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Commissioner's Updates

November 20, 2000

Dear Superintendents, and Leaders of Charter Schools and Collaboratives:

In this update, I have three announcements and two documents posted on our [website](#).

Spanish Version of Letter to Parents of Tenth Grade Students

On Friday, all superintendents, high school principals and bilingual directors were mailed a Spanish version of the letter recently sent from the Governor Cellucci, Lt. Governor Swift, Chairman of the Board Peyser and me to all parents of children in the tenth grade. The letter discusses the MCAS and the graduation requirement and is available on the Department [website](#).

Newly Revised Program Plan for Special Education

Also this month, we have posted the revised Program Plan for Special Education. During November and December regional workshops are being conducted for local special education administrators. I hope you will find that the format that has been designed for the statement of assurances should significantly reduce paperwork. Please note that the deadline for all school districts and charter schools to submit Program Plans is January 31, 2001.

School Council Information

The School Council handbook has been posted and can be viewed at the School Council [Website](#).

Finally, there are two items recently posted on our website:

1. [Assessment Development Committee Member Recruitment for 2001-2002](#)
2. [Memorandum on Distribution of Boy Scouts Information to Public Schools](#)

Wishing you a happy holiday season, and

Sincerely,

David P. Driscoll
Commissioner of Education

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Massachusetts Department of Education

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- > [MCAS Home](#)
- > [School Notices](#)
- > [About The MCAS](#)
- [Test Schedule](#)
- [Test Items](#)
- [Scoring Guides/Student Work](#)
- [MCAS Results](#)
- > [MCAS Alternate Assessment](#)
- > [Publications](#)
- > [Links to Related Resources](#)
- [MCAS Performance Appeals](#)
- [Parent Information Hotline](#)
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[Assessment/Accountability](#) > [MCAS](#) >

Massachusetts Comprehensive Assessment System

2001-2002 Assessment Development Committee Member Recruitment

Memorandum

To: Superintendents, Principals and Educational leaders
From: David P. Driscoll, Commissioner of Education
Date: November 13, 2000

The Department of Education is seeking Massachusetts classroom teachers to serve on the Massachusetts Comprehensive Assessment System (MCAS) Assessment Development Committees in the areas of English language arts, mathematics, science and technology/engineering and history and social science. Committee members work with the Department of Education and its testing contractor to develop, review and refine MCAS test questions. Committee members must have content expertise, understanding of and direct experience with the Massachusetts Curriculum Frameworks, and experience at the grade level(s) tested. Participation on an ADC Committee provides an excellent professional development opportunity.

The Department will reimburse districts for substitute teacher expenses for meetings that take place during the school year. Mileage expenses for travel to meetings is provided by the Department of Education. In addition, lodging for members living 70 miles or more from the meeting site is provided. Committee members will receive an honorarium for attending the summer meetings.

I encourage you to share this memorandum with colleagues and encourage qualified individuals to apply. Please notify eligible staff and encourage them to complete and submit the enclosed application [[MS WORD](#) || [PDF](#)].

The application deadline is 5:00 p.m., Friday, December 15, 2000. Applicants will be notified of their selections by January 10, 2001.

Committee Memberships

| Grade | Subject | Number of Memberships Available |
|-------|------------------------------------|---------------------------------|
| 3 | Reading | 8 |
| 4 | English Language Arts | 8 |
| 4 | Mathematics | 8 |
| 5 | Science and Technology/Engineering | 8 |
| 5 | History and Social Science | 8 |
| 6 | Mathematics | 8 |

| | | |
|------|--|---|
| 7 | <i>English Language Arts</i> | 8 |
| 8 | <i>Mathematics</i> | 8 |
| 8 | <i>Science and Technology/ Engineering</i> | 8 |
| 8 | <i>History and Social Science</i> | 8 |
| 9/10 | <i>Earth Science</i> | 8 |
| 9/10 | <i>Technology/Engineering</i> | 8 |
| 9/10 | <i>Introductory Physics</i> | 3 |
| 9/10 | <i>Chemistry</i> | 3 |
| 9/10 | <i>Biology</i> | 3 |
| 9/10 | <i>Integrated Science</i> | 8 |
| 10 | <i>English Language Arts</i> | 8 |
| 10 | <i>Mathematics</i> | 8 |
| 10 | <i>History and Social Science</i> | 8 |

Committee members are required to attend one or two multi-day summer meetings (two summer meetings for grade ten committees), and at least two meetings during the school year. The anticipated dates for meetings are listed below. Additional meetings may be called as necessary.

Anticipated Meeting Dates

| Date | ADC Committee |
|-------------------------|--|
| January 9 and 10, 2001 | Grade 10 English Language Arts Grade 10 Mathematics |
| February 8 and 9, 2001 | English Language Arts (all grades) |
| March 6 and 7, 2001 | Grade 5 Science Grade 8 Science Grade 9/10 Technology/Engineering |
| March 8 and 9, 2001 | Grade 9/10 Biology Grade 9/10 Chemistry Grade 9/10 Earth Science Grade 9/10 Integrated Science Grade 9/10 Introductory Physics |
| March 21 and 22, 2001 | All ADC Committees except Science |
| April 25 and 26, 2001 | English Language Arts (all grades) |
| July 24, 25, 26, 2001 | All ADC Committees |
| August 14, 15, 16, 2001 | Grade 10 English Language Arts Grade 10 Mathematics |
| October 10 and 11, 2001 | All ADC Committees |

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- › [Laws & Regulations Home](#)
- › [State Regulations](#)
- › [State Laws](#)
- › [Federal Laws](#)
- › [Legal Advisories](#)
- › [Arbitration Awards](#)

[District/School Administration](#) › [Administration](#) ›

Education Laws and Regulations

Advisory: Distribution of Boy Scouts Literature in Public Schools

Memorandum

To: Superintendents of Schools and Charter School Leaders
From: David P. Driscoll, Commissioner of Education
Date: November 15, 2000

This memorandum responds to a question the Department of Education has received about 603 C.M.R. 26.06(1), the section of the Equal Educational Opportunity Regulations that prohibits public schools in Massachusetts from sponsoring outside extra-curricular groups that discriminate on the basis of race, color, sex, national origin, religion or sexual orientation. Specifically, school officials have asked whether the regulation precludes a public school from allowing the distribution of Boy Scouts literature to students, given that the Boy Scouts restrict membership on the basis of sexual orientation. Such literature would presumably recruit new members or notify students of upcoming Boy Scouts meetings or events.

Our advisory opinion analyzes the question under the state regulation as well as First Amendment principles. In summary:

A school committee (or the board of trustees of a charter school) may adopt a policy that allows the Boy Scouts to post notices and distribute flyers in the school(s). As long as the public school does not "sponsor" the Boy Scouts or any other group that restricts membership, by endorsing the group or participating in the organization of its activities or recruitment of students, the school is not in violation of 603 C.M.R. 26.06(1). If the school committee permits certain types of outside groups (e.g., nonprofit charitable or civic groups that provide programs or services for young people) to distribute literature in the schools, it creates a "limited public forum." No school committee is required to create a limited public forum. Once it does so, however, the school committee may not deny access to a qualified group on grounds that the group restricts membership based on sexual orientation or another protected category.

603 C.M.R. 26.06(1) draws the distinction between school-sponsored activities and outside groups that may use the school as a "limited public forum." It states that:

No school shall sponsor or participate in the organization of outside extra-curricular activities conducted at such school that restrict student participation on the basis of race, color, sex, religion, national origin or sexual orientation. 603 C.M.R. 26.06(1) does not prohibit school committees from allowing use of school premises by independent groups with restrictive membership.

By providing that a school committee may "allow use of school premises by independent groups with restrictive membership," the regulation distinguishes between a public school's sponsorship of such a group and a public school's provision of a "limited public forum" to such a group.

The U.S. Supreme Court has determined that a limited public forum is created when public property becomes designated "for use by the public as a place of expressive activity." *Perry Education Assoc. v. Perry Local Educators Assn.*, 460 U.S. 37, 45-48 and n. 7 (1983). In this context, a limited public forum exists when a school committee decides to allow use of school property or facilities by designated types of outside non-school-related

groups. The public forum is "limited" because the school committee establishes reasonable rules regarding the type of outside groups that may use the school facilities and the extent to which such groups may use the facilities. For example, the limited public forum may be available only to nonprofit charitable or civic groups and only for the use of the school buildings after school hours. Alternatively, a school committee may decide to permit outside groups to post notices or distribute flyers at school as part of the limited public forum that the school committee wishes to provide.

Once a school committee decides to create a limited public forum, First Amendment principles dictate that it cannot refuse access to a qualified group based on the content of its message. This means that if a school committee decides to allow its schools to be used as literature distribution centers by nonprofit charitable or civic organizations that provide programs or services for young people, it must allow the Boy Scouts to use the schools for this purpose despite the restrictive membership policy of the Boy Scouts. Should the school committee decide, however, not to allow use of the school as a public forum at all, or to limit its public forum to a type of group that does not encompass the Boy Scouts, for example, athletic programs for youth, then it may decline to permit the Boy Scouts to post or distribute literature at the schools.

Literature distribution for independent outside organizations is distinct from sponsorship. Because of the Boy Scouts restrictive admission policy, 603 C.M.R. 26.06(1) precludes a public school from sponsoring the Boy Scouts as an extra-curricular activity for students. For purposes of its regulation, the Department interprets "sponsoring" to mean endorsing, supervising or participating in the organization of the activity.

Where literature distribution is part of the limited public forum that a school provides, the school committee should take steps to make clear that it is not sponsoring or endorsing the outside organizations whose literature the school is making available to students. Specifically, if a school committee decides to allow its school buildings to be used as limited public forums for purposes of literature distribution by certain types of outside groups (e.g., nonprofit charitable or civic groups that provide programs or services for young people), the following steps should be taken to ensure that the school does not "sponsor or endorse" the literature distributed:

1. School handbooks that are provided to students and their families each school year should indicate that the school is allowing its facilities to be used by outside groups in this manner and should explicitly state that any literature disseminated by an outside group in the school is not school-sponsored or endorsed.
2. Posters and flyers regarding outside groups should be posted in common areas and not in classrooms. School notices should not be intermingled with such posters and flyers.
3. An outside group's literature should not be distributed to students during instructional time and, if possible, should not be intermingled with official school notices.
4. Students should not be compelled to take home or read any such literature.
5. As part of the school committee's policy on literature distribution, outside groups may be requested to provide their own disclaimer on their literature and
6. School newsletters and notices to parents may not publicize outside groups or recruit new members for such groups.

In sum, no public school is required to open itself up as a literature distribution center for outside non-school-related groups. Once a school committee decides to allow such access for certain types of groups, however, a qualified group may not be denied access on grounds that the group's message is discriminatory or that the group has restrictions on who may be a member. Providing access to an outside group in this manner does not constitute "sponsorship" of the group or its literature, assuming that the school does not endorse, supervise or participate in the organization of the outside group. This means that although a public school may, depending on its school committee policy, allow the Boy Scouts to post notices or distribute flyers at school, it may not allow information about the Boy Scouts or any other group with restrictive membership to be placed in school newsletters or notices.

We hope this memorandum will be helpful to you and your school community. If you have further questions about these issues, please consult with your school district's legal counsel or contact the Department of Education's Legal Office.

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