



➤ **What is the Problem?**

Students with autism spectrum disorder (or autism) are sometimes denied special education and related services necessary to address their challenges in social skills or other areas. This may happen when: (1) school districts find that the student does not have an autism spectrum disorder even though an evaluator has diagnosed the student with autism; or (2) school districts refuse to provide social skills services or other services even though a student has demonstrated significant difficulties in these areas.

➤ **When a School District Disagrees with an Autism Spectrum Disorder Diagnosis**

Why does this happen? School districts sometimes do not agree with a diagnosis by an evaluator that a student has an autism spectrum disorder because evaluators who are clinicians often use the autism definition found in DSM-5,¹ while school districts are often guided only by the definitions found within state and federal special education regulations.¹

How can parents advocate so that school districts use the evaluator's diagnosis of autism?

Massachusetts special education law requires school districts to find that a student has autism if the student meets the DSM-5 definition of autism. Parents can show districts the language in this law that states: “[w]henever an evaluation indicates that a child has a disability on the autism spectrum ... as defined in the most recent edition of the Diagnostic and Statistical Manual of the American Psychiatric Association [which is DSM-5], the Individualized Education Program (IEP) team ... shall address ... needs resulting from the child's disability that impact progress in the general curriculum, including social and emotional development.” (MGL c. 71B §3.)¹

Also, even though the DSM-5 and regulatory definitions of autism use different language, the two definitions are substantively very similar. Parents can ask their evaluator to explicitly consider the standards contained within the regulatory definition (in addition to DSM-5) when evaluating the student and determining whether he or she has autism spectrum disorder.

¹ DSM-5 refers to the 5th edition of the Diagnostic and Statistical Manual of the American Psychiatric Association. The DSM-5 is a detailed diagnostic tool for licensed clinicians. Most school psychologists are not trained to understand or use the DSM-5. The DSM-5 definition appears in the attached Appendix.

² The definitions of autism within state and federal regulations appear in the attached Appendix.

³ The Dept. of Elementary and Secondary Education (DESE) suggests that the regulatory definition of autism, rather than the DSM definition, should be used by school districts. See DESE's Advisory SPED 2014-1, found online at <http://www.doe.mass.edu/sped/advisories/2014-1ta.html> But this advisory is inconsistent with the plain language of state law (quoted in text above). A district may not follow a policy or practice that is “contrary to the plain language of the statute and its underlying purpose”. See *Mass. Hospital Association v. Dept. of Medical Security*, 412 Mass. 340, 346 (1992).

➤ **When a School District Refuses to Address Social Skills (or Other) Deficits**

Why does this happen? The school district may agree that a student has social skills (or other) deficits but decide that the student is not eligible for special education because the social skills (or other) deficits do not interfere with academic progress.

How can parents advocate so that school districts address social skills (or other) deficits?

An appropriate evaluation of a student's social skills deficits may be the essential first step to ensure that these deficits are identified and then addressed by the school district. If a student has or may have an autism spectrum disorder, parents should request the school district to use an evaluation tool that will determine the extent of the social skills deficits. These deficits may be seen at school, recess, after school, or in the community.¹

Parents can point out to school districts that special education regulations require the school district to consider not only a student's *academic* progress, but also a student's overall *educational* progress (including progress in social skills) when determining eligibility and what services have to be provided.¹

Also, Massachusetts special education law requires that social skills deficits of students with autism be addressed. Parents can point out language in this law which states that the IEP Team "shall consider and shall specifically address ... the need to develop social interaction skills and proficiencies" of students diagnosed with autism. (MGL c. 71B, § 3.) A DESE advisory, which discusses this law, explains that school districts must address social skills deficits, as well as deficits in a student's pragmatic language skills.¹

- **Additional steps** If a student with autism has been denied eligibility or special education services necessary to address social skills (or other) deficits, parents may consider:
- obtaining an independent education evaluation to address the student's deficits;¹
 - scheduling an observation of the student's school program;¹
 - rejecting the proposed eligibility finding or rejecting an IEP in whole or in part;
 - contacting a local autism center or the MAC Helpline for more information or assistance at (617) 357-8431 ext. 3224.

⁴ Federal regulations specifically mandate that school districts assess students "in all areas related to the suspected disability, including, if appropriate, ... social ... status." See 34 CFR §300.304(c)(4).

⁵ Massachusetts eligibility regulations specifically require that if a student does not make documented growth in social skills development because of the student's autism, then the student must be determined eligible to receive special education services and those services should address the student's social skills deficits. See 603 CMR 28.02(9); 603 CMR 28.02(17).

⁶ See DESE *Advisory SPED 2007-1*, found at http://www.doe.mass.edu/sped/advisories/07_1ta.html

⁷ Parents have the right to request an independent education evaluation (or IEE), paid by the school district, if they disagree with the school district's evaluation. See 603 CMR 28.04(5)(c).

⁸ Parents and their evaluators have the right to observe the student at school. See MGL c. 71B, s. 3. See also the DESE *Advisory SPED 2009-2*, found at http://www.doe.mass.edu/sped/advisories/09_2.html

APPENDIX

DEFINITION OF AUTISM UNDER MASSACHUSETTS AND FEDERAL REGULATIONS

State regulations 603 CMR 28.02 (7)

Disability shall mean one or more of the following impairments:

(a) Autism - A developmental disability significantly affecting verbal and nonverbal communication and social interaction. The term shall have the meaning given it in federal law at 34 CFR §300.8(c)(1).

Federal regulations 34 CFR §300.8(c)(1)

(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

DEFINITION OF AUTISM UNDER DSM-5

Autism Spectrum Disorder 299.00 (F84.0)

Diagnostic Criteria

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive, see text):

1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.
2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and

3. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

Specify current severity:

Severity is based on social communication impairments and restricted repetitive patterns of behavior.

B. Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive; see text):

1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).
2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns or verbal nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat food every day).
3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interest).
4. Hyper- or hyporeactivity to sensory input or unusual interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

Specify current severity:

Severity is based on social communication impairments and restricted, repetitive patterns of behavior.

C. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).

D. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

E. These disturbances are not better explained by intellectual disability (intellectual developmental disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.