**Minutes of the Regular Meeting**

**of the Massachusetts Board of Elementary and Secondary Education**

**Tuesday, October 19, 2021**

**Department of Elementary and Secondary Education**

**75 Pleasant Street, Malden, MA 02148**

**9:04 a.m. – 11:30 a.m.**

**Members of the Board of Elementary and Secondary Education Present:**

**Katherine Craven**,Chair,Brookline

**James Morton**, Vice-Chair, Boston

**Matthew Hills**, Newton

**Eleni Carris Livingston**, Wellesley, Student Member

**Darlene Lombos,** Boston

**Michael Moriarty,** Holyoke

**James Peyser**,Secretary of Education

**Paymon Rouhanifard**, Brookline

**Mary Ann Stewart,** Lexington

**Martin West**, Newton

**Member of the Board of Elementary and Secondary Education Absent:**

**Amanda** **Fernández**,Belmont

**Jeffrey C. Riley**,Commissioner of Elementary and Secondary Education

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Chair Craven called the meeting to order at 9:04 a.m. and members introduced themselves.

Statements from the Public

* **Gerry Mroz,** Melrose, addressed the Board on Item 3: Commissioner Riley’s Goals for 2021-2022
* **Thy Nguyen,** Boston Public Schools student, addressed the Board on issues concerning the Boston Public Schools
* **Ruby Reyes,** Director, Boston Education Justice Alliance, addressed the Board on issues concerning the Boston Public Schools
* **Suleika Soto,** parent,addressed the Board on issues concerning the Boston Public Schools
* **Natalia Cuadra-Saez** read a statement from **Kassie Infante**, Greater Lawrence Education Justice Alliance, on Lawrence Public Schools safety concerns and receivership
* **Lew Finfer,** Massachusetts Communities Action Network, addressed the Board on vocational school admissions

**Comments from the Chair**

Chair Craven announced that Ms. Livingston will join the Board’s Budget Committee, which includes Mr. Hills (committee chair), Mr. Moriarty, and Ms. Stewart. Chair Craven said Mr. Hills would report on behalf of the Budget Committee at the November meeting. Chair Craven said Ms. Fernandez, Chair of the Board’s Educator Diversification Committee, would also present an update in November.

**Comments from the Secretary**

Secretary Peyser noted that STEM Week started yesterday with a kickoff event at MIT, and many activities and events will be going on involving 500 schools and 25,000 students across the Commonwealth. Secretary Peyser highlighted some partnerships and grants that are promoting hands-on learning experiences to get students engaged in STEM and encourage them to pursue further education and careers in STEM. He said these activities and programs have an equity focus and the theme is “See yourself in STEM,” aimed particularly for students who historically have been underrepresented in fields such as engineering and computer science. Secretary Peyser said the goals include strengthening the quality of STEM education programs and reaching out to various communities to bring them into these fields.

**Comments from the Commissioner**

Commissioner Riley introduced Deputy Commissioner Regina Robinson, who joined the Department on September 2. He noted that Ms. Robinson has experience as a college administrator, instructor, K-12 parent, policy maker, and district leader; among her other accomplishments, she served as the Dean of Student Affairs at Cambridge College from 2011-2021 and was an appointed member of the Boston School Committee for one term. Board members welcomed Ms. Robinson.

Mr. Moriarty thanked the Commissioner for the information he provided in his memo about DESE’s support to districts to improve ventilation in school buildings. Mr. Moriarty commented that this significant expenditure of public money should help not only with COVID-19 mitigation but also to improve conditions for students with asthma. He asked if the Commissioner might follow up with district leaders in the future to find out how the new measures are working. Commissioner Riley said he will follow up with the Massachusetts Association of School Superintendents.

**Teacher of the Year, Marta García**

Commissioner Riley said he is very pleased to introduce the 2022 Massachusetts Teacher of the Year, Marta García. He noted that on October 6, he, Governor Baker, and Secretary Peyser joined Salem municipal and school officials to announce that Ms. García had been selected. Ms. García is a second and third grade English as a Second Language (ESL) teacher at Witchcraft Heights Elementary School in Salem. Commissioner Riley introduced Ms. García and the school’s principal, Susan Carmona.

Ms. García expressed her appreciation for this recognition. She commented that masks are essential, but they make instruction more challenging for language learners and ESL students. Ms. García said she is a language learner and English is not her first language, and she can relate to her students and their families. She thanked DESE, Salem Superintendent Dr. Steve Zrike and Kate Carbone, assistant superintendent, her principal Susan Carmona, and assistant principal Nicole Mateo, Ms. García said it is an honor to represent Salem and Massachusetts.

Ms. García noted that she speaks English with an accent and said behind an accent is a story of overcoming struggle to be an active part of a new culture. She said the accent is also a central part of one’s identity, reflecting the language that speaks from the heart. Ms. Garcia said having a second language is a superpower – language proficiency opens the door to opportunities – and she wants people to recognize the strengths of bilingual students and language learners. Ms. Garcia said these students have taught her more than she could ever teach them.

Ms. Garcia said she wants to use the privilege of this platform to amplify these students’ voices and the voices of immigrant parents who care deeply about their children’s education and have chosen to be here for their future. She encouraged use of culturally responsive practices and assessments to teach and nurture multilingual learners in the U.S. with empathy, humility, and humanity. Board members expressed their gratitude to Ms. Garcia and gathered to take a photograph with her.

Chair Craven reminded all that today’s Board meeting, like all open meetings of the Board, is being recorded.

**Update on School Reopening and Action Steps to Support Schools, Students, and Families**

Commissioner Riley said the supply chain problems and staffing shortages that are affecting commerce around the world are also affecting our schools. He said, for example, some districts struggled at the start of the school year to get enough school bus drivers. Commissioner Riley said DESE worked with the Administration, and the Governor called out the National Guard to help address the problem. He said staffing also affects COVID-19 testing in schools, especially the new Test and Stay program, which enables students and staff to remain in school rather than quarantine; it has already saved over 35,000 school days for students who otherwise would have been out of school. The Commissioner said the Governor has activated the National Guard to help address some staffing challenges with the vendor that was hired to do this work. The Commissioner thanked the Governor and Secretary Peyser, the medical community, and the National Guard for their support. Secretary Peyser expressed his gratitude to the National Guard and to the Governor for his leadership in deploying them to meet a critical need.

Commissioner Riley said the Department has also been supporting districts in managing school nutrition programs through some supply chain challenges.

Commissioner Riley said the Board will recall that on September 27th, consistent with the authority that the Board granted to him, he extended the mask requirement through at least November 1st. He noted that as of October 15th, if a school demonstrates a vaccination rate of 80% or more, vaccinated students and staff in that building could take their masks off. He said whether a district or school avails itself of the 80% vaccination off-ramp is a local decision to be made by school and district leaders in consultation with health officials, who may also take additional metrics into consideration such as COVID cases in the community. Commissioner Riley said as of yesterday, the Department has received requests to lift the mask requirement from nine schools: five public high schools serving grades 9-12, one middle school serving grades 7 and 8, and three approved special education schools serving primarily grades 9-12, and the Department is processing those requests. He said the decision whether to extend the mask requirement will be made early next week.

Commissioner Riley said the Department has partnered with MEMA to offer COVID-19 supplies to districts at no cost.

Regarding Lawrence, Commissioner Riley said he was in Lawrence this past Friday and Monday, visited the high school, and met with school officials and with students and staff. The Commissioner said the Department is continuing to support the administration as they enact a plan to strengthen services for students.

Mr. Hills asked if the National Guard’s role is to clear a temporary backlog in the testing program or if districts will need continuing assistance. Commissioner Riley said he expects it will be similar to the school bus situation: the National Guard provided the service for a period of time until the bus companies were able to hire more people.

Ms. Livingston commented that masks can hinder some students’ learning, particularly young students learning to read, ESL students, and those with hearing loss. She asked if masks with clear paneling are available. Commissioner Riley said the Department offered recommendations on this last year and will continue to provide support to districts.

Mr. Rouhanifard asked if the Commissioner could comment on the statement made earlier by Mr. Finfer about vocational school admissions policies. Mr. Rouhanifard questioned whether the policy that was described meets the intent of the Board’s regulations. The Commissioner said the Department surfaced concerns about vocational school admissions policies several years ago and has worked with the Board, the schools, and the community to figure out the best next steps. He said the Department has ongoing monitoring and oversight over these schools and the ability to intervene if there are problems. Commissioner Riley said schools are currently submitting their admissions policies to the Department and these issues are under review. He said the goal is equitable access and outcomes for students, and the Department will take in the full picture.

Ms. Lombos asked about the process for receivership. Commissioner Riley gave a brief overview and said the Department would provide more details.

**Commissioner Riley’s Goals for 2021-2022**

Commissioner Riley gave an overview of the goals he set forth in his October 15th memorandum. He said they fall into two categories: “recover” and “reimagine.” He said the Department will continue to support districts to mitigate the impact of COVID-19. The Commissioner noted that the Acceleration Roadmap addresses both academics and students’ social emotional wellbeing as they transition back into the schools. Commissioner Riley said ESSER funding is substantial and, along with state funding, has to be used well. He said districts have a blueprint because of the Student Opportunity Act, under which districts filed plans to use funds on evidence-based programs like early literacy, diversifying the teacher corps, early college, and others that have a track record of working. Commissioner Riley noted other items in his memorandum, including improved resources for special education and English language learners, early literacy, innovative science assessments, early college, and diversifying the educator workforce.

Chair Craven commended the Commissioner and Russell Johnston for continuing the IEP improvement project. She said based on her personal experience, the IEP form drives the special education process, and making it more meaningful should drive improvements in programs and outcomes for students with disabilities.

In response to a question from Vice-Chair Morton, Commissioner Riley said alternative assessments are related to the Department’s innovative assessment initiative. He said he believes assessment is critical and needs to be more engaging and reflective of what students will need when they graduate from high school. The Commissioner said the Board will hear more about innovative assessment in the coming year.

Mr. Moriarty said he was delighted to see early literacy highlighted in the goals. He said the 2021 MCAS results show a significant decline in outcomes at the end of third grade, especially among the neediest communities. Mr. Moriarty said he believes the Mass Literacy Guide provides a pathway to change those outcomes for the better. He encouraged the Commissioner to continue to promote the Mass Literacy Guide as well as the Dyslexia Guidelines that DESE published last spring. He said these guidelines are not just technical documents for specialists; they are a great resource for every administrator and teacher.

Mr. Hills asked the Commissioner about the Department’s management capacity to address the goals and objectives he has outlined. Commissioner Riley said he plans to use some ESSER funds to supplement current funding. The Commissioner added that he is shifting the agency to compliance-plus-support with a focus on continuous improvement.

Ms. Stewart asked about gifted and talented education. Commissioner Riley said the Department is looking at the issues through an equity lens and expects to expand efforts in the future.

Ms. Stewart asked about vocational school admissions. The Commissioner said he is committed to this work, having flagged the issue a few years ago, and the Department will use the tools that the Board provided in the new regulations to bring about better outcomes. Secretary Peyser said he knows the Department is actively engaged in this matter. Mr. Moriarty suggested deferring further Board discussion on this topic until the Commissioner and his team have reviewed the facts. Mr. Hills said the Board’s role is not to get into the details of any particular school but to hear from the Commissioner, after his review, his assessment of whether schools are following the policy direction that the Board has set.

**Board of Elementary and Secondary Education FY2023 Budget Proposal and Report from**

**the Board’s Budget Committee**

Mr. Hills, as Chair of the Board Budget Committee, said the committee will meet to discuss FY2023 education budget priorities with the Department and then present to the Board at its November 16 meeting. Senior Associate Commissioner/CFO Bill Bell provided an overview of the budget timeline and process, noting that the Department is working with the Executive Offices of Education and Administration & Finance on FY2023 budget preparation. He said the Department is managing significantly increased funds to support schools and districts, including $2.6 billion in ESSER funds and an additional $300 million in state funds. Mr. Bell said he will work with the Budget Committee and the Board to identify priorities to inform the Governor’s budget proposal for FY2023.

**Mystic Valley Regional Charter School Request for Waiver**

Commissioner Riley explained that Mystic Valley Regional Charter School (MVRCS) is requesting a waiver of the charter school regulations; specifically, the school is asking the Board to waive the requirement that all charter schools will be evaluated on the same performance criteria. He said the Board may grant a waiver of a regulation under exceptional circumstances. The Commissioner noted the Board has had the opportunity to review the charter school’s waiver request and supporting documents as well as his recommendation. Commissioner Riley said he is recommending that the Board deny the request for two reasons explained in his memo: first, a waiver is unnecessary, and second, granting MVRCS a waiver would require evaluating this school on a basis different from every other charter school in Massachusetts.

Chair Craven invited the charter school’s representatives to present on behalf of the school: Attorney Charles Waters from Sheehan Phinney, counsel for MVRCS; Attorney Howard Cooper from Todd & Weld, co-counsel; and Alexander Dan, the school’s director/superintendent. Chair Craven said the Board would then hear from Cliff Chuang, senior associate commissioner, and Alison Bagg, director.

Attorney Waters handed out a 6-page memorandum plus attachments, dated October 19, titled “Statement in Support of Mystic Valley Regional Charter School’s Request for Waiver Pursuant to 603 CMR 1.03 and Response to Memorandum of Commissioner Jeffrey Riley submitted on October 7, 2021,” and presented the points set out in the memorandum to the Board.

In closing, Attorney Waters asked the Board first, to grant the waiver request specifically because any evaluation of the school must "take into account each school's charter and accountability plan" and the new Performance Criteria are being implemented in a manner that conflicts with this school's charter, and second, if the Board agrees with the Commissioner, the Board should make clear with a public vote that DESE's staff must abide by the Commissioner's opinion, that future compliance reviews may not penalize Mystic Valley for complying with its charter and educational mission, and any review must be conducted by a review team that is not motivated by bias against the school.

Superintendent Dan spoke about Mystic Valley Regional Charter School’s successful program. He invited Board members to visit the school.

Chair Craven thanked the school’s representatives and invited Mr. Chuang and Ms. Bagg to the table. Chair Craven stated the only matter before the Board is the school’s waiver request, and the Board is aware of the school’s lawsuit. She said she has visited the school and was impressed. Ms. Bagg reiterated Chair Craven’s comments that much of what the school’s attorney stated relates to ongoing litigation that the school has filed against the Board, Department, and Commissioner. She responded to questions from members and referred them back to the Commissioner’s memorandum. Secretary Peyser noted that the school’s charter is not up for renewal, adding the current case is premature and involves a mid-cycle site visit. Mr. Chuang, Ms. Bagg, and General Counsel Rhoda Schneider, along with Attorney Waters and Superintendent Dan, answered clarifying questions from the Board. Chair Craven thanked the presenters and called for a motion. Vice-Chair Morton read the motion aloud.

**On a motion duly made and seconded, it was**:

**VOTED: that the Board of Elementary and Secondary Education, in accordance with General Laws chapter 71, section 89, and 603 CMR 1.00, hereby denies the request of Mystic Valley Regional Charter School, pursuant to 603 CMR 1.03(2), to waive 603 CMR 1.11(2) requiring that “[a]ll charter schools will be evaluated on the same performance criteria as provided in the guidelines, provided, however, that the criteria will take into account each school's charter and accountability plan.” The Board of Elementary and Secondary Education relies on the reasons presented by the Commissioner.**

The vote was unanimous.

Chair Craven said the Board will be discussing the Mystic Valley Regional Charter School litigation in an executive session immediately following the regular meeting.

**Approval of the Minutes of the June 22, 2021 Regular Meeting and the August 24, 2021 Special Meeting**

**On a motion duly made and seconded, it was:**

**VOTED:** **that the Board of Elementary and Secondary Education approve the minutes of the June 22, 2021 Regular Meeting and the minutes of the August 24, 2021 Special Meeting.**

The vote was unanimous.

Chair Craven said as is stated in the posted agenda, this meeting includes an executive session for the Board to discuss strategy with respect to litigation. She recommended that the Board vote to go into executive session, in accordance with Mass. General Laws chapter 30A, section 21, paragraph 3. The purpose of the executive session is to discuss strategy with respect to litigation in pending matters and imminent litigation involving the Board or Department. Chair Craven explained that discussion of these matters in open session may have a detrimental effect on the litigating position of the Board or Department. The pending matters are:

* Mystic Valley Regional Charter School v. Board, Department, and Commissioner of Elementary and Secondary Education, and
* 6 consolidated cases proceeding as Family Freedom Endeavor Inc., et al., v. Commissioner, Department, and Board of Elementary and Secondary Education

**On a motion duly made and seconded, it was:**

**VOTED: that the Board go into executive session, in accordance with Mass. General Laws chapter 30A, section 21 (3). The purpose of the executive session is to discuss strategy with respect to pending litigation involving the Board and Department of Elementary and Secondary Education. Discussion of the pending cases in open session would have a detrimental effect on the litigating position of the Board.**

The vote, by roll call, was unanimous.

Chair Craven said the open meeting has concluded and the Board would go into executive session to discuss strategy with respect to litigation and would not return to open session following the executive session. Chair Craven called for a short break from 11:30-11:45 a.m. and asked all who do not have business directly affecting the executive session to leave the meeting. The Board went into executive session at 11:45 a.m. and voted to adjourn the meeting at 12:35 p.m.

Respectfully submitted,

Jeffrey C. Riley

Commissioner of Elementary and Secondary Education

and Secretary to the Board