



Massachusetts Department of Elementary and Secondary Education

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To: Members of the Board of Elementary and Secondary Education
From: Deborah Steenland, Associate General Counsel
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Date: June 4, 2014
Subject: Paul A. Dever Elementary School Turnaround Plan Appeal: Legal
Issues

At Commissioner Chester's request, we are addressing legal issues relating to the Boston Teachers Union's appeal of the Paul A. Dever Elementary School Turnaround Plan. (The Commissioner's response to the appeal addresses the educational strategies in the turnaround plan that the BTU is contesting.) This memo focuses on what the statute requires with respect to the roles and duties of the Commissioner and the Board. In addition, we provide an analysis of the one legal argument included in the BTU's appeal.¹

In short, the turnaround plan, as well as the process by which it was developed, meets the statutory requirements. The plan is sound educationally and well grounded in research as well as in the law. For these reasons, the Board of Elementary and Secondary Education should allow the work to proceed.

A. Roles and Duties of the Commissioner and Board under the Statute

While the Board of Elementary and Secondary Education ("Board") has broad responsibilities for establishing statewide policies relating to the education of students in the Commonwealth, the Legislature has identified specific responsibilities with respect to

¹ While the BTU requests a modification to the compensation system included in the Turnaround Plan, it does not challenge the compensation system on legal grounds. In any event, a full defense of the legal issues relating to the performance-based compensation system is included in our May 14, 2014 memorandum to the Board regarding the Parker School appeal and our May 30, 2014 memorandum to the Board regarding the Morgan Full Service Community School appeal.

underperforming and chronically underperforming schools and districts.² The Achievement Gap Act of 2010, St. 2010, c. 12, §3³ made sweeping changes to the statutes on underperforming schools and districts to bring about the rapid turnaround of the Commonwealth’s lowest performing schools. The statute identifies specific roles for the Commissioner and the Board with respect to underperforming (Level 4) and chronically underperforming (Level 5) schools and districts. For example, the Legislature determined that it would be the Board’s responsibility to determine whether a district should be declared chronically underperforming. G.L. c. 69, § 1K(a). Following the Board’s declaration that a district is chronically underperforming, it is the responsibility of the Commissioner and the Receiver to “jointly create a turnaround plan to promote the rapid improvement of the chronically underperforming district.” Section 1K(b). The Board and the Commissioner fulfilled these responsibilities when, in November 2011, the Board declared the Lawrence Public Schools a chronically underperforming district, and in May 2012, Commissioner Chester and Receiver Riley issued the turnaround plan for the Lawrence Public Schools.

The Legislature identified a different process for Level 5 schools. The Achievement Gap Act gives the Commissioner the responsibility to determine which schools should be declared “chronically underperforming,” or Level 5. After the Commissioner designates a school as chronically underperforming, it is then his responsibility to create the turnaround plan. Section 1J(m)(“Upon the designation of a school as a chronically underperforming school in accordance with the regulations developed under this section, the commissioner shall create a turnaround plan for the school under this subsection and subsections (n) to (p), inclusive.”)⁴

Once the Commissioner issues the final turnaround plan, the superintendent, school

² The Board has fulfilled its responsibilities under these statutes and will continue to do so. For example, with respect to Level 4 and 5 schools and districts, the Board has promulgated regulations establishing the process and standards for declaring schools and districts “under-performing” or “chronically underperforming.” 603 CMR 2.00 et seq. Further, the Board receives regular reports from the Commissioner regarding the progress of these schools and districts. See Exhibit 1 for a list of Board meetings at which the Board has been briefed on Level 4 and Level 5 schools, and the Lawrence Public Schools (Level 5 District), in the last two years.

³ A copy of the statute is included as Exhibit 2.

⁴ In creating the turnaround plan for the Dever Elementary School, the Commissioner followed the process set out in the statute: he convened a local stakeholder group; he received and considered the recommendations of the local stakeholder group; he included in the turnaround plan the required statutory components; he submitted a preliminary turnaround plan to the local stakeholder group, the superintendent and the school committee; he received and considered modifications to the turnaround plan, incorporating some of the proposed modifications; and he issued a final turnaround plan.

committee or local union may appeal to the Board. A majority of the Board may vote to modify the plan if the Board determines that: “(1) such modifications would further promote the rapid academic achievement of students in the applicable school; (2) a component of the plan was included, or a modification was excluded, on the basis of demonstrably false information or evidence; or (3) the commissioner failed to meet the requirements of subsections (m) to (p), inclusive.” Section 1J(q).

The decision of the Board regarding an appeal is final. As a result, after an appeal has been heard, and the Board has taken whatever action it deems appropriate, the process is completed, the turnaround plan is final, and implementation may proceed.

B. The Commissioner properly exercised his authority under the Achievement Gap Act to include an alternative dispute resolution process as part of the Turnaround Plan.

The BTU asserts that the Commissioner failed to meet the requirements of G.L. c. 69, § 1J when he included an alternative dispute resolution process in the Turnaround Plan. The BTU’s argument is without merit because it fails to recognize that the Achievement Gap Act provides for sweeping changes to the operations and structure of a chronically underperforming school. The Commissioner acted within the authority granted to him by the statute when he changed collective bargaining agreement provisions, including the provision relating to the grievance process.

Section 1J(o)(7) provides that, notwithstanding any general or special law to the contrary, the Commissioner may limit, suspend or change one or more provisions of any contract or collective bargaining agreement, as the contract or agreement applies to the school. Here, the Commissioner appropriately recognized that a Level 5 school requires a different grievance process than what is provided for in the district’s collective bargaining agreement for two reasons: (1) the process in the Turnaround Plan allows decisions to be made by the appropriate parties; and (2) the process included in the Turnaround Plan will provide a more expeditious process for resolving disputes.

The grievance process in the BTU's current collective bargaining agreement includes the following steps:⁵

Step 1: An employee presents a grievance to the Principal, Headmaster or Director "within a reasonable period of time, normally thirty (30) school days after knowledge by the employee of the facts giving rise to the act or condition which is the basis of his or her grievance."

Step 2: If the grievance is not resolved at Step 1, the aggrieved employee or the union may appeal by forwarding the grievance to the appropriate "Cluster Leader" or the Manager for Employee Relations. The Cluster Leader or the Manager for Employee Relations conducts a hearing and issues a written decision.

Step 3: A decision at Step 2 may be appealed by the employee or the union to the Superintendent of schools. The Superintendent of schools or his designee meets with the employee and the union, and issues a written decision.

Step 4: A grievance which was not resolved at Step 3 may be submitted by the union to arbitration. The collective bargaining agreement requires that the decision of the arbitrator be accepted as final by the parties to the dispute.

The Achievement Gap Act, however, expressly acknowledges that a Level 5 school Receiver has full operational and managerial control over the school, as provided by the Commissioner through the turnaround plan. G.L. c. 69, § 1J(s). The regulations relating to Level 5 schools likewise provide that a Receiver in a Level 5 school has all the powers that the superintendent previously had over the school. 603 CMR 2.06 (5)(a). In a Level 5 school, the Commissioner's and the Receiver's authority to make decisions for the operation and management of the school is statutory, and it is their obligation, not the superintendent's, to ensure that the turnaround plan is implemented in the best interests of the students at the school.

Requiring grievances to be decided by the district's superintendent would be inconsistent with the statutory construct for the operation of Level 5 schools. For example, if an employee filed a grievance relating to the employee's placement on the new performance-based compensation system, that issue should not be addressed by the superintendent, who will have no familiarity or experience with the system and no responsibility for implementing it. To the

⁵ A copy of the grievance process in the BTU's collective bargaining agreement is included as Exhibit 3.

contrary, where the law and the regulations give the Receiver the traditional role of the superintendent, the Receiver should make such decisions.

Although there are no cases decided under the Achievement Gap Act, this result is consistent with the cases decided in analogous matters. For example, in *Department of State Police v. Massachusetts Organization of State Engineers and Scientists*, 456 Mass. 450 (2010), the Supreme Judicial Court rejected the union's argument that the Colonel's decision to terminate a chemist was subject to arbitration. The SJC noted that state law authorized the Colonel to appoint, transfer and remove experts, clerks and other assistants as he may deem necessary for the operation of the department. The Court stated:

The import of this language is plainly to confer on the colonel exclusive managerial authority over the appointment, transfer, and removal of any person employed in one of the specified positions, authority that cannot be delegated to an arbitrator under a collective bargaining agreement.

Id. at 455. See, also *City of Boston v. Boston Police Superior Officers Federation*, 466 Mass. 210 (2013)(Police Commissioner's statutory managerial authority to assign and transfer police officers could not be delegated to an arbitrator, even with the parties' consent).

Further, the alternative dispute resolution process is designed to provide prompt resolution of concerns, as opposed to the traditional grievance and arbitration process. In the traditional process, it is not unusual for more than a year to elapse between the time an incident occurs, a grievance is filed, and an arbitrator issues a decision. In contrast, the time frames in the Turnaround Plan's alternative dispute process are accelerated so that disputes will be resolved quickly.

Finally, it is important to note that the Turnaround Plan's alternative dispute resolution process is designed to provide due process to the employee. Thus, the Turnaround Plan expressly states that an employee may be represented by a union representative at any stage of the process. (Turnaround Plan at p. 47) Further, the alternative dispute resolution process provides an opportunity for the grievant to meet with the Principal and the Receiver to discuss their concerns, and requires the Principal and the Receiver to provide his or her decision in writing to the employee. And, consistent with the Achievement Gap Act, disputes relating to the dismissal of a teacher with professional teacher status will still be governed by the expedited

arbitration process set out in G.L. c. 69, § 1J(o). In sum, the alternative dispute resolution process set out in the Turnaround Plan will be a fair and effective method for resolving disputes in an expeditious manner.

Conclusion

As shown above, the process by which the Turnaround Plan was developed fully complies with all statutory requirements. In addition, the Turnaround Plan itself satisfies the provisions of the law. For these reasons, the Board of Elementary and Secondary Education should allow the work to proceed.

Exhibit 1

The following includes examples of when the Board of Elementary and Secondary Education was briefed on Level 4 and 5 schools and districts, and accountability issues during the last two years.

FY2012

October 2011- District Accountability and Assistance: Update on Fall River and Lawrence, <http://www.doe.mass.edu/boe/docs/fy2012/2011-10.pdf>

November 2011- Special Meeting- Plan for Identifying and Intervening in Level 5 Districts and Lawrence Public Schools.

Regular Meeting- Plan for Identifying and Intervening in Level 5 Districts, Lawrence Public Schools, and Update on Level 4 Schools, <http://www.doe.mass.edu/boe/docs/fy2012/2011-11.pdf>

December 2011- Update on Level 5 District Designation for Lawrence Public Schools, <http://www.doe.mass.edu/boe/docs/fy2012/2011-12.pdf>

January 2012- Update on Level 5 District Designation for Lawrence Public Schools, <http://www.doe.mass.edu/boe/docs/fy2012/2012-01.pdf>

February 2012- Update on Level 5 District Designation for Lawrence Public Schools, <http://www.doe.mass.edu/boe/docs/fy2012/2012-02.pdf>

April 2012- Report on School Turnaround *and* Lawrence Public Schools, <http://www.doe.mass.edu/boe/docs/fy2012/2012-04.pdf>

June 2012- Lawrence Public Schools-Update on Receivership and District Turnaround Plan, <http://www.doe.mass.edu/boe/docs/fy2012/2012-06.pdf>

FY2013

September 2012- Special Meeting, 2011-2012 Achievement and Accountability Overview.

Regular Meeting-2011-2012 Achievement *and* Accountability Overview and Update on Lawrence Public Schools Receivership. <http://www.doe.mass.edu/boe/docs/2012-09/>

November 2012- Special Meeting, Level 4 Schools.

Regular Meeting, Recap of Special Meeting on Level 4 Schools. <http://www.doe.mass.edu/boe/docs/2012-11/>

January 2013- Progress Report on Level 4 Districts, <http://www.doe.mass.edu/boe/docs/2013-01/>

April 2013- Update on Lawrence Public Schools Receivership, <http://www.doe.mass.edu/boe/docs/2013-04/>

June 2013- Special Meeting- Level 4 Schools: Third Year Insights and Decisions, <http://www.doe.mass.edu/boe/docs/2013-06/>

FY2014

September 2013- Special Meeting, 2012-13 Achievement and Accountability Results.

Regular Meeting, 2012-13 Achievement and Accountability Overview. <http://www.doe.mass.edu/boe/docs/2013-09/>

October 2013- Update on Level 5 Schools, <http://www.doe.mass.edu/boe/docs/2013-10/>

November 2013- Lawrence Public School: Progress Report on First Full Year of Receivership and Update on Level 5 Schools, <http://www.doe.mass.edu/boe/docs/2013-11/>

February 2014- Update on Level 5 Schools, <http://www.doe.mass.edu/boe/docs/2014-02/>

March 2014- Update on Level 5 Schools, <http://www.doe.mass.edu/boe/docs/2014-03/>

April 2014- Lawrence Public Schools: Update on Teacher Contract and Update on Level 5 Schools, <http://www.doe.mass.edu/boe/docs/2014-04/>



Effective: January 19, 2010

Massachusetts General Laws Annotated [Currentness](#)

Part I. Administration of the Government (Ch. 1-182)

▣ [Title XII](#). Education (Ch. 69-78A)

▣ [Chapter 69](#). Powers and Duties of the Department of Elementary and Secondary Education ([Refs & Annos](#))

→ → § 1J. Underperforming or chronically underperforming schools; creation and submission of turnaround plan; appointment of receiver; annual review

(a) The commissioner of elementary and secondary education may, on the basis of student performance data collected pursuant to section 1I, a school or district review performed under [section 55A of chapter 15](#), or regulations adopted by the board of elementary and secondary education, designate 1 or more schools in a school district other than a Horace Mann charter school as underperforming or chronically underperforming. The board shall adopt regulations establishing standards for the commissioner to make such designations on the basis of data collected pursuant to section 1I or information from a school or district review performed under [section 55A of chapter 15](#). Upon the release of the proposed regulations, the board shall file a copy thereof with the clerks of the house of representatives and the senate who shall forward the regulations to the joint committee on education. Within 30 days of the filing, the committee may hold a public hearing and issue a report on the regulations and file the report with the board. The board, pursuant to applicable law, may adopt final regulations making revisions to the proposed regulations as it deems appropriate after consideration of the report and shall forthwith file a copy of the regulations with the chairpersons of the joint committee on education and, not earlier than 30 days of the filing, the board shall file the final regulations with the state secretary. Schools that score in the lowest 20 per cent statewide among schools serving common grade levels on a single measure developed by the department that takes into account student performance data and, beginning on July 1, 2011, improvement in student academic performance, shall be deemed eligible for designation as underperforming or chronically underperforming. Not more than 4 per cent of the total number of public schools may be designated as underperforming or chronically underperforming at any given time.

In adopting regulations allowing the commissioner to designate a school as underperforming or chronically underperforming, the board shall ensure that such regulations take into account multiple indicators of school quality in making determinations regarding underperformance or chronic underperformance, such as student attendance, dismissal rates and exclusion rates, promotion rates, graduation rates or the lack of demonstrated significant improvement for 2 or more consecutive years in core academic subjects, either in the aggregate or among subgroups of students, including designations based special education, low-income, English language proficiency and racial classifications.

Before a school is designated chronically underperforming by the commissioner, a school must be designated underperforming and fail to improve.

An underperforming or chronically underperforming school described in the following subsections shall operate in accordance with laws regulating other public schools, except as such provisions may conflict with this section or any turnaround plans created thereunder. A student who is enrolled in a school at the time it is designated as underperforming or chronically underperforming shall retain the ability to remain enrolled in the school while remaining a resident of the district if the student chooses to do so.

(b) Upon the designation of a school as an underperforming school in accordance with regulations developed pursuant to this section, the superintendent of the district, with approval by the commissioner, shall create a turnaround plan for the school, under subsections (b) to (e), inclusive. The commissioner may allow for an expedited turnaround plan for schools that have been previously designated as underperforming and where the district has a turnaround plan that has had a public comment period and approval of the local school committee.

Before the superintendent creates the turnaround plan required in this subsection, the superintendent shall convene a local stakeholder group of not more than 13 individuals, for the purpose of soliciting recommendations on the content of such plan to maximize the rapid academic achievement of students at the school. The superintendent shall provide due consideration to the recommendations of the stakeholder group. The group shall include: (1) the commissioner, or a designee; (2) the chair of the school committee, or a designee; (3) the president of the local teacher's union, or a designee; (4) an administrator from the school, who may be the principal, chosen by the superintendent; (5) a teacher from the school chosen by the faculty of the school; (6) a parent from the school chosen by the local parent organization; (7) representatives of applicable state and local social service, health and child welfare agencies, chosen by the superintendent; (8) as appropriate, representatives of state and local workforce development agencies, chosen by the superintendent; (9) for elementary schools, a representative of an early education and care provider chosen by the commissioner of the department of early education and care and, for middle schools or high schools, a representative of the higher education community selected by the secretary; and (10) a member of the community appointed by the chief executive of the city or town. If the school or district does not have a parent organization or if the organization does not select a parent, the superintendent shall select a volunteer parent of a student from the school. The superintendent shall convene such group within 30 days of the commissioner designating a school as underperforming and the group shall make its recommendations to the superintendent within 45 days of its initial meeting. Meetings of the local stakeholder group shall be open to the public and the recommendations submitted to the superintendent under this subsection shall be publicly available immediately upon their submission.

(c) In creating the turnaround plan in subsection (b) the superintendent shall include, after considering the recommendations of the local stakeholder group, provisions intended to maximize the rapid academic achievement of students at the school and shall, to the extent practicable, base the plan on student outcome data, including, but not limited to: (1) data collected pursuant to section 1J or information from a school or district review performed under [section 55A of chapter 15](#); (2) student achievement on the Massachusetts Comprehensive Assessment System; (3) other measures of student achievement, approved by the commissioner; (4) student promotion and graduation rates; (5) achievement data for different subgroups of students, including low-income students as defined in chapter 70, limited English-proficient students and students receiving special education; and (6) student attendance, dismissal rates and exclusion rates.

The superintendent shall also include in the creation of the turnaround plan, after considering the recommendations of the local stakeholder group, the following: (1) steps to address social service and health needs of students at the school and their families, to help students arrive and remain at school ready to learn; provided, however, that this may include mental health and substance abuse screening; (2) steps to improve or expand child welfare services and, as appropriate, law enforcement services in the school community, in order to promote a safe and secure learning environment; (3) steps to improve workforce development services provided to students and their families at the school, to provide students and families with meaningful employment skills and opportunities; (4) steps to address achievement gaps for limited English-proficient, special education and low-income students; and (5) alternative English language learning programs for limited English proficient students, notwithstanding chapter 71A; and (6) a financial plan for the school, including any additional funds to be provided by the district, commonwealth, federal government or other sources.

The secretaries of health and human services, labor and workforce development, public safety and other applicable state and local social service, health and child welfare officials shall coordinate with the superintendent regarding the implementation of strategies under clauses (1) to (3), inclusive, of the second paragraph that are included in a final turnaround plan and shall, subject to appropriation, reasonably support such implementation consistent with the requirements of state and federal law applicable to the relevant programs that each such official is responsible for administering. The secretary of education and the commissioner of elementary and secondary education shall assist the superintendent in facilitating the coordination.

To assess the school across multiple measures of school performance and student success, the turnaround plan shall include measurable annual goals including, but not limited to: (1) student attendance, dismissal rates and exclusion rates; (2) student safety and discipline; (3) student promotion and graduation and dropout rates; (4) student achievement on the Massachusetts Comprehensive Assessment System; (5) progress in areas of academic underperformance; (6) progress among subgroups of students, including low-income students as defined by chapter 70, limited English-proficient students and students receiving special education; (7) reduction of achievement gaps among different groups of students; (8) student acquisition and mastery of twenty-first century skills; (9) development of college readiness, including at the elementary and middle school levels; (10) parent and family engagement; (11) building a culture of academic success among students; (12) building a culture of student support and success among school faculty and staff and; (13) developmentally appropriate child assessments from pre-kindergarten through third grade, if applicable.

(d) Notwithstanding any general or special law to the contrary, in creating the turnaround plan required in subsection (b), the superintendent may, after considering the recommendations of the group of stakeholders: (1) expand, alter or replace the curriculum and program offerings of the school, including the implementation of research-based early literacy programs, early interventions for struggling readers and the teaching of advanced placement courses or other rigorous nationally or internationally recognized courses, if the school does not already have such programs or courses; (2) reallocate the uses of the existing budget of the school; (3) provide additional funds to the school from the budget of the district, if the school does not already receive funding from the district at least equal to the average per pupil funding received for students of the same classification and grade level in the district; (4) provide funds, subject to appropriation and following consultation with applicable local unions, to increase the salary of any

administrator, or teacher in the school, to attract or retain highly-qualified administrators, or teachers or to reward administrators, or teachers who work in underperforming schools that achieve the annual goals set forth in the turnaround plan; (5) expand the school day or school year or both of the school; (6) for an elementary school, add pre-kindergarten and full-day kindergarten classes, if the school does not already have such classes; (7) following consultation with applicable local unions, require the principal and all administrators, teachers and staff to reapply for their positions in the school, with full discretion vested in the superintendent regarding his consideration of and decisions on rehiring based on the reapplications. (8) limit, suspend or change 1 or more provisions of any contract or collective bargaining agreement, as the contract or agreement applies to the school; provided, that the superintendent shall not reduce the compensation of an administrator, teacher or staff member unless the hours of the person are proportionately reduced; (9) limit, suspend or change 1 or more school district policies or practices, as such policies or practices relate to the school; (10) include a provision of job-embedded professional development for teachers at the school, with an emphasis on strategies that involve teacher input and feedback; (11) provide for increased opportunities for teacher planning time and collaboration focused on improving student instruction; (12) establish a plan for professional development for administrators at the school, with an emphasis on strategies that develop leadership skills and use the principles of distributive leadership; (13) establish steps to assure a continuum of high-expertise teachers by aligning the following processes with a common core of professional knowledge and skill: hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and organizational structure; (14) develop a strategy to search for and study best practices in areas of demonstrated deficiency in the school; (15) establish strategies to address mobility and transiency among the student population of the school; and (16) include additional components based on the reasons why the school was designated as underperforming and the recommendations of the group of stakeholders in subsection (b).

If the superintendent does not approve a reapplication submitted by an employee pursuant to clause (7) for a position in the school or if an employee does not submit a reapplication for a position in the school, the employee shall retain such rights as may be provided under law or any applicable collective bargaining agreement in relation to the employee's ability to fill another position in the district; provided, however, that the employee shall not have the right to displace any teacher with professional teacher status in any other school during a school year.

A teacher with professional teacher status in a school declared underperforming or chronically underperforming may be dismissed for good cause; provided, however, that the teacher receives 5 days written notice of the decision to terminate which shall include, without limitation, an explanation of the reason why the superintendent is not retaining the teacher in the school; provided, further, that the teacher may seek review of a termination decision within 5 days after receiving notice of the teacher's termination by filing a petition for expedited arbitration with the commissioner; provided, further, that except as otherwise provided herein [section 42 of chapter 71](#) shall apply to a petition filed pursuant to this section; provided, further, that the commissioner shall cause an arbitrator to be selected pursuant to the procedures in [section 42 of chapter 71](#) within 3 days of receipt of petition and shall conduct and complete a hearing within 10 days of receipt of the petition; provided, further, that in reviewing dismissal decisions, the arbitrator shall consider the components of the turnaround plan and shall also consider any personnel evaluations conducted that are consistent with the guidelines established pursuant to section 1B; and provided, further, that the arbitrator's decision shall be issued within 10 days from the completion of the hearing.

For a school with limited English-proficient students, the professional development and planning time for teachers and administrators identified in clauses (10) to (12), inclusive, shall include specific strategies and content designed

to maximize the rapid academic achievement of limited English-proficient students at the school.

(e) Within 30 days of the local stakeholder group making recommendations under subsection (b), the superintendent shall submit a turnaround plan to the local stakeholder group, the school committee and the commissioner, all of whom may propose modifications to the plan. The superintendent shall make such plan immediately available to the public upon the submission. The stakeholder group, the school committee and the commissioner shall submit any proposed modifications to the superintendent not more than 30 days after the date of submission of the turnaround plan and the proposed modifications shall be made public immediately upon their submission to the superintendent. The superintendent shall consider and may incorporate the modifications into the plan if the superintendent determines that inclusion of the modifications would further promote the rapid academic achievement of students at the school or may alter or reject the proposed modifications submitted under this subsection. Within 30 days of receiving any proposed modifications under this subsection, the superintendent shall issue a final turnaround plan for the school and the plan shall be made publicly available.

(f) Within 30 days of the issuance of a final turnaround plan under subsection (e) a school committee or local union may appeal to the commissioner regarding 1 or more components of the plan, including the absence of 1 or more modifications proposed under subsection (e). The commissioner may, in consultation with the superintendent, modify the plan if the commissioner determines that: (1) such modifications would further promote the rapid academic achievement of students in the applicable school; (2) a component of the plan was included, or a modification was excluded, on the basis of demonstrably-false information or evidence; or (3) the superintendent failed to meet the requirements of subsections (b) to (e), inclusive. The decision of the commissioner regarding an appeal under this subsection shall be made within 30 days and shall be final.

(g) If, after considering the recommendations of the group of stakeholders, the superintendent considers it necessary to maximize the rapid academic achievement of students at the applicable school by altering the compensation, hours and working conditions of the administrators, teachers, principal and staff at the school or by altering other provisions of a contract or collective bargaining agreement applicable to the administrators, teachers, principal and staff, the superintendent may request that the school committee and any union bargain or reopen the bargaining of the relevant collective bargaining agreement to facilitate such achievement. The bargaining shall be conducted in good faith and completed not later than 30 days from the point at which the superintendent requested that the parties bargain. The agreement shall be subject to ratification within 10 business days by the bargaining unit members in the school. If the parties are unable to reach an agreement within 30 days or if the agreement is not ratified within 10 business days by the bargaining unit members of the school, the parties shall submit remaining unresolved issues a joint resolution committee for dispute resolution process on the next business day following the end of the 30-day bargaining period or failure to ratify.

The joint resolution committee shall be comprised of 3 members, 1 of whom shall be appointed by the employee organization within 3 business days following the submission of unresolved issues to the joint resolution committee, 1 of whom shall be appointed by the school committee within 3 business days following the submission of unresolved issues to the joint resolution committee and 1 who shall be selected through the American Arbitration Association who shall forthwith forward to the parties a list of 3 conciliators, each of whom shall have professional experience in elementary and secondary education, from which the parties may agree upon a single conciliator

provided, however, that if the parties cannot select a conciliator from among the 3 within 3 business days, the American Arbitration Association shall select a conciliator from the remaining names. The joint resolution committee shall conduct a dispute resolution process to be concluded within 10 business days of selection. This process shall be conducted in accordance with the rules of the American Arbitration Association and consistent with this section. The fee for the process shall be shared equally between the 2 parties involved.

The joint resolution committee shall consider the positions of the parties, the designation of the school as underperforming and the needs of the students in the school. Notwithstanding any other provision of this chapter, the decision of the joint resolution committee shall be dispositive of all the issues in dispute and shall be submitted to the parties within 10 business days of the completion of the process. Under no circumstance, shall a time extension be granted beyond 10 business days of the completion of the process. If a decision is not submitted to the parties within 10 business days, the commissioner will resolve all outstanding issues.

(h) The superintendent may select an external receiver to operate the school and implement the turnaround plan or to assist the superintendent with the implementation. The superintendent may appoint the receiver if the superintendent determines that conditions exist in the district that are likely to negatively affect his ability to implement the plan successfully. A school committee may appeal to the commissioner the decision of the superintendent to appoint an external receiver. The commissioner may reverse such decision only if he determines that the superintendent made the decision on the basis of demonstrably-false information or evidence. A receiver shall be a non-profit entity or an individual with a demonstrated record of success in improving low-performing schools or the academic performance of disadvantaged students. A receiver shall be subject to [section 11A 1/2 of chapter 30A](#) and chapter 66. A receiver who is an individual shall also be subject to chapter 268A.

(i) An external receiver selected by the superintendent to operate a school shall have full managerial and operational control over the school as provided in the turnaround plan. For all other purposes, the school district in which the school is located shall remain the employer of record.

(j) Each turnaround plan shall be authorized for a period of not more than 3 years, subject to subsection (k). The superintendent or external receiver, as applicable, may develop additional components of the turnaround plan pursuant to subsections (b) to (g) inclusive and shall develop annual goals for each component of the plan, in a manner consistent with subsections (b) to (g), inclusive. The superintendent or external receiver, as applicable, shall be responsible for meeting the goals of the plan.

(k) Each school designated by the commissioner as underperforming under subsection (a) shall be reviewed by the superintendent, in consultation with the principal of the school, at least annually. The purpose of the review shall be to determine whether the school has met the annual goals in its turnaround plan and to assess the overall implementation of the turnaround plan. The review shall be in writing and shall be submitted to the commissioner and the relevant school committee not later than July 1 for the preceding school year. The review shall be submitted in a format determined by the department of elementary and secondary education.

If the commissioner determines that the school has met the annual performance goals stated in the turnaround plan, the review shall be considered sufficient and the implementation of the turnaround plan shall continue. If the

commissioner determines that the school has not met 1 or more goals in the turnaround plan and that the failure to meet the goals may be corrected through reasonable modification of the plan, the superintendent may amend the turnaround plan in a manner consistent with the provisions of subsection (b) to (g) inclusive. If the commissioner determines that the school has substantially failed to meet 1 or more goals in the plan, the commissioner may appoint an examiner to conduct an evaluation of the school's implementation of the turnaround plan.

If the commissioner determines that the school has substantially failed to meet multiple goals in the plan, the commissioner may require changes to the turnaround plan to be implemented by the superintendent in the following year or the appointment of an external partner to advise and assist the superintendent in implementing the plan the following year. If the changes to the turnaround plan require changes in a collective bargaining agreement applicable to administrators, teachers or staff in the school, the bargaining procedure in subsection (g) shall be used. If an underperforming school is operated by an external receiver, the commissioner may require the superintendent to terminate the receiver and develop a new turnaround plan; provided, however, that the superintendent shall not terminate the receiver before the completion of the first full school year of the operation of the underperforming school.

(l) Upon the expiration of a turnaround plan, the commissioner shall conduct a review of the school to determine whether the school has improved sufficiently, requires further improvement or has failed to improve. On the basis of such review, the commissioner may determine that: (1) the school has improved sufficiently for the designation of the school as underperforming to be removed; (2) the school has improved, but the school remains underperforming, in which case the superintendent may, with the approval of the commissioner, renew the plan or create a new or modified plan for an additional period of not more than 3 years, consistent with the requirements of subsections (a) to (g); or (3) consistent with the requirements of subsection (a), the school is chronically underperforming. The commissioner may recommend the appointment of an external receiver by the superintendent if the commissioner believes that a new or modified turnaround plan implemented by the superintendent will not result in rapid improvement. In carrying out this subsection, the superintendent shall: (1) in the case of a renewal of a turnaround plan, determine subsequent annual goals for each component of the plan with the input of the local stakeholder group as defined in subsection (b); or (2) create a new or modified turnaround plan as necessary, consistent with the requirements of this section.

(m) Upon the designation of a school as a chronically underperforming school in accordance with the regulations developed under this section, the commissioner shall create a turnaround plan for the school under this subsection and subsections (n) to (p), inclusive.

Before creating the turnaround plan required in this subsection, the commissioner shall convene a local stakeholder group of not more than 13 individuals for the purpose of soliciting recommendations on the content of such plan in order to maximize the rapid academic achievement of students. The commissioner shall provide due consideration to the recommendations of the stakeholder group. The group shall include: (1) the superintendent, or a designee; (2) the chair of the school committee, or a designee; (3) the president of the local teacher's union, or a designee; (4) an administrator from the school, who may be the principal, chosen by the superintendent; (5) a teacher from the school chosen by the faculty of the school; (6) a parent from the school chosen by the local parent organization; (7) representatives of applicable state and local social service, health and child welfare agencies, chosen by the

commissioner; (8) as appropriate, representatives of state and local workforce development agencies, chosen by the commissioner; (9) for elementary schools, a representative of an early education and care provider chosen by the commissioner of the department of early education and care and, for middle schools or high schools, a representative of the higher education community selected by the secretary of education; and (10) a member of the community appointed by the chief executive of the city or town. If the school or district does not have a parent organization or if the organization does not select a parent, the commissioner shall select a volunteer parent of a student from the school. The commissioner shall convene the group within 30 days of the designation of a school as chronically underperforming and the group shall make its recommendations to the commissioner within 45 days of its initial meeting. Meetings of the local stakeholder group shall be open to the public and the recommendations submitted to the commissioner under this subsection shall be publicly available immediately upon their submission.

(n) In creating the turnaround plan required in subsection (m), the commissioner shall include, after considering the recommendations of the local stakeholder group, provisions intended to maximize the rapid academic achievement of students at the school and shall, to the extent practicable, base the plan on student outcome data, including, but not limited to: (1) data collected under section 1J or information from a school or district review performed under [section 55A of chapter 15](#); (2) student achievement on the Massachusetts Comprehensive Assessment System; (3) other measures of student achievement, approved by the commissioner, as appropriate; (4) student promotion and graduation rates; (5) achievement data for different subgroups of students, including low-income students as defined by chapter 70, limited English-proficient students and students receiving special education; and (6) student attendance, dismissal rates and exclusion rates.

The commissioner shall include in the creation of the turnaround plan, after considering the recommendations of the local stakeholder group, the following: (1) steps to address social service and health needs of students at the school, and their families, in order to help students arrive and remain at school ready to learn; provided, however, that this may include mental health and substance abuse screening; (2) steps to improve or expand child welfare services and, as appropriate, law enforcement services in the school community, in order to promote a safe and secure learning environment; (3) steps to improve workforce development services provided to students at the school, and their families, in order to provide students and families with meaningful employment skills and opportunities; (4) steps to address achievement gaps for limited English-proficient, special education and low-income students; (5) alternative English language learning programs for limited-English proficient students, notwithstanding chapter 71A; and (6) a financial plan for the school, including any additional funds to be provided by the district, commonwealth, federal government or other sources.

The secretaries of health and human services, labor and workforce development, public safety and other applicable state and local social service, health and child welfare officials shall coordinate with the secretary of education and the commissioner regarding the implementation of strategies under clauses (1) to (3), inclusive, of the second paragraph that are included in a final turnaround plan and shall, subject to appropriation, reasonably support the implementation consistent with the requirements of state and federal law applicable to the relevant programs that each official is responsible for administering.

In order to assess the school across multiple measures of school performance and student success, the turnaround plan shall include measurable annual goals including, but not limited to, the following: (1) student attendance

,dismissal rates and exclusion rates; (2) student safety and discipline; (3) student promotion and graduation and dropout rates; (4) student achievement on the Massachusetts Comprehensive Assessment System; (5) progress in areas of academic underperformance; (6) progress among subgroups of students, including low-income students as defined by chapter 70, limited English-proficient students and students receiving special education; (7) reduction of achievement gaps among different groups of students; (8) student acquisition and mastery of 21st-century skills; (9) development of college readiness, including at the elementary and middle school levels; (10) parent and family engagement; (11) building a culture of academic success among students; (12) building a culture of student support and success among school faculty and staff; and (13) developmentally appropriate child assessments from pre-kindergarten through third grade, if applicable.

(o) Notwithstanding any general or special law to the contrary, in creating the turnaround plan required in subsection (m), the commissioner may, after considering the recommendations of the group of stakeholders: (1) expand, alter or replace the curriculum and program offerings of the school, including the implementation of research-based early literacy programs, early interventions for struggling readers and the teaching of advanced placement courses or other rigorous nationally or internationally recognized courses, if the school does not already have such programs or courses; (2) reallocate the uses of the existing budget of the school; (3) provide additional funds to the school from the budget of the district, if the school does not already receive funding from the district at least equal to the average per pupil funding received for students of the same classification and grade level in the district; (4) provide funds, subject to appropriation, to increase the salary of an administrator, or teacher in the school, in order to attract or retain highly-qualified administrators or teachers or to reward administrators, or teachers who work in chronically underperforming schools that achieve the annual goals set forth in the turnaround plan; (5) expand the school day or school year or both of the school; (6) for an elementary school, add pre-kindergarten and full-day kindergarten classes, if the school does not already have such classes; (7) limit, suspend, or change 1 or more provisions of any contract or collective bargaining agreement, as the contract or agreement applies to the school; provided, however, that the commissioner shall not reduce the compensation of an administrator, teacher or staff member unless the hours of the person are proportionately reduced; and provided further, that the commissioner may require the school committee and any applicable unions to bargain in good faith for 30 days before exercising authority pursuant to this clause; (8) following consultation with applicable local unions, require the principal and all administrators, teachers and staff to reapply for their positions in the school, with full discretion vested in the superintendent regarding his consideration of and decisions on rehiring based on the reapplications; (9) limit, suspend or change 1 or more school district policies or practices, as such policies or practices relate to the school; (10) include a provision of job-embedded professional development for teachers at the school, with an emphasis on strategies that involve teacher input and feedback; (11) provide for increased opportunities for teacher planning time and collaboration focused on improving student instruction; (12) establish a plan for professional development for administrators at the school, with an emphasis on strategies that develop leadership skills and use the principles of distributive leadership; (13) establish steps to assure a continuum of high expertise teachers by aligning the following processes with the common core of professional knowledge and skill: hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and organizational structure; (14) develop a strategy to search for and study best practices in areas of demonstrated deficiency in the school; (15) establish strategies to address mobility and transiency among the student population of the school; and (16) include additional components, at the discretion of the commissioner, based on the reasons the school was designated as chronically underperforming and the recommendations of the local stakeholder group in subsection (m).

If the commissioner does not approve a reapplication submitted by an employee pursuant to clause (7) for a position in the school or if an employee does not submit a reapplication for a position in the school, the employee shall retain such rights as may be provided under law or any applicable collective bargaining agreement, in relation to the employee's ability to fill another position in the district; provided, however, that the employee shall not have the right to displace any teacher with professional teacher status in any other school during a school year.

A teacher with professional teacher status in a school declared underperforming or chronically underperforming may be dismissed for good cause; provided, however, that the teacher receives 5 days written notice of the decision to terminate which shall include without limitation an explanation of the reason why the commissioner or superintendent is not retaining the teacher in the school; provided, further, that the teacher may seek review of a termination decision within 5 days after receiving notice of the teacher's termination by filing a petition for expedited arbitration with the commissioner; provided further, that except as otherwise provided herein [section 42 of chapter 71](#) shall apply to a petition filed pursuant to this section; provided further, that the commissioner shall cause an arbitrator to be selected pursuant to the procedures in [section 42 of chapter 71](#) within 3 days of receipt of petition and shall conduct and complete a hearing within 10 days of receipt of the petition; provided, further, that in reviewing dismissal decisions, the arbitrator shall consider the components of the turnaround plan and shall also consider any personnel evaluations conducted that are consistent with the guidelines established pursuant to section 1B; and provided, further, that the arbitrator's decision shall be issued within 10 days from the completion of the hearing.

For a school with limited English-proficient students, the professional development and planning time for teachers and administrators identified in clauses (10) to (12), inclusive, shall include specific strategies and content designed to maximize the rapid academic achievement of the limited English-proficient students.

If the commissioner proposes to reallocate funds to the school from the budget of the district under clause (3), the commissioner shall notify the school committee, in writing, of the amount of and rationale for the reallocation.

(p) Within 30 days of the local stakeholder group making recommendations under subsection (m), the commissioner shall submit a turnaround plan to the local stakeholder group, the superintendent and the school committee, all of whom may propose modifications to the plan. The commissioner shall make the plan immediately available to the public upon submission. The stakeholder group, the superintendent and the school committee shall submit any proposed modifications to the commissioner within 30 days after the date of submission of the turnaround plan and the proposed modifications shall be made public immediately upon their submission to the commissioner. The commissioner shall consider and incorporate the modifications into the plan if the commissioner determines that inclusion of the modifications would further promote the rapid academic achievement of students at the applicable school. The commissioner may alter or reject modifications submitted pursuant to this subsection. Within 30 days of receiving any proposed modifications, the commissioner shall issue a final turnaround plan for the school and the plan shall be made publicly available.

(q) Within 30 days of the issuance of a final turnaround plan under subsection (p), a superintendent, school committee or local union may appeal to the board of elementary and secondary education regarding 1 or more components of the plan, including the absence of 1 or more modifications proposed under subsection (p). A majority

of the board, may vote to modify the plan if the board determines that: (1) such modifications would further promote the rapid academic achievement of students in the applicable school; (2) a component of the plan was included, or a modification was excluded, on the basis of demonstrably-false information or evidence; or (3) the commissioner failed to meet the requirements of subsections (m) to (p), inclusive. The decision of the board regarding an appeal under this subsection shall be made within 30 days and shall be final.

(r) In the case of a chronically underperforming school, the commissioner may, under the circumstances described in this subsection, send a targeted assistance team to the school to assist the superintendent with the implementation of the turnaround plan, require the superintendent to implement the turnaround plan, or select an external receiver to operate the school and implement the turnaround plan. The commissioner may appoint such receiver if the commissioner determines that: (1) the superintendent is unlikely to implement the plan successfully; or (2) conditions exist in the district that are likely to negatively affect the ability of the superintendent to implement such plan successfully. A receiver shall be a non-profit entity or an individual with a demonstrated record of success in improving low performing schools or the academic performance of disadvantaged students. A receiver shall be subject to [section 11A 1/2 of chapter 30A](#) and chapter 66. A receiver who is an individual shall also be subject to chapter 268A.

The commissioner may select the external receiver upon the designation of a school as chronically underperforming. The external receiver may serve as the commissioner's designee for the purpose of creating a school's turnaround plan under subsections (m) to (p), inclusive.

(s) An external receiver selected by the commissioner to operate a chronically underperforming school shall have full managerial and operational control over the school as provided in the turnaround plan. For all other purposes, the school district in which the school is located shall remain the employer of record.

(t) Each turnaround plan shall be authorized for a period of not more than 3 years, subject to subsection (v). The superintendent or external receiver, as applicable, may develop additional components of the plan and shall develop annual goals for each component of the plan in a manner consistent with subsection (n), all of which must be approved by the commissioner. The superintendent or external receiver, as applicable, shall be responsible for meeting the goals of the turnaround plan.

(u) The commissioner or external receiver, as applicable, shall provide a written report to the school committee on a quarterly basis to provide specific information about the progress being made on the implementation of the school's turnaround plan. One of the quarterly reports shall be the annual evaluation under subsection (v).

(v) The commissioner shall evaluate each chronically underperforming school at least annually. The purpose of the evaluation shall be to determine whether the school has met the annual goals in its turnaround plan and assess the implementation of the plan at the school. The review shall be in writing and shall be submitted to the superintendent and the school committee not later than July 1 for the preceding school year. The review shall be submitted in a format determined by the department of elementary and secondary education.

If the commissioner determines that the school has met the annual performance goals stated in the turnaround plan,

the review shall be considered sufficient and the implementation of the turnaround plan shall continue. If the commissioner determines that the school has not met 1 or more goals in the plan, the commissioner may modify the plan in a manner consistent with subsection (n).

If the commissioner determines that the school has substantially failed to meet multiple goals in the plan, the commissioner may: (1) if the school is operated by a superintendent, appoint an external receiver, as defined in subsection (r), to operate the school; or (2) if the school is operated by an external receiver terminate the contract of the external receiver; provided, however, that the commissioner shall not terminate the receiver before the completion of the first full school year of the operation of the chronically underperforming school.

(w) Upon the expiration of a turnaround plan for a chronically underperforming school, the commissioner shall conduct a review of the school to determine whether the school has improved sufficiently, requires further improvement or has failed to improve. On the basis of such review, the commissioner may: (1) on the basis of a superintendent's or external receiver's success in meeting the terms of the plan, renew the plan with the superintendent or external receiver for an additional period of not more than 3 years; (2) if a school that is operated by a superintendent and remains chronically underperforming, appoint an external receiver, as defined in subsection (r), to operate the school; (3) if a chronically underperforming school that is operated by an external receiver and remains chronically underperforming, transfer the operation of the school from the receiver to the applicable superintendent or to another external receiver; or (4) determine that the school has improved sufficiently for the designation of chronically underperforming to be removed. The commissioner shall: (1) in the case of a renewal of an turnaround plan, jointly determine subsequent annual goals for each component of the plan with the superintendent or external receiver, as applicable; or (2) create a new or modified turnaround plan as necessary, consistent with the requirements of this section.

(x) Notwithstanding any general or special law to the contrary, any underperforming or chronically underperforming school operating a limited-English proficient program or programs for limited English proficient students in any 1 language group shall establish a limited English proficient parent advisory council. The parent advisory council shall be comprised of parents or legal guardians of students who are enrolled in limited English proficient programs within the school. Each parent advisory council shall have at least 1 representative from every language group in which a program is conducted in a given school. Membership shall be restricted to parents or legal guardians of students enrolled in limited English proficient programs within the school. The duties of the parent advisory council shall include, but not be limited to, advising the school on matters that pertain to the education of students in limited English proficient programs, meeting regularly with school officials to participate in the planning and development of a plan to improve educational opportunities for limited English proficient students, and to participate in the review of school improvement plans established under [section 59C of chapter 71](#) as they pertain to limited English proficient students. Any parent advisory council may, at its request, meet at least once annually with the school council. The parent advisory council shall establish by-laws regarding officers and operational procedures. In the course of its duties under this section, the parent advisory council shall receive assistance from the director of limited English proficient programs for the district or other appropriate school personnel as designated by the superintendent.

(y) The board of elementary and secondary education shall adopt regulations regarding: (1) the conditions under

which an underperforming or chronically underperforming school shall no longer be designated as an underperforming or chronically underperforming school; and (2) the transfer of the operation of an underperforming or a chronically underperforming school from a superintendent or an external receiver, as applicable, to the school committee. The regulations shall include provisions to allow a school to retain measures adopted in an turnaround plan for a transitional period if, in the judgment of the commissioner, the measures would contribute to the continued improvement of the school. Such regulations shall also include provisions that clearly identify the conditions under which such a transitional period shall end and the powers granted to the commissioner and board under this section shall cease to apply to a district previously designated as chronically underperforming.

(z) The commissioner shall report annually to the joint committee on education, the house and senate committees on ways and means, the speaker of the house of representatives and the senate president on the implementation and fiscal impact of this section and section 1K. The report shall include, but not be limited to, a list of all schools currently designated as underperforming or chronically underperforming, a list of all districts currently designated as chronically underperforming, the plans and timetable for returning the schools and districts to the local school committee and strategies used in each of the schools and districts to maximize the rapid academic achievement of students.

CREDIT(S)

Added by [St.1993, c. 71, § 29](#). Amended by [St.2008, c. 311, § 5, eff. Aug. 14, 2008](#); [St.2010, c. 12, § 3, eff. Jan. 19, 2010](#).

HISTORICAL AND STATUTORY NOTES

St.1993, c. 71, § 29, an emergency act, was approved June 18, 1993.

Sections 67, 77 and 99 of St.1993, c. 71, provide:

“Section 67. This act shall apply to all cities, towns, and regional school districts, notwithstanding section twenty-seven C of chapter twenty-nine of the General Laws and without regard to any acceptance or appropriation by a city, town, or regional school district or to any appropriation by the general court.”

“Section 77. The provisions of sections one J and one K of chapter sixty-nine of the General Laws and sections forty-one, forty-two, and eighty-nine of chapter seventy-one of the General Laws shall not apply to employees subject to collective bargaining agreements executed prior to the effective date of this act insofar as such collective bargaining agreements are in conflict with said sections. Collective bargaining agreements effective after the date of this act shall be subject to the provisions of said sections.”

“Section 99. All programs and actions undertaken under the provisions of this act shall be conducted in a manner reflecting and encouraging a policy of nondiscrimination and equal opportunity for members of minority groups and women. All officials and employees of any school department or district shall take affirmative steps to ensure

equality of opportunity in the internal affairs of such departments and districts, as well as in their relations with the public, including those persons and organizations doing business with said departments and districts. Each school district department and district shall adopt measures to ensure equal opportunity in the areas of hiring, promotion, demotion, transfer, recruitment, layoff or termination, rates of compensation, and in-service training programs. The department of education shall conduct an ongoing review of affirmative action steps taken by various school departments and districts to determine whether such departments and districts are complying with the intent of this section. Whenever such noncompliance is determined by the board of education, the commissioner shall hold a public hearing on the matter and report his resulting recommendations to the school committee of the department or district and to the Massachusetts commission against discrimination.”

St.2008, c. 311, § 5, an emergency act, approved Aug. 14, 2008, effective Aug. 14, 2008, in the second paragraph, in the second sentence, inserted “, pursuant to section 55A of chapter 15,”.

2010 Legislation

St.2010, c. 12, § 3, an emergency act, approved Jan. 19, 2010, effective Jan. 19, 2010, rewrote the section, which prior thereto read:

“The board shall establish regulations defining when a school or school district has chronically failed to improve the educational program provided to students served by the school or district. Such regulations shall be consistent with the goals and standards adopted by the board and the basis for the determination of chronic failure shall include, but not be limited to, the evaluations performed pursuant to section one *I*. The regulations adopted by the board shall take into account the turnover of students in particular schools and districts.

“Schools that have consistently failed to improve the academic performance of their students shall be deemed under-performing, in accordance with the board's regulations. Upon determination that a school is under-performing, the commissioner shall immediately appoint an independent fact-finding team which, pursuant to section 55A of chapter 15, shall forthwith assess the reasons for the under-performance and the prospects for improvement and report its findings to the commissioner and the district in which the school is located no later than ninety days from the date of its appointment. No more than six months after the determination that a school is under-performing, the district in which the school is located shall present to the board a remedial plan that shall set forth specific goals for improvement, specific means for attaining such goals, and a timetable, not to exceed twenty-four months, for carrying out the plan. The district shall implement said remedial plan, with such changes or amendments as the board shall direct. During the period of implementation, the commissioner shall provide to the school technical assistance for the improvement of the educational program provided to the students served therein.

“If the school fails to demonstrate significant improvement as dictated by its remedial plan within twenty-four months after the approval of its remedial plan, the board may declare the school to be chronically under-performing. Upon a determination that a school is chronically under-performing, the following steps may be taken:

“(1) The principal of the school shall be immediately removed and shall not be assigned to the school for the following school year unless the board finds that the principal did not play a significant role in the under-

performance of the school;

“(2) The superintendent may designate a new principal for the school. Any principal of a chronically under-performing school shall have such extraordinary powers, including the power to dismiss, in accordance with paragraph (4), any teacher or other employee assigned to the school without regard to the procedures set forth under sections forty-one and forty-two of chapter seventy-one or the provisions of any collective bargaining agreement. Such dismissed teachers shall otherwise retain such rights as may be provided under law or any applicable collective bargaining agreement, except that they shall not have the right to displace any teacher in any other school;

“(3) In order to recruit and retain talented personnel, the commissioner may make available funds, subject to appropriation, to permit the superintendent during the period of remediation to increase the salary of any principal or teacher assigned to the school by not more than one percent for every ten percent of the enrollment of the chronically under-performing school comprised of low-income students, as that term is used in chapter seventy;

“(4) If the school does not receive funding from the district at least equal to the average per pupil funding received for students of the same classification and grade level in the district, the district shall provide additional funding sufficient to bring funding for that school to such level;

“(5) Such other actions determined by the board of education, to be reasonably calculated to increase the number of students attending the school who satisfy the student performance standards.

“A principal appointed to a chronically under-performing school may dismiss a teacher with professional teacher status for good cause, provided that the teacher has received five school days written notice of the decision to terminate. The teacher with professional teacher status may seek review of a termination decision within five school days after receiving notice of his termination by filing a petition for expedited arbitration with the commissioner. An arbitrator shall be selected according to the procedures set forth in section forty-two of chapter seventy-one. In reviewing dismissal decisions, the arbitrator shall consider the chronic under-performance of the school to the degree that such under-performance is not due to factors beyond the control of the teacher, and the arbitrator shall consider any report from the fact-finding team that evaluates the teacher's performance. The arbitrator's decision shall be issued within ten school days from the completion of the hearing.”

CROSS REFERENCES

Commissioner's duties with respect to school district's under-performance, see [c. 69, § 1A](#).

CODE OF MASSACHUSETTS REGULATIONS

Under-performing schools and school districts, education department, see [603 CMR 2.01 et seq.](#)

LIBRARY REFERENCES

Schools  45, 129 to 134.

Westlaw Topic No. 345.

[C.J.S. Schools and Schools Districts §§ 92, 94 to 95, 98 to 99, 124, 145 to 146, 239 to 246, 290, 294 to 357, 359 to 360, 362, 372, 374 to 377, 383 to 389.](#)

RESEARCH REFERENCES

Treatises and Practice Aids

[18B Mass. Prac. Series § 22.6](#), Underperformance and Receivership.

[18B Mass. Prac. Series § 22.16](#), School Principals.

[18B Mass. Prac. Series § 22.52](#), Financing Educational Programs.

NOTES OF DECISIONS

In general [1](#)

1. In general

Promulgation of regulations requiring mathematics teachers in certain schools, including those with “low-performing mathematics programs,” to take assessment test prior to renewal of their licenses was entirely within the authority of the Board of Education over professional development and recertification, pursuant to Education Reform Act, and regulations were fully consistent with the Act's accountability provisions which they were specifically designed to implement, without infringing on the role of the independent fact-finding team under Act. [Massachusetts Federation of Teachers, AFT, AFL-CIO v. Board of Educ. \(2002\) 767 N.E.2d 549, 436 Mass. 763. Education !\[\]\(d27e48b2777a47a98adf1cbdde5037b2_img.jpg\) 450](#)

M.G.L.A. 69 § 1J, MA ST 69 § 1J

Current through Chapter 97 of the 2014 2nd Annual Session

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END OF DOCUMENT

Article X

Dispute Resolution

A. General

It is the declared objective of the parties to encourage the prompt resolution of disputes arising under this Agreement. The parties recognize the importance of prompt and equitable disposition of any complaint at the lowest organizational level possible.

Whatever means are used to resolve a dispute arising under this Agreement, a resolution should be sought that provides fair redress of grievances while giving due consideration to the best interests of schoolchildren.

Any person(s) or the Union shall have the right to present a dispute and have it promptly considered on its merits. Staff covered by this Agreement shall not suffer a loss of pay for time spent in conferring and meeting on a grievance; provided, however, that conferences and meetings will not normally take place during periods when the individuals involved have classroom duties, except as otherwise provided herein. A grievance of a continuing nature alleging that it uniformly affects a class of bargaining unit employees need only be filed once and shall be considered to include all subsequent violations.

Any discipline in relation to collective bargaining unit members shall be for just cause.

B. Definitions

A "grievance" shall mean a complaint

(1) that there has been as to a member of the bargaining unit a violation, misinterpretation, or inequitable application of any of the provisions of this agreement or

(2) that a member of the bargaining unit has been treated unfairly or inequitably by reason of any act or condition which is contrary to established policy or practice governing or affecting employees, except that the term "grievance" shall not apply to any matter as to which the Committee is without authority to act. As used in this Article, references to a single employee shall include also a group of employees having the same grievance.

C. Availability of Mediators

The Steering Committee shall choose up to twenty-four (24) employees of the Boston Public School system to be trained as mediators for the system. All persons chosen shall be acceptable to both the Union and the Committee. Employees chosen for this position should have demonstrated excellent interpersonal skills, creativity, and an orientation toward collaborative problem-solving in carrying out their duties in the system. The candidates chosen should as a group be highly representative of the racial and ethnic diversity of the school system. They should receive formal training in problem-solving mediation. Appointments as a mediator should be voluntary. Appointments should be reviewed annually and terminable at the discretion of the Superintendent with or without cause.

These mediators shall be available in addition to their regular duties to confer with employees of the system involved in contract-related disputes on a confidential basis seeking to assist the parties in resolving such difficulties. They may talk in person or by phone. Mediators shall be called on to mediate a building-level discussion of a grievance in Step 1 of the dispute resolution process outlined in the following section. However, no mediator shall mediate a building-level discussion of a grievance that they have previously discussed with an employee, unless all parties to the mediation so request in writing. Mediation will be available for grievances filed at Step 2 or Step 3 if both parties agree.

The School Department will circulate at least annually to all employees a list of mediators and their phone numbers. School Department policy shall be to encourage employees to seek help from a mediator to resolve work-related difficulties informally.

Mediator stipends will be retirement worthy and become part of one's annualized salary.

D. Dispute Resolution Process for Grievances

Grievances of employees within the bargaining unit shall be presented and adjusted in the following manner:

1. General Procedures

(a) Step 1: School Level

An employee or his or her Union representative may either orally or in writing present a grievance to the Principal, Headmaster, or Director within a reasonable time, normally thirty (30) school days after knowledge by the employee of the facts giving rise to the act or condition which is the basis of her or his grievance.

The Principal, Headmaster, or Director of the school shall confer with the employee at the time of the complaint or within five (5) school days with a view to arrive at a mutually satisfactory resolution of the grievance. At that conference, the employee may present the grievance personally or he or she may be represented by a Union representative; but where the employee is represented, he/she must be present. Whenever a grievance is presented by the employee personally, the Principal, Headmaster, or Director shall give the Union representative the opportunity to be present and state the views of the Union.

The Principal/Headmaster or Director shall communicate his/her decision orally or in writing to the aggrieved employee and to any Union representative who participated in this Step within five (5) school days after receiving the complaint or within five (5) school days after the conference, whichever is earlier.

If the grievance is unresolved, a mediator shall be assigned within three (3) school days to assist the parties in attempting to resolve the complaint. If the dispute is not resolved within three (3) school days following the assignment of a mediator, the grievance may be appealed to the next step.

The parties shall observe the grievance procedure pertaining to Steps 1, 2, and 3 without regard to the mediation process specified herein until the utilization of mediators contemplated by this Agreement is made operational by the School Department and written notice of that implementation is provided to the Union.

(b) Step 2: Cluster Leader or Manager for Employee Relations

If the grievance is not resolved at Step 1, the aggrieved employee or the Union may appeal by forwarding the grievance in writing to the appropriate Cluster Leader within five (5) school days after he or she has received the Step 1 decision. The appeal shall include:

- (1) The name and position of the Complainant.
- (2) A statement of the grievance and the facts involved.
- (3) The corrective action requested.
- (4) Name of Union Representative at Step 1; if any.
- (5) Signature of each complaining employee or Union representative.

The Cluster Leader will conduct a grievance hearing with the aggrieved employee, and his or her Union representative shall be given at least two (2) school days' notice of the hearing. The

aggrieved employee shall be given the opportunity to be present at the hearing. The Headmaster/Principal or applicable administrator may also be present at this hearing to state his or her views. For grievances filed at step 1, mediators shall not be present at step 2 grievance hearings. For grievances filed at step 2, a mediator shall be used if requested by both parties.

The Cluster Leader shall issue a written decision on the grievance as soon as possible, but not later than ten (10) school days after the receipt of the appeal or five (5) school days after the hearing, whichever is earlier. A copy will be sent to the aggrieved employee and the Union.

The following grievances shall be presented to the Manager for Employee Relations with the procedures and time requirements set forth above:

- (1) A grievance alleging that the person was placed on the wrong step of the salary schedule.
- (2) A grievance alleging the person's wages were improperly paid.
- (3) A grievance alleging the person was improperly denied an increment.
- (4) A grievance alleging the person's absence deduction was improperly calculated.
- (5) A grievance alleging the person was improperly denied a sabbatical leave.
- (6) A grievance alleging the person was improperly denied a leave of absence without pay.
- (7) A grievance filed on behalf of a person who is not assigned to a level.
- (8) A grievance that, by mutual agreement of the Cluster Leader and Union, should be heard directly at Central Administration.

(c) Step 3: Superintendent

A decision at Step 2 may be appealed in writing by the employee or the Union to the Superintendent of Schools within ten (10) school days after the decision by the appropriate administrator at Step 2 has been received. The Superintendent or his or her designated representatives shall meet with the aggrieved employee and the Union representative with a view to arriving at a mutually satisfactory resolution of the complaint. The aggrieved employee and the Union representative will receive at least two (2) school days' notice of the meeting and shall be given an opportunity to be heard. The Headmaster/Principal or Director and the Cluster Leader or Manager of Employee Relations may also be present at the meeting and state their views.

The Superintendent or her or his designated representatives shall communicate her or his written decision together with supporting reasons to the aggrieved employee and to the Union as soon as possible, but not later than ten (10) school days after receipt of the appeal or five (5) school days after the conference, whichever is earlier.

(d) Alternative Procedure for Certain Grievances

All grievances involving in whole or in part violations of section I(F) of this Agreement, "Handling of New Issues," shall be submitted to the following procedure in lieu of proceeding through Steps 1 through 3 of the grievance procedure described above. Either party may initiate a grievance in writing by requesting that it be made the subject of a meeting between a representative of the General Counsel's office and a representative of the Union. The parties shall meet and confer upon the matter within ten (10) school days following the request for a meeting in an attempt to resolve the grievance. If the parties agree on a resolution, they shall reduce this agreement to writing and sign it. The representative of the General Counsel's office shall be authorized to take appropriate corrective action to redress such grievances. If no agreement is reached within ten (10) school days, nothing in this clause shall affect the rights or either party to proceed to arbitration.

2. Initiation of Grievances at Step 2 or Step 3

(a) Grievances arising from the action of officials other than the Principal, Headmaster, or Director may be initiated with and processed in accordance with the provisions of Step 2 of this dispute resolution process. Where the action is initiated by the Superintendent of Schools, the grievance may be initiated at Step 3.

(b) Conferences held under this procedure at Step 2 or Step 3 shall be conducted at a time and place that will afford a fair and reasonable opportunity for all persons entitled to be present to attend. When such conferences are held during day school hours, all persons who participate shall be excused with pay.

3. Time Limits and Application

(a) The time limits specified in any step of this procedure may be extended in any specific instance, by mutual agreement.

(b) A grievance filed at an inappropriate step of the grievance procedure will be considered as properly filed, but the time limits for answering the complaint shall not begin until the grievance is referred to the appropriate step.

(c) In the event that the immediacy of the grievance requires an employee to meet with his/ her Principal or Headmaster suddenly (on a non-scheduled occasion) he/ she shall be allowed to have his/her Union representative present at the meeting, provided he/she first makes this request of the Principal or Headmaster.

(d) A failure by a teacher or the Union to process the grievance from one step to the next step, within the time limits provided will result in an automatic appeal of the grievance to the next step. A failure of a Committee representative to answer a grievance at any step of the grievance procedure within the time limits provided shall be considered a denial of the grievance at that step.

E. Arbitration

1. Arbitration Defined

A grievance which was not resolved at Step 3 under the grievance procedure may be submitted by the Union to arbitration. The arbitration may be initiated by filing with the Committee and the American Arbitration Association a request for arbitration. The notice shall be filed within thirty (30) school days after denial of the grievance at Step 3 under the grievance procedure, provided, however, if the Union did not receive a written reply from the Superintendent at Step 3, then said time limit shall be extended to sixty (60) school days after the Step 3 hearing. The voluntary labor arbitration rules of the American Arbitration Association shall apply to the proceeding.

The Union will make a reasonable effort to use no more than two (2) witnesses during the same school hours in arbitration cases.

2. Power of the Arbitrator

Notwithstanding anything to the contrary, no dispute or controversy shall be a subject for arbitration unless it involves the meaning, interpretation, or application of an express provision of this Agreement. The arbitrator shall have no power to alter, add to, subtract from, or modify any provision of this Agreement. The parties are agreed that no restrictions are intended on the powers of the Committee except those set forth in the language of this Agreement.

3. Decision of the Arbitrator

The arbitrator shall issue his/her written decision not later than thirty (30) days from the date of the close of the hearings or, if oral hearings have been waived, then from the date of transmitting the final statements and proofs to the arbitrator. The decision of the arbitrator will be accepted as final by the parties to the dispute and both will abide by it.

4. Arbitration Award Application

The Committee agrees that it will apply to all substantially similar situations the decision of an arbitrator sustaining a grievance and the Union agrees that it will not bring or continue, and that it will not represent any employee in any grievance which is substantially similar to a grievance denied by the decision of the arbitrator. The arbitrator's fee will be shared equally by the parties to the dispute.

5. Alternate Arbitration Procedure

Notwithstanding any contrary provision of this Article, unresolved grievances at Step 3 may be submitted by the Union to a closed panel of arbitrators and not the American Arbitration Association, under an alternate arbitration procedure mutually agreed between the parties.

6. Staffing Clause

Notwithstanding any contrary provision of this Agreement, no provision of this Agreement shall be deemed to require the School Committee to hire any particular number or kind of teachers or other personnel or to maintain any level of staffing, nor shall any arbitrator have the power to order the hiring of any kind or number of teachers or other personnel as a consequence of any violation of this Agreement. This provision shall not be deemed to restrict any arbitrator from ordering the reinstatement of any employee in any case dealing with the question of just cause for dismissal.

7. Implementation

The Committee will use its best efforts to implement a settlement agreement or an arbitrator's award within 30 days after approval of such settlement or receipt of such award and determination not to contest it.

Such efforts shall include, but not be limited to, establishment of a payment system under which specified employees of the School Department are to be held accountable for compliance with this section.

F. Resolution of Differences by Peaceful Means

The Union and Committee agree that differences between the parties shall be settled by peaceful means as provided within this Agreement. The Union, in consideration of the value of this Agreement and its terms and conditions and the Legislation which engendered it, will not engage in, instigate, or condone any strike, work stoppage, or any concerted refusal to perform normal work duties on the part of any employee covered by this Agreement.