

[Commissioner's Update Archive](#)

Commissioner's Updates

February 7, 2000

Dear Superintendents, and Leaders of Charter Schools and Collaboratives:

As a reminder, coordinated updates are being posted entirely online rather than being mailed. For the time being, I will continue to mail to you around the fifth and twentieth of every month a hard copy of my cover letters. To help you better access our website, I have taken the following steps:

I have restructured the Department of Education News Page to provide direct access to the items in my [bimonthly updates](#). There are now two versions of each of the documents attached to my updates; Portable Document Format (PDF) and Hypertext Mark-up Language (HTML).

HTML documents provide fast and easy access and do not have special system requirements. PDF documents are better for printing because they always display exactly as created, regardless of fonts, software, and operating systems. PDF documents do require a plug-in for your browser. This is free software available at <http://www.adobe.com/products/acrobat/readstep.html>. Additionally, we maintain a special webpage to assist you with PDF documents at <http://www.doe.mass.edu/resources/pdf.html>.

I urge you to encourage your administrators, school principals and Chapter 766 school providers to read these bi-monthly notices and remain informed on the latest news located on our website, which is continuously being revised.

In this letter, I have three matters to address and four items for your review:

School Safety

The unfortunate death of a four year old boy in a pre-school last week should be a reminder to us all to review and revise school safety policies and procedures. While a few accidents may be unavoidable, it is imperative that we take every precaution necessary to prevent them.

School Finance

Three items: first, the [Foundation Reserve grants](#) have been awarded. Again this year, the interest in this grant was keen, and 220 requests for funds were submitted. Grants have been awarded to 41 districts and towns. For information on these awards, see our School Finance webpage. Next, the preliminary Chapter 70 and local spending requirements for FY 2001 will be mailed to you at the end of February. Finally, I have included in this bi-monthly update the proposed changes to school construction regulations [PDF](#). Public comment on the regulations will be accepted until March 3.

MCAS

Two important matters: first, I have posted on our MCAS webpage two important notices; one regarding this [spring's MCAS schedule](#), and the other about [MCAS administration workshops](#) to be conducted in March. **It is critical that your principals review these MCAS notices.** Next, as you know, I have selected Harcourt Educational Management to serve as our student testing contractor for 2000-2004. I want to assure you that there will be no major changes in the testing program as a result of this decision.

This update includes five items:

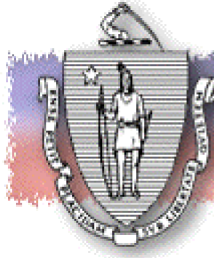
1. [Proposed changes to school construction regulations](#)
2. [Request for information regarding the federal Emergency Immigrant Education Assistance Program](#)
3. [Notice regarding special education services for students in private schools](#)
4. [Board in Brief, a summary of the January 25 meeting of the Board of Education](#)
5. Proposed Regulations 603 CMR 31.00: Massachusetts Certificate of Mastery
[No longer available]

As I travel across the Commonwealth, I continue to be inspired by the hard work being done. I recognize that you have a lot to do, and appreciate your continuing commitment. All the best, and

Sincerely,

David P. Driscoll
Commissioner of Education

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Massachusetts Department of Education

350 Main Street, Malden, Massachusetts 02148-5023 (781) 338-3000

TO: Superintendents, Mayors/Boards of Selectmen and Other Interested Parties
FROM: David P. Driscoll, Commissioner of Education
DATE: January 28, 2000
Subj: PROPOSED CHANGES TO THE SCHOOL CONSTRUCTION REGULATIONS (603 CMR 38.00) COMMENTS REQUESTED BY MARCH 3, 2000

Pursuant to its authority under M.G.L. c. 69, § 1B, and St. 1948, c. 645, § 11 (as amended; the School Building Assistance (SBA) Act), and in accordance with the Administrative Procedure Act, M.G.L. c. 30A, the Massachusetts Board of Education is soliciting public comment regarding [proposed changes in the School Construction Regulations](#), otherwise known as the SBA program regulations. These proposals have been developed partly in response to the rapidly escalating cost of the SBA program, whose annual cost has grown from a manageable \$127 million in FY1990 to \$331 million projected for FY2001. With another 138 projects on the waiting list and 120 new project applications received this year, the cost will soon exceed a half billion dollars a year. The Board of Education and I believe that changes to the program are needed to ensure its continued viability.

Our goal in proposing these changes is to make the best and most efficient use of limited financial resources. We want to make sure that communities with truly urgent school building needs do not have to wait years to receive funding. We also want to make sure that construction funding does not crowd out funding for reducing class sizes, improving teacher quality, providing extra assistance to at-risk students, and other educational priorities.

Listed below are the specific programmatic improvements and regulatory changes proposed at this time. Perhaps the major impact of these proposed changes is that proposals for new school buildings to replace existing buildings will receive even more scrutiny than in the past. Although new school buildings can be a source of great community pride, they are not an educational necessity. With appropriate on-going maintenance and judicious renovation, most older buildings can and should continue in use.

- Allow the use of modular construction in limited circumstances where it is a cost-effective solution that reduces or eliminates the need for permanent construction.

- Require municipalities and districts to grant to the Commonwealth the right to use, and permit other municipalities and districts to use, plans and specifications on other SBA projects. This will allow us to establish a library of project plans that other districts can use in lieu of designing new projects from scratch. In the future, we may propose a legislative change to provide a financial incentive to re-use existing plans.
- Change the policies governing renovations to existing facilities. Much attention has been given to our current policy, under which we do not pay for "small" repairs (such as the replacement of a roof or a boiler), but if a community lets enough things get run down we pay for a total renovation. We propose resuming payments for replacement or reconstruction of individual building systems, provided that the system has been adequately maintained and has reached the end of its normal useful life. For major renovations of existing buildings, our focus should be on building additional capacity, modifying existing space to meet new educational needs, and addressing code compliance and safety issues. Ancillary work, such as patching and painting walls, replacing floors and ceilings, and providing new furnishings and equipment, should not normally be reimbursable under the SBA program, as these types of items should be taken care of through on-going maintenance which is the responsibility of the municipality or district. The only exception would be very old buildings (we suggest 50 years or older) that have not previously been renovated with SBA funds. Given the wear and tear that a school building receives, it is not unreasonable to expect that even the best-maintained building will need a complete overhaul at that age.
- Exclude field houses, swimming pools, and skating rinks from reimbursable costs. While such facilities can be a nice enhancement to a secondary school and to a community at large, they do not serve a sufficiently urgent educational need to justify the use of scarce SBA dollars.
- Set earlier application deadlines. Currently, a project must have begun the application process with a building needs conference by January 1 to be considered for approval in June. This does not allow sufficient time for the planning and review process, particularly if there are a large number of projects under consideration. We recommend moving the schedule back by four months, so that the initial building needs conference must take place by September 1.
- Establish an interagency advisory committee with representation from Administration and Finance, Revenue, Capital Asset Management, Housing and Community Development, and Environmental Affairs. The committee would have the opportunity to review all proposed capital construction projects in the early planning stages, allowing them to bring issues and concerns to the attention of the Commissioner and the Board.
- Make two clarifications with respect to enrollment projections: (1) districts must submit adequate supporting documentation; and (2) districts may not include incoming school choice students in the projected enrollment used to determine the needed facility size.
- Establish separate cost limits for furnishings and equipment (F&E). Currently, each project has a single cost limit that includes design and construction as well as F&E. The single cost limit allows building committees to either under- or over-purchase in the F&E category to compensate for shortfalls and savings in the design and construction category.
- Allow the Commissioner to require the use of a construction manager (individual

- or firm) if the municipality or district does not have adequate in-house construction management expertise.
- Require industry-standard air pollution containment procedures for renovation projects that take place while a school is in session. (Requested by the Department of Public Health)
 - Allow bond issuance costs (including bond counsel and credit rating services) to be included in eligible costs for reimbursement. Currently these costs are excluded, but there does not appear to be any compelling reason for that policy.
 - Increase the per square foot cost allowances by 1.2%, based on the twelve-month change in the *ENR* building cost index for Boston. The proposed new cost per square foot allowances would be as follows: elementary schools - \$148.00; middle and junior high schools - \$158.00; high schools - \$170.00; vocational schools - \$182.00. These proposed allowances do not include the proposed additional \$15.00 per square foot allowance for furnishings and equipment.

We intend to apply these new policies to projects that had an initial building needs conference on or after January 1, 2000. Projects that had an initial building needs conference prior to that date and are ready to be added to the waiting list in June 2000 would not be subject to the new policies. The applicability of the new policies to the remaining projects, those that had their conference before January 1, 2000 but will not be ready for final approval this year, will be determined on a case-by-case basis.

Written comments on the proposed amendments may be submitted to Jeff Wulfson, Chief Financial Officer, by mail at the Department of Education, 350 Main Street, Malden, MA 02148; by fax to 781-338-6565; or by e-mail to jwulfson@doe.mass.edu. The deadline for submission of public comment is Friday, March 3, 2000. Copies of the proposed amendments may be obtained by calling 781-338-6599 or on the Department's school finance web site, <http://finance1.doe.mass.edu/>. We anticipate that the Board of Education will take final action on the proposed regulations at its regular meeting scheduled for March 28, 2000.

Please note that these proposals are consistent with, but separate from, the legislative recommendations included in the [Governor's House 1 budget request](#) for FY2001. Comments concerning the Governor's legislative proposals should be directed to the House and Senate Committees on Ways and Means.

1/14/00

Proposed Amendments to 603 CMR 38.00

School Construction

For initial review by Board of Education: January 25, 2000
Public comment period: ends March 3
Anticipated final action by the Board of Education: March 28, 2000

*Note: proposed new language is indicated in **boldface type**.*

38.03: General requirements: Capital Construction

(1) All **capital construction** projects shall have an anticipated useful life of at least 50 years as a public school of the applicant school district, **provided that this requirement may be waived by the Commissioner where the applicant can demonstrate that a shorter term solution is cost effective or otherwise in the public interest.**

* * *

(12) **The applicant shall provide a qualified construction manager to oversee all capital construction projects.**

(13) **Applicants shall implement containment procedures for dusts, gases, fumes, and other pollutants created during renovations/construction as part of any planned construction, addition to, or renovation of a school if the building is occupied by students, teachers or school department staff while such renovation and construction is occurring. Such containment procedures shall be consistent with the most current edition of the "IAQ Guidelines for Occupied Buildings Under Construction" published by the Sheet Metal and Air Conditioning Contractors National Association, Inc. (SMACNA). All bids received for school construction or renovations shall include the cost of planning and execution of containment of construction/renovation pollutants consistent with the SMACNA guidelines.**

(14) **The applicant shall grant to the Commonwealth a non-exclusive, irrevocable license to use, and permit other municipalities and districts to use, any and all plans and specifications on other school building projects without additional compensation, and shall provide copies of such plans and specifications in such form as is prescribed by the Commissioner.**

* * *

38.05: Program Standards: Capital Construction

(1) Program Design A school project shall be designed based upon an approved program for a specified number of students for a typical academic week. The program model shall be approved by the district school committee, and shall comply with requirements of law and Board regulations relative to curriculum, program, student learning time and length of school year. In addition the project design may contain

provision for community programs approved by the district school committee or other local agency or office having lawful control of community programs. Community school spaces shall be included within the gross square footage established in 603 CMR 38.00 unless the Commissioner specifically approves additional space based on a demonstrable community need that cannot be accommodated within those limitations. **Swimming pools, skating rinks, field houses, and similar community recreational facilities shall not be eligible for reimbursement.**

(2) Planned Enrollment The Department and the applicant shall agree on a planned enrollment for the school project. **The applicant shall provide adequate supporting documentation as requested by the Department.** The planned enrollment shall be consistent with demonstrable need, **and shall not include incoming school choice students.**

* * *

38.06: Cost Standards: Capital Construction

(1) Grants for capital construction projects ~~approved under 603 CMR 38.00 shall be computed at not more than~~ **shall be based on** the following amounts per square foot **for the cost of the general contract, design fees, allowable site preparation, site development, insurance, construction supervision, costs related to the issuance of notes and bonds, contingency amounts, and miscellaneous costs.**

[all amounts below to be updated based upon ENR building cost indices]

Elementary School ~~\$161.00~~ per square foot

Middle School/Junior High School ~~\$174.00~~ per square foot

High School ~~\$183.00~~ per square foot

Vocational School ~~\$195.00~~ per square foot

(2) ~~The square foot costs listed in 603 CMR 38.06(1) shall include the cost of the general contract, fees, all equipment, allowable site preparation, site development, insurance, contingency amount, and miscellaneous costs and shall apply to projects approved after June 1, 1999.~~ **Grants for capital construction projects may also include not more than \$15.00 per square foot for furnishings and equipment.**

(3) For the purpose of calculating the state construction grant, the estimated approved cost and the final approved cost for a school project shall not exceed the cost that would result by multiplying the gross square footage per pupil by the planned enrollment and by multiplying the result by the established cost per square foot **as set forth in paragraphs (1) and (2) of this section. Said costs per square foot shall apply to projects approved after June 1, 2000.**

* * *

(6) ~~The approved cost of includable renovation in an existing school building to which an addition is proposed shall be determined by comparing the architect's estimate of the actual cost of the proposed renovation with the per square foot cost estimate, as set forth in 603 CMR 38.06(1), of constructing a similar new facility.~~ **Where an existing school building is being expanded, the square footage for cost purposes shall be based on the size of the proposed addition, plus that portion of the space in the existing building which requires significant renovation and reconstruction to accommodate changes in educational use. Renovations and repairs to other areas of the existing building shall not be eligible for reimbursement under a capital construction grant but may be eligible for a major reconstruction grant in accordance with 603 CMR 38.07(4).**

* * *

38.07: Major Reconstruction Projects

(4) Projects that may qualify for major reconstruction projects grants include: a project to eliminate a structural **or environmental** safety hazard; a project to make a building accessible to persons with physical disabilities; a roof replacement or reconstruction project; the replacement or improvement of a heating system; a project to make a building more energy efficient. **In addition, applicants may apply for a major reconstruction grant for the complete renovation of an existing school building or portion of a school building, including but not limited to repairs to or replacement of walls, ceilings, flooring, windows, electrical and telecommunications wiring, lighting fixtures, and furnishings and equipment, provided that it has been at least 50 years since such building or portion of a building was constructed or most recently renovated.** Specific approval requirements applicable to the listed projects may be established by the Department.

* * *

38.10: Application Procedures

* * *

(2) ~~Projects will be placed on the approved project list for Board consideration of funding authorization in the subsequent fiscal year~~ **presented to the Board for approval in June of each year** if: (a) the building needs conference has been held prior to ~~January 4~~ **September 1 of the previous calendar year**; (b) the applicant has submitted educational specifications and preliminary designs approved by the school committee by ~~March 4~~ **November 1 of the previous calendar year**; (c) the applicant has submitted all required application materials and supporting documentation, including any required local agency approvals, on or before ~~June 4~~ **March 1 of that year**; and (d) the project meets all requirements set forth in St. 1948, c.645, as amended, and in 603 CMR 38.00 for project approval. **If the Board approves a project but funding authorization is not available for a grant award in the current fiscal year, the project shall be placed on a waiting list pending the subsequent authorization of funds.**

(3) For the purpose of 603 CMR 38.00 there shall be four types of applications:

(a) An *application for approval and funding of a capital construction project*, which shall consist of all project schematic plans/drawings, educational specifications, required approvals, construction documents and other documentation required to demonstrate that the planning for a proposed project is complete through the construction document phase and meets the approval requirements set forth in 603 CMR 38.03, 38.04, 38.05, and 38.06. An application form and check list of required submissions will be provided by the Department. Application materials may be submitted to the Department in stages as the planning for the project progresses. To qualify for State funding, the application for a capital construction project must be complete, and the ~~Department~~ **Board's** project approval given, prior to any construction start.

(b) An *application for approval and funding of a major ~~repairs~~ reconstruction project*, which shall consist of a single submission providing detailed design, material and cost information concerning the specific renovation proposed. An application form and check list of required submissions will be provided by the Department. A separate application shall be filed for each distinct renovation proposed for a given school building, *i.e.*, roof, heating system, handicapped access, etc. To qualify for State funding, the application for a major ~~repairs~~ **reconstruction** project grant must be filed with the Department, and the ~~Department~~ **Board's** project approval given, prior to any construction start.

* * *

(7) The Commissioner shall establish a school building assistance advisory committee, and shall invite representation from the executive office for administration and finance, the department of revenue, the division of capital asset management, the department of housing and community development, the executive office of environmental affairs, and such other agencies as he deems appropriate. The advisory committee shall be given the opportunity to review applications for capital construction projects, to request additional information from applicants relating thereto, and to provide advice and comment to the Commissioner and the Board with respect to whether such proposed projects are in the best interests of the Commonwealth.

~~(7)~~**(8) Project approval, when given, shall be signified by letter from the Commissioner. The Commissioner shall notify each applicant in writing of the Board's action.**

~~(8)~~**(9) Any applicant for an approved school project which has a complete application on file with the Department and has obtained written project approval from the Commissioner may commence construction without jeopardizing future Board action on the applicant's request for a school building assistance grant. Neither the Commissioner's approval of the project nor the applicant's commencement of construction thereupon shall commit the Board to authorize a school building assistance grant for the project when the project receives funding consideration, nor**

~~do these actions affect the project's placement on any future priority list.~~ **Approval of a project and placement on the waiting list does not constitute a guarantee of project funding. Any applicant with an approved project on the waiting list may commence construction prior to the grant award but does so at its own risk. Only a grant award provides a funding commitment by the Commonwealth. The Board will award grants to projects on the waiting list as funding authorization is available.**

* * *

38.11: Grant Awards

(13) ~~In June of each fiscal year, the Department shall present to the Board a list of approved major reconstruction projects awaiting grant authorization, listed in the order in which applications for those projects were received. The Board shall make grant awards for such projects to the extent that unexpected funds are available in any of the school building assistance appropriation accounts for that fiscal year.~~ **Major reconstruction projects shall be placed on the waiting list after capital construction projects and shall be listed in the order in which applications for those projects were received, provided that if an applicant proposes both a capital construction project and a major reconstruction project to be done concurrently on a single building, both projects shall be listed together on the waiting list in accordance with the priority of the capital construction project.**

[Commissioner's Update Archive](#)

Emergency Immigrant Education Assistance Program Request for Information

Memorandum

To: Superintendents of Schools
From: David P. Driscoll, Commissioner of Education
Date: February 4, 2000
Subject: Emergency Immigrant Education Assistance Program
Request for Information

The Massachusetts Department of Education was notified recently by the Office of Bilingual Education and Minority Languages Affairs of the U.S. Department of Education that new awards would be available under **the Emergency Immigrant Education Assistance Program** for the 2000-20001 school year. During the current school year, the Department has disbursed \$3,713,488 to approximately 80 school districts in Massachusetts under the entitlement and competitive grant opportunities offered through this program. These grants are to be used to provide high quality instruction to immigrant children and youth and to help those children and youth make the transition into American society and meet the same challenging State performance standards expected of all children and youth.

In order for a school district to qualify for a subgrant under the **entitlement** component of this Act, the sum of the number of immigrant children, including refugees, must be equal to:

1. at least 500, or
2. at least three percent of the total number of students enrolled in public schools under the jurisdiction of the local educational agency and non-public schools within the district served by the local education agency.

In order for the Department to verify your eligibility and to estimate your allocation under the Act, we need to have the following information by **March 10, 2000**.

The total count of immigrant children and youth enrolled in elementary and secondary public schools under your jurisdiction and enrolled in elementary and secondary non-public schools within your district through February 1, 2000. The count should be taken in the month of February.

Since the State's allocation will be based on the March 10, 2000 information received from districts, only those districts that provide this information by the due date will receive funding under this Act. Attached to this memo is a Child/Youth Count Report form. Please complete and return the original and one copy to:

**Massachusetts Department of Education
Learning Support Services
350 Main Street
Malden, Massachusetts 02148-5023
Attn: Russell Fleming**

Once the State plan and application have been approved, and the grant award notification is received from the U.S. Department of Education, you will be sent the necessary application materials during the unified grant application process.

Finally, please note that although your district may not qualify for entitlement funding under this program, the Department also conducts a competitive component of this grant entitled the **English Language Acquisition**

Program. This grant is made available for districts that normally would not qualify under the conditions described above and will also be made available during the unified grant application process.

Should you have any questions regarding this memorandum, please contact Russell Fleming at (781) 338-6259.

Child/Youth Count Report

District Name _____

Report Prepared by _____ Tel # _____

Fill in the following table reporting the number of *immigrant children* enrolled, during the current school year, in public and non-public elementary and secondary schools, for your school district. If the total number of immigrants in public and non-public schools is either 500 or 3% of the LEA population you qualify for funding under this program.

1	2	3	4	5
Immigrants in Public Schools	Immigrants in Non-Public Schools	Total Number of Immigrants	Total LEA Population (Public and Private)	Immigrant Percentage of Total Col 3/Col 4

Example: LEA below does qualify with 5.29%.

1	2	3	4	5
Immigrants in Public Schools	Immigrants in Non-Public Schools	Total Number of Immigrants	Total LEA Population (Public and Private)	Immigrant Percentage of Total Col 3/Col 4
256	75	331	6254	.0529 (5.29%)

Instructions for Country of Origin Form

1. You **are not required** to submit data on each immigrant child and youth counted. Instead, you are only required to submit a list of the countries of origin and accompanying totals for immigrant students as defined below. Please use the attached **Country of Origin Form** to report this data. Also, please note that the countries of origin list must be in alphabetical order and that the superintendent's signature must be included. Individual demographic information supporting this aggregate data should be kept on file at the LEA.
2. Please refer to the enclosed list of commonly accepted designations for Independent States (Countries) in the World as of January 1, 2000. The list of countries is based on U.S. State Department information and can also be accessed at:

http://www.state.gov/www/regions/independent_states.html

3. Districts are reminded that Puerto Rico, as well as other dual sovereignty territories listed below, should not be recorded on the enclosed forms. Also, do not use the nation abbreviations listed or capital cities.
4. Other incorrect country of origin designations, such as the use of Africa in lieu of specific African country names, will *not* be accepted by the SEA for compilation.



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Special Education

February 4, 2000

Guidance on Providing Special Education Services for Students Attending Private Schools at Private Expense

In an outside section of the FY2000 state budget (St. 1999, c. 127, §258), the Legislature has directed Massachusetts schools to continue providing special education services to private school students consistent with the regulatory language in the Chapter 766 regulations and the federal requirements in effect prior to the reauthorization of the federal special education law in 1997. This means that Massachusetts state law requires a higher standard of services than the federal Individuals with Disabilities Education Act currently requires.

This memorandum provides guidance on how this outside section affects practice at the local level. First, the regulatory language requires that public schools provide "genuine opportunities [for eligible private school students] to participate in the public school special education program." 603 C.M.R. § 28.205.2. Further, public school special education for private school students must be "comparable in quality, scope, and opportunity for participation to that provided to public school children with needs of equal importance." 603 C.M.R. § 28.205.2.

Below is a question and answer guide to clarify the requirements for private school students. If you have further questions, please contact the Program Quality Assurance Office at 781-338-3700.

Questions and Answers

1. **What effect does Outside Section 258 of the FY2000 state budget have on the provision of special education services to Massachusetts students attending private schools at private expense?**

Outside Section 258 of the FY2000 state budget requires the Department of Education to "continue in effect and enforce" section 28.205 of the Massachusetts regulations for special education. The outside section essentially requires school districts, as matter of state law, to provide services to private school students to the same extent that they were required to do so under the federal Individuals with Disabilities Education Act prior to its amendment in 1997. Massachusetts state law now requires a higher standard of services than the federal Individuals with Disabilities Education Act currently requires.

2. **Is the "Final Guidance" document that the Department published in August 1999 regarding Students with Disabilities Enrolled in Private Schools still in effect?**

No. The August 1999 guidance was based on the federal Individuals with Disabilities Education Act and its implementing regulations rather than the higher standard of service now in place in Massachusetts. While the August 1999 document accurately explains current federal law, it does not address additional requirements of state law. We recommend that schools discard the August 1999 document. This memorandum supersedes it.

3. **Who is an "eligible student?"**

Under the current Massachusetts regulations, an "eligible student" is a person, three through twenty-one years of age and residing in Massachusetts, with a disability who has not received a high school diploma; who, as result of his or her disability, is unable to progress effectively in regular education; and who

requires special education services in order to develop his or her educational potential. "Special education" is defined as "specially designed instruction." Therefore, to be an "eligible student," such a person must require specially designed instruction to develop his or her educational potential and to progress effectively in regular education. Public school districts are responsible for eligible students who reside in their school district, irrespective of where they may attend school.

4. Does this mean that, in Massachusetts, each eligible student in private schools has an individual right to publicly funded special education services?

Yes. Each student with a disability has the right to receive a special education evaluation and a determination of eligibility. A student with a disability is eligible for special education services if the Team determines that the student, because of his or her disability, is unable to progress effectively in the regular education program and requires specially designed instruction to progress effectively. If so, the student has the right to receive the services identified by the Team and outlined in the student's Individualized Educational Plan ("IEP").

5. Do private school students have rights to special education identical to students enrolled in public schools?

No. Because private school students are being educated in a school program that public school districts cannot modify or otherwise control, an IEP offered to a privately enrolled student may differ from that which might be offered to the same student if enrolled in public school. The law requires the public school district to provide services tailored to the individual student's needs and a "genuine opportunity to participate in the public school special education program."

6. What services is a public school district required to provide to eligible private school students?

Every eligible student enrolled in a private school has the right to have special education services offered that are responsive to that student's individual needs and "comparable in quality and scope" to services provided to eligible students enrolled in a public school. Public school districts may meet the requirement of providing a comparable "opportunity to participate" by providing services in a flexible manner with qualified individuals. For instance, some services may be provided using federal funds and if so, those services may be provided on the grounds of the private school, making the services more easily accessible. If state and local funds are used, services may be provided only at a public school or neutral site. Public schools may be able to accommodate eligible private school students in special education instructional groups that are provided early or late in the school day and that, therefore, create fewer scheduling barriers for students who attend private schools.

7. Does a public school district have additional obligations under federal law with respect to special education for private school students?

Yes. The specific requirements of federal law can be found at 34 C.F.R. §§ 300.450 through 300.462. Federal law requires public school districts to ensure that representatives of private schools have opportunities to consult with the public school in relation to "child find" activities and in relation to providing special education services. Child find activities include locating, identifying, and evaluating students with disabilities who may be eligible for special education. Whenever possible, representatives of the student's private school should be invited to participate as a member of the public school Team considering the evaluation information and determining appropriate IEP services for each individual student.

8. What is the federal "proportionate share?"

Federal law also requires public school districts to spend an amount on special education and related services for private school students that is at least the same proportion of the public school district's total federal funds as the number of private school students residing in the public school district is to the total number of eligible students residing in the public school district. This amount is commonly referred to as the "proportionate share."

The proportionate share (PSHARE) for a public school district is calculated as follows:

$$\text{(\$federal entitlement)} = \text{PSHARE} = \frac{\text{(\# of eligible private school students)}}{\text{(\# of ALL eligible students (public \& private))}} \times \text{\%}$$

The public school district divides the number of eligible private school students by the total of all eligible students (public and private) to obtain a certain percentage value. This percentage value represents the proportion that eligible private school students represent relative to the total of all eligible students. Subsequently, when the public school district becomes aware of the amount of federal special education entitlement funds it will receive it must identify that same proportion of those funds as the "proportionate share" that must be spent on services for eligible private school students. An example follows.

EXAMPLE

A public school district determined that ten (10) students who live in its geographical jurisdiction are eligible for special education services and are enrolled in a private or parochial school rather than the public school. The public school additionally determined that 90 public school students are eligible for special education and have IEPs from the public school. **Thus, for this district, the proportion of eligible private school students to all eligible students is 10:100 or 10%.**

As part of the federally required child count conducted in December 1998 the public school district "counted" the 90 public school students on IEPs and two (2) of the eligible private school students, because those two students received special education services from the public school district. In total, the public school submitted a child count of 92 students in December 1998. The share of IDEA-Part B funds that will be provided to Massachusetts school districts during the 1999-2000 school year is calculated at \$535/student. Therefore, this district will receive \$49,220 in federal special education entitlement funds during the 1999-2000 school year (\$535/student served X 92 students).

Since eligible private school students constitute 10% of all eligible students, the "proportionate share" of the federal special education funds is 10% of the \$49,220 or \$4,922. This district must spend at least \$4,922 on services for eligible private school students in order to meet its obligation under IDEA-97 during the 1999-2000 school year.

9. **Do private school students in Massachusetts have due process rights concerning the provision of special education services?**

Yes. Requests for mediation or appeals may be directed to the Bureau of Special Education Appeals at 781-338-6400. Other requests for assistance or for understanding the legal requirements may be directed to the Program Quality Assurance Services 781-338-3700 and the Department's Problem Resolution System at 781-338-3737.

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Board In Brief

Tuesday, January 25, 2000

This is "Board in Brief," issued at the request of Commissioner David P. Driscoll to bring you up to date on Board of Education matters. This is a report on the special meeting held Monday, January 24, 2000, and the regular monthly meeting held on Tuesday, January 25, 2000, at the Department of Education in Malden.

SPECIAL MEETING

The Board held a special meeting to discuss its mission and goals. Board Chairman James A. Peyser suggested the overarching goal is improving student achievement. The Board discussed policy areas including accountability, creating conditions for effective schools, educator leadership development, and school restructuring. No votes were taken, and the discussion will continue at the February 23 meeting.

REGULAR MEETING

Chairman Peyser opened the meeting by noting Governor Cellucci's initiative, announced during his State of the State address, to test math teachers in schools where more than 30 percent of students are failing the subject. Chairman Peyser said, "We have attempted to address this issue through our recent revision of the recertification regulations. The Department and the Joint Commission on Educator Preparation are putting together proposals, which we will review in a few months, to address this problem at the undergraduate level. It is my hope and expectation that these measures will yield positive results over time." The Board will discuss the mathematics testing proposal at its February 23 meeting.

The Chairman commented on the Inspector General's report on charter schools, which he said was useful in some areas but off the mark in others because of misunderstanding about the nature of charter schools. He also discussed the charter school report from the Education Reform Review Commission, which he said, "implies that more charter schools would increase the chances for broader, systemic reform. I urge the House of Representatives to take up the bill already passed by the Senate that would raise the cap on the number of charter schools."

Commissioner Driscoll reported that Governor Cellucci's FY 2001 budget proposal (House 1) is to be released January 26. He informed the Board of the Department's recent organizational changes designed to strengthen its effectiveness, and gave the Board a technology update regarding the Massachusetts Community Network project, the Information Management System for student data, and the newest initiative, Virtual Education Space. The Commissioner also introduced the Department of Education's new Associate Commissioner for Charter Schools, Susan Miller Barker.

The Commissioner announced that after receiving proposals from three testing companies, he is in final negotiations with Harcourt Educational Measurement of San Antonio, Texas to take over the administration of the MCAS test from Advanced Systems in Measurement & Evaluation, Inc., Dover, N.H.. The Commissioner noted, "Harcourt's proposal provided two key components that will help us move forward with the implementation of the MCAS over the next five years: 1) their technological capacity to turn around results more quickly; and 2) the ability to deliver an equally high-quality program more economically."

Commissioner Driscoll and Chairman Peyser both paid tribute to the late Dr. Stanley Z. Koplik, a member of the Board and Chancellor of the Board of Higher Education. "He was not only a great colleague, but a great friend," Commissioner Driscoll said. Chairman Peyser stated, "Stan was a dedicated and caring public servant who was at the center of this decade's reform movements in both K-12 and higher education. He unfailingly stood for high academic standards."

Competency Determination: Adoption of Regulation on Grade 10 Passing Standard for Class of 2003

After a review of public comment and on recommendation of the Commissioner and the Chairman, the Board voted to adopt a regulation setting the standard for the Competency Determination, as follows: "Students in the graduating class of 2003 shall meet or exceed the Needs Improvement threshold scaled score of 220 on both the English Language Arts and the Mathematics MCAS grade 10 tests in order to satisfy the requirements of the Competency Determination. The Board intends to raise the threshold scaled score required for the Competency Determination in future years."

Chairman Peyser said the Competency Determination standard "strikes the right balance; it is both challenging and reasonable." Commissioner Driscoll added, "I agree with the Chairman, that this is a fair, reasonable, and meaningful first step in establishing the high school graduation requirement." The Board approved the standard on an 8-1 vote, with Board member Edwin Delattre opposed. At a future meeting the Board plans to discuss implementation issues relating to the Competency Determination, including opportunities for re-testing, an appeals process, and further educational opportunities and local certificates for students who do not meet the Competency Determination standard.

Certificate of Mastery Regulations

The Education Reform Act calls for a "certificate of mastery" for high-achieving Massachusetts high school students. The purposes of the certificate are to: recognize high academic achievement; motivate students to perform to their best abilities on MCAS and other measures; recognize high academic achievement in areas not included in the MCAS; and recognize high academic achievement as identified by outside forums including publications, performances and awards in literature, science and the arts. The Board voted unanimously to seek public comment on a regulation defining the standards for the certificate of mastery. As proposed, the Certificate of Mastery would be in the form of an award named in honor of the late Stanley Z. Koplik.

The proposed criteria for public school students include scoring "Advanced" on at least one grade 10 MCAS test subject, and scoring at least "Proficient" on the remaining sections of the grade 10 MCAS. All candidates for the certificate must fulfill additional requirements through one of several combinations covering both arts/humanities and mathematics/science, through SATII and AP exams or other measures. The Department is researching what should be the qualifying scores on SATII and AP exams, as well as eligibility criteria for private school students. After the period of public comment on the proposed regulation, the Board will take a final vote on it this spring.

School Building Assistance: Policy Issues and Authorization to Seek Public Comment on Proposed Amendments to Regulations

The Board voted to seek public comment on proposed amendments to the regulations on School Building Assistance. Proposals include: changing the policies governing renovations to existing facilities; allowing the use of modular construction in limited cases where it is cost-effective; requiring municipalities and districts to grant to the Commonwealth the right to use plans and specifications for other school building projects; excluding field houses, swimming pools and skating rinks from reimbursable costs; establishing separate cost limits for furnishings and equipment; and requiring industry-standard air pollution containment procedures for renovations that take place while a school is in session. The cost standards for capital construction projects are proposed to increase by 1.2%.

Chairman Peyser and other Board members commended the Department for the proposals. He noted that the rapidly escalating cost of the School Building Assistance program jeopardizes its continued viability. The program's annual cost has grown from \$127 million in FY 1990 to \$331 million projected for FY 2001. With 138 projects on the waiting list and another 120 new project applications received this year, the annual cost is estimated to soon exceed a half billion dollars. The proposed changes are designed to use financial resources more efficiently, so that urgent school building needs can be met, and construction funding does not crowd out funding for other educational priorities.

Charter School Renewals: City on a Hill Charter School, South Shore Charter School

The Board voted to renew the charters for the City on a Hill (Boston) and South Shore (Hull) Charter Schools for the five-year period from July 1, 2000 through June 30, 2005.

School and District Accountability

The Board received a report from Juliane Dow, Director of Accountability and Targeted Assistance. Ms. Dow reported that this week schools across the Commonwealth are receiving the first reports issued under the School Performance Rating Process adopted by the Board last fall. The Mid-Cycle Progress Report for each school includes: 1998 MCAS results, which serve as the baseline for the rating cycle; the school's improvement expectations established for this cycle; 1999 MCAS results, compared to the 1998 baseline and the improvement expectations; and an explanation of how performance and improvement ratings will be determined and reported at the end of the 1998-2000 School Performance Rating Cycle.

The next step in implementing the new school accountability system is to analyze the 1999 MCAS results to identify schools that performed at the lowest levels in 1998 and showed no improvement in 1999. Schools that meet these criteria will be candidates for Panel Review this year.

Board members also discussed the District Performance Evaluations, including piloting the proposed District Evaluation Process this spring in several districts. The Revere Public Schools have agreed to work with the Department to pilot the draft evaluation protocol and criteria. Other districts are also being recruited for the program. The Board plans to discuss the proposed district performance standards in March, seek public comment, and vote on the standards in May.

NEXT BOARD MEETING

The next regular meeting of the Board of Education will take place on Wednesday, February 23, 2000 at the Department of Education in Malden.

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