provider contracts with the state Medicaid agency. School-Based Medicaid providers can bill MassHealth in accordance with the contract terms. Federal revenues are returned directly to the municipality which, in turn, can choose to share such revenue with the school districts, in whole or in part. Figure A below seeks to provide an overview of the scale of Massachusetts districts receiving Medicaid revenue from municipalities. Districts may apply for and receive revenues in different fiscal years, but this is a

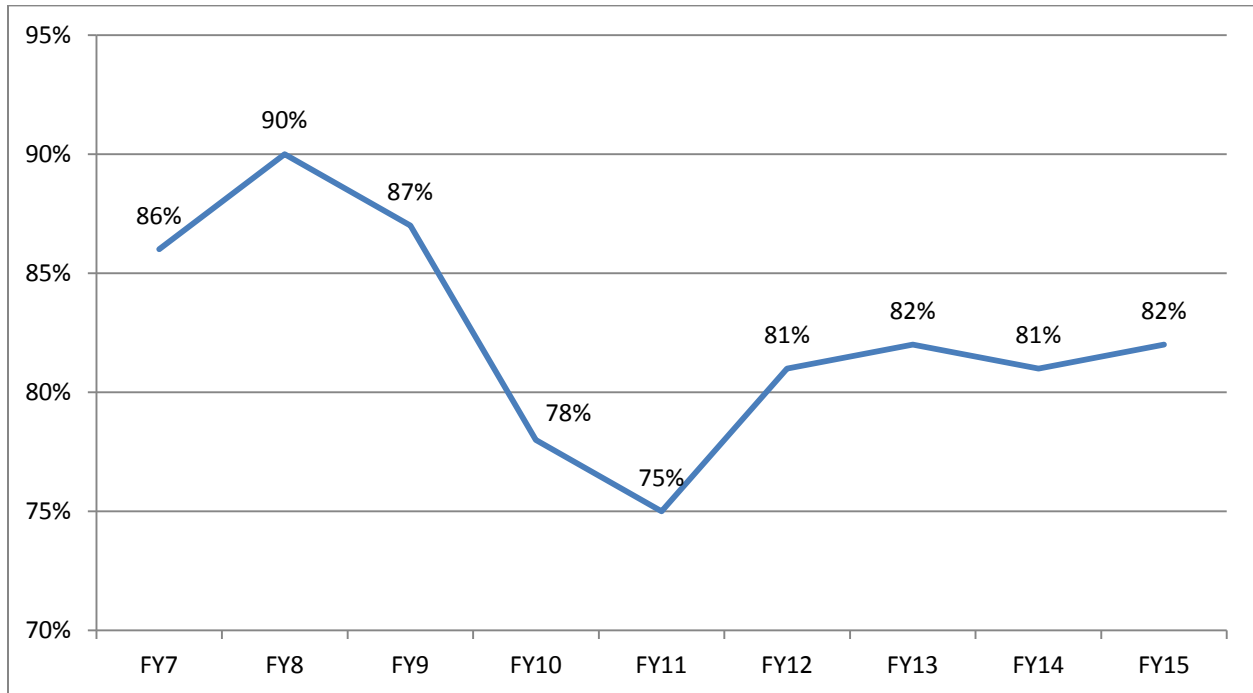
close approximation of FY15 activity. Typically, municipalities that do not share the Medicaid revenue directly with the school district, usually provide some alternative service in lieu of direct funds, such as property maintenance or snow-plowing. This distinction regarding the manner in which districts receive revenue is not represented in Figure A below. Data for FY15 represents the most recently available information at the time at which this report was written.

Figure A: Municipal Medicaid Funding Breakdown, FY15



In July 2009, the Municipal Medicaid program underwent significant procedural changes. Massachusetts was required to change its claiming procedures to a “fee for service” model. This new model requires further documentation of services provided and provides reimbursement only for qualified providers. At the time it was implemented, there was concern that this more demanding model would lead to a considerable decrease in the Medicaid reimbursement available to the state. The percentage of districts participating in the Municipal Medicaid program leveled off from FY12 to FY15 but has not rebounded to pre-FY09 levels. (Figure B).

**Figure B: Percentage of School Districts Participating in Medicaid Reimbursement
FY07-FY15**



E. ***Circuit Breaker***

The state Special Education Reimbursement (“Circuit Breaker”) Program, enacted by the Legislature in 2000 under c. 159, § 171, was first implemented in FY04. The Circuit Breaker program is designed to provide additional state financial assistance to school districts that have incurred exceptionally high costs in educating individual students with disabilities. The law supports shared costs between the Department and the school district when costs rise above a certain level, at which point the state will share up to 75 percent of the costs. Massachusetts state funds are available to reimburse a school district for students with disabilities whose special education costs exceed four times the state average foundation budget per pupil.

Annual reports on statewide circuit breaker claims and reimbursement can be found at <http://www.doe.mass.edu/finance/circuitbreaker>. [Data from October 2016](#) show district claims submitted in FY16 and reimbursed in FY17 at a rate of 70 percent.

III. FY16 in Review

A. ***ESE Reorganization and the Office of Special Services***

In the summer of 2015 the Department experienced a significant reduction in staff, in large part due to the temporary introduction of an early retirement incentive program for Executive Branch staff and the end of federal *Race to the Top* funding. (A number of senior managers also retired at the end of calendar year 2016, including State Director of Special Education Marcia

Mittnacht.) At the same time, the Department's mission – to strengthen the Commonwealth's public education system so that all students are prepared for success after high school – came into clearer focus. In light of these factors, the Department launched an initiative to take stock of its organizational structure and identify changes that could be made to enhance coordination and planning while helping agency leadership and staff work more efficiently and effectively. The Department underwent a reorganization that formed three main program centers: Educational Options, Instructional Support, and District Support. The Center for District Support includes the newly created Office of Special Services, which includes the Special Education Planning and Policy Development Office, the Special Education in Institutional Settings Office, the Office of Approved Special Education Schools, and the Office of Public School Monitoring.

1. Special Education Planning and Policy Development Office

The Office of Special Education Planning & Policy Development (SEPP) is the lead unit at the Department for planning and delivering targeted supports and resources to continuously improve the education of students receiving special education services. SEPP's mission is to strengthen the Commonwealth's public education system so that every student, and most especially every student with disabilities, is prepared to succeed in postsecondary education, compete in the global economy, and understand the rights and responsibilities of American citizens, and in so doing, to close all proficiency gaps. With a results-driven focus, the office seeks to increase public knowledge regarding special education and students with disabilities; engage in strategic planning and use of funds; develop, model, and disseminate best practices; promote communication and collaboration within the Department and among external stakeholders; and support effective compliance to improve student outcomes.

This year Massachusetts achieved the "meets requirements" rating from the U.S. Office of Special Education Programs (OSEP) for the third year in a row under the federal Results Driven Accountability framework, which considers not only compliance but student outcomes. OSEP looked at the totality of our state's data, including the State Performance Plan/Annual Performance Report (SPP/APR),² students with IEPs' participation and performance on the National Assessment of Educational Progress (NAEP), and their participation in the MCAS.

SEPP continues to make progress on several ongoing initiatives including the [Leading Educational Access Project \(LEAP\)](#), known formerly as the Low-Income Educational Access Project, which was created to support the Department's commitment to improving outcomes for all students. Research shows that low-income students are far more likely to be identified as eligible for special education services than other students. Additionally, low-income students who are identified as eligible are more likely to be educated in substantially separate settings.³ There is evidence that the best outcomes occur for students with disabilities who are most included alongside their non-disabled peers in school classes and activities. Therefore, both

² The State Performance Plan/Annual Performance Report is filed annually with OSEP. Each year states must report on their success in meeting compliance or performance targets focused on state and district special education systems and student outcomes. The most current report and historical SPP/APR documents are available at: <http://www.doe.mass.edu/sped/spp/maspp.html>.

³ Hehir, Thomas, et al., *Review of Special Education in the Commonwealth*, April 2012, <http://www.doe.mass.edu/sped/hehir/2012-04sped.pdf>

higher identification of low-income students and subsequent separation from the inclusive educational environment is concerning.

The Department is working collaboratively with a cohort of Massachusetts districts (LEAP districts), collaboratives, and agencies to assess why disproportionality in special education identification and/or placement is occurring for low-income students. These partners are conducting root cause and infrastructure analyses to identify, develop, and disseminate tools, technical assistance (TA), sustainable professional development, and other resources to ultimately support all Massachusetts districts.⁴

SEPP also continues to make progress on The Massachusetts State Systemic Improvement Plan (SSIP). The SSIP is a comprehensive, multi-year plan for improving social-emotional skills for young children aged 3-5 with IEPs using Positive Behavior Supports (PBS) through Pyramid Strategies. This approach is a research-based framework and curriculum to promote social-emotional skills and address challenging behaviors for young children. Throughout FY16 and continuing into FY17, the Department is building state- and local-level capacity to create sustainable leadership systems and infrastructure that will enable an ongoing cycle of improvement and direct technical assistance and training for local staff. Social-Emotional Learning (SEL) is now one of the five key goals of the Department and therefore this initiative, in coordination with other key initiatives⁵, is central to the Department's work.

2. Special Education in Institutional Settings Office

Since 1974, the Department has provided special education services to eligible children and youth residing in facilities operated by the Departments of Youth Services (DYS), Mental Health (DMH), Public Health (DPH) and the County Houses of Correction (CHC). The Department unit providing these services is the Special Education in Institutional Settings (SEIS) program. In school year 2015-2016, SEIS served an average of 522 students monthly in over 80 sites statewide: 46 students monthly in CHC; 79 students monthly in DPH; 106 students monthly in DMH; and 291 students monthly in DYS. For a brief description of the services in each of the host agency settings, please visit the [SEIS website](#).

3. Office of Approved Special Education Schools

The Office of Approved Special Education Schools (OASES) approves 164 different day and residential programs throughout Massachusetts, implements the Department's compliance monitoring and complaint management procedures, and provides technical assistance to program personnel and the public regarding the implementation of laws and regulations. During the 2015-2016 school year, 5,764 students from Massachusetts were placed in private special education schools, both day and residential, under the authority of public entities. This accounts for approximately 3.5 percent of all students with disabilities statewide. These programs provide special education and related services to students whose needs exceed those that can be accommodated within the public school setting. The Department's approval and monitoring of

⁴ Of particular note are LEAP's free [online interactive training module](#) and a statewide cadre of trainers available to support all districts in addressing the needs of low-income students. These [trainers are from twelve educational collaboratives](#).

⁵ See [Social and Emotional Learning in Massachusetts](#), from the Department's Office of Curriculum and Instruction.

private special education schools in Massachusetts is governed primarily by special education regulations.⁶

Each program participates in a full Program Review every sixth year and a Mid-cycle review every third year. The year prior to each Program or Mid-cycle Review, each approved program completes a self-assessment. The Department then reviews the documentation submitted and is on site at each program the next school year. [Published Program Reviews](#) and [Mid-cycle Reviews](#) can be found on [the Department's website](#).

In the spring of 2016 Massachusetts Governor Baker asked the Office of the Child Advocate (OCA) to guide and coordinate a review of approved private residential and day programs that provide educational services to children who require a residential or substantially separate educational setting to meet their needs. This work was begun, in part, in response to serious incidents of student's health and safety in some residential ~~or schools~~ and substantially separate day programs, and a series of recommendations that were issued following an external review of state systems. OCA convened an interagency Residential Schools Working Group that included representatives from the state agencies responsible for the monitoring and oversight of residential schools: the Department of Early Education and Care (EEC), the Department of Elementary and Secondary Education (ESE), the Department of Children and Families (DCF), the Department of Mental Health (DMH), and the Disabled Persons Protection Commission (DPPC). The Working Group was guided by a Steering Committee comprised of the Child Advocate, Undersecretaries of the Executive Office of Education and Health and Human Services, and a representative from the Governor's Office.

Under OCA's leadership, the Working Group has focused on changing the agencies' operational approach to program oversight and communication. Initial meetings of the Working Group reviewed the risk factors the agencies use to fulfill their statutory functions. As a result of these initial meetings, ESE and its partner agencies ~~agreed to make~~ made immediate changes to improve coordination, data collection, and information sharing, prioritizing this work because of recent incidents involving student health and safety. ~~Among other immediate changes,~~ ESE increased the scope of reporting of incidents and special education needs to include all students enrolled in the program (Massachusetts, out-of-state, and privately-funded) instead of just the students who had been referred by a local school district. Additionally, ESE and other agencies updated and clarified policies regarding the use of behavioral supports and restraints, and the reporting requirements student and staff-related to restraints and ~~straints and any~~ injuries to staff or students, and behavioral supports and restraint. Quarterly interagency meetings are now taking place with ESE, EEC and DCF to discuss residential schools ~~programs~~ under review, and to identify patterns, trends, or areas of concern. Beginning in the 2017-2018 school year, any approved private special education school with any identified noncompliance in its Program or Mid-cycle Reviews will have unannounced visits from ESE to verify implementation of the school's progress reports for corrective action.

⁶ See 603 CMR 28.09 [Approval of Public and Private Day and Residential Special Education School Programs](#) and 603 CMR 18.00 [Program and Safety Standards for Approved Public or Private Day and Residential Special Education School Programs](#). If an applicant is specifically seeking to operate a private residential special education program, the applicant must also obtain licensure from the Department of Early Education and Care (EEC).

This work is continuing, and additional information regarding this Working Group and interagency collaboration will be provided in the FY17 *Annual Report on Students with Disabilities*.

4. Office of Public School Monitoring

The Office of Public School Monitoring implements the Department's compliance monitoring procedures through Coordinated Program Reviews and Mid-cycle Reviews for school districts, charter schools, collaboratives, SEIS programs, and career/vocational technical education schools, and provides technical assistance to school personnel. [Coordinated Program Reviews](#) (CPRs) are conducted every six years and include special education, civil rights, English language learner education, and career/vocational technical education. [Mid-cycle Reviews](#) (MCRs) occur three years after the CPR and focus on special education. Public School Monitoring staff is also available to provide technical assistance to districts in order to meet compliance requirements, which are monitored through progress reporting. The positive impact of the reviews include, but are not limited to, programmatic development, reallocation of instructional spaces for special education students, increased staffing in programs, and increased professional development in districts.

B. Educational Collaboratives

Twenty-six [educational collaboratives](#) collectively served 265 member districts during FY16. That year, 4,182 students with a full range of needs received direct services through educational collaboratives. Collaboratives also serve students and adults by providing therapy services, professional development, and vocational training for member and non-member districts. While collaboratives were formed over forty years ago to operate joint special education programs for member districts (and some non-member districts), they have evolved since that time to meet additional needs of public school districts, such as cooperative purchasing, transportation and in-service training.

Additional information on collaboratives, including the authorizing law and companion regulations (603 CMR 50.00) may be accessed on the Department's [website](#).

C. Bureau of Special Education Appeals

The Bureau of Special Education Appeals ("BSEA"), an independent subdivision of the Division of Administrative Law Appeals, conducts mediations and due process hearings to resolve disputes among parents, school districts, private schools and state agencies.⁷ Consistent with authorities derived from federal law and regulations (the [Individuals with Disabilities Education Act](#), "IDEA") and Massachusetts law and regulations. (M.G.L. c.71B), the BSEA provides due process and dispute resolution procedures – including mediation – on any matter concerning the eligibility, evaluation, placement, individualized education program (IEP), provision of special

⁷ In addition to mediation and due process hearings (both of which must be offered pursuant to federal law), the BSEA offers the following alternative dispute resolution options: IEP Team meeting facilitations; settlement conferences; and advisory opinions.

education, or procedural protections for students with disabilities.⁸ The BSEA also may hear issues involving the denial of a free appropriate public education guaranteed by [Section 504 of the Rehabilitation Act of 1973](#).

During the period July 1, 2015 through June 30, 2016 (FY16), the BSEA received notice of approximately 10,800 rejected IEPs, representing an increase of 5 percent from the prior year. While not all of these became the subject of a dispute resolution process handled by the BSEA, the BSEA conducted 778 mediations in this period, an increase of approximately 50 over last year's number. Parties reached an agreement in 85.9 percent of the mediations conducted.

The BSEA also saw a significant increase in the number of hearing requests received in FY16. The 568 requests represented an increase of more than 15 percent over FY15. BSEA hearing officers conducted full hearings resulting in 23 decisions (representing an increase from the 18 decisions issued in the previous year). In addition at least 48 substantive written rulings were issued. An additional 82 cases were resolved at settlement conferences conducted by BSEA staff.

During FY16, the BSEA facilitated 135 IEP Team meetings, an increase from the 127 conducted during the previous year. The BSEA declined an additional 66 requests for Team meeting facilitation, because BSEA staff was not available.

IV. For More Information

The information in this report is a compilation of data and narrative contributions from several units within the Department, as well as input from the Massachusetts Organization of Education Collaboratives, the state Office of Medicaid, and the Division of Administration Law Appeals. If you have any questions, please contact Russell Johnston, PhD, State Director of Special Education, by email at rjohnston@doe.mass.edu or by phone at 781-338-3564.

⁸ A school district may not, however, request a hearing on a parent's failure or refusal to consent to initial evaluation or initial placement of a child in a special education program, or to written revocation of parental consent for further provision of special education and related services.