



For children, schools, and parents

- **Child-centered**
- **Appropriate program**
- **Trust-based**

**Resolving Disputes in a Trust-Building
And Child-Centered Way**

**CADRE's Fifth National Symposium on
Dispute Resolution in Special Education**

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**www.specialeducationday.com
www.doe.mass.edu/sped/spedx/**

The information provided herein is intended to be used for general information only and not as legal advice. In the event that legal advice is required, the services of an attorney should be sought.

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Acknowledgments

SpedEx is the result of efforts by many of us in Massachusetts. I wish to specifically acknowledge the following contributors, for without them, SpedEx would not have gotten off the ground.

Marilyn Bisbicos, Ed. D., Administrator of Special Education

Richard Connolly, J.D., Former head of the Bureau of Special Education Appeals, Massachusetts Department of Elementary and Secondary Education (DESE)

Carla B. Jentz, M. Ed., Executive Director, The Massachusetts Administrators for Special Education

Marcia M. Mittnacht, State Director for Special Education, DESE

Edward Orenstein, M.S., retired Executive Director, CASE

Alec Peck, Professor, Ph. D., Interim Associate Dean Faculty and Academics, Associate Professor, Special Education, Boston College

David Scanlon, Ph. D., Associate Professor, Special Education, Boston College



1. Introduction to SpedEx

SpedEx is an innovative dispute-resolution pilot project, launched and funded by the Massachusetts Department of Elementary and Secondary Education (DESE) as a pilot project. SpedEx grew out of Special Education Day discussions representing stakeholders from across the state over the past few years. It represents the combined efforts of the DESE, the Bureau of Special Education Appeals (BSEA), the Special Education Day Committee (SPEDCO), and the SpedEx Planning Committee. DESE is funding certain SpedEx pilot activities for four (4) years.

SpedEx is

- (a) designed to assure that a child receives a free appropriate public education (FAPE) in the least restrictive environment (LRE).
- (b) voluntary and will build trust between parents and schools.
- (c) expedient and will provide a report that parties may use to resolve disputes within 30 days.

SpedEx

- (d) involves a jointly agreed-upon independent SpedEx consultant chosen from a list maintained by the DESE, who can assist parties to determine the program the child needs to assure a FAPE in the LRE and to develop an IEP that the parties can accept.
- (e) Involves an after-agreement observation of the child in the program to assure that FAPE is being provided in the LRE. If the dispute is not resolved, the parties may pursue their due process rights.
- (f) Involves no waiver of rights by parents or schools.

Essential elements and purpose of SpedEx: the ultimate goal of the SpedEx pilot project is to reduce the anxiety, anger, and expense of litigation when disputes arise between parents and schools about special education services by providing a voluntary and constructive process that focuses on what the child needs for a FAPE in the LRE, not on winning and losing at due process.

2. A bit of history— Special Education Day and SPEDCO— Seven Years and Counting!

About ten years ago, we did not set out to “change the world.” The four of us^{1/} began a dialogue, sure that there had to be better ways to increase the capacity for delivering special education services and to support professional in the field. We began on-going, lively, consistent, committed, frequent, and fun meetings. Looking back it was as if we had formed a self-help support and “think tank” of like minded professionals—focused on the “prize”—systemic change in special education in the context of educating all students in our schools.

Margaret Mead’s powerful words inspired us

Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.

Here are the steps we took:

We invented a national holiday, Special Education Day!

April 2005 **Special Education Day, December 2.** It is in the annual directory, **Chase’s Calendar of Events**, published by McGraw Hill. The holiday’s theme is ***Dreams, Realities, and Possibilities***. The goal is:

1. To celebrate the successes in special education since the law was enacted.
2. To discuss current challenges.
3. To promote systemic reform.

May 2005 **www.specialeducationday.com** launched.

November 2005 **Education Week** published our article, “Special Education at 30—Dreams, Realities, and Possibilities.”
<http://www.edweek.org/ew/articles/2005/11/30/13freedman.h25.html>

December 2, 2005 **First Annual Special Education Day.**
We developed a summary of comments and participants’ written contributions about current challenges—seeking paths for reform.

Since then, we have had Special Education Day celebrations every year but 2009. Over the years, we have been sponsored by the Massachusetts Administrators for Special

^{1/} The four of us who became known as SPEDCO, the Special Education Day Committee are **Marilyn Bisbicos, Ed.D.**, Administrator of Special Education; **Miriam Kurtzig Freedman, M.A., J.D.**, Author, speaker, consultant, of counsel to the Boston law firm of Stoneman, Chandler & Miller LLP; **Carla B. Jentz, M. Ed.**, Executive Director, Massachusetts Administrators for Special Education (ASE) and **Edward Orenstein, M.S.**, retired Executive Director, CASE Collaborative.

Education (ASE), the Massachusetts Association of 766 Approved Private Schools (MAAPS), CEC—Massachusetts Federation of the Council for Exceptional Children (one year), and SPEDCO, the Special Education Day Committee. We inaugurated the “Special Education Day” song (by Nathan (Nate) Anderson of South Dakota), another speaker here at CADRE!



In 2011 we plan for the 7th Annual Special Education Day event. Please visit our website, www.specialeducationday.com for details.

History of SpedEx (Special Education Program Expert Model)

Summer 2007 **SPEDCO—wins runner up designation in 16th Annual Better Government Competition at Pioneer Institute, Boston!** Our entry, “Four Proposals to Reform Special Education” was honored at the BGC awards ceremony and published by the Pioneer Institute. www.pioneerinstitute.org. We incorporated suggestions that were discussed at holiday events, including the idea of hiring neutral consultants to resolve special education disputes.

September 2007 **SPEDCO submitted SpedEx proposal to the DESE to pilot and fund the SpedEx as an alternative model to resolve disputes.**

During the 2007-2009 school years, SPEDCO and DESE worked together to launch SpedEx. DESE agreed to fund SpedEx as a pilot for several years. We changed the term ‘Expert’ to ‘Consultant.’ Professor Alec Peck of Boston College was the SpedEx administrator.

During the 2009-2010 school year, SpedEx was launched with one case. As a result of that case and several inquiries, we changed the entry point to two options: a rejected IEP or a hearing request. Professor David Scanlon of Boston College became the SpedEx administrator.

During the 2010-2011 school year, SpedEx handled five cases. We fielded more inquiries, and had more IEPs accepted through the process. We made presentations around the state and country about SpedEx.

During the 2011-2012 school year, we expect SpedEx to grow as an alternative path for parents and schools. We have the funding for eight cases this year. For more information, please contact Professor Scanlon at david.scanlon@bc.edu.

3. How SpedEx Works

Family & Community > Special Communities >

Special Education Appeals

SpedEx

SpedEx is: a dispute resolution pilot project that will be available in certain cases after an IEP has been rejected or a hearing request has been filed. It (a) is designed to assure that a child receives a free appropriate public education (FAPE) in the least restrictive environment (LRE); (b) is voluntary and will build trust between parents and schools; (c) is expedient; (d) provides a jointly agreed-upon independent SpedEx consultant to review evidence and advise the parties on FAPE and LRE so they may resolve their dispute. The consultant is chosen from a list maintained by the SpedEx Administrator and available for review on the website of the BSEA and the Special Education section of the Department of Elementary and Secondary Education (ESE). The list of consultants is here: [SpedExbios](#)

The independent SpedEx consultant can assist parties to determine the program the child needs to assure a FAPE in the LRE. The parties are not bound by the consultant's report and recommendation. If the parties agree to the SpedEx recommendation, the dispute is considered resolved. Upon agreement the child is placed in the program recommended by the consultant and the SpedEx consultant observes the child in the program to assure that FAPE is being provided in the LRE. If the parties do not agree with the SpedEx recommendation, the parties may pursue their due process rights.

Key features:

- Use of an independent, neutral, educational SpedEx consultant jointly agreed-upon by family and school whose fee will be paid by the ESE
- Placement of students by agreement within 30 days with post-placement observation by SpedEx consultant
- Decisions made through joint school-family knowledge and cooperation
- ESE has solicited and selected an administrator of the SpedEx Program, Dr. David Scanlon, Associate Professor of Special Education at Boston College. Professor Scanlon will set up a database to administer the program, maintain schedules, contract with the SpedEx consultants, conduct satisfaction surveys, and develop data to assess the efficacy of the pilot project.

The following questions are designed to assist in determining whether SpedEx may be appropriate for your circumstances. If your answer to either of these questions is "yes," the next step would be to propose the possibility of using SpedEx to the other party (either the school or the parent.) If both parties are interested in pursuing the possibility, then contact Dr. David Scanlon, SpedEx Administrator, at david.scanlon@bc.edu

Are the school district and the parent:

1. Disputing whether the district's proposed IEP offers a FAPE in the LRE?
2. Disputing what services the child needs in order to receive a FAPE in the LRE?

This is a three year pilot project, with limited funding (eight cases) for each fiscal year. Requests for this option after an IEP has been rejected or a hearing request has been filed will generally be accepted on a first-come, first-served basis. Dr. Scanlon reserves the right to reject applications that are not consistent with the pilot objectives.

Typical SpedEx Timeline

After an IEP has been rejected...

1. Inquire to the SpedEx administrator as to whether the case may be appropriate for SpedEx
2. Ask the other party (parent or school) to agree to engage the SpedEx dispute resolution process
3. Parties jointly select 1-3 SpedEx consultants, in order of preference, they will agree to review the case. (First choice may not always be available.) Notify the SpedEx administrator.
4. SpedEx administrator contracts with one consultant to review the case. Parties are notified.
5. School administrator facilitates permissions for consultant to enter school facilities, access student records, observe, and interview appropriate school staff.
6. Consultant then has approximately 30 days to interview parties, which may include the child, observe, review relevant documents, and prepare a report advising the parties on FAPE and LRE to resolve their dispute.
7. Following delivery of the report to the parties by the SpedEx administrator, parties agree to adopt the consultant's recommendations and then sign an IEP reflecting their agreement (suggested: agreement decision)

made within 10 days), with placement of the child within 30 days. If they reject the consultant's recommendations they may pursue their due process rights.

8. Regardless of the parties' decision, the SpedEx consultant's report becomes part of the child's permanent record.
9. If the SpedEx consultant's recommendations are adopted, the consultant makes a follow-up observation within 30 days of placement.
10. At the conclusion of the SpedEx process, the SpedEx administrator contacts both parties to solicit their opinions on the SpedEx process.

You may consult the SpedEx administrator at any stage of the process.

Please direct any questions to: Dr. David Scanlon at david.scanlon@bc.edu

SpedEx Consultants: Applications for inclusion on the list of SpedEx consultants will be accepted throughout the life of the pilot project (i.e., three years). Persons who may wish to be included on the list of SpedEx consultants must have at least a Master's Degree and three years experience in their field of expertise. In addition, a SpedEx consultant must (a) hold the appropriate license or certification in their area of expertise; (b) should possess an understanding of the legal basis of FAPE - a free appropriate public education - and LRE - least restrictive environment; (c) be prepared to review and recommend programs that meet the needs of the student, that is, provide FAPE in the LRE; (d) be able to maintain strict neutrality and work expeditiously to gather necessary information from all parties; (e) seek to promote dispute resolution through cooperation and trust between schools and parents; and (f) be willing and able to follow up agreements with an on-site visit to the child in the agreed-upon program. Additional information may be found at the Commonwealth's contract solicitation site, www.comm-pass.com, key word "bsea".

4. How it is working

Number of Cases

2009-10	1
2010-11	5
2011-12	1*

Outcome of Cases

	IEP	Hearing, etc.	Pending
2009-10		1	
2010-11	3		1
2011-12			1

*Case began in the 2010-2011 school year.

“SpedEx provided a neutral perspective that gave both parties more information to make a decision.”--Assistant Director, Special Education.

“Our [SpedEx consultant] did a very detailed and honest assessment of the placement.” --Family advocate.

**For a list and short bios of SpedEx consultants, please visit:
<http://www.doe.mass.edu/sped/spedx/spedxbios.html>**

5. Similarities and differences between mediation and SpedEx in Massachusetts

Mediation

1. Informal process to “encourage mutual respect, promote communication and provide basis for positive working relationships between parents and school staff”.*
2. Process available after request for BSEA mediation.
3. Collaborative and voluntary process to be amicable and efficient.
4. Impartial mediator provided by the DESE helps parties clarify concerns, explore interests, discuss options, and collaborate to reach mutually satisfying agreement that addresses needs of the student.
5. Mediator does not decide resolution; mediator assists parties to reach resolution about any aspect of dispute—program, procedure, evaluation, payment, etc. Partial agreements may result, resolving part of a dispute.
6. If resolution is reached, parties work with mediator to write agreement.
7. Confidential process. Mediation agreement becomes part of the student record.
8. Process no cost to parties.
9. Parties do not need attorney.

* DESE website at
<http://www.doe.mass.edu/bsea/mediation.html>

SpedEx

1. Informal process to resolve placement of a FAPE in the LRE within 30 days, to build trust between parties, and to develop an accepted IEP and a post-agreement observation.
2. Process available after rejected IEP or BSEA hearing request
3. Collaborative and voluntary process to be amicable and efficient.
4. Independent consultant provided by the DESE. Parties select an independent consultant from DESE list and agree on the consultant to use. Consultant reviews case and makes written recommendation to assist parties to determine the FAPE in the LRE program that child needs.
5. Consultant interviews parents, school personnel, and student, observes student in program and/or proposed program, reviews records, writes conclusions/ recommendations, and may meet with parties to review and hopefully, help them reach IEP agreement.
6. Parties may accept, amend, or reject the consultant’s recommendations and report. If IEP is accepted, consultant conducts a post-resolution program observation to assure FAPE in the LRE is implemented
7. Report becomes part of student record.
8. Process at no cost to parties.
9. Parties do not need attorney.

6. SpedEx--What IS it? What IS it NOT?

SpedEx is provided and funded as a pilot by the Massachusetts Department of Elementary and Secondary Education (DESE), in cooperation with the Special Education Day Committee (SPEDCO), and the SpedEx Planning Committee.

This list seeks to explain what SpedEx is and what it is not.

If you have questions, please contact David Scanlon David.Scanlon@bc.edu
or contact SPEDCO at info@specialeducationday.com.

SPEDEX IS

SPEDEX IS NOT

1. Resolution designed to provide a FAPE / LRE and build trust between school and family.	1. Resolution designed mainly to end disputes.
2. Child-centered dispute resolution model.	2. Resolution involving winning or losing by schools or parents.
3. Parties voluntarily use SpedEx. Parties do not waive or lose rights.	3. An "either or" option.
4. Parties jointly select an independent SpedEx Expert from list maintained by BSEA.	4. A "battle of experts."
5. The SpedEx consultant is an independent contractor who meets requirements of degree and experience as well as licensure and certification required to be on the consultant list.	5. An endorsement of any kind by the DESE about any individual SpedEx consultant's expertise or qualifications.
6. Spedex consultant recommends FAPE / LRE for the child and assists parties to resolve disputes.	6. A second opinion to assist parties to prepare for hearing.
7. Expedient process completed within 30 days.	7. A time-consuming and burdensome process.
8. SpedEx available after an IEP is rejected or a hearing is requested.	8. A way to bypass mediation.
9. A way to assure a FAPE and resolve the dispute so no hearing is necessary.	9. A prehearing or a way to prepare for a hearing.
10. Free to parties. A cost effective process. The DESE is funding the SpedEx Pilot Project.	10. A costly or burdensome process for families and schools.
11. Voluntary. SpedEx is available to parties only if they both agree to use it and agree on a SpedEx consultant.	11. Required by any state or federal statute or regulation.
12. If no resolution is reached, parties may proceed to available due process options.	12. A denial of the parties' right to due process.
13. A trust building process, as parties need to jointly agree to use SpedEx and to select a consultant who, if the parties agree with the recommendations, will then observe child's program to assure the child receives FAPE.	13. A trust destroying process as, unfortunately, often results from due process litigation and other procedures.

Updated, September 22, 2011

7. A few lessons learned and moving forward.

- 1. No one wanted to be the first school or parent to try SpedEx. Change is hard. People are fearful. It took a while to launch SpedEx.**
- 2. We quickly moved from the notion of ‘expert’ to ‘consultant.’**
- 3. We soon moved the entry point from a hearing request back to a rejection of an IEP. In our experience, participants’ positions were more flexible at that time and they were more willing to work together.**
- 4. SpedEx moved from the BSEA (Bureau of Special Education Appeals) to the DESE. www.doe.mass.edu/sped/spedx.**
- 5. We plan to document SpedEx success and challenges and distribute our research to others. We have been gratified by the commitment of our SpedEx consultants and the general satisfaction with the process among participants.**
- 6. We affirmatively believe that a small group of thoughtful, committed people can make a huge difference, as Margaret Mead wrote.**
- 7. We have been heartened by the response so far (though many were skeptical at first). We believe in the importance of building trust between parents and schools in order to improve learning opportunities for all children—and that SpedEx is among the promising practices and innovations to help us do just that!**
- 8. We hope that this positive, effective and efficient, and innovative model will be used widely. Thus, I am grateful for the opportunity to present SpedEx to this vital audience. Thank you for your participation.**

If you have questions or wish to explore SpedEx further, please contact me at info@specialeducationday.com or Miriam@schoollawpro.com, or David Scanlon at david.scanlon@bc.edu.

"Our [SpedEx consultant] did a very detailed and honest assessment of the placement."
-Family Advocate

for further information
or
to inquire about beginning SpedEx:

please email the program administrator:

David Scanlon at Boston College:
david.scanlon@bc.edu

also, visit

www.doe.mass.edu/sped/spedx/



A new and effective Special Education Dispute Resolution Model

SpedEx

For children, schools, and parents

- Child-centered
- Appropriate program
- Trust-based

...When parents and schools disagree
about a child's special education services

SpedEx is free to schools and parents. It offers them a neutral consultant—that they jointly select—to help them agree on appropriate services for the child and resolve their dispute.

SpedEx is offered by the Massachusetts Department of
Elementary and Secondary Education (DESE)

www.doe.mass.edu/sped/spedx/

"SpedEx provided a neutral perspective that gave both parties more information to make a decision."
-Assistant Director of Special Education

"The SpedEx [consultant] came in and talked to all state holders before making a judgment."
-Director of Pupil Services

SpedEx...

- provides a jointly agreed-upon independent SpedEx Consultant to review evidence and advise the parties on a free appropriate public education (FAPE) in the least restrictive environment (LRE) for the child. The consultant's services are designed to help the parties resolve their dispute
- designed to ensure that a child receives appropriate services
- voluntary and builds trust between parents and schools
- FREE to schools and parents
- expedient
- Does not require parties to waive rights. They can proceed through the various dispute resolution options provided by the BSEA at any time.

The Consultant is chosen from a list available for review on the website of the BSEA and the Special Education section of the Department of Elementary and Secondary Education (DESE)

www.doe.mass.edu/sped/spedx/spedxbios.html

SpedEx

For children, schools, and parents

- Child-centered
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How SpedEx works:

Have the parents rejected an IEP or is there a hearing request?
And...

Are the school and the parents:

- > Disputing whether the proposed IEP offers an appropriate program? or
- > Disputing what services the child needs in order to receive appropriate services and placement?

If so, consider using SpedEx

Four Steps:

1. Parents & school agree to use SpedEx process
2. SpedEx consultant selected jointly by parents & school reviews the case
-interviews, observations, document review
3. Consultant recommends appropriate services in a written report within 30 days
4. If parties agree with the recommendations, the IEP is developed to reflect them. It is then implemented and the consultant observes student in the accepted program thereafter.

SpedEx is a grass roots reform developed by educators and parents. It is supported and funded by the Massachusetts Department of Elementary and Secondary Education.

MIRIAM KURTZIG FREEDMAN, M.A., J.D.
Reformer, school attorney, author, speaker

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Goals:

- To bring understanding of special education and '504' requirements and develop reliable, valid and legal accountability and inclusion practices.
- To promote systemic and meaningful reform of special education nationwide.
- To build excellence in educating ALL students through books, speaking, and consultations.

Experience:

- Respected authority with an outspoken perspective to change the climate in the special education arena. Attorney at Boston law firm since 1988, representing school districts.
- Massachusetts Hearing Officer for eight years; public school teacher in California, New Jersey, New York and Massachusetts.
- Visiting fellow at Stanford University since 2005.

Reform achievements:

Co-founder Special Education Day and Special Education Day Committee (SPEDCO) to honor special education's achievement and spur reform. The Massachusetts Department of Elementary and Secondary Education funds and administers one of SPEDCO's reforms, SpedEx—an Alternate Dispute Resolution model. The other reform, Procedures Lite, is being piloted by schools.

Pioneer Institute Runner Up awards in its Better Government Competition (2007 (co-authored) and 2004).

Author and presenter *Fixing Special Education—12 Steps to Transform a Broken System.*

Authorships:

Special reports, six books in the education and law fields, and articles, including two Hoover Institution publications (*Education Next* and *Hoover Digest*), several in *Education Week* and *Education News* interviews. Please visit www.schoollawpro.com.

Professional memberships:

- Fordham Institute session on new directions for special education (2010); National Governors Assessment Board's (NAGB) Advisory Panel on Uniform National Rules for Testing Students with Disabilities for the NAEP, the 'Nation's Report Card.' (2009).
- MA Commissioner's Advisory Panel on MCAS Accommodations (2008-9).
- National Speakers Association (former board member, New England chapter).
- MA Bar Association. Education Consumer Consultants Network.
- Founding member of SPEDCO.

Education:

LLB New York University School of Law

MA University of New York at Stony Brook

BA Barnard College (Columbia University)

Public schools in Palestine (now Israel), Holland and New Jersey